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FEDERAL REGISTER

Vol. 76 Wednesday,
No. 207 October 26, 2011

Pages 66169–66600

OFFICE OF THE FEDERAL REGISTER

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Contents

Federal Register

Vol. 76, No. 207

Wednesday, October 26, 2011

Advisory Council on Historic Preservation
See Historic Preservation, Advisory Council

Agency for Healthcare Research and Quality
NOTICES
Scientific Information Requests:
Phototherapy for Treatment of Chronic Plaque Psoriasis, 66307–66308

Agriculture Department
See Office of Advocacy and Outreach
See Rural Utilities Service
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 66269–66270

Antitrust Division
NOTICES
National Cooperative Research and Production Act of 1993:
Advanced Media Workflow Association, Inc., 66324
Cooperative Research Group on Development of a Predictive Model for Corrosion-Fatigue of Materials in Sour Environment, 66325
Cooperative Research Group on NASGRO Development and Support, 66324–66325

Army Department
NOTICES
Environmental Impact Statements; Availability, etc.:
Stationing and Operation of Joint High Speed Vessels; Withdrawal, 66281–66282
Meetings:
Army Education Advisory Committee, 66282

Centers for Disease Control and Prevention
NOTICES
Statement of Organization, Functions, and Delegations of Authority, 66308–66309

Centers for Medicare & Medicaid Services
NOTICES
Pilot Program for Parallel Review of Medical Products:
Correction, 66309

Children and Families Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 66309–66310

Coast Guard
RULES
Drawbridge Operations:
Nanticoke, Seaford, DE, 66184
Trent River, New Bern, NC, 66183–66184
PROPOSED RULES
Safety Zones:
Fireworks Displays within the Fifth Coast Guard District, 66239–66248
NOTICES
Meetings:
Lower Mississippi River Waterway Safety Advisory Committee, 66314
National Maritime Security Advisory Committee, 66313–66314

Commerce Department
See Industry and Security Bureau
See International Trade Administration
See National Oceanic and Atmospheric Administration

Defense Acquisition Regulations System
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 66282–66283

Defense Department
See Army Department
See Defense Acquisition Regulations System
See Navy Department
NOTICES
Defense Transportation Regulation, Part IV, 66281

Education Department
PROPOSED RULES
Teacher Preparation and TEACH Grant Programs:
Negotiated Rulemaking Committee, Negotiator Nominations and Schedule of Committee Meetings, 66248–66249
NOTICES
Meetings:
Committee on Measures of Student Success, 66283

Employment and Training Administration
NOTICES
Amended Certifications Regarding Eligibility To Apply for Worker and Alternative Trade Adjustment Assistance:
Callaway Golf Ball Operations, Inc., et al., Chicopee, MA, 66328
Iron Mountain Information Management, Inc., Corporate Service Group, et al., Boston, MA, 66327–66328
Determinations Regarding Eligibility to Apply for Worker and Alternative Trade Adjustment Assistance, 66328–66330
Investigations Regarding Certifications of Eligibility to Apply for Worker and Alternative Trade Ajustment Assistance, 66331–66332

Energy Department
See Energy Efficiency and Renewable Energy Office
See Federal Energy Regulatory Commission

Energy Efficiency and Renewable Energy Office
NOTICES
Meetings:
Wind and Water Power Program, 66284

Environmental Protection Agency
RULES
Exemptions from the Requirement of a Tolerance:
Bacteriophage of Clavibacter Michiganensis Subspecies Michiganensis, 66187–66192

NOTICES
Clean Air Act Operating Permit Program:
Petition for Objection to State Operating Permit for Public Service Co. of Colorado dba Xcel Energy – Cherokee Power Station, 66286
Petition for Objection to State Operating Permit for Public Service Co. of Colorado dba Xcel Energy – Valmont Power Station, 66285–66286
Final 2010 Effluent Guidelines Program Plan, 66286–66304

Executive Office of the President
See Presidential Documents

Federal Aviation Administration
RULES
Revision of Class E Airspace:
Umiat, AK, 66178–66179
Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures, 66179–66181
PROPOSED RULES
Airworthiness Directives:
Boeing Co. Airplanes, 66200–66203
Bombardier, Inc. Model BD 700 1A10 and BD 700 1A11 Airplanes, 66198–66200
Bombardier, Inc. Model CL 600 2B16 (CL 601 3A, CL 601 3R, and CL 604 Variants) Airplanes, 66203–66205
Sikorsky Aircraft Corp. Model S–76A Helicopters, 66205–66207
Sikorsky Aircraft Corp. Model S–92A Helicopters, 66207–66211
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Aviation Insurance, 66348
FAA Airport Master Record, 66348–66349
Financial Responsibility for Licensed Launch Activities, 66349–66350
General Aviation and Air Taxi Activity and Avionics Survey, 66346–66347
Hazardous Materials Training Requirements, 66347–66348
Organization Designation Authorization, 66346
Training and Qualification Requirements for Check Airmen and Flight Instructors, 66349
Type Certification Procedures for Changed Products, 66347
Meetings:
RTCA Special Committee 205–EUROCAE WG–71; Software Considerations in Aeronautical Systems, 66350
RTCA Special Committee 222 Inmarsat Aeronautical Mobile Satellite (Route) Services, 66350–66351
Petitions for Exemptions; Summaries of Petitions Received, 66351–66352
Requests to Release Airport Property:
Halifax County Airport (RZZ), Roanoke Rapids, NC, 66352

Federal Bureau of Investigation
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 66325–66326
Meetings:
Council for the National Crime Prevention and Privacy Compact, 66326

Federal Communications Commission
PROPOSED RULES
Television Broadcasting Services:
Cleveland, OH, 66250

Federal Energy Regulatory Commission
PROPOSED RULES
Automatic Underfrequency Load Shedding and Load Shedding Plans Reliability Standards, 66220–66229
Enhancement of Electricity Market Surveillance and Analysis, etc., 66211–66220
Transmission Planning Reliability Standards, 66229–66235
NOTICES
Combined Filings, 66284–66285

Federal Maritime Commission
NOTICES
Agreements Filed, 66304

Federal Motor Carrier Safety Administration
PROPOSED RULES
Unified Registration System, 66506–66595

Federal Reserve System
NOTICES
Formations of, Acquisitions by, and Mergers of Bank Holding Companies, 66304

Federal Retirement Thrift Investment Board
NOTICES
Meetings; Sunshine Act, 66304–66305

Fiscal Service
NOTICES
Surety Companies Acceptable on Federal Bonds:
Western National Mutual Insurance Co., 66361

Fish and Wildlife Service
PROPOSED RULES
Endangered and Threatened Wildlife and Plants:
90-Day Finding on Petition to Delist the Coastal California Gnatcatcher, 66255–66260
Designation of Critical Habitat for Lepidium papilliferum (Slickspot Peppergrass), 66250–66255
Review of Native Species That Are Candidates for Listing; Annual Notice of Findings on Resubmitted Petitions, etc., 66370–66439
NOTICES
Environmental Assessments; Availability, etc.:
Proposed Establishment of Everglades Headwaters National Wildlife Refuge and Conservation Area, 66321
Long Range Transportation Plans for Fish and Wildlife Service Lands:
HI, IA, Northern NV, OR, WA, and Pacific Island Territories; Correction, 66321

Food and Drug Administration
PROPOSED RULES
Bar Code Technologies for Drugs and Biological Products:
Retrospective Review Under Executive Order 13563, 66235–66238
NOTICES
Draft Documents to Support Submission of an Electronic Common Technical Document; Availability, 66311
Pilot Program for Parallel Review of Medical Products:
Correction, 66309

Health and Human Services Department
See Agency for Healthcare Research and Quality
See Centers for Disease Control and Prevention
See Centers for Medicare & Medicaid Services
See Children and Families Administration
See Food and Drug Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 66305–66306
Requirements and Registration for Leading Health Indicators App Challenge, 66306–66307

Historic Preservation, Advisory Council
NOTICES
Meetings:
Quarterly Business, 66311–66312

Homeland Security Department
See Coast Guard
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 66312–66313

Housing and Urban Development Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Energy Efficient Mortgages, 66317
Family Unification Program, 66315–66316
Management Reviews of Multifamily Housing Programs, 66317–66318
Multifamily Insurance Benefits Claims Package, 66316–66317
Single Family Mortgage Instruments, 66314–66315
Funding Awards, Fiscal Year 2010/2011:
Limited English Proficiency Initiative Program, 66318–66319
Operating Cost Adjustment Factors for 2012, 66319–66320

Industry and Security Bureau
RULES
Commerce Control List:
CFR Correction, 66181

Interior Department
See Fish and Wildlife Service
See Land Management Bureau
See National Park Service
See Surface Mining Reclamation and Enforcement Office

Internal Revenue Service
RULES
Disregarded Entities; Excise Taxes and Employment Taxes, 66181–66183
NOTICES
Quarterly Publication of Individuals Who have Chosen to Expatriate, 66361–66367

International Trade Administration
NOTICES
Antidumping Duty Administrative Reviews; Results, Amendments, Extensions, etc.:
Stainless Steel Plate in Coils from Belgium, 66271–66273

Justice Department
See Antitrust Division
See Federal Bureau of Investigation

Labor Department
See Employment and Training Administration
See Labor–Management Standards Office
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Well-Being Supplement to the American Time Use Survey, 66326–66327

Labor–Management Standards Office
RULES
Labor Organization Officer and Employee Reports, 66442–66504

Land Management Bureau
NOTICES
Filing of Plats of Survey:
Idaho, 66322
Oregon/Washington, 66322–66323

National Highway Traffic Safety Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 66352–66353
Grant of Petitions for Decision of Inconsequential Noncompliance:
Tireco, Inc., 66353–66354

National Oceanic and Atmospheric Administration
RULES
Fisheries of the Exclusive Economic Zone Off Alaska:
Pacific Cod by Catcher/Processors Using Pot Gear in the Bering Sea and Aleutian Islands Management Area, 66195–66196
Pacific Cod by Vessels Harvesting Pacific Cod for Processing by the Inshore Component in the Western Regulatory Area of the Gulf of Alaska, 66196–66197
Fisheries of the Northeastern United States:
Monkfish; Framework Adjustment 7, 66192–66195
PROPOSED RULES
Fisheries of the Northeastern United States:
Atlantic Mackerel, Squid, and Butterfish Fisheries; Specifications and Management Measures, 66260–66268
NOTICES
Applications for Exempted Fishing Permits:
Snapper–Grouper Fishery off the Southern Atlantic States and Coral and Coral Reefs Fishery in the South Atlantic, 66273–66274
Meetings:
North Pacific Fishery Management Council, 66274
Requests for Applications:
Cordell Bank National Marine Sanctuary Advisory Council, 66274
Small Takes of Marine Mammals Incidental to Specified Activities:
Pier 36/Brannan Street Wharf Project, San Francisco Bay, CA, 66274–66281

National Park Service
NOTICES
National Register of Historic Places:
Pending Nominations and Related Actions, 66323

Navy Department
NOTICES
Intent to Grant Partially Exclusive Patent Licenses:
BOLD Industries, Inc., 66283

Nuclear Regulatory Commission
NOTICES
Applications for Amendments to Facility Operating Licenses; Withdrawals:
Florida Power Corp., 66332
Appointments to Performance Review Boards for Senior Executive Service, 66332–66333
Environmental Assessments; Availability, etc.:
H. B. Robinson Steam Electric Plant, Unit No. 2, 66333–66334
Environmental Assessments; Availibity, etc.:
Proposed License Renewal for Nuclear Fuel Services, Inc. in Erwin, TN, 66334–66336

Office of Advocacy and Outreach
RULES
Office of Advocacy and Outreach Federal Financial Assistance Programs, 66169–66178

Postal Regulatory Commission
NOTICES
Post Office Closings, 66336–66339

Postal Service
RULES
Organization and Administration; Establishment, Classification, and Discontinuance, 66184–66187

Presidential Documents
ADMINISTRATIVE ORDERS
Congo, Democratic Republic of the; Continuation of National Emergency (Notice of October 25, 2011), 66597–66599

Public Debt Bureau
See Fiscal Service

Rural Utilities Service
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 66270–66271

Securities and Exchange Commission
NOTICES
Inaugural Roundtable of the Financial Reporting Series:
Uncertainty in Financial Statements; How Much to Recognize and How Best to Communicate It, 66339
Self-Regulatory Organizations; Proposed Rule Changes:
Financial Industry Regulatory Authority, Inc., 66344–66345
NYSE Arca, Inc, 66339–66344

State Department
NOTICES
Meetings:
U.S. Advisory Commission on Public Diplomacy, 66345–66346

Surface Mining Reclamation and Enforcement Office
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 66323–66324

Surface Transportation Board
NOTICES
Construction and Operation Exemptions:
DesertXpress Enterprises, LLC and DesertXpress HSR Corp., Victorville, CA, and Las Vegas, NV, 66354–66355

Transportation Department
See Federal Aviation Administration
See Federal Motor Carrier Safety Administration
See National Highway Traffic Safety Administration
See Surface Transportation Board

Treasury Department
See Fiscal Service
See Internal Revenue Service
PROPOSED RULES
Effect of Election on Corporation:
Withdrawal, 66239
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 66355–66361

Veterans Affairs Department
NOTICES
Meetings:
Joint Biomedical Laboratory Research and Development and Clinical Science Research and Development Services Scientific Merit Review Board, 66367

Separate Parts In This Issue

Part II
Interior Department, Fish and Wildlife Service, 66370–66439

Part III
Labor Department, Labor–Management Standards Office, 66442–66504

Part IV
Transportation Department, Federal Motor Carrier Safety Administration, 66506–66595

Part V
Presidential Documents, 66597–66599

Reader Aids

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

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

CFR PARTS AFFECTED IN THIS ISSUE

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

3 CFR

Administrative Orders:

Notices:

Notice of October 25, 2011 66599

7 CFR

Ch. XXV.....66169

14 CFR

71.....66178

97.....66179

Proposed Rules:

39 (6 documents) 66198, 66200, 66203, 66205, 66207, 66209

15 CFR

774 (2 documents) 66181

18 CFR

Proposed Rules:

35.....66211

40 (2 documents) 66220, 66229

21 CFR

Proposed Rules:

201.....66235

610.....66235

26 CFR

301.....66181

Proposed Rules:

1.....66239

29 CFR

404.....66442

33 CFR

117 (2 documents) 66183, 66184

Proposed Rules:

165.....66239

34 CFR

Proposed Rules:

Ch. VI.....66248

39 CFR

241.....66184

40 CFR

180.....66187

47 CFR

Proposed Rules:

73.....66250

49 CFR

Proposed Rules:

360.....66506

365.....66506

366.....66506

368.....66506

385.....66506

387.....66506

390.....66506

392.....66506

50 CFR

648.....66192

679 (2 documents) 66195, 66196

Proposed Rules:

17 (3 documents) 66250, 66255, 66370

648.....66260

Rules and Regulations

Federal Register
Vol. 76, No. 207
Wednesday, October 26, 2011

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

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DEPARTMENT OF AGRICULTURE

Office of Advocacy and Outreach

7 CFR Chapter XXV

RIN 0503–ZA01

Office of Advocacy and Outreach Federal Financial Assistance Programs

AGENCY: Office of Advocacy and Outreach, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule establishes the regulations for the administrative provisions of all grants or cooperative agreements to be administered by the Office of Advocacy and Outreach (OAO), established by the Food, Conservation, and Energy Act of 2008, (FCEA). Additionally, this interim rule establishes substantive regulations for the Outreach and Assistance for Socially Disadvantaged Farmers and Ranchers Program (OASDFR Program), established by the Food, Agriculture, Conservation and Trade Act of 1990 (FACT Act). It sets forth the criteria to deliver outreach and technical assistance in a linguistically appropriate manner to socially disadvantaged farmers, ranchers and forest landowners to acquire, own, operate, and retain farms, ranches and non-industrial forest land. In addition, it assures farmers and ranchers who are members of socially disadvantaged groups equitable participation in the full range of agriculture programs offered by the Department.

DATES: This interim rule becomes effective on: October 26, 2011. OAO requests to receive comments on or before: December 27, 2011.

ADDRESSES: You may submit comments, identified by RIN 0503–ZA01, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E—Mail: Asher.Weinberg@osec.usda.gov.* Include RIN 0503–ZA01 in the subject line of the message.
- *Fax:* 202–720–7136. Include RIN 0503–ZA01 in the subject line of the message.
- *Mail:* paper, disk, or CD–ROM submissions should be submitted to: Office of Advocacy and Outreach, U.S. Department of Agriculture, Attn: Asher Weinberg RIN 0503–ZA01, 1400 Independence Avenue, Room 520–A, Stop 9801, Washington, DC 20250–9821
- *Hand Delivery/Courier:* Office of Advocacy and Outreach, U.S. Department of Agriculture, Attn: Asher Weinberg RIN 0503–ZA01, 1400 Independence Avenue, Room 520–A, Washington, DC 20250–9821

Instructions: All submissions received must include the agency name and RIN for this rulemaking.

FOR FURTHER INFORMATION CONTACT: Asher Weinberg, Grants Program Manager, OASDFR Program, at (202) 720–3112.

SUPPLEMENTARY INFORMATION:

I. Introduction

The FCEA amended the Department of Agriculture Reorganization Act of 1994, to establish OAO. In addition, the FCEA amended Section 2501(a) of the FACT Act, to transfer the OASDFR Program to OAO and to authorize mandatory funding for this program for Fiscal Year (FY) 2009 through FY 2012. The purpose of this rulemaking is to establish general regulations governing awards management procedures for all OAO award programs. This rulemaking will also establish specific regulations governing the OASDFR Program awards management procedures.

II. Administration Requirements

Executive Orders 12866 & 13563

This action has been determined not significant for the purposes of Executive Orders 12866 and 13563, and therefore, has not been reviewed by the Office of Management and Budget. This interim rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. It will not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs. It will not have an annual effect on the economy of $100 million or more, nor will it adversely affect the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities in a material way. Furthermore, it does not raise a novel legal or policy issue arising out of legal mandates, the President's priorities or principles set forth in the Executive Order.

Regulatory Flexibility Act of 1980

This interim rule has been reviewed in accordance with the Regulatory Flexibility Act of 1980, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 601–612. The Department concluded that the rule will not have a significant economic impact on a substantial number of small entities. The rule does not involve regulatory and informational requirements regarding businesses, organizations, and governmental jurisdictions subject to regulation.

Paperwork Reduction Act (PRA)

The Department certifies that this interim rule has been assessed in accordance with the requirements of the Paperwork Reduction Act, 44 U.S.C. 2501 *et seq.,* (PRA). The Department concludes that this interim rule does not impose any new information requirements.

Catalog of Federal Domestic Assistance

This interim regulation applies to Federal assistance programs administered by OAO, including 10.443, Outreach and Assistance for Socially Disadvantaged Farmers and Ranchers and 10.465, Farmworker Training Grants.

Unfunded Mandates Reform Act of 1995 and Executive Order 13132

The Department has reviewed this interim rule in accordance with the requirements of Executive Order No. 13132 and the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1501 *et seq.,* and has found no potential or 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 there is no

Federal mandate contained herein that could result in increased expenditures by State, local, or tribal governments or by the private sector, the Department has not prepared a budgetary impact statement.

Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

The Department has reviewed this interim rule in accordance with Executive Order 13175 and has determined that it does not have ''tribal implications.'' The interim rule does not ''have substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibility between the Federal government and Indian tribes.''

III. Statutory Authority

Section 14013 of the FCEA establishes OAO. This section specifies the establishment and transfer of programs to OAO, including the Socially Disadvantaged Farmers Group, the Small Farms and Beginning Farmers and Ranchers Group, the Farmworker Coordinator, and other programs as determined by the Secretary. In addition, Section 14004 amended Section 2501(a) of the FACT Act to clarify the Secretary's authority to engage in grants and other agreements to provide outreach and assistance for socially disadvantaged farmers and ranchers. Previously, the OASDFR Program (also known as 2501 Program) was administered by the National Institute of Food and Agriculture (NIFA). Section 14013 of the FCEA added Section 226B to the Department of Agriculture Reorganization Act of 1994 to transfer the OASDFR Program to OAO. The OASDFR Program provides outreach and technical assistance in a linguistically appropriate manner to encourage and assist current and prospective socially disadvantaged farmers, ranchers, and forest landowners in (1) owning and operating farms, ranches, and non-industrial forest lands; and (2) in participating equitably in the full range of agricultural programs offered by the Department.

IV. Section-by-Section Analysis

This interim rule will identify OAO awards management procedures for all competitive and noncompetitive award programs administered within OAO. General OAO awards management procedures are discussed in part 2500 subparts A, B, C, D and E. Part 2500 subpart F of this regulation provides program-specific procedures for the OASDFR Program.

Part 2500—OAO Federal Financial Assistance Programs—General Award Administrative Procedures

A. Subpart A—General Information

The purpose of this subpart is to establish the definitions and statutes and regulations applicable to this part

B. Subpart B—Pre-Award: Solicitation and Proposal

The purpose of this subpart is to establish the solicitation criteria through a Request for Proposals (RFP). This subpart also identifies the type of proposals to be submitted and OAO eligibility requirements.

C. Subpart C—Pre-Award: Proposal Review and Evaluation

The purpose of this subpart is to establish the requirements for reviewing, evaluating and selecting proposals. This subpart also establishes the OAO ''Applicant Feedback'' process.

D. Subpart D—Award

The purpose of this subpart is to identify the OAO administrative processes for spending program funds. This subpart also establishes the OAO award agreement which defines the terms and conditions of the award.

E. Subpart E—Post-Award and Closeout

The purpose of this subpart is to establish the OAO post-award and closeout requirements. Subsequently, this subpart also establishes the OAO regulations in regard to cost-sharing and matching, indirect cost, program income, and financial and technical reporting.

F. Subpart F—Outreach and Assistance for Socially Disadvantaged Farmers and Ranchers Program

The purpose of this subpart is to establish the program-specific grants and cooperative agreements management procedures for the OASDFR Program.

List of Subjects in 7 CFR Part 2500

Farmers, Federal aid programs, Grants administration, Grant programs—agriculture, Ranchers, Socially disadvantaged groups.

For the reasons discussed in the preamble, the Office of Advocacy and Outreach, Departmental Management adds chapter XXV, consisting of part 2500, to Title 7 of the Code of Federal Regulations to read as follows:

Chapter XXV—Office of Advocacy and Outreach

PART 2500—OAO FEDERAL FINANCIAL ASSISTANCE PROGRAMS—GENERAL AWARD ADMINISTRATIVE PROCEDURES

Subpart A—General Information

Sec.

2500.001 Applicability of regulations.
2500.002 Definitions.
2500.003 Other applicable statutes and regulations.

Subpart B—Pre-Award: Solicitation and Proposals

2500.011 Competition.
2500.012 Requests for proposals.
2500.013 Types of proposals.
2500.014 Eligibility requirements.
2500.015 Content of a proposal.
2500.016 Submission of a proposal.
2500.017 Confidentiality of proposals and awards.
2500.018 Electronic submission.

Subpart C—Pre-Award: Proposal Review and Evaluation

2500.021 Guiding principles.
2500.022 Preliminary proposal review.
2500.023 Selection of reviewers.
2500.024 Evaluation criteria.
2500.025 Procedures to minimize or eliminate duplication of effort.
2500.026 Applicant feedback.

Subpart D—Award

2500.031 Administration.

Subpart E—Post-Award and Closeout

2500.041 Payment.
2500.042 Cost sharing and matching.
2500.043 Program income.
2500.044 Indirect costs.
2500.045 Technical reporting.
2500.046 Financial reporting.
2500.047 Project meetings.
2500.048 Review of disallowed costs.
2500.049 Prior approvals.
2500.050 Suspension, termination, and withholding of support.
2500.051 Debt collection.
2500.052 Award appeals procedures.
2500.053 Expiring appropriations.
2500.054 Monitoring scope, purpose, and awardee responsibility.
2500.055 Audit.
2500.056 Civil rights.

Subpart F—Outreach and Assistance for Socially Disadvantaged Farmers and Ranchers Program

2500.101 Applicability of regulations.
2500.102 Purpose.
2500.103 Definitions.
2500.104 Eligibility requirements.
2500.105 Project types and priorities.
2500.106 Funding restrictions.
2500.107 Matching.
2500.108 Term of award.
2500.109 Program requirements.

Authority: 7 U.S.C. 6934, 7 U.S.C. 2279.

Subpart A—General Information

§ 2500.001 Applicability of regulations.

The regulations in subparts A through E of this part apply to the programs authorized under section 14013 of the FCEA to be administered within the Office of Advocacy and Outreach (OAO). The purpose of this part is to set forth regulations for competitive and noncompetitive grants, cooperative agreements, and other assistance agreements awarded through OAO.

§ 2500.002 Definitions.

Applicant means the entity that has submitted a proposal in response to an OAO Request For Proposal (RFP).

Authorized Departmental Officer (ADO) means the Secretary or any employee of the Department with delegated authority to issue or modify award instruments on behalf of the Secretary.

Authorized Organizational Representative (AOR) means the President or Chief Executive Officer of the applicant organization or the official, designated by the President or Chief Executive Officer of the applicant organization, who has the authority to commit the resources of the organization to the project.

Award means financial assistance that provides support to accomplish a public purpose. Awards may be grants, cooperative agreements, or other assistance agreements.

Award agreement means the agreement between OAO and the awardee which sets forth the terms and conditions under which the OAO funds will be made available. Award agreement is used as a general term to describe grant agreements, cooperative agreements, and other assistance agreements.

Award closeout means the process by which the award operation is concluded at the expiration of the award period or following a decision to terminate the award.

Award period means the timeframe of the award from the beginning date to the ending date as defined in the award agreement.

Awardee means the entity designated in the grant agreement, cooperative agreement, or other assistance agreement as the legal entity to which the award is given.

Baseline monitoring is the minimum, basic monitoring that will take place on an ongoing basis throughout the lifetime of every award.

Beginning date means the date the award agreement is executed by the awardee and OAO and from which costs can be incurred.

Community-based organization means a nongovernmental organization with a well-defined constituency that includes all or part of a particular community.

Cooperative agreement means the award of funds to an eligible awardee to assist in meeting the costs of conducting a project which is intended and designed to accomplish the purpose of the program as identified in the RFP, and where substantial involvement is expected between OAO and the awardee when carrying out the activities included in the agreement. This agreement may also be referred to more generally as an award.

Department means the U.S. Department of Agriculture.

Disallowed costs means the use of Federal financial assistance funds for unauthorized activities or items as stipulated in the applicable Federal cost principles (2 CFR part 220, 2 CFR part 225, and 2 CFR part 230).

Ending date means the date the award agreement is scheduled to be completed. It is also the latest date award funds will be provided under the award agreement, without an approved time extension.

Participant means an individual or entity that participates in awardee-led activities funded under the award agreement. Furthermore, a participant is any individual or entity who has applied for, otherwise participated in, or received a payment, or other benefit as a result of participating in an activity funded by an OAO award.

Partnering means a joint effort among two or more eligible entities with the capacity to conduct projects intended and designed to accomplish the purpose of the program.

Program leader means the program supervisor within OAO.

Project means activities supported under an OAO award.

Project Director (PD) means the individual designated by the awardee in the proposal and award documentation, and approved by the ADO who is responsible for the direction and management of the award.

Project Officer (PO) means an individual within OAO who is responsible for the programmatic oversight of the award on behalf of the Department.

Request for Proposals (RFP) means an official USDA funding opportunity. At OAO discretion, funding opportunities may be referred to as request for proposals, request for applications, notice of funding availability, or funding opportunity.

Review panel means an evaluation process involving qualified individuals within the relevant field to give advice on the merit of proposals submitted to OAO.

Secretary means the Secretary of Agriculture and any other officer or employee of the Department of Agriculture to whom authority may be delegated.

Terminate funding means the cancellation of Federal assistance, in whole or in part, at any time before the ending date.

§ 2500.003 Other applicable statutes and regulations.

Several Federal statutes and regulations apply to proposals for Federal assistance considered for review and to grants and cooperative agreements awarded by OAO. These include, but are not limited to:

(a) 7 CFR Part 1, Subpart A—USDA implementation of the Freedom of Information Act;

(b) 7 CFR Part 3—USDA implementation of OMB Circular No. A–129, regarding debt management;

(c) Title VI of the Civil Rights Act of 1964 (Pub. L. 88–352), as amended, which prohibits discrimination on the basis of race, color, or national origin, and 7 CFR part 15, subpart A (USDA implementation);

(d) 7 CFR Part 3015—USDA Uniform Federal Assistance Regulations, implementing OMB directives and incorporating provisions of the Federal Grant and Cooperative Agreement Act of 1977, Public Law 95–224, 31 U.S.C. § 6301–6308, as well as general policy requirements applicable to awardees of Departmental financial assistance.

(e) 7 CFR Part 3016—USDA implementation of Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

(f) 7 CFR Part 3017—USDA implementation of Governmentwide Debarment and Suspension (Nonprocurement).

(g) 7 CFR Part 3018—USDA implementation of Restrictions on Lobbying. Imposes prohibitions and requirements for disclosure and certification related to lobbying on awardees of Federal contracts, grants, cooperative agreements, and loans.

(h) 7 CFR Part 3019—USDA implementation of OMB Circular No. A–110, Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations (now relocated at 2 CFR part 215).

(i) 7 CFR Part 3021—USDA implementation of Governmentwide Requirements for Drug-Free Workplace (Financial Assistance).

(j) 7 CFR Part 3052—USDA implementation of OMB Circular No. A–133, Audits of States, Local Governments, and Non-Profit Organizations.

(k) 7 U.S.C. 3318—conferring upon the Secretary general authority to enter into contracts, grants, and cooperative agreements to further the research, extension, or teaching programs in the food and agricultural sciences of the Department of Agriculture.

(l) 29 U.S.C. 794 (Section 504, Rehabilitation Act of 1973) and 7 CFR part 15b (USDA implementation of statute)—prohibiting discrimination based upon physical or mental handicap in Federally assisted programs.

(m) 35 U.S.C. 200 *et seq.*—Bayh-Dole Act, promoting the utilization of inventions arising from federally supported research or development; encouraging maximum participation of small business firms in federally supported research and development efforts; and promoting collaboration between commercial concerns and nonprofit organizations, including universities, while ensuring that the Government obtains sufficient rights in federally supported inventions to meet the needs of the Government and protect the public against nonuse or unreasonable use of inventions (implementing regulations are contained in 37 CFR part 401)

(n) Title IX of the Education Amendment of 1972 (20 U.S.C. 1681–1683 and 1685–1686), as amended, which prohibits discrimination on the basis of sex;

(o) Age Discrimination Act of 1975 (42 U.S.C. 6101–6107), as amended, which prohibits discrimination on the basis of age;

(p) Drug Abuse Office and Treatment Act of 1972 (Pub. L. 92–255), as amended, relating to nondiscrimination on the basis of drug abuse;

(q) Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (Pub. L. 91–616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism;

(r) Sections 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290dd–3 and 290ee–3), as amended, relating to confidentiality of alcohol and drug abuse patient records;

(s) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 *et seq.*), as amended, relating to nondiscrimination in the sale, rental or financing of housing;

(t) Any other nondiscrimination provisions in the specific statute(s) under which proposals for Federal assistance are made, and the requirements of any other nondiscrimination statute(s) which may apply to the proposal.

Subpart B—Pre-Award: Solicitation and Proposals

§ 2500.011 Competition.

(a) *Standards for competition.* Except as provided in paragraph (b) of this section, OAO will enter into discretionary grants or cooperative agreement only after competition, unless restricted by statute.

(b) *Exception.* The OAO ADO may make a determination in writing that competition is not deemed appropriate for a particular transaction. Such determination shall be limited to transactions where it can be adequately justified that a noncompetitive award is in the best interest of the Federal Government and necessary to the goals of the program. Non-competitive determinations will comply with regulations established in 7 CFR 3015.158(d).

§ 2500.012 Requests for proposals.

(a) *General.* For each competitive grant or cooperative agreement, OAO will prepare a program solicitation (also called a request for proposals (RFP)). The RFP may include all or a portion of the following items:

(1) Contact information.

(2) Catalog of Federal Domestic Assistance (CFDA) number.

(3) Legislative authority and background information.

(4) Purpose, priorities, and fund availability.

(5) Program-specific eligibility requirements.

(6) Program-specific restrictions on the use of funds, if applicable.

(7) Matching requirements, if applicable.

(8) Acceptable types of proposals.

(9) Types of projects to be given priority consideration, including maximum anticipated awards and maximum project lengths, if applicable.

(10) Program areas, if applicable.

(11) Funding restrictions, if applicable.

(12) Directions for obtaining additional requests for proposals and proposal forms.

(13) Information about how to obtain proposal forms and the instructions for completing such forms.

(14) Instructions and requirements for submitting proposals, including submission deadline(s).

(15) Explanation of the proposal evaluation process.

(16) Specific evaluation criteria used in the review process.

(17) Type of Federal assistance awards (i.e., grants or cooperative agreements).

(b) *RFP variations.* Where program-specific requirements differ from the requirements established in this part, program solicitations will also address any such variation(s). Variations may occur in the following:

(1) Award management guidelines.

(2) Restrictions on the delegation of fiscal responsibility.

(3) Required approval for changes to project plans.

(4) Expected program outputs and reporting requirements, if applicable.

(5) Applicable Federal statutes and regulations.

(6) Confidential aspects of proposals and awards, if applicable.

(7) Regulatory information.

(8) Definitions.

(9) Minimum and maximum budget requests and whether proposals outside of these limits will be returned without further review.

(c) *Program announcements.* Occasionally, OAO will issue a program announcement (PA) to alert potential applicants and the public about new and ongoing funding opportunities. These PAs may provide tentative due dates and are released without associated proposal packages. No proposals are solicited under a PA. PAs will be announced in the **Federal Register** or on the OAO Web site.

§ 2500.013 Types of proposals.

The type of proposal acceptable may vary by funding opportunity. The RFP will stipulate what will be required for submission to OAO in response to the funding opportunity.

§ 2500.014 Eligibility requirements.

Program-specific eligibility requirements appear in the subpart applicable to each program and in the corresponding RFPs.

§ 2500.015 Content of a proposal.

The RFP provides instructions on how to access a funding opportunity. The funding opportunity contains the proposal package, which includes the forms necessary for completion of a proposal in response to the RFP. The RFP will be posted on *http://www.Grants.gov.* OAO may also publish the RFP in the **Federal Register**.

§ 2500.016 Submission of a proposal.

The RFP will provide deadlines for the submission of proposals. OAO may issue separate RFPs and/or establish separate deadlines for different types of proposals, different award instruments, or different topics or phases of the

assistance programs. If proposals are not received by applicable deadlines, they will not be considered for funding. Exceptions will be considered only when extenuating circumstances exist, as determined by OAO, and justification and supporting documentation are provided by the applicant. Conformance with preparation and submission instructions is required and will be strictly enforced unless a deviation has been approved. OAO may establish additional requirements. OAO may return without review proposals that are not consistent with the RFP instructions.

§ 2500.017 Confidentiality of proposals and awards.

(a) *General.* Names of entities submitting proposals, as well as proposal contents and evaluations, except to those involved in the review process, will be kept confidential to the extent permissible by law.

(b) *Identifying confidential and proprietary information in a proposal.* If a proposal contains proprietary information that constitutes a trade secret, proprietary commercial or financial information, confidential personal information, or data affecting the national security, it will be treated in confidence to the extent permitted by law, provided that the information is clearly marked by the applicant with the term ''confidential and proprietary information.'' In addition, the following statement must be included at the bottom of the project narrative or any other attachment included in the proposal that contains such information: ''The following pages (specify) contain proprietary information which (name of proposing organization) requests not to be released to persons outside the Government, except for purposes of evaluation.''

(c) *Disposition of proposals.* By law, OAO is required to make the final decisions as to whether the information is required to be kept in confidence. Information contained in unsuccessful proposals will remain the property of the applicant. However, the Department will retain for three years one file copy of each proposal received; extra copies will be destroyed. Public release of information from any proposal submitted will be subject to existing legal requirements. Any proposal that is funded will be considered an integral part of the award and normally will be made available to the public upon request, except for information designated proprietary by OAO.

(d) *Submission of proprietary information.* The inclusion of proprietary information is discouraged unless it is necessary for the proper evaluation of the proposal. If proprietary information is to be included, it should be limited, set apart from other text on a separate page, and keyed to the text by numbers. It should be confined to a few critical technical items that, if disclosed, could jeopardize the obtaining of foreign or domestic patents. Trade secrets, salaries, or other information that could jeopardize commercial competitiveness should be similarly keyed and presented on a separate page. Proposals or reports that attempt to restrict dissemination of large amounts of information may be found unacceptable by OAO and constitute grounds for return of the proposal without further consideration. Without assuming any liability for inadvertent disclosure, OAO will limit dissemination of such information to its employees and, where necessary for the evaluation of the proposal, to outside reviewers on a confidential basis.

§ 2500.018 Electronic submission.

Applicants and awardees are encouraged, but not required, to submit proposals and reports in electronic form as prescribed in the RFP issued by OAO and in the applicable award agreement.

Subpart C—Pre-Award: Proposal Review and Evaluation

§ 2500.021 Guiding principles.

The guiding principle for Federal assistance proposal review and evaluation is to ensure that each proposal is treated in a consistent and fair manner. After the evaluation process by the review panel, OAO will provide an opportunity for applicant feedback in as timely a manner as possible.

§ 2500.022 Preliminary proposal review.

Prior to technical examination, a preliminary review will be made of all proposals for responsiveness to the administrative requirements set forth in the RFP. Proposals that do not meet the administrative requirements may be eliminated from program competition. However, OAO retains the right to conduct discussions with applicants to resolve technical and/or budget issues, as deemed necessary by OAO.

§ 2500.023 Selection of reviewers.

(a) *Requirement.* OAO is responsible for performing a review of proposals submitted to OAO competitive award programs. The RFP will identify the criteria that OAO will use for the selection of the proposal review panel.

(b) *Confidentiality.* The identities of reviewers will remain confidential to the maximum extent possible. Therefore, the names of reviewers will not be released to applicants. Names of applicants, as well as proposal content and evaluation comments will be kept confidential to the extent permitted by law, except to those involved in the review process. Reviewers will comply with the above-mentioned confidentiality guidelines.

(c) *Conflicts of interest.* During the evaluation process, extreme care will be taken to prevent any actual or perceived conflicts of interest that may impact review or evaluation. Reviewers are expected to be in compliance with the Conflict-of-Interest process made a part of the RFP.

§ 2500.024 Evaluation criteria.

(a) *General.* To ensure any project receiving funds from OAO is consistent with the broad goals of the funding program, the content of each proposal submitted to OAO will be evaluated based on a pre-determined set of review criteria as indicated in the RFP.

(b) *Guidance for reviewers.* In order that all potential applicants for a program have similar opportunities to compete for funds, all reviewers will receive an orientation from the Program Leader of the review criteria. Reviewers are instructed to use those same evaluation criteria, and only those criteria, to judge the merit of the proposals they review.

§ 2500.025 Procedures to minimize or eliminate duplication of effort.

OAO may implement appropriate business processes to minimize or eliminate the awarding of Federal assistance to projects that unnecessarily duplicate activities already being sponsored under other awards, including awards made by other Federal agencies.

§ 2500.026 Applicant feedback.

Unsuccessful applicants may submit a request for applicant feedback in writing to OAO within 10 days after receiving written notice of not being selected for further processing. Applicant feedback requests are to be mailed to the Program Leader at the address below, unless otherwise stated in the ''Notice of Non-Selection'' or in the RFP. At OAO's discretion, either written or oral feedback will be provided to unsuccessful applicants.

U.S. Department of Agriculture, Departmental Management, Office of Advocacy and Outreach, *Attn:* Program Leader (Applicant Feedback), Whitten Building, Rm. 520–A, stop 9821, 1400 Independence Avenue, SW., Washington, DC 20250–9821.

Subpart D—Award

§ 2500.031 Administration.

(a) *General.* Within the limit of funds available for such purpose, the OAO ADO shall make Federal assistance awards to those responsible, eligible applicants whose proposals are judged most meritorious under the procedures set forth in the RFP. The date specified by the OAO ADO as the effective date of the award shall be no later than September 30th of the Federal fiscal year in which the project is approved for support and funds are appropriated for such purpose, unless otherwise permitted by law. It should be noted that the project need not be initiated on the award effective date, but as soon thereafter as practical so that project goals may be attained within the funded project period. All funds awarded by OAO shall be expended solely for the purpose for which the funds are awarded in accordance with the approved statement of work and budget, the regulations, the terms and conditions of the OAO award agreement, the applicable Federal cost principles, and the Department's assistance regulations (e.g., 7 CFR parts 3015, 3016, and 3019).

(b) *Award agreement.* The award agreement and accompanying terms and conditions will provide pertinent instructions and information including, at a minimum, the following:

(1) Legal name and address of performing organization or institution to which OAO has awarded a grant or cooperative agreement.

(2) Title of project.

(3) Name(s) of Project Director(s).

(4) Identifying award number assigned by OAO.

(5) Project period.

(6) Total amount of OAO financial assistance approved.

(7) Legal authority under which the grant or cooperative agreement is awarded.

(8) Appropriate CFDA number.

(9) Approved budget plan (that may be referenced).

(10) Terms and Conditions

Subpart E—Post-Award and Closeout

§ 2500.041 Payment.

(a) *General.* All payments will be made in advance unless a deviation is accepted or as specified in paragraph (b) of this section. All payments to the awardee shall be made via the approved electronic funds transfer (EFT) method. Awardees are expected to request funds via the federally-approved electronic payment system for reimbursement in a timely manner. Exact payment method will be described in the terms and conditions of the award agreement.

(b) *Reimbursement method.* OAO shall use the reimbursement method if it determines that advance payment is not feasible or that the awardee does not maintain or demonstrate the willingness to maintain written procedures that minimize the elapse of time between the transfer of funds and disbursement by the awardee, and financial management systems that meet the standards for fund control and accountability.

§ 2500.042 Cost sharing and matching.

(a) *General.* Awardees may be required to match the Federal funds received under an OAO award. The required percentage of matching, type of matching (e.g., cash and/or in-kind contributions), sources of match (e.g., non-Federal), and whether OAO has any authority to waive the match will be specified in the subpart applicable to the specific Federal assistance program, as well as in the RFP.

(b) *Indirect costs as in-kind matching contributions.* Indirect costs may be claimed under the Federal portion of the award budget. However, unless explicitly authorized in the RFP, indirect costs may not be claimed on both the Federal and nonfederal portion of the award budget.

§ 2500.043 Program income.

(a) *General.* OAO shall apply the standards set forth in this subpart in requiring awardee organizations to account for program income related to projects financed in whole or in part with Federal funds.

(b) *Addition method.* Unless otherwise provided in the authorizing statute, in accordance with the terms and conditions of the award, program income earned during the project period shall be retained by the awardee and shall be added to funds committed to the project by OAO and the awardee and used to further eligible project or program objectives. Any specific program deviations will be identified in the individual subparts.

(c) *Award terms and conditions.* Unless the program regulations identified in the individual subpart provide otherwise, awardees shall follow the terms and conditions of the OAO award. Such terms and conditions will be made a part of the OAO award agreement.

§ 2500.044 Indirect costs.

Indirect cost rates for grants and cooperative agreements shall be determined in accordance with the applicable assistance regulations and cost principles, unless superseded by another authority.

§ 2500.045 Technical reporting.

All projects supported with Federal funds under this part must be documented according to the terms and conditions of the OAO award agreement.

§ 2500.046 Financial reporting.

(a) *SF–425, Federal Financial Report.* As stated in the award terms and conditions of the OAO award agreement, a final SF–425, Federal Financial Report, is due 90 days after the expiration of the award and should be submitted to OAO electronically. The awardee shall report program outlays and program income on the same accounting basis (i.e., cash or accrual) that it uses in its normal accounting system. When submitting a final SF–425, Federal Financial Report, the total matching contribution, if required, should be shown in the report. The final SF–425 must not show any unliquidated obligations. If the awardee still has valid obligations that remain unpaid when the report is due, it shall request an extension of time for submitting the report pursuant to paragraph (c) of this section; submit a provisional report (showing the unliquidated obligations) by the due date; and submit a final report when all obligations have been liquidated, but no later than the approved extension date. SF–425, Federal Financial Reports, must be submitted by all awardees, including Federal agencies and national laboratories.

(b) *Awards with required matching.* For awards requiring a matching contribution, an annual SF–425, Federal Financial Report, is required and this requirement will be indicated in the terms and conditions of the OAO award agreement, in which case it must be submitted no later than 45 days following the end of the budget or reporting period.

(c) *After the due date.* Requests are considered late when they are submitted after the 90-day period following the award expiration date. Requests to submit a late final SF–425, Federal Financial Report, will only be considered, up to 30 days after the due date, in extenuating circumstances. This request should include a provisional report pursuant to paragraph (a) of this section, as well as an anticipated submission date, a justification for the late submission, and a justification for the extenuating circumstances. If an awardee needs to request additional funds, procedures in paragraph (d) of this section apply.

(d) *Overdue SF–425, Federal Financial Reports.* Awardees with overdue SF–425, Federal Financial Reports, or other required financial reports (as identified in the award terms and conditions), will have their applicable balances in the approved federal electronic funds transfer system restricted or placed on ''manual review,'' which restricts the awardee's ability to draw funds, thus requiring prior approval from OAO. If any remaining available balances are needed by the awardee (beyond the 90-day period following the award expiration date) and the awardee has not requested an extension to submit a final SF–425, Financial Status Report, the awardee will be required to contact OAO to request permission to draw any additional funds and will be required to provide justification and documentation to support the draw. Awardees also will need to comply with procedures in paragraph (c) of this section. OAO will approve these draw requests only in extenuating circumstances.

(e) *Additional reporting requirements.* OAO may require forecasts of Federal cash requirements in the ''Remarks'' section of the report; and when practical and deemed necessary, OAO may require awardees to report in the ''Remarks'' section the amount of cash advances received in excess of three days (i.e., short narrative with explanations of actions taken to reduce the excess balances). When OAO needs additional information or more frequent reports, a special provision will be added to the award terms and conditions and identified in the OAO award agreement. Should OAO determine that an awardee's accounting system is inadequate, additional pertinent information to further monitor awards may be requested from the awardee until such time as the system is brought up to standard, as determined by OAO. This additional reporting requirement will be required via a special provision to the award terms and conditions of the OAO award agreement.

§ 2500.047 Project meetings.

In addition to reviewing and monitoring the status of progress and final technical reports and financial reports, OAO Project Officers may use regular and periodic conference calls to monitor the awardee's performance as well as conferences, workshops, meetings, and symposia to not only monitor the awards, but to facilitate communication and the sharing of project results. These opportunities also serve to eliminate or minimize OAO funding of unneeded duplicative project activities. Required attendance at these conference calls, conferences, workshops, meetings, and symposia will be identified in the RFP or award document.

§ 2500.048 Review of disallowed costs.

(a) *Notice.* If the OAO Project Officer (PO) determines that there is a basis for disallowing a cost, OAO shall provide the awardee written notice of its intent to disallow the cost. The written notice shall state the amount of the cost and the factual and legal basis for disallowing it.

(b) *Awardee response.* Within 60 days of receiving written notice of the PO's intent to disallow the cost, the awardee may respond with written evidence and arguments to show the cost is allowable, or that, for equitable, practical, or other reasons, shall not recover all or part of the amount, or that the recovery should be made in installments. An extension of time will be granted only in extenuating circumstances.

(c) *Decision.* Within 60 days of receiving the awardee's written response to the notice of intent to disallow the cost, the PO shall issue a management decision stating whether or not the cost has been disallowed, the reasons for the decision, and the method of appeal that has been provided under this section. If the awardee does not respond to the written notice under paragraph (a) of this section within the time frame specified in paragraph (b) of this section, the PO shall issue a management decision on the basis of the information available to it. The management decision shall constitute the final action with respect to whether the cost is allowed or disallowed. In the case of a questioned cost identified in the context of an audit subject to 7 CFR part 3052, the management decision will constitute the management decision under 7 CFR 3052.405(a).

(d) *Demand for payment.* If the management decision under paragraph (c) of this section constitutes a finding that the cost is disallowed and, therefore, that a debt is owed to the Government, the PO shall provide the required demand and notice pursuant to 7 CFR 3.11.

(e) *Review process.* Within 60 days of receiving the demand and notice referred to in paragraph (d) of this section, the awardee may submit a written request to the OAO Director for a review of the final management decision that the debt exists and the amount of the debt. Within 60 days of receiving the written request for a review, the OAO Director will issue a final decision regarding the debt. A review by the OAO Director or designee constitutes an administrative review for debts under 7 CFR part 3, subpart F.

§ 2500.049 Prior approvals.

(a) *Subcontracts.* No more than 50 percent of the award may be subcontracted to other parties without prior written approval of the ADO. Any subcontract awarded to a Federal agency under an award must have prior written approval of the ADO. To request approval, a justification for the proposed subcontractual arrangements, a performance statement, and a detailed budget for the subcontract must be submitted to the ADO.

(b) *No-cost extensions of time*—(1) *General.* Awardees may initiate a one-time no-cost extension of the expiration date of the award of up to 12 months unless one or more of the following conditions apply: the terms and conditions of the award prohibit the extension; the extension requires additional Federal funds; and the extension involves any change in the approved objectives or scope of the project. For the first no-cost extension, the awardee must notify OAO in writing with the supporting reasons and revised expiration date at least 10 days before the expiration date specified in the award.

(2) *Additional requests for no-cost extensions of time before expiration date.* When more than one no-cost extension of time or an extension of more than 12 months is required, the extension(s) must be approved in writing by the PO. The awardee must submit a written request, which must be received no later than 10 days prior to the expiration date of the award, to the PO. The request must contain, at a minimum, the following information: The length of the additional time required to complete the project objectives and a justification for the extension; a summary of the progress to date; an estimate of the funds expected to remain unobligated on the scheduled expiration date; a projected timetable to complete the portion(s) of the project for which the extension is being requested; and signature of the AOR and the PD.

(3) *Requests for no-cost extensions of time after expiration date.* OAO may consider and approve requests for no-cost extensions of time up to 120 days following the expiration of the award. These will be approved only for extenuating circumstances, as determined by OAO. The awardee's AOR must submit the requirements identified under paragraph (b)(2) of this section as well as an ''extenuating circumstance'' justification and a description of the actions taken by the

awardee to minimize these requests in the future.

(4) *Other requirements.* No-cost extensions of time may not be exercised merely for the purpose of using unobligated balances.

§ 2500.050 Suspension, termination, and withholding of support.

(a) *General.* If an awardee has failed to materially comply with the terms and conditions of the award, OAO may take certain enforcement actions, including, but not limited to, suspending the award pending corrective action and terminating the award for cause.

(b) *Suspension.* OAO generally will suspend (rather than immediately terminate) an award to allow the awardee an opportunity to take appropriate corrective action before OAO makes a termination decision. OAO may decide to terminate the award if the awardee does not take appropriate corrective action during the period of suspension. OAO may terminate, without first suspending, the award if the deficiency is so serious as to warrant immediate termination. Termination for cause may be appealed under the terms and conditions identified in the OAO award agreement.

(c) *Termination.* An award also may be terminated, partially or wholly, by the awardee or by OAO with the consent of the awardee. If the awardee decides to terminate a portion of the award, OAO may determine that the remaining portion of the award will not accomplish the purposes for which the award was originally made. In any such case, OAO will advise the awardee of the possibility of termination of the entire award and allow the awardee to withdraw its termination request. If the awardee does not withdraw its request for partial termination, OAO may initiate procedures to terminate the entire award for cause.

§ 2500.051 Debt collection.

The collection of debts owed to OAO by awardees, including those resulting from cost disallowances, recovery of funds, unobligated balances, or other circumstances, are subject to the Department's debt collection procedures as set forth in 7 CFR part 3, and, with respect to cost disallowances, § 2500.048.

§ 2500.052 Award appeals procedures.

(a) *General.* OAO permits awardees to appeal certain adverse post-award administrative decisions made by OAO. Such adverse decisions include: Termination, in whole or in part, and determination that an award is void. An award may be terminated for failure of the awardee to carry out its approved project in accordance with the applicable law and the terms and conditions of award; or for failure of the awardee otherwise to comply with any law, regulation, assurance, term, or condition applicable to the award. Additionally, an award may be determined to be void if, for example, it was not authorized by statute or regulation or because it was fraudulently obtained. Appeals of determinations regarding the allowability of costs are subject to the procedures in § 2500.048.

(b) *Appeal Procedures.* The formal notification of an adverse determination will contain a statement of the awardee's appeal rights. To appeal an adverse determination, the awardee must submit a request for review to the OAO official specified in the notification, detailing the nature of the disagreement with the adverse determination and providing supporting documents in accordance with the procedures contained in the notification. The awardee's request to OAO for review must be received within 60 days after receipt of the written notification of the adverse determination; however, an extension may be granted if the awardee can show good cause why an extension is warranted. OAO will carefully consider the merits of all requests for appeals and further reviews. However, at the conclusion of the OAO appeal review process, the OAO decision rendered on the appeal is considered final. The awardee will be notified in writing by OAO of final appeal review determinations.

§ 2500.053 Expiring appropriations.

(a) *OAO awards supported with office appropriations.* Most OAO awards are supported with annual appropriations. On September 30th of the 5th fiscal year after the period of availability for obligation ends, the funds for these appropriations accounts expire per 31 U.S.C. 1552 and the account is closed, unless otherwise specified by law. Funds that have not been drawn through the approved electronic funds transfer system, by the awardee or disbursed through any other system or method by August 31st of that fiscal year are subject to be returned to the U.S. Department of the Treasury after that date. The August 31st requirement also applies to awards with a 90-day period concluding on a date after August 31st of that fifth year. Appropriations cannot be restored after expiration of the accounts. More specific instructions are provided in the OAO award terms and conditions.

(b) *OAO awards supported with funds from other Federal agencies (reimbursable funds).* OAO may require that all draws and reimbursements for awards supported with reimbursable funds (from other Federal agencies) be completed prior to June 30th of the 5th fiscal year after the period of availability for obligation ends to allow for the proper billing, collection, and close-out of the associated interagency agreement before the appropriations expire. The June 30th requirement also applies to awards with a 90-day period concluding on a date after June 30th of that fifth year. Appropriations cannot be restored after expiration of the accounts. More specific instructions are provided in the terms and conditions of the OAO award agreement.

§ 2500.055 Audit.

Awardees must comply with the audit requirements of 7 CFR part 3052. The audit requirements apply to the years in which Federal financial assistance funds are received and years in which work is accomplished using these funds.

§ 2500.056 Civil rights.

Awardees must comply with the civil rights requirements of 7 CFR part 15, subpart A—USDA implementation of Title VI of the Civil Rights Act of 1964, as amended. In accordance, no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the recipient receives Federal financial assistance and will immediately take any measures necessary to effectuate this agreement.

Subpart F—Outreach and Assistance For Socially Disadvantaged Farmers and Ranchers Program

§ 2500.101 Applicability of regulations.

The regulations in this subpart apply to the Outreach and Assistance for Socially Disadvantaged Farmers and Ranchers (OASDFR) Program authorized under section 2501 of the Food, Agriculture, Conservation and Trade Act of 1990 (7 U.S.C. 2279), as amended. Unless otherwise specified in this subpart, the requirements of 7 CFR part 2500 subparts A through E will apply in addition to the requirements discussed in this subpart.

§ 2500.102 Purpose.

(a) The purpose of the OASDFR Program is to make competitive awards to provide outreach and technical assistance to encourage and assist

socially disadvantaged farmers and ranchers in:

(1) Owning and operating farms, ranches and non-industrial forest lands; and

(2) In participating equitably in the full range of agricultural programs offered by the Department.

(b) The OASDFR Program awards shall be used exclusively to:

(1) Enhance coordination of the outreach, technical assistance, and education efforts authorized under agriculture programs;

(2) Assist in reaching current and prospective socially disadvantaged farmers, ranchers or forest landowners in a linguistically appropriate manner; and

(3) Improve the participation of those farmers and ranchers in agricultural programs.

§ 2500.103 Definitions.

The definitions provided in subpart A apply to this subpart. In addition, the definitions that apply specifically to the OASDFR Program under this subpart include:

Agriculture programs means those programs administered within the Department, by agencies including but not limited to: Forest Service (FS), Natural Resources Conservation Service (NRCS), Farm Service Agency (FSA), Risk Management Agency (RMA), Rural Development (RD), Rural Business Cooperative Service (RBCS), National Institute of Food and Agriculture (NIFA), and Agricultural Marketing Service (AMS), and other such programs as determined by the Department on a case-by-case basis either at the OAO Director's initiative or in response to a written request with supporting explanation for inclusion of a program. (For further details on specific programs included under this subpart see 7 U.S.C. 2279(e)(3) or the RFP).

Alaska Native means a citizen of the United States who is a person of one-fourth or more Alaska Indian, Eskimo, or Aleut blood, or combination thereof. (For further specification, see 43 U.S.C 1602(b) or the RFP).

Alaska Native cooperative colleges means an eligible post-secondary educational institution that has an enrollment of undergraduate full-time equivalent students that is at least 20 percent Alaska Native students at the time of submission of a proposal.

Assistance means providing educational and technical assistance to socially disadvantaged farmers, ranchers, and forest landowners in (1) owning and operating farms, ranches, and non-industrial forest lands; and (2) in participating equitably in the full range of agricultural programs offered by the Department through workshops, site visits and other means of contact in a linguistically appropriate manner.

Farmer, rancher, or forest landowner means the person who primarily cultivates, operates, or manages a farm, ranch, or forest for profit, either as owner or tenant. A farm includes livestock, dairy, poultry, fish, fruit, and truck farms. It also includes plantations, ranches, ranges, and orchards.

Hispanic-serving institution means an eligible institution of higher education that has an enrollment of undergraduate full-time equivalent students that is at least 25 percent Hispanic students at the end of the award year immediately preceding the date of submission of a proposal (see 20 U.S.C. 1101a(5)).

Indian tribe means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) (43 U.S.C. 1601 *et seq.*), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians. (For further specification, see 25 U.S.C. 450b).

Indian tribal community college means a post-secondary education institution which is formally controlled, or has been officially sanctioned, or chartered, by the governing body of an Indian tribe or tribes. (See 25 U.S.C. 1801(a)(4)).

Institution of higher education means an educational institution in any State that is a public or other nonprofit institution that is legally authorized and accredited by a nationally recognized accrediting agency or association to provide a program of education beyond secondary education for which the institution awards a bachelor's degree. (For further specification, see 20 U.S.C. 1001(a)).

Outreach means the use of formal and informal educational materials and activities in a linguistically appropriate manner that serve to encourage and assist socially disadvantaged farmers and ranchers in:

(1) Owning and operating farms and ranches; and in

(2) Participating equitably in the full range of agricultural programs offered by the Department.

Socially disadvantaged farmer, rancher or forest landowner means a farmer, rancher, or forest landowner who is a member of a socially disadvantaged group. (See 7 U.S.C. 2279(e)(2)).

Socially disadvantaged group means a group whose members have been subjected to racial or ethnic prejudice because of their identity as members of a group without regard to their individual qualities. (See 7 U.S.C. 2279(e)(1)).

State means any of the 50 States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands of the United States, American Samoa, the Commonwealth of the Northern Mariana Islands, and federally recognized Indian tribes.

Supplemental funding means funding to an existing awardee in addition to the amount of the original award contained in the grant or cooperative agreement. Such additional funding is intended to continue or expand work that is within the scope of the original agreement and statement of work.

Tribal organization means the recognized governing body of any Indian tribe. A tribal organization is any legally established organization of Indians which is controlled, sanctioned, or chartered by such governing body or which is democratically elected by the adult members of the Indian community. In any case where an award is made to an organization to perform services benefiting more than one Indian tribe, the approval of each participating Indian tribe shall be a prerequisite to the making of such an award. (See 25 U.S.C. 1603(25).

§ 2500.104 Eligibility requirements.

Proposals may be submitted by any of the following:

(a) Any community-based organization, network, or coalition of community-based organizations that:

(1) Has demonstrated experience in providing agricultural education or other agriculturally related services to socially disadvantaged farmers, ranchers, and forest landowners;

(2) Has provided to the Secretary documentary evidence of work with, and on behalf of socially disadvantaged farmers, ranchers, or forest landowners during the three-year period preceding the submission of a proposal for assistance under this program; and

(3) Does not engage in activities prohibited under Section 501(c)(3) of the Internal Revenue Code of 1986.

(b) An 1890 institution or 1994 institution (as defined in 7 U.S.C. 7601), including West Virginia State University.

(c) An Indian tribal community college or an Alaska Native cooperative college.

(d) A Hispanic-serving institution (as defined in 7 U.S.C. 3103).

(e) Any other institution of higher education (as defined in 20 U.S.C. 1001) that has demonstrated experience in providing agriculture education or other agriculturally related services to socially disadvantaged farmers, ranchers, and forest landowners in a region.

(f) An Indian tribe (as defined in 25 U.S.C. 450b) or a national tribal organization that has demonstrated experience in providing agriculture education or other agriculturally-related services to socially disadvantaged farmers, ranchers, and forest landowners in a region.

(g) Other organizations or institutions that received funding under this program before January 1, 1996, but only with respect to projects that the Secretary considers are similar to projects previously carried out by the entity under this program.

§ 2500.105 Project types and priorities.

For each RFP, OAO may develop and include the appropriate project types and focus areas based on the critical needs of the socially disadvantaged farmer and rancher community. For standard OASDFR projects, competitive grants or cooperative agreements will be awarded to support programs and services, as appropriate, to encourage and assist socially disadvantaged farmers and ranchers in the following focus areas:

(a) Owning and operating farms and ranches;

(b) Participating equitably in the full range of agricultural programs offered by the Department; and

(c) Other areas as specified by the Secretary in the RFP.

§ 2500.106 Funding restrictions.

Funds made available under this subpart shall not be used for the construction of a new building or facility or the acquisition, expansion, remodeling, or alteration of an existing facility (including site grading and improvement, and architect fees).

§ 2500.107 Matching.

Matching funds are not required as a condition of receiving awards under this subpart.

§ 2500.108 Term of award.

The award term will be defined in the OAO award agreement, and can be later amended upon approval of OAO.

§ 2500.109 Program requirements.

Grants and cooperative agreements under this subpart shall address the priorities in the Department that involve providing outreach and technical assistance to socially disadvantaged farmers, ranchers, and forest landowners to own and operate farms and participate equitably in agricultural programs; and other priorities as determined by the Secretary.

Signed in Washington, DC, on October 14, 2011.

Pearlie S. Reed,

Assistant Secretary for Administration for the Office of the Secretary.

[FR Doc. 2011–27108 Filed 10–25–11; 8:45 am]

BILLING CODE 3412–89–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2011–0750; Airspace Docket No. 11–AAL–08]

Revision of Class E Airspace; Umiat, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revises Class E airspace at Umiat, AK, due to the cancellation of two special instrument approach procedures at the Umiat Airport. The cancellation of these two special instrument approach procedures has made the transition airspace from 700 feet above the surface no longer necessary for the safety of Instrument Flight Rules (IFR) operations.

DATES: Effective 0901 UTC, December 15, 2011. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Martha Dunn, AAL–538G, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5898; *fax:* (907) 271–2850; *e-mail: Martha.ctr.Dunn@faa.gov. Internet address: http://www.faa.gov/about/office_org/headquarters_offices/ato/service_units/systemops/fs/alaskan/rulemaking/.*

SUPPLEMENTARY INFORMATION:

History

On Wednesday, August 10, 2011, the FAA published a notice of proposed rulemaking (NPRM) in the **Federal Register** to revise Class E airspace at Umiat, AK (76 FR 49387).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. One comment was made regarding a typing error within the final rule. This error has been corrected.

The Class E airspace areas are published in paragraphs 6002 and 6005, respectively, of FAA Order 7400.9V, *Airspace Designations and Reporting Points,* signed September 9, 2011, and effective September 15, 2011, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order. With the exception of editorial changes, and the changes described above, this rule is the same as that proposed in the NPRM.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by revising Class E airspace at the Umiat Airport, Umiat, AK, due to the cancellation of two special instrument approach procedures. The Class E airspace extending upward from 700 above the surface is no longer necessary for the safety and management of IFR operations at the airport.

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. Because this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle 1, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart 1, Section 40103, Sovereignty and use of airspace. Under that section, the FAA is charged with prescribing regulations to ensure the safe and efficient use of the navigable airspace. This regulation is within the scope of that authority because it reflects the changes in use of

the Umiat Airport and is consistent with the FAA's continuing effort to safely and efficiently use the navigable airspace.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9V, *Airspace Designations and Reporting Points,* signed September 9, 2011, and effective September 15, 2011, is amended as follows:

Paragraph 6005 Class E arspace extending upward from 700 feet or more above the surface of the earth.

* * * * *

AAL AK E5 Umiat, AK [Revised]

Umiat Airport, AK
(Lat. 69°22′16″ N., long. 152°08′06″ W.)

That airspace extending upward from 1,200 feet above the surface within a 73-mile radius of the Umiat Airport, Alaska.

Issued in Anchorage, AK, on October 14, 2011.

Marshall G. Severson,

Acting Manager, Alaska Flight Services.

[FR Doc. 2011–27366 Filed 10–25–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30808; Amdt. No. 3448]

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 October 26, 2011. 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 October 26, 2011.

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: Richard A. Dunham III, 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 October 14, 2011.

Ray Towles,

Deputy 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 17 NOV 2011

Troy, AL, Troy Muni, RADAR–1, Amdt 9
Show Low, AZ, Show Low Rgnl, RNAV (GPS) RWY 24, Amdt 2A
Salinas, CA, Salinas Muni, Takeoff Minimums and Obstacle DP, Amdt 4
Atlanta, GA, Hartsfield-Jackson Atlanta Intl, Takeoff Minimums and Obstacle DP, Amdt 4A
Newton, KS, Newton-City-County, Takeoff Minimums and Obstacle DP, Orig
Fayetteville, NC, Fayetteville Rgnl/Grannis Field, ILS OR LOC/DME RWY 4, Amdt 16
Teterboro, NJ, Teterboro, RNAV (GPS)–C, Orig, CANCELLED
Teterboro, NJ, Teterboro, RNAV (GPS) X RWY 6,Orig
Watertown, NY, Watertown Intl, Takeoff Minimums and Obstacle DP, Amdt 1
Fairview, OK, Fairview Muni, Takeoff Minimums and Obstacle DP, Amdt 3
Guymon, OK, Guymon Muni, GPS RWY 36, Orig-A, CANCELLED
Guymon, OK, Guymon Muni, RNAV (GPS) RWY 18, Amdt 1
Guymon, OK, Guymon Muni, RNAV (GPS) RWY 36, Orig
Guymon, OK, Guymon Muni, Takeoff Minimums and Obstacle DP, Amdt 1
Norman, OK, University of Oklahoma Westheimer, ILS OR LOC RWY 17, Amdt 1A
Jasper, TN, Marion County-Brown Field, Takeoff Minimums and Obstacle DP, Amdt 2
Portland, TN, Portland Muni, GPS RWY 19, Orig, CANCELLED
Portland, TN, Portland Muni, RNAV (GPS) RWY 1, Orig
Portland, TN, Portland Muni, RNAV (GPS) RWY 19, Orig
Pulaski, TN, Abernathy Field, RNAV (GPS) RWY 16, Amdt 2
Pulaski, TN, Abernathy Field, RNAV (GPS) RWY 34, Amdt 2
Pulaski, TN, Abernathy Field, Takeoff Minimums and Obstacle DP, Amdt 4
Rogersville, TN, Hawkins County, Takeoff Minimums and Obstacle DP, Amdt 2
Amarillo, TX, Tradewind, Takeoff Minimums and Obstacle DP, Amdt 3
Lancaster, TX, Lancaster Rgnl, NDB RWY 31, Amdt 3, CANCELLED
Yakima, WA, Yakima Air Terminal/ Mcallister Field, RNAV (RNP) Y RWY 27, Orig-A

Effective 15 DEC 2011

Savoonga, AK, Savoonga, RNAV (GPS) RWY 5, Amdt 1
Savoonga, AK, Savoonga, RNAV (GPS) RWY 23, Amdt 1
Shungnak, AK, Shungnak, RNAV (GPS) RWY 9, Amdt 2
Shungnak, AK, Shungnak, RNAV (GPS) RWY 27, Amdt 2
Hamilton, AL, Marion County-Rankin Fite, Takeoff Minimums and Obstacle DP, Amdt 1
Prattville, AL, Prattville-Grouby Field, Takeoff Minimums and Obstacle DP, Amdt 1
Reform, AL, North Pickens, Takeoff Minimums and Obstacle DP, Amdt 1
McGehee, AR, McGehee Muni, Takeoff Minimums and Obstacle DP, Orig
Mesa, AZ, Falcon Fld, RNAV (GPS) RWY 4L, Amdt 1
Mesa, AZ, Falcon Fld, RNAV (GPS) RWY 4R, Amdt 1
Atwater, CA, Castle, ILS OR LOC/DME RWY 31, Amdt 2C
Atwater, CA, Castle, RNAV (GPS) RWY 13, Orig-B
Atwater, CA, Castle, RNAV (GPS) RWY 31, Orig-B
Atwater, CA, Castle, Takeoff Minimums and Obstacle DP, Amdt 1A
Atwater, CA, Castle, VOR/DME RWY 31, Amdt 1B
Davis/Woodland/Winters, CA, Yolo County, RNAV (GPS) RWY 34, Amdt 2
Denver, CO, Rocky Mountain Metropolitan, ILS OR LOC Y RWY 29R, Amdt 14
Denver, CO, Rocky Mountain Metropolitan, ILS OR LOC Z RWY 29R, Orig
Denver, CO, Rocky Mountain Metropolitan, RNAV (GPS) RWY 29L, Amdt 1
Denver, CO, Rocky Mountain Metropolitan, RNAV (GPS) RWY 29R, Amdt 1
Miami, FL, Opa-Locka Executive, GPS RWY 9L, Orig B, CANCELLED
Miami, FL, Opa-Locka Executive, GPS RWY 27R, Orig B, CANCELLED
Miami, FL, Opa-Locka Executive, ILS OR LOC RWY 9L, Amdt 5
Miami, FL, Opa-Locka Executive, ILS OR LOC RWY 12, Amdt 2
Miami, FL, Opa-Locka Executive, ILS OR LOC RWY 27R, Amdt 1
Miami, FL, Opa-Locka Executive, RNAV (GPS) RWY 9L, Orig
Miami, FL, Opa-Locka Executive, RNAV (GPS) RWY 12, Orig
Miami, FL, Opa-Locka Executive, RNAV (GPS) RWY 27R, Orig
Miami, FL, Opa-Locka Executive, Takeoff Minimums and Obstacle DP, Amdt 9
Sebring, FL, Sebring Rgnl, RNAV (GPS) RWY 14, Orig
Sebring, FL, Sebring Rgnl, RNAV (GPS) RWY 32, Orig
Waynesboro, GA, Burke County, NDB RWY 8, Amdt 2B, CANCELLED
Cedar Rapids, IA, The Eastern Iowa, ILS OR LOC RWY 27. Amdt 6B
Boise, ID, Boise Air Terminal/Gowen Fld, VOR/DME OR TACAN RWY 10L, Amdt 2
Boise, ID, Boise Air Terminal/Gowen Fld, VOR/DME RWY 10R, Amdt 1
Abilene, KS, Abilene Muni, Takeoff Minimums and Obstacle DP, Orig
Marysville, KS, Marysville, NDB RWY 34, Amdt 5, CANCELLED
Moundridge, KS, Moundridge Muni, Takeoff Minimums and Obstacle DP, Orig
Paola, KS, Miami County, Takeoff Minimums and Obstacle DP, Orig
Indianola, MS, Indianola Muni, NDB RWY 18, Amdt 5A, CANCELLED
Indianola, MS, Indianola Muni, NDB RWY 36, Amdt 5A, CANCELLED
Lewistown, MT, Lewistown Muni, RNAV (GPS) RWY 8, Amdt 1A
Rochester, NY, Greater Rochester Intl, Takeoff Minimums and Obstacle DP, Amdt 7
Aurora, OR, Aurora State, Takeoff Minimums and Obstacle DP, Amdt 3
North Bend, OR, Southwest Oregon Rgnl, NDB RWY 4, Amdt 5A

North Bend, OR, Southwest Oregon Rgnl, RNAV (GPS) Y RWY 4, Orig-A
North Bend, OR, Southwest Oregon Rgnl, VOR–A, Amdt 5A
North Bend, OR, Southwest Oregon Rgnl, VOR/DME–B, Amdt 4A
Scappoose, OR, Scappoose Industrial Airpark, LOC/DME RWY 15, Amdt 2
Bay City, TX, Bay City Muni, Takeoff Minimums and Obstacle DP, Orig
Denton, TX, Denton Muni, ILS OR LOC RWY 18, Amdt 9
Devine, TX, Devine Muni, Takeoff Minimums and Obstacle DP, Amdt 1
Kenedy, TX, Karnes County, RNAV (GPS) RWY 16, Orig
Kenedy, TX, Karnes County, RNAV (GPS) RWY 34, Orig
Kenedy, TX, Karnes County, VOR/DME–A, Amdt 7
Paducah, TX, Dan E. Richards Muni, Takeoff Minimums and Obstacle DP, Orig
Williamsburg, VA, Williamsburg-Jamestown, Takeoff Minimums and Obstacle DP, Amdt 2
Walla Walla, WA, Walla Walla Rgnl, NDB RWY 20, Amdt 6
Milwaukee, WI, General Mitchell Intl, ILS OR LOC RWY 19R, Amdt 12
Phillips, WI, Price County, Takeoff Minimums and Obstacle DP, Amdt 1
Fairmont, WV, Fairmont Muni-Frankman Field, VOR/DME–A, Amdt 1

[FR Doc. 2011–27371 Filed 10–25–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 774

The Commerce Control List

CFR Correction

In Title 15 of the Code of Federal Regulations, Parts 300–799, revised as of January 1, 2011, in Supplement No. 1 to Part 774, in ECCN 2B008, the ''Items'' paragraph on page 719 is revised to read as follows:

Supplement No. 1 to PART 774—THE COMMERCE CONTROL LIST

* * * * *

2B008 Assemblies or Units, Specially Designed for Machine Tools, or Dimensional Inspection or Measuring Systems and Equipment, as Follows (See List of Items Controlled).

* * * * *

Items:

a. Linear position feedback units (e.g., inductive type devices, graduated scales, infrared systems or ''laser'' systems) having an overall ''accuracy'' less (better) than (800 + (600 × L × 10^{-3})) nm (L equals the effective length in mm);

N.B.: For ''laser'' systems see also 2B006.b.1.c and d.

b. Rotary position feedback units (e.g., inductive type devices, graduated scales, infrared systems or ''laser'' systems) having an ''accuracy'' less (better) than 0.00025°;

N.B.: For ''laser'' systems see also 2B006.b.2.

c. ''Compound rotary tables'' and ''tilting spindles'', capable of upgrading, according to the manufacturer's specifications, machine tools to or above the levels controlled by 2B001 to 2B009.

* * * * *

[FR Doc. 2011–27753 Filed 10–25–11; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 774

The Commerce Control List

CFR Correction

In Title 15 of the Code of Federal Regulations, Parts 300–799, revised as of January 1, 2011, on page 684, in Supplement No. 1 to Part 774, in ECCN 1C118, the ''Items'' paragraph is revised to read as follows:

Supplement No. 1 to PART 774—THE COMMERCE CONTROL LIST

* * * * *

1C118 Titanium-stabilized duplex stainless steel (Ti-DSS), having all of the following characteristics (see List of Items Controlled).

* * * * *

Items:

a. Having all of the following characteristics:

a.1. Containing 17.0–23.0 weight percent chromium and 4.5–7.0 weight percent nickel;

a.2. Having a titanium content of greater than 0.10 weight percent; and

a.3. A ferritic-austenitic microstructure (also referred to as a two-phase microstructure) of which at least 10 percent is austenite by volume (according to ASTM E–1181–87 or national equivalents), and

b. Having any of the following forms:

b.1. Ingots or bars having a size of 100 mm or more in each dimension;

b.2. Sheets having a width of 600 mm or more and a thickness of 3 mm or less; or

b.3. Tubes having an outer diameter of 600 mm or more and a wall thickness of 3 mm or less.

* * * * *

[FR Doc. 2011–27751 Filed 10–25–11; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[TD 9553]

RIN 1545–BH90

Disregarded Entities; Excise Taxes and Employment Taxes

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains final regulations relating to disregarded entities and excise taxes. These regulations also make conforming changes to the tax liability rule for disregarded entities and the treatment of entity rule for disregarded entities with respect to employment taxes. These regulations affect disregarded entities in general and, in particular, disregarded entities that pay or pay over certain federal excise taxes or that are required to be registered by the IRS.

DATES: *Effective Date:* These regulations are effective on October 26, 2011.

Applicability Date: For dates of applicability, see §§ 301.7701–2(e)(2), 301.7701–2(e)(5), and 301.7701–2(e)(6).

FOR FURTHER INFORMATION CONTACT: Michael H. Beker, (202) 622–3070 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the Procedure and Administration Regulations (26 CFR part 301) under section 7701 of the Internal Revenue Code (Code).

Temporary regulations (TD 9462, 74 FR 46903) and a cross-reference notice of proposed rulemaking (REG–116614–08, 74 FR 46957) were published in the **Federal Register** on September 14, 2009 (the 2009 proposed regulations). On October 14, 2009, corrections to the temporary regulations (74 FR 52677) and to the cross-reference notice of proposed rulemaking (74 FR 52708) were published in the **Federal Register**.

The 2009 proposed regulations clarify that a single-owner eligible entity that is disregarded as an entity separate from its owner for any purpose under § 301.7701–2, but regarded as an entity for certain excise tax purposes under § 301.7701–2(c)(2)(v), is treated as a corporation with respect to those excise taxes. In addition, the 2009 proposed regulations make conforming changes to the tax liability rule for disregarded entities in § 301.7701–2(c)(2)(iii) and the

treatment of entity rule for disregarded entities with respect to employment taxes in § 301.7701–2(c)(2)(iv)(B).

No public hearing was requested or held. One written comment was received. After consideration of the comment, the proposed regulations are adopted by this Treasury decision and the temporary regulations are removed.

Summary of the Comment and Explanation of Provisions

A. Air Transportation Excise Tax

The commenter asked whether an amount paid to a single-member limited liability company (SMLLC) by its owner for air transportation provided to its owner will be deemed to be paid to a separate corporation and therefore subject to federal transportation excise taxes under section 4261.

On August 16, 2007, final regulations under § 301.7701–2(c)(2)(v)(A) were published in the **Federal Register** (TD 9356, 72 FR 45891) (the 2007 final regulations). The 2007 final regulations provide that a single-owner eligible entity that is disregarded as an entity separate from its owner for Federal tax purposes is treated as a separate entity for certain excise tax purposes, including Federal tax liabilities imposed by Chapter 33 of the Code. Under this rule, amounts paid after December 31, 2007, to an SMLLC by its owner for air transportation are subject to the tax imposed by section 4261. The commenter suggested that the rule in the 2007 final regulations created a tax liability where one did not exist before.

Prior to the adoption of the § 301.7701–2 regulations in 1997, amounts paid from one state law entity to another for air transportation were potentially subject to the section 4261 tax, regardless of the relationship between the entities. See for example, Rev. Ruls. 76–394 (1976–2 CB 355) and 70–325 (1970–1 CB 231), which involve transportation between related corporations and between corporations and their shareholders. Because there are separate and distinct entities in each case, these rulings hold that payments made from one entity to another for taxable air transportation are ''amounts paid'' for purposes of the section 4261 tax. While section 4282 provides a limited exception in the case of air transportation excise taxes for certain affiliated groups that do not offer air transportation services to non-affiliated members, no exception had been provided prior to 1997 for other situations.

The adoption of the § 301.7701–2 regulations in 1997 departed from this long-standing precedent by making those previously taxable transactions no longer subject to excise tax when the owner of an eligible entity elected to be a disregarded entity. The 2007 regulations merely restored the long-standing and reasonable pre-1997 rule. Accordingly, the final regulations retain the rule that excise taxes imposed on amounts paid for covered services (such as air transportation) apply to amounts paid between state law entities for such services (unless a statutory exception applies).

B. Indoor Tanning Services Excise Tax

After the 2009 proposed regulations were published, section 10907 of the Patient Protection and Affordable Care Act, Public Law 111–148 (124 Stat. 119 (2010)) added new Chapter 49 to the Code, which contains an excise tax on amounts paid for indoor tanning services under new section 5000B. The IRS and Treasury Department are aware of issues relating to the treatment of qualified subchapter S subsidiaries and single-owner eligible entities that are disregarded as entities separate from their owners with respect to tax liabilities imposed by Chapter 49 of the Code. The issues are similar to those addressed in § 301.7701–2(c)(2)(v). Accordingly, the IRS and the Treasury Department plan to issue regulations addressing the treatment of those entities with respect to tax liabilities imposed by Chapter 49 of the Code.

C. Firearms Excise Tax and Harbor Maintenance Tax

The rules in the final regulations do not apply to the firearms excise tax administered by the Alcohol and Tobacco Tax and Trade Bureau (TTB) and the harbor maintenance tax administered by U.S. Customs and Border Protection (Customs). Rules in 26 CFR part 301 generally do not apply for purposes of these taxes and taxpayers should not assume that a single owner entity will be disregarded under applicable TTB or Customs rules.

Availability of IRS Documents

The IRS revenue rulings cited in this preamble are published in the Internal Revenue Cumulative Bulletin and are available from the Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954.

Special Analyses

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, and, because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, the proposed regulations preceding these regulations were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Michael H. Beker, Office of the Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and the Treasury Department participated in their development.

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 301 is amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

■ **Paragraph 1.** The authority citation for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805. * * *

■ **Par. 2.** Section 301.7701–2 is amended by:

■ 1. Revising paragraphs (c)(2)(iii), (c)(2)(iv)(B), (c)(2)(v)(B), (c)(2)(v)(C) *Example* (iv), (e)(2), and (e)(6).

■ 2. Adding two sentences at the end of paragraph (e)(5).

The additions and revisions read as follows:

§ 301.7701–2 Business entities; definitions.

* * * * *

(c) * * *

(2) * * *

(iii) *Tax liabilities of certain disregarded entities*—(A) *In general.* An entity that is disregarded as separate from its owner for any purpose under this section is treated as an entity separate from its owner for purposes of—

(*1*) Federal tax liabilities of the entity with respect to any taxable period for which the entity was not disregarded;

(*2*) Federal tax liabilities of any other entity for which the entity is liable; and

(*3*) Refunds or credits of Federal tax.

(B) *Examples.* The following examples illustrate the application of paragraph (c)(2)(iii)(A) of this section:

Example 1. In 2006, X, a domestic corporation that reports its taxes on a calendar year basis, merges into Z, a domestic LLC wholly owned by Y that is disregarded as an entity separate from Y, in a state law merger. X was not a member of a consolidated group at any time during its taxable year ending in December 2005. Under the applicable state law, Z is the successor to X and is liable for all of X's debts. In 2009, the Internal Revenue Service (IRS) seeks to extend the period of limitations on assessment for X's 2005 taxable year. Because Z is the successor to X and is liable for X's 2005 taxes that remain unpaid, Z is the proper party to sign the consent to extend the period of limitations.

Example 2. The facts are the same as in *Example 1,* except that in 2007, the IRS determines that X miscalculated and underreported its income tax liability for 2005. Because Z is the successor to X and is liable for X's 2005 taxes that remain unpaid, the deficiency may be assessed against Z and, in the event that Z fails to pay the liability after notice and demand, a general tax lien will arise against all of Z's property and rights to property.

(iv) * * *

(B) *Treatment of entity.* An entity that is disregarded as an entity separate from its owner for any purpose under this section is treated as a corporation with respect to taxes imposed under Subtitle C—Employment Taxes and Collection of Income Tax (Chapters 21, 22, 23, 23A, 24, and 25 of the Internal Revenue Code).

* * * * *

(v) * * *

(B) *Treatment of entity.* An entity that is disregarded as an entity separate from its owner for any purpose under this section is treated as a corporation with respect to items described in paragraph (c)(2)(v)(A) of this section.

(C) * * *

Example. * * *

(iv) Assume the same facts as in paragraph (c)(2)(v)(C) *Example* (i) and (ii) of this section. If LLCB does not pay the tax on its sale of coal under chapter 32 of the Internal Revenue Code, any notice of lien the Internal Revenue Service files will be filed as if LLCB were a corporation.

* * * * *

(e) * * *

(2) Paragraph (c)(2)(iii) of this section applies on and after September 14, 2009. For rules that apply before September 14, 2009, see 26 CFR part 301, revised as of April 1, 2009.

* * * * *

(5) * * * However, paragraph (c)(2)(iv)(B) of this section applies with respect to wages paid on or after September 14, 2009. For rules that apply before September 14, 2009, see 26 CFR part 301 revised as of April 1, 2009.

(6)(i) Except as provided in this paragraph (e)(6), paragraph (c)(2)(v) of this section applies to liabilities imposed and actions first required or permitted in periods beginning on or after January 1, 2008.

(ii) Paragraphs (c)(2)(v)(B) and (c)(2)(v)(C) *Example* (iv) of this section apply on and after September 14, 2009.

* * * * *

§ 301.7701–2T [Removed]

■ **Par. 3.** Section 301.7701–2T is removed.

Steven T. Miller,

Deputy Commissioner for Services and Enforcement.

Approved: October 18, 2011.

Emily S. McMahon,

Acting, Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 2011–27720 Filed 10–25–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2011–0960]

Drawbridge Operation Regulations; Trent River, New Bern, NC

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Fifth Coast Guard District, has issued a temporary deviation from the regulations governing the operation of the US 70 (Alfred Cunningham) Bridge, at mile 0.0, over the Trent River, at New Bern, NC. The deviation restricts the operation of the draw span to facilitate the general maintenance of the Bridge.

DATES: This deviation is effective from 8 p.m. October 26, 2011 through 11:59 p.m. on October 27, 2011.

ADDRESSES: Documents mentioned in this preamble as being available in the docket are part of docket USCG–2011–0960 and are available online by going to *http://www.regulations.gov,* inserting USCG–2011–0960 in the ''Keywords'' box, and then clicking ''Search''. This material is also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Mr. Bill H. Brazier, Bridge Management Specialist, Fifth Coast Guard District, telephone (757) 398–6422, e-mail *Bill.H.Brazier@uscg.mil.* If you have questions on reviewing the docket, call Renee V. Wright, Program Manager, Docket Operations, (202) 366–9826.

SUPPLEMENTARY INFORMATION: The North Carolina Department of Transportation (NCDOT), who owns and operates this bascule lift bridge, has requested a temporary deviation from the current operating regulations set out in 33 CFR 117.843(a), to facilitate the general maintenance of the bridge.

In the closed position to vessels, the US 70 (Alfred Cunningham) Bridge, at mile 0.0, at New Bern, NC has a vertical clearance of 14 feet, above mean high water.

Under this temporary deviation, the drawbridge will be closed to vessels requiring an opening each day from 8 p.m. until 11:59 p.m. on October 26, 2011 and October 27, 2011. There are no alternate routes for vessels transiting this section of the Trent River.

The Coast Guard reviewed the 2010 drawbridge logs provided by NCDOT. In the month of October 2010, between the hours of 8 p.m. and 11:59 p.m., there were approximately four recorded vessel openings of the drawbridge. The drawbridge will be able to open for emergencies. Most vessel traffic utilizing this bridge consists of recreational boaters. October is outside of the high recreational boating season therefore, only a small number of boaters may be affected by this temporary closure. There are no alternate routes on this section of Trent River. Vessels that can pass through the bridge in the closed position may do so at any time.

The Coast Guard will inform all users of the waterway through our Local and Broadcast Notice to Mariners of the closure periods for the bridge so that vessels can arrange their transits to minimize any impacts caused by the temporary deviation.

In accordance with 33 CFR 117.35(e), the draw must return to its original operating schedule immediately at the end of the designated time period. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: October 18, 2011.

Waverly W. Gregory, Jr.,

Bridge Program Manager, By direction of the Commander, Fifth Coast Guard District.

[FR Doc. 2011–27721 Filed 10–25–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2011–0972]

Drawbridge Operation Regulation; Nanticoke, Seaford, DE

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Fifth Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the SR 13 Bridge across the Nanticoke River, mile 39.6, at Seaford, DE. The deviation is necessary to accommodate the cleaning and painting of the bridge. This deviation allows the bridge to remain in the closed position throughout the month of November to facilitate the maintenance work.

DATES: This deviation is effective from 12:01 a.m. on November 1, 2011 to 11:59 on November 30, 2011.

ADDRESSES: Documents mentioned in this preamble as being available in the docket are part of docket USCG–2011–0972 and are available online by going to *http://www.regulations.gov,* inserting USCG–2011–0972 in the ''Keyword'' box and then clicking ''Search''. They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Lindsey Middleton, Bridge Management Specialist, Coast Guard; telephone 757–398–6629, e-mail *Lindsey.R.Middleton@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: Marinis Bros. Inc., on behalf of Delaware Department of Transportation (DelDOT), has requested a temporary deviation from the current operating regulation of the SR 13 Bridge across the Nanticoke River, mile 39.6, at Seaford, DE. The requested deviation is to accommodate painting and cleaning of the bridge. The vertical clearance of this single-leaf bascule bridge is three feet at mean high water (MHW) in the closed position and unlimited in the open position. During this deviation period, the vertical clearance will be limited to one foot at MHW due to the scaffolding that will be used for the maintenance of the bridge. The bridge will remain in the closed position for the entire month. In critical situations the bridge will be able to open if at least 24 hours of notice is given. There are no alternate routes available to vessels.

The current operating schedule for the bridge is set out in 33 CFR 117.243(b). According to that schedule, during the month of November the bridge shall open on signal, except that from 6 p.m. to 8 a.m. Monday through Friday and 3:30 p.m. through 7:30 a.m. Saturday and Sunday, if at least four hours notice is given.

Logs from November 2010 have shown that there were 20 openings for the entire month. Sixteen of those openings were on November 13th and 14th. The openings were due to a Bass Fishing Tournament; however, the tournament is not scheduled for this year minimizing the amount of anticipated openings. The majority of vessel traffic utilizing this waterway is recreational boaters. There is one mariner that requests most of the bridge openings throughout the winter months. Marinis Bros., Inc. has coordinated with this mariner. DelDOT has coordinated with the town concerning the month long bridge closure as well. The Coast Guard will inform all other users of the waterway through our Local and Broadcast Notices to Mariners so that mariners can arrange their transits to minimize any impact caused by the temporary deviation. The Coast Guard will also require the bridge owner to post signs on either side of the bridge notifying mariners of the temporary regulation change.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the designated time period. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: October 12, 2011.

Waverly W. Gregory, Jr.,

Bridge Program Manager, Fifth Coast Guard District.

[FR Doc. 2011–27722 Filed 10–25–11; 8:45 am]

BILLING CODE 9110–04–P

POSTAL SERVICE

39 CFR Part 241

Post Office Organization and Administration: Establishment, Classification, and Discontinuance

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: The Postal Service is amending its regulations to improve the administration of the Post Office closing and consolidation process. This final rule adopts changes to Postal Service regulations pertaining to the definition of ''consolidation'' and the staffing of Post Offices.

DATES: *Effective Date:* December 1, 2011.

FOR FURTHER INFORMATION CONTACT: Jim Boldt, (202) 268–6799.

SUPPLEMENTARY INFORMATION: On March 31, 2011, the Postal Service published a proposed rule in the **Federal Register** (76 FR 17794) to improve the process for discontinuing Post Offices and other Postal Service-operated retail facilities. The proposed rule also included various proposals to apply certain discontinuance procedures to all retail facilities operated by Postal Service employees. The Postal Service requested comments on the proposed rule.

On July 13, 2011, the Postal Service published an initial final rule (76 FR 41413), with minor corrections published on July 21, 2011 (76 FR 43898). That final rule responded to comments and made numerous changes from the proposed rule, resulting in revised regulations that took effect on July 14, 2011. In the final rule, the Postal Service noted that certain aspects of the proposed rule were subject to then-ongoing consultations under 39 U.S.C. 1004(b)–(d). As a result, the first final rule implemented only changes to 39 CFR part 241 that were not subject to ongoing consultations. 76 FR 41413. The Postal Service advised that changes subject to consultation—namely, those concerning the definition of ''consolidation'' and the staffing of Post Offices—were being deferred and could be addressed in a subsequent final rule. *Id.* at 41414–15.

At this time, the consultations referenced in the first final rule have run their course, and the Postal Service is prepared to issue the remaining proposed changes, with minor modifications as explained in section III below. Analysis of the pertinent comments received appears below. With the changes described herein, the final rule will take effect upon the publication of corresponding changes in

the *Postal Bulletin,* scheduled for December 1, 2011.

I. Response to Comments Received

As recounted in the first final rule (76 FR 41413), the Postal Service received approximately 257 comments in response to the proposed rule. Commenters included 34 Members of Congress, the Postal Regulatory Commission (''Commission'' or ''PRC''), five state legislators, three postmasters' and postal supervisors' organizations, one postal lessors' organization and various of its members, one mailing industry stakeholder, and numerous other postal customers. Although some comments were favorable about certain aspects of the proposed rule, almost all of the comments expressed concerns about various aspects of the proposed rule. Below we discuss the comments pertinent to this final rule and our response to each.

A. Definition of ''Consolidation''

Several commenters expressed concern about the proposed rule's interpretation of ''consolidation,'' such that the term would no longer apply to the conversion of a Post Office into a Postal Service-operated station or branch. In particular, these commenters claim that this approach, combined with the fact that 39 U.S.C. 404(d)(5) does not confer appeal rights for closings or consolidations of stations and branches, could result in an effective denial of appeal rights if the Postal Service were to convert a Post Office into a station or branch and then proceed to close or consolidate the facility. Comments about appeal rights were discussed in the first final rule (76 FR 41414–15).

Overall, this rulemaking expands the circumstances in which full-blown discontinuance studies are used; hence, it increases the overall transparency of discontinuance decisions affecting Postal Service-operated retail facilities. Previously, stations and branches studied for discontinuance were studied in a faster, less intensive process. *See* PRC, Advisory Opinion Concerning the Process for Evaluating Closing Stations and Branches (''SBOC Opinion''), Docket No. N2009–1, March 10, 2010, at 48–57, 61–65 (exploring differences between the discontinuance processes for Post Offices and for stations and branches).

Contrary to longstanding arguments by the Postal Service resting on much of the legislative history and case law on which some of the comments rely, the Commission, labor organizations, and others have asserted that customers perceive no functional difference between a Post Office and a classified station or classified branch. *See, e.g.,* SBOC Opinion at 52, 64; Comments of American Postal Workers Union, AFL–CIO, Eugene Area Local No. 679, PRC Docket No. A2011–4, January 21, 2011, at 1–3. While the Postal Service continues to disagree with the proponents of this view as to whether that lack of perceived difference has legal relevance, the Postal Service acknowledges the practical vitality of the observation. As a result, it is difficult to understand what concrete purpose would be furthered by continuing to apply discontinuance procedures to the conversion of one Postal Service-operated retail facility type to another, when customers will not see any significant difference in service. In contrast, customers are more likely to experience or perceive an impact from the replacement of a Postal Service-operated retail facility with a contractor-operated retail facility.

''Consolidation,'' in its former sense of changing a Post Office into a station or branch of another Post Office, has rarely been applied over the last 20 years. From the perspective of postal customers, a conversion between Postal Service-operated retail facility types has only minimal impact, as few customers are aware of the distinction between different types of retail units.

Unlike classified stations and branches, contractor-operated retail facilities can be closed without being subject to the discontinuance process. Relationships established through a contract have alternative mechanisms for termination or other changes. The continuation of contractor-operated facilities is much more dependent on the contractor's willingness to furnish services under contract for a reasonable fee. Contractor-operated units may accordingly experience less predictability in their continuation. Hence, it is more important that customers and other stakeholders have an opportunity to provide input when a Postal Service-operated retail facility is converted into a contractor-operated retail facility than when a conversion results in Postal Service-operated classified station or branch. The latter are not subject to the greater unpredictability of a contractor-operator, and so customers are unlikely to perceive a significant difference in service when a Post Office is converted into a Postal Service-operated classified station or branch.

Two postmaster organizations submitted a legal opinion to the effect that the proposed approach to ''consolidation'' runs counter to a consistent definition provided by legislative history, courts, and the Postal Service itself. This legal analysis appears to overlook the fact that most of the authorities on which it relies, some of which date back to the 1970s, were premised on Postal Service regulations in effect at the time and did not speak to whether the Postal Service was somehow precluded from changing those regulations. That the Postal Service's previous interpretation of ''consolidation'' was found to be reasonable does not mean that that interpretation is the only reasonable and valid one. See *Citizens for the Hopkins Post Office* v. *United States Postal Serv.,* 830 F. Supp. 296, 299 (D.S.C. 1993) (''This court finds the definition of 'consolidation' advanced by the Postal Service [in its then-current regulations] to be one which is reasonable[.]'' (emphasis added)).[1]

The United States Supreme Court has long held that an ''initial agency interpretation [of a statute] is not instantly carved in stone'' and that any agency ''must consider varying interpretations and the wisdom of its policy on a continuing basis.'' *Chevron, U.S.A., Inc.* v. *Natural Resources Defense Council, Inc.,* 467 U.S. 837, 863–64 (1984). This is the case even where a revised interpretation ''represents a sharp break with prior interpretations.'' *Id.* at 862. Because the plain language of the statute is silent and ambiguous as to the intended definition of ''consolidation,'' and because the Postal Service is charged with implementing 39 U.S.C. 404(d), the Postal Service is free to revise its interpretation of the statute so long as its interpretation is reasonable. *See id.* at 842–43; *Rust* v. *Sullivan,* 500 U.S. 173, 186–87 (1991); *see also Citizens for the Hopkins Post Office,* 830 F. Supp. at 298–99 (''The term 'consolidation' as used in § 404(b) [now 404(d)] is not defined in the statute. Consequently, this court will begin with the principle that the construction placed on a statute by the agency charged with administering it is entitled to considerable deference and should be upheld if reasonable.''). In the proposed rule and elsewhere in this final rule, the Postal Service has explained why it is reasonable to revise its interpretation of ''consolidation'' in order to give sensible and feasible effect to larger regulatory

[1] The author of the legal opinion appears to have misquoted this sentence of the *Citizens for the Hopkins Post Office* opinion as referring to ''the [sic] one which is reasonable.'' This error may help to explain why the author reads the opinion as supporting the author's conclusion that the Postal Service's historical interpretation of ''consolidation'' is the *only* permissible one, rather than one of multiple interpretive possibilities. The actual quotation supports the latter view.

changes that will increase transparency and public participation.

The same legal opinion cited a pleading filed by the Postal Service in an ongoing federal action to support its view that the instant rulemaking somehow undoes an indelible aspect of postal law. The legal opinion fails to note that the subject matter of the litigation and the quoted pleading itself concern Postal Service regulations in effect at the time. They do not prejudice the Postal Service's authority or discretion to revise those regulations at a later time. An agency is entitled to defend its actions based on its legal interpretation and regulations in effect at the applicable time, rather than on prior or subsequent policies and regulations. As the Postal Service noted in its proposed rule and first final rule, and reiterates here, this rulemaking is not retroactive and does not affect any actions taken by the Postal Service under previous regulations. *See generally, Bowen* v. *Georgetown Univ. Hosp.,* 488 U.S. 204, 208 (1988) (holding that agency regulations are not retroactive except as specifically authorized by Congress).

In sum, the proposed reinterpretation of ''consolidation'' is within the Postal Service's authority to administer the statutory scheme. The Postal Service is adopting a new interpretation of the existing statutory term, while continuing to apply the discontinuance procedures established by Congress to consolidations as distinct from closings. The proposed interpretation is reasonable in its own right and goes a long way toward closing the gap between respective Postal Service and Commission positions. It also fits into the larger framework of changes to orient discontinuance processes more appropriately around customer expectations—as the Commission and others have recommended for years—and to increase public transparency and participation.

B. Staffing of Post Offices

Many commenters expressed the view that the Postmaster Equity Act, Public Law 108–86 (2003), precludes the proposed change to 39 CFR 241.1 such that a Post Office may be staffed by non-postmaster personnel. As codified in 39 U.S.C. 1004(i)(3), the Postmaster Equity Act defines a ''postmaster'' as ''an individual who is the manager in charge of the operations of a post office, with or without the assistance of subordinate managers or supervisors.''

The Postmaster Equity Act serves the purpose of requiring consultation by the Postal Service with groups representing middle management tiers regarding, among other things, pay policies and schedules. It was not intended to—and unambiguously did not—modify the Postal Service's authority to determine the staffing and scope of its retail facility network. *See* 39 U.S.C. 403(b)(1), 403(b)(3), 404(a)(3), 1001(e)(4)–(5). Congress was explicit in framing Section 1004(i)'s definitions as applicable only ''for purposes of this section.'' 39 U.S.C. 1004(i). Cf. *United States* v. *Cons. Life Ins. Co.,* 430 U.S. 725, 769 (1977) (White, J., dissenting) (finding a definition under section 801(c)(2) and (3) of the Internal Revenue Code of 1954 to be inapplicable to rules for taxing the income of life insurance companies from modified coinsured contracts under section 820 of the Internal Revenue Code of 1954, because the definition was applicable only ''for purposes of * * * subsection 801(a)''); *Thomas* v. *U.S. Bank Nat'l Ass*'n, 575 F.3d 794, 798 (8th Cir. 2009) (construing preemption language ''for purposes of this section'' in 12 U.S.C. 1831d(a) as meaning that ''conflicting state constitutions or statutes are not preempted for every and all purposes, but only for purposes of 'this section'''). Congress could have applied Section 1004(i)'s definitions to title 39 more broadly or even to section 404(d) in particular, but it did not do so. Therefore, the limited context of the Postmaster Equity Act is inapposite to this rulemaking.

Even if the Postmaster Equity Act had some import in this context, the proposed rule would not be inconsistent with the definition of a ''postmaster'' therein. The Postmaster Equity Act does not require that each postmaster manage only one Post Office or that every Post Office be individually staffed by a postmaster. Indeed, in many cities, postmasters are responsible for a main Post Office and several classified stations and branches, which the Commission has repeatedly described as having no functional difference from customers' perspectives from Post Offices. The Postal Service is confident that rural postmasters would be similarly capable of overseeing operations at more than one retail facility.

Decisions about the staffing of Post Offices are within the Postal Service's general authority to manage Post Offices and staff appointments under the Postal Reorganization Act provisions cited above. The proposed rule is consistent with the definition of a postmaster under the Postmaster Equity Act, exercises appropriate and reasonable rule-making authority under the Postal Reorganization Act, and streamlines postal operations in order to reduce costs and enhance value. Therefore, it is a reasonable exercise of the Postal Service's authority to administer its statutory objectives, and it is not inconsistent with title 39 of the U.S. Code.

One commenter was concerned that, as a result of the same change, the presence of Post Offices staffed by non-postmaster personnel would make it easier for the Postal Service to close those facilities. It is unclear how such an effect would flow from mere staffing arrangements, however. The same requirements, criteria, and procedures apply to all Post Offices, regardless of how they are staffed. As explained in the proposed rule, those same requirements, criteria, and procedures are now applied, as a matter of policy, to Postal Service-operated stations and branches, which are not staffed by postmasters today. If anything, this change could lead to the continued operation of Post Offices that otherwise would be discontinued, due to the Postal Service's ability to staff them in a more flexible and economical fashion.

Another commenter viewed the proposed change to 39 CFR 241.1 as inconsistent with Employee and Labor Relations Manual (ELM) 113.3, which the commenter believed to correspond to 39 U.S.C. 1004(i)(3). ELM 113.3(k) reflects the Postal Service's previous practice of requiring a postmaster at all Post Offices. As explained above, 39 U.S.C. 1004(i)(3) defines a ''postmaster'' in association with a Post Office, but does not require that a Post Office be associated with a postmaster staffing each Post Office in all cases. Hence, the Postal Service is not precluded by statute from taking a different approach. The Postal Service plans to update ELM 113.3(k) to reflect the change to 39 CFR 241.1.

A postal supervisors' organization raised concerns that the replacement of Executive and Administrative Schedule (EAS) employees with bargaining-unit employees, and/or postmasters with clerks-in-charge, would increase workload, deprive communities of access to knowledgeable management personnel, and not offer significant cost savings in light of current pay ceilings. The Postal Service has not yet determined to take any such specific action in furtherance of these changes to the overarching regulations. Any particular staffing decision would presumably take account of workload, community needs, and cost savings. In this rulemaking, the Postal Service only removes, as a general matter, a self-imposed restriction on its discretion to make such decisions in instances where

more flexible staffing may be the most rational option.

II. Explanation of Changes From Proposed Rule

The final rule includes the following additional changes to the proposed rule.

Paragraph 241.1(a) has been revised to clarify that the operation or staffing of a Post Office by non-postmaster personnel must be at the direction of the postmaster, and that it may include times when the postmaster is not physically present. While the proposed rule referred to whether a Post Office was ''operated or managed'' by non-postmaster personnel, the phrase ''operated or staffed'' better reflects the intended meaning that a postmaster would continue to manage operations at the Post Office, albeit possibly without personally operating or staffing it on a continuous basis.

A sentence is added to paragraph 241.3(a)(1)(ii) (redesignated as 241.3(a)(1)(iii)) to clarify that these regulations will no longer apply to discontinuance actions pending as of December 1, 2011, that pertain to the conversion of a Post Office to another type of USPS-operated facility.

The definition of ''consolidation'' in paragraph 241.3(a)(2)(iv) is revised to restrict the term's definition to instances where a Postal Service-operated retail facility is replaced with a contractor-operated retail facility that reports to a Postal Service-operated retail facility. Consistent with the proposed rule, the term no longer encompasses situations where a Post Office is replaced with a Classified Station or Classified Branch.

Paragraph 241.3(b)(4) is revised to indicate the possibility that a consolidated facility's name, or a similar name, can be used by the succeeding facility, rather than suggesting an expectation that the former name will be maintained, thereby allowing for the range of contract- and service-specific circumstances that can affect such a determination.

The Postal Service hereby adopts the following changes to 39 CFR part 241.

List of Subjects in 39 CFR Part 241

Organization and functions (government agencies), Postal Service.

Accordingly, 39 CFR part 241 is amended as follows:

PART 241—RETAIL ORGANIZATION AND ADMINISTRATION: ESTABLISHMENT, CLASSIFICATION, AND DISCONTINUANCE

■ 1. The authority citation for 39 CFR part 241 continues to read as follows:

Authority: 39 U.S.C. 101, 401, 403, 404, 410, 1001.

■ 2. In § 241.1, paragraph (a) is revised to read as follows:

§ 241.1 Post offices.

(a) *Establishment.* Post Offices are established and maintained at locations deemed necessary to ensure that regular and effective postal services are available to all customers within specified geographic boundaries. A Post Office may be operated or staffed by a postmaster or by another type of postal employee at the direction of the postmaster, including when the postmaster is not physically present.

* * * * *

■ 3. In § 241.3:
■ a. Paragraph (a)(1)(i)(B) is revised;
■ b. Paragraph (a)(1)(ii) is redesignated as paragraph (a)(1)(iii), and new paragraph (a)(1)(ii) is added;
■ c. Newly redesignated paragraph (a)(1)(iii) is revised;
■ d. Paragraph (a)(2)(iv) is revised;
■ e. Paragraph (b)(2)(i) is revised;
■ f. Paragraph (b)(4) is revised; and
■ g. Paragraph (c)(2) is revised.

The revisions and additions read as follows:

§ 241.3 Discontinuance of USPS-operated retail facilities.

(a) * * *

(1) * * *

(i) * * *

(B) Combine a USPS-operated Post Office, station, or branch with another USPS-operated retail facility, or

(ii) The conversion of a Post Office into, or the replacement of a Post Office with, another type of USPS-operated retail facility is not a discontinuance action subject to this section. A change in the staffing of a Post Office such that it is staffed only part-time by a postmaster, or not staffed at all by a postmaster, but rather by another type of USPS employee, is not a discontinuance action subject to this section.

(iii) The regulations in this section are mandatory only with respect to discontinuance actions for which initial feasibility studies have been initiated on or after July 14, 2011. Unless otherwise provided by responsible personnel, the rules under § 241.3 as in effect prior to July 14, 2011 shall apply to discontinuance actions for which initial feasibility studies have been initiated prior to July 14, 2011. Discontinuance actions pending as of December 1, 2011, that pertain to the conversion of a Post Office to another type of USPS-operated facility are no longer subject to these regulations.

(2) * * *

(iv) ''Consolidation'' means an action that converts a Postal Service-operated retail facility into a contractor-operated retail facility. The resulting contractor-operated retail facility reports to a Postal Service-operated retail facility.

* * * * *

(b) * * *

(2) * * *

(i) In a consolidation, the ZIP Code for the replacement contractor-operated retail facility is the ZIP Code originally assigned to the discontinued facility.

* * * * *

(4) *Name of facility established by consolidation.* If a USPS-operated retail facility is consolidated by establishing in its place a contractor-operated facility, the replacement unit can be given the same name of the facility that is replaced, if appropriate in light of the nature of the contract and level of service provided.

(c) * * *

(2) *Consolidation.* The proposed action may include a consolidation of USPS-operated retail facilities. A consolidation arises when a USPS-operated retail facility is replaced with a contractor-operated retail facility.

* * * * *

Stanley F. Mires,

Attorney, Legal Policy and Legislative Advice.

[FR Doc. 2011–27641 Filed 10–25–11; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2009–0538; FRL–8891–3]

Bacteriophage of Clavibacter Michiganensis Subspecies Michiganensis; Exemption From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of lytic bacteriophage of Clavibacter michiganensis subspecies michiganensis produced in Clavibacter michiganensis subspecies michiganensis in or on tomato when applied as a bactericide in accordance with good agricultural practices. On behalf of OmniLytics, Inc., Interregional Research Project Number 4 (IR–4) submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA) requesting an exemption from

the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of lytic bacteriophage of Clavibacter michiganensis subspecies michiganensis produced in Clavibacter michiganensis subspecies michiganensis under the FFDCA.

DATES: This regulation is effective October 26, 2011. Objections and requests for hearings must be received on or before December 27, 2011, 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–2009–0538. 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 Office of Pesticide Programs (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: Denise Greenway, Biopesticides and Pollution Prevention Division (7511P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; *telephone number:* (703) 308–8263; *e-mail address: greenway.denise@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 electronic access to other related information?

You may access a frequently updated electronic version of 40 CFR part 180 through the Government Printing Office's e-CFR site at *http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.*

C. How can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a(g), 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–2009–0538 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 December 27, 2011. 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–HQOPP–2009–0538, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* 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. Background and Statutory Findings

In the **Federal Register** of September 23, 2009 (74 FR 48556) (FRL–8434–7), 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 tolerance petition (PP 9E7552) by IR–4, Rutgers University, 500 College Rd. East, Suite 201W, Princeton, NJ 08540 (on behalf of OmniLytics, Inc., 9100 South 500 West, Sandy, UT 84070). The petition requested that 40 CFR part 180 be amended by establishing an exemption from the requirement of a tolerance for residues of bacteriophage of Clavibacter michiganensis subspecies michiganensis. This notice referenced a summary of the petition prepared by the petitioner, IR–4, which is available in the docket via *http://www.regulations.gov.* There were no comments received in response to the notice of filing.

Section 408(c)(2)(A)(i) of FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the exemption is ''safe.'' Section 408(c)(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. Pursuant to section 408(c)(2)(B) of FFDCA, in establishing or maintaining in effect an exemption from the requirement of a tolerance, EPA must take into account the factors set forth in section 408(b)(2)(C) of FFDCA, which require EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance exemption 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. * * *''

Additionally, section 408(b)(2)(D) of FFDCA requires that EPA consider ''available information concerning the cumulative effects of [a particular pesticide's] * * * residues and other substances that have a common mechanism of toxicity.''

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides. Second, EPA examines exposure to the pesticide through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings.

III. Toxicological Profile

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness, and reliability and the relationship of this information 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.

A. Bacteriophage Overview

Bacteriophage, the most abundant group of biological entities on the planet, are naturally occurring viruses that are found in soil and water and in association with plants and animals, including humans (Refs. 1 through 8). Bacteriophage are obligate parasites of bacteria, which means they attach to, infect, and reproduce in bacteria, and are host-specific for bacteria, with specific bacteriophage attacking only one bacterial species and most frequently only one strain within a bacterial species (Refs. 9 through 11). As such, bacteriophage do not attack other beneficial bacteria. In addition, there is no evidence for bacteriophage infecting any other life form, including humans, except bacteria (Refs. 7, 12, and 13). Humans and other animals commonly consume bacteriophage as they are abundantly found in water, on plant surfaces, and in foods such as ground beef, pork sausage, chicken, oysters, cheese, mushrooms, and broccoli (Refs. 3, 4, and 14 through 19). In addition, bacteriophage are common commensals of the human gut and likely play an important role in regulating populations of various bacteria in the gastrointestinal tract (Ref. 7). As cited in public literature, bacteriophage have been used for more than 80 years as therapeutic agents with no ill effects and are active against bacteria that cause many infections and human diseases (Refs. 7, 20, and 21).

Since 2005, bacteriophage have also been used in a pesticide product (Agriphage; EPA Reg. No. 67986–1), without reported incidents, to control particular bacterial diseases (Xanthomonas campestris pv. vesicatoria and Pseduomonas syringae pv. tomato) of tomato and pepper. In conjunction with registration of the aforementioned pesticide product, EPA established an exemption from the requirement of a tolerance for residues of bacteriophage of Xanthomonas campestris pv. vesicatoria and Pseudómonas syringae pv. tomato in or on tomato and pepper (see the **Federal Register** of December 28, 2005 (70 FR 76704) (FRL–7753–6)). Much like the previously registered bacteriophage, OmniLytics, Inc. is proposing that bacteriophage of Clavibacter michiganensis subspecies michiganensis be applied as a pesticide for a very limited use-to control bacterial canker disease on tomato.

B. Microbial Pesticide Toxicology Data Requirements

All mammalian toxicology data requirements supporting the request for an exemption from the requirement of a tolerance for residues of bacteriophage of Clavibacter michiganensis subspecies michiganensis in or on tomato have been fulfilled with submission of valid studies from the public literature (Refs. 22 and 23).

As mentioned in Unit III.A., bacteriophage are viruses that only infect specific bacteria, a basic fact supported by both information presented in public literature and the absence of reported adverse effects to humans even with commonplace exposure to bacteriophage. Literature submitted established that bacteriophage have been used historically and through modern times in lieu of or to assist the action of antibiotics. Clinical uses encompass all manner of administration from injection/intravenous and surgical wound applications to topical and ingestible preparations. There have been no reports of adverse effects from such administrations and in other similar cases using controlled scientific studies. Also submitted were literature citations showing that bacteriophage are common and abundant in soils, are in a wide range of plant materials, and are generally present in high numbers in the environment (*e.g.,* up to 1010 plaque-forming units (PFU) per liter may be found in non-polluted waters). Yet again, no adverse effects to humans have been reported with these types of potential exposure. Moreover, bacteriophage presence reported in foods and feeds ranges from 101 to 105 PFU/100 grams (g) of meat and up to 107 PFU/100 g of cheese without any known harmful effects after consumption of such materials. Finally, the petitioner noted that, during an extensive history of bacteriophage laboratory and pesticidal usage, adverse reports in the literature have not been documented and episodes of hypersensitivity have not occurred.

Because bacteriophage are obligate bacterial parasites and are not known to infect humans, the only human health risk associated with use of bacteriophage of Clavibacter michiganensis subspecies michiganensis as a bactericide is potential for acquisition and production of microbial toxins. This acquisition occurs through lysogeny, which is when bacteriophage integrate into the genome of toxigenic bacterial host strains and pick up and transmit those genetic traits to other bacteria that otherwise would not produce toxic substances. Therefore, bacteriophage of Clavibacter michiganensis subspecies michiganensis that meet the following two conditions do not present this risk issue:

1. Bacteriophage produced in Clavibacter michiganensis subspecies michiganensis, which has been sequenced and determined to be an atoxigenic host bacteria, and

2. Bacteriophage possessing the capability to lyse host bacteria, *i.e.,* completely destroy host cells during the viral production process, which precludes genetic transfer of possible toxins to other bacteria (Ref. 22).

IV. Aggregate Exposure

In examining aggregate exposure, section 408 of FFDCA directs EPA to consider available information concerning exposures from the pesticide residue in food and all other non-occupational exposures, including drinking water from ground water or surface water and exposure through pesticide use in gardens, lawns, or buildings (residential and other indoor uses).

A. Dietary Exposure

1. Food exposure. Published literature submitted by the petitioner, as well as other publicly available literature, indicate that bacteriophage are commonly associated with food and are therefore regularly consumed by humans. According to Ackermann (1997), these viruses have been found in association with ''buds, leaves, root nodules (leguminous plants), roots,

rotting fruit, seeds, stems, and straw; crown gall tumors * * * healthy or diseased alfalfa, barley, beans, broccoli, Brussels sprouts, buckwheat, clover, cotton, cucumber, lucerne, mulberry, oats, peas, peach trees, radish, rutabaga, ryegrass, rye, timothy, tobacco, tomatoes, [and] wheat'' (Ref. 14). Moreover, bacteriophage have been isolated from a wide range of food products, including ground beef, pork sausage, chicken, farmed freshwater fish, common carp, marine fish, oil sardines, raw skim milk, and cheese (Refs. 15, 16, and 24 through 27). In fact, several studies have suggested that 100% of the ground beef and chicken meat sold at retail stores contain various levels of bacteriophage. For instance, bacteriophage were recovered from 100% of examined fresh chicken and pork sausage samples and from 33% of delicatessen meat samples analyzed; the levels ranged from 3.3×1010 to 4.4×1010 PFU/100 g of fresh chicken, up to 3.5×1010 PFU/100 g of fresh pork, and up to 2.7×1010 PFU/100 g of roast turkey breast samples (Ref 16). Other studies similarly showed the widespread occurrence of bacteriophage in certain foods:

a. 38 bacteriophage-host systems were isolated from 22 of 45 refrigerated products (Ref 27);

b. Bacteriophage infecting fire blight pathogen (Erwinia amylovora) were isolated from apple, pear, and raspberry tissues and from soil samples collected at sites displaying fire blight symptoms (Ref 5); and

c. Shellfish, which filter large quantities of seawater, concentrated both bacteria and bacteriophage (Ref 6).

Because lytic bacteriophage of Clavibacter michiganensis subspecies michiganensis produced in Clavibacter michiganensis subspecies michiganensis are intended to be applied to tomatoes, it is likely that dietary exposure will occur; however, no adverse effects are expected to occur. Despite constant and direct food exposure to bacteriophage (examples provided in the preceding paragraph and in Unit III.), no adverse effects to humans have been reported in publicly available literature. Indeed, no such effects are expected given that bacteriophage, including the one at issue in this action, are not capable of infecting eukaryotic cells and are host specific, attacking only bacteria.

2. Drinking water exposure. Published literature submitted by the petitioner, as well as other publicly available literature, indicate that, much like food, bacteriophage are commonly associated with water and are therefore regularly consumed by humans. According to Demuth *et al.* (1993), ''Bacteriophage * * * have been isolated from all types of bacteria and from virtually any aquatic or terrestrial habitat where bacteria can exist. However, only in the last few years has it been recognized that viruses (phage) are extremely abundant in ocean and fresh water and may exceed the concentration of bacteria by up to 100-fold'' (Ref. 3). Other studies showed that bacteriophage of Erwinia carotovora and Erwinia ananas were isolated from certain freshwater lakes in Florida and Texas (Ref. 4) and that coliphage were present in some samples of drinking water (Ref 28).

When lytic bacteriophage of Clavibacter michiganensis subspecies michiganensis produced in Clavibacter michiganensis subspecies michiganensis are applied to tomato as a bactericide in accordance with good agricultural practices, exposure of humans to residues of these bacteriophage in consumed drinking water may occur. Although lytic bacteriophage of Clavibacter michiganensis subspecies michiganensis produced in Clavibacter michiganensis subspecies michiganensis are not expected to reach surface water because the proposed use patterns do not include direct application to aquatic sites, it is possible that this microbial pest control agent could make it into ground water. Nonetheless, if oral exposure to lytic bacteriophage of Clavibacter michiganensis subspecies michiganensis produced in Clavibacter michiganensis subspecies michiganensis occurs through consumed drinking water (*e.g.,* due to surface water contamination by microbial pesticide spray drift or runoff or contact with ground water), for the many reasons enumerated in Unit III. and Unit IV.A.1., EPA concludes there is reasonable certainty that this type of drinking water exposure, or any level of drinking water exposure for that matter, will not result in harm to humans.

B. Other Non-Occupational Exposure

Dermal and inhalation non-occupational exposures to lytic bacteriophage of Clavibacter michiganensis subspecies michiganensis produced in Clavibacter michiganensis subspecies michiganensis are not expected as all proposed pesticide applications will take place in distinct agricultural settings. Even if dermal and inhalation non-occupational exposures were to occur inadvertently (*e.g.,* through spray drift) or due to an eventual expansion of use sites, such exposures would not be of concern given the information presented in Unit III. and Unit IV.A.

V. 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 exemption, EPA consider ''available information concerning the cumulative effects of [a particular pesticide's] * * * residues and other substances that have a common mechanism of toxicity.''

EPA has not found lytic bacteriophage of Clavibacter michiganensis subspecies michiganensis produced in Clavibacter michiganensis subspecies michiganensis to share a common mechanism of toxicity with any other substances, and lytic bacteriophage of Clavibacter michiganensis subspecies michiganensis produced in Clavibacter michiganensis subspecies michiganensis do not appear to produce a toxic metabolite against the target pest. For the purposes of this tolerance action, therefore, EPA has assumed that lytic bacteriophage of Clavibacter michiganensis subspecies michiganensis produced in Clavibacter michiganensis subspecies michiganensis do not have a common mechanism of toxicity with other substances. Therefore, section 408(b)(2)(D)(v) of the FFDCA does not apply. 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 Web site at *http://www.epa.gov/pesticides/cumulative.*

VI. Determination of Safety for United States (U.S.) Population, Infants and Children

FFDCA section 408(b)(2)(C) provides that EPA shall assess the available information about consumption patterns among infants and children, special susceptibility of infants and children to pesticide chemical residues, and the cumulative effects on infants and children of the residues and other substances with a common mechanism of toxicity. In addition, FFDCA section 408(b)(2)(C) provides that EPA shall apply an additional tenfold (10×) 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 that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the Food Quality Protection Act Safety Factor. In

applying this provision, EPA either retains the default value of 10× or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

As previously discussed in Unit III. and Unit IV., humans, including infants and children, have been exposed to bacteriophage through food and water, where they are commonly found, and through decades of therapeutic use with no known or reported adverse effects. Based on this, as well as all the other reasons enumerated repeatedly in this unit, EPA concludes that there is a reasonable certainty that no harm will result to the U.S. population, including infants and children, from aggregate exposure to the residues of lytic bacteriophage of Clavibacter michiganensis subspecies michiganensis produced in Clavibacter michiganensis subspecies michiganensis. Such exposure includes all anticipated dietary exposures and all other exposures for which there is reliable information. EPA has arrived at this conclusion because, considered collectively, the public literature available on bacteriophage, including the one at issue in this action, do not demonstrate toxic, pathogenic, and/or infective potential to mammals. Thus, there are no threshold effects of concern and, as a result, an additional margin of safety is not necessary.

VII. Other Considerations

A. Analytical Enforcement Methodology

An analytical method is not required for enforcement purposes for the reasons stated above and because EPA is establishing an exemption from the requirement of a tolerance without any numerical limitation.

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. In this context, 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 lytic bacteriophage of Clavibacter michiganensis subspecies michiganensis produced in Clavibacter michiganensis subspecies michiganensis.

C. Revisions to Requested Exemption

In its petition, the petitioner requested generally that the Agency issue an exemption from the requirement of a tolerance for residues of bacteriophage of Clavibacter michiganensis subspecies michiganensis in or on tomato. The petitioner's supporting materials indicated that the actual pesticide that would be used would be safe because the bacteriophage were lytic and produced in Clavibacter michiganensis subspecies michiganensis. The Agency believes both that these two conditions are necessary to make the safety finding and the petitioner was only requesting a narrow exemption; therefore, the Agency is modifying the tolerance exemption regulatory text to include such criteria.

VIII. Conclusions

EPA concludes that there is a reasonable certainty that no harm will result to the U.S. population, including infants and children, from aggregate exposure to residues of lytic bacteriophage of Clavibacter michiganensis subspecies michiganensis produced in Clavibacter michiganensis subspecies michiganensis. Therefore, an exemption from the requirement of a tolerance is established for residues of lytic bacteriophage of Clavibacter michiganensis subspecies michiganensis produced in Clavibacter michiganensis subspecies michiganensis in or on tomato when applied as a bactericide in accordance with good agricultural practices.

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X. Statutory and Executive Order Reviews

This final rule establishes a tolerance exemption under section 408(d) of FFDCA in response to a petition submitted to EPA. 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 exemption 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. As a result, this action does not 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, EPA 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, EPA 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) (Pub. L. 104–4).

This action does not involve any technical standards that would require EPA 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).

XI. 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: September 30, 2011.

Steven Bradbury,

Director, 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 180.1307 is added to subpart D to read as follows:

§ 180.1307 Bacteriophage of Clavibacter michiganensis subspecies michiganensis; exemption from the requirement of a tolerance.

An exemption from the requirement of a tolerance is established for residues of lytic bacteriophage of Clavibacter michiganensis subspecies michiganensis produced in Clavibacter michiganensis subspecies michiganensis in or on tomato when applied as a bactericide in accordance with good agricultural practices.

[FR Doc. 2011–27042 Filed 10–25–11; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 101119575–1554–02]

RIN 0648–BA46

Fisheries of the Northeastern United States; Monkfish; Framework Adjustment 7

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

ACTION: Final rule.

SUMMARY: This final rule implements measures that were approved in Framework Adjustment 7 to the Monkfish Fishery Management Plan. The New England Fishery Management Council and Mid-Atlantic Fishery Management Council developed Framework Adjustment 7 to adjust the annual catch target for the Northern Fishery Management Area to be consistent with the most recent

scientific advice regarding the acceptable biological catch for monkfish. The New England Council's Scientific and Statistical Committee recommended a revision to the acceptable biological catch based on information from the 50th Northeast Regional Stock Assessment Review Committee. Framework Adjustment 7 specifies a new days-at-sea allocation and trip limits for the Northern Fishery Management Area consistent with the new annual catch target, and establishes revised biomass reference points for the Northern and Southern Fishery Management Areas.

DATES: This rule is effective October 26, 2011.

ADDRESSES: An environmental assessment (EA) was prepared for Framework Adjustment 7 (Framework 7) that describes the proposed action and other alternatives considered, and provides an analysis of the impacts of the proposed measures and alternatives. Copies of Framework 7, including the EA and the Initial Regulatory Flexibility Analysis (IRFA), are available on request from Paul J. Howard, Executive Director, New England Fishery Management Council (Council), 50 Water Street, Newburyport, MA 01950. These documents are also available online at *http://www.nefmc.org.*

FOR FURTHER INFORMATION CONTACT: Jason Berthiaume, Fisheries Management Specialist, (978) 281–9177; *fax:* (978) 281–9135.

SUPPLEMENTARY INFORMATION:

Background

The monkfish fishery is jointly managed by the New England and Mid-Atlantic Fishery Management Councils (Councils), with the New England Council having the administrative lead. The fishery extends from Maine to North Carolina, and is divided into two management units: The Northern Fishery Management Area (NFMA) and the Southern Fishery Management Area (SFMA). Details on the background and need for Amendment 5 and this framework are contained in the amendment and the preambles for the proposed (76 FR 11737; March 3, 2011) and final rules (76 FR 30265; May 25, 2011) for Amendment 5, and are not repeated here.

Amendment 5, which was partially approved by NMFS on April 28, 2011, was intended to bring the Monkfish Fishery Management Plan (FMP) into compliance with the requirements of the reauthorized Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The Magnuson-Stevens Act requires that all FMPs contain annual catch limits (ACL) to prevent overfishing, and measures to ensure accountability. Among other measures, Amendment 5 implemented accountability measures (AMs) and ACLs, established biological and management reference points and control rules, and specified an annual catch target (ACT), days-at-sea (DAS), and trip limits for the SFMA.

However, NMFS disapproved the proposed ACT for the NFMA in Amendment 5, and specification of DAS and trip limits to achieve that ACT. Amendment 5 proposed an ACT for the NFMA of 10,750 mt, an allocation of 40 DAS, and trip limits of 1,250 lb (567 kg) tail wt. per DAS for Category A and C vessels, and 800 lb (363 kg) tail wt. per DAS for Category B and D vessels based on the 2007 Data Poor Working Group (DPWG) Assessment, which was considered to be the best scientific information available at the time the Amendment 5 document was finalized by the Councils. Subsequent to the Councils taking final action on Amendment 5, a 2010 stock assessment (50th Northeast Regional Stock Assessment Review Committee (SARC 50)) became available, which revealed new scientific information that, when included in the Councils' interim acceptable biological catch (ABC) approach, reduced the monkfish NFMA ABC. In response to the new assessment, the New England Council's Scientific and Statistical Committee (SSC) revisited its previous ABC recommendation at a meeting in August 2010. The SSC, after much discussion concerning the uncertainty with the new assessment and alternate methods for calculating ABC to account for this uncertainty, agreed to maintain the existing interim ABC approach it previously recommended. Using this interim ABC approach, the SSC recalculated the recommended ABC in Amendment 5 to incorporate the results of SARC 50. Based on the recalculation of the ABCs, the SFMA's ACT and associated DAS and trip limit measures were found to still be consistent with the new ABC and ACL, and they were approved by NMFS in Amendment 5. The recalculated ABC for the NFMA, on the other hand, was reduced from 10,750 mt to 7,592 mt, creating an inconsistency with the Amendment 5 recommended ABC, ACT, and associated NFMA DAS and trip limit measures. Based on this inconsistency, NMFS disapproved the Amendment 5 proposed specifications for the NFMA.

This disapproval left current measures in effect for the NFMA until superseded by a revised ACT and specification of DAS and trip limits which is the purpose of this action. Because it was too late for the Councils to revise the Amendment 5 NFMA measures in a timely fashion for fishing year (FY) 2011, the Councils initiated Framework 7 in September 2010 to revise the ACT for the NFMA to be consistent with the most recent scientific advice. Leaving the current measures in place was considered an acceptable interim measure because they are more conservative than measures being implemented by this framework. This framework reconfirms the SFMA ABC and associated specifications and management measures that were approved and implemented through Amendment 5. This framework also updates the biomass reference points in the Monkfish FMP to be consistent with the results of SARC 50.

Approved Measures

1. ACT

Framework 7 reduces the ACT for the NFMA to be consistent with the most recent scientific advice regarding the monkfish NFMA ABC. The SSC recommended a reduction of the NFMA ABC, based on SARC 50, to 7,592 mt. The ACT being implemented in this final rule is 86.5 percent of the ABC, or 6,567 mt. The ACT for the NFMA being implemented is slightly higher than the current total allowable landings (TAL) for the NFMA. Any landings that occur between when Amendment 5 was implemented on May 25, 2011, and the effective date of this final rule will be counted against the ACT for the current FY and will be used to determine whether AMs are triggered.

2. Specification of DAS and Trip Limits

The DAS allocations and trip limits implemented in this action are calculated to achieve, but not go over, the ACT. The trip limits for the NFMA for permit categories A and C will be 1,250 lb (567 kg) tail weight, and 600 lb (272 kg) tail weight for permit categories B and D, with all categories having an initial DAS allocation of 40 DAS. After accounting for the Monkfish Research Set-Aside (RSA) program, the final allocation is 39.3 DAS.

3. Revision to Biological Reference Points

This action revises the biological reference points in the Monkfish FMP to be consistent with those recommended by the SSC and SARC 50. In the SARC 50 report, the Southern Demersal Working Group recommended an approach that would set biomass target reference points based on the long-term

projected biomass (B) corresponding to the fishing mortality rate (F) at maximum sustainable yield, or its proxy, which for monkfish is F_{max}. This recommendation, along with the recommendation to set B threshold reference points at one-half of the target, is consistent with National Standard 1. The B_{target} under this recommendation is 52,930 mt for the NFMA and 74,490 mt for the SFMA, and $B_{threshold}$ of 26,465 mt for the NFMA and 37,245 mt for the SFMA.

Comments and Responses

The public comment period for the proposed rule ended on September 6, 2011. One comment was received.

Comment 1: The commenter suggested that all fishery quotas should be cut, based on the notion that coastal hypoxia was not considered when developing Framework 7.

Response: The commenter discussed coastal hypoxia at length, but did not explain how it relates to this rule and there is no known scientific basis for the commenter's suggestion. The reasons presented by the Council and NMFS for recommending the monkfish measures in this Framework are based on the best scientific information available, and are discussed in the preambles to both the proposed and final rule.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has made a determination that this final rule is consistent with the Monkfish FMP, Framework 7, other provisions of the Magnuson-Stevens Act, and other applicable laws.

Pursuant to the APA, 5 U.S.C. 553(d)(1), NMFS finds good cause to waive the 30-day delay in effectiveness of this rule. This final rule implements measures that are less restrictive than current regulations by increasing monkfish DAS allocations and trip limits for permit category B and D vessels in the NFMA. The increase in the DAS allocations and trip limits being implemented by this action are measures that were intended to be implemented with Amendment 5 on May 1, 2011 (start of the 2011 FY). However, while Amendment 5 was being finalized, new scientific information became available which resulted in the disapproval of the measures in Amendment 5 that modify the NFMA DAS and trip limits. Therefore, this action was adopted to implement less restrictive DAS and trip limits that were disapproved in Amendment 5.

Moreover, the monkfish fishery is a seasonal fishery, with the majority of the fishing activity occurring in the spring and fall. Waiving the 30-day delay in effectiveness of this rule will allow vessels to immediately utilize the additional DAS and trip limits for a greater portion of the fall fishery than if the current and more restrictive regulations were in place for the 30-day delay in effectiveness period. Specifically, some vessels have already exhausted their DAS. Waiving the 30-day delayed effectiveness will provide more opportunities for these vessels to continue fishing in the fall fishery. A delay in effectiveness could result in unnecessary short-term adverse economic impacts to monkfish vessels and associated shoreside facilities and fishing communities. Lastly, in the recent past, the monkfish fishery has not been able to utilize its full ACT. It is expected that, with increased DAS allocation and trip limits being implemented with this action, the monkfish fishery will be able to more effectively utilize the ACT. Thus, a delay in effectiveness would be contrary to achieving optimum yield in the monkfish fishery, thereby undermining the purpose of this rulemaking.

The Office of Management and Budget has determined that this rule is not significant for purposes of Executive Order 12866.

The New England Council prepared an EA for Framework 7 to the Monkfish FMP that discusses the impact on the environment as a result of this rule. A copy of the EA is available from the Council (see **ADDRESSES**).

NMFS, pursuant to section 604 of the Regulatory Flexibility Act (RFA), has prepared a Final Regulatory Flexibility Analysis (FRFA) in support of Framework 7. The FRFA incorporates the IRFA, relevant analyses contained in the Framework and its EA, and a summary of the analyses completed to support the action in this rule. A copy of the analyses done in the Framework and EA is available from the Councils (see **ADDRESSES**). A summary of the IRFA was published in the proposed rule for this action and is not repeated here. A description of why this action was considered, the objectives of, and the legal basis for this rule is contained in the preamble to the proposed rule and this final rule and is not repeated here.

A Summary of the Significant Issues Raised by the Public in Response to the IRFA, a Summary of the Agency's Assessment of Such Issues, and a Statement of Any Changes Made in the Proposed Rule as a Result of Such Comments

No significant issues were raised by the public comment in response to the IRFA.

For purposes of the IRFA, all of the entities (fishing vessels) affected by this action are considered small entities under the Small Business Administration size standards for small fishing businesses (less than $4.0 million in annual gross sales). Although multiple vessels may be owned by a single owner, tracking of ownership is not readily available to reliably ascertain affiliated entities. Therefore, for purposes of this analysis, each permitted vessel is treated as a single small business entity. Consequently, there are no differential impacts between large and small entities. Information on costs in the fishery is not readily available and individual vessel profitability cannot be determined directly; therefore, expected changes in gross revenues were used as a proxy for profitability.

This action does not introduce any new reporting, recordkeeping, or other compliance requirements. This final rule does not duplicate, overlap, or conflict with other Federal rules.

Description and Estimate of Number of Small Entities to Which the Final Rule Will Apply

The management measures in Framework 7 have the potential to affect all federally permitted monkfish vessels that are actively participating in the fishery. As of September 2009, there were 758 limited access monkfish permit holders and 2,156 open access permit holders. Of these, 573 limited access permit holders (76 percent) actively participated in the monkfish fishery during FY 2008, while only 504 open access permit holders (23 percent) actively participated in the fishery during that time period. Thus, this action is expected to impact at least 1,077 currently active monkfish permit holders, but have no impact on open access permit holders.

The majority of the measures in this action are specific to the NFMA, and, thus, will apply to vessels that fish primarily in the NFMA. Of the 546 vessels that participated in the fishery in FY 2009, 232 reported fishing in the NFMA. Of the 232, 115 reported fishing only in the NFMA and 171 in both the NFMA and SFMA. Accordingly, this

action will most likely impact approximately 232 vessels that fish in the NFMA.

Description of the Steps the Agency Has Taken To Minimize the Significant Economic Impact on Small Entities Consistent With the Stated Objectives of Applicable Statutes

All of the management measures contained in Framework 7 and implemented in this final rule either provide for increased fishing opportunities or increased efficiency and profitability. This action increases fishing opportunities by raising the overall annual DAS allocations for all limited access monkfish vessels from 31 DAS to 40 DAS, prior to adjusting the DAS allocation for the Monkfish RSA program. Although the DAS usage cap for the SFMA remains at 28 DAS, the NFMA DAS increase provides additional fishing opportunities for vessels that fish primarily in the NFMA, vessels that fish in both the NFMA and SFMA, and vessels that fish primarily in the SFMA that may also wish to pursue fishing opportunities in the NFMA. Previously, vessels that fished primarily in the SFMA who utilized the maximum 28 SFMA DAS would otherwise have 3 DAS remaining that could only be used in the NFMA. With this action, these vessels will now have 12 DAS available for use in the NFMA prior to adjusting the DAS allocation for the Monkfish RSA program, which may provide opportunities for these vessels to also participate in the NFMA fishery as well as the SFMA fishery.

In regards to increased efficiency and profitability, this action increases the NFMA ACT. Assuming that prices do not decrease due to higher landings, a higher ACT would result in higher monkfish revenues and thus additional benefits to vessels. However, this is only the case if the higher allocation is actually landed. To achieve the higher ACT, this action also raises the trip limits for permit Category B and D vessels from 470 lb (213 kg) to 600 lb (272 kg) tail weight. This increase allows Category B and D vessels fishing in the NFMA to land more monkfish than previously authorized, which could increase vessel efficiency and profitability, as well as reducing any regulatory discards.

Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as ''small entity compliance guides.'' The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a letter to permit holders that also serves as small entity compliance guide (the guide) was prepared. Copies of this final rule are available from the NMFS Northeast Regional Office, and the guide, *i.e.,* permit holder letter, will be sent to all holders of permits for the monkfish fishery. The guide and this final rule will be available upon request, and posted on the Northeast Regional Office's Web site at *http://www.nero.noaa.gov.*

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: October 19, 2011.

Samuel D. Rauch III,

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

For the reasons set out in the preamble, 50 CFR part 648 is amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

■ 1. The authority citation for part 648 continues to read as follows:

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

■ 2. In § 648.92, revise paragraph (b)(1)(i) to read as follows:

§ 648.92 Effort-control program for monkfish limited access vessels.

* * * * *

(b) * * *

(1) * * *

(i) *General provision.* Limited access monkfish permit holders shall be allocated 40 monkfish DAS each fishing year to be used in accordance with the restrictions of this paragraph (b), unless otherwise restricted by paragraph (b)(1)(ii) of this section or modified by § 648.96(b)(3), or unless the vessel is enrolled in the Offshore Fishery Program in the SFMA, as specified in paragraph (b)(1)(iv) of this section. The annual allocation of monkfish DAS shall be reduced by the amount calculated in paragraph (b)(1)(v) of this section for the research DAS set-aside. Limited access NE multispecies and limited access sea scallop permit holders who also possess a limited access monkfish permit must use a NE multispecies or sea scallop DAS concurrently with each monkfish DAS utilized, except as provided in paragraph (b)(2) of this section, unless otherwise specified under this subpart F.

* * * * *

■ 3. In § 648.94, revise paragraph (b)(1)(ii) to read as follows:

§ 648.94 Monkfish possession and landing restrictions.

* * * * *

(b) * * *

(1) * * *

(ii) *Category B and D vessels.* Limited access monkfish Category B and D vessels that fish under a monkfish DAS exclusively in the NFMA may land up to 600 lb (272 kg) tail weight or 1,746 lb (792 kg) whole weight of monkfish (gutted) per DAS (or any prorated combination of tail weight and whole weight based on the conversion factor for tail weight to whole weight of 2.91). For every 1 lb (0.45 kg) of tail only weight landed, the vessel may land up to 1.91 lb (0.87 kg) of monkfish heads only, as described in paragraph (a) of this section.

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[FR Doc. 2011–27723 Filed 10–25–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 101126521–0640–02]

RIN 0648–XA791

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Catcher/Processors Using Pot Gear in the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by pot catcher/processors in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 2011 Pacific cod total allowable catch (TAC) specified for pot catcher/processors in the BSAI.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), October 23, 2011, through 1200 hrs, A.l.t., December 31, 2011.

FOR FURTHER INFORMATION CONTACT: Obren Davis, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the

BSAI exclusive economic zone according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2011 Pacific cod TAC allocated as a directed fishing allowance to pot catcher/processors in the BSAI is 3,041 metric tons as established by the final 2011 and 2012 harvest specifications for groundfish in the BSAI (76 FR 11139, March 1, 2011).

In accordance with § 679.20(d)(1)(iii), the Administrator, Alaska Region, NMFS, has determined that the 2011 Pacific cod TAC allocated as a directed fishing allowance to pot catcher/processors in the BSAI has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by pot catcher/processors in the BSAI.

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

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of Pacific cod by pot catcher/processors in the BSAI. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of October 20, 2011.

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

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

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

Dated: October 21, 2011.

Alan D. Risenhoover,

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

[FR Doc. 2011–27714 Filed 10–21–11; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 101126522–0640–02]

RIN 0648–XA790

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

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

ACTION: Temporary rule; closure.

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

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), October 26, 2011, through 2400 hrs, A.l.t., December 31, 2011.

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

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

The 2011 Pacific cod TAC apportioned to vessels harvesting Pacific cod for processing by the inshore component of the Western Regulatory Area of the GOA is 20,507 metric tons (mt), as established by the final 2011 and 2012 harvest specifications for groundfish of the GOA (76 FR 11111, March 1, 2011).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator) has determined that the 2011 Pacific cod TAC apportioned to vessels harvesting Pacific cod for processing by the inshore component of the Western Regulatory Area of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 20,257 mt, and is setting aside the remaining 250 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by vessels harvesting Pacific cod for processing by the inshore component in the Western Regulatory Area of the GOA.

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

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the directed fishing closure of Pacific cod by vessels harvesting Pacific cod for processing by the inshore component in the Western Regulatory Area of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of October 20, 2011.

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

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

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

Dated: October 21, 2011.

Alan D. Risenhoover,

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

[FR Doc. 2011–27715 Filed 10–21–11; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 76, No. 207
Wednesday, October 26, 2011

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–1092; Directorate Identifier 2011–NM–111–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc. Model BD–700–1A10 and BD–700–1A11 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for the products listed above. This proposed 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:

During a routine inspection, deformation was found at the neck of the pressure regulator body on the oxygen Cylinder and Regulator Assemblies (CRA).
An investigation by the vendor * * * revealed that the deformation was attributed to two (2) batches of raw material that did not meet the required tensile strength. This may cause elongation of the pressure regulator neck, which could result in rupture of the oxygen cylinder, and in the case of cabin depressurization, oxygen not being available when required.
* * * * *

The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

DATES: We must receive comments on this proposed AD by December 12, 2011.

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

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

For service information identified in this proposed 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*. You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

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

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:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2011–1092; Directorate Identifier 2011–NM–111–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

The Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian Airworthiness Directive CF–2011–10, dated May 13, 2011 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> During a routine inspection, deformation was found at the neck of the pressure regulator body on the oxygen Cylinder and Regulator Assemblies (CRA).
>
> An investigation by the vendor, Avox Systems Inc., revealed that the deformation was attributed to two (2) batches of raw material that did not meet the required tensile strength. This may cause elongation of the pressure regulator neck, which could result in rupture of the oxygen cylinder, and in the case of cabin depressurization, oxygen not being available when required.
>
> This [Canadian] directive mandates [an inspection to determine if a certain oxygen CRA is installed and] the replacement of oxygen CRAs containing pressure regulators, part number (P/N) 806370–06, that do not meet the required material properties.

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

Relevant Service Information

Bombardier has issued Service Bulletins 700–1A11–35–010 (for Model BD–700–1A11 airplanes) and 700–35–011 (for Model BD–700–1A10 airplanes), both Revision 01, both dated February 1, 2011. 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 Proposed 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 proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

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 proposed 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 proposed AD.

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 39 products of U.S. registry. We also estimate that it would take about 10 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Required parts would cost about $0 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 the proposed AD on U.S. operators to be $33,150, or $850 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 proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Bombardier, Inc.: Docket No. FAA–2011–1092; Directorate Identifier 2011–NM–111–AD.

Comments Due Date

(a) We must receive comments by December 12, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Bombardier, Inc. Model BD–700–1A10 and BD–700–1A11 airplanes, certificated in any category, serial numbers (S/N) 9002 through 9126 inclusive, 9128 through 9312 inclusive, 9314 through 9322 inclusive, 9324 through 9335 inclusive, 9337, 9338, 9340, 9341, 9343, 9344, 9346, 9347, 9350, 9353, 9355, 9356, 9358, 9361, 9365, 9372, 9374, 9384, 9402, 9403, and subsequent.

Subject

(d) Air Transport Association (ATA) of America Code 35: Oxygen.

Reason

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

During a routine inspection, deformation was found at the neck of the pressure regulator body on the oxygen Cylinder and Regulator Assemblies (CRA).

An investigation by the vendor * * * revealed that the deformation was attributed to two (2) batches of raw material that did not meet the required tensile strength. This may cause elongation of the pressure regulator neck, which could result in rupture of the oxygen cylinder, and in the case of cabin depressurization, oxygen not being available when required.

* * * * *

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) For airplanes having S/N 9002 through 9126 inclusive, 9128 through 9312 inclusive, 9314 through 9322 inclusive, 9324 through 9335 inclusive, 9337, 9338, 9340, 9341, 9343, 9344, 9346, 9347, 9350, 9353, 9355, 9356, 9358, 9361, 9365, 9372, 9374, 9384, 9402, 9403: Within 7 months after the effective date of this AD, do an inspection of oxygen pressure regulators having P/N 806370–06 to determine if the serial number is listed in Table 2 of the Accomplishment Instructions of Bombardier Service Bulletin 700–35–011 (for Model BD–700–1A10 airplanes) or 700–1A11–35–010 (for Model BD–700–1A11 airplanes), both Revision 01, both dated February 1, 2011.

(1) If the serial number of the pressure regulator having P/N 806370–06 is listed in Table 2 of the Accomplishment Instructions of Bombardier Service Bulletin 700–35–011 (for Model BD–700–1A10 airplanes) or 700–1A11–35–010 (for Model BD–700–1A11 airplanes), both Revision 01, both dated February 1, 2011, within 7 months after the effective date of this AD, replace the affected oxygen CRA, in accordance with paragraph 2.C. of the Accomplishment Instructions of Bombardier Service Bulletin 700–35–011 (for Model BD–700–1A10 airplanes) or 700–1A11–35–010 (for Model BD–700–1A11 airplanes), both Revision 01, both dated February 1, 2011.

(2) If the serial number of the oxygen pressure regulator having P/N 806370–06 is not listed in Table 2 of the Accomplishment Instructions of Bombardier Service Bulletin 700–35–011 (for Model BD–700–1A10 airplanes) or 700–1A11–35–010 (for Model BD–700–1A11 airplanes), both Revision 01,

both dated February 1, 2011, no further action is required by this paragraph.

Parts Installation

(h) For all airplanes: As of the effective date of this AD, no person may install an oxygen pressure regulator (P/N 806370–06) having any serial number listed in Table 2 of the Accomplishment Instructions of Bombardier Service Bulletin 700–35–011 (for Model BD–700–1A10 airplanes) or 700–1A11–35–010 (for Model BD–700–1A11 airplanes), both Revision 01, both dated February 1, 2011, on any airplane, unless a suffix ''-A'' is beside the serial number.

FAA AD Differences

Note 1: This AD differs from the MCAI and/or service information as follows:

The MCAI applicability specifies only airplanes having certain serial numbers and prohibits installation of the affected part on those airplanes. Because the affected part could be rotated onto any of the Model BD–700–1A10 and BD–700–1A11 airplanes, this AD applies to S/N 9002 through 9126 inclusive, 9128 through 9312 inclusive, 9314 through 9322 inclusive, 9324 through 9335 inclusive, 9337, 9338, 9340, 9341, 9343, 9344, 9346, 9347, 9350, 9353, 9355, 9356, 9358, 9361, 9365, 9372, 9374, 9384, 9402, 9403, and subsequent. This has been coordinated with the Transport Canada Civil Aviation (TCCA).

Other FAA AD Provisions

(i) 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. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the ACO, send it 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, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding 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.

Related Information

(j) Refer to MCAI Transport Canada Civil Aviation (TCCA) Airworthiness Directive CF–2011–10, dated May 13, 2011; Bombardier Service Bulletin 700–35–011, Revision 01, dated February 1, 2011; and Bombardier Service Bulletin 700–1A11–35–010, Revision 01, dated February 1, 2011; for related information.

Issued in Renton, Washington, on October 17, 2011.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–27650 Filed 10–25–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–1094; Directorate Identifier 2011–NM–070–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain The Boeing Company Model 757 airplanes. This proposed AD would require inspecting for discrepancies and insufficient coverage of the secondary fuel barrier, determining the thickness of the secondary fuel barrier, and corrective actions if necessary. This proposed AD was prompted by reports that inspections of the wing center section revealed defective, misapplied, or missing secondary fuel vapor barrier on the center fuel tank. We are proposing this AD to detect and correct defective surfaces and insufficient thickness of secondary fuel barrier, which could allow fuel leaks or fumes into the pressurized cabin, and allow fuel or fuel vapors to come in contact with an ignition source, which could result in a fire or an explosion.

DATES: We must receive comments on this proposed AD by December 12, 2011.

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

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

For service information identified in this proposed AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; e-mail *me.boecom@boeing.com;* Internet *https://www.myboeingfleet.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Kevin Nguyen, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue, SW., Renton, Washington 98057–3356; *phone:* 425–917–6501; *fax:* 425–917–6590; *e-mail: kevin.nguyen@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2011–1094; Directorate Identifier 2011–NM–070–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

We received reports that inspections of the wing center section revealed

defective, misapplied, or missing secondary fuel vapor barrier on the center fuel tank. The secondary fuel barrier is applied external to the fuel tank walls, which are subject to cabin pressure to provide a secondary means to contain fuel and fuel vapors. When the secondary fuel barrier is applied satisfactorily, it protects the pressurized cabin areas from fuel leaks and fumes. If the secondary fuel barrier is defective, fuel or fumes can leak through fastener holes or cracks in the structure and pass into the passenger compartment. There have been no reports from operators of fuel leaks or fumes in the passenger compartment. We are proposing this AD to detect and correct defective surfaces and insufficient thickness of secondary fuel barrier, which could allow fuel leaks or fumes into the pressurized cabin, and allow fuel or fuel vapors to come in contact with an ignition source, which could result in a fire or an explosion.

Related Rulemaking

On June 10, 2005, the FAA issued AD 2005–13–15, Amendment 39–14152 (70 FR 36486, June 24, 2005), applicable to certain Boeing Model 737–200, –200C, –300, –400, –500, –600, –700, –700C, –800, and –900 series airplanes, which requires a one-time detailed inspection for discrepancies of the secondary fuel vapor barrier of the wing center section, and related investigative and corrective actions if necessary. That AD was prompted by reports that the secondary fuel vapor barrier was not applied correctly to, or was missing from, certain areas of the wing center section. The actions required by that AD are intended to prevent fuel or fuel vapors from leaking into the cargo or passenger compartments and coming into contact with a possible ignition source, which could result in fire or explosion.

Relevant Service Information

We reviewed Boeing Service Bulletins 757–57–0060, Revision 2, dated May 24, 2007 (for Model 757–200, 757–200PF, and 757–200CB series airplanes); and 757–57–0061, Revision 1, dated May 24, 2007 (for Model 757–300 series airplanes). These service bulletins describe procedures for, depending on airplane configuration, inspecting for discrepancies and insufficient coverage of the secondary fuel barrier, determining the thickness of the secondary fuel barrier, and corrective actions if necessary. Discrepancies include missing, peeled, non-continuous, or non-transparent secondary fuel barrier; small air bubbles, air pockets, blister-like areas, or solid particles in the secondary fuel barrier; fillet sealant, primer, corrosion-inhibiting compound or other finishes applied to the top of the secondary fuel barrier; missing fillet (cap) seals; or areas of secondary fuel barrier whose thickness is less than or greater than specified limits; or areas not having a transparent quality that makes it possible to see a crack in the structure; or areas not having a minimum application coverage area. Corrective actions include repairing the secondary fuel barrier, including removal and reapplication, if needed; or applying more secondary fuel barrier, as needed.

FAA's Determination

We are proposing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of these same type designs.

Proposed AD Requirements

This proposed AD would require accomplishing the actions specified in the service information described previously, except as discussed under ''Differences Between the Proposed AD and the Service Information.''

Differences Between the Proposed AD and the Service Information

Although Boeing Service Bulletin 757–57–0060, Revision 2, and Boeing Service Bulletin 757–57–0061, Revision 1, both dated May 24, 2007, specify to send the inspection results to the manufacturer, this proposed AD would not require any report. Boeing Service Bulletin 757–57–0060, Revision 2, and Boeing Service Bulletin 757–57–0061, Revision 1, both dated May 24, 2007, refer to a ''detailed visual inspection'' for discrepancies and insufficient coverage of the secondary fuel barrier. We have determined that the procedures in the service bulletin should be described as a ''detailed inspection.'' Note 1 has been included in this AD to define this type of inspection.

Costs of Compliance

We estimate that this proposed AD affects 619 airplanes of U.S. registry. We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Access and inspect secondary fuel barrier.	42 work-hours × $85 per hour = $3,570 per inspection	$0	$3,570	$2,209,830

We estimate the following costs to do any necessary repairs that would be required based on the results of the proposed inspection. We have no way of determining the number of aircraft that might need these repairs:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Apply secondary fuel barrier	7 work-hours × $85 per hour = $595 per secondary fuel barrier application.	$0	$595

According to the manufacturer, some of the costs of this proposed AD may be covered under warranty, thereby reducing the cost impact on affected individuals. We do not control warranty coverage for affected individuals. As a result, we have included all costs in our cost estimate.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I,

section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency's authority.

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

The Boeing Company: Docket No. FAA–2011–1094; Directorate Identifier 2011–NM–070–AD.

Comments Due Date

(a) We must receive comments by December 12, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to The Boeing Company Model 757–200, 757–200PF, and 757–200CB series airplanes, certificated in any category, as identified in Boeing Service Bulletin 757–57–0060, Revision 2, dated May 24, 2007; and Model 757–300 series airplanes, certificated in any category, as identified in Boeing Service Bulletin 757–57–0061, Revision 1, dated May 24, 2007.

Subject

(d) Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code 57: Wings.

Unsafe Condition

(e) This proposed AD was prompted by reports that inspections of the wing center section revealed defective, misapplied, or missing secondary fuel vapor barrier on the center fuel tank. We are issuing this AD to detect and correct defective surfaces and insufficient thickness of secondary fuel barrier, which could allow fuel leaks or fumes into the pressurized cabin, and allow fuel or fuel vapors to come in contact with an ignition source, which could result in a fire or an explosion.

Compliance

(f) Comply with this AD within the compliance times specified, unless already done.

Detailed Inspection

(g) For airplanes identified in Boeing Service Bulletin 757–57–0060, Revision 2, dated May 24, 2007, as Group 1, Group 2, and Group 4 Configuration 1; and airplanes identified in Boeing Service Bulletin 757–57–0061, Revision 1, dated May 24, 2007, as Group 1, Group 2, and Group 3 Configuration 1: Within 60 months after the effective date of this AD, do a detailed inspection to detect discrepancies of the secondary fuel barrier at the front spar and the upper panel of the wing center section, and if discrepancies exist, repair before further flight, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 757–57–0060, Revision 2, dated May 24, 2007; or Boeing Service Bulletin 757–57–0061, Revision 1, dated May 24, 2007; as applicable.

Note 1: For the purposes of this AD, a detailed inspection is: ''An intensive examination of a specific item, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate. Inspection aids such as mirror, magnifying lenses, etc., may be necessary. Surface cleaning and elaborate access procedures may be required.''

Inspection of Minimum Application Coverage Area

(h) For Group 3 airplanes identified in Boeing Service Bulletin 757–57–0060, Revision 2, dated May 24, 2007; and Group 2 airplanes identified in Boeing Service Bulletin 757–57–0061, Revision 1, dated May 24, 2007: Within 60 months after the effective date of this AD, do a detailed inspection of the front spar and the upper panel to ensure the secondary fuel barrier application covers the minimum area specified in Boeing Service Bulletin 757–57–0060, Revision 2, dated May 24, 2007; or Boeing Service Bulletin 757–57–0061, Revision 1, dated May 24, 2007; as applicable. If the secondary fuel barrier does not cover the minimum specified area, apply more secondary fuel barrier before further flight, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 757–57–0060, Revision 2, dated May 24, 2007; or Boeing Service Bulletin 757–57–0061, Revision 1, dated May 24, 2007; as applicable.

Measurement of Thickness of Secondary Fuel Barrier

(i) For Group 1, Group 2, and Group 4 Configuration 1 airplanes identified in Boeing Service Bulletin 757–57–0060, Revision 2, dated May 24, 2007; and for Group 1, Group 2, and Group 3 Configuration 1 airplanes identified in Boeing Service Bulletin 757–57–0061, Revision 1, dated May 24, 2007: Within 60 months after the effective date of this AD, measure the thickness of the secondary fuel barrier. If the thickness is less than or over the acceptable limits defined in Boeing Service Bulletin 757–57–0060, Revision 2, dated May 24, 2007; or Boeing Service Bulletin 757–57–0061, Revision 1, dated May 24, 2007; as applicable, apply more secondary fuel barrier or repair before further flight, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 757–57–0060, Revision 2, dated May 24, 2007; or Boeing Service Bulletin 757–57–0061, Revision 1, dated May 24, 2007; as applicable.

(j) For Group 4, Configuration 2 airplanes identified in Boeing Service Bulletin 757–57–0060, Revision 2, dated May 24, 2007; and Group 3, Configuration 2 airplanes identified in Boeing Service Bulletin 757–57–0061, Revision 1, dated May 24, 2007: Within 60 months, review the maintenance records to determine if there was a minimum of 0.005 inch of new secondary fuel barrier applied, or if the thickness of the secondary fuel barrier cannot be determined from the maintenance records, measure the thickness of the secondary fuel barrier. If the thickness is less than or over the acceptable limits specified in Boeing Service Bulletin 757–57–0060, Revision 2, dated May 24, 2007; or Boeing Service Bulletin 757–57–0061, Revision 1, dated May 24, 2007; as applicable, apply more secondary fuel barrier or repair before further flight, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 757–57–0060, Revision 2, dated May 24, 2007; or Boeing Service Bulletin 757–57–0061, Revision 1, dated May 24, 2007; as applicable.

No Reporting Requirement

(k) Although Boeing Service Bulletin 757–57–0060, Revision 2, dated May 24, 2007; and Boeing Service Bulletin 757–57–0061, Revision 1, dated May 24, 2007; specify to submit certain information to the manufacturer, this AD does not include that requirement.

Alternative Methods of Compliance (AMOCs)

(l)(1) The Manager, Seattle Aircraft Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in the Related Information section of this AD. Information may be e-mailed to: *9-NM-Seattle-ACO-AMOC-REQUESTS@faa.gov.*

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

Related Information

(m)(1) For more information about this AD, contact Kevin Nguyen, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue, SW., Renton, Washington 98057–3356; phone: 425–917–6501; fax: 425–917–6590; e-mail: *kevin.nguyen@faa.gov.*

(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.boeingfleet.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

* * * * *

Issued in Renton, Washington, on October 17, 2011.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–27652 Filed 10–25–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–1095; Directorate Identifier 2010–NM–241–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc. Model CL–600–2B16 (CL–601–3A, CL–601–3R, and CL–604 Variants) Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for the products listed above. This proposed 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:

During pre-delivery inspections and test flights, several short circuit events were reported, one of which resulted in smoke in the cockpit. There were no in-service incidents.

Investigations have identified three conditions affecting the wiring of Circuit Breaker Panels * * * and Junction Boxes * * *, which would lead to short circuiting:

* * * * *

If not corrected, these conditions could result in arcing, damage to adjacent structure, smoke in the cockpit, or loss of system redundancies.

* * * * *

The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

DATES: We must receive comments on this proposed AD by December 12, 2011.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–40, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; *phone:* 514–855–5000; *fax:* 514–855–7401; *e-mail: thd.crj@aero.bombardier.com; Internet: http://www.bombardier.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Assata Dessaline, Aerospace Engineer, Avionics and Flight Test Branch, ANE–172, New York Aircraft Certification Office (ACO), FAA, 1600 Stewart Ave. Suite 410, Westbury, NY 11590; telephone (516) 228–7301; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2011–1095; Directorate Identifier 2010–NM–241–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

Transport Canada Civil Aviation (TCCA), which is the airworthiness authority for Canada, has issued Canadian Airworthiness Directive CF–2010–25, dated August 3, 2010 (referred to after this as ''the MCAI''), to correct

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

> During pre-delivery inspections and test flights, several short circuit events were reported, one of which resulted in smoke in the cockpit. There were no in-service incidents.
>
> Investigations have identified three conditions affecting the wiring of Circuit Breaker Panels 1, 2, 3 and 4 (CBP–1, CBP–2, CBP–3, and CBP–4) and Junction Boxes 17 and 18 (JB17 and JB18), which would lead to short circuiting:
>
> 1. In CBP–1, there may be low clearance between specific bus bars and the circuit breaker panel structure.
>
> 2. Some nickel-plated terminal lugs, size number 22–20 with a green insulating sleeve, may not have been manufactured to applicable standards. These terminal lugs may have been installed in CBP–1, CBP–2, CBP–3, CBP–4, JB17 and JB18. This manufacturing defect affects the mechanical hold of the wire in the crimped lug barrel.
>
> 3. In JB17, JB18 and the above-mentioned CBPs, foreign object debris (FOD) may be found.
>
> If not corrected, these conditions could result in arcing, damage to adjacent structure, smoke in the cockpit, or loss of system redundancies.
>
> This TCCA directive is issued to mandate the replacement or relocation of the specific CBP–1 bus bars, the [detailed] inspection, and rework if necessary, of any loose or improperly crimped lugs in CBP–1, CBP–2, CBP–3, CBP–4, JB17 and JB18, and to ensure there is no FOD in the affected areas [via a general visual inspection for FOD, and removal if necessary].

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

Relevant Service Information

Bombardier has issued Service Bulletin 605–24–002, dated December 07, 2009, and Service Bulletin 605–24–004, dated January 18, 2010. 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 Proposed 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 proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

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 proposed 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 proposed AD.

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 69 products of U.S. registry. We also estimate that it would take about 6 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Required parts would cost about $347 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 costs. 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 the proposed AD on U.S. operators to be $59,133, or $857 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 proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Bombardier, Inc.: Docket No. FAA–2011–1095; Directorate Identifier 2010–NM–241–AD.

Comments Due Date

(a) We must receive comments by December 12, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Bombardier, Inc. Model CL–600–2B16 (CL–601–3A, CL–601–3R, and CL–604 Variants) airplanes, certificated in any category, serial numbers 5701 through 5752 inclusive, 5754 through 5775 inclusive, 5777, 5779 through 5781 inclusive, 5783 through 5790 inclusive, 5792, 5794 through 5796 inclusive, 5798, 5801, and 5804.

Subject

(d) Air Transport Association (ATA) of America Code 24: Electrical Power.

Reason

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

During pre-delivery inspections and test flights, several short circuit events were reported, one of which resulted in smoke in the cockpit. There were no in-service incidents.

Investigations have identified three conditions affecting the wiring of Circuit Breaker Panels * * * and Junction Boxes * * *, which would lead to short circuiting:

If not corrected, these conditions could result in arcing, damage to adjacent structure, smoke in the cockpit, or loss of system redundancies.

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, Bus Bar Actions, and Corrective Actions

(g) For airplanes having serial numbers 5701 through 5752, 5754 through 5775, 5777, 5780 through 5781, 5783 through 5790, 5792, 5794 through 5796, 5798, 5801, and 5804: Within 800 flight hours after the effective date of this AD, do the actions in paragraph (g)(1), (g)(2), and (g)(3) of this AD, in accordance with the Accomplishment Instructions of the Bombardier Service Bulletin 605–24–004, dated January 18, 2010.

(1) Do a detailed inspection in CBP–1 for loose lugs and for crimped lugs that have any of the conditions specified in step 2.B.(9)(d) of Bombardier Service Bulletin 605–24–004, dated January 18, 2010. Before further flight, replace all loose lugs and all crimped lugs in CBP–1 that have any of the conditions specified in step 2.B.(9)(d) of Bombardier Service Bulletin 605–24–004, dated January 18, 2010.

(2) Relocate or replace the CBP–1 bus bars as applicable.

(3) Do a general visual inspection for foreign object damage (FOD). If any FOD is found: Before further flight, remove the FOD.

(h) For airplanes having serial numbers 5701 through 5752, 5754 through 5756, 5758 through 5775, 5779, 5781, 5788, 5789, 5792, 5795, 5798, 5801, and 5804: Within 800 flight hours after the effective date of this AD, do the actions in paragraph (h)(1) and (h)(2) of this AD, in accordance with the Accomplishment Instructions of the Bombardier Service Bulletin 605–24–002, dated December 7, 2009.

(1) Do a detailed inspection for loose lugs and for crimped lugs that have any of the conditions specified in step 2.B.(2)(d) of Bombardier Service Bulletin 605–24–002, dated December 7, 2009, in CBP–2, CBP–3, CBP–4, JB17, and JB18. Before further flight, replace all loose lugs and all crimped lugs that have any of the conditions specified in step 2.B.(2)(d) of Bombardier Service Bulletin 605–24–002, dated December 7, 2009, in CBP–2, CBP–3, CBP–4, JB17, and JB18.

(2) Do a general visual inspection for FOD. If any FOD is found: Before further flight, remove the FOD.

FAA AD Differences

Note 1: This AD differs from the MCAI and/or service information as follows: The Accomplishment Instructions of Bombardier Service Bulletin 605–24–002, dated December 7, 2009, does not specify corrective action for the general visual inspection for FOD. This AD requires removing any FOD discovered during the general visual inspection.

Other FAA AD Provisions

(i) 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. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to 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, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding 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.

Related Information

(j) Refer to MCAI Canadian Airworthiness Directive CF–2010–25, dated August 3, 2010; and Bombardier Service Bulletin 605–24–002, dated December 07, 2009; and Bombardier Service Bulletin 605–24–004, dated January 18, 2010; for related information.

Issued in Renton, Washington, on October 17, 2011.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–27653 Filed 10–25–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0517; Directorate Identifier 2009–SW–73–AD]

RIN 2120–AA64

Airworthiness Directives; Sikorsky Aircraft Corporation Model S–76A Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes adopting a new airworthiness directive (AD) for the Sikorsky Aircraft Corporation (Sikorsky) Model S–76A helicopters. This proposal would require modifying the electric rotor brake (ERB). Thereafter, the AD would also require inserting changes to the ''Normal Procedures'' and ''Emergency Procedures'' sections of the Rotorcraft Flight Manual (RFM), which revises the information of the basic RFM when the ERB is installed. This proposal is prompted by a reported incident of a fire occurring in an ERB installed on a Model S–76A helicopter. The actions specified by this proposed AD are intended to prevent overheating of the ERB assembly, ignition of the ERB hydraulic fluid, a fire in the main gearbox area, and subsequent loss of control of the helicopter.

DATES: Comments must be received on or before December 27, 2011.

ADDRESSES: Use one of the following addresses to submit comments on this proposed AD:

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

You may get the service information identified in this proposed AD from Sikorsky Aircraft Corporation, Attn: Manager, Commercial Technical Support, mailstop s581a, 6900 Main Street, Stratford, CT, telephone (203) 383–4866, e-mail address:

tsslibrary@sikorsky.com, or at *http://www.sikorsky.com.*

FOR FURTHER INFORMATION CONTACT: Caspar Wang, Aviation Safety Engineer, Boston Aircraft Certification Office, 12 New England Executive Park, Burlington, MA 01803, telephone (781) 238–7799, fax (781) 238–7170.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any written data, views, or arguments regarding this proposed AD. Send your comments to the address listed under the caption **ADDRESSES**. Include the docket number ''FAA–2010–0517, Directorate Identifier 2009–SW–73–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed rulemaking. Using the search function of our docket Web site, you can find and read the comments to any of our dockets, including the name of the individual who sent or signed the comment. You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Examining the Docket

You may examine the docket that contains the proposed AD, any comments, and other information 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 Docket Operations office (telephone (800) 647–5527) is located in Room W12–140 on the ground floor of the West Building at the street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

Discussion

A number of service documents and ADs have been issued relating to the ERB on these and similar model helicopters. AD 82–17–03, issued July 30, 1982 (47 FR 35469, August 16, 1982), requires a puck-to-disc inspection of rotor brake, part number (P/N) 76363–09101–101, and modification of the ERB system including, among other modifications, installation of a warning relay by following Sikorsky Customer Service Bulletin No. 76–66–10B, dated November 25, 1981. AD 2003–04–15, issued February 14, 2003 (68 FR 8994, February 27, 2003), requires inspecting certain rotor brake discs for cracks that resulted from improper heat treating of the disc. This document proposes adopting a new AD for the Sikorsky Model S–76A helicopters with a different part-numbered ERB. This proposal would require, within 120 days, modifying the ERB by installing and operationally testing the parts contained in an ERB warning relay kit (P/N 76070–55023–011), an ERB circuit modification kit (P/N 76070–55033–012), and an ERB modification kit (P/N 76070–55207–011) for helicopters with ERB, P/N 76363–09100–012. This proposal is prompted by a reported incident of a fire occurring in an ERB installed on a Model S–76A helicopter in Brazil. The actions specified by this proposed AD are intended to prevent overheating of the ERB assembly, ignition of the ERB hydraulic fluid, a fire in the main gearbox area, and subsequent loss of control of the helicopter.

We have reviewed the following documents from Sikorsky:

- Customer Service Bulletin No. 76–66–10B, Revision 1, pages 2–8, dated July 30, 1981, and Revision 2, pages 1 and 9–13 dated November 25, 1981 (CSB), specifies installing an ERB warning relay kit;
- Customer Service Notice 76–113, dated June 1, 1983 (CSN), which specifies installing an ERB circuit breaker and modification kit; and
- ASB No. 76–66–48B, Revision B, dated July 8, 2009, which specifies a one-time installation of an ERB modification kit containing two other kits and several modifications.
- RFM Supplement No. 41, dated September 6, 2005, which revises the information in the basic RFM normal and emergency procedures sections when the ERB system is modified.

This unsafe condition is likely to exist or develop on other helicopters of the same type design. Therefore, the proposed AD would require modifying the ERB by installing the parts contained in a warning relay system modification kit, part number (P/N) 76070–55023–011; a circuit modification kit, P/N 76070–55033–012; and a manifold, relay box, junction box, right-hand relay panel, and wiring harness modification kit, P/N 76070–55207–011. The proposed AD would also require operationally testing the ERB system after each modification. The proposed AD would also require inserting changes contained in a supplement into the RFM.

These actions would be required to be accomplished in accordance with specified portions of the service information described previously.

We estimate that this proposed AD would affect 180 helicopters of U.S. registry. It would take about 38 work hours per helicopter to perform the modifications and operational tests at an average labor rate of $85 per work hour. Required parts would cost $13,300 per helicopter. Based on these figures, we estimate the total cost impact of the proposed AD on U.S. operators would be $2,975,400 for the fleet.

Regulatory Findings

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

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

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

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

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

We prepared a draft economic evaluation of the estimated costs to comply with this proposed AD. See the AD docket to examine the draft economic evaluation.

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.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 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. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

Sikorsky Aircraft Corporation: Docket No. FAA–2010–0517; Directorate Identifier 2009–SW–73–AD.

Applicability: Model S–76A helicopters, with an electric rotor brake (ERB), part number (P/N) 76363–09100–012, installed, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent overheating of the ERB assembly, ignition of the ERB hydraulic fluid, fire in the main gearbox area, and subsequent loss of control of the helicopter, do the following:

(a) Within 120 days, modify the ERB by installing:

(1) Warning relay system parts contained in modification kit, part number (P/N) 76070–55023–011, and operationally testing the ERB system in accordance with paragraphs 2.A. through 2.F., of Sikorsky Customer Service Bulletin No. 76–66–10B, Revision 1 (pages 2 through 8), dated July 30, 1981, and Revision 2, (pages 1 and 9 through 13) dated November 25, 1981;

(2) Circuit breaker and diodes contained in ERB circuit modification kit, P/N 76070–55033–012, and operationally testing the ERB system in accordance with paragraph B. through F. of Sikorsky Customer Service Notice 76–113, dated June 1, 1983; and

(3) Manifold, relay box, junction box, right-hand relay panel, and wiring harness parts contained in ERB modification kit, P/N 76070–55207–011, and operationally testing the ERB system in accordance with paragraphs 3.B. through 3.I. of the Accomplishment Instructions of Sikorsky Alert Service Bulletin No. 76–66–48B, Revision B, dated July 8, 2009.

(b) After accomplishing paragraph (a) of this AD, insert into the Sikorsky Rotorcraft Flight Manual (RFM) the changes to the ''Normal Procedures (Part I, Section II)'' and ''Emergency Procedures (Part 1, Section III)'' contained in Sikorsky RFM, Supplement No. 41, dated September 6, 2005.

(c) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Contact the Manager, Boston Aircraft Certification Office, FAA, **ATTN:** Caspar Wang, Aviation Safety Engineer, 12 New England Executive Park, Burlington, MA 01803, telephone (781) 238–7799, fax (781) 238–7170, for information about previously approved alternative methods of compliance.

(d) The Joint Aircraft System/Component (JASC) Code is 6321: Main Rotor Brake.

Issued in Fort Worth, Texas, on October 7, 2011.

Lance T. Gant,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2011–27659 Filed 10–25–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–1115; Directorate Identifier 2010–SW–011–AD]

RIN 2120–AA64

Airworthiness Directives; Sikorsky Aircraft Corporation (Sikorsky) Model S–92A Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes adopting a new airworthiness directive (AD) for the Sikorsky Model S–92A helicopters. This proposal would require revising the Operating Limitations section of the Sikorsky Model S–92A Rotorcraft Flight Manual (RFM). This proposal is prompted by the manufacturer's analysis of engine data that revealed the data was inaccurate in dealing with available above specification engine power margin. The actions specified by this proposed AD are intended to prevent the use of inaccurate engine performance data in calculating maximum gross weight by revising the Operating Limitations section of the RFM.

DATES: Comments must be received on or before December 27, 2011.

ADDRESSES: Use one of the following addresses to submit comments on this proposed AD:

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

FOR FURTHER INFORMATION CONTACT: John Coffey, Aviation Safety Engineer, Boston Aircraft Certification Office, 12 New England Executive Park, Burlington, MA 01803, telephone (781) 238–7173, fax (781) 238–7170.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any written data, views, or arguments regarding this proposed AD. Send your comments to the address listed under the caption **ADDRESSES**. Include the docket number ''FAA–2011–1115, Directorate Identifier 2010–SW–011–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed rulemaking. Using the search function of our docket web site, you can find and read the comments to any of our dockets, including the name of the individual who sent or signed the comment. You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Examining the Docket

You may examine the docket that contains the proposed AD, any comments, and other information 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 Docket Operations office (telephone (800) 647–5527) is located in Room W12–140 on the ground floor of the West Building at the street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

Discussion

This document proposes adopting a new AD for the Sikorsky Model S–92A helicopters. This proposal would require revising the Operating Limitations section, Part 1, Section 1, *Weight Limits,* of the Sikorsky Model S–92A RFM with the following statement ''Performance credit for above specification engine power margin is prohibited.'' Engine power margin is determined through power assurance checks. Previous flight manual revisions allowed for the use of above specification engine power margin as shown in the circled area of Figure 1 of this AD. The use of above-specification engine power margin is now being prohibited. Sikorsky has published various RFM revisions correcting the charts in Parts I and IV of the RFM. If those revisions have previously been incorporated into the RFM, the RFM revision specified by this proposed AD would not be required. The RFM revisions, all dated April 9, 2008, are as follows:

Affected RFM	Revision with correct charts
S92A–RFM–002	Revision 8.
S92A–RFM–003	Revision 7.
S92A–RFM–004	Revision 6.
S92A–RFM–005	Revision 5.
S92A–RFM–006	Revision 6.

This proposal is prompted by the manufacturer's analysis of engine data that revealed the data was inaccurate in dealing with available engine power margin. The actions specified by this proposed AD are intended to prevent the use of inaccurate performance data in calculating maximum gross weight by revising the Operating Limitations section of the RFM.

This unsafe condition is likely to exist or develop on other helicopters of the same type design. Therefore, the proposed AD would require inserting a limitation into the Operating Limitation section of the RFM prohibiting the use of power margin percentage credit in calculating gross weight and inserting the revisions into the Operating Limitations, Part 1, Section 1, of Sikorsky RFM SA S92A–RFM–002, –003, –004, –005, and –006.

We estimate that this proposed AD would affect 37 helicopters of U.S. registry, and the proposed actions would take about 1 work hour per helicopter to insert the revisions into the RFM at an average labor rate of $85 per work hour. Parts costs are not associated with this AD. Based on these figures, we estimate the total cost impact of the proposed AD on U.S. operators would be $3,145.

Regulatory Findings

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

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

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

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

3. Will not affect intrastate aviation in Alaska to the extent that it justifies making a regulatory distinction; and

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

We prepared an economic evaluation of the estimated costs to comply with this proposed AD. See the AD docket to examine the draft economic evaluation.

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.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 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. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

Sikorsky Aircraft Corporation: Docket No. FAA–2011–1115; Directorate Identifier 2010–SW–011–AD.

Applicability: Model S–92A helicopters, certificated in any category.

Compliance: Within 90 days, unless accomplished previously.

To prevent the use of inaccurate performance data in calculating the maximum gross weight, revise the Operating Limitations section of the Rotorcraft Flight Manual (RFM) as follows:

(a) By making pen and ink changes, insert into the Operating Limitations section, Part 1, Section 1, *Weight Limits,* of RFM SA S92A–RFM–002, –003, –004, –005, and –006 the following limitation ''Performance credit for above specification engine power margin is prohibited.''

(b) If the RFM already contains the revisions appropriate for your helicopter as listed in the following Table 1, all dated April 9, 2008, with the correct performance charts, without the performance credit as depicted in the circled area of Figure 1 of this AD, the operating limitation required by paragraph (a) of this AD does not need to be inserted into the RFM.

TABLE 1

Affected RFM	Revision with correct charts
S92A–RFM–002	Revision 8.
S92A–RFM–003	Revision 7.
S92A–RFM–004	Revision 6.
S92A–RFM–005	Revision 5.
S92A–RFM–006	Revision 6.

Note 1: Previous RFM revisions allowed for the use of above-specification engine power margin as depicted in the circled area of Figure 1 of this AD.

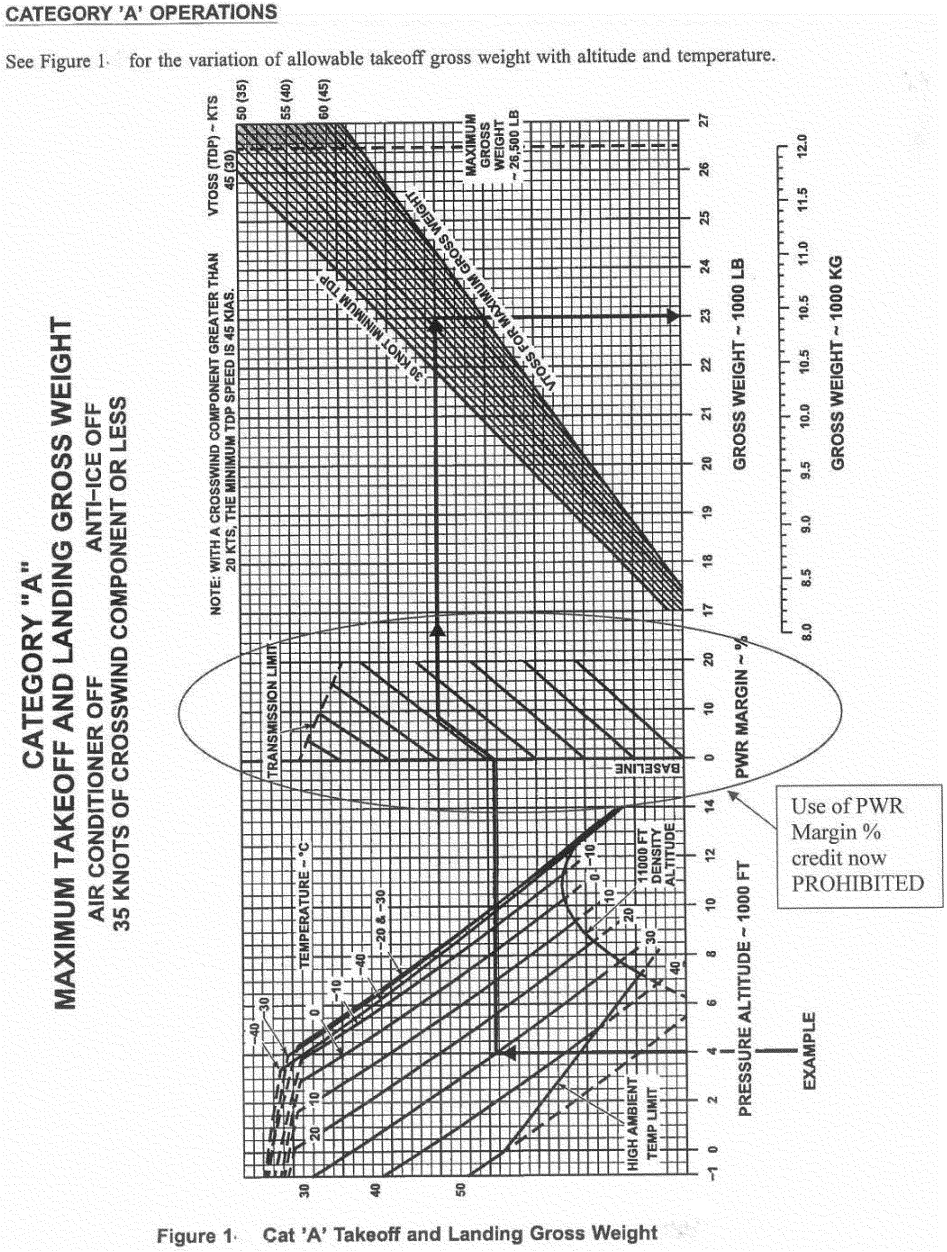


Figure 1 Cat 'A' Takeoff and Landing Gross Weight

(c) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Contact the Manager, Boston Aircraft Certification Office, FAA, *Attn:* John Coffey Aviation Safety Engineer, 12 New England Executive Park, Burlington, MA 01803, telephone (781) 238–7173, fax (781) 238–7170, for information about previously approved alternative methods of compliance.

(d) The Joint Aircraft System/Component (JASC) Code is 7200: Engine (Turbine/Turboprop).

Issued in Fort Worth, Texas, on October 7, 2011.

Lance T. Gant,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2011–27670 Filed 10–25–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–1113; Directorate Identifier 2009–SW–53–AD]

RIN 2120–AA64

Airworthiness Directives; Sikorsky Aircraft Corporation (Sikorsky) Model S–92A Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes adopting a new airworthiness directive (AD) for the Sikorsky Model S–92A helicopters. This proposal would require inspecting each tail rotor blade (blade) for mislocated aluminum wire mesh in the blade skin. This proposal is prompted by the discovery that blades were manufactured with aluminum wire mesh mislocated, leaving portions of the graphite torque tube (spar) region unprotected from a lightning strike. This condition can exist in both the upper and lower blade skin airfoils. The actions specified by this proposed AD are intended to detect mislocated blade wire mesh and to prevent spar delamination, loss of the blade tip cap during a lightning strike, blade

imbalance, loss of a blade, and subsequent loss of control of the helicopter.

DATES: Comments must be received on or before December 27, 2011.

ADDRESSES: Use one of the following addresses to submit comments on this proposed AD:

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

You may get the service information identified in this proposed AD from Sikorsky Aircraft Corporation, Attn: Manager, Commercial Technical Support, mailstop s581a, 6900 Main Street, Stratford, CT, telephone (203) 383–4866, e-mail address *tsslibrary@sikorsky.com,* or at *http://www.sikorsky.com.*

FOR FURTHER INFORMATION CONTACT: Nicholas Faust, Aviation Safety Engineer, Boston Aircraft Certification Office, 12 New England Executive Park, Burlington, MA 01803, telephone (781) 238–7763, fax (781) 238–7170.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any written data, views, or arguments regarding this proposed AD. Send your comments to the address listed under the caption **ADDRESSES**. Include the docket number ''FAA–2011–1113, Directorate Identifier 2009–SW–53–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed rulemaking. Using the search function of our docket Web site, you can find and read the comments to any of our dockets, including the name of the individual who sent or signed the comment. You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Examining the Docket

You may examine the docket that contains the proposed AD, any comments, and other information 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 Docket Operations office (telephone (800) 647–5527) is located in Room W12–140 on the ground floor of the West Building at the street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

Discussion

This document proposes adopting a new AD for the Sikorsky Model S–92A helicopters. This proposal would require inspecting each blade for mislocated aluminum wire mesh in the blade skin. This proposal is prompted by the discovery that blades were manufactured with aluminum wire mesh mislocated, leaving portions of the graphite torque tube (spar) region unprotected from a lightning strike. This condition can exist on both the upper and lower blade skin airfoils. The actions specified by this proposed AD are intended to detect mislocated blade wire mesh to prevent spar delamination and loss of the blade tip cap during a lightning strike leading to blade imbalance, loss of a blade, and subsequent loss of control of the helicopter.

We have reviewed Sikorsky Special Service Instructions SSI No. 92–021A, dated October 21, 2009 (SSI), which specifies inspecting the blade for mislocated blade wire mesh. Two options are identified in the SSI. One option is to conduct an eddy current inspection and the other option is to conduct a visual inspection after sanding to determine if there is mislocated wire mesh.

This unsafe condition is likely to exist or develop on other helicopters of the same type design. Therefore, the proposed AD would require inspecting each blade to determine if the wire mesh is mislocated and replacing the blade with an airworthy blade if the wire mesh is mislocated. The actions would be required to be done by following the service information described previously.

We estimate that this proposed AD would affect 44 helicopters of U.S. registry. There are 486 suspect blades worldwide, and we assume 29 percent (141) of those blades may be on helicopters of U.S. registry. We estimate that inspecting a blade for mislocated wire mesh would take about 4 work hours per blade, assuming all operators opt to do the blade sanding inspection rather than the eddy current inspection, at an average labor rate of $85 per work hour. Required parts would cost about $13,000 for each blade repaired by the manufacturer or $180,000 for each new blade. The total cost of the proposed AD for U.S. operators would be $3,215,940, assuming 51 blades are found with mislocated wire mesh, and assuming 36 of those blades are replaced with blades repaired by the manufacturer and 15 blades are replaced with new blades.

Regulatory Findings

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

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

1. Is not a ''significant regulatory action'' under Executive Order 12866;
2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);
3. Will not affect intrastate aviation in Alaska to the extent that it justifies making a regulatory distinction; and
4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a draft economic evaluation of the estimated costs to comply with this proposed AD. See the AD docket to examine the draft economic evaluation.

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.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 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. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

Sikorsky Aircraft Corporation: Docket No. FAA–2011–1113; Directorate Identifier 2009–SW–53–AD.

Applicability: Model S–92A helicopters, tail rotor blade assembly (blade), part numbers (P/N) 92170–11000–044, –045, and –046, with a serial number with a prefix of ''A111'' and a number equal to or less than ''–00585,'' installed, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To detect mislocated blade wire mesh and to prevent spar delamination, loss of the blade tip cap during a lightning strike, blade imbalance, loss of a blade, and subsequent loss of control of the helicopter, do the following:

(a) Within 60 days, inspect the upper and lower airfoils of each tail rotor blade to determine if the wire mesh is mislocated.

(1) Inspect by using either an eddy current inspection in accordance with paragraphs B.(1)(a) through B.(1)(o) or using the hand-sanding method and visually inspecting in accordance with paragraphs B.(2)(a) through B.(2)(d) of Sikorsky Special Service Instructions SSI No. 92–021A, Revision A, dated October 21, 2009, except you are not required to contact or report nonconforming blades to the manufacturer. If you sand and visually inspect and confirm the correct location of the wire mesh, touch-up and repaint the sanded area.

(2) If there is a blade with a mislocated wire mesh, before further flight, replace the blade with an airworthy blade.

(b) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Contact the Manager, Boston Aircraft Certification Office, FAA, *Attn:* Nicholas Faust, Aviation Safety Engineer, Boston Aircraft Certification Office, 12 New England Executive Park, Burlington, MA 01803, telephone (781) 238–7763, fax (781) 238–7170, for information about previously approved alternative methods of compliance.

(c) The Joint Aircraft System/Component (JASC) Code is 6410, Tail Rotor Blades.

Issued in Fort Worth, Texas, on October 7, 2011.

Lance T. Gant,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2011–27669 Filed 10–25–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 35

[Docket No. RM11–17–000]

Enhancement of Electricity Market Surveillance and Analysis Through Ongoing Electronic Delivery of Data From Regional Transmission Organizations and Independent System Operators

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission (Commission) proposes to revise its regulations to require each regional transmission organization (RTO) and independent system operator (ISO) to electronically deliver to the Commission, on an ongoing basis, data related to the markets that it administers. Ongoing electronic delivery of data relating to physical and virtual offers and bids, market awards, resource outputs, marginal cost estimates, shift factors, financial transmission rights, internal bilateral contracts, and interchange pricing will facilitate the Commission's development and evaluation of its policies and regulations and will enhance Commission efforts to detect anti-competitive or manipulative behavior, or ineffective market rules, thereby helping to ensure just and reasonable rates.

DATES: Comments on the proposed rule are due December 27, 2011.

Comments, identified by docket number, may be filed in the following ways:

- *Electronic Filing* through *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:* Those unable to file electronically may mail or hand-deliver comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, NE., Washington, DC 20426.

Instructions: For detailed instructions on submitting comments and additional information on the rulemaking process, see the Comment Procedures Section of this document.

FOR FURTHER INFORMATION CONTACT:

William Sauer (Technical Information), Office of Enforcement, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–6639, *william.sauer@ferc.gov.*

Christopher Daignault (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8286, *christopher.daignault@ferc.gov.*

SUPPLEMENTARY INFORMATION:

Notice of Proposed Rulemaking

October 20, 2011.

1. In this Notice of Proposed Rulemaking (NOPR), the Federal Energy Regulatory Commission (Commission) proposes, pursuant to sections 301(b) and 307(a) of the Federal Power Act (FPA),[1] to amend its regulations to require each regional transmission organization (RTO) and independent system operator (ISO) to electronically deliver to the Commission, on an ongoing basis, data related to the markets that it administers. Ongoing electronic delivery of data relating to physical and virtual offers and bids, market awards, resource outputs, marginal cost estimates, shift factors, financial transmission rights (FTR), internal bilateral contracts, and interchange pricing will facilitate the Commission's development and evaluation of its policies and regulations and will enhance Commission efforts to detect anti-competitive or manipulative behavior, or ineffective market rules, thereby helping to ensure just and reasonable rates.

I. Background

2. Wholesale electricity markets have witnessed tremendous change in recent years. In the decades after the 1935 enactment of the FPA, the industry was characterized by self-sufficient, vertically integrated utilities. Most utilities built their own generation, transmission, and distribution facilities

[1] 16 U.S.C. 825(b), 825f(a).

and sold electricity to their own wholesale and retail customers. During this time, the Commission regulated jurisdictional entities' rates through traditional cost-based ratemaking. Cost-based rate regulation ensures that rates are just and reasonable by administratively determining an entity's cost of providing service. Changes in national policy and other forces led to increased coordination and competition in the late 1960s and 1970s,[2] and the enactment of the Public Utility Regulatory Policies Act (PURPA).[3] The 1980s and early 1990s experienced an increased adoption of market-based ratemaking and wholesale power sales competition to promote efficiency and to lower wholesale power prices.[4]

3. National policy fostered further market evolution by encouraging increased competition among generators through the Energy Policy Act of 1992 (EPAct 1992).[5] Specifically, EPAct 1992 eased regulatory restrictions so that independent and affiliate generators could more easily enter, and compete in, wholesale electricity markets. EPAct 1992 also expanded the Commission's authority to address undue discrimination in transmission access in order to promote wholesale competition. In subsequent orders, the Commission found that the availability of transmission service enhances competition in power markets, by increasing power supply options of buyers and power sales options of sellers, and leads to lower rates for consumers.[6] By the mid-1990s, the Commission had determined that additional measures were needed to address undue discrimination in transmission access and issued Order Nos. 888[7] and 889,[8] which required ''open access'' transmission service. In doing so, the Commission explained that its action ''remove[s] impediments to competition in the wholesale power marketplace and * * * bring[s] more efficient, lower cost power to the Nation's electricity customers.'' [9] The Commission subsequently issued Order No. 890,[10] to further remedy undue discrimination and thereby remove barriers to competition.

4. In addition to addressing undue discrimination in transmission access, Order No. 888 encouraged the formation of ISOs. The Commission posited that ''ISOs have great potential to assist us and the industry to help provide regional efficiencies, to facilitate economically efficient pricing, and, especially in the context of power pools, to remedy undue discrimination and mitigate market power.'' [11] To facilitate ISO formation and foster independent operation of the transmission grid, the Commission suggested that utilities should voluntarily transfer operating control of their transmission facilities to an ISO. Four years later, in Order No. 2000,[12] the Commission encouraged the voluntary formation of RTOs to administer the transmission grid on a regional basis. To date, the Commission has approved six RTOs and ISOs: PJM Interconnection, L.L.C. (PJM); New York Independent System Operator, Inc. (NYISO); Midwest Independent Transmission System Operator, Inc. (Midwest ISO); ISO New England Inc. (ISO–NE); California Independent System Operator Corporation (CAISO); and Southwest Power Pool, Inc. (SPP). Together, these six RTOs and ISOs serve more than half of the United States' wholesale electricity demand.[13]

5. The wholesale electricity markets operated by Commission-approved RTOs/ISOs have evolved since their inception and will likely continue to do so as advances in technology usher in additional competing resources, computational efficiencies, new products, and new types of market participants. Today, for example, market participants include independent generating resources, storage devices, demand response and energy efficiency providers, marketers and traders, vertically integrated utilities, power marketing administrations, municipalities and cooperatives, among others.

6. Substantial changes also have occurred with respect to the manner in which electricity is bought and sold. For example, when the IntercontinentalExchange (ICE) was established in 2000, the vast majority of electricity sales transacted on ICE contained requirements for physical delivery. Electricity bought or sold without requirements for physical delivery is commonly referred to as a financial electricity product. Beginning in 2004, the volume of financial electricity products bought and sold on ICE eclipsed that of electricity bought and sold on ICE with physical delivery requirements. The financial electricity product volumes on ICE also surpassed electricity volumes reported to the Commission through Electric Quarterly

[2] Counted among such forces are the Northeast blackout of 1965 and the responses to perceived transmission system insufficiencies, as well as the subsequent oil crisis of 1973. For a discussion of developments following the 1965 blackout, *see* William F. Fox, Jr., *Federal Regulation of Energy* 749, 755 (1983 & Supp. 1993), and Stephen Breyer and Paul W. MacAvoy, *The Federal Power Commission and the Coordination Problem in the Electrical Power Industry,* 46 S. Cal. L. Rev. 661, 661 (1973).

[3] Public Utility Regulatory Policies Act of 1978, Pub. L. No. 95–617, 92 Stat. 3117 (1978) (codified as amended in scattered sections of 16 U.S.C.); *see, e.g.,* 16 U.S.C. 824a-3, 824i, 824j.

[4] *See, e.g., Louisville Gas & Elec. Co.,* 62 FERC ¶ 61,016, at 61,143 & n.16, 61,149 (1993) (accepting non-traditional, market-based rates as consistent with primary regulatory goal of ensuring lowest reasonable cost energy to consumers, provided service is reliable and the seller demonstrates a lack of market power); *Pac. Gas & Elec. Co.,* 38 FERC ¶ 61,242, at 61,790 (1987) (accepting proposed competitive rates because ''competition * * * encourages utilities to make efficient decisions with a minimum of regulatory intervention [and, u]ltimately, consumers should benefit from lower prices as competition improves efficiency.''), *modifying on other ground,* 47 FERC ¶ 61,121 (1989), *modified,* 50 FERC ¶ 61,339 (1990), *modified sub nom. W. Sys. Power Pool,* 55 FERC ¶ 61,099, at 61,319 (addressing applicant's failure to eliminate anticompetitive effects by mitigating market power), *granting stay,* 55 FERC ¶ 61,154, *reh'g granted in part,* 55 FERC ¶ 61,495 (1991), *modified,* 59 FERC ¶ 61,249 (1992); *Pub. Serv. Co. of New Mexico,* 25 FERC ¶ 61,469, at 62,038 (1983) (averring that ''competition penalizes a seller that is inefficient or has an unreasonable pricing strategy[; consequently,] consumers * * * benefit because the improvements in efficiency lead to lower prices.''); *see also Heartland Energy Servs., Inc.,* 68 FERC ¶ 61,223 (1994) (reviewing early Commission decisions granting market-based rate authority).

[5] Pub. L. No. 102–486, 106 Stat. 2776 (1992).

[6] *Fla. Mun. Power Agency v. Fla. Power & Light Co.,* 65 FERC ¶ 61,125, at 61,615, *reh'g dismissed,* 65 FERC ¶ 61,372 (1993), *final order,* 67 FERC ¶ 61,167 (1994), *order on reh'g,* 74 FERC ¶ 61,006 (1996).

[7] *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities,* Order No. 888, FERC Stats. & Regs. ¶ 31,036 (1996), *order on reh'g,* Order No. 888–A, FERC Stats. & Regs. ¶ 31,048, *order on reh'g,* Order No. 888–B, 81 FERC ¶ 61,248 (1997), *order on reh'g,* Order No. 888–C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group* v. *FERC,* 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York* v. *FERC,* 535 U.S. 1 (2002).

[8] *Open Access Same-Time Information System and Standards of Conduct,* Order No. 889, FERC Stats. & Regs. ¶ 31,035 (1996), *order on reh'g,* Order No. 889–A, FERC Stats. & Regs. ¶ 31,049, *reh'g denied,* Order No. 889–B, 81 FERC ¶ 61,253 (1997).

[9] Order No. 888, FERC Stats. & Regs. ¶ 31,036 at 31,634.

[10] *Preventing Undue Discrimination and Preference in Transmission Service,* Order No. 890, FERC Stats. & Regs. ¶ 31,241, *order on reh'g,* Order No. 890–A, FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh'g,* Order No. 890–B, 123 FERC ¶ 61,299 (2008), *order on reh'g,* Order No. 890–C, 126 FERC ¶ 61,228 (2009), *order on clarification,* Order No. 890–D, 129 FERC ¶ 61,126 (2009).

[11] Order No. 888, FERC Stats. & Regs. ¶ 31,036 at 31,652; *see also id.* at 31,730–32.

[12] *Regional Transmission Organizations,* Order No. 2000, 65 FR 809 (Jan. 6, 2000), FERC Stats. & Regs. ¶ 31,089 (1999), *order on reh'g,* Order No. 2000–A, FERC Stats. & Regs. ¶ 31,092 (2000), *aff'd sub nom. Pub. Util. Dist. No. 1 of Snohomish County, Washington* v. *FERC,* 272 F.3d 607 (D.C. Cir. 2001).

[13] *See* ISO/RTO Council, *Progress of Organized Wholesale Electriciy Markets in North America* 1 (2007), *http://www.isorto.org/atf/cf/%7B5B4E85C6-7EAC-40A0-8DC3-003829518EBD%7D/IRC_State_of_the_Markets_Report_103007.pdf.*

Reports (EQR) in several markets.[14] Given that financial electricity products commonly settle using published prices from Commission-jurisdictional markets, changes in the prices of physical electricity products impact the values of both physical and financial electricity products.

7. Recognizing the importance of information relating to market trading and market oversight, the Commission issued Order No. 2001 [15] and Order No. 697,[16] establishing reporting requirements for entities selling under market-based rates. As one keen observer stated, in this regard, ''[i]nformation is the key to a viable electricity market and to preventing market manipulation.'' [17] In addition, the Energy Policy Act of 2005 (EPAct 2005) [18] gave the Commission expanded authority to address market manipulation,[19] including the ability to assess civil fines and seek criminal penalties.[20]

8. Independent market monitoring by RTO/ISO market monitoring units (MMU) is an important means to evaluate market developments and to identify and deter market abuses and manipulation. In Order No. 2000, the Commission identified market monitoring as a basic function of an RTO.[21] The Commission refined its approach to MMUs in a 2005 policy statement and in Order No. 719.[22] In the 2005 Policy Statement, the Commission outlined tasks for MMUs to perform in order to enhance the competitive structure of RTO/ISO markets.[23] Subsequently, in Order No. 719, the Commission further clarified requirements for MMU functions, independence, and information sharing.[24]

9. The Commission has acknowledged that MMUs perform a vital and necessary function in market oversight [25] but that they do not supplant the Commission's authority.[26] Rather, MMUs are designed to provide the Commission with an *additional* means of detecting market power abuses, market design flaws, and opportunities for improvements in market efficiency.[27]

II. Discussion

10. In this NOPR, the Commission proposes to revise its regulations to require each RTO and ISO to electronically deliver to the Commission, on an ongoing, non-public basis, data related to the markets that it administers; namely, data relating to physical and virtual offers and bids, market awards, resource outputs, marginal cost estimates, shift factors, FTRs, internal bilateral contracts, and interchange pricing. To facilitate such ongoing, electronic delivery, the Commission proposes that each RTO and ISO use automated electronic procedures to provide this data.

11. The Commission is statutorily obligated to ensure that sales of electricity in wholesale markets are made at just and reasonable rates,[28] and to address market manipulation in connection with the purchase or sale of electricity subject to the Commission's jurisdiction.[29] Toward that end, section 301(b) of the FPA provides that the Commission shall at all times have access to and the right to inspect and examine all accounts and records of public utilities.[30] In this NOPR, and pursuant to its authority under section 301(b), the Commission proposes to seek ongoing electronic delivery of data including accounts and records of the RTOs/ISOs, which are public utilities.

12. Moreover, the Commission also has authority pursuant to section 307(a) of the FPA to investigate any facts, conditions, practices, or matters it may deem necessary or proper to determine whether any person, electric utility, transmitting utility, or other entity may have violated or might violate the FPA or the Commission's regulations, or to aid in the enforcement of the FPA or the Commission regulations, or to obtain information about wholesale power sales or the transmission of power in interstate commerce.[31]

13. As markets continue to evolve with increased levels of sophistication, the Commission must continue to evaluate the type of data necessary to ensure just and reasonable rates. The Commission's market monitoring and surveillance capabilities and associated data requirements must keep pace with market developments and evolve along with the markets. Further, the Commission's evaluation of the market rules, regulations, and policies should be informed by the data collection proposed herein. Electronic delivery of the types of data proposed herein will help to bring the Commission's access to RTO/ISO data in sync with the types and levels of activity in those markets and help to ensure that rates are just and reasonable.

14. Most of the data discussed in this NOPR are already collected and stored by the RTOs/ISOs in order to administer

[14] *See* Federal Energy Regulatory Commission, *2008 State of the Markets Report* (2009), *available at http://www.ferc.gov/market-oversight/st-mkt-ovr/2008-som-final.pdf.* We also note that financial electricity products may be transacted (1) Through exchanges besides ICE (*e.g.,* NYMEX and Nodal Exchange), (2) by voice brokers, (3) bilaterally, or (4) by using other means.

[15] *Revised Public Utility Filing Requirements,* Order No. 2001, FERC Stats. & Regs. ¶ 31,127, *reh'g denied,* Order No. 2001–A, 100 FERC ¶ 61,074, *reh'g denied,* Order No. 2001–B, 100 FERC ¶ 61,342, *order directing filing,* Order No. 2001–C, 101 FERC ¶ 61,314 (2002), *order directing filing,* Order No. 2001–D, 102 FERC ¶ 61,334, *order refining filing requirements,* Order No. 2001–E, 105 FERC ¶ 61,352 (2003), *order on clarification,* Order No. 2001–F, 106 FERC ¶ 61,060 (2004), *order revising filing requirements,* Order No. 2001–G, 120 FERC ¶ 61,270, *order on reh'g and clarification,* Order No. 2001–H, 121 FERC ¶ 61,289 (2007), *order revising filing requirements,* Order No. 2001–I, FERC Stats. & Regs. ¶ 31,282 (2008).

[16] *Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities,* Order No. 697, FERC Stats. & Regs. ¶ 31,252, *clarified,* 121 FERC ¶ 61,260 (2007), *order on reh'g,* Order No. 697–A, FERC Stats. & Regs. ¶ 31,268, *clarified,* 124 FERC ¶ 61,055, *order on reh'g,* Order No. 697–B, FERC Stats. & Regs. ¶ 31,285 (2008), *order on reh'g,* Order No. 697–C, FERC Stats. & Regs. ¶ 31,291 (2009), *order on reh'g,* Order No. 697–D, FERC Stats. & Regs. ¶ 31,305 (2010), *aff'd sub nom. Montana Consumer Counsel* v. *FERC,* No. 08–71827, 2011 U.S. App. LEXIS 20724 (9th Cir. Oct. 13, 2011). In its decision upholding Order No. 697, the Ninth Circuit Court of Appeals noted that monitoring must be accompanied by enforcement because ''[w]ithout enforcement, there is little reason to believe that sellers will police themselves.'' *Montana Consumer Counsel,* 2011 U.S. App. LEXIS 20724 at *19 n.5.

[17] Charles H. Koch, Jr., *Collaborative Governance: Lessons for Europe from U.S. Electricity Restructuring,* 61 Admin. L. Rev. 71, 97 (2009).

[18] Public Law No. 109–58, 119 Stat. 594 (2005).

[19] *See, e.g.,* 16 U.S.C. 824v.

[20] *See* 16 U.S.C. 825o (criminal penalties); 16 U.S.C. 825o–1 (civil fines).

[21] Prior to this first generic consideration of MMUs in Order No. 2000, the Commission addressed market monitoring in connection with individual RTO/ISO proposals. *See Pac. Gas & Elec. Co.,* 77 FERC ¶ 61,265 (1996), *order on reh'g,* 81 FERC ¶ 61,122 (1997), *order on clarification,* 83 FERC ¶ 61,033 (1998) (requiring the ISO to file a detailed monitoring plan and listing minimum elements for such a plan); *Pennsylvania-New Jersey-Maryland Interconnection,* 81 FERC ¶ 61,257 (1997) (requiring PJM Interconnection, L.L.C. to develop a market monitoring program to evaluate market power and market design flaws).

[22] *Market Monitoring Units in Regional Transmission Organizations and Independent System Operators,* 111 FERC ¶ 61,267 (2005) (2005 Policy Statement); *Wholesale Competition in Regions with Organized Electric Markets,* Order No. 719, FERC Stats. & Regs. ¶ 31,281 (2008), *order on reh'g,* Order No. 719–A, FERC Stats. & Regs. ¶ 31,292 (2009), *order on reh'g,* Order No. 719–B, 129 FERC ¶ 61,252 (2009).

[23] 2005 Policy Statement, 111 FERC ¶ 61,267 at P 2.

[24] Specifically, MMU functions consist of evaluating existing and proposed market rules, tariff provisions, and market design elements and recommending changes, if applicable; reviewing and reporting on the performance of wholesale markets; and identifying and notifying the Commission of behavior that may require investigation. *See* Order No. 719, FERC Stats. & Regs. ¶ 31,281 at P 354.

[25] *See, e.g.,* Order No. 719, FERC Stats. & Regs. ¶ 31,281 at P 314.

[26] Order No. 2000, FERC Stats. & Regs. ¶ 31,089 at 31,156–57.

[27] *Id.*

[28] *See* 16 U.S.C. 824d, 824e.

[29] *See* 16 U.S.C. 824v.

[30] 16 U.S.C. 825(b).

[31] 16 U.S.C. 825f(a).

their markets. To the extent that an RTO/ISO does not already collect specific data, the Commission is not proposing to require either the collection of such data from market participants or its electronic delivery to the Commission. The Commission also proposes that key identifiers and other descriptive details necessary to understand the data be included in the data electronically delivered to the Commission. Finally, the Commission proposes that each RTO/ISO electronically deliver the data to the Commission using a common transfer method and format (*i.e.,* Secure File Transfer Protocol and XML), which are described below. The Commission is not proposing that each RTO/ISO aggregate or materially modify the data prior to electronic delivery to the Commission.[32]

15. This NOPR proposes to require an automated data delivery process, in part, to minimize any burden on RTOs/ISOs. The Commission currently can request this data from individual RTOs and ISOs on an ad hoc basis. Such recurrent, periodic data requests may require more Commission and RTO/ISO resources than the proposed electronic delivery of this data using an automated process.

16. Although the six RTOs/ISOs have developed different wholesale electricity market designs, there are many similarities in the data that they use to administer these markets. Generally speaking, market participants with their own supply resources or with supply resources under contract submit energy supply offers indicating the price at which they are willing to supply various quantities of energy. Load-serving entities submit demand bids indicating the price at which they are willing to buy various quantities of energy. The supply offers pass through market power screens. These screens are used to determine whether the resources can affect the market price and whether the offers should be mitigated. If an energy supply offer triggers the application of mitigation, it is replaced with a mitigated energy supply offer. Generally, mitigated energy supply offers are calculated using estimated marginal cost data, which approximate generators' costs under different conditions.[33]

17. Similar to the process for submitting energy offers and bids, market participants with their own supply resources or with supply resources under contract also submit offers to provide ancillary services and capacity services.[34] These offers typically indicate a price at which a market participant is willing to provide the service and, like the energy supply offers discussed above, are subject to mitigation when appropriate.

18. Entities with or without physical assets or load obligations may also submit ''virtual'' supply offers and demand bids in the RTO/ISO day-ahead markets. These virtual offers and bids contribute to price formation in RTO/ISO markets. Further, entities located outside of the RTO/ISO footprint may submit supply offers and demand bids in the form of interchange offers and bids.

19. The RTOs/ISOs match the above-described inputs through an intricate process designed to use the lowest-cost resources to meet demand.[35] This process yields pricing signals through locational marginal pricing (LMP) that determine which supply offers and demand bids are selected (and which would also inform long-term planning, *e.g.,* decisions on whether to enter and exit markets). Supply offers that are selected are required to provide a specific amount of service. For example, resources that are selected in the day-ahead energy market will be given an energy market award that specifies the amount of energy a particular resource is financially obligated to supply. These market awards are determined by each resource's supply offer and the corresponding day-ahead LMP. Finally, the RTO/ISO provides dispatch instructions for resources in real time. Real-time compensation is determined by the dispatch instructions, metered output, and the corresponding LMP.

20. LMP is comprised of three components: The system-wide price of energy, transmission line losses, and the congestion charge. The congestion charge component of LMP is calculated using shift factors when modeled flows are above the intended physical capability of given transmission facilities. A shift factor reflects the positive or negative percentage effect that a one-megawatt change in generation output or demand will have on an identified constraint. These shift factors are used to create a dispatch strategy that is consistent with physical and other reliability constraints. In other words, shift factors allow RTOs/ISOs to manage transmission constraints through congestion charge price signals that relate to a generator's or load's influence on a specific constraint.

21. Prices in the RTO/ISO day-ahead markets and real-time balancing markets can be volatile depending on market conditions. Products designed to hedge RTO/ISO price volatility have provided valuable tools for RTO/ISO market participants to secure predictable revenue streams or reduce price risk associated with generation costs. These price hedging tools have evolved concurrently with changes in wholesale electricity markets.

22. In the RTO/ISO markets, market participants can limit price risk using several tools, notably, virtual offers and bids, FTRs, and internal bilateral contracts. Virtual offers and bids (collectively, virtuals) allow market participants the opportunity, among other things, to transfer price risk between day-ahead and real-time markets within an RTO/ISO. When virtuals are scheduled in the day-ahead market, the financial commitment is established at published day-ahead prices, and virtuals are automatically liquidated with the opposite buy/sell position, in most cases at real-time prices. Virtuals are not backed by physical assets. If a load-serving entity determines that it might need to purchase supply from real-time markets,[36] the load-serving entity could use virtuals to ''lock-in'' a day-ahead price.

23. FTRs provide market participants with a mechanism to hedge transmission costs under LMP-based market designs. In general, load-serving entities in RTOs/ISOs are allocated either FTRs or transmission rights convertible into FTRs. This allocation is often based on usage during an historical period. Allocated FTRs are limited to load-serving entities and to those who funded construction of specific transmission facilities. Other FTRs are auctioned, and such FTRs generally can be purchased by creditworthy entities. Moreover, FTRs

[32] The Commission is currently considering providing an XML Schema Definition (XSD) that describes the structure of the XML document to be electronically delivered to the Commission. XSD defines those elements, attributes, data types, and any default or fixed values in the XML. Depending on how the requested data is stored by each RTO/ISO, some data transformation may be required to prepare XML that is consistent with the XSD. For example, one RTO/ISO might store dates in MM–DD–YYYY format while the rest use YYYY–MM–DD format. As such, an XSD might specify that dates in the XML be electronically delivered to the Commission in YYYY–MM–DD format.

[33] The estimated marginal cost data the Commission proposes to receive through this NOPR do not include individual generators' actual costs, revenues, or profits.

[34] We note that currently CAISO and SPP do not administer a centralized capacity market.

[35] We note that other inputs, including generation capabilities and other system costs, *inter alia,* are used by RTOs/ISOs to arrive at the lowest-cost solution.

[36] A load-serving entity might determine such a need to purchase supply, for example, because of potential weather-related events or generator malfunction.

can be resold outside of the RTO/ISO auction and allocation procedures. Transactions occurring outside of the RTO/ISO allocation and auction procedures are commonly referred to as secondary market transactions.

24. Finally, internal bilateral contracts allow market participants to hedge energy costs under LMP-based market designs. In RTOs/ISOs, market participants can enter into bilateral agreements and use the RTO/ISO to perform settlement functions. These internal bilateral contracts typically rely on a bilaterally negotiated price rather than the potentially more volatile RTO/ISO LMP-based energy price, and they allow market participants the opportunity to transfer risks relating to energy costs among market participants. Thus, a load-serving entity may enter into an internal bilateral contract with a supplier to settle its energy costs at a predetermined rate rather than at the applicable LMP. If the market participant reports this internal bilateral contract to the RTO/ISO, the RTO/ISO would then account for this agreement in its settlement process.

25. RTO/ISO price-hedging products have been created outside of the RTO/ISO markets as well. Electricity futures were first traded on NYMEX in March 1996.[37] Electricity futures, which are traded on organized exchanges, and electricity forwards, which are traded outside of organized exchanges, are transactions that typically specify a quantity of physical electricity to be delivered at a specific time and place in the future at an agreed-upon price.[38] A generation owner can sell output from its facility at a pre-determined price by entering into futures or forward transactions even as the RTO/ISO price varies.

26. In recent years, other products for hedging RTO/ISO prices have developed, such as electricity swaps. Swaps are similar to electricity futures and forwards, but swaps are financial transactions that do not require physical delivery. Electricity swaps can be bought or sold at a given ''fixed'' price and subsequently settle at a ''floating'' published daily electricity price; this is typically referred to as a ''fixed-for-floating'' swap. Swaps can act as a hedge when used alongside physical electricity sales, by guaranteeing the generation owner an agreed upon price, notwithstanding fluctuation in the published electricity price. Specifically, if the published daily electricity price is higher than the agreed upon price, the generation owner pays the difference to the counter-party to the swap but still receives the agreed upon price.[39] This effectively guarantees a predictable revenue stream to the generation owner. RTO/ISO posted prices are one of the commonly referenced settlement values used in electricity swaps.

27. To the extent that any market participant is willing to manipulate the market, that market participant would have an incentive to manipulate RTO/ISO prices that are used to settle values for electricity products, including financial products such as electricity swaps. The likelihood of an attempt at market manipulation can be reduced if the perceived cost of manipulation exceeds the perceived benefit. For example, a market participant may wish to drive up an RTO/ISO price because that market participant also holds an electricity swap that benefits from a higher RTO/ISO price. In that vein, the market participant may offer supply into the RTO/ISO market at levels above its own marginal costs, driving up an RTO/ISO price by requiring a higher-priced unit to be selected. That market participant would receive less revenue from the RTO/ISO due to the lost sales opportunity from its own higher-priced offer not being selected. However, in this example, the market participant may be able to more than offset the reduction in revenue through the benefit of its electricity swap associated with the higher RTO/ISO price.

28. Given the history of electricity markets it regulates, the Commission expects that such markets will continue to evolve, that new physical and financial products will be formed, and that increasingly complex manipulative or other anti-competitive strategies may be created.

A. Market Monitoring and Surveillance

29. To keep pace with market developments, the Commission is proposing to establish ongoing, electronic delivery of data from each RTO and ISO to enhance its market monitoring and surveillance efforts. By seeking electronic delivery of the data outlined in this NOPR, the Commission does not seek to displace or modify any of the existing market monitoring functions performed by MMUs. Nor do we intend our proposal to be perceived as an implicit criticism of the MMUs' performance. Instead, this data will help the Commission detect anti-competitive or manipulative behavior, or ineffective market rules, and thus help ensure just and reasonable rates.

30. Among other objectives, the Commission will use the data it proposes to receive as part of automated screens and other analyses designed to detect attempts to manipulate RTO/ISO pricing for the purpose of benefiting products that settle using RTO/ISO pricing and to detect abuses involving interchange transactions. Supply offer, demand bid, virtual, and FTR data will assist the Commission in understanding how market participants are positioning themselves in RTO/ISO markets. For example, market participants attempting to move RTO/ISO settlement pricing might offer supply into the RTO/ISO market at uncompetitive prices. Likewise, market participants could target specific LMP prices using virtual offers and bids. Because congestion impacts are often spread across many price nodes (and result in many different LMPs) through shift factors, these virtual offers and bids need not be placed at the specific price node for which a market participant might be attempting to move the LMP. Estimated marginal cost and shift factor data will enhance the Commission's ability to identify such behavior that may be designed to impact RTO/ISO pricing. Moreover, interchange pricing data will assist the Commission's efforts to identify anomalous or uneconomic electricity interchange schedules; electricity schedules between markets that are not consistent with pricing signals could be a source of market inefficiency or raise other anti-competitive concerns.

31. Securing data concerning the markets that the RTOs/ISOs administer is part of the Commission's broader effort to enhance its market monitoring and surveillance capabilities. Specifically, in a recently issued NOPR on Commission access to electronic tag (e-Tag) data,[40] the Commission proposed to make e-Tag data available to the Commission to assist in monitoring the market and preventing manipulation, among other things. In yet another NOPR, the Commission proposed to require additional contract and transaction data from those who file

[37] S.J. Deng and S.S. Oren, *Electricity derivatives and risk management,* 31 Energy 940, 943 (2006), *available at http://www.sciencedirect.com.*

[38] *See id.* at 942–43.

[39] For example, Generator sells to the RTO/ISO at a market-based rate, which varies according to the market. As a hedge, Generator sells a financial swap to Counter-party at $30/MWh. If the published electricity price that Generator receives on day one is $20/MWh, Counter-party pays Generator the difference, i.e., $10 ($30 minus $20). Thus, Generator receives the agreed upon price of $30/MWh. Conversely, if the published electricity price that Generator receives on day two is $45/MWh, Generator owes Counter-party the difference, *i.e.,* $15 ($45 minus $30). Thus, Generator again receives the agreed upon price of $30/MWh.

[40] *Availability of E–Tag Information to Commission Staff,* Notice of Proposed Rulemaking, FERC Stats. & Regs. ¶ 32,675 (2011).

EQRs and to extend the EQR filing requirements to wholesale market participants which fall outside the Commission's FPA section 205 jurisdiction.[41] The Commission stated that these proposals would strengthen the Commission's ability to identify potential exercises of market power or manipulation. We believe that the same is true here.

32. Utilizing the data the Commission proposes to receive in this NOPR and the two NOPRs addressed above could greatly enhance the Commission's market monitoring and surveillance capabilities. The data will permit the Commission to improve its screening of market participants for illicit behavior, making such conduct more difficult to mask. In addition, the data the Commission proposes to collect in these NOPRs could provide a better picture of legitimate market activity and lessen the possibility that market monitoring and surveillance screens will result in error.

B. Commission Policies and Regulations

33. In overseeing wholesale electricity markets, the Commission evaluates, in response to submissions or on its own motion, existing market designs and the effectiveness of market rules. The Commission proposes to use RTO/ISO market data to more effectively carry out these functions. Electronic delivery of this data will enable the Commission to better identify ineffective market rules and better inform Commission policies and decision-making, and thus help prevent anti-competitive behavior and ensure just and reasonable rates.

34. We believe that electronic delivery of RTO/ISO market data will provide the Commission with empirical information that will augment ongoing industry outreach in determining the effectiveness of the Commission-approved market rules and the efficiency of existing market designs in producing just and reasonable rates. Electronic delivery of the market data sought would allow the Commission to perform better ongoing analysis as markets evolve and new resources begin participating in these markets. For example, the market data sought should enable the Commission to assess both the scheduling practices of renewable resources and how renewable energy schedules compare with actual real-time performance. Because of its unique position, the Commission will be able to perform such analysis across the RTO/ISO markets. This cross-market analysis will enhance the Commission's ongoing efforts to assess the performance of different market designs and rules.

35. In seeking electronic delivery of this data, the Commission emphasizes that it does not seek to displace existing MMU efforts to evaluate market rules and market designs nor is it proposing to modify any of the market monitoring functions performed by MMUs. Rather, the Commission is seeking to augment the assessments currently being performed by MMUs, thus strengthening the Commission's regulatory capabilities through the ongoing electronic delivery of RTO/ISO market data.

C. Requested Data

36. As part of this rulemaking, the Commission proposes to require ongoing electronic delivery of, the data (*e.g.,* the information to be included in the datasets) described below. The Commission invites comment on these data requirements:

1. *Supply offers and demand bids for energy and ancillary services*—The Commission is proposing that RTOs/ISOs provide their data on supply offers and demand bids submitted to RTO/ISO markets. This dataset would include all offers and bids for energy and ancillary services. This dataset would also include offers and bids submitted for interchange transactions, as well as those submitted without economic consideration, *i.e.,* self schedules.

2. *Virtual offers and bids*—The Commission is proposing that RTOs/ISOs provide their data on virtual supply offers and virtual demand bids submitted to RTO/ISO markets.

3. *Energy/ancillary service awards*—The Commission is proposing that RTOs/ISOs provide their data on market awards for energy and ancillary services. This dataset would include the quantity and price of all market awards for energy and ancillary services. The dataset would also identify resources that are self-scheduled.

4. *Capacity market offers, designations, and prices*—For RTOs/ISOs with centralized capacity markets, the Commission is proposing to require RTOs/ISOs to provide their data on capacity offers as well as capacity market outcomes or designations. This dataset would identify capacity resources, the amount of procured capacity, and the applicable capacity market price.

5. *Resource output*—The Commission is proposing that RTOs/ISOs provide their data on resource output data used in market settlements. This dataset would include details used in market settlements, including RTO/ISO dispatch instructions (*i.e.,* the output that a dispatched resource is expected to produce in real-time) for energy or ancillary services, or whether resources are operating at self-scheduled output levels, and measured output levels.

6. *Marginal cost estimates*—The Commission is proposing that RTOs/ISOs provide their data on marginal cost estimates; such estimates are typically generated for the potential replacement of supply offers in market power mitigation procedures. This dataset would include all marginal cost estimates that have been developed, and not just those estimates that were used to generate mitigated supply offers. The Commission is seeking just the resulting marginal cost estimates themselves, however, and is not proposing that RTOs/ISOs provide the inputs that allow for calculation of those estimates. Further, the Commission is not seeking other operating information regarding individual generators' actual costs, revenues, or profits.

7. *Day-ahead shift factors*—The Commission is proposing that RTOs/ISOs provide their data on shift factors calculated for use in the day-ahead market. This would include generation shift factors, which are factors to be applied to a generator's expected change in output to determine the amount of flow contribution that that change in output will impose on an identified transmission facility or flowgate, and load shift factors, which are factors to be applied to a load's expected change in demand to determine the amount of flow contribution that that change in demand will impose on an identified transmission facility or flowgate. This dataset would not be limited to binding constraints, but should also include all shift factors calculated to address non-binding constraints.

8. *FTR data*—The Commission is proposing that RTOs/ISOs provide their data on FTR transactions that may not be publicly posted in all RTO/ISO markets. Specifically, the Commission is proposing that RTOs/ISOs provide data detailing how all FTRs and allocated rights were acquired, either through RTO/ISO allocation or auction procedures; data detailing whether the acquired allocation positions were converted from positions that collect auction revenue into positions that collect congestion revenue; and data detailing secondary market transactions to the extent that they are available to the RTO/ISO.

9. *Internal Bilateral Contracts*—The Commission is proposing that RTOs/ISOs provide their data on the settlement of internal bilateral contracts for energy.

[41] *Electricity Market Transparency Provisions of Section 220 of The Federal Power Act,* Notice of Proposed Rulemaking, FERC Stats. & Regs. ¶ 32,676 (2011).

10. *Pricing data for interchange transactions*—The Commission is proposing that RTOs/ISOs provide their data on pricing information for scheduled interchanges. Scheduled interchanges include any transaction between two or more Balancing Authority Areas. To enhance the Commission's market monitoring and surveillance efforts, the Commission is proposing that eTag IDs be included, when applicable, in addition to other interchange pricing details and transaction identification.

37. The data that the Commission is proposing to receive electronically in this NOPR are limited to physical and virtual offers and bids, market awards, resource outputs, marginal cost estimates, shift factors, FTRs, internal bilateral contracts, and interchange pricing. These datasets would include descriptive information such as market participant names, unique identifiers, pricing points, and other information that the Commission considers necessary and appropriate to understand and analyze the data described in this NOPR. Markets are not static, however, and, as markets continue to evolve, the Commission may initiate a new rulemaking process in the future to reassess the data necessary for its market monitoring and surveillance efforts and for its policy and decision-making needs.

38. The Commission proposes that RTOs/ISOs be required to electronically deliver the data discussed in this NOPR to the Commission within seven days after each RTO/ISO creates the datasets in a market run or otherwise. For example, day-ahead offers and bids, market awards, resource outputs, day-ahead shift factors, internal bilateral contracts, and day-ahead interchange pricing data would be required to be electronically delivered within seven days after the completion of each day-ahead market run. Real-time offers and bids and real-time interchange pricing data would be required to be electronically delivered within seven days after the completion of each real-time market run. For data that are updated less frequently, including capacity market results, estimated marginal costs, and FTR data, each RTO/ISO would be expected to electronically deliver that data within seven days after it is created or updated by the RTO/ISO. For the initial delivery of data under this proposal, however, the Commission proposes that each RTO/ISO would be required to electronically deliver all such data forty-five days after the effective date of any final rule in this proceeding. Finally, if the RTO/ISO makes later corrections to the data (after they have been delivered to the Commission), the RTO/ISO would be expected to electronically deliver the corrected data to the Commission within seven days after the correction has been made. The Commission invites comments with respect to the timeframe in which the data described in this NOPR should be electronically delivered to the Commission.

39. The Commission proposes to locate the requirement to electronically deliver this data on an ongoing basis within section 35.28(g) of our regulations. Further, the Commission proposes to direct each RTO/ISO to submit a compliance filing amending its open access transmission tariff to reflect this requirement within forty-five days after the effective date of any final rule in this proceeding.

D. Data Formatting and Web-Based Delivery

40. In order to facilitate the Commission's efforts described above, the Commission is proposing to require each RTO and ISO to use consistent formatting and delivery methods to electronically deliver the data described in this NOPR to the Commission. Consistent formatting and delivery methods will enable the Commission to develop routine data procedures to link RTO/ISO and other market data, thus enabling automated analytic techniques.

41. In regard to data formatting, the Commission is proposing to require that any data outlined in this NOPR be in an XML format that is consistent for all RTOs/ISOs when electronically delivered to the Commission. As stated above, the Commission is not proposing that each RTO/ISO materially modify the data prior to electronic delivery to the Commission.[42]

42. In Order No. 714,[43] the Commission adopted XML format for entities to use when making tariff related filings, based upon industry agreement.[44] XML is also commonly used by RTOs/ISOs to deliver data to market participants through Open Access Same-Time Information Systems (OASIS) and other purposes. Data not formatted in XML may also be extracted directly from a database into an XML-formatted file using automated procedures. However, the Commission also recognizes that XML, which was adopted by the industry as the most effective format to use when electronically filing tariffs, may not be the preferred format to use when electronically delivering RTO/ISO data. Accordingly, we seek comment on this issue.

43. In regard to the data delivery method, the Commission is proposing that each RTO and ISO use a secure data delivery method to provide data to the Commission due to the commercially-sensitive nature of the market data described in this NOPR. Specifically, the Commission is proposing that any RTO/ISO market data be electronically delivered using the Secure File Transfer Protocol (SFTP). Delivery by SFTP is similar to delivery by File Transfer Protocol or ''FTP,'' a widely-used file-sharing protocol; except that all communications transmitted using SFTP are encrypted. Access to the server where the data is electronically delivered will only be granted to each applicable RTO and ISO and to the Commission.

44. Accordingly, and as part of our consideration of the range of possible formats and delivery methods that RTOs/ISOs may use to electronically deliver data to the Commission, the Commission invites comments with respect to efficient and secure ways to provide the Commission with RTO/ISO data. The Commission also invites comment on the time and resources that may be needed by RTOs/ISOs for the initial implementation and ongoing compliance with the proposed requirements of this rule. Finally, the Commission invites comment on whether a phased implementation approach should be undertaken, and, if so, what a potential phased approach should entail.

E. Non-Public Data

45. Much of the information that the Commission expects to receive in this proposal is, by its nature, commercially-sensitive.[45] Disclosure of such information could result in competitive harm to market participants and the market as a whole.[46] Accordingly, the

[42] *See supra* P 14.

[43] *Electronic Tariff Filings,* Order No. 714, 73 FR 57515, FERC Stats. & Regs. ¶ 31,276 (2008).

[44] Order No. 714, FERC Stats. & Regs. ¶ 31,276 at P 30.

[45] In the past, the Commission has granted requests for privileged or confidential treatment of similar non-public data. *See, e.g., N.Y. Indep. Sys. Operator, Inc.,* 131 FERC ¶ 61,169, at P 15 (2010) (granting such treatment for data relating to specific generator or other equipment details, transmission system information, bidding strategies, generator reference levels, generator costs, guarantee payments, and the associated relevant time periods); *see also So. Cal. Edison Co.,* 135 FERC ¶ 61,201, at P 20; *Hydrogen Energy Cal. LLC,* 135 FERC ¶ 61,068, at P 25 (2011); *N.Y. Indep. Sys. Operator, Inc.,* 130 FERC ¶ 61,029, at P 3 (2010).

[46] Section 301(b) of the FPA, 16 U.S.C. 825(b), provides that no member, officer, or employee of the Commission may divulge any fact or information that may come to his knowledge during the course of examination of books or other

Continued

Commission proposes that the data sought in this proceeding is to be kept non-public and not be made publicly available,[47] except as may be directed by the Commission, or a court with appropriate jurisdiction.[48]

46. To the extent the data collected pursuant to this rulemaking are used, for example, to support proposed market rule changes, the analysis relied upon by the Commission will be publicly available except that confidential market information and other protected or confidential information will remain non-public. Also, the Commission may direct its staff to publicly issue a staff report outside of a rulemaking proceeding with similar protections for confidential or otherwise protected information.

III. Information Collection Statement

47. The collections of information contained in this proposed rule have been submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507(d). The Commission solicits comments on the Commission's need for this information, whether the information will have practical utility, the accuracy of the provided burden estimates, ways to enhance the quality, utility, and clarity of the information to be collected, and any suggested methods for minimizing respondents' burden, including the use of automated information techniques. 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.

48. The proposed rule does not require market participants other than the RTOs/ISOs to report information to the Commission.

49. The Commission's estimated reporting burden related to the proposed rule in Docket RM11–17–000 follow.

Data collection, proposed FERC–921	Number of respondents	Implementing burden		Annual recurring operating burden		Average annual burden (implementation cost averaged over 3 yrs.)	
		Burden hrs. per respondent	Cost per respondent	Burden hrs. per respondent	Cost per respondent	Burden hrs. for all respondents	Cost for all respondents
Compliance filing	6	7	$1,750	.....	.....	14	$3,500
Web-Based Delivery	6	1,040	100,864	40	$3,879	2,320	225,003
Grand Total, Average Annual Estimates	6	.....	.....	.....	.....	2,334	228,503

50. The Commission recognizes that there will be an initial implementation burden associated with providing the Commission with RTO/ISO data. This includes submitting a compliance filing to the Commission, which the Commission estimates as a burden of 7 hours per RTO/ISO, and implementing a process to automatically upload data to an SFTP site for Commission use (including development, testing and production). The Commission estimates a burden of 1040 hours per RTO/ISO for the development, testing and production of an automated process to provide the Commission with the data described in this NOPR. In this regard, though, RTO/ISO markets have already developed capabilities necessary to handle RTO/ISO data in an automated manner. For instance, through their Open Access Same-time Information Systems (OASIS), RTOs/ISOs already make certain market data publically available in XML format using automated procedures. Likewise, some RTOs/ISOs have developed procedures similar to those proposed in this NOPR to deliver data to their MMUs.

51. For the recurring effort involved in electronically delivering RTO/ISO data to the Commission, the Commission anticipates that the additional burden associated with this rule will be minimal. Any recurring burden would be associated with addressing updates to RTO/ISO data as the data that they process changes and due to occasional errors in the data handling or data upload process.

accounts, except as may be directed by the Commission or by a court.

[47] We note that, notwithstanding that the Commission may have data available to it, complainants still must bear the burden of making a prima facie case; complainants must do more than make unsubstantiated allegations. *Interstate Power & Light Co.* v. *ITC Midwest, LLC,* 135 FERC ¶ 61,162, at P 18 (2011); *see also UNITIL Power Corp.* v. *Pub. Serv. Co. of N.H.,* 62 FERC P 61,055, at 61,287 (1993) (''The question we must answer at this stage of the proceeding is whether UNITIL has presented sufficient evidence of PSNH's costs so that we may assess whether a trial-type, evidentiary hearing is warranted.''); Houlton Water Co. v. Me. Pub. Serv. Co., 55 FERC P 61,037, at 61,110 (1991) (''Maine Public correctly states that a customer seeking a section 206 investigation of existing rates must provide some basis to question the reasonableness of the overall rate level, taking into account changes in all cost components and not just [the item being challenged].'').

[48] We note that the Freedom of Information Act (FOIA) allows persons to file requests to obtain data from the Commission. However, commercially-sensitive data, like that described in this NOPR, is covered by exemption 4 of FOIA, which protects ''trade secrets and commercial or financial information obtained from a person [that is] privileged or confidential.'' 5 U.S.C. 552(b)(4) (2006), *amended by* OPEN Government Act of 2007, Pub. L. No. 110–175, 121 Stat. 2524 (2007); *accord* 18 CFR 388.107(d).

Information Collection Costs: The Commission has estimated the cost of compliance per RTO/ISO to be $102,614 in the initial year of implementation and $3,879 in subsequent years. The Commission expects that the compliance filing will be completed by RTO/ISO legal staff and has estimated an hourly rate at $250/hour. The Commission estimates that a variety of staff, including legal, database administrators and IT and information security specialists, will be required to electronically deliver to the Commission the RTO/ISO data described in this NOPR. The Commission estimated the average hourly cost for this task to be $96.98/hour (including legal staff at $250/hour, information systems manager at $105.35/hour, database administrator at $55.61/hour, and information security analyst at $57.67/hour).[49]

Title: Proposed FERC–921.[50].

Action: Proposed collection.

OMB Control No.: To be determined.

Respondents for this Rulemaking: RTOs and ISOs.

Frequency of Information: Initial implementation, compliance filing, and automated daily updates.

52. *Necessity of Information:* As wholesale electricity markets continue to develop and evolve, new opportunities arise for anti-competitive or manipulative behavior. The Commission's market monitoring and surveillance capabilities and associated data requirements must keep pace with market developments and evolve along with the markets. The data discussed in this NOPR will allow the Commission to more effectively identify and address such behavior; to identify ineffective market rules; to better inform Commission policies and regulations; and thus to help ensure just and reasonable rates.

53. *Internal Review:* The Commission has made a preliminary determination that the proposed revisions are necessary to keep pace with ever-changing possibilities for anti-competitive or manipulative behavior and to better inform Commission policies and regulations, and thus to ensure that rates are just and reasonable. The Commission has assured itself, by means of its internal review, that there is specific, objective support for the burden estimate associated with the information requirements.

54. Interested persons may obtain information on the reporting requirements by contacting the Federal Energy Regulatory Commission, Office of the Executive Director, 888 First Street, NE., Washington, DC 20426 [*Attention:* Ellen Brown, *e-mail: DataClearance@ferc.gov, phone:* (202) 502–8663, *fax:* (202) 273–0873].

55. Comments concerning the information collections proposed in this NOPR and the associated burden estimates, should be sent to the Commission in this docket and may also be sent to the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503 [*Attention:* Desk Officer for the Federal Energy Regulatory Commission]. For security reasons, comments should be sent by e-mail to OMB at the following *e-mail address: oira_submission@omb.eop.gov.* Please reference FERC–921 and the docket number of this proposed rulemaking (Docket No. RM11–17–000) in your submission.

IV. Environmental Analysis

56. 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.[51] The Commission has categorically excluded certain actions from these requirements as not having a significant effect on the human environment.[52] The actions proposed here fall within a categorical exclusion in the Commission's regulations, *i.e.,* they involve information gathering, analysis, and dissemination.[53] Therefore, environmental analysis is unnecessary and has not been performed.

V. Regulatory Flexibility Act Certification

57. The Regulatory Flexibility Act of 1980 (RFA)[54] generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. The RFA mandates consideration of regulatory alternatives that accomplish the stated objectives of a rule and that minimize any significant economic impact on a substantial number of small entities. The Small Business Administration's (SBA) Office of Size Standards is responsible for the definition of a small business.[55] The SBA has established a size standard for utilities, stating that a firm is small if, including its affiliates, it is primarily engaged in the transmission, generation and/or distribution of electric energy for sale and its total electric output for the preceding twelve months did not exceed four million megawatt hours.[56] RTOs and ISOs are not small entities, and they are the only entities impacted directly by this proposed rule.

58. CAISO is a nonprofit organization with over 54,000 megawatts of capacity and over 25,000 circuit miles of transmission lines.

59. NYISO is a nonprofit organization that oversees wholesale electricity markets serving 19.2 million customers. NYISO manages a nearly 11,000-mile network of high-voltage transmission lines.

60. PJM is comprised of more than 700 members including power generators, transmission owners, electricity distributers, power marketers, and large industrial customers and serves 13 states and the District of Columbia.

61. SPP is comprised of 63 members serving 6.2 million households in nine states and has 48,930 miles of transmission lines.

62. Midwest ISO is a nonprofit organization with over 145,000 megawatts of installed generation. Midwest ISO has over 57,600 miles of transmission lines and serves 13 states and one Canadian province.

63. ISO–NE is a regional transmission organization serving six states in New England. The system is comprised of more than 8,000 miles of high-voltage transmission lines and over 300 generators.

64. The Commission believes this proposed rule will not have a significant economic impact on a substantial number of small entities, and therefore no regulatory flexibility analysis is required.

VI. Comment Procedures

65. The Commission invites interested persons to submit comments on the matters and issues proposed in this

[49] Hourly average wage is an average and was calculated using Bureau of Labor Statistics (BLS), Occupational Employment Statistics data for May 2010 (at *http://www.bls.gov/oes/*) for the database administrator and information security analysts. The average hourly figure for legal staff and information systems manager is a composite from BLS and other resources. The following weightings were applied to estimate the average hourly cost: Legal staff (⅙), information systems manager (⅙), database administrator (⅓), and information security analyst (⅓).

[50] OATT compliance filings (like the one-time compliance filing here) are normally included under FERC–516 (OMB Control No. 1902–0096). However, the reporting requirements (including the compliance filing) contained in this proposed rule in Docket No. RM11–17 will be covered by a proposed FERC–921.

[51] *Regulations Implementing the National Environmental Policy Act,* Order No. 486, 52 FR 47,897 (Dec. 17, 1987), FERC Stats. & Regs. ¶ 30,783 (1987).

[52] 18 CFR 380.4.

[53] *See* 18 CFR 380.4(a)(5).

[54] 5 U.S.C. 601–612.

[55] 13 CFR 121.101.

[56] 13 CFR 121.201 (Sector 22, Utilities).

notice to be adopted, including any related matters or alternative proposals that commenters may wish to discuss. Comments are due December 27, 2011. Comments must refer to Docket No. RM11–17–000, and must include the commenter's name, the organization they represent, if applicable, and their address.

66. 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.

67. Commenters that are not able to file comments electronically must send an original copy of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, NE., Washington, DC 20426.

68. 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

69. 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 the Commission's Home Page (*http://www.ferc.gov*) and in the Commission'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.

70. From the Commission's Home Page on the Internet, this information is available on eLibrary. The full text of this document is available on eLibrary both 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.

71. User assistance is available for eLibrary and the Commission's Web site during normal business hours from the Commission's 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 35

Electric power rates, Electric utilities, Reporting and recordkeeping requirements.

By direction of the Commission. Commissioner Spitzer is not participating.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

In consideration of the foregoing, the Commission proposes to revise Chapter I, Title 18 of the *Code of Federal Regulations* to read as follows:

PART 35—FILING OF RATE SCHEDULES AND TARIFFS

1. The authority for part 35 continues to read as follows:

Authority: 16 U.S.C. 791a–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352.

2. In § 35.28, paragraphs (g)(4) through (g)(6) are redesignated as paragraphs (g)(5) through (g)(7) and a new paragraph (g)(4) is added to read as follows:

§ 35.28. Non-discriminatory open access transmission tariff.

* * * * *

(g) *Tariffs and operations of Commission-approved independent system operators and regional transmission organizations.*

* * * * *

(4) *Electronic delivery of data.* Each Commission-approved regional transmission organization and independent system operator must electronically deliver to the Commission, on an ongoing basis and in a form and manner acceptable to the Commission, data related to the markets that the regional transmission organization or independent system operator administers.

* * * * *

[FR Doc. 2011–27626 Filed 10–25–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 40

[Docket No. RM11–20–000]

Automatic Underfrequency Load Shedding and Load Shedding Plans Reliability Standards

October 20, 2011.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: Under section 215 of the Federal Power Act, the Federal Energy Regulatory Commission (Commission) proposes to approve Reliability Standards PRC–006–1 (Automatic Underfrequency Load Shedding) and EOP–003–2 (Load Shedding Plans), developed and submitted to the Commission for approval by the North American Electric Reliability Corporation (NERC), the Electric Reliability Organization certified by the Commission. The proposed Reliability Standards establish design and documentation requirements for automatic underfrequency load shedding programs that arrest declining frequency and assist recovery of frequency following system events leading to frequency degradation. The Commission also proposes to approve the related Violation Risk Factors and Violation Severity Levels, implementation plan, and effective date proposed by NERC.

DATES: Comments are due December 27, 2011.

ADDRESSES: Comments, identified by docket number, may be filed in the following ways:

- Electronic Filing through *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:* Those unable to file electronically may mail or hand-deliver comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, NE., Washington, DC 20426.

Instructions: For detailed instructions on submitting comments and additional information on the rulemaking process, see the Comment Procedures Section of this document.

FOR FURTHER INFORMATION CONTACT:

Stephanie Schmidt (Technical Information), Office of Electric Reliability, Division of Reliability Standards, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–6568, *Stephanie.Schmidt@ferc.gov.*

Matthew Vlissides (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8408, *Matthew.Vlissides@ferc.gov.*

SUPPLEMENTARY INFORMATION:

1. Under section 215 of the Federal Power Act (FPA),[1] the Commission proposes to approve proposed Reliability Standards PRC–006–1

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

(Automatic Underfrequency Load Shedding) and EOP–003–2 (Load Shedding Plans). The proposed Reliability Standards were developed and submitted for approval to the Commission by the North American Electric Reliability Corporation (NERC), which the Commission certified as the Electric Reliability Organization (ERO) responsible for developing and enforcing mandatory Reliability Standards.[2] The proposed Reliability Standards establish design and documentation requirements for automatic underfrequency load shedding (UFLS) programs, which are meant to arrest declining frequency and assist recovery of frequency following underfrequency events and provide last resort system preservation measures.

2. The Commission proposes to approve the related Violation Risk Factors (VRFs) and Violation Severity Levels (VSLs), implementation plan, and effective date proposed by NERC. The Commission also proposes to approve the retirement of the currently effective Reliability Standards PRC–007–0, PRC–009–0, and EOP–003–1, and the NERC-approved Reliability Standard PRC–006–0.

3. The Commission seeks comments from NERC and other interested persons on specific issues concerning the proposed Reliability Standards.

I. Background

A. Underfrequency Load Shedding

4. An interconnected electric power system must balance load and generation in order to maintain frequency within a reliable range.[3] The balance between generation and load within an interconnected electric power system is shown in the frequency of the system.[4] Underfrequency protection schemes are drastic measures employed if the system frequency falls below a specified value.[5] The Blackout Report provides the following explanation:

[A]utomatic under-frequency load-shedding (UFLS) is designed for use in extreme conditions to stabilize the balance between generation and load after an electrical island has been formed, dropping enough load to allow frequency to stabilize within the island. All synchronous generators in North America are designed to operate at 60 cycles per second (Hertz) and frequency reflects how well load and generation are balanced—if there is more load than generation at any moment, frequency drops below 60 Hz, and it rises above that level if there is more generation than load. By dropping load to match available generation within the island, UFLS is a safety net that helps to prevent the complete blackout of the island, which allows faster system restoration afterward. UFLS is not effective if there is electrical instability or voltage collapse within the island.[6]

5. UFLS programs are designed for each defined area or system, and they are commonly implemented with devices installed on the distribution side of the power system.[7] Factors considered in developing a UFLS program include: (1) Underfrequency set point, (2) minimum amount of load to shed, and (3) what load and at what locations to shed.

1. Underfrequency Set Point

6. The underfrequency set point is the frequency at which a specified load will disconnect from the system in a UFLS program.[8] Separately, generators have their own underfrequency set points, which will disconnect them from the system if the frequency drops to a certain value, thus protecting them from damage.[9] Underfrequency set points for load shedding are set above the frequencies at which generators disconnect.[10] This is done to prevent losing additional resources that would exacerbate the imbalance between resources and demand, resulting in further frequency declines. UFLS programs initiate at a specified point to shed the first load block, and if necessary additional load blocks at other lower set points, to arrest system frequency decline prior to the loss of additional resources.[11]

7. Once a frequency threshold [12] is identified, the balance of resources and demand to be maintained to prevent the system from reaching that frequency threshold is determined. UFLS programs use validated models of the power system, which consist of mathematical representations of static (e.g., transformers and transmission lines) and dynamic (e.g., generators and motor loads) components of the power system aggregated to simulate how the system performs during system operations.[13] Models are validated, typically, by comparing actual system operations against simulated system operations to ensure the simulated system operations are within a defined and acceptable margin of tolerance relative to actual system operations. Inaccurate power system models may result in a UFLS program that does not perform as desired, thus undermining the reliability objective of UFLS.

8. A UFLS program is designed to shed sufficient load to arrest system frequency decline without shedding too much load such that frequency increases above 60 Hz. If a UFLS program is not effective, either because of invalid power system models or miscoordination of the UFLS program with entities inside and outside of the intended island, it may not achieve the reliability objective of preventing cascading outages. This, in turn, could further undermine reliability and recovery of the Bulk-Power System during a system emergency.[14]

2. Minimum Amount of Load to Shed

9. The amount of load to disconnect is the amount of load shed at each underfrequency set point, typically expressed in megawatts or percent of system peak load or both.[15]

3. What Load to Shed

10. In addition to determining the amount of load to disconnect based on validated power system models, a UFLS program identifies what loads to shed

[2] *North American Electric Reliability Corp.,* 116 FERC ¶ 61,062, *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).

[3] Electric Power Research Institute, *EPRI Power Systems Dynamics Tutorial,* Chapter 4 at page 4–78 (2009), *available at http://www.epri.com* (EPRI Tutorial).

[4] *Id.*

[5] *Id.*

[6] *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* at 92–93 (2004) (Blackout Report).

[7] UFLS programs are designed to maintain a balance between resources and demand in a defined area (e.g., Interconnection, Regional Entity area, or planning coordinator area).

[8] In Order No. 693–A, the Commission directed NERC to collect the frequency and magnitude of load in UFLS systems. *Mandatory Reliability Standards for the Bulk-Power System,* Order No. 693, FERC Stats. & Regs. ¶ 31,242, *order on reh'g,* Order No. 693–A, 120 FERC ¶ 61,053, at P 145 (2007). NERC submitted a response to this request on February 1, 2008 that included the underfrequency set points and magnitude of load shed in each Regional Entity. NERC, *Response to FERC Supplemental Request for Information on the Status of Underfrequency Load Shedding,* Docket No. RM06–16–000 (filed Feb. 1, 2008).

[9] EPRI Tutorial at page 4–81.

[10] *Id.*

[11] *Id.* at P 4–78, 4–79.

[12] A frequency threshold is a pre-determined frequency that UFLS programs are designed to avoid reaching, as the system may become unstable at this frequency.

[13] *See, e.g.,* PowerTech Labs Inc., *2010 Evaluation and Assessment of Southwest Power Pool (SPP) Under-Frequency Load Shedding Scheme, available at http://www.spp.org/publications/SPP-2010-UFLS-Final.pdf.*

[14] For example, if not enough load is shed to arrest frequency decline, additional resources may disconnect from the Interconnection to prevent damage to generators, and thus system frequency will continue to collapse. Conversely, if too much load is shed, the system frequency could exceed 60 Hz also causing resources to disconnect from the Interconnection to prevent damage to generators. EPRI Tutorial at page 4–78.

[15] EPRI Tutorial at page 4–78.

and their locations. Therefore, in deciding what specific loads to shed, consideration is given to whether the load is critical (e.g., hospitals, police stations, or fire stations). These loads would typically not be included in a UFLS program.

B. Mandatory Reliability Standards

11. 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. Once approved, the Reliability Standards may be enforced by the ERO, subject to Commission oversight, or by the Commission independently.[16]

12. Pursuant to section 215 of the FPA, the Commission established a process to select and certify an ERO [17] and, subsequently, certified NERC as the ERO.[18] On March 16, 2007, the Commission issued Order No. 693, approving 83 of the 107 Reliability Standards filed by NERC, including Reliability Standards PRC–007–0, PRC–009–0, and EOP–003–1.[19] The Commission neither approved nor remanded NERC-approved Reliability Standard PRC–006–0 in Order No. 693.[20]

C. NERC–Approved Reliability Standard

1. PRC–006–0

13. NERC-approved Reliability Standard PRC–006–0 addresses the development of a regional UFLS program that is used as a last resort to preserve islanding operation following a major system event on the Bulk-Power System that could otherwise cause the island system frequency to collapse. PRC–006–0 requires regional reliability organizations to develop, coordinate, document and assess UFLS program design and effectiveness at least every five years. In Order No. 693, the Commission determined neither to approve nor remand this ''fill-in-the-blank'' Reliability Standard because the regional procedures had not been submitted, and the Commission held that it would not propose to approve or remand PRC–006–0 until the ERO submitted the additional information.[21]

D. Currently Effective Reliability Standards

1. PRC–007–0

14. Reliability Standard PRC–007–0 requires transmission owners, transmission operators, load serving entities (LSEs) and distribution providers to provide, and annually update, their underfrequency data to facilitate the regional reliability organization's maintenance of the UFLS program database.

2. PRC–009–0

15. Reliability Standard PRC–009–0 requires that the performance of a UFLS system be analyzed and documented following an underfrequency event by requiring the transmission owner, transmission operator, LSE and distribution provider to document the deployment of their UFLS systems in accordance with the regional reliability organization's program.

3. EOP–003–1

16. Reliability Standard EOP–003–1 addresses load shedding plans and requires that balancing authorities and transmission operators operating with insufficient transmission and/or generation capacity have the capability and authority to shed load rather than risk a failure of the system. It includes requirements to establish plans for automatic load shedding for underfrequency or undervoltage, manual load shedding to respond to real-time emergencies, and communication with other balancing authorities and transmission operators.

II. Proposed Reliability Standards

17. On March 31, 2011, NERC filed a petition seeking Commission approval of proposed Reliability Standards PRC–006–1 and EOP–003–2 and requesting the concurrent retirement of the currently effective Reliability Standards PRC–007–0, PRC–009–0, and EOP–003–1 and NERC-approved Reliability Standard PRC–006–0.[22] NERC requests an effective date for PRC–006–1 and EOP–003–2 of one year following the first day of the first calendar quarter after applicable regulatory approvals with respect to all Requirements of the proposed Reliability Standards *except* Parts 4.1 through 4.6 of Requirement R4 of PRC–006–1. With respect to Parts 4.1 through 4.6 of Requirement R4 of PRC–006–1, NERC requests an effective date of one year following the receipt of generation data as would be required in draft Reliability Standard PRC–024–1 [23] but no sooner than one year following the first day of the first calendar quarter after applicable regulatory approvals of PRC–006–1.

A. PRC–006–1

18. Proposed Reliability Standard PRC–006–1 would apply to planning coordinators, ''UFLS entities,'' [24] and transmission owners that ''own Elements identified in the UFLS program established by the Planning Coordinators.'' NERC states that the primary purpose of the proposed Reliability Standard is the establishment of design and document requirements for UFLS programs that arrest declining frequency and assist recovery of frequency following system events leading to frequency degradation.

19. NERC states that PRC–006–1 satisfies the Commission's criteria, set forth in Order No. 672, for determining whether a proposed Reliability Standard is just, reasonable, not unduly discriminatory or preferential and in the public interest.[25]

20. According to NERC, PRC–006–1 is designed to achieve a specific reliability goal by establishing design and documentation requirements for automatic UFLS programs to arrest declining frequency, assist recovery of frequency following underfrequency events and provide last resort system preservation measures. NERC contends that PRC–006–1 contains a technically sound method to achieve its reliability goal by establishing a framework for developing, designing, assessing and coordinating UFLS programs, and that PRC–006–1 is clear and unambiguous regarding what is required and who is required to comply with the Reliability Standard.

21. NERC states that PRC–006–1 does not reflect ''best practices'' without regard to implementation cost.[26] NERC contends that it achieves a specific reliability goal of establishing design

[16] *See* 16 U.S.C. 824o(e).

[17] *Rules Concerning Certification of the Electric Reliability Organization; and Procedures for the Establishment, Approval and Enforcement of Electric Reliability Standards,* Order No. 672, FERC Stats. & Regs. ¶ 31,204, *order on reh'g,* Order No. 672–A, FERC Stats. & Regs. ¶ 31,212 (2006).

[18] *North American Electric Reliability Corp.,* 116 FERC ¶ 61,062, *order on reh'g & compliance,* 117 FERC ¶ 61,126 (2006), *aff'd sub nom., Alcoa, Inc.* v. *FERC,* 564 F.3d 1342 (D.C. Cir. 2009).

[19] Order No. 693, FERC Stats. & Regs. ¶ 31,242 at P 603.

[20] *Id.* P 1479.

[21] *Id.* P 1477, 1479.

[22] NERC Petition at 1. The proposed new Reliability Standards are not attached to the NOPR. They are, however, available on the Commission's eLibrary document retrieval system in Docket No. RM11–20–000 and are available on the ERO's Web site, *http://www.nerc.com.* Reliability Standards approved by the Commission are not codified in the CFR.

[23] PRC–024–1 addresses ''Generator Performance During Frequency and Voltage Excursions'' and is currently being developed in the NERC standard drafting process.

[24] PRC–006–1 defines ''UFLS entities'' as: ''All entities that are responsible for the ownership, operation, or control of UFLS equipment as required by the UFLS program established by the Planning Coordinators.''

[25] Order No. 672, FERC Stats. & Regs. ¶ 31,204 at P 323–37.

[26] NERC Petition at 24.

and documentation requirements for automatic UFLS programs to arrest declining frequency and assist recovery following underfrequency events, and that UFLS programs provide last resort system preservation measures by shedding load during system disturbances that result in substantial imbalance between load and generation. NERC also maintains that PRC–006–1 does not aim at a ''lowest common denominator'' but instead establishes common performance characteristics that all UFLS programs must meet to effectively protect Bulk-Power System reliability.[27]

22. NERC states that PRC–006–1 does not include any differentiation in requirements based on entity size, though it provides the opportunity for planning coordinators to consider input from smaller entities when developing the UFLS program. NERC further explains that PRC–006–1 would apply throughout North America, with variances for entities within the Western Electricity Coordinating Council (WECC) and the Quebec Interconnections.

23. As proposed by NERC, PRC–006–1 has 14 requirements and 19 sub-requirements, summarized as follows:

Requirement R1: Requires each planning coordinator to develop and document criteria to identify portions of the bulk electric system that may form islands.

Requirement R2: Requires each planning coordinator to identify the islands to serve as a basis for designing its UFLS program. Sub-Requirements 2.1, 2.2, and 2.3 serve as a checklist of items that the entity must consider when identifying islands.

Requirement R3: Requires each planning coordinator to develop a UFLS program, including notification of and a schedule for implementation by the UFLS entities within its area, that meets the specific performance characteristics set forth in sub-Requirements 3.1 through 3.3 in simulations of underfrequency conditions resulting from an imbalance of up to 25 percent within the identified island.

Requirement R4: Requires each planning coordinator to conduct and document a UFLS design assessment at least once every five years that determines through dynamic simulation whether the UFLS program design meets the performance characteristics in Requirement R3 for each island identified in Requirement R2, with sub-Requirements 4.1 through 4.7 specifying items that the simulation must model.

Requirement R5: Requires each planning coordinator to coordinate its UFLS design with all other planning coordinators whose areas or portions of whose areas are also part of the same identified island through specific actions identified in Requirement R5.

Requirement R6: Requires each planning coordinator to maintain a UFLS database containing data necessary to model its UFLS program for use in event analyses and assessments of the UFLS program at least once each calendar year, with no more than 15 months between maintenance activities.

Requirement R7: Requires each planning coordinator to provide its UFLS database to other planning coordinators within its Interconnection within 30 calendar days of request.

Requirement R8: Requires each UFLS entity to provide data to its planning coordinator(s) according to the format and schedule specified by the planning coordinator(s) to support maintenance of the UFLS database.

Requirement R9: Requires each UFLS entity to provide automatic tripping of load in accordance with the UFLS program design and schedule for application determined by its planning coordinator(s) in each planning coordinator area in which it owns assets.

Requirement R10: Requires each transmission owner to provide automatic switching of its existing capacitor banks, transmission lines, and reactors to control overvoltage as a result of underfrequency load shedding if required by the UFLS program and schedule for application determined by the planning coordinator(s) in each planning coordinator area in which the transmission owner owns transmission.

Requirement R11: Requires each planning coordinator, in whose area a bulk electric system islanding event results in system frequency excursions below the initializing set points of the UFLS program, to conduct and document an assessment of the event within one year of event actuation that evaluates the performance of the UFLS equipment (sub-Requirement 11.1), and the effectiveness of the UFLS program (sub-Requirement 11.2).

Requirement R12: Requires each planning coordinator, in whose islanding event assessment (Requirement R11) UFLS program deficiencies are identified, to conduct and document a UFLS design assessment to consider the identified deficiencies within two years of event actuation.

Requirement R13: Requires each planning coordinator, in whose area a bulk electric system islanding event occurred that also included the area(s) or portions of area(s) of other planning coordinator(s) in the same islanding event and that resulted in system frequency excursions below the initializing set points of the UFLS program, to coordinate its event assessment (in accordance with Requirement R11) with all other planning coordinators whose areas or portions of whose areas were also included in the same islanding event by either: (i) Conducting a joint event assessment per Requirement R11 among the planning coordinators whose areas or portions of whose areas were included in the same islanding event; or (ii) conducting an independent event assessment per Requirement R11 that reaches conclusions and recommendations consistent with those of the event assessments of the other planning coordinators whose areas or portions of whose areas were included in the same islanding event; or (iii) conducting an independent event assessment per Requirement R11 and where the assessment fails to reach conclusions and recommendations consistent with those of the event assessments of the other planning coordinators whose areas or portions of whose areas were included in the same islanding event, identifying differences in the assessments that likely resulted in the differences in the conclusions and recommendations and report these differences to the other planning coordinators whose areas or portions of whose areas were included in the same islanding event and to the ERO.

Requirement R14: Requires the planning coordinator to respond to written comments submitted by UFLS entities and transmission owners within its planning coordinator area following a comment period and before finalizing its UFLS program, indicating in the written response to comments whether changes will be made or reasons why changes will not be made to the UFLS program, including a schedule for implementation (sub-Requirement 14.1) and the UFLS design assessment (sub-Requirement 14.2).

B. EOP–003–2

24. Proposed Reliability Standard EOP–003–2 would apply to balancing authorities and transmission operators. NERC states that EOP–003–2 makes minimal changes to EOP–003–1 by removing references to UFLS, which NERC describes as redundant in light of proposed Reliability Standard PRC–006–1, and instead focuses proposed Reliability Standard EOP–003–2 on undervoltage conditions.

[27] *Id.* at 26.

III. Discussion

25. Pursuant to section 215(d)(2) of the FPA, the Commission proposes to approve Reliability Standard PRC–006–1 and EOP–003–1 as just, reasonable, not unduly discriminatory or preferential, and in the public interest. The Commission believes that the UFLS program addressed in the proposed Reliability Standards is important to arresting declining frequency and assisting recovery of frequency following system events that lead to system instability, which can result in a blackout. The Commission finds that the proposed Reliability Standards are necessary for reliability because UFLS is used in extreme conditions to stabilize the balance between generation and load after an electrical island has been formed, dropping enough load to allow frequency to stabilize within the island. Reliability Standard PRC–006–1, in conjunction with the conforming changes to EOP–003–2, provides last resort Bulk-Power System preservation measures by establishing the first national Reliability Standard of common performance characteristics that all UFLS programs must meet. In addition, the Commission proposes to approve the related VRFs and VSLs, implementation plan, and effective date proposed by NERC. Finally, the Commission proposes to approve the retirement of the currently effective Reliability Standards PRC–007–0, PRC–009–0, and EOP–003–1, and the NERC-approved Reliability Standard PRC–006–0.

26. The Commission addresses or seeks comments from the ERO and other interested persons on aspects of the proposed Reliability Standards. Specifically, we address or seek comments on the following issues: (A) Impact of resources not connected to the bulk electric system; (B) validation of power system models used to simulate ULFS programs; (C) scope of UFLS events assessments; (D) impact of generator owner trip settings outside of the UFLS program; (E) UFLS program coordination with other protection systems; (F) identification of island boundaries in UFLS programs; (G) automatic load shedding in PRC–006–1 and manual load shedding in EOP–003–2; (H) elimination of balancing authority responsibilities in EOP–003–2; and (I) the ''Lower VSL'' for Requirement R8 and the ''Medium'' VRF for Requirement R5 of PRC–006–1. These issues also apply to the corresponding Requirements in the requested regional variance for WECC in PRC–006–1.

A. Impact of Resources Not Connected to Bulk Electric System Facilities

27. As described above, UFLS programs are designed to maintain balance between resources and load in a defined area (e.g., an Interconnection, Regional Entity area, or planning coordinator area). When a resource is lost, load exceeds supply causing frequency to decrease below its scheduled value (e.g., 60 Hz in the United States). Conversely, a loss of load or excess supply can result in higher frequencies than scheduled, resulting in an overfrequency condition. As a last resort, UFLS programs are initiated during extreme underfrequency conditions to reestablish balance by shedding load at predetermined frequencies and times to prevent system-wide blackouts.

28. Requirement R2 of PRC–006–1 requires planning coordinators to identify islands to serve as a basis for designing UFLS programs. Requirement R3 addresses performance characteristics for UFLS programs. Requirement R4 requires each planning coordinator to conduct and document the assessment of its UFLS design and determine if the UFLS program meets the performance characteristics in Requirement R3 for each island identified in Requirement R2.

29. The simulations outlined in Requirement R4 all concern individual generating units greater than 20 MVA gross nameplate rating or generating plants/facilities greater then 75 MVA ''connected to the bulk electric system.'' However, some generation that meets the 20 MVA and 75 MVA criteria is not connected to bulk electric system facilities. Accordingly, those resources not connected to bulk electric system facilities would not be modeled pursuant to Requirement R4. However, a resource not connected to the bulk electric system may serve load designed to be shed in a UFLS program. The Commission is concerned that failure to account for resources not connected to the bulk electric system in a planning coordinator's UFLS program could result in the planning coordinator being unaware of how such resources respond to underfrequency conditions. If the planning coordinator is unaware of how these facilities have responded, it may plan to shed more load than is required for an area's frequency to return to normal. This could lead to an unintended overfrequency condition if the plan is carried out in the operating timeframe. These conditions, in turn, could lead the plan to violate the performance characteristics specified in Requirement R3.

30. The performance characteristics identified in Requirement R3 provide acceptable parameters for developing UFLS programs that are designed to restore balance between resources and load. However, the Commission is concerned that generation resources or facilities that are not connected to the bulk electric system may not be considered during the development of UFLS programs.

31. The Commission seeks comments from the ERO and other interested persons as to whether and how all resources required for the reliable operation of the bulk electric system, including resources not connected to bulk electric system facilities, are considered in the development of UFLS programs under Requirements R3 and R4.

B. Validation of Power System Models

32. Power systems consist of static components (e.g., transformers and transmission lines) and dynamic components (e.g., generators and motor loads). Mathematical representations of these components are aggregated to create an area's power system model. Power system planners [28] and system operators base decisions on simulations, both static and dynamic, using area power system models to meet requirements in both Commission-approved planning and operational Reliability Standards.[29]

33. Requirements R4 and R11 of PRC–006–1 require applicable entities to use dynamic simulations to design and assess the effectiveness of UFLS programs. As previously discussed, UFLS programs are designed to provide last resort system preservation measures by: (1) Arresting declining frequency; and (2) assisting recovery of frequency following underfrequency events. Dynamic simulations that do not accurately represent the power system can result in an UFLS program that is ineffective.

34. The Commission believes that the UFLS program design requirements established in Requirement R2 and the required assessments established in Requirements R4 and R11 of PRC–006–1 are generally acceptable and include improvements above the current Reliability Standards. Accordingly, the Commission believes that the language in the proposed Requirements is appropriate.

[28] Power system planners may include functional entities such as transmission planners and planning coordinators.

[29] *See, e.g.,* Reliability Standards MOD–010–0, MOD–012–0 and TOP–002–2a, Requirement R19.

C. UFLS Event Assessments

1. Assessments in the Absence of Island Formation

35. Requirement R11 of PRC–006–1 requires planning coordinators to conduct assessments after a ''BES islanding event results in system frequency excursion below the initializing set points of the UFLS program.'' The Commission is concerned whether the phrase ''BES islanding event'' could be interpreted to mean that a planning coordinator only has to assess an event if it meets both of the following requirements: (1) System frequency excursions fall below the initializing set point for UFLS; and (2) bulk electric system islands form within the Interconnection. If the frequency falls below the initializing UFLS set point but islands do not form (e.g., because the event was not severe enough to isolate portions of the Interconnection, or UFLS or other protection systems failed to operate properly to form islands), an assessment of the performance of the UFLS program for this event is still useful because it can determine if the UFLS program operated as expected.

36. The Commission seeks clarification from the ERO regarding what actions must planning coordinators take under Requirement R11 if an event results in system frequency excursions falling below this initializing set point for UFLS but without the formation of a bulk electric system island.

2. Coordination of Assessments and Results

37. Requirements R5 and R13 of PRC–006–1 require planning coordinators that share identified islands to coordinate UFLS program design and event assessment. The options for coordinating designs of UFLS programs in Requirement R5 include: (1) Developing a common program; (2) conducting a joint UFLS design assessment among the planning coordinators whose area or portions of whose areas are part of the same identified island; or (3) conducting an independent design assessment and, in the event the UFLS design assessment fails to meet Requirement R3, identify modifications to the UFLS program(s) to meet Requirement R3 and report these modifications as recommendations to the other planning coordinators.

38. The options for coordinating event assessments in Requirement R13 include: (1) Conducting a joint event assessment per Requirement R11 among planning coordinators whose areas were affected; (2) conducting an independent event assessment per Requirement R11 that reaches conclusions and recommendations consistent with other planning coordinators whose areas were affected; or (3) conducting an independent event assessment per Requirement R11 and where the assessment fails to reach conclusions and recommendations consistent with those of the other planning coordinators whose areas were affected by the same islanding event, identify differences in the assessments and report these differences to the other affected planning coordinators. The Commission seeks comments from the ERO and other interested persons as to whether the differences should be subsequently reported to the reliability coordinator for resolution in the event that the process does not resolve differences in the assessments.

39. The Commission believes that Requirements R5 and R13 provide flexibility in coordinating UFLS design programs and event assessments among planning coordinators whose areas fall within the same island or whose areas are affected by the same event. Accordingly, the Commission believes that the language in the proposed Requirements is appropriate.

3. Assessment Timeline for Completion

40. Requirement R11 of Reliability Standard PRC–006–1 requires a planning coordinator to perform an island event assessment within one year of an event. If the planning coordinator identifies program deficiencies, Requirement R12 requires the planning coordinator to conduct and document UFLS design assessments, which are meant to consider the deficiencies, within two years of an event. The Commission is concerned that this time frame may be too long since it appears that island event assessments and consideration of deficiencies could reasonably be conducted in a much shorter time frame. Under NERC's proposal, deficiencies could remain within a UFLS program for two years from an event exposing the Bulk-Power System to instability, uncontrolled separation and cascading outages should a frequency event occur that the UFLS program mishandles. NERC provided no explanation of its basis for the proposed two-year time frame.

41. The Commission asks the ERO and other interested persons what the basis is for proposing a two-year time frame. In addition, the Commission seeks clarification from the ERO as to how soon after event actuation would an entity need to implement corrections in response to any deficiencies identified in the event assessment under Requirement R11.

D. Generator Owner Trip Settings Outside of the UFLS Program

42. Requirements 4.1 through 4.7 of Reliability Standard PRC–006–1 are intended to capture the effects of generators that trip prior to UFLS initiation. As previously discussed, a generator trip normally creates an imbalance between resources and load causing system frequency to decline. Some generators may need to disconnect from the system prior to reaching underfrequency set points to protect their components from permanent damage. If this loss occurs during a system event, the generator can no longer provide a response to assist in arresting frequency decline. This resource loss also counteracts the response provided by other resources to arrest frequency decline, increasing the likelihood of instability, uncontrolled separation, and cascading outages.

43. We agree that planning coordinators should consider generators that trip prior to underfrequency set points when developing their UFLS programs. The Commission seeks comments from the ERO and other interested persons on how generation losses outside of the UFLS set points (i.e., generators having trip settings prior to the UFLS underfrequency set points) should be accounted for in UFLS programs (e.g., generator owners who trip outside of the UFLS set points could procure load to shed to account for the loss in generation).

E. UFLS Program Coordination With Other Protection Systems

44. Recommendation 21C of the Blackout Report addresses the coordination of protection systems.[30] The recommendation states that NERC shall ''determine the goals and principles needed to establish an integrated approach to relay protection for generators and transmission lines and the use of underfrequency and undervoltage load shedding (UFLS and UVLS) programs. An integrated approach is needed to ensure that at the local and regional levels, these interactive components provide an appropriate balance of risks and benefits in terms of protecting specific assets and facilitating overall grid survival.'' [31] Accordingly, an integrated approach requires coordination of all types of protection systems (e.g., UFLS, UVLS), internally and externally to an entity's

[30] Blackout Report at 159.

[31] *Id.*

area, to be responsive to the Blackout Report.

45. While PRC–006–1 requires coordination of UFLS programs among planning coordinators in Requirements R5, R7, and R13, it does not appear to capture the same level of coordination with other protection systems as in Requirement R1.2.8 of PRC–006–0.[32] The Commission seeks comments from NERC and other interested persons on whether and how coordination with other protection systems is or is not achieved under the new requirements.

F. Identification of Island Boundaries

46. Requirement R1 of PRC–006–1 directs planning coordinators to develop criteria to select areas that may form islands based on historical events and system studies. Historical events and system studies provide planning coordinators with the data necessary to determine where islands will occur based on the physics of the system. Requirement R2.3 clarifies that islands identified in Requirement R1, which span two or more Regional Entity areas, should be broken up such that each Regional Entity area forms an island. Requirement R2.3 allows planning coordinators to ''adjust the island boundaries to differ from the Regional Entity area boundaries by mutual consent where necessary'' to preserve contiguous island boundaries that better reflect simulations. The Commission agrees that identifying island boundaries based on where they are likely to occur due to system characteristics, as opposed to maintaining rigid Regional Entity area boundaries, should result in more effective UFLS programs. Accordingly, the Commission encourages cooperation among entities to create UFLS programs that set island boundaries based on where separations are expected to occur during an underfrequency event.

47. In its petition, NERC states that the Requirements allow planning coordinators to ''select islands including interconnected portions of the bulk electric system in adjacent Planning Coordinator areas and Regional Entity areas, without the need for coordinating this selection with Planning Coordinators in neighboring regions.'' [33] Requirement R2.3 of PRC–006–1, however, requires ''mutual consent'' to adjust island boundaries from Regional Entity boundaries. The Commission seeks clarification from the ERO concerning the required degree of cooperation and/or ''mutual consent'' between planning coordinators under the proposed Reliability Standard in order for island boundaries to be set so that, while deviating from Regional Entity boundaries, they better approximate actual island separation boundaries.

G. Automatic Load Shedding and Manual Load Shedding

48. Proposed Reliability Standard PRC–006–1 requires automatically shedding predetermined amounts of load if frequency declines to the UFLS set point in order to rebalance resources and demand and prevent frequency decline that might cause instability, uncontrolled separation, or cascading outages. Proposed Reliability Standard EOP–003–2 requires manual load shedding plans, which may be employed in addition to the automatic load shedding in the UFLS program, or to mitigate other reliability issues. If load allocated to be shed automatically is also planned for manual load shedding, then that load resource would be double-counted. Once load is disconnected from the system, either automatically or manually, it cannot be used again to arrest frequency decline. In the event that a load resource is double-counted and removed during automatic UFLS, the manual load shedding cannot be completed if called upon. Even if additional load is located and shed to compensate for this missing load, the system would be put into an un-studied state and could have unpredicted, negative responses. Accordingly, resources allocated to each type of load shedding (i.e., automatic and manual) should not overlap.

49. There are no requirements in PRC–006–1 to coordinate automatic load shedding by UFLS and manual load shedding under EOP–003–2. The Commission seeks comments from the ERO and other interested persons on how the coordination of automatic and manual load shedding is considered in light of the fact that the proposed Reliability Standards do not explicitly require coordination.

H. Elimination of Requirements for Balancing Authorities in EOP–003–2

50. Requirements R2, R4, and R7 of the currently-effective Reliability Standard EOP–003–1 apply to transmission operators and balancing authorities. Proposed Reliability Standard EOP–003–2 proposes to eliminate balancing authorities from Requirements R2, R4, and R7.

51. Under the proposed modification, balancing authorities would no longer: (i) Establish plans for automatic load shedding for underfrequency or undervoltage conditions (Requirement R2); (ii) consider factors (including frequency, rate of frequency decay, voltage level, rate of voltage decay, or power flow levels) in designing an automatic undervoltage load shedding scheme (Requirement R4); and (iii) coordinate automatic load shedding throughout its area with underfrequency isolation of generating units, tripping of shunt capacitors, and other automatic actions that will occur under abnormal frequency, voltage, or power flow conditions (Requirement R7). In its petition, NERC explains that balancing authorities were deleted from Requirements R2 and R4 ''because the frequency related aspects of these requirements were removed, leaving only consideration of automatic undervoltage load shedding in these two requirements.'' [34] NERC's petition, however, does not explain why balancing authorities were removed from Requirement R7. Moreover, given that balancing authorities would no longer be subject to Requirements R2, R4, and R7 of EOP–003–2 and are not listed as applicable entities in PRC–006–1, the proposed Reliability Standards do not preserve these existing balancing authority responsibilities.

52. The Commission seeks clarification from the ERO as to why these existing balancing authority responsibilities were not incorporated into Reliability Standards PRC–006–1 or EOP–003–2. The Commission also seeks comments from the ERO and other interested persons as to why balancing authorities should not be informed of UFLS program plans that directly impact balancing authority functions.

I. Violation Risk Factors and Violation Severity Levels

53. NERC states that each primary requirement in PRC–006–1 and EOP–003–2 is assigned a Violation Risk Factor (VRF) and Violation Severity Level (VSL) and that these elements support the determination of an initial value range for the Base Penalty Amount regarding violations of requirements in Commission-approved Reliability Standards, as defined in the ERO Sanction Guidelines.

54. The Commission proposes to approve the VRFs and VSLs in PRC–006–1 and EOP–003–2. However, the Commission seeks comments from the ERO and other interested persons regarding one proposed VSL and one proposed VRF for PRC–006–1.

55. The ''Lower VSL'' assignment for Requirement R8 in PRC–006–1 applies

[32] Requirement 1.2.8 of PRC–006–0 encompasses ''[a]ny other schemes that are part of or impact the UFLS program.''

[33] NERC Petition at 75–76.

[34] NERC Petition at 42.

when a UFLS entity fails to provide data to its planning coordinator for 5 to 10 calendar days following the schedule specified by the planning coordinator. Requirement R8 of PRC–006–1 does not include a 5-day grace period for providing data to planning coordinators. Accordingly, the subject VSL assignment may be inconsistent with the Commission's VSL Guideline 3. The guideline states that a VSL ''should not appear to redefine or undermine the requirement.'' [35] The five-day grace period implicit in the proposed VSL appears to be inconsistent with this guideline. In addition, the proposed VSL creates a compliance issue. Specifically, it is unclear where a UFLS entity falls in the VRF and VSL matrices if it fails to provide data to its planning coordinator within 1 to 5 days of its scheduled date.

56. The VRF for Requirement R5, which requires planning coordinators to coordinate their UFLS program design with other planning coordinators whose area is in part of the same identified island, is proposed as ''Medium.'' NERC states that Requirement R5 is ''not related to similar reliability goals in other standards.'' [36] However, coordination of load shedding plans is required in a similar manner in Requirement R3 of currently effective Reliability Standard EOP–003–1,[37] which includes a VRF of ''High.'' The lack of coordination of UFLS programs among planning coordinators within the same identified island could lead to ineffective UFLS operations and further cascading outages within the island when UFLS is activated.

57. Guideline 3 of the Commission's VRF Guidelines states that ''[a]bsent justification to the contrary, the Commission expects the assignment of Violation Risk Factors corresponding to Requirements that address similar reliability goals in different Reliability Standards would be treated comparably.'' [38] The Commission seeks clarification from the ERO why coordination of load shedding plans is a ''High'' VRF for transmission operators and balancing authorities in EOP–003–2 but NERC proposes a ''Medium'' VRF for planning coordinators in, PRC–006–1.

J. Implementation Plan and Effective Date

58. NERC requests an effective date for PRC–006–1 and EOP–003–2 of one year following the first day of the first calendar quarter after applicable regulatory approvals with respect to all Requirements of the proposed Reliability Standards except Parts 4.1 through 4.6 of Requirement R4 of PRC–006–1. With respect to Parts 4.1 through 4.6 of Requirement R4 of PRC–006–1, NERC requests an effective date of one year following the receipt of generation data as required in Reliability Standard PRC–024–1,[39] but no sooner than one year following the first day of the first calendar quarter after applicable regulatory approvals of PRC–006–1.

59. NERC contends that the proposed implementation plan is not excessively long and allows sufficient time for entities to transition and install the necessary processes to become compliant. NERC maintains that the one year phase-in for compliance provides planning coordinators sufficient time: (1) To develop, modify, or validate (to determine that an existing program meets required performance characteristics) existing UFLS programs; and (2) to establish a schedule for implementation, or validate a schedule for completion of program revisions already in progress. Moreover, NERC states that transmission owners and distribution providers will comply with the schedule determined by planning coordinators but no sooner than the effective date of the standard.

60. The Commission proposes to accept the implementation plan and effective date proposed by the ERO for PRC–006–1 and EOP–003–2. However, the Commission seeks comments from the ERO and other interested persons about any potential reliability gaps that may occur during the development and implementation of PRC–024–1, such as how the planning coordinators will adequately determine and apply UFLS simulations and plans in the absence of generator trip settings.

IV. Information Collection Statement

61. The Office of Management and Budget (OMB) regulations require that OMB approve certain reporting and recordkeeping (collections of information) imposed by an agency.[40] Upon approval of a collection(s) of information, OMB will assign an OMB control number and 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.

62. The Commission is submitting these reporting and recordkeeping requirements to OMB for its review and approval under section 3507(d) of PRA. Comments are solicited on the Commission's need for this information, whether the information will have practical utility, the accuracy of provided burden estimate, 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.

63. This Notice of Proposed Rulemaking proposes to approve Reliability Standards PRC–006–1 and EOP–003–2, which would replace currently effective Reliability Standards PRC–007–0, PRC–009–0, EOP–003–1 and NERC-approved Reliability Standard PRC–006–0.[41] As noted previously, Reliability Standard PRC–006–0 was never approved by the Commission, and therefore has never been mandatory and enforceable. On the other hand, Reliability Standards PRC–007–0 and PRC–009–0 were approved by the Commission and are currently mandatory and enforceable. Because Proposed Reliability Standard PRC–006–1 incorporates the requirements from Reliability Standards PRC–006–0, PRC–007–0, and PRC–009–0 some of the existing requirements will become mandatory and enforceable (where previously they were voluntary), while others continue to be so. To properly account for the burden on respondents, the Commission will treat the burden resulting from NERC-approved Reliability Standard PRC–006–0 as essentially new to the industry, even though it is likely that most applicable entities have already been complying.[42]

64. The reporting requirements in proposed Reliability Standard EOP–

[35] *North American Electric Reliability Corp.,* 123 FERC ¶ 61,284, at P 32 (2008).

[36] NERC Petition at 46.

[37] Proposed Reliability Standard EOP–003–2 includes the same VRF assignment of ''High'' for Requirement R3.

[38] *North American Electric Reliability Corp.,* 119 FERC ¶ 61,145, at P 25 (2007).

[39] PRC–024–1 addresses ''Generator Performance During Frequency and Voltage Excursions'' and is currently being developed in the NERC standard drafting process under Project 2007–09 (Generator Verification), which is one of NERC's priority projects.

[40] 5 CFR 1320.11.

[41] PRC–006–0 was not approved by the Commission but remained effective as a NERC-approved standard (but not mandatory or enforceable). The other three standards were approved by the Commission. *Mandatory Reliability Standards for the Bulk-Power System,* Order No. 693, FERC Stats. & Regs. ¶ 31,242, *order on reh'g,* Order No. 693–A, 120 FERC ¶ 61,053 (2007).

[42] This statement is made because currently effective Reliability Standards PRC–007–0 and PRC–009–0 required UFLS entities to follow the UFLS program implemented by Reliability Standard PRC–006–0. Therefore, it is likely that entities have already been following the requirements contained in Reliability Standard PRC–006–0.

003–2 are virtually the same as those in currently effective Reliability Standard EOP–003–1. The difference is that proposed Reliability Standard EOP–003–2 proposes to eliminate balancing authorities from Requirements R2 and from Measure M1.[43] This requirement and measure deal with establishing and documenting automatic load shedding plans.

65. *Public Reporting Burden:* Our estimate below regarding the number of respondents is based on the NERC compliance registry as of 7/29/11. According to the NERC compliance registry, there are 72 planning coordinators and 126 balancing authorities. The individual burden estimates are based on the time needed to gather data, run studies, and analyze study results to design or update the UFLS programs. Additionally, documentation and the review of UFLS program results by supervisors and management is included in the administrative estimations. These are consistent with estimates for similar tasks in other Commission approved standards.

PRC–006–1 (Automatic underfrequency load shedding)[44]	Number of respondents annually (1)	Number of responses per respondent (2)	Average burden hours per response (3)		Total annual burden hours (1)x(2)x(3)
PCs*: Design and document Automatic UFLS Program	72	1	120		8,640
PCs: Management Review of Documentation			40		2,880
PCs: Record Retention			16		1,152
Total					12,672
EOP–003–2 (Load Shedding Plans)[45]					
Removal of BAs* from Reporting Requirements in R2 and M1 (Burden Reduction)	126	1	Reporting	−10	−1260
			Record Retention	−1	−126
Total					−1,386
Net Change in Burden					11,286

*PC = Planning Coordinator; BA = Balancing Authority.

Total Annual Hours for Collection: (Compliance/Documentation) = 11,286 hours.

Total Reporting Cost for Planning Coordinators: = 11,520 hours @ $120/hour = $1,382,400.

Total Record Retention Cost for Planning Coordinators: 1,152 hours @ $28/hour = $32,256.

Total Reporting and Record Retention Cost Savings for Balancing Authorities: = (1,260 hours @ $120/hour) + (126 hours @ $28/hour) = $154,728.

Total Annual Cost (Reporting + Record Retention)[46]: = $1,414,656 − $154,728 = $1,259,928.

Title: Mandatory Reliability Standards for the Bulk-Power System.

Action: Proposed Collection FERC–725A.

OMB Control No.: 1902–0244.

Respondents: Businesses or other for-profit institutions; not-for-profit institutions.

Frequency of Responses: On occasion.

Necessity of the Information: This proposed rule proposes to approve the requested modifications to Reliability Standards pertaining to automatic underfrequency load shedding. The proposed Reliability Standards help ensure the reliable operation of the bulk electric system by arresting declining frequency and assisting recovery of frequency following system events leading to frequency degradation.

Internal Review: The Commission has reviewed the proposed Reliability Standards and made a determination that its action is necessary to implement section 215 of the FPA. These requirements, if accepted, should conform to the Commission's expectation for UFLS programs as well as procedures within the energy industry.

66. 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:* Ellen Brown, Office of the Executive Director, *e-mail: DataClearance@ferc.gov, phone:* (202) 502–8663, *fax:* (202) 273–0873].

67. For submitting comments concerning the collection(s) of information and the associated burden estimate(s), please send your comments to the Commission and to the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503 [*Attention:* Desk Officer for the Federal Energy Regulatory Commission, *phone:* (202) 395–4638, *fax:* (202) 395–7285]. For security reasons, comments to OMB should be submitted by e-mail to: *oira_submission@omb.eop.gov.* Comments submitted to OMB should include Docket Number RM11–20 and OMB Control Number 1902–0244.

V. Environmental Analysis

68. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement

[43] Balancing authorities are also removed from Requirements R4 and R7, but these do not have reporting requirements associated with them.

[44] Proposed Reliability Standard PRC–006–1 applies to both planning coordinators and to UFLS entities. However, the burden associated with the UFLS entities is not new because it was accounted for under Commission approved Reliability Standards PRC–007–0 and PRC–009–0.

[45] Transmission operators also have to comply with Reliability Standard EOP–003–2 but since the applicable reporting requirements (and associated burden) have not changed from the existing standard to the proposed standard these entities are not included here.

[46] The hourly reporting cost is based on the cost of an engineer to implement the requirements of the rule. The record retention cost comes from Commission staff research on record retention requirements.

for any action that may have a significant adverse effect on the human environment.[47] The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment. Included in the exclusion are rules that are clarifying, corrective, or procedural or that do not substantially change the effect of the regulations being amended.[48] The actions proposed here fall within this categorical exclusion in the Commission's regulations.

VI. Regulatory Flexibility Act Certification

69. The Regulatory Flexibility Act of 1980 (RFA)[49] generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. The RFA mandates consideration of regulatory alternatives that accomplish the stated objectives of a proposed rule and that minimize any significant economic impact on a substantial number of small entities. The Small Business Administration's (SBA) Office of Size Standards develops the numerical definition of a small business.[50] The SBA has established a size standard for electric utilities, stating that a firm is small if, including its affiliates, it is primarily engaged in the transmission, generation and/or distribution of electric energy for sale and its total electric output for the preceding twelve months did not exceed four million megawatt hours.[51]

70. Proposed Reliability Standard PRC–006–1 proposes to establish design, assessment, and documentation requirements for automatic UFLS program. It will be applicable to planning coordinators and entities that are responsible for the ownership, operation, or control of UFLS equipment. Proposed Standard EOP–003–2 proposes to remove balancing authorities from having to comply with R2 and M1 of the standard. Comparison of the NERC compliance registry with data submitted to the Energy Information Administration on Form EIA–861 indicates that perhaps as many as 8 small entities are registered as planning coordinators and 18 small entities are registered as balancing authorities. The Commission estimates that the small planning coordinators to whom the proposed Reliability Standard will apply will incur compliance and recordkeeping costs of $157,184 ($19,648 per planning coordinator) associated with the Standard's requirements. The small balancing authorities will receive a savings of $154,728 ($8,596 per balancing authority). Accordingly, proposed Reliability Standards PRC–006–1 and EOP–003–2 should not impose a significant operating cost increase or decrease on the affected small entities.

71. Based on this understanding, the Commission certifies that these Reliability Standards will not have a significant economic impact on a substantial number of small entities. Accordingly, no regulatory flexibility analysis is required.

VII. Comment Procedures

72. 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 December 27, 2011. Comments must refer to Docket No. RM11–20–000, and must include the commenter's name, the organization they represent, if applicable, and their address in their comments.

73. 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.

74. Commenters that are not able to file comments electronically must send an original of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, NE., Washington, DC 20426.

75. 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

76. 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 the Commission's Home Page (*http://www.ferc.gov*) and in the Commission'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.

77. From the Commission'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.

78. User assistance is available for eLibrary and the Commission's Web site during normal business hours from the Commission's 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 40

Electric power; Electric utilities; Reporting and recordkeeping requirements.

By direction of the Commission. Commissioner Spitzer is not participating.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–27625 Filed 10–25–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 40

[Docket No. RM11–18–000]

Transmission Planning Reliability Standards

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed rulemaking.

SUMMARY: Transmission Planning (TPL) Reliability Standards are intended to ensure that the transmission system is planned and designed to meet an appropriate and specific set of reliability criteria. Reliability Standard TPL–002–0a references a table which identifies different categories of contingencies and allowable system impacts in the planning process. The table includes a footnote regarding planned or controlled interruption of electric supply where a single contingency occurs on a transmission system. North American Electric Reliability Corporation (NERC), the Commission-certified Electric

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[47] Order No. 486, *Regulations Implementing the National Environmental Policy Act of 1969,* FERC Stats. & Regs., Regulations Preambles 1986–1990 ¶ 30,783 (1987).

[48] 18 CFR 380.4(a)(2)(ii).

[49] 5 U.S.C. 601–612.

[50] 13 CFR 121.101.

[51] 13 CFR 121.201, Sector 22, Utilities & n.1.

Reliability Organization, requests approval of a revision to the footnote. In this notice, the Commission proposes to remand NERC's proposed revision to the footnote.

DATES: Comments are due December 27, 2011.

ADDRESSES: You may submit comments, identified by docket number 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 comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT:

Robert T. Stroh (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, *Telephone:* (202) 502–8473.

Eugene Blick (Technical Information), Office of Electric Reliability, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, *Telephone:* (202) 502–8066.

SUPPLEMENTARY INFORMATION:

Notice of Proposed Rulemaking

October 20, 2011.

1. On March 31, 2011, the North American Electric Reliability Corporation (NERC) filed a petition seeking approval of Table 1, footnote 'b' of four Reliability Standards: Transmission Planning: TPL–001–1—System Performance Under Normal (No Contingency) Conditions (Category A), TPL–002–1b—System Performance Following Loss of a Single Bulk Electric System Element (Category B), TPL–003–1a—System Performance Following Loss of Two or More Bulk Electric System Elements (Category C), and TPL–004–1– System Performance Following Extreme Events Resulting in the Loss of Two or More Bulk Electric System Elements (Category D).[1] Pursuant to section 215(d)(4) of the Federal Power Act (FPA)[2], the Commission proposes to remand the proposed Table 1, footnote b. As discussed below, the Commission believes that the proposed Reliability Standard does not meet the statutory criteria for approval that it be just, reasonable, not unduly discriminatory or preferential, and in the public interest.[3] The Commission seeks comments on its proposal.

I. Background

2. Section 215 of the FPA requires a Commission-certified Electric Reliability Organization (ERO) to develop mandatory and enforceable Reliability Standards, which are subject to Commission review and approval. Approved Reliability Standards are enforced by the ERO, subject to Commission oversight, or by the Commission independently.

3. Pursuant to section 215 of the FPA, the Commission established a process to select and certify an ERO[4] and, subsequently, certified NERC as the ERO.[5] On March 16, 2007, the Commission issued Order No. 693, approving 83 of the 107 Reliability Standards filed by NERC, including Reliability Standard TPL–002–0, Table 1, footnote 'b.'[6] In addition, pursuant to section 215(d)(5) of the FPA,[7] the Commission directed NERC to develop modifications to 56 of the 83 approved Reliability Standards, including footnote 'b' of Reliability Standard TPL–002–0.[8]

A. Transmission Planning (TPL) Reliability Standards

4. Currently-effective Reliability Standard TPL–002–0a addresses Bulk-Power System planning and related system performance for single element contingency conditions. Requirement R1 of TPL–002–0a requires that each Planning Authority and Transmission Planner ''demonstrate through a valid assessment that its portion of the interconnected transmission system is planned such that the Network can be operated to supply projected customer demands and projected Firm Transmission Services, at all demand levels over the range of forecast system demands, under the contingency conditions as defined in Category B of Table I.''[9] Table I identifies different categories of contingencies and allowable system impacts in the planning process. With regard to system impacts, Table I further provides that a Category B (single) contingency must not result in cascading outages, loss of demand or curtailed firm transfers, system instability or exceeded voltage or thermal limits. With regard to the clause regarding loss of demand, current footnote 'b' of Table 1 states:

> Planned or controlled interruption of electric supply to radial customers or some local Network customers, connected to or supplied by the Faulted element or by the affected area, may occur in certain areas without impacting the overall reliability of the interconnected transmission systems. To prepare for the next contingency, system adjustments are permitted, including curtailments of contracted Firm (non-recallable reserved) electric power Transfers.

B. Order No. 693 Directive

5. In Order No. 693, the Commission stated that it believes that the transmission planning Reliability Standard should not allow an entity to plan for the loss of non-consequential firm load in the event of a single contingency.[10] The Commission directed the ERO to develop certain modifications, including a clarification of Table 1, footnote 'b'. The Commission stated that:

> Based on the record before us, we believe that the transmission planning Reliability Standard should not allow an entity to plan for the loss of non-consequential load in the event of a single contingency. The Commission directs the ERO to clarify the Reliability Standard. Regarding the comments of Entergy and Northern Indiana that the Reliability Standard should allow entities to plan for the loss of firm service for a single contingency, the Commission finds that their comments may be considered through the Reliability Standards development process. However, we strongly discourage an approach that reflects the lowest common denominator. The Commission also clarifies that an entity may seek a regional difference to the Reliability Standard from the ERO for case-specific circumstances.[11]

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[1] While footnote 'b' appears in all four of the above referenced TPL Reliability Standards, its relevance and practical applicability is limited to TPL–002–0a.

[2] 18 U.S.C. 824o(d)(4) (2006).

[3] 16 U.S.C. 824o(d)(2) (2006).

[4] *Rules Concerning Certification of the Electric Reliability Organization; and Procedures for the Establishment, Approval and Enforcement of Electric Reliability Standards,* Order No. 672, FERC Stats. & Regs. ¶ 31,204, *order on reh'g,* Order No. 672–A, FERC Stats. & Regs. ¶ 31,212 (2006).

[5] *North American Electric Reliability Corp.,* 116 FERC ¶ 61,062, *order on reh'g & compliance,* 117 FERC ¶ 61,126 (2006), *aff'd sub nom., Alcoa, Inc.* v. *FERC,* 564 F.3d 1342 (D.C. Cir. 2009).

[6] *Mandatory Reliability Standards for the Bulk-Power System,* Order No. 693, FERC Stats. & Regs. ¶ 31,242, *order on reh'g,* Order No. 693–A, 120 FERC ¶ 61,053 (2007).

[7] 16 U.S.C. 824o(d)(5)(2006).

[8] Order No. 693, FERC Stats & Regs. ¶ 31,242 at P 1797.

[9] Reliability Standard TPL–002–0a, Requirement R1.

[10] *See* Order No. 693, FERC Stats. & Regs. ¶ 31,242 at P 1794. Non-consequential load loss includes the removal, by any means, of any planned firm load that is not directly served by the elements that are removed from service as a result of the contingency. Currently-effective footnote 'b' deals with both consequential load loss and non-consequential load loss. NERC's proposed footnote 'b' characterizes both types of load loss as ''Firm Demand.'' The focus of this NOPR is NERC's proposed treatment of non-consequential load loss or planned interruption of ''Firm Demand.''

[11] Order No. 693, FERC Stats. & Regs. ¶ 31,242 at P 1794 (footnotes omitted).

6. In a subsequent clarifying order, the Commission stated that it believed that a regional difference, or a case-specific exception process that can be technically justified, to plan for the loss of firm service ''at the fringes of various systems'' would be an acceptable approach in limited circumstances.[12] Specifically, the Commission clarified that:

> Moreover, the Commission, in * * * Order No. 693, then provided a clarification that an entity may seek a regional difference to the Reliability Standard from the ERO for case-specific circumstances. We believe that a regional difference, or a case-specific exception process that can be technically justified, to plan for the loss of firm service ''at the fringes of various systems'' would be an acceptable approach. Thus, the Commission did not dictate a single solution as NERC and others now claim. In any event, NERC must provide a strong technical justification for its proposal.[13]

C. NERC's Petition for Approval of TPL–002–0a, Footnote b

7. On March 31, 2011, NERC filed a petition seeking approval of its proposal to revise and clarify footnote 'b' ''in regard to load loss following a single contingency.'' [14] NERC stated that it did not eliminate the ability of an entity to plan for the loss of non-consequential load in the event of a single contingency but drafted a footnote that, according to NERC, ''meets the Commission's directive while simultaneously meeting the needs of industry and respecting jurisdictional bounds.'' [15] NERC states that its proposed footnote 'b' establishes the requirements for the limited circumstances when and how an entity can plan to interrupt Firm Demand for Category B contingencies. It allows for planned interruption of Firm Demand when ''subject to review in an open and transparent stakeholder process.'' [16] NERC's proposed footnote 'b' states:

> An objective of the planning process should be to minimize the likelihood and magnitude of interruption of firm transfers or Firm Demand following Contingency events. Curtailment of firm transfers is allowed when achieved through the appropriate redispatch of resources obligated to re-dispatch, where it can be demonstrated that Facilities, internal and external to the Transmission Planner's planning region, remain within applicable Facility Ratings and the re-dispatch does not result in the shedding of any Firm Demand. It is recognized that Firm Demand will be interrupted if it is: (1) Directly served by the Elements removed from service as a result of the Contingency, or (2) Interruptible Demand or Demand-Side Management Load. Furthermore, in limited circumstances Firm Demand may need to be interrupted to address BES performance requirements. When interruption of Firm Demand is utilized within the planning process to address [Bulk Electric System] performance requirements, such interruption is limited to circumstances where the use of Demand interruption are documented, including alternatives evaluated; and where the Demand interruption is subject to review in an open and transparent stakeholder process that includes addressing stakeholder comments.

D. Supplemental Information

8. On June 7, 2011, in response to a Commission deficiency letter, NERC explained that ''the approach proposed in footnote 'b' is equally efficient because many of the stakeholder processes that will be used in footnote 'b' planning decisions are already in place, as implemented by FERC in Order No. 890 and in state regulatory jurisdictions.'' [17] NERC also pointed to state public utility commission processes or processes existing in local jurisdictions that address transmission planning issues that could serve to provide a case-specific review of the planned interruption of Firm Demand. NERC added that an ERO-sponsored planning process is not likely to be efficient or effective because of extensive jurisdictional issues between NERC, the Commission, and the many authorities having jurisdiction that would have to be resolved before implementation could occur. NERC added that an ERO-specific process would lead to conflicts among federal, provincial, state and local governing bodies that have jurisdiction over various parts of the planning, siting and construction process. NERC also believes that a NERC-centered process would duplicate planning actions occurring elsewhere (*e.g.,* where resource allocation decisions are actually being made), and such a process could lead to inconsistent results. NERC concluded that a more reasonable and expeditious path would be to rely on existing stakeholder processes. According to NERC, such processes would more likely engage the appropriate local-level decision-makers and policy-makers.

9. With respect to review and oversight by NERC and the Regional Entities, NERC submitted that an ERO-specific process would place the ERO in the position of managing and actively participating in a planning process, which conflicts with its role as the compliance monitor and enforcement authority. NERC also stated that neither the ERO nor the Regional Entities will review decisions regarding planned interruptions. Their role will be limited to reviewing whether the registered entity participated in a stakeholder process when planning to interrupt Firm Demand. NERC explained that Regional Entities will have oversight after-the-fact by auditing the entity's implementation of footnote 'b' to determine if the entity planned on interrupting Firm Demand and whether the decision by the entity to rely on planned interruption of Firm Demand was vetted through the stakeholder process and qualified as one of the situations identified in footnote b.

10. Furthermore, NERC stated that an objective of the planning process should be to minimize the likelihood and magnitude of planned Firm Demand interruptions. NERC recognizes that there may be topological or system configurations where allowing planned interruptions of Firm Demand may provide more reliable service. NERC contends that due to the wide variety of system configurations and regulatory compacts, it is not feasible for the ERO to develop a one-size-fits-all criterion for limiting the planned firm load interruptions for Category B events. According to NERC, the standards drafting team evaluated setting a certain magnitude of planned interruption of Firm Demand, but there was no analytical data to support a single value, and it would be viewed as arbitrary.

II. Discussion

11. The Commission proposes to remand NERC's proposal to modify Reliability Standard TPL–002–0a, Table 1, footnote 'b.' The Commission believes that NERC's proposal does not meet the directives in Order No. 693 and the June 2010 Order and does not clarify or define the circumstances in which an entity can plan to interrupt Firm Demand for a single contingency. Specifically, the Commission is concerned that the procedural and substantive parameters of NERC's proposed stakeholder process are too undefined to provide assurances that the process will be effective in determining when it is appropriate to plan for interrupting Firm Demand, does not contain NERC-defined criteria on circumstances to determine when an exception for planned interruption of Firm Demand is permissible, and could result in inconsistent results in implementation. In proposing a stakeholder process without specification of any technical means by which exceptions are to be evaluated,

[12] *Mandatory Reliability Standards for the Bulk Power System,* 131 FERC ¶ 61,231, at P 21 (2010) (June 2010 Order).

[13] *Id.*

[14] NERC Petition at 10.

[15] *Id.*

[16] *Id.*

[17] NERC Data Response at 4.

the proposed footnote effectively turns the processes into a reliability standards development process outside of NERC's existing procedures. Furthermore, the Commission believes that regardless of the process used, the result could lead to inconsistent reliability requirements within and across reliability regions. While the Commission recognizes that some variation among regions or entities is reasonable given varying grid topography and other legitimate considerations, there are no technical or other criteria to determine whether varied results are arbitrary or based on meaningful distinctions. While the Commission acknowledges that NERC has flexibility in developing alternative approaches, we believe that the proposed approach is not equally efficient or effective as the Commission's directives and that NERC has failed to provide a strong technical justification for its proposal.

12. As an initial matter, the Commission is concerned that the process lacks parameters. The standard requires that, when planning to interrupt Firm Demand, the Firm Demand interruption must be ''subject to review in an open and transparent stakeholder process that includes addressing stakeholder comments.'' [18] However, without any substantive parameters governing the stakeholder process, the enforceability of this obligation by NERC and the Regional Entities' would be limited to a review to ensure only that a stakeholder process occurred. Indeed, NERC's explanation appears to confirm this concern, as NERC explained that Regional Entities' involvement is limited to oversight after-the-fact by auditing the entity's implementation of footnote 'b' to determine if the entity planned on interrupting Firm Demand and whether the decision by the entity to rely on planned interruption of Firm Demand was vetted through the stakeholder process and qualified as one of the situations identified in footnote 'b'.

13. Further, the Commission is concerned that the NERC proposal leaves undefined the circumstances in which it is allowable to plan for Firm Demand to be interrupted in response to a Category B contingency. The TPL–002–0a Reliability Standard requires Planning Authorities and Transmission Planners to demonstrate through a valid assessment that the transmission system is planned and can be operated to supply projected Firm Demand at all demand levels over a range of forecasted system demands.[19] Moreover, the planner must consider all single contingencies applicable to Table I, Category B and demonstrate that system performance is met. For those instances where system performance is not met, the planner must provide a written summary of its plans to achieve system performance including implementation schedules, in service dates of facilities and implementation lead times.[20] In regard to NERC's proposal, the Commission is concerned that footnote 'b' would function as a means to override the reliability objective and system performance requirements of the TPL Reliability Standard without any technical or other criteria specified to determine when planning to interrupt Firm Demand would be allowable. In this case NERC has provided no technically sound means of determining situations in which planning to interrupt Firm Demand would be allowable, and instead has removed such decision-making to an unspecified stakeholder process without any assurance that such processes will deploy technically sound means of approving or denying exceptions. Without any technical or other criteria specified to determine when planning to interrupt Firm Demand would be allowable, the Commission is concerned that multiple stakeholder processes across the country engaging in such determinations could lead to inconsistent and arbitrary exceptions including, potentially, allowing entities to plan to interrupt any amount of Firm Demand in any location and at any voltage level. While the Commission recognizes that some variation among regions or entities is reasonable given varying grid topography and other legitimate considerations, there are no technical or other criteria to determine whether varied results are arbitrary or based on meaningful distinctions. The Commission is thus concerned that there may be a lack of consistency in determinations to allow the planned interruption of Firm Demand. The proposed stakeholder process does not have any parameters except for openness and transparency. As a result, multiple processes that could be adopted across the country would likely lead to inconsistent determinations to allow for the planned interruption of Firm Demand.

14. The Commission believes that a remand would give NERC and industry flexibility to develop an approach that would address the issues identified by the Commission with the proposed footnote 'b' stakeholder process including, as discussed below, definition of the process and criteria or guidelines for the process.

A. Lack of Technical or Other Criteria

15. NERC's proposal does not prescribe the criteria that would define the parameters of permissible interruption of Firm Demand. In Order No. 693 the Commission expressed concern that, as a general rule, footnote 'b' should not allow an entity to plan for the loss of non-consequential load in the event of a single contingency and directed NERC to clarify the standard. The Commission stated in the June 2010 Order that a regional difference or a case-specific exception process that could be technically justified would be acceptable. While the Commission allows NERC to propose an equally effective and efficient solution to a Commission's proposed solution, the Commission does not believe that the proposal is equally effective and efficient. First, NERC's proposed footnote 'b' contains no constraints and could allow an entity to plan to interrupt any amount of Firm Demand, in any location or at any voltage level as needed for any single contingency, provided that it is documented and subjected to a stakeholder process. This result is contrary to the underlying standard and our prior orders.[21] Further, NERC did not technically justify its proposal, instead relying on the benefit of having transparency in the process. The Commission does not believe transparency in this instance can substitute for a technical justification.

16. In its supplemental filing, NERC states that it is not feasible for the ERO to develop a one-size-fits-all criterion for limiting the planned interruption of Firm Demand due to the wide variety of system configurations and regulatory compacts.[22] NERC states that the standards drafting team believes there is no analytical data to support a single level and therefore any single value was viewed as arbitrary.

17. We are not persuaded by NERC's reasoning. First, both NERC and the Commission have developed thresholds in other reliability contexts that have overcome similar claims of arbitrariness. For example, the threshold for conducting vegetation management pursuant to Reliability Standard FAC–003–1 applies to all transmission lines operated at 200 kV and above.[23] In the

[18] NERC Petition at 10.

[19] Reliability Standard TPL–002–0a, Requirement R1.

[20] Reliability Standard TPL–002–0a, Requirements R1.5 and R2.

[21] *See* Order No. 693, *see also* June 2010 Order.

[22] NERC Data Response at 6.

[23] Reliability Standard FAC–003–1.

same vein, NERC's Statement of Compliance Registry Criteria has numerous thresholds for determining eligibility for registration.[24] The Commission did not suggest a one size fits all exceptions process. If the ERO were to perform an exception process, it might include flexibility in decisions based on disparate topology or on other matters since it could utilize its technical expertise to determine the reliability impact from one region to another. Moreover, the Commission's proposal to remand revised footnote 'b' due to a lack of criteria does not preclude NERC from developing another alternative, provided that it is equally ''efficient and effective.''

18. Finally, the Commission understands that there are a wide variety of system configurations and regulatory compacts. NERC indicates that the standards drafting team considered a variety of limits; however, it is not clear whether NERC considered a blend of quantitative and qualitative thresholds. For example, a standard could require a process with a quantitative limitation on how much Firm Demand could be planned for interruption and that standard could provide an exception process where a registered entity would submit documents and explanation to the ERO or a Regional Entity for approval based upon certain considerations.[25] In short, we believe that a more defined process would be needed but, by itself, would not be adequate without NERC-defined technical or other criteria to determine planned interruption of Firm Demand. The Commission seeks comment on these proposals.

B. Stakeholder Process

19. The Commission believes that NERC's proposed footnote 'b' stakeholder process does not meet Order No. 693 and the June 2010 Order directive. According to NERC, the type of stakeholder process used under its proposed footnote 'b' can vary from one planning entity to the next. NERC offers several stakeholder processes as examples, such as the Order 890-type process, a state public utility commission or local jurisdiction process, or a Regional Transmission Organization/Independent System Operator (RTO/ISO) stakeholder process.

20. First, because NERC's proposed footnote 'b' does not define the stakeholder process, the express terms of the standard would allow an applicable entity to form or participate in any stakeholder process and be compliant with the proposed standard. Second, as we have mentioned, NERC has offered no technical justification for exceptions to be granted through the stakeholder process and therefore no means for the Commission to judge whether the process will protect the reliability of the Bulk-Power System. Nothing in the proposed footnote 'b' restricts the stakeholder process, other than that it must be an open and transparent stakeholder process that includes addressing stakeholder comments. The Commission is concerned that any meeting that is open to stakeholders could meet this standard. Further, because the stakeholder process is not defined, the proposal could allow a transmission planner to develop a process that provides insufficient process and transparency and still comply with the standard. The Commission believes that such process would be insufficient because it allows any stakeholder process to essentially become a reliability standards development processes outside of NERC's existing procedures. Furthermore, the Commission believes that regardless of the stakeholder process used, the outcome could lead to inconsistent results, with no technical or other criteria to determine whether varied results are arbitrary or based on meaningful distinctions. The Commission seeks comment on whether a stakeholder process is the appropriate vehicle to approve or deny exceptions to allow entities to plan to interrupt Firm Demand for a single contingency and if so, whether the proposed footnote 'b' would require any stakeholder due process.

21. Nor does the standard describe what would be entailed in addressing the stakeholder comments. As described above, the process under the standard does not provide for any technical rigor to address stakeholder concerns. While the standard requires transparency and an opportunity for stakeholder comments on the transmission planner's proposed plan to interrupt Firm Demand, it does not mandate any particular stakeholder involvement, nor does it mandate that interested governmental authorities be afforded notice and an opportunity to comment. As we read the proposed standard, a responsible entity could define when it would plan to interrupt Firm Demand on its own, then ask for stakeholder input on that plan. While the standard requires the responsible entity to ''address'' stakeholder comments, the responsible entity is not required to specify or support the technical basis upon which it rendered a decision. The Commission believes that the stakeholder process in proposed footnote 'b' would allow the transmission planner to define the circumstances when it would rely on planned interruption of Firm Demand, provide that definition for review by regulators and other stakeholders, receive comments from regulators and stakeholders requesting a more narrow definition, and explain to the regulators and stakeholders why it is declining the request and maintaining the broader definition, even if every other transmission planner facing similar circumstances would reach the opposite conclusion.

22. In Order No. 693 and the June 2010 Order, the Commission stated that a regional difference or a case-specific exception process, among other things, would be an acceptable approach. With regard to a case-specific process, NERC replied it would ''create undesirable delays and uncertainty in the transmission planning process.'' [26] However, the proposed footnote 'b' does not provide a time limitation by which planning decisions to interrupt Firm Demand must be made. The Commission is not persuaded that NERC's proposed approach ameliorates this concern. The Commission seeks comment on whether an exceptions process that provides defined criteria, with some allowance or consideration for unique circumstances, could be crafted that would resolve NERC's concerns of ''undesirable delays'' and ''uncertainty.''

23. In sum, the Commission is concerned that the stakeholder process set forth in the NERC proposal is not sufficiently defined, rendering it potentially unenforceable. As mentioned above, the proposed stakeholder process includes no parameters other than openness and transparency. NERC states that it and the Regional Entities will review a responsible entity's decision to plan to interrupt Firm Demand using an after-the-fact audit, to determine if the entity's implementation of footnote 'b' to plan Firm Demand interruption and whether the decision by the entity was vetted through the stakeholder process and qualified as one of the situations

[24] *See, e.g.,* NERC Statement of Registry Criteria, Section III. The Commission approved Statement of Registry Criteria in Order No. 693.

[25] While we encourage NERC to exercise flexibility in designing an appropriate standard, under this example, the exception process could consist of a stakeholder process that has some level of due process as long as that process does not allow the entity that proposes its exception to make the decision on whether to grant the exception.

[26] NERC Data Response at 2.

identified in footnote 'b.' [27] The Commission believes that this could result in a transmission planner invoking a process that provides for minimal stakeholder involvement, providing scant reasons to reject any stakeholder input and then defending its decision by claiming that it has satisfied the provision. While the Compliance Enforcement Authority would verify that the process fulfilled the letter of NERC's proposed footnote 'b'—that some open, transparent stakeholder process was involved and that the responsible entity in some way addressed stakeholder concerns—there is no mechanism for the ERO or a Regional Entity to enforce a finding that the evidence does not support an acceptable instance of planned interruption of Firm Demand. The Commission seeks comment on the concerns raised above.

C. Commission Proposal

24. The Commission believes that NERC's proposed footnote 'b' does not meet the Commission's Order No. 693 directives, nor is it an equally effective and efficient alternative. On this basis, the Commission proposes to remand the proposal to NERC.

25. The Commission also proposes to provide further guidance on acceptable approaches to footnote 'b'. We seek comment on all of the options below. In addition, while the Commission is proposing certain options for revising footnote 'b', we also seek comment on other potential options to solve the concerns outlined in this NOPR. As noted above, the Commission understands that there are a wide variety of system configurations and regulatory compacts. We believe that a more defined process than that provided in the proposed footnote 'b' would be needed but, by itself, would not be adequate without NERC-defined technical or other criteria to determine an acceptable planned interruption of Firm Demand at the fringes of the system.[28]

26. We acknowledge that the standards drafting team considered a variety of limits; however, setting some form of criteria within the standard itself for planning to interrupt Firm Demand may be an acceptable approach to setting criteria for footnote 'b' and would be an option for NERC to consider. We also seek comment on whether existing protocols could provide guidance to NERC in devising criteria. For example, the Department of Energy's Electric Emergency Incident and Disturbance Report (Form OE–417) requires, among other things, an entity to report the uncontrolled loss of 300 Megawatts or more of firm system loads for more than 15 minutes from a single incident, load shedding of 100 Megawatts or more implemented under emergency operational policy, and the loss of service for more than 1 hour to 50,000 customers. While these are reporting requirements for the operational timeframe, and may include distribution level load shedding, the Commission requests comments on whether they could also serve as a basis for setting limits on when an entity can plan to interrupt Firm Demand on the Bulk-Power System. Another existing document that could provide guidance on how to set a limit on the planned interruption of Firm Demand is NERC's Statement of Compliance Registry Criteria, which uses, for example, 25 MW as a threshold in determining when a load-serving entity or distribution provider should register with NERC. We seek comments on this proposed option, and any other external documents that could be used to guide a revision to footnote 'b.'

27. Second, as stated above, it is not clear whether NERC considered a blend of quantitative and qualitative thresholds. The Commission seeks comments on whether this would be an option for providing criteria that would be generally applicable, but also for allowing for certain cases that may exceed the criteria. For example, a standard could require a process with a quantitative limitation on how much Firm Demand could be planned for interruption and that standard could provide an exception process where a registered entity would submit documents and explanation to the ERO or a Regional Entity for approval based upon certain considerations. NERC has raised concerns about conflicts among federal, provincial, state and local governing bodies that have jurisdiction over various parts of the planning, siting and construction process. The Commission believes that this approach may satisfy the need for technical criteria that we have described, while accounting for NERC's concerns about the difficulty of developing a one-size-fits-all criterion for limiting planned Firm Demand interruptions and the appropriateness and feasibility of managing and actively participating in each planning process. As NERC states, the objective of footnote 'b' should be to minimize the likelihood and magnitude of planned Firm Demand interruptions. The Commission believes that setting generally applicable criteria for when an applicable entity can plan to shed Firm Demand, coupled with an exceptions process overseen by NERC and the Regional Entities, could mean that few exception requests must be processed by NERC and the Regional Entities. We seek comment on this option, and which entities should be involved in the review and subsequent determination as to whether an exception should be allowed.

28. NERC has raised concerns about conflicts among federal, provincial, state and local governing bodies that have jurisdiction over various parts of the planning, siting and construction process. There also may be concerns about the costs of planning to avoid Firm Demand shedding. The Commission seeks comment on whether a feasible option would be to revise footnote 'b' to allow for the planned interruption of Firm Demand in circumstances where the transmission planner can show that it has customer or community consent and there is no adverse impact to the Bulk-Power System. This presumably would not require affirmative consent by every individual retail customer, but we recognize that either term, customer or community, would need to be adequately defined. The Commission therefore seeks comments on who might be able to represent the customer or community in this option and how customer or community consent might be demonstrated. Additionally, we seek comment on how it would be determined that firm demand shedding with customer consent would not adversely impact the Bulk-Power System. However, we also seek comment on whether a customer who would otherwise consent to having its planning authority or transmission planner plan to interrupt Firm Demand pursuant to this option could instead select interruptible or conditional firm service under the tariff to address cost concerns.

29. Finally, regardless of how NERC revises footnote 'b' to resolve the concerns outlined in this NOPR and in previous orders, the Commission notes that NERC will need to support the revision to footnote 'b.' If there is a threshold component to the revised footnote, the Commission believes that NERC would need to support the threshold and show that instability, uncontrolled separation, or cascading failures of the system will not occur as a result of planning to shed Firm Demand up to the threshold. In addition, if there is an individual exception option, the Commission

[27] NERC Data Response at 7–8.

[28] Any exceptions process to determine specific requests for planned interruption of Firm Demand may not necessarily be limited to the fringes of the system.

believes that the applicable entities should be required to find that there is no adverse impact to the Bulk-Power System from the exception and that it is considered in wide-area coordination and operations. Further, we believe that any exception should be subject to further review by the Regional Entity, NERC, and the Commission. This does not necessarily mean that the Regional Entity, NERC, or the Commission should have to approve the exception, but that any of the three could later audit its implementation.

30. In conclusion, while the Commission provides three options for revising footnote 'b' in this Notice of Proposed Rulemaking, we seek comments on the feasibility of the options and on ways in which the options might be improved. In addition, we seek comment on whether there are other ways for NERC to solve the concerns outlined above in an equally effective and efficient manner.

III. Information Collection Statement

31. The Office of Management and Budget (OMB) regulations require that OMB approve certain reporting and recordkeeping (collections of information) imposed by an agency.[29] The information contained here is also subject to review under section 3507(d) of the Paperwork Reduction Act of 1995.[30]

32. As stated above, the subject of this NOPR is NERC's proposed modification to Table 1, footnote 'b' applicable in four TPL Reliability Standards. This NOPR proposes to remand the footnote 'b' modification to NERC. By remanding footnote 'b' the applicable Reliability Standards and any information collection requirements are unchanged. Therefore, the Commission will submit this NOPR to OMB for informational purposes only.

33. 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:* Ellen Brown, Office of the Executive Director, *e-mail: data.clearance@ferc.gov, phone:* (202) 502–8663, or *fax:* (202) 273–0873].

IV. Regulatory Flexibility Act

34. The Regulatory Flexibility Act of 1980 (RFA)[31] generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. The RFA mandates consideration of regulatory alternatives that accomplish the stated objectives of a proposed rule and that minimize any significant economic impact on a substantial number of small entities. The Small Business Administration's (SBA) Office of Size Standards develops the numerical definition of a small business.[32] The SBA has established a size standard for electric utilities, stating that a firm is small if, including its affiliates, it is primarily engaged in the transmission, generation and/or distribution of electric energy for sale and its total electric output for the preceding twelve months did not exceed four million megawatt hours.[33] The RFA is not implicated by this NOPR because the Commission is remanding footnote' b' and not proposing any modifications to the existing burden or reporting requirements. With no changes to the Reliability Standards as approved, the Commission certifies that this NOPR will not have a significant economic impact on a substantial number of small entities.

V. Comment Procedures

35. 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 60 days from publication in the **Federal Register**. Comments must refer to Docket No. RM11–18–000, and must include the commenter's name, the organization they represent, if applicable, and their address in their comments.

36. 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.

37. Commenters that are not able to file comments electronically must send an original of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, NE., Washington, DC 20426.

38. 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.

VI. Document Availability

39. 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.

40. 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.

41. 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. Commissioner Spitzer is not participating.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–27624 Filed 10–25–11; 8:45 am]

BILLING CODE 6717–01–P

[29] 5 CFR 1320.11.

[30] 44 U.S.C. 3507(d).

[31] 5 U.S.C. 601–612.

[32] 13 CFR 121.201.

[33] *Id.* n.22.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 201 and 610

[Docket No. FDA–2011–N–0719]

Bar Code Technologies for Drugs and Biological Products; Retrospective Review Under Executive Order 13563; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; request for comments.

SUMMARY: The Food and Drug Administration (FDA) is announcing a review of the ''Bar Code Final Rule,'' under Executive Order 13563, ''Improving Regulation and Regulatory Review.'' The Bar Code Final Rule, which was published in 2004, requires

certain human drug products and biological products to have a bar code. Information submitted can help FDA to reassess the costs and benefits of the rule and to identify any relevant changes in technology that have occurred since it went into effect. FDA is establishing a public docket to receive information relevant to reassessing the Bar Code Rule. This is an opportunity for interested persons to share information, research, and ideas on the need, maturity, and acceptability of alternative identification technologies for the identification, including the unique identification, of drugs and biological products. FDA will use the information received to assess whether the Bar Code Final Rule is achieving its intended benefits as effectively as possible or should be modified.

DATES: FDA will accept both initial comments and reply comments in response to this notice. Initial comments must be received on or before January 9, 2012 and reply comments on or before February 23, 2012. (See the ''Comments'' section of this document for more information.)

ADDRESSES: Submit electronic comments to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Benjamin A. Chacko, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION: On February 2, 2011, President Barack Obama issued Executive Order (E.O.) 13563, ''Improving Regulation and Regulatory Review'' (76 FR 3821). One of the provisions in the new Executive order is the affirmation of retrospective reviews of existing significant regulations. As one step in implementing the new Executive order, FDA published a notice in the **Federal Register** on April 27, 2011 (76 FR 23520), entitled ''Periodic Review of Existing Regulations; Retrospective Review Under E.O. 13563.'' In that document, FDA announced that it is conducting a review of its existing regulations to determine, in part, whether they can be made more effective in light of current public health needs and to take advantage of and support advances in innovation that have occurred since those regulations took effect. Under E.O. 13563, and under the Department of Health and Human Services' *Plan for Retrospective Review of Existing Rules,* FDA will consider strengthening, complementing, or modernizing rules where necessary or appropriate.

As FDA conducts its retrospective review of regulations, the Agency will take into account the following factors: [1]

- Whether an action will have a positive impact on innovation in an area of public health, safety, or delivery of or access to care;
- Whether the public health benefits of an action have been realized;
- Whether the public or regulated community view modification or revocation of a regulation as important and have offered useful comments and suggestions for change;
- Whether the impact and effectiveness of a regulation has changed or been superseded by changes in conditions or advances in scientific or technological information;
- Whether there are significant, unresolved issues with implementation or enforcement; and
- How long the regulation has been in effect and whether it has been subject to prior reviews.

The first rule FDA is reviewing under E.O. 13563 is the Bar Code Final Rule. The Agency plans to reassess its costs and benefits and to determine if the Bar Code Final Rule should be modified to take into account changes in technology that have occurred since the rule went into effect in 2004.

I. Background

In the **Federal Register** of March 14, 2003 (68 FR 12500), FDA published a proposed rule (Bar Code Proposed Rule) that would require certain human drug product labels and biological product labels to have a linear bar code that would contain, at a minimum, the drug's National Drug Code (NDC) number. In the **Federal Register** of February 26, 2004 (69 FR 9120), the Agency finalized the proposed rule (§§ 201.25 and 610.67 (21 CFR 201.25 and 610.67)). As discussed in the preamble to the Bar Code Proposed Rule, the rule was intended to help reduce the number of medication errors that occur in hospitals and other health care settings (68 FR 12500 at 12501 through 12502). FDA envisioned that bar codes would be part of a system, along with bar code scanners and computerized databases, that would enable health care professionals to check whether they are giving the right drug (in the right dose and via the right route of administration) to the right patient at the right time (*Id.* at 12501).

The events that led FDA to propose requiring bar codes are described in the preamble to the Bar Code Proposed Rule. In brief, medication errors are known to be a serious public health problem and can occur at several points from the time a health care provider prescribes the drug to a patient to the time when the patient receives the drug. The use of bar codes on drug products was expected to significantly reduce medication errors. Bar codes also can complement other efforts to reduce medication errors, such as computer physician order entry (CPOE) systems (where a physician enters orders electronically into a computer instead of writing the order on paper, and subsequently the order can be checked against the patient's electronic records for possible drug interactions, overdoses, and patient allergies) and retail pharmacy-based computer systems that use a bar-coded NDC number to verify that a consumer's prescription is being dispensed with the correct drug. FDA refers readers to the preamble to the Bar Code Proposed Rule should they wish to obtain details on the events, recommendations, meetings, and literature that shaped the proposed rule.

In the preamble to the Bar Code Proposed Rule, the Agency discussed in detail the challenge of requiring the use of linear bar codes, which, while enabling hospitals to buy scanning equipment with the confidence that their purchased equipment would not be rendered obsolete by new technology, could affect future technological innovation (68 FR 12500 at 12508 through 12510). Comments received related to a public meeting on bar coding, presented an array of differing opinions on the issue of whether to require a specific technology (68 FR 12500 at 12508). Given the complexity of the issues, FDA requested in the Bar Code Proposed Rule comment concerning alternatives that could replace or be used in conjunction with the linear bar code such as another symbol, standard, or technology (*Id.* at 12510 and 12529).

In response to the Bar Code Proposed Rule, FDA received comments including those opposing the use of linear bar codes or asking the Agency to consider other technologies or to eliminate any reference to linear bar codes in the final rule. Such comments primarily argued that selecting a symbology or standard would inhibit technological innovation.

[1] Department of Health and Human Services, ''*Plan for Retrospective Review of Existing Rules,*'' pp. 21–22 (August 22, 2011).

Comments opposed to a linear bar code requirement generally advocated the following alternatives: (1) Two-dimensional symbologies, (2) the European Article Number/Uniform Code Council (EAN/UCC) system generally, (3) radio frequency identification (RFID) chips, or (4) no standard or symbology at all (69 FR 9120 at 9136).

Ultimately, FDA determined that, based on data and public comment, a linear bar code requirement was appropriate (Id. at 9137 through 9138). In the preamble to the Bar Code Final Rule, the Agency addressed comments concerning alternatives to the linear bar code and stated that, while it believed that linear bar codes were an established, cost-effective, widely used and easily recognized technology, it also acknowledged that linear bar codes have several disadvantages. For example, linear bar codes may take up more label space than alternative technologies and may encode less data compared to other technologies. Thus, if more data need to be encoded on the packaging or labeling for any other reason (such as to allow tracking and tracing of drug products through the drug distribution system), a linear bar code might prove too limiting (Id. at 9137). FDA also stated that, although it had decided to preserve the linear bar code requirement, it would consider revising the rule to accommodate newer technologies as they become more mature and established (Id. at 9137 through 9138).

Since FDA issued the Bar Code Final Rule, advances in alternative technologies have occurred. In addition, it has become increasingly clear from industry, health care providers, and other FDA initiatives, that certain FDA-regulated products present unique bar coding concerns. For example, the Agency has since learned that certain vaccines present unique challenges in the bar coding context, particularly with respect to compliance with recordkeeping and mandatory adverse event reporting requirements that are specific to the administration of childhood vaccines.[2]

In recognition of these challenges, in the **Federal Register** of August 11, 2011 (76 FR 49772), FDA announced the availability of a final guidance document entitled ''Guidance for Industry: Bar Code Label Requirements—Questions and Answers'' [3]. This guidance amended and superseded the final guidance of the same title dated October 2006, by incorporating a revised response to question 12 (Q12), which pertains to the use of alternate coding technologies for vaccines. The Agency explained in the **Federal Register** notice announcing the final guidance that it believes alternative technology such as two-dimensional symbology has advanced, allowing the Agency to reconsider the use of such technology. Accordingly, it will now consider requests from vaccine manufacturers who request to use alternate coding technologies, such as two-dimensional symbology, that encode lot number and expiration date information, for an exemption under § 201.25(d)(1)(ii) to the linear bar code requirement. FDA limited the scope of its revised response to Q12 to vaccines because of the mandatory reporting concerns specific to these products as described in the guidance.

FDA recognizes, however, that since alternative technologies continue to advance, it may now be feasible for these technologies to address other stakeholder coding needs in other contexts and for other products. For example, under section 505D of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 355e), FDA is developing standards for identification, validation, authentication, and tracking and tracing of prescription drugs. The goal of this initiative is to implement a system to further ensure patient safety and to improve the security of the drug supply chain against counterfeit, diverted, subpotent, substandard, adulterated, misbranded, or expired drugs. In March 2010, FDA issued a guidance that discusses a standard for uniquely identifying prescription drug packages using a Standardized Numerical Identifier (SNI).[4] In the guidance, the Agency did not specify the means of incorporating the SNI onto the package. However, the guidance recognizes that the SNI is a flexible standard that can be encoded into a variety of machine-readable forms of data carriers, such as two-dimensional bar codes, alternate coding systems, and RFID. Thus, the guidance leaves options open while technologies for securing the supply chain continue to be identified, and standards making use of SNI are developed. Similarly, while FDA recognizes that the underlying primary goals of the Bar Code Final Rule and section 505D of the FD&C Act are different, the Agency wants to leave options open with respect to how the same technology may be used for both purposes.

FDA is announcing the establishment of a public docket to provide an opportunity for interested persons to share information, research, and ideas on the effectiveness of the current regulation and the need, maturity, and acceptability of alternative technologies for the identification, including the unique identification, of drugs and biological products. FDA will use the information received to assess coding technologies in relation to current bar code requirements and other initiatives.

II. Request for Comments and Information

FDA is requesting comments and supporting information on (1) bar code labeling standards for drugs and biological products and (2) the identification of current alternative technologies for use by industry and others.

To facilitate this discussion, FDA sets forth some questions in the following paragraphs. These questions, which are not meant to be exhaustive, are provided to stimulate public comments that will help FDA evaluate the Bar Code Final Rule and the accommodation of alternative technologies to the linear bar code requirement (§ 201.25). The public is encouraged to address these and/or other related questions.

The Agency encourages responses to the following questions about the costs and benefits of any alternative to the linear bar code. FDA also encourages you to provide as much detail and context as possible in your responses. Furthermore, the Agency specifically invites small businesses to provide information about the potential impact of alternatives to the linear bar code.

1. Is there a need for alternative technologies to the linear bar code? Does the current linear bar code requirement meet the current needs of the health care industry and health care providers?

2. How has product coding technology changed since FDA issued the Bar Code Final Rule on February 26, 2004? Please provide information about the maturity, degree of adoption, cost, and ease of use of coding technologies

[2] The National Childhood Vaccine Injury Act of 1986 (Pub. L. 99–660) (42 U.S.C. 300aa–25(a)) requires health care providers to report certain adverse events related to identified childhood vaccines to the Vaccine Adverse Event Reporting System (42 U.S.C. 300aa–25(b)). Although health care providers are encouraged to report adverse events related to other drugs and biological products to FDA, they are not required to do so.

[3] ''Guidance for Industry: Bar Code Label Requirements—Questions and Answers'' dated August 2011 (*http://www.fda.gov/downloads/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/Guidances/UCM267392.pdf*).

[4] ''Guidance for Industry: Standards for Securing the Drug Supply Chain—Standardized Numerical Identification for Prescription Drug Packages'' dated March 2010 (*http://www.fda.gov/downloads/RegulatoryInformation/Guidance/UCM206075.pdf*).

that may be considered as alternatives or in addition to the linear bar code.

3. What factors other than those listed in question 2 should FDA take into account in considering technologies alternative to or in addition to the linear bar code?

4. What technologies or coding systems warrant FDA's consideration as alternatives to the linear bar code? In your response, the Agency particularly invites comments on the following issues for each technology identified:

A. What is the current state of development and availability of the alternative technology?

B. Would adoption of this technology as an alternative to the linear bar code further reduce medication errors in hospitals and health care settings? Please provide supporting data, if available.

C. Would adoption of this alternative technology advance public health protections? If so, how? If supporting data exist, please provide this information.

5. Does the adoption of this alternative technology have implications for other FDA or Department of Health and Human Services initiatives (*e.g.,* SNI)?

6. Have you used the linear bar code for authentication or tracking and tracing of prescription drugs?

A. If so, how?

B. Please describe any successes or challenges that you have encountered in adopting linear bar code technology for this purpose.

C. If not, which if any alternative technologies could reduce medication errors while also serving other functions?

7. For hospitals and other health-care facilities that have adopted bar code technologies using linear bar codes:

A. What difficulties did you encounter in adopting the technology?

B. How have productivity and operating costs changed?

C. What differences have you seen in medical outcomes?

D. What problems have you experienced with the technology?

8. For hospitals and other health-care facilities that have adopted alternative technologies or non-linear coding:

A. What difficulties did you encounter in adopting the technology?

B. How have productivity and operating costs changed?

C. What differences have you seen in medical outcomes?

D. What problems have you experienced with the technology?

9. For hospitals and other health-care facilities that have not adopted bar code technologies using linear bar codes:

A. Do you plan to adopt the technology within the next 12 months?

B. If you do not plan to adopt the technology, please explain what factor(s) most influenced the decision not to adopt it.

10. How would technology adoption have proceeded since 2004 had the Bar Code Final Rule not gone into effect?

11. What are hospitals' and other health-care facilities' forecasts for technology adoption once incentives in the Economic Stimulus Act of 2008 (Pub. L. 110–185) are no longer in effect?

12. Would there be an economic impact on those parties who may not be subject to the bar code requirement but who nonetheless may use or adopt or have adopted bar code technology (*e.g.,* hospitals, clinics, public health agencies, and health care providers)? Please use the following questions to guide your responses.

A. *Current practices.* Describe your current practice(s) at your institution with respect to those products that are required to be labeled with a bar code under §§ 201.25 and 610.67. Have you encountered any barriers to your ability to use technology at your institution?

B. *Using an alternative to the linear bar code.* If an alternative to the linear bar code could be placed on the label of at least some of your products, what impact, if any, would that have on your current practice(s)? How would you change your practices, if at all?

C. *Expenses.* What unplanned expenses, if any, would you incur, if an alternative to the linear bar code could be placed on the label of at least some of your products? If you could foresee using an alternative to the linear bar code, would you modify operations in your facility, and if so, how?

D. *Adverse event reporting and recalls.* Have you encountered challenges/successes in drug identification or reporting with respect to products that contain a bar code on their labels? If so, please describe them. Would an alternative to the linear bar code have an impact on your recall management or adverse event reporting, and if so, how?

13. Are there other parties whose economic interests we should consider?

III. Comments

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

Please allow sufficient time for mailed comments to be timely received by the due dates in the event of delivery delay. Comments must be received by these dates to be considered. We request that comments be identified clearly as an ''initial'' comment or a ''reply'' comment. Initial comments may address any issue raised in this notice. Initial comments will be made available electronically, online at *http://www.regulations.gov,* or for public inspection in the Division of Dockets Management (see **ADDRESSES**). To allow sufficient opportunity for interested persons to prepare and submit any reply comments, late-filed initial comments will not be considered. Reply comments must address only matters raised in initial comments and must not be used to present new arguments, contentions, or factual material that is not responsive to the initial comments. To be considered, reply comments must identify which initial comments they are replying to, and which specific issues(s) are being addressed. We will not consider comments received during the reply comment period that do not identify the specific issue(s) raised during the initial comment period on which the reply comment is based. It is the Agency's intent to comply with Executive Order 13563 as quickly as possible, so we will not look favorably on requests for extensions of the comment period.

Comments previously submitted to the Division of Dockets Management for the following docket will also be considered by FDA and do not need to be resubmitted: ''Draft Guidance for Industry: Bar Code Label Requirements (Question 12 Update)'' (75 FR 54347 September 2010; Docket No. FDA–2010–D–0426).

Dated: October 21, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–27657 Filed 10–25–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1

[REG–158677–05]

RIN 1545–BF24

Effect of Election on Corporation

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Withdrawal of notice of proposed rulemaking.

SUMMARY: This document withdraws the proposed regulation seeking to clarify that if a bank is an S corporation within the meaning of section 1361(a)(1), its status as an S corporation does not affect the applicability of the special rules for banks under the Internal Revenue Code.

FOR FURTHER INFORMATION CONTACT: Laura Fields at (202) 622–3050 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On August 24, 2006, the Treasury Department and the IRS published in the **Federal Register** (71 FR 50007) a notice of proposed rulemaking under section 1363 (REG–158677–05), relating to the applicability of the special banking rules to banks that are S corporations within the meaning of section 1361(a)(1) of the Internal Revenue Code.

The Treasury Department and the IRS received written comments on the proposed regulation from various interested parties. The Treasury Department and the IRS have decided to withdraw the proposed regulation.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Withdrawal of Notice of Proposed Rulemaking

Accordingly, under the authority of 26 U.S.C. 7805, the notice of proposed rulemaking (REG–158677–05) that was published in the **Federal Register** on August 24, 2006 (71 FR 50007) is withdrawn.

Steven T. Miller,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 2011–27631 Filed 10–25–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2011–0118]

RIN 1625–AA00

Safety Zones; Fireworks Displays Within the Fifth Coast Guard District

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to revise the list of permanent safety zones established for fireworks displays at various locations within the geographic boundary of the Fifth Coast Guard District. This action is necessary to protect the life and property of the maritime public from the hazards posed by fireworks displays. Entry into or movement within these proposed zones during the enforcement periods is prohibited without approval of the appropriate Captain of the Port.

DATES: Comments and related material must be received by the Coast Guard on or before November 25, 2011.

ADDRESSES: You may submit comments identified by docket number USCG–2011–0118 using any one of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov*.

(2) *Fax:* 202–493–2251.

(3) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

To avoid duplication, please use only one of these four methods. See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or e-mail Dennis Sens, Prevention Division, Fifth Coast Guard District; telephone 757–398–6204, e-mail *Dennis.M.Sens@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided.

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2011–0118), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (via *http://www.regulations.gov*) or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via *http://www.regulations.gov,* it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* click on the ''submit a comment'' box, which will then become highlighted in blue. In the ''Document Type'' drop down menu select ''Proposed Rule'' and insert ''USCG–2011–0118'' in the ''Keyword'' box. Click ''Search'' then click on the balloon shape in the ''Actions'' column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* click on the ''read comments'' box, which will then

become highlighted in blue. In the ''Keyword'' box insert ''USCG–2011–0118'' and click ''Search.'' Click the ''Open Docket Folder'' in the ''Actions'' column. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one using one of the four methods specified under **ADDRESSES**. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register.**

Basis and Purpose

In this rule the Coast Guard proposes to revise the list of permanent safety zones at 33 CFR 165.506, established for fireworks displays at various locations within the geographic boundary of the Fifth Coast Guard District. For a description of the geographical area of the Fifth District and subordinate Coast Guard Sectors—Captain of the Port Zones, please see 33 CFR 3.25. Currently there are 73 permanent safety zones that are established for annually recurring fireworks displays within the geographic boundaries of the Fifth Coast Guard District.

The Coast Guard proposes to revise the list of permanent safety zones at 33 CFR 165.506, established for fireworks displays, by adding 3 new locations, deleting 2 previously established locations and modifying 19 previously established locations within the geographic boundary of the Fifth Coast Guard District. This rule will increase the total number of permanent safety zones to 74 locations for fireworks displays within the boundary of the Fifth Coast Guard District.

This rule proposes to add 3 new safety zone locations to the permanent safety zones listed in 33 CFR 165.506. The new safety zones include locations at: North Atlantic Ocean, Atlantic City, NJ; Great Wicomico River, Mila, VA; and Cockrell's Creek, Reedville, VA.

The 19 previously established safety zone locations proposed for modification by this rule are: Severn River and Spa Creek, Annapolis, MD; Baltimore Inner Harbor, Patapsco River, MD, (2 locations); Patuxent River, Calvert County, MD; Chesapeake Bay, Chesapeake Beach, MD; Potomac River, Charles County, MD; Potomac River, Charles County, MD near Mount Vernon; Potomac River, National Harbor, MD; Miles River, St. Michaels, MD; Tred Avon River, Oxford, MD; Upper Potomac River, Alexandria, VA; Anacostia River, Washington, DC; Potomac River, Prince William County, VA; North Atlantic Ocean, Ocean City, NJ; Chesapeake Bay, Norfolk, VA; North Atlantic Ocean, Virginia Beach, VA (2 locations); Pamlico River, Washington, NC; and Motts Channel, Banks Channel, Wrightsville Beach, NC. Safety zone modifications include revision to dates and minor changes to coordinates that define safety zone boundaries.

The Coast Guard typically receives numerous applications for fireworks displays in these general areas. Previously, a temporary safety zone was established on an emergency basis for each display. This limited the opportunity for public comment. Establishing permanent safety zones through notice and comment rulemaking provides the public the opportunity to comment on the safety zone locations, size, and length of time the zones will be enforced.

Each year organizations in the Fifth Coast Guard District sponsor fireworks displays in the same general location and time period. Each event uses a barge or an on-shore site near the shoreline as the fireworks launch platform. A safety zone is used to control vessel movement within a specified distance surrounding the launch platforms to ensure the safety of persons and property. Coast Guard personnel on scene may allow boaters within the safety zone if conditions permit.

The Coast Guard would publish notices in the **Federal Register** if an event sponsor reported a change to the listed event venue or date. In the case of inclement weather the event usually will be conducted on the day following the date listed in the Table to § 165.506. Coast Guard Captains of the Port would give notice of the enforcement of each safety zone by all appropriate means to provide the widest dissemination of notice among the affected segments of the public. This would include publication in the Local Notice to Mariners and Marine Information Broadcasts. Marine information and facsimile broadcasts may also be made for these events, beginning 24 to 48 hours before the event. Fireworks barges or launch sites on land used in the locations stated in this rulemaking would also display a sign labeled ''FIREWORKS—DANGER—STAY AWAY''* * * The sign would be affixed to the port and starboard side of the barge or mounted on a post 3 feet above ground level when on land and in close proximity to the shoreline facing the water. This sign provides on scene notice that the safety zone is or will be enforced on that day. The sign will be diamond shaped, 4 feet by 4 feet with a 3-inch orange retro-reflective border. The word ''DANGER'' shall be 10-inch black block letters centered on the sign with the words ''FIREWORKS'' and ''STAY AWAY'' in 6 inch black block letters placed above and below the word ''DANGER'' respectively on a white background. There would also be a Coast Guard patrol vessel on scene 30 minutes before the display is scheduled to start until 30 minutes after its completion to enforce the safety zone.

The enforcement period for these proposed safety zones is from 5:30 p.m. to 1 a.m. local time. However, vessels may enter, remain in, or transit through these safety zones during this timeframe if authorized by the Captain of the Port or designated Coast Guard patrol personnel on scene, as provided for in 33 CFR 165.23.

This rule is being proposed to provide for the safety of life on navigable waters during the events and to give the marine community the opportunity to comment on the proposed zone locations, size, and length of time the zones will be active.

Discussion of Proposed Rule

The Coast Guard proposes to revise the regulations at 33 CFR 165.506 by adding the following 3 permanent safety zone locations.

North Atlantic Ocean, Atlantic City, NJ, Safety Zone

The waters of the North Atlantic Ocean within a 500 yard radius of the fireworks barge located at latitude 39°20′58″ N, longitude 074°25′58″ W, near the shoreline at Atlantic City, NJ.

Great Wicomico River, Mila, VA, Safety Zone

All waters of the Great Wicomico River located within a 420 foot radius of the fireworks display at approximate

position latitude 37°50′31″ N, longitude 076°19′42″ W near Mila, Virginia.

Cockrell's Creek, Reedville, VA, Safety Zone

All waters of Cockrell's Creek located within a 420 foot radius of the fireworks display at approximate position latitude 37°49′54″ N, longitude 076°16′44″ W near Reedville, Virginia.

The Coast Guard proposes to revise regulations at 33 CFR 165.506 by modifying 19 existing permanent safety zone locations. The following table shows where these 19 existing permanent safety zones are listed within the Table to 33 CFR 165.506 and describes the revisions that are being made to these safety zones.

Number	Table to § 165.506 section	Location	Revision
1	a.11	N. Atlantic Ocean, Ocean City, NJ	Event date.
2	b.2	Severn River & Spa Creek, Annapolis, MD	Coordinates.
3	b.6	Baltimore Inner Harbor, Patapsco River, MD	Event date & coordinates.
4	b.7	Baltimore Inner Harbor, Patapsco River, MD	Event date & coordinates.
5	b.9	Patuxent River, Calvert County, MD	Coordinates.
6	b.11	Chesapeake Bay, Chesapeake Beach, MD	Coordinates.
7	b.13	Potomac River, Charles County, MD	Event date & coordinates
8	b.14	Potomac River, Charles County, MD, Mount Vernon	Coordinates.
9	b.16	Potomac River, National Harbor, MD	Event date & coordinates.
10	b.18	Miles River, St. Michaels, MD	Coordinates.
11	b.19	Tred Avon River, Oxford, MD	Coordinates.
12	b.21	Upper Potomac River, Alexandria, VA	Event date.
13	b.22	Anacostia River, Washington, DC	Coordinates.
14	b.23	Potomac River, Prince William County, VA	Event date & coordinates.
15	c.10	Chesapeake Bay, Norfolk, VA	Event date.
16	c.16	N. Atlantic Ocean, Virginia Beach, VA	Event date.
17	c.17	N. Atlantic Ocean, Virginia Beach, VA	Event date.
18	d.7	Pamlico River, Washington, NC	Coordinates.
19	d.10	Motts Channel, Banks Channel, Wrightsville Beach, NC	Event date.

The Coast Guard proposes to amend regulations at 33 CFR 165.506 by disestablishing the following 2 permanent safety zones. All coordinates listed for the following safety zones reference Datum NAD 1983.

Number	Date	Location	Regulated area
(b) Coast Guard Sector Baltimore—COTP Zone			
10	July 4th	Patuxent River, Solomons Island, Calvert County, MD, Safety Zone.	All waters of the Patuxent River within a 400 yard radius of the fireworks barge located at latitude 38°19′03″ N, longitude 076°26′07.6″ W.
11	July 4th	Patuxent River, Solomons Island, MD, Safety Zone.	All waters of Patuxent River within a 300 yard radius of the fireworks barge in an area bound by the following points: latitude 38°19′42″ N, longitude 076°28′02″ W; thence to latitude 38°19′26″ N, longitude 076°28′18″ W; thence to latitude 38°18′48″ N, longitude 076°27′42″ W; thence to latitude 38°19′06″ N, longitude 076°27'25'' W; thence to the point of origin, located near Solomons Island, MD.

Regulatory Analyses

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

Regulatory Planning and Review

This NPRM has not been designated a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation is unnecessary. This finding is based on the short amount of time that vessels would be restricted from the zones, and the small zone sizes positioned in low vessel traffic areas. Vessels would not be precluded from getting underway, or mooring at any piers or marinas currently located in the vicinity of the proposed safety zones. Advance notifications would also be made to the local maritime community by issuing Local Notice to Mariners, Marine information and facsimile broadcasts so mariners can adjust their plans accordingly. Notifications to the public for most events will usually be made by local newspapers, radio and TV stations. The Coast Guard anticipates that these safety zones will only be enforced 2 to 3 times per year.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed rule would have a significant economic impact on a

substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities some of which may be small entities: The owners and operators of vessels intending to transit or anchor in the proposed safety zones during the times these zones are enforced.

These proposed safety zones will not have a significant economic impact on a substantial number of small entities for the following reasons: The enforcement period will be short in duration and, in many of the zones, vessels can transit safely around the safety zones. Generally, blanket permission to enter, remain in, or transit through these safety zones will be given except during the period that the Coast Guard patrol vessel is present. Before the enforcement period, we will issue maritime advisories widely.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. A preliminary environmental analysis checklist supporting this preliminary determination is available in the docket where indicated under **ADDRESSES**. This proposed rule involves implementation of regulations within 33 CFR Part 165 that establish safety zones on navigable waters of the United States, and, therefore paragraph (34)(g) of figure 2–1 applies. These safety zones are enforced for the duration of the

fireworks displays, which are launched from or adjacent to navigable waters of the United States and may have potential for negative impact on the safety or other interest of waterway users and shore side activities in the event area. The category of activities includes fireworks launched from barges at or near the shoreline that generally rely on the use of navigable waters as a safety buffer. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. Revise § 165.506 to read as follows:

§ 165.506 Safety Zones; Fifth Coast Guard District Fireworks Displays.

(a) *Regulations.* (1) The general regulations contained in 33 CFR 165.23 apply.

(2) The following regulations apply to the fireworks safety zones listed in the Table to § 165.506. These regulations will be enforced annually, for the duration of each fireworks event listed in the Table to § 165.506. In the case of inclement weather, the event may be conducted on the day following the date listed in the Table to § 165.506. Annual notice of the exact dates and times of the enforcement period of the regulation with respect to each safety zone, the geographical area, and other details concerning the nature of the fireworks event will be published in Local Notices to Mariners and via Broadcast Notice to Mariners over VHF–FM marine band radio.

(3) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on-scene-patrol personnel. Those personnel are comprised of commissioned, warrant, and petty officers of the U.S. Coast Guard. Other Federal, State and local agencies may assist these personnel in the enforcement of the safety zone. Upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing light or other means, the operator of a vessel shall proceed as directed.

(b) Notification. (1) Fireworks barges and launch sites on land that operate within the regulated areas contained in the Table to § 165.506 will have a sign affixed to the port and starboard side of the barge or mounted on a post 3 feet above ground level when on land immediately adjacent to the shoreline and facing the water labeled ''FIREWORKS—DANGER—STAY AWAY.'' This will provide on scene notice that the safety zone will be enforced on that day. This notice will consist of a diamond shaped sign 4 feet by 4 feet with a 3-inch orange retro reflective border. The word ''DANGER'' shall be 10 inch black block letters centered on the sign with the words ''FIREWORKS'' and ''STAY AWAY'' in 6 inch black block letters placed above and below the word ''DANGER'' respectively on a white background.

(2) Coast Guard Captains of the Port in the Fifth Coast Guard District will notify the public of the enforcement of these safety zones by all appropriate means to effect the widest publicity among the affected segments of the public. Publication in the Local Notice to Mariners, marine information broadcasts, and facsimile broadcasts may be made for these events, beginning 24 to 48 hours before the event is scheduled to begin, to notify the public.

(c) *Contact Information.* Questions about safety zones and related events should be addressed to the local Coast Guard Captain of the Port for the area in which the event is occurring. Contact information is listed below. For a description of the geographical area of each Coast Guard Sector—Captain of the Port zone, please see 33 CFR 3.25.

(1) Coast Guard Sector Delaware Bay—Captain of the Port Zone, Philadelphia, Pennsylvania: (215) 271–4944.

(2) Coast Guard Sector Baltimore—Captain of the Port Zone, Baltimore, Maryland: (410) 576–2525.

(3) Coast Guard Sector Hampton Roads—Captain of the Port Zone, Norfolk, Virginia: (757) 483–8567.

(4) Coast Guard Sector North Carolina—Captain of the Port Zone, Wilmington, North Carolina: (877) 229–0770 or (910) 772–2200.

(d) *Enforcement Period.* The safety zones in the Table to § 165.506 will be enforced from 5:30 p.m. to 1 a.m. each day a barge with a ''FIREWORKS—DANGER—STAY AWAY'' sign on the port and starboard side is on-scene or a ''FIREWORKS—DANGER—STAY AWAY'' sign is posted on land adjacent to the shoreline, in a location listed in the Table to § 165.506. Vessels may not enter, remain in, or transit through the safety zones during these enforcement periods unless authorized by the Captain of the Port or designated Coast Guard patrol personnel on scene.

TABLE TO § 165.506

[All coordinates listed in the Table to § 165.506 reference Datum NAD 1983.]

Number	Date	Location	Regulated area
(a.) Coast Guard Sector Delaware Bay—COTP Zone			
1	July 4th	North Atlantic Ocean, Bethany Beach, DE, Safety Zone.	The waters of the North Atlantic Ocean within a 500 yard radius of the fireworks barge in approximate position latitude 38°32′08″ N, longitude 075°03′15″ W, adjacent to shoreline of Bethany Beach, DE.
2	Labor Day	Indian River Bay, DE, Safety Zone.	All waters of the Indian River Bay within a 360 yard radius of the fireworks launch location on the pier in approximate position latitude 38°36′42″ N, longitude 075°08′18″ W, about 700 yards east of Pots Net Point, DE.
3	July 4th	North Atlantic Ocean, Rehoboth Beach, DE, Safety Zone.	All waters of the Atlantic Ocean within a 360 yard radius of the fireworks barge in approximate position latitude 38°43′01.2″ N, longitude 075°04′21″ W, approximately 400 yards east of Rehoboth Beach, DE.
4	July 4th	North Atlantic Ocean, Avalon, NJ, Safety Zone.	The waters of the North Atlantic Ocean within a 500 yard radius of the fireworks barge in approximate location latitude 39°05′31″ N, longitude 074°43′00″ W, in the vicinity of the shoreline at Avalon, NJ.

TABLE TO § 165.506—Continued

[All coordinates listed in the Table to § 165.506 reference Datum NAD 1983.]

Number	Date	Location	Regulated area
5	July 4th, September—2nd Saturday.	Barnegat Bay, Barnegat Township, NJ, Safety Zone.	The waters of Barnegat Bay within a 500 yard radius of the fireworks barge in approximate position latitude 39°44′50″ N, longitude 074°11′21″ W, approximately 500 yards north of Conklin Island, NJ.
6	July 4th	North Atlantic Ocean, Cape May, NJ, Safety Zone.	The waters of the North Atlantic Ocean within a 500 yard radius of the fireworks barge in approximate location latitude 38°55′36″ N, longitude 074°55′26″ W, immediately adjacent to the shoreline at Cape May, NJ.
7	July 3rd	Delaware Bay, North Cape May, NJ, Safety Zone.	All waters of the Delaware Bay within a 500 yard radius of the fireworks barge in approximate position latitude 38°58′00″ N, longitude 074°58′30″ W.
8	August—3rd Sunday	Great Egg Harbor Inlet, Margate City, NJ, Safety Zone.	All waters within a 500 yard radius of the fireworks barge in approximate location latitude 39°19′33″ N, longitude 074°31′28″ W, on the Intracoastal Waterway near Margate City, NJ.
9	July 4th, August every Thursday. September 1st Thursday	Metedeconk River, Brick Township, NJ, Safety Zone.	The waters of the Metedeconk River within a 300 yard radius of the fireworks launch platform in approximate position latitude 40°03′24″ N, longitude 074°06′42″ W, near the shoreline at Brick Township, NJ.
10	July—1st Friday	North Atlantic Ocean, Atlantic City, NJ, Safety Zone.	The waters of the North Atlantic Ocean within a 500 yard radius of the fireworks barge located at latitude 39°20′58″ N, longitude 074°25′58″ W, near the shoreline at Atlantic City, NJ.
11	July 4th, October—1st Saturday.	North Atlantic Ocean, Ocean City, NJ, Safety Zone.	The waters of the North Atlantic Ocean within a 500 yard radius of the fireworks barge in approximate location latitude 39°16′22″ N, longitude 074°33′54″ W, in the vicinity of the shoreline at Ocean City, NJ.
12	May—4th Saturday	Barnegat Bay, Ocean Township, NJ, Safety Zone.	All waters of Barnegat Bay within a 500 yard radius of the fireworks barge in approximate position latitude 39°47′33″ N, longitude 074°10′46″ W.
13	July 4th	Little Egg Harbor, Parker Island, NJ, Safety Zone.	All waters of Little Egg Harbor within a 500 yard radius of the fireworks barge in approximate position latitude 39°34′18″ N, longitude 074°14′43″ W, approximately 100 yards north of Parkers Island.
14	September—3rd Saturday	Delaware River, Chester, PA, Safety Zone.	All waters of the Delaware River near Chester, PA just south of the Commodore Barry Bridge within a 250 yard radius of the fireworks barge located in approximate position latitude 39°49′43.2″ N, longitude 075°22′42″ W.
15	September—3rd Saturday	Delaware River, Essington, PA, Safety Zone.	All waters of the Delaware River near Essington, PA, west of Little Tinicum Island within a 250 yard radius of the fireworks barge located in the approximate position latitude 39°51′18″ N, longitude 075°18′57″ W.
16	July 4th, Columbus Day, December 31st, January 1st.	Delaware River, Philadelphia, PA, Safety Zone.	All waters of Delaware River, adjacent to Penns Landing, Philadelphia, PA, bounded from shoreline to shoreline, bounded on the south by a line running east to west from points along the shoreline at latitude 39°56′31.2″ N, longitude 075°08′28.1″ W; thence to latitude 39°56′29.1″ N, longitude 075°07′56.5″ W, and bounded on the north by the Benjamin Franklin Bridge.
(b.) Coast Guard Sector Baltimore—COTP Zone			
1	April—1st or 2nd Saturday.	Washington Channel, Upper Potomac River, Washington, DC, Safety Zone.	All waters of the Upper Potomac River within a 150 yard radius of the fireworks barge in approximate position latitude 38°52′09″ N, longitude 077°01′13″ W, located within the Washington Channel in Washington Harbor, DC.
2	July 4th, December—1st and 2nd, Saturday, December 31st.	Severn River and Spa Creek, Annapolis, MD, Safety Zone.	All waters of the Severn River and Spa Creek within an area bounded by a line drawn from latitude 38°58′40″ N, longitude 076°28′49″ W; thence to latitude 38°58′26″ N, longitude 076°28′28″ W; thence to latitude 38°58′45″ N, longitude 076°28′07″ W; thence to latitude 38°59′01″ N, longitude 076°28′37″ W, thence to latitude 38°58′57″ N, longitude 076°28′40″ W, located near the entrance to Spa Creek in Annapolis, Maryland.
3	Saturday before Independence Day holiday.	Middle River, Baltimore County, MD, Safety Zone.	All waters of the Middle River within a 300 yard radius of the fireworks barge in approximate position latitude 39°17′45″ N, longitude 076°23′49″ W, approximately 300 yards east of Rockaway Beach, near Turkey Point.
4	July 4th, December 31st	Patapsco River (Middle Branch), Baltimore, MD, Safety Zone.	All waters of the Patapsco River, Middle Branch, within an area bound by a line drawn from the following points: latitude 39°15′22″ N, longitude 076°36′36″ W; thence to latitude 39°15′10″ N, longitude 076°36′00″ W; thence to latitude 39°15′40″ N, longitude 076°35′23″ W; thence to latitude 39°15′49″ N, longitude 076°35′47″ W; thence to the point of origin, located approximately 600 yards east of Hanover Street (SR–2) Bridge.
5	June 14th, July 4th, September—2nd Saturday, December 31st.	Northwest Harbor (East Channel), Patapsco River, MD, Safety Zone.	All waters of the Patapsco River within a 300 yard radius of the fireworks barge in approximate position 39°15′55″ N, 076°34′35″ W, located adjacent to the East Channel of Northwest Harbor.
6	May—2nd or 3rd Thursday or Friday, July 4th, December 31st.	Baltimore Inner Harbor, Patapsco River, MD, Safety Zone.	All waters of the Patapsco River within a 100 yard radius of the fireworks barge in approximate position latitude 39°17′01″ N, longitude 076°36′31″ W, located at the entrance to Baltimore Inner Harbor, approximately 125 yards southwest of pier 3.

TABLE TO § 165.506—Continued

[All coordinates listed in the Table to § 165.506 reference Datum NAD 1983.]

Number	Date	Location	Regulated area
7	May—2nd or 3rd Thursday or Friday, July 4th, December 31st.	Baltimore Inner Harbor, Patapsco River, MD, Safety Zone.	The waters of the Patapsco River within a 100 yard radius of approximate position latitude 39°17′04″ N, longitude 076°36′36″ W, located in Baltimore Inner Harbor, approximately 125 yards southeast of pier 1.
8	July 4th, December 31st	Northwest Harbor (West Channel) Patapsco River, MD, Safety Zone.	All waters of the Patapsco River within a 300 yard radius of the fireworks barge in approximate position latitude 39°16′21″ N, longitude 076°34′38″ W, located adjacent to the West Channel of Northwest Harbor.
9	July 4th	Patuxent River, Calvert County, MD, Safety Zone.	All waters of the Patuxent River within a 200 yard radius of the fireworks barge located at latitude 38°19′17″ N, longitude 076°27′45″ W, approximately 800 feet from shore at Solomons Island, MD.
10	July 4th	Chester River, Kent Island Narrows, MD, Safety Zone.	All waters of the Chester River, within an area bound by a line drawn from the following points: latitude 38°58′50″ N, longitude 076°15′00″ W; thence north to latitude 38°59′00″ N, longitude 076°15′00″ W; thence east to latitude 38°59′00″ N, longitude 076°14′46″ W; thence southeast to latitude 38°58′50″ N, longitude 076°14′28″ W; thence southwest to latitude 38°58′37″ N, longitude 076°14′36″ W, thence northwest to latitude 38°58′42″ N, longitude 076°14′55″ W, thence to the point of origin, located approximately 900 yards north of Kent Island Narrows (US–50/301) Bridge.
11	July 3rd	Chesapeake Bay, Chesapeake Beach, MD, Safety Zone.	All waters of the Chesapeake Bay within a 150 yard radius of the fireworks barge in approximate position latitude 38°41′36″ N, longitude 076°31′30″ W, and within a 150 yard radius of the fireworks barge in approximate position latitude 38°41′28″ N, longitude 076°31′29″ W, located near Chesapeake Beach, Maryland.
12	July 4th	Choptank River, Cambridge, MD, Safety Zone.	All waters of the Choptank River within a 300 yard radius of the fireworks launch site at Great Marsh Point, located at latitude 38°35′06″ N, longitude 076°04′46″ W.
13	July—2nd or 3rd Saturday and last Saturday.	Potomac River, Charles County, MD, Safety Zone.	All waters of the Potomac River within a 300 yard radius of the fireworks barge in approximate position latitude 38°20′05″ N, longitude 077°15′00″ W, approximately 500 yards north of the shoreline at Fairview Beach, Virginia.
14	May—last Saturday, July 4th.	Potomac River, Charles County, MD—Mount Vernon, Safety Zone.	All waters of the Potomac River within an area bound by a line drawn from the following points: latitude 38°42′30″ N, longitude 077°04′47″ W; thence to latitude 38°42′18″ N, longitude 077°04′42″ W; thence to latitude 38°42′11″ N, longitude 077°05′10″ W; thence to latitude 38°42′22″ N, longitude 077°05′12″ W; located at the Mount Vernon Estate, in Fairfax County, Virginia.
15	October—1st Saturday	Dukeharts Channel, Potomac River, MD, Safety Zone.	All waters of the Potomac River within a 300 yard radius of the fireworks barge in approximate position latitude 38°13′27″ N, longitude 076°44′48″ W, located adjacent to Dukeharts Channel near Coltons Point, Maryland.
16	July—Day before Independence Day holiday, November—3rd Thursday and last Friday, December—1st, 2nd and 3rd Friday.	Potomac River, National Harbor, MD, Safety Zone.	All waters of the Potomac River within an area bound by a line drawn from the following points: latitude 38°47′13″ N, longitude 077°00′58″ W; thence to latitude 38°46′51″ N, longitude 077°01′15″ W; thence to latitude 38°47′25″ N, longitude 077°01′33″ W; thence to latitude 38°47′32″ N, longitude 077°01′08″ W; thence to the point of origin, located at National Harbor, Maryland.
17	July 4th, September—last Saturday.	Susquehanna River, Havre de Grace, MD, Safety Zone.	All waters of the Susquehanna River within a 150 yard radius of the fireworks barge in approximate position latitude 39°32′42″ N, longitude 076°04′30″ W, approximately 800 yards east of the waterfront at Havre de Grace, MD.
18	June and July—Saturday before Independence Day holiday.	Miles River, St. Michaels, MD, Safety Zone.	All waters of the Miles River within a 200 yard radius of approximate position latitude 38°47′42″ N, longitude 076°12′51″ W, located at the entrance to Long Haul Creek.
19	June and July—Saturday or Sunday before Independence Day holiday.	Tred Avon River, Oxford, MD, Safety Zone.	All waters of the Tred Avon River within a 150 yard radius of the fireworks barge in approximate position latitude 38°41′24″ N, longitude 076°10′37″ W, approximately 500 yards northwest of the waterfront at Oxford, MD.
20	July 3rd	Northeast River, North East, MD, Safety Zone.	All waters of the Northeast River within a 300 yard radius of the fireworks barge in approximate position latitude 39°35′26″ N, longitude 075°57′00″ W, approximately 400 yards south of North East Community Park.
21	June—2nd or 3rd Saturday, July—1st, 2nd or 3rd Saturday, September—1st or 2nd Saturday.	Upper Potomac River, Alexandria, VA, Safety Zone.	All waters of the Upper Potomac River within a 300 yard radius of the fireworks barge in approximate position 38°48′37″ N, 077°02′02″ W, located near the waterfront of Alexandria, Virginia.
22	March through October, at the conclusion of evening MLB games at Washington Nationals Ball Park.	Anacostia River, Washington, DC, Safety Zone.	All waters of the Anacostia River within a 150 yard radius of the fireworks barge in approximate position latitude 38°52′13″ N, longitude 077°00′16″ W, located near the Washington Nationals Ball Park.
23	June—last Saturday, July—3rd, 4th or last Saturday or Sunday.	Potomac River, Prince William County, VA, Safety Zone.	All waters of the Potomac River within a 200 yard radius of the fireworks barge in approximate position latitude 38°34′07″ N, longitude 077°15′32″ W, located near Cherry Hill, Virginia.

TABLE TO § 165.506—Continued

[All coordinates listed in the Table to § 165.506 reference Datum NAD 1983.]

Number	Date	Location	Regulated area
(c.) Coast Guard Sector Hampton Roads—COTP Zone			
1	July 4th	North Atlantic Ocean, Ocean City, MD, Safety Zone.	All waters of the Atlantic Ocean in an area bound by the following points: latitude 38°19′39.9″ N, longitude 075°05′03.2″ W; thence to latitude 38°19′36.7″ N, longitude 075°04′53.5″ W; thence to latitude 38°19′45.6″ N, longitude 075°04′49.3″ W; thence to latitude 38°19′49.1″ N, longitude 075°05′00.5″ W; thence to point of origin. The size of the safety zone extends approximately 300 yards offshore from the fireworks launch area located at the high water mark on the beach.
2	May—4th Sunday, June—3rd Monday, and June 29th, July 4th, August—1st and 4th Sunday, September—1st and 4th Sunday.	Isle of Wight Bay, Ocean City, MD, Safety Zone.	All waters of Isle of Wight Bay within a 350 yard radius of the fireworks barge in approximate position latitude 38°22′32″ N, longitude 075°04′30″ W.
3	July 4th	Assawoman Bay, Fenwick Island—Ocean City, MD, Safety Zone.	All waters of Assawoman Bay within a 360 yard radius of the fireworks launch location on the pier at the West end of Northside Park, in approximate position latitude 38°25′57.6″ N, longitude 075°03′55.8″ W.
4	July 4th	Broad Bay, Virginia Beach, VA, Safety Zone.	All waters of the Broad Bay within a 400 yard radius of the fireworks display in approximate position latitude 36°52′08″ N, longitude 076°00′46″ W, located on the shoreline near the Cavalier Golf and Yacht Club, Virginia Beach, Virginia.
5	October—1st Friday	York River, West Point, VA, Safety Zone.	All waters of the York River near West Point, VA within a 400 yard radius of the fireworks display located in approximate position latitude 37°31′25″ N, longitude 076°47′19″ W.
6	July 4th	York River, Yorktown, VA, Safety Zone.	All waters of the York River within a 400 yard radius of the fireworks display in approximate position latitude 37°14′14″ N, longitude 076°30′02″ W, located near Yorktown, Virginia.
7	July 4th	Chincoteague Channel, Chincoteague, VA, Safety Zone.	All waters of the Chincoteague Channel within a 360 yard radius of the fireworks launch location at the Chincoteague carnival waterfront in approximate position latitude 37°55′40.3″ N, longitude 075°23′10.7″ W, approximately 900 yards southwest of Chincoteague Swing Bridge.
8	May—1st Friday, July 4th	James River, Newport News, VA, Safety Zone.	All waters of the James River within a 325 yard radius of the fireworks barge in approximate position latitude 36°58′30″ N, longitude 076°26′19″ W, located in the vicinity of the Newport News Shipyard, Newport News, Virginia.
9	July 9th	Chesapeake Bay, Hampton, VA, Safety Zone.	All waters of the Chesapeake Bay within a 350 yard radius of approximate position latitude 37°02′23″ N, longitude 076°17′22″ W, located near Buckroe Beach.
10	June—4th Friday, July—1st Friday, July 4th.	Chesapeake Bay, Norfolk, VA, Safety Zone.	All waters of the Chesapeake Bay within a 400 yard radius of the fireworks display located in position latitude 36°57′21″ N, longitude 076°15′00″ W, located near Ocean View Fishing Pier.
11	July 4th	Chesapeake Bay, Virginia Beach, VA, Safety Zone.	All waters of the Chesapeake Bay 400 yard radius of the fireworks display in approximate position latitude 36°55′02″ N, longitude 076°03′27″ W, located at the First Landing State Park at Virginia Beach, Virginia.
12	Memorial Day, June—1st and 2nd Friday, Saturday and Sunday, July 4th, November—4th Saturday, December—1st Saturday and December 31st, January—1st.	Elizabeth River, Southern Branch, Norfolk, VA, Safety Zone.	All waters of the Elizabeth River Southern Branch in an area bound by the following points: latitude 36°50′54.8″ N, longitude 076°18′10.7″ W; thence to latitude 36°51′7.9″ N, longitude 076°18′01″ W; thence to latitude 36°50′45.6″ N, longitude 076°17′44.2″ W; thence to latitude 36°50′29.6″ N, longitude 076°17′23.2″ W; thence to latitude 36°50′7.7″ N, longitude 076°17′32.3″ W; thence to latitude 36°49′58″ N, longitude 076°17′28.6″ W; thence to latitude 36°49′52.6″ N, longitude 076°17′43.8″ W; thence to latitude 36°50′27.2″ N, longitude 076°17′45.3″ W thence to the point of origin.
13	May—2nd Saturday, September—1st Saturday and Sunday, December—1st Saturday.	Appomattox River, Hopewell, VA, Safety Zone.	All waters of the Appomattox River within a 400 yard radius of the fireworks barge in approximate position latitude 37°19′11″ N, longitude 077°16′55″ W.
14	July—3rd Saturday	John H. Kerr Reservoir, Clarksville, VA, Safety Zone.	All waters of John H. Kerr Reservoir within a 400 yard radius of approximate position latitude 36°37′51″ N, longitude 078°32′50″ W, located near the center span of the State Route 15 Highway Bridge.
15	May, June, July, August, September, October—every Wednesday, Friday, Saturday and Sunday, July 4th.	North Atlantic Ocean, Virginia Beach, VA, Safety Zone A.	All waters of the Atlantic Ocean within a 1000 yard radius of the center located near the shoreline at approximate position latitude 36°51′12″ N, longitude 075°58′06″ W, located off the beach between 17th and 31st streets.
16	September—4th Saturday or October—1st Saturday.	North Atlantic Ocean, VA Beach, VA, Safety Zone B.	All waters of the Atlantic Ocean within a 350 yard radius of approximate position latitude 36°50′35″ N, longitude 075°58′09″ W, located on the 14th Street Fishing Pier.

TABLE TO § 165.506—Continued

[All coordinates listed in the Table to § 165.506 reference Datum NAD 1983.]

Number	Date	Location	Regulated area
17	Friday, Saturday, Sunday and Monday—Labor Day Weekend.	North Atlantic Ocean, VA Beach, VA, Safety Zone C.	All waters of the Atlantic Ocean within a 350 yard radius of approximate position latitude 36°49′55″ N, longitude 075°58′00″ W, located off the beach between 2nd and 6th streets.
18	July 4th	Nansemond River, Suffolk, VA, Safety Zone.	All waters of the Nansemond River within a 350 yard radius of approximate position latitude 36°44′27″ N, longitude 076°34′42″ W, located near Constant's Wharf in Suffolk, VA.
19	February—4th Saturday, July 4th.	Chickahominy River, Williamsburg, VA, Safety Zone.	All waters of the Chickahominy River within a 400 yard radius of the fireworks display in approximate position latitude 37°14′50″ N, longitude 076°52′17″ W, near Barrets Point, Virginia.
20	July 4th	James River, Williamsburg, VA, Safety Zone.	All waters of the James River within a 350 yard radius of approximate position latitude 37°13′23.3″ N, longitude 076°40′11.8″ W, located near Kingsmill Resort.
21	July—3rd, 4th and 5th	Great Wicomico River, Mila, VA, Safety Zone.	All waters of the Great Wicomico River located within a 420 foot radius of the fireworks display at approximate position latitude 37°50′31″ N, longitude 076°19′42″ W near Mila, Virginia.
22	July—1st Friday, Saturday and Sunday.	Cockrell's Creek, Reedville, VA, Safety Zone.	All waters of Cockrell's Creek located within a 420 foot radius of the fireworks display at approximate position latitude 37°49′54″ N, longitude 076°16′44″ W near Reedville, Virginia.
(d.) Coast Guard Sector North Carolina—COTP Zone			
1	July 4th, October—1st Friday.	Morehead City Harbor Channel, NC, Safety Zone.	All waters of the Morehead City Harbor Channel that fall within a 360 yard radius of latitude 34°43′01″ N, longitude 076°42′59.6″ W, a position located at the west end of Sugar Loaf Island, NC.
2	April—2nd Saturday, July 4th, August—3rd Monday, October—1st Friday.	Cape Fear River, Wilmington, NC, Safety Zone.	All waters of the Cape Fear River within an area bound by a line drawn from the following points: latitude 34°13′54″ N, longitude 077°57′06″ W; thence northeast to latitude 34°13′57″ N, longitude 077°57′05″ W; thence north to latitude 34°14′11″ N, longitude 077°57′07″ W; thence northwest to latitude 34°14′22″ N, longitude 077°57′19″ W; thence east to latitude 34°14′22″ N, longitude 077°57′06″ W; thence southeast to latitude 34°14′07″ N, longitude 077°57′00″ W; thence south to latitude 34°13′54″ N, longitude 077°56′58″ W; thence to the point of origin, located approximately 500 yards north of Cape Fear Memorial Bridge.
3	July 4th	Green Creek and Smith Creek, Oriental, NC, Safety Zone.	All waters of Green Creek and Smith Creek that fall within a 300 yard radius of the fireworks launch site at latitude 35°01′29.6″ N, longitude 076°42′10.4″ W, located near the entrance to the Neuse River in the vicinity of Oriental, NC.
4	July 4th	Pasquotank River, Elizabeth City, NC, Safety Zone.	All waters of the Pasquotank River within a 300 yard radius of the fireworks launch site in approximate position latitude 36°18′00″ N, longitude 076°13′00″ W, approximately 200 yards south of the east end of the Elizabeth City Bascule Bridges.
5	July 4th	Currituck Sound, Corolla, NC, Safety Zone.	All waters of the Currituck Sound within a 300 yard radius of the fireworks barge in approximate position latitude 36°22′48″ N, longitude 075°51′15″ W.
6	July 4th, November—3rd Saturday.	Middle Sound, Figure Eight Island, NC, Safety Zone.	All waters of the Figure Eight Island Causeway Channel from latitude 34°16′32″ N, longitude 077°45′32″ W, thence east along the marsh to a position located at latitude 34°16′19″ N, longitude 077°44′55″ W, thence south to the causeway at position latitude 34°16′16″ N, longitude 077°44′58″ W, thence west along the shoreline to position latitude 34°16′29″ N, longitude 077°45′34″ W, thence back to the point of origin.
7	June—2nd Saturday, July—1st Saturday after July 4th.	Pamlico River, Washington, NC, Safety Zone.	All waters of the Pamlico River that fall within a 300 yard radius of the fireworks launch site at latitude 35°32′27″ N, longitude 077°03′40.5″ W, located 500 yards north of Washington railroad trestle bridge.
8	July 4th	Neuse River, New Bern, NC, Safety Zone.	All waters of the Neuse River within a 360 yard radius of the fireworks barge in approximate position latitude 35°06′07.1″ N, longitude 077°01′35.8″ W, located 420 yards north of the New Bern, Twin Span, high rise bridge.
9	July 4th	Edenton Bay, Edenton, NC, Safety Zone.	All waters within a 300 yard radius of position latitude 36°03′04″ N, longitude 076°36′18″ W, approximately 150 yards south of the entrance to Queen Anne Creek, Edenton, NC.
10	July 4th, November—Saturday following Thanksgiving.	Motts Channel, Banks Channel, Wrightsville Beach, NC, Safety Zone.	All waters of Motts Channel within a 500 yard radius of the fireworks launch site in approximate position latitude 34°12′29″ N, longitude 077°48′27″ W, approximately 560 yards south of Sea Path Marina, Wrightsville Beach, NC.
11	July 4th	Cape Fear River, Southport, NC, Safety Zone.	All waters of the Cape Fear River within a 600 yard radius of the fireworks barge in approximate position latitude 33°54′40″ N, longitude 078°01′18″ W, approximately 700 yards south of the waterfront at Southport, NC.
12	July 4th	Big Foot Slough, Ocracoke, NC, Safety Zone.	All waters of Big Foot Slough within a 300 yard radius of the fireworks launch site in approximate position latitude 35°06′54″ N, longitude 075°59′24″ W, approximately 100 yards west of the Silver Lake Entrance Channel at Ocracoke, NC.

TABLE TO § 165.506—Continued

[All coordinates listed in the Table to § 165.506 reference Datum NAD 1983.]

Number	Date	Location	Regulated area
13	August—1st Tuesday	New River, Jacksonville, NC, Safety Zone.	All waters of the New River within a 300 yard radius of the fireworks launch site in approximate position latitude 34°44′45″ N, longitude 077°26′18″ W, approximately one half mile south of the Hwy 17 Bridge, Jacksonville, North Carolina.

Dated: September 12, 2011.

William D. Lee,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 2011–27645 Filed 10–25–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF EDUCATION

34 CFR Chapter VI

Negotiated Rulemaking Committee, Negotiator Nominations and Schedule of Committee Meetings—Teacher Preparation and TEACH Grant Programs

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Intent to establish negotiated rulemaking committees.

SUMMARY: We announce our intention to establish a negotiated rulemaking committee to prepare proposed regulations under Title II and Title IV of the Higher Education Act of 1965, as amended (HEA). The committee will include representatives of organizations or groups with interests that are significantly affected by the topics proposed for negotiation. We request nominations for individual negotiators who represent key stakeholder constituencies for the issues to be negotiated to serve on the committee and we set a schedule for committee meetings.

DATES: We must receive your nominations for negotiators to serve on the committee on or before November 25, 2011. The dates, times, and locations of the committee meetings are set out in the *Schedule for Negotiations* section under **SUPPLEMENTARY INFORMATION,** below.

ADDRESSES: Please send your nominations for negotiators to Wendy Macias, U.S. Department of Education, 1990 K Street, NW., room 8017, Washington, DC 20006, or by fax at (202) 502–7874. You may also e-mail your nominations to *Wendy.Macias@ed.gov.*

FOR FURTHER INFORMATION CONTACT: For information about the content of this notice, including information about the negotiated rulemaking process or the nomination submission process, contact: Wendy Macias, U.S. Department of Education, 1990 K Street, NW., room 8017, Washington, DC 20006. *Telephone:* (202) 502–7526. You may also e-mail your questions about the nomination submission process to: *Wendy.Macias@ed.gov.*

Note: For general information about the negotiated rulemaking process, see *The Negotiated Rulemaking Process for Title IV Regulations, Frequently Asked Questions* at *http://www.ed.gov/policy/highered/reg/hearulemaking/hea08/neg-reg-faq.html.*

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS), toll free at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: On May 5, 2011, we published a notice in the **Federal Register** (76 FR 25650) announcing our intent to establish one or more negotiated rulemaking committees to develop proposed regulations under the HEA. In addition, we announced our intent to develop these proposed regulations by following the negotiated rulemaking procedures in Section 492 of the HEA.

The notice also announced a series of three regional hearings at which interested parties could comment on the topics suggested by the Department and suggest additional topics for consideration for action by the negotiating committees. We also held four public roundtable discussions to complement the regional hearings. The hearings and roundtables were held in: Nashville, Tennessee (roundtable only); Tacoma, Washington; Chicago, Illinois; and Charleston, South Carolina. We invited parties to comment and submit topics for consideration in writing as well. (Transcripts from the regional hearings can be found at *http://www2.ed.gov/policy/highered/reg/hearulemaking/2011/hearings.html.* Written comments may be viewed through the Federal eRulemaking Portal at *http://www.regulations.gov.* Instructions for finding comments are available on the site under ''How to Use *Regulations.gov''* in the Help section. Individuals can enter docket ID ED–2011–OPE–0003 in the ''Enter Keyword or ID'' search box to locate the appropriate docket.) *Regulatory Issues:* After consideration of the information received at the regional hearings, in the roundtable discussions, and in writing, we have decided to establish a negotiating committee to address teacher preparation program issues in Title II of the HEA and in the Teacher Education Assistance for College and Higher Education (TEACH) Grant Program authorized by Title IV of the HEA.

We list the topics the committee is likely to address in the *Committee Topics* section, below.

We intend to select negotiators for the committee who represent the interests significantly affected by the topics proposed for negotiations. In so doing, we will follow the requirement in Section 492(b)(1) of the HEA that the individuals selected must have demonstrated expertise or experience in the relevant subjects under negotiation. We will also select individual negotiators who reflect the diversity among program participants, in accordance with Section 492(b)(1) of the HEA. Our goal is to establish a committee that will allow significantly affected parties to be represented while keeping the committee size manageable.

The committee may create subgroups on particular topics that may involve additional individuals who are not members of the committee. Individuals who are not selected as members of the committee will be able to attend the meetings, have access to the individuals representing their constituencies, and participate in informal working groups on various issues between the meetings. The committee meetings will be open to the public.

The Department has identified the following constituencies as having interests that are significantly affected by the topics proposed for negotiations. The Department plans to seat as negotiators individuals from organizations or groups representing these constituencies:

- Postsecondary students, including legal assistance organizations that represent students.
- Teachers.

- Financial aid administrators at postsecondary institutions.
- Business officers and bursars at postsecondary institutions.
- Admissions officers at postsecondary institutions.
- State officials, including officials with teacher preparation program approval agencies, State teacher licensing boards, higher education executive officers, chief State school officers, State attorneys general, and State data system administrators.
- Institutions that offer teacher preparation programs, including schools of education.
  - Institutions of higher education eligible to receive Federal assistance under Title III, Parts A, B, and F, and Title V of the HEA, which include Historically Black Colleges and Universities, Hispanic-Serving Institutions, American Indian Tribally Controlled Colleges and Universities, Alaska Native and Native Hawaiian-Serving Institutions, Predominantly Black Institutions, and other institutions with a substantial enrollment of needy students as defined in Title III of the HEA.
  - Two-year public institutions of higher education.
  - Four-year public institutions of higher education.
  - Private, non-profit institutions of higher education.
  - Private, for-profit institutions of higher education.
- Operators of programs for alternative routes to teacher certification.
- Accrediting agencies.
- Students enrolled in elementary and secondary education, including parents of students enrolled in elementary and secondary education.
- School and local educational agency officials, including those responsible for hiring teachers and evaluating teacher performance.

The goal of the committee is to develop high-quality proposed regulations that reflect a final consensus of the committee. Consensus means that there is no dissent by any member of the negotiating committee, including the committee member representing the Department. An individual selected as a negotiator will be expected to represent the interests of their organization or group. If consensus is reached, all members of the organization or group represented by a negotiator are bound by the consensus and are prohibited from commenting negatively on the resulting proposed regulations. The Department will not consider any such negative comments that are submitted by members of such an organization or group.

Nominations

Nominations should include:

- The name of the nominee, the organization or group the nominee represents, and a description of the interests that the nominee represents.
- Evidence of the nominee's expertise or experience in the subject, or subjects, to be negotiated.
- Evidence of support from individuals or groups of the constituency that the nominee will represent.
- The nominee's commitment that he or she will actively participate in good faith in the development of the proposed regulations.
- The nominee's contact information, including address, phone number, fax number, and e-mail address.

For a better understanding of the negotiated rulemaking process, nominees should review *The Negotiated Rulemaking Process for Title IV Regulations, Frequently Asked Questions* at *http://www.ed.gov/policy/highered/reg/hearulemaking/hea08/neg-reg-faq.html* prior to committing to serve as a negotiator.

Nominees will be notified whether or not they have been selected as negotiators as soon as the Department's review process is completed.

Committee Topics

The topics the committee is likely to address are as follows:

- The requirements for institutional and program report cards on the quality of teacher preparation (Section 205(a) of the HEA);
- The requirements for State report cards on the quality of teacher preparation (Section 205(b) of the HEA);
- The standards to ensure reliability, validity, and accuracy of the data submitted in report cards on the quality of teacher preparation (Section 205(c) of the HEA);
- The criteria used by States to assess the performance of teacher preparation programs at higher education institutions in the State, the identification of low-performing programs (Section 207(a) of the HEA), and the consequences of a State's termination of eligibility of a program (Section 207(b) of the HEA);
- The definition of the term ''high quality teacher preparation program'' for the purpose of establishing the eligibility of an institution to participate in the TEACH Grant program (Section 420L(1) of the HEA);
- The definition of the term ''high quality professional development services'' for the purpose of establishing the eligibility of an institution to participate in the TEACH Grant program (Section 420L(1) of the HEA); and
- The service and repayment obligations for the TEACH Grant Program (Subpart E of 34 CFR 686).

These topics are tentative. Topics may be added or removed as the process continues.

Schedule for Negotiations

The committee will meet for three sessions on the following dates:

Session 1: January 18–20, 2012.

Session 2: February 27–29, 2012.

Session 3: April 3–5, 2012.

The first and second day of each session will begin at 9 a.m. and end around 5 p.m. The final day of each session will begin at 9 a.m. and end at 12 p.m.

The meetings will be held at the U.S. Department of Education at: 1990 K Street, NW., Eighth Floor Conference Center, Washington, DC 20006.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) by contacting the contact person under **FOR FURTHER INFORMATION CONTACT.**

Electronic Access to This Document: 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 via the *Federal Digital System* at: *http://www.gpo.gov/fdsys.* At this site 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). To use PDF, you must have Adobe Acrobat Reader, which is available free at this site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at *http://www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Program Authority: 20 U.S.C. 1021 *et seq.,* 1070g *et seq.,* 1098a.

Dated: October 21, 2011.

Eduardo M. Ochoa,

Assistant Secretary for Postsecondary Education.

[FR Doc. 2011–27719 Filed 10–25–11; 8:45 am]

BILLING CODE 4000–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 11–159, RM–11644; DA 11–1690]

Television Broadcasting Services; Cleveland, OH

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission has before it a petition for rulemaking filed by Community Television of Ohio License, LLC (''Community Television''), the licensee of station WJW (TV), channel 8, Cleveland, Ohio, requesting the substitution of channel 31 for channel 8 at Cleveland. Community Television is seeking the channel substitution because a sizeable number of the station's viewers in areas southwest of the station's transmitter were not able to receive the station's over-the-air signal after it terminated analog service on June 12, 2009, and commenced post-transition digital service on its VHF channel. Many viewers reporting difficulty receiving WJW (TV)'s signal report they have no difficulty receiving the UHF stations in the area. Channel 31 was selected because this was Community Television's pre-transition digital channel and it has retained much of the channel 31 transmission equipment.

DATES: Comments must be filed on or before November 25, 2011, and reply comments on or before December 12, 2011.

ADDRESSES: Federal Communications Commission, Office of the Secretary, 445 12th Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve counsel for petitioner as follows: Scott S. Patrick, Esq., Dow Lohnes PLLC, 1200 New Hampshire Avenue, NW., Suite 800, Washington, DC 20036–6802.

FOR FURTHER INFORMATION CONTACT: Joyce L. Bernstein, *joyce.bernstein@fcc.gov,* Media Bureau, (202) 418–1647.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 11–159, adopted October 7, 2011, and released October 11, 2011. The full text of this document is available for public inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street, SW., Washington, DC 20554. This document will also be available via ECFS (*http://www.fcc.gov/cgb/ecfs/*). (Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.) This document may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–478–3160 or via e-mail *www.BCPIWEB.com.* To request this document in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to *fcc504@fcc.gov* or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts (other than *ex parte* presentations exempt under 47 CFR 1.1204(a)) are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1208 for rules governing restricted proceedings.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television, Television broadcasting.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336, and 339.

§ 73.622 [Amended]

2. Section 73.622(i), the Post-Transition Table of DTV Allotments under Ohio is amended by removing channel 8 and adding channel 31 at Cleveland.

[FR Doc. 2011–27592 Filed 10–25–11; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[FWS–R1–ES–2010–0071; MO 92210–0–0009]

RIN 1018–AX16

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for Lepidium papilliferum (Slickspot Peppergrass)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the reopening of the comment period on our May 10, 2011, proposal to designate critical habitat for *Lepidium papilliferum* (slickspot peppergrass) under the Endangered Species Act of 1973, as amended (Act). We also announce the availability of a draft economic analysis (DEA) of the proposed designation and an amended required determinations section of the proposal. We are reopening the comment period to allow all interested parties an opportunity to comment simultaneously on the proposed rule, the associated DEA, and the amended required determinations section. Comments previously submitted on this rulemaking do not need to be resubmitted, as they will be fully considered in preparation of the final rule.

DATES: We will consider comments received on or before December 12, 2011. Comments must be received by 11:59 p.m. Eastern Time on the closing date. Any comments that we receive after the closing date may not be considered in the final decision on this action.

ADDRESSES:

Document availability: You may obtain a copy of the DEA via *http://www.regulations.gov* at Docket No. FWS–R1–ES–2010–0071 or by contacting the office listed under **FOR FURTHER INFORMATION CONTACT.**

Comment submission: You may submit comments by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal at *http://www.regulations.gov.* In the box that reads ''Enter Keyword or ID,'' enter the docket number for this proposed rule, which is FWS–R1–ES–2010–0071, 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.

(2) *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R1–ES–2010–0071; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203.

We will post all comments on *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: Brian T. Kelly, State Supervisor, Idaho Fish and Wildlife Office, 1387 S. Vinnell Way, Room 368, Boise, ID 83709, by telephone (208–378–5243), or by facsimile (208–378–5262). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Public Comments

We will accept written comments and information during this reopened comment period on our proposed critical habitat for *Lepidium papilliferum* that was published in the **Federal Register** on May 10, 2011 (76 FR 27184), our DEA of the proposed designation, and the amended required determinations provided in this document. We will consider information and recommendations from all interested parties. We are particularly interested in comments concerning:

(1) The reasons why we should or should not designate habitat as ''critical habitat'' under section 4 of the Act, including whether there are threats to the species from human activity, the degree to which threats from human activity can be expected to increase due to the designation, and whether that increase in threats outweighs the benefit of designation such that the designation of critical habitat may not be prudent.

(2) Specific information on:

(a) The amount and distribution of *Lepidium papilliferum* habitat;

(b) What areas occupied at the time of listing and that contain features essential to the conservation of *Lepidium papilliferum* should be included in the designation and why;

(c) The habitat components (primary constituent elements) essential to the conservation of the species, such as specific soil characteristics, plant associations, or pollinators, and the quantity and spatial arrangement of these features on the landscape needed to provide for the conservation of the species;

(d) What areas not occupied at the time of listing are essential for the conservation of the species, if any, and why; and

(e) Special management considerations or protections that the features essential to the conservation of *Lepidium papilliferum* may require, including managing for the potential effects of climate change.

(3) Land use designations and current or planned activities in the proposed critical habitat areas and their possible impacts on proposed critical habitat.

(4) Any reasonably foreseeable economic, national security, or other relevant impacts that may result from designating any area that may be included in the final designation. We are particularly interested in any impacts on small entities, and the benefits of including or excluding areas from the proposed designation that are subject to these impacts.

(5) Information on whether the benefits of an exclusion of any particular area outweigh the benefits of inclusion under section 4(b)(2) of the Act, after considering both the potential impacts and benefits of the proposed critical habitat designation. Under section 4(b)(2) of the Act, we may exclude an area from critical habitat if we determine that the benefits of such exclusion outweigh the benefits of including that particular area as critical habitat, unless failure to designate that specific area as critical habitat will result in the extinction of the species. We are considering the possible exclusion of areas under private ownership, in particular, as we anticipate the benefits of exclusion may outweigh the benefits of inclusion in those areas. We therefore request specific information on:

(a) The benefits of including any specific areas in the final designation and supporting rationale,

(b) The benefits of excluding any specific areas from the final designation and supporting rationale, and

(c) Whether any specific exclusions may result in the extinction of the species and why (see ''Consideration of Impacts Under Section 4(b)(2) of the Act,'' below).

(6) The use of Public Land Survey System quarter-quarter sections to delineate the proposed critical habitat designation. We used quarter-quarter sections in this proposed rule because they are the most-commonly-used minimum size and method for delineating land ownership boundaries within the range of *Lepidium papilliferum.*

(7) The projected and reasonably likely impacts of climate change on *Lepidium papilliferum* and on the critical habitat areas we are proposing.

(8) Whether we could improve or modify our approach to designating critical habitat in any way to provide for greater public participation and understanding, or to better accommodate public concerns and comment.

(9) Information on the extent to which the description of economic impacts in the DEA is reasonable and accurate.

(10) The likelihood of adverse social reactions to the designation of critical habitat, as discussed in the DEA, and how the consequences of such reactions, if likely to occur, would relate to the conservation and regulatory benefits of the proposed critical habitat designation.

If you submitted comments or information on the proposed rule (76 FR 27184) during the initial or extended comment period (76 FR 39807) that was open from May 11 through September 9, 2011, please do not resubmit them. We will incorporate them into the public record as part of this comment period, and we will fully consider them in the preparation of our final determination. Our final determination concerning critical habitat will take into consideration all written comments and any additional information we receive during all comment periods. On the basis of public comments, we may, during the development of our final determination, find that areas proposed are not essential, are appropriate for exclusion under section 4(b)(2) of the Act, or are not appropriate for exclusion.

You may submit your comments and materials concerning the proposed rule or DEA by one of the methods listed in **ADDRESSES**. We request that you send comments only by the methods described in **ADDRESSES**.

If you submit a comment via *http://www.regulations.gov,* your entire comment—including any personal identifying information—will be posted on the Web site. We will post all hardcopy comments on *http://www.regulations.gov* as well. If you

submit a hardcopy comment that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so.

Comments and materials we receive, as well as supporting documentation we used in preparing the proposed rule and DEA, will be available for public inspection on *http://www.regulations.gov* at Docket No. FWS–R1–ES–2010–0071, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Idaho Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**). You may obtain copies of the proposed rule and the DEA on the Internet at *http://www.regulations.gov* at Docket Number FWS–R1–ES–2010–0071, or by mail from the Idaho Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Background

It is our intent to discuss only those topics directly relevant to the designation of critical habitat for *Lepidium papilliferum* in this document. For more information on previous Federal actions concerning *L. papilliferum,* refer to the proposed designation of critical habitat published in the **Federal Register** on May 10, 2011 (76 FR 27184). For more information on *L. papilliferum* or its habitat, please refer to the final listing rule published in the **Federal Register** on October 8, 2009 (74 FR 52014), which is available online at *http://www.regulations.gov* at Docket No. FWS–R1–ES–2010–0071 or from the Idaho Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Previous Federal Actions

On May 10, 2011, we published a proposed rule to designate critical habitat for *Lepidium papilliferum* (76 FR 27184). We proposed to designate as critical habitat approximately 23,374 hectares (57,756 acres) in four units in Ada, Elmore, Payette, and Owyhee Counties in Idaho. We announced a 60-day comment period in that proposed rule, scheduled to close on July 11, 2011. On June 1, 2011, we received a request from the Governor of Idaho seeking a 60-day extension of the comment period so that the State of Idaho may coordinate comments between the State agencies that may be affected by critical habitat, and to allow adequate time for citizens to provide input on the proposed critical habitat designation. In response to this request, on July 7, 2011, we announced in the **Federal Register** an extension of the comment period for an additional 60 days, until September 9, 2011 (76 FR 39807).

Critical Habitat

Section 3 of the Act defines critical habitat as the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features essential to the conservation of the species and that may require special management considerations or protection, and specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. If the proposed rule is made final, section 7 of the Act will prohibit destruction or adverse modification of critical habitat by any activity funded, authorized, or carried out by any Federal agency. Federal agencies proposing actions affecting critical habitat must consult with us on the effects of their proposed actions, under section 7(a)(2) of the Act.

Consideration of Impacts Under Section 4(b)(2) of the Act

Section 4(b)(2) of the Act requires that we designate or revise critical habitat based upon the best scientific data available, after taking into consideration the economic impact, impact on national security, or any other relevant impact of specifying any particular area as critical habitat. We may exclude an area from critical habitat if we determine that the benefits of excluding the area outweigh the benefits of including the area as critical habitat, provided such exclusion will not result in the extinction of the species.

When considering the benefits of inclusion for an area, we consider the additional regulatory benefits that area would receive from the protection from adverse modification or destruction as a result of actions with a Federal nexus (activities conducted, funded, permitted, or authorized by Federal agencies), the educational benefits of mapping areas containing essential features that aid in the recovery of the listed species, and any benefits that may result from designation due to State or Federal laws that may apply to critical habitat.

When considering the benefits of exclusion, we consider, among other things, whether exclusion of a specific area is likely to result in conservation; the continuation, strengthening, or encouragement of partnerships; or implementation of a management plan.

In the case of *Lepidium papilliferum,* the benefits of critical habitat include public awareness of the presence of the species and the importance of habitat protection, and, where a Federal nexus exists, increased habitat protection for *L. papilliferum* due to protection from adverse modification or destruction of critical habitat. In practice, situations with a Federal nexus exist primarily on Federal lands or for projects undertaken by, or with the authorization or permission of, Federal agencies. We are considering the possible exclusion of areas under private ownership from the designation of critical habitat for *L. papilliferum,* as we anticipate the benefits of exclusion may outweigh the benefits of inclusion in those areas.

The final decision on whether to exclude any areas will be based on the best scientific data available at the time of the final designation, including information obtained during the comment period and information about the economic impact of designation. Accordingly, we have prepared a draft economic analysis (DEA) concerning the proposed critical habitat designation, which is available for review and comment (see **ADDRESSES** section).

Draft Economic Analysis

The DEA identifies and analyzes the potential economic impacts associated with the proposed critical habitat designation for *Lepidium papilliferum.* The DEA describes the economic impacts of all potential conservation efforts for *L. papilliferum;* some of these costs will likely be incurred regardless of whether we designate critical habitat. The economic impact of the proposed critical habitat designation is analyzed by comparing scenarios both ''with critical habitat'' and ''without critical habitat.'' The ''without critical habitat'' scenario represents the baseline for the analysis, considering protections already in place for the species (e.g., under the Federal listing and other Federal, State, and local regulations). The baseline, therefore, represents the costs incurred regardless of whether critical habitat is designated. The ''with critical habitat'' scenario describes the incremental impacts associated specifically with the designation of critical habitat for the species. In other words, these incremental impacts would not occur but for the designation.

These incremental impacts produce the costs that we consider in the final designation of critical habitat when evaluating the benefits of excluding particular areas under section 4(b)(2) of the Act. The analysis looks retrospectively at baseline impacts incurred since the species was listed, and forecasts both baseline and incremental impacts likely to occur if

we finalize the proposed critical habitat designation.

As described above, the DEA separates conservation measures into two distinct categories according to ''without critical habitat'' and ''with critical habitat'' scenarios. The ''without critical habitat'' scenario represents the baseline for the analysis, considering protections otherwise afforded to the species (e.g., under the Federal listing and other Federal, State, and local regulations). The ''with critical habitat'' scenario describes the incremental impacts specifically due to designation of critical habitat for the species. In other words, these incremental conservation measures and associated economic impacts would not occur but for the designation. Conservation measures implemented under the baseline (without critical habitat) scenario are described qualitatively within the DEA, but economic impacts associated with these measures are not quantified. Economic impacts are only quantified for conservation measures implemented specifically due to the designation of critical habitat (i.e., incremental impacts). For a further description of the methodology of the analysis, see Chapter 2, ''Framework for the Analysis,'' of the DEA.

The DEA provides estimated costs of the foreseeable potential economic impacts of the proposed critical habitat designation for *Lepidium papilliferum* over the next 20 years, from 2012 through 2031. We determined that this 20-year timeframe was the appropriate period for analysis because the availability of land-use planning information becomes very limited for most activities beyond that timeframe. The DEA identifies potential incremental costs as a result of the proposed critical habitat designation; these are those costs attributed to critical habitat over and above those baseline costs attributed to listing and other regulatory protections. The DEA quantifies economic impacts of *L. papilliferum* conservation efforts associated with the following categories of activity: (1) Wildfire and invasive nonnative species management; (2) commercial and residential development; (3) utility and transportation activities; and (4) livestock use. The most visible effect to *L. papilliferum* and its habitat from livestock use is through localized trampling impacts; however, as stated in the final listing rule, under current management conditions we do not consider this activity to represent a significant threat to the species. Although the final listing rule evaluated recreation as a possible minor threat to the species, this does not appear to be a major factor impacting either *L. papilliferum* or its habitat. We therefore do not anticipate any measurable economic impact of critical habitat designation for this species on recreation, and this activity was not considered in the draft economic analysis.

Approximately 95 percent of the proposed critical habitat area is on public lands (roughly 86 percent is Federal land managed by the Bureau of Land Management (BLM)). Of this, 8 percent is State land, 2 percent is County land (Payette, Ada, Owyhee, and Elmore counties, Idaho), and the remaining 5 percent covers privately owned lands. Commercial and residential develop could result in the loss of *Lepidium papilliferum* populations, as well as indirect losses through the development of infrastructure that allows greater access to the habitat (e.g., off-road vehicles, human-ignited wildfires) and habitat fragmentation. Although no development has taken place within the proposed critical habitat areas since publication of the proposed rule, portions of the critical habitat area are adjacent to urban and rural development, or within the Interstate 84 corridor, increasing the probability that the areas may be subject to future development.

The most significant biological threats to the species are related to increased frequency of wildfire, combined with the invasion of nonnative annual grasses. The invasion of nonnative annual grasses provides a continuous source of fuel, which directly contributes to a dramatic increase in natural fire frequency. Conservation measures related to wildfire and nonnative species have been incorporated into a Conservation Agreement being implemented by the BLM, which applies to 86 percent of the proposed critical habitat area. Rights-of-way and pipeline activities, particularly those related to utilities and transportation activities, became subject to section 7 consultation in 2009, when the species was listed under the Act, and actions are already being reviewed to evaluate potential impacts to the species related to equipment operation or construction within areas occupied by the species. A review of our consultation records indicates that no project modifications have been required to date, either because the activities were not within *Lepidium papilliferum* habitat, or conservation measures were incorporated into project designs to avoid impacts to the species or its habitat.

The draft economic analysis concludes that critical habitat designation is not likely to affect levels of economic activity or conservation measures being implemented within the proposed critical habitat area. Unless changes occur to existing conservation measures or the management of land use activities, the incremental impacts of critical habitat designation would be limited to the additional administrative costs of section 7 consultations for Federal agencies, associated with considering the potential for adverse modification of critical habitat. These costs are estimated to be $14,200 annually, or $161,000 over a 20-year period, based on the present value discounted at seven percent.

Because approximately 86 percent of the proposed critical habitat area is Federal land managed by the BLM, the proposed critical habitat designation is unlikely to generate economic impacts beyond administrative costs of section 7 consultation. Additionally, a binding Conservation Agreement has been developed to address the conservation needs of this species on BLM land, and BLM already consults with us under section 7 of the Act to ensure their activities do not jeopardize the continued existence of the species. The BLM intends to continue to manage these lands for conservation of *Lepidium papilliferum,* by implementing the specific conservation measures identified in Chapter 3 of the draft economic analysis. In addition, project proponents and land managers are aware of the species' presence throughout its range, and the need to consult with the Service for projects that have a Federal nexus that may affect the species. We believe activities on private lands are unlikely to have a Federal nexus or be subject to section 7 consultation, based on a review of our consultation records to date. However, in the case that private lands may possibly be subject to a Federal permit or funding source in the future (e.g., U.S. Department of Agriculture, Natural Resources Conservation Service programs or Federal permitting of alternative energy projects), the DEA underestimates potential administrative costs due to critical habitat designation in the 5 percent of proposed critical habitat that overlaps the private lands. However, we have no information indicating that any such activity will occur on private lands in the foreseeable future.

In conclusion, the Service does not foresee a circumstance in which critical habitat designation will change the outcome of future section 7 consultations. Any conservation

measures implemented to minimize impacts to the species would very likely be sufficient to also minimize impacts to critical habitat. Therefore, we do not believe any additional conservation measures would be needed solely to minimize impacts to critical habitat. Based on this reasoning, we also do not anticipate critical habitat designation to result in any appreciable incremental economic benefits. Any economic benefits related to conservation activities would flow from the listing of the species, rather than the designation of critical habitat, and would fall within the economic baseline.

As we stated earlier, we are soliciting data and comments from the public on the DEA, as well as all aspects of the proposed rule and our amended required determinations. We may revise the proposed rule or supporting documents to incorporate or address information we receive during the public comment period. In particular, we may exclude an area from critical habitat if we determine that the benefits of excluding the area outweigh the benefits of including the area, provided the exclusion will not result in the extinction of the species.

Required Determinations—Amended

In our May 10, 2011, proposed rule (76 FR 27184), we indicated that we would defer our determination of compliance with several statutes and executive orders until the information concerning potential economic impacts of the designation and potential effects on landowners and stakeholders became available in the DEA. We have now made use of the DEA data to make these determinations. In this document, we affirm the information in our proposed rule concerning Executive Order (E.O.) 12866 (Regulatory Planning and Review), E.O. 12630 (Takings), E.O. 13132 (Federalism), E.O. 12988 (Civil Justice Reform), E.O. 13211 (Energy, Supply, Distribution, and Use), the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), and the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951). However, based on the DEA data, we are amending our required determination concerning the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Regulatory Flexibility Act

Under the Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 802(2)), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. Based on our DEA of the proposed designation, we provide our analysis for determining whether the proposed rule would result in a significant economic impact on a substantial number of small entities. Based on comments we receive, we may revise this determination as part of our final rulemaking.

According to the Small Business Administration, small entities include small organizations, such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; and small businesses (13 CFR 121.201). For example, small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we considered the types of activities that might trigger regulatory impacts under this designation as well as types of project modifications that may result. In general, the term ''significant economic impact'' is meant to apply to a typical small business firm's business operations.

To determine if the proposed designation of critical habitat for *Lepidium papilliferum* would affect a substantial number of small entities, we considered the number of small entities affected within particular types of economic activities, such as commercial and residential development. In order to determine whether it is appropriate for our agency to certify that this rule would not have a significant economic impact on a substantial number of small entities, we considered each industry or category individually. In estimating the numbers of small entities potentially affected, we also considered whether their activities have any Federal involvement. Critical habitat designation will not affect activities that do not have any Federal involvement; designation of critical habitat only affects activities conducted, funded, permitted, or authorized by Federal agencies. In areas where *L. papilliferum* is present, Federal agencies already are required to consult with us under section 7 of the Act on activities they fund, permit, or implement that may affect the species. If we finalize this proposed critical habitat designation, consultations to avoid the destruction or adverse modification of critical habitat would be incorporated into the existing consultation process.

In the DEA, we evaluated the potential economic effects on small entities resulting from implementation of conservation actions related to the proposed designation of critical habitat for *Lepidium papilliferum.* As estimated in Chapter 4 of the DEA, incremental impacts of the proposed designation are limited to additional incremental costs of time spent by the Service, Federal action agency, and any third parties in section 7 consultation over and above time spent on the jeopardy analysis component of the consultation. Small entities may participate in section 7 consultation as a third party (the primary consulting parties being the Service and the Federal action agency); therefore, it is possible that the small entities may spend additional time considering critical habitat during section 7 consultation for *L. papilliferum.* These incremental administrative impacts are the only potential incremental impacts of critical habitat designation that may be borne by small entities. Some of the forecast consultations for *L. papilliferum* may involve third parties, such as ranchers, energy companies (for pipeline projects), or developers. The maximum annualized incremental impact to such third parties is anticipated to total $2,810 between 2012 and 2031; such costs are expected to be distributed between multiple third parties. While $2,810 is expected to represent the maximum total cost annually, the potential third party cost for each individual consultation is anticipated to be significantly less, on the order of $260 to $1,750 depending on the consultation type. Small entities are consequently anticipated to bear a relatively low cost impact as a result of the designation of critical habitat for *L. papilliferum.* We do not believe this designation will have a significant impact on these small entities or affect a substantial number of them. Please

refer to Appendix A of the DEA of the proposed critical habitat designation for a more detailed discussion of potential economic impacts.

In summary, we have considered whether the proposed designation would result in a significant economic impact on a substantial number of small entities. Information for this analysis was gathered from the Small Business Administration, stakeholders, and the Service. For the above reasons and based on currently available information, we certify that if promulgated, the proposed designation would not have a significant economic impact on a substantial number of small business entities. Therefore, an initial regulatory flexibility analysis is not required.

Authors

The primary authors of this notice are the staff members of the Idaho Fish and Wildlife Office, Pacific Region, 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: October 17, 2011.

Eileen Sobeck,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2011–27727 Filed 10–25–11; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R8–ES–2011–0066; 92220–1113–0000; ABC Code: C5]

Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition to Delist the Coastal California Gnatcatcher as Threatened

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90-day petition finding.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 90-day finding on a petition to remove the coastal California gnatcatcher (*Polioptila californica californica*) as a threatened species under the Endangered Species Act of 1973, as amended (Act). Based on our review, we find that the petition does not present substantial scientific or commercial information to indicate that delisting the coastal California gnatcatcher may be warranted. Therefore, we are not initiating a status review in response to this petition. We also conclude that the coastal California gnatcatcher constitutes a valid subspecies and are no longer considering whether to propose its reclassification to a distinct population segment (DPS) under the Act. We ask the public to submit to us any new information that becomes available concerning the status of, or threats to, the coastal California gnatcatcher or its habitat at any time.

DATES: The finding announced in this document was made on October 26, 2011.

ADDRESSES: This finding is available on the Internet at *http://www.regulations.gov* at Docket Number FWS–R8–ES–2011–0066. Supporting documentation we used in preparing this finding is available for public inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Carlsbad Fish and Wildlife Office, 6010 Hidden Valley Road, Suite 101, Carlsbad, CA 92011. Please submit any new information, materials, comments, or questions concerning this finding to the above address.

FOR FURTHER INFORMATION CONTACT: Jim Bartel, Field Supervisor, Carlsbad Fish and Wildlife Office, U.S. Fish and Wildlife Service, 6010 Hidden Valley Road, Suite 101, Carlsbad, CA 92011, by telephone at 760–431–9440, or by facsimile to 760–431–9624. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Act (16 U.S.C. 1531 *et seq.*) requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that the petitioned action may be warranted. We are to base this finding on information provided in the petition, supporting information submitted with the petition, and information otherwise available in our files. To the maximum extent practicable, we are to make this finding within 90 days of our receipt of the petition, and publish our notice of the finding promptly in the **Federal Register**.

Our standard for substantial scientific or commercial information within the Code of Federal Regulations (CFR) with regard to a 90-day petition finding is ''that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted'' (50 CFR 424.14(b)(1)). If we find that substantial scientific or commercial information was presented, we are required to promptly conduct a species status review, which we subsequently summarize in our 12-month finding.

Petition History

We received a petition, dated April 9, 2010, from the Pacific Legal Foundation (PLF), representing the Coalition of Labor Agriculture, and Business (COLAB), Property Owners Association of Riverside County, and M. Lou Marsh, M.D., on April 12, 2010, to remove the coastal California gnatcatcher from the Federal List of Endangered and Threatened Wildlife (List) under the Act (PLF 2010, pp. 1–9). The petition clearly identifies itself as such and included the requisite identification information for the petitioner(s), as required in 50 CFR 424.14(a). This finding addresses the petition.

Previous Federal Actions

The coastal California gnatcatcher has been the subject of numerous **Federal Register** publications since its inclusion as a category two candidate species in 1982 (47 FR 58454, December 30, 1982; Service 2010, p. 3) (see *http://ecos.fws.gov/speciesProfile/profile/speciesProfile.action?spcode=B08X*). On March 22, 1991, the Service published a 90-day finding addressing seven petitions to list five species as threatened or endangered, including three petitions pertaining to the coastal California gnatcatcher (56 FR 12146), and concluded that substantial information was presented to indicate that listing might be warranted. This finding led to the September 17, 1991, publication of a proposed rule to list the coastal California gnatcatcher as endangered; the public comment period for this proposed rule lasted 6 months, until March 16, 1992 (56 FR 47053). The proposed rule also constituted our 12-month finding, which the proposed rule referred to as the ''final finding'', on the petition.

On September 22, 1992, the Service reopened the public comment period on the proposed rule to list the coastal California gnatcatcher as endangered for an additional 30 days, from September 22, 1992, until October 22, 1992, and notified the public that we needed extra time to obtain and review the information regarding the taxonomy of the coastal California gnatcatcher (57 FR 43686). On March 30, 1993, the Service published a final rule to list the coastal California gnatcatcher as a threatened species (58 FR 16742). In that rule, we

did not designate critical habitat, because we had determined that designating critical habitat for the gnatcatcher was not prudent.

On March 30, 1993, the same day that the final listing rule published in the **Federal Register**, we also published a proposed rule to adopt a special rule under section 4(d) of the Act (16 U.S.C. 1531 *et seq.*) to allow for the take of the coastal California gnatcatcher (58 FR 65088). On December 10, 1993, the Service published in the **Federal Register** a final rule adopting the special rule concerning take of the coastal California gnatcatcher (58 FR 65088). The special rule is codified in the Code of Federal Regulations (CFR) at 50 CFR 17.41(b).

In a Memorandum Opinion and Order filed in the U.S. District Court for the District of Columbia on May 2, 1994 (*Building Industry Association of Southern California et al.* v. *Babbitt*), the Court vacated the listing determination for the coastal California gnatcatcher, stating the Secretary of the Interior should have made available the raw data that formed the basis of Dr. Jonathan Atwood's report (Atwood 1991) that concluded subspecies recognition for the coastal California gnatcatcher. We subsequently made these data available to the public for review and comment on June 2, 1994, for a period of 60 days, until August 1, 1994 (59 FR 28508). On June 16, 1994, the Court reinstated the threatened status for the coastal California gnatcatcher until the public could review and comment on the raw data analyzed by Atwood.

Before the comment period for the June 2, 1994, **Federal Register** publication ended, we extended that public comment period (59 FR 38426, July 28, 1994), and we subsequently extended it two more times, on August 26, 1994 (59 FR 44125), and October 25, 1994 (59 FR 53628). Therefore, the public comment period on data pertaining to the subspecific taxonomy of the coastal California gnatcatcher lasted from June 2, 1994, until December 1, 1994. Further, on December 27, 1994, we reopened the public comment period on those data for an additional 30 days, until January 26, 1995 (59 FR 66509).

On March 27, 1995, the Service published in the **Federal Register** (60 FR 15693) an extensive review of the Atwood data (including independent scientific analyses of the Atwood data) received during the public comment periods concerning the subspecies classification of the coastal California gnatcatcher. We affirmed our earlier determination that the coastal California gnatcatcher is a valid subspecies (58 FR 16742, March 30, 1993; 58 FR 65088, December 10, 1993) and affirmed the coastal California gnatcatcher's threatened status under the Act.

On February 8, 1999, the Service published in the **Federal Register** (64 FR 5957) a notice of determination that it was prudent to designate critical habitat for the coastal California gnatcatcher. We subsequently published a proposed rule to designate critical habitat for the coastal California gnatcatcher (65 FR 5945; February 7, 2000); announced a reopening of comment period and availability of a draft economic analysis for the February 7, 2000, proposed rule (65 FR 40073; June 29, 2000); and published a final rule designating critical habitat for the coastal California gnatcatcher (65 FR 63679; October 24, 2000).

In response to a June 11, 2002, court ruling from the U.S. District Court for the Central District of California (*Building Industry Association of Southern California et al.* v. *Norton*), the Service published a proposed rule to revise designated critical habitat for the coastal California gnatcatcher on April 24, 2003 (68 FR 20228). In this proposed rule, the Service reconsidered the economic impacts associated with designating any particular area as critical habitat, announced that we were considering whether the listing of the coastal California gnatcatcher should be amended as a DPS in light of a study by Zink *et al.* (2000) questioning the genetic distinctiveness of the coastal California gnatcatcher, and opened a 60-day period for public comments (68 FR 20228). On April 8, 2004, the Service published two documents related to the coastal California gnatcatcher: The first reopened the public comment period on the proposed determination of a DPS of the coastal California gnatcatcher (69 FR 18515), and the second was a notice of availability of draft economic analysis and a public hearing on the proposed April 24, 2003, designation of critical habitat (69 FR 18516). The Service published its final rule concerning the revised designation of critical habitat on December 19, 2007 (72 FR 72009), for the coastal California gnatcatcher. In that **Federal Register** publication, we announced that we were continuing to evaluate whether the current listing of the coastal California gnatcatcher as a subspecies under the Act should be retained or changed.

In 2010, we completed a 5-year status review of the coastal California gnatcatcher (Service 2010, pp. 1–51). After analyzing all available information, including Zink *et al.* (2000), we recommended no change in its threatened status and indicated that we would not pursue delineation of a DPS for the coastal California gnatcatcher (Service 2010, p. 36; *http://ecos.fws.gov/docs/five_year_review/doc3571.pdf*). With a recommendation of no change in threatened status, the coastal California gnatcatcher maintains its recovery priority number of 9C, based on the taxon's status as a subspecies facing a high degree of threat with a low recovery potential.

Species Information

For information on the biology and life history of the coastal California gnatcatcher, *see* the 2010 coastal California gnatcatcher 5-year review (Service 2010, pp. 6–11).

Evaluation of Information for This Finding

Under section 3(16) of the Act, we may consider for listing any species, including subspecies, of fish, wildlife, or plants, or any DPS of vertebrate fish or wildlife that interbreeds when mature (16 U.S.C. 1532(16)). Such entities are considered eligible for listing under the Act (and, therefore, are referred to as listable entities), should we determine that they meet the definition of an endangered or threatened species.

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations at 50 CFR 424 set forth the procedures for adding a species to, or removing a species from the List. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1) of the Act:

(A) The present or threatened destruction, modification, or curtailment of its habitat or range;

(B) Overutilization for commercial, recreational, scientific, or educational purposes;

(C) Disease or predation;

(D) The inadequacy of existing regulatory mechanisms; or

(E) Other natural or manmade factors affecting its continued existence.

We must consider these same five factors in delisting a species. We may delist a species according to 50 CFR 424.11(d) if the best available scientific and commercial data indicate that the species is neither endangered nor threatened for the following reasons:

(1) The species is extinct;

(2) The species has recovered and is no longer endangered or threatened; or

(3) The original scientific data used at the time the species was classified were in error.

In making this 90-day finding, we evaluated whether information

regarding the coastal California gnatcatcher, as presented in the petition and other information available in our files, is substantial, thereby indicating that the petitioned action may be warranted. The petition did not assert that the coastal California gnatcatcher is extinct, nor do we have information in our files indicating that the coastal California gnatcatcher is extinct. The petition did not assert that the coastal California gnatcatcher has recovered and is no longer endangered or threatened, nor do we have information in our files indicating the coastal California gnatcatcher has recovered. The petition also did not contain any information regarding threats to the coastal California gnatcatcher. We recently completed a 5-year status review in which we determined that the threats found at the time of listing remain, and we recommended that the coastal California gnatcatcher retain its threatened status (Service 2010, pp. 11–35). The petition asserts that the original scientific data used at the time the coastal California gnatcatcher was listed as Threatened under the Act were in error. Our evaluation of the information included with the petition is presented below.

The petitioners claim the coastal California gnatcatcher is not a valid subspecies and request we remove the coastal California gnatcatcher from the List. The petitioners present an unpublished literature review prepared for the Pacific Legal Foundation by Dr. Matthew A. Cronin (2009, *in litt.* pp. 1–18), which reviewed ''* * * post-listing studies to explain why the subspecies classification for the California gnatcatcher is no longer tenable'' (PLF 2010, p. 4). The petition presented two published journal articles, Zink *et al.* (2000, pp. 1394–1405) and Skalski *et al.* (2008, pp. 199–220), supporting three issues of concern raised by Cronin (2009, *in litt.* pp. 1–18). The issues of concern raised by Cronin and stated in the petition are:

(1) ''Zink *et al.* (2000, pp. 1394–1405) determined that Atwood's observed morphological characteristic changes are not representative of genetic differentiation, which differentiation could support a subspecies classification. The Zink study's conclusion is all the more significant given that Atwood was a co-author. In their paper, Zink and Atwood expressly state that *P. californica* should have no subspecies.

(2) Skalski *et al.* (2008, pp. 199–220) determined that Atwood's statistical analyses were seriously flawed because Atwood's supposed diagnostic characters support a geographic cline, not a distinct break in character distribution markers, which could support a subspecies classification.

(3) Skalski *et al.* (2008, pp. 199–220) determined that Atwood's data sets were confounded: many of Atwood's specimens may not have been representative of wild gnatcatchers.''

The first issue presented by the petitioners refers to Zink *et al.* (2000, pp. 1394–1405), which asserts that the morphological differences (*i.e.,* plumage coloration, body size) identified by Atwood (1988, pp. iii–vii, 1–74; 1991, pp. 118–133) do not represent genetic differentiation that supports subspecies classification. Zink *et al.* (2000, p. 1399) examined variation within the mitochondrial (mt) mtDNA control region and three mtDNA genes of the coastal California gnatcatcher and concluded the genetic information does not support recognition of the coastal California gnatcatcher as a subspecies. Zink *et al.* (2000) does not state that *Polioptila californica* should have no subspecies, but instead suggests that currently recognized subspecies may not be equivalent to ecologically significant units.

As a result of uncertainty in the subspecies status of the coastal California gnatcatcher raised by Zink *et al.* (2000, pp. 1394–1405), in 2003 and 2004 the Service solicited public comments on a proposed determination of a DPS for the coastal California gnatcatcher (68 FR 20228; 69 FR 18515). Public comments received in 2004 on this issue were highly polarized, though most expressed concern with the validity or usefulness of redefining the coastal California gnatcatcher as a DPS. Some commenters advocated delisting the coastal California gnatcatcher and asserted that the application of the DPS policy was inappropriate. They argued that the information presented by Zink *et al.* (2000, pp. 1394–1405) challenging the subspecies classification for the coastal California gnatcatcher superseded over 100 years of previously published taxonomic treatments recognizing morphological distinctiveness to varying degrees within the greater California gnatcatcher taxon, including (Brewster 1881, p. 103; Brewster 1902, p. 210; Thayer and Bangs 1907, p. 138; Grinnell 1926, p. 496; Grinnell 1928, p. 227; van Rossem 1931, p. 35; Hellmayr 1934, p. 508; AOU 1957, p. 451; Miller *et al.* 1957, pp. 204–205; Mayr and Paynter 1964, pp. 449–450; Atwood 1988, p. 61; Atwood 1991, p. 127; Phillips 1991, p. 25; Mellink and Rea 1994, p. 53; Howell and Webb 1995, p. 578). However, many public commenters advocated the retention of the coastal California gnatcatcher as a listed subspecies and questioned if information from one scientific publication was sufficient to overrule information from multiple, previously published, scientific papers that acknowledge the distinctiveness of the coastal California gnatcatcher and lend support to its retention as a listed subspecies. The Service also received comments from peer-reviewers, the majority of which cautioned against putting too much weight on Zink *et al.*'s (2000) conclusions and questioned whether the analysis by Zink *et al.* (2000, pp. 1394–1405) supported a change of the coastal California gnatcatcher's subspecific status (2000, pp. 1394–1405).

In 2004, the Service also convened a panel of seven Federal scientists (five Service biologists not associated with the listing of the coastal California gnatcatcher, one Smithsonian Institute biologist, and one National Park Service biologist) to discuss and evaluate how well scientific evidence supports the following statements:

(1) The coastal California gnatcatcher (*Polioptila californica californica*) is a valid subspecies.

(2) The coastal California gnatcatcher is discrete (substantially divergent in physical, physiological, ecological, genetic, or behavioral characters) from other portions of the species.

(3) Loss of the coastal California gnatcatcher would represent a significant diminution of the species as a whole (in terms of evolutionary legacy or range of biological characteristics represented within the species).

(4) The coastal California gnatcatcher is neither a valid subspecies nor a discrete and significant portion of the species.

(5) The mtDNA evidence presented by Zink *et al.* (2000) alone constitutes sufficient information to overturn the existing taxonomy.

Overall, panelists supported retaining the coastal California gnatcatcher as a subspecies under the Act for reasons including (but not limited to):

(1) ''There is evidence showing the coastal California gnatcatcher differs in several morphological characters from gnatcatcher populations farther south (body plumage color, tail length, amount of white in tail, and brownish plumage in females). All authorities have recognized it as a distinct taxon based on its physical appearance since it was first described. While some doubt has been cast on recent analyses of morphological data by Atwood (1991), problems with that analysis do not invalidate previous and subsequent morphological work (Grinnell 1926, van

Rossem 1931, Mellink and Rea 1994).'' (VanderWerf, *in litt.* 2004, p. 1).

(2) Although Zink *et al.* (2000) concluded that mitochondrial DNA does not support the existence of a subspecies of *Polioptila californica,* ''mtDNA represents only a single genetic marker among many potential markers that could provide an indication of population subdivision, subspecies, or local adaptation. Other molecular markers with higher mutation rates may reveal more recent patterns of divergence and would be more likely to show population differentiation, such as nuclear genetic markers, which might be linked to selected traits and would be expected to evolve more rapidly than mtDNA. None of these other markers have been investigated'' (VanderWerf, *in litt.* 2004, pp. 1–2).

(3) ''Phylogenetic reconstructions and taxonomic determinations should be, and usually are, based on a variety of morphological, genetic (including nuclear and mtDNA), and behavioral evidence.'' (VanderWerf, *in litt.* 2004, p. 2).

(4) ''Patterns in mtDNA variations can be extremely variable and may or may not have anything to do with the patterns seen in nuclear markers, or with morphological, ecological, physiological, or behavioral data, and therefore are often not reflective of important differences between species, subspecies or populations. Patterns of genetic variation can be totally different from, and uninformative about, important adaptive differences between taxa (Crandall *et al.* 2000). Besides the California gnatcatcher, there are many examples in which mtDNA evidence failed to detect documented differences in morphology, nuclear DNA and ecological adaptation, including the Common raven (Omland *et al.* 2000), Orchard oriole (Baker *et al.* 2003), Florida grasshopper sparrow (Bulgin *et al.* 2003), and Swamp sparrows (Greenberg *et al.* 1998).'' (VanderWerf, *in litt.* 2004, p. 2).

(5) ''The most comprehensive review of available mtDNA data was conducted by Funk and Omland (2003), who found that 23 percent of 2,319 species showed evidence of paraphyly or polyphyly based on mtDNA (sharing of mtDNA haplotypes among species), and they concluded that the causes of this must be understood to avoid erroneous phylogenetic interpretations.'' (VanderWerf, *in litt.* 2004, p. 2).

(6) ''Loss of the coastal California gnatcatcher would substantially decrease the species' range and, since it occurs in a somewhat different habitat type from other populations, would diminish the ecological range of characteristics present in the species. Although the adaptive significance of the morphological differences has not been investigated, it is possible they represent important adaptations to the local environment, and that their loss would diminish the species evolutionary legacy.'' (VanderWerf, *in litt.* 2004, pp. 1–2).

(7) ''Zink *et al.* (2000) provide some interesting information on the evolutionary history of [gnatcatcher] populations, but the argument that the California gnatcatcher is not distinct from other populations is based on a single genetic character, mtDNA, and this is a far too narrow and limited technique for making determinations of taxonomic validity. Most features of an organism are determined by multiple (nuclear) genes, not by mtDNA. Taxonomists and other biologists interested in evolutionary units cannot ignore available data on other aspects of the genome and physical and ecological characters (Crandall *et al.* 2000). Under the very narrow criterion of Zink *et al.* (2000) few subspecies would be valid, and many full species would not be recognized, despite abundant and definitive data that they are no longer capable of interbreeding with other species (Avise 2004).'' (VanderWerf, *in litt.* 2004, pp. 2–3).

The panel concluded that the scientific evidence: (1) Substantially supports that the coastal California gnatcatcher is a valid subspecies; (2) substantially supports that the coastal California gnatcatcher is discrete from other portions of the species; (3) substantially supports that the loss of the coastal California gnatcatcher would represent a significant diminution of the species as a whole; (4) offers little support for the assertion that the coastal California gnatcatcher is neither a valid subspecies nor a discrete and significant portion of the species; and (5) displays little support that the mtDNA evidence presented by Zink *et al.* (2000, pp. 1394–1405) alone constitutes sufficient information to overturn the existing taxonomy. The panel also noted that further decision on the status of the taxon should wait for analyses of a variety of morphological, genetic (including nuclear and mtDNA), and behavioral evidence.

In 2005, Edwards *et al.* (p. 6552) asserted that nuclear genes, not mtDNA, should have priority in determining avian species delimitation. Additionally, Haig and Winker (2010, pp. 172, 174) asserted the best approach for subspecies recognition is to include multiple characters (mtDNA, nuclear DNA, morphology) and that reliance on a single locus with unique properties, such as mtDNA, may not accurately reflect the genetic differences among populations due to random genetic effects (Funk *et al.* 2007, pp. 1287–1288).

We acknowledge that the taxonomic classification of the coastal California gnatcatcher has been the subject of considerable scientific debate. The Service also addresses the information presented by Zink *et al.* (2000) in a recent 5-year review for the coastal California gnatcatcher (Service 2010, pp. 4–5). Species experts have recognized the coastal California gnatcatcher as a distinct taxon based on its physical appearance since it was first described, and the taxon is recognized as a distinct subspecies by the American Ornithologists Union (AOU 1957, p. 451). Some doubt has been cast on analyses of morphological data by Atwood (1991, pp. 118–133) (*e.g.,* Cronin 1997, p. 663), but problems with those analyses do not invalidate previous and subsequent morphological work (Grinnell 1926, pp. 493–500; van Rossem 1931, pp. 36–37; Phillips 1991, pp. 25–26; Mellink and Rea 1994, pp. 50–62). Analysis by Zink *et al.* (2000, p. 1402) suggested that the northern population of California gnatcatchers does not appear to be unique, and that not all recognized subspecies equate to evolutionary significant units, although they were unable to expressly state that *P. californica* should have no subspecies, as claimed in the petition. We concluded in our 5-year review (Service 2010, pp. 4–5), that Zink *et al.* (2000, pp. 1394–1405) was insufficient to disregard the existing taxonomic status of the coastal California gnatcatcher and the information from multiple scientific papers that support subspecies classification of *P.c. californica.* We affirm that conclusion here. We conclude that the information and analysis in Zink *et al.* 2000 does not present substantial information that the current subspecies taxonomic classification of the coastal California gnatcatcher may be in error.

The second issue presented by the petitioners refers to Skalski *et al.* (2008, pp. 199–220) and the assertion that the statistical analyses applied to the morphological data (collected by Atwood in determining the subspecies status of the coastal California gnatcatcher) were not appropriate statistical techniques for determining subspecific species classification. The issue Skalski *et al.* (2008, pp. 199–220) raises concerns the use of numerous tests of equality of sample means, cluster analysis, and discriminant analysis (Atwood 1991; Atwood, *in litt.* 1994; Link and Pendleton, *in litt.* 1994;

McDonald *et al., in litt.* 1994; Messer, *in litt.* 1994, Newton, *in litt.* 1994), which supported the subspecies classification. Skalski *et al.* (2008, pp. 199–220) assert these analyses are subject to high rates of false positives (Type I error) and therefore determination of classification as a subspecies should be based on analyses designed to detect specific alternative hypotheses, such as step and spline regression, while being insensitive to the sample location distributions (Skalski *et al.* 2008, p. 217).

We examined this paper and determined the statistical analysis conducted by Skalski *et al.* (2008, pp. 210–212), a spline regression model using the log-length of the white spot on the sixth rectrix (tail feather) of the California gnatcatcher, was a new interpretation of old data and examined only one character, as an example of the statistical analysis of the 31 that Atwood (1988, pp. iii–vii, 1–74; 1991, 118–133) analyzed in his research. Skalski's analysis of this character, in contrast to Atwood's analysis, did not detect variation in the character consistent with subspecific designations within the California gnatcatcher. However, the Service concludes the results of this restrictive analysis do not present substantial evidence supporting potential revision of the subspecific taxonomic classification of the coastal California gnatcatcher. While the issue of concern raised by Skalski *et al.* (2008, pp. 199–220) and the petitioners relates to the validity of the statistical technique used, and we acknowledge that application of different statistical methods may yield different conclusions, the study's application of alternative methods of data analyses is limited. Without further analysis of additional characters, few conclusions can be made as to the appropriate taxonomic classification of the coastal California gnatcatcher. The current information does not provide substantial information that the current subspecies taxonomic classification of the coastal California gnatcatcher may be in error.

We previously analyzed the statistical technique utilized to determine subspecific classification of the coastal California gnatcatcher and addressed this topic in a publication in the **Federal Register** that determined that the conclusions reached by Atwood (1991) were reasonable and were largely consistent with five other independent and alternative scientific analyses (Link and Pendleton, *in litt.* 1994; Atwood, *in litt.* 1994; McDonald *et al., in litt.* 1994; Messer, *in litt.* 1994, Newton, *in litt.* 1994) that were received at that time and support 30° north latitude as the southern subspecific boundary of *P.c. californica* (60 FR 15698; March 27, 1995). We continue to agree that Atwood's conclusions are reasonable because they are based on scientifically sound methodology that represents the best available scientific and commercial data available (60 FR 15699; March 27, 1995), as required in 50 CFR 424.11(d).

The final issue presented by the petitioners also refers to Skalski *et al.* (2008, pp. 199–220) and their assertion that ''foxing'' (the change in feather color associated with time after preparation of the specimen) of museum specimens might have biased Atwood's original and subsequent analysis of phenotypic characters, including plumage brightness (Atwood 1988, pp. iii–vii, 1–74; 1991, 118–133), by confounding the specimen's year of collection with measures of brightness of plumage. Significantly, Skalski *et al.* (2008) did not reexamine the specimens evaluated by Atwood, but instead constructed scatterplot diagrams that compared the area of specimen collection (latitude) with time (year) collected.

Mellink and Rea (1994, pp. 50–62), in their analyses of coastal California gnatcatcher taxonomy, collected samples from the field and specimens from museums for comparison of genetic differences. The petition argues that the study skins analyzed by Mellink and Rea (1994) were also subject to foxing. However, Mellink and Rea (1994, pp. 52–53) excluded samples that were worn, damaged, or soiled to eliminate discrepancies among samples and concluded that within this species, foxing is ''* * * slight and seems restricted largely to the gray underparts, with little or no apparent change in brown areas.''

Additionally, as mentioned under the second issue presented by the petitioners, five independent statistical analyses were conducted and submitted to the Service, in response to a request for public comment (59 FR 28508, 59 FR 38426, 59 FR 44125, 59 FR 53628, 59 FR 66509). These analyses (Link and Pendleton, *in litt.* 1994; Atwood, *in litt.* 1994; McDonald *et al., in litt.* 1994; Messer, *in litt.* 1994; Newton, *in litt.* 1994) as well as Mellink and Rea (1994) were addressed in the March 27, 1995, **Federal Register** publication (60 FR 15693) announcing our determination that the coastal California gnatcatcher is a valid subspecies and affirming the coastal California gnatcatcher's threatened status under the Act (60 FR 15695). In that document, we concluded that there was no justification to support a claim that Atwood's 1991 data were incomplete, censored, or otherwise inadequate. Furthermore, we concluded that the analysts of the five independent reviews of Atwood's 1991 data took adequate care to remove potential effects of confounding of specimen age and collection area (60 FR 15695; March 27, 1995).

We conclude that the petitioner did not present substantial new information regarding the subspecific status of the coastal California gnatcatcher. The genetic information provided in the petition (Zink *et al.* 2000) and assertions of improper statistical analyses (Skalski *et al.* 2008) have been the focus of several Service (Service 2010) and independent scientific reviews (Link and Pendleton, *in litt.* 1994; Atwood, *in litt.* 1994; McDonald *et al., in litt.* 1994; Messer, *in litt.* 1994; Newton, *in litt.* 1994; Mellink and Rea 1994; VanderWerf, *in litt.* 2004) and the Service has concluded that the information is insufficient to support reclassification (see Service 2010, pp. 1–51). Issues regarding morphological analyses and specimen quality have also been considered by the Service and by numerous other taxonomic examinations, all of which support the subspecific status of the coastal California gnatcatcher (Grinnell 1926, pp. 493–500; van Rossem 1931, pp. 36–37; Phillips 1991, pp. 25–26; Mellink and Rea 1994, pp. 50–62). We hereby reaffirm our determination and recognition of the coastal California gnatcatcher as a distinct taxon, at the rank of subspecies as *Polioptila californica californica.*

Finding

In summary, the petition does not present substantial information to support a finding that the removal of the coastal California gnatcatcher from the List of Endangered and Threatened Wildlife may be warranted on the ground that the coastal California gnatcatcher is not a valid subspecies.

The petition presents an unpublished review by Cronin (2009, pp. 1–18) contending that subspecies classification for the coastal California gnatcatcher is not reasonable. The review discusses articles by Skalski *et al.* (2008, pp. 1394–1405) and Zink *et al.* (2000), that provide analyses of Atwood's (1991) data. We previously reviewed Atwood's data (1988 and 1991) and concluded that Atwood's conclusion that the coastal California gnatcatcher is a valid subspecies is adequately supported (60 FR 15693, March 27, 1995). We also convened a panel of experts in 2004 to consider the Zink *et al.* (2000) study. The panel concluded that Zink *et al.* (2000) offers

little and insufficient support for reconsidering the coastal California gnatcatcher's subspecies classification. Our recent status review also concluded that the coastal California gnatcatcher represents a valid subspecies (Service 2010, pp. 1–51).

The petitioners also assert that the Service should overturn the classification of the coastal California gnatcatcher as a subspecies due to inappropriate techniques used in Atwood's (1991) statistical analysis of morphological data and present a review and interpretation of two journal articles in support of their claim. The Service reviewed the articles and determined that they do not present new information; instead they consist of an incomplete interpretation of old data. Moreover, the concerns raised by petitioners regarding ''foxing'' and the statistical technique utilized to analyze the data, were previously considered and rejected in our March 27, 1995, **Federal Register** publication affirming that the coastal California gnatcatcher meets the definition of a ''species'' under the Act (60 FR 15693), a Service status review (Service 2010, pp. 1–51), and a peer-reviewed journal (Mellink and Rea 1994, pp. 50–62).

Morphological variation within the California gnatcatcher species has been recognized as an indicator of the distinctiveness of populations and subspecific groups by numerous biologists, publications, and the AOU before and after Atwood's conclusion that the coastal California gnatcatcher is a valid subspecies (Brewster 1881, p. 103; Brewster 1902, p. 210; Thayer and Bangs 1907, p. 138; Grinnell 1926, p. 496; Grinnell 1928, p. 227; van Rossem 1931, p. 35; Hellmayer 1934, p. 508; AOU 1957, p. 451; Miller *et al.* 1957, pp. 204–205; Paynter 1964, pp. 449–450; Atwood 1988, p. 61; Atwood 1991, p. 127; Phillips 1991, p. 25; Mellink and Rea 1994, p. 53; Howell and Webb 1995, p. 578). Thus, we conclude that the best information available indicates that the coastal California gnatcatcher is a valid subspecies and that the original scientific data evaluated and methods of analysis used at the time of listing were not in error as suggested by the petitioners.

The sole focus of the petition is the contention that the coastal California gnatcatcher is not a valid subspecies and therefore should be delisted. Petitioners do not provide any information related to the other relevant factors that the Service considers when reviewing proposals to list or delist a species, including the factors provided under subsection 4(a)(1) of the Act. The information in Service files, including our recent 5-year review of the species (Service 2010, pp. 1–51), confirms that threats to the coastal California gnatcatcher remain.

We have reviewed the petition, as well as the literature cited in the petition, and we have evaluated that information and information in our files. Based on this review and evaluation, we find that the petition does not present substantial scientific or commercial information to indicate that removal of the coastal California gnatcatcher from the List may be warranted. Although we will not commence a status review in response to this petition, we will continue to monitor the population status and trends of the coastal California gnatcatcher, potential threats to the coastal California gnatcatcher, and ongoing management actions that might be important with regard to the conservation of the coastal California gnatcatcher across its range.

Because we conclude that the coastal California gnatcatcher is a valid subspecies under the Act, we are no longer considering whether to propose its reclassification to a DPS under the Act. This document reaffirms our recognition of the coastal California gnatcatcher as a subspecies. We encourage interested parties to continue to gather data that will assist with the conservation of the subspecies. If you wish to provide information regarding the coastal California gnatcatcher, you may submit your information or materials to the Field Supervisor, Carlsbad Fish and Wildlife Office (see **ADDRESSES**), at any time.

References Cited

A complete list of references cited is available on the Internet at *http://www.regulations.gov* and upon request from the Carlsbad Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Author

The primary authors of this notice are the staff members of the Carlsbad Fish and Wildlife Office.

Authority

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

Dated: October 14, 2011.

Gregory E. Siekaniec,

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

[FR Doc. 2011–27644 Filed 10–25–11; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 110707371–1617–01]

RIN 0648–BB28

Fisheries of the Northeastern United States; Atlantic Mackerel, Squid, and Butterfish Fisheries; Specifications and Management Measures

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

ACTION: Proposed rule, request for comments.

SUMMARY: NMFS proposes 2012 specifications and management measures for Atlantic mackerel and butterfish, and 2012–2014 specifications for *Illex* and longfin squid. This is the first year that the specifications are being recommended for Atlantic mackerel and butterfish under the provisions of the Mid-Atlantic Fishery Management Council's (Council) Annual Catch Limit and Accountability Measure Omnibus Amendment (Omnibus Amendment). The two squid species are exempt from these requirements because they have a life cycle of less than 1 year. This action also proposes to adjust the closure threshold for the commercial mackerel fishery to 95 percent (from 90 percent), to allow the use of jigging gear to target longfin squid if the longfin squid fishery is closed due to the butterfish mortality cap, and to require a 3-inch (76-mm) minimum codend mesh size in order to possess more than 2,000 lb (0.9 mt) of butterfish (up from 1,000 lb (0.45mt)). Finally, this rule proposes minor corrections in existing regulatory text intended to clarify the intent of the regulations. These proposed specifications and management measures promote the utilization and conservation of the Atlantic Mackerel, Squid, and Butterfish (MSB) resource.

DATES: Public comments must be received no later than 5 p.m., eastern standard time, on November 25, 2011.

ADDRESSES: Copies of supporting documents used by the Mid-Atlantic Fishery Management Council (Council), including the Environmental Assessment (EA) and Regulatory Impact Review (RIR)/Initial Regulatory Flexibility Analysis (IRFA), are available from: Dr. Christopher M. Moore, Executive Director, Mid-Atlantic Fishery Management Council, Suite 201,

800 N. State Street, Dover, DE 19901. The EA/RIR/IRFA is accessible via the Internet at *http://www.nero.noaa.gov.*

You may submit comments, identified by NOAA–NMFS–2011–0245, by any one of the following methods:

• *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal *http://www.regulations.gov.* To submit comments via the e-Rulemaking Portal, first click the ''submit a comment'' icon, then enter NOAA–NMFS–2011–0245 in the keyword search. Locate the document you wish to comment on from the resulting list and click on the ''Submit a Comment'' icon on the right of that line.

• *Mail:* To NMFS, Northeast Regional Office, 55 Great Republic Dr, Gloucester, MA 01930. Mark the outside of the envelope ''Comments on 2012 MSB Specifications.''

• *Fax:* (978) 281–9135, *Attn:* Aja Szumylo.

Instructions: Comments must be submitted by one of the above methods to ensure that the comments are received, documented, and considered by NMFS. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted for public viewing on *http:www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.) submitted voluntarily by the sender will be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word or Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Aja Szumylo, Fishery Policy Analyst, 978–281–9195, fax 978–281–9135.

SUPPLEMENTARY INFORMATION:

Background

Specifications, as referred to in this proposed rule, are the combined suite of commercial and recreational catch levels established for one or more fishing years. The specification process also allows for the modification of a select number of management measures, such as closure thresholds, gear restrictions, and possession limits. The Council's process for establishing specifications relies on provisions within the Fishery Management Plan (FMP) and its implementing regulations, as well as requirements established by the Magnuson-Stevens Act. Specifically, section 302(g)(1)(B) of the Magnuson-Stevens Act states that the Scientific and Statistical Committee (SSC) for each Regional Fishery Management Council shall provide its Council ongoing scientific advice for fishery management decisions, including recommendations for acceptable biological catch (ABC), preventing overfishing, maximum sustainable yield, and achieving rebuilding targets. The ABC is a level of catch that accounts for the scientific uncertainty in the estimate of the stock's defined overfishing level (OFL). The Council's SSC met on May 26 and 27, 2011, to recommend ABCs for the 2012 Atlantic mackerel (mackerel) and butterfish specifications, and the 2012–2014 *Illex* and longfin squid specifications.

The FMP's implementing regulations require the involvement of a monitoring committee in the specification process for each species. Since the Magnuson-Stevens Act requirements for the SSC to recommend ABC became effective, the monitoring committees' role has largely been to recommend any reduction in catch limits from the SSC-recommended ABCs to offset management uncertainty, and to recommend other management measures (*e.g.,* gear and/or possession restrictions) needed for the efficient management of the fishery. The MSB Monitoring Committee met on May 27, 2011, to discuss specification related recommendations for the 2012 mackerel and butterfish fisheries, and the 2012–2014 *Illex* and longfin squid fisheries.

Following the meetings described above, the Council considered the recommendations of the SSC, the Monitoring Committee, and public comments at its June 14–16, 2011, meeting in Port Jefferson, NY, and made their specification recommendations. The Council submitted these recommendations, along with the required analyses, for agency review on August 9, 2011, with final submission on September 15, 2011. NMFS must review the Council's recommendations to assure that they comply with the FMP and applicable law, and conduct notice-and-comment rulemaking to propose and implement the final recommendations.

The structure of specifications for the mackerel and butterfish fisheries was revised by the Council's recently finalized regulations implementing the Omnibus Amendment (76 FR 60606, September 29, 2011), which established annual catch limit (ACL) and accountability measure (AM) provisions for all of the Council's FMPs. Following the specification of ABC, the revised regulations at § 648.22 require the specification of ACLs, which, if exceeded, require payback deductions from the subsequent year's catch limit. In order to avoid ACL overages, and the associated paybacks when ACLs are exceeded, the regulations also require the specification of annual catch targets (ACTs) to provide a buffer for management. Several specifications, including domestic annual harvest (DAH), domestic annual processing (DAP), total allowable level of foreign fishing (TALFF), and joint venture processing for mackerel (JVP), were previously required in the implementing regulations for the FMP, and remain unchanged by the Omnibus Amendment.

For mackerel, the Omnibus Amendment and Amendment 11 to the MSB FMP (approved on September 30, 2011) created distinct allocations for the commercial and recreational mackerel fisheries. The revised mackerel regulations require the specification of ACTs for both the commercial and recreational mackerel fisheries. For butterfish, the regulations require specification of the mortality cap on the longfin squid fishery.

The regulations governing specifications for *Illex* and longfin squid are largely unchanged; both squid species are exempt from ACL/AM requirements because they have a life cycle of less than 1 year. For both squid species, regulations at § 648.22 require the specification of ABC, initial optimum yield (IOY), DAH, and DAP.

TABLE 1—PROPOSED SPECIFICATIONS, IN METRIC TONS (MT), FOR MACKEREL AND BUTTERFISH FOR THE 2012 FISHING YEAR, AND FOR ILLEX AND LONGFIN SQUID FOR THE 2012–2014 FISHING YEARS

Specifications	Mackerel	Butterfish	*Illex*	Longfin
OFL	Unknown	Unknown	Unknown	Unknown
ABC	43,781	3,622	24,000	23,400
ACL	43,781	3,622	N/A	N/A

TABLE 1—PROPOSED SPECIFICATIONS, IN METRIC TONS (MT), FOR MACKEREL AND BUTTERFISH FOR THE 2012 FISHING YEAR, AND FOR ILLEX AND LONGFIN SQUID FOR THE 2012–2014 FISHING YEARS—Continued

Specifications	Mackerel	Butterfish	*Illex*	Longfin
Commercial ACT	34,907	3,260	N/A	N/A
Recreational ACT/RHL	2,443	N/A	N/A	N/A
IOY	N/A	N/A	22,915	22,445
DAH/DAP	33,821	1,087	22,915	22,445
JVP	0	N/A	N/A	N/A
TALFF	0	0	N/A	N/A

Research Set-Aside

The Mid-Atlantic Research Set-Aside (RSA) Program allows research projects to be funded through the sale of fish that has been set aside from the total annual quota. The RSA may vary between 0 and 3 percent of the overall quota for each species. The Council has recommended that up to 3 percent of the total ACL for mackerel and butterfish, and up to 3 percent of the IOY for *Illex* and longfin squid, may be set aside to fund projects selected under the 2012 Mid-Atlantic RSA Program. NMFS solicited research proposals under the 2012 Mid-Atlantic RSA Program through a Federal Funding Opportunity announcement that published on January 6, 2011. The project selection and award process for the 2012 Mid-Atlantic RSA Program has not concluded. However, three projects have been preliminarily selected for approval by the Northeast Fisheries Science Center. These projects have collectively requested 250,580 lb (113,681 kg) of longfin squid, 200,000 lb (90,718 kg) of butterfish, 689,932 lb (312,948 kg) of summer flounder, 509,160 lb (230,951 kg) of scup, 184,280 lb (83,588 kg) of black sea bass, and 200,000 lb (90,718 kg) of bluefish. Project awards are pending a review by the NOAA Grants Office. If any portion of the MSB RSA is not awarded, NMFS will return it to the general fishery either through the final 2012 MSB specification rulemaking process or through the publication of a separate notice in the **Federal Register** notifying the public of a quota adjustment.

These proposed specifications include a brief description of the preliminarily selected 2012 Mid-Atlantic RSA projects, including a description of applicable MSB exemptions that will likely be required to conduct the proposed research and compensation fishing. The Magnuson-Stevens Act requires that interested parties be provided an opportunity to comment on all proposed exempted fishing permits (EFPs).

Vessels harvesting RSA quota in support of approved research projects would be issued EFPs authorizing them to exceed Federal possession limits and to fish during Federal quota closures. With respect to the MSB FMP, such regulations include closure regulations at § 648.24 and possession restrictions at § 648.26. These exemptions are necessary to allow project investigators to recover research expenses, as well as adequately compensate fishing industry participants harvesting RSA. Vessels harvesting RSA would operate within all other regulations that govern the commercial fishery, unless otherwise exempted through a separate EFP. Vessels conducting compensation fishing would harvest RSA quota during the fishing year from January 1–December 31, 2012.

Project #1: The proposed project is the continuation of a scup survey of 10 hard-bottom sites in Southern New England (SNE) that are not sampled by current state and Federal finfish trawl surveys. Unvented fish pots will be fished on each site from June through October in coastal waters of Nantucket Sound, Martha's Vineyard Sound, and Buzzard's Bay, MA, and Rhode Island Sound, RI. The length frequency distribution of the catch will be compared statistically to each of the other collection sites, and to finfish trawl data collected by the NMFS and state agencies to gain greater understanding of the scup stock structure. Vessels conducting research would not require any exemptions from regulations implemented under the MSB FMP. Vessels harvesting RSA quota would require the aforementioned closure and possession limit exemptions to facilitate compensation fishing activities.

Project #2: The proposed project is a black sea bass survey of sites in SNE and Mid-Atlantic waters. Unvented black sea bass pots will be fished on each site, which will include one in Massachusetts, one south of Rhode Island, one south of New Jersey, and one south of Virginia, for 5 months from June through October in SNE, and April through August in the Mid-Atlantic. The project is designed to collect black sea bass from sites that are un-sampled by current state and Federal finfish bottom trawl surveys. The length frequency distribution of the catch will be compared to each of the other collection sites, and to finfish trawl data collected by NMFS and state agencies to gain greater understanding of the black sea bass stock structure. Vessels conducting research would not require any exemptions from regulations implemented under the MSB FMP. Vessels harvesting RSA quota would require the aforementioned closure and possession limit exemptions to facilitate compensation fishing activities.

Project #3: The proposed project would continue a spring and fall trawl survey in shallow waters between Martha's Vineyard, MA, and Cape Hatteras, NC, that are not sampled by the NMFS trawl survey. The project investigators plan to provide stock assessment data for Mid-Atlantic RSA species, including summer flounder, scup, black sea bass, longfin squid, butterfish, and Atlantic bluefish, and assessment-quality data for weakfish, Atlantic croaker, spot, several skate and ray species, smooth dogfish, horseshoe crab, and several unmanaged but important forage species. Vessels conducting this near-shore trawl survey would not require any exemptions from regulations implemented under the MSB FMP. Vessels harvesting RSA quota would require the aforementioned closure and possession limit exemptions to facilitate compensation fishing activities.

2012 Proposed Specifications and Management Measures for Mackerel and Butterfish

Atlantic Mackerel

The status of the mackerel stock was assessed by the Transboundary Resources Assessment Committee (TRAC) in March 2010. The 2010 TRAC Status Report indicated reduced productivity in the stock and a lack of older fish in both the survey and catch data; however, the status of the mackerel stock is unknown because biomass reference points could not be determined. According to the FMP, mackerel ABC must be calculated using

the formula U.S. ABC = Stock-wide ABC − C, where C is the estimated catch of mackerel in Canadian waters for the upcoming fishing year. Due to uncertainty in the assessment, the TRAC recommended that total annual catches not exceed 80,000 mt (average total U.S. and Canadian landings from 2006–2008) until new information is available. The SSC recommended specifying the stock-wide ABC for 2012 at 80,000 mt, consistent with the TRAC recommendation. The Council recommended a U.S. ABC of 43,781 mt (80,000 mt − 36,219 mt (estimated 2012 Canadian catch)).

Consistent with MSB Amendment 11, the Council recommended a recreational allocation of 2,714 mt (6.2 percent of the U.S. ABC). The proposed Recreational ACT of 2,443 mt (90 percent of 2,714 mt) is reduced to account for low precision and time lag of recreational catch estimates, as well as lack of recreational discard estimates. The Recreational ACT is equal to the Recreational Harvest Limit (RHL), which would be the effective cap on recreational catch.

For the commercial mackerel fishery, the Council recommended a commercial fishery allocation of 41,067 mt (93.8 percent of the U.S. ABC, the portion of the ACL that was not allocated to the recreational fishery). The recommended Commercial ACT of 34,907 mt (85 percent of 41,067) is reduced to address uncertainty in estimated 2012 Canadian landings, uncertainty in discard estimates, and possible misreporting. The Commercial ACT would be further reduced by a discard rate of 3.11 percent (mean plus one standard deviation of discards from 1999–2008), to arrive at the proposed DAH of 33,821 mt. The DAH would be the effective cap on commercial catch, as it has been in past specifications.

Consistent with the Council's recommendation, NMFS proposes mackerel specifications that would set the U.S. ABC/ACL at 43,781 mt, the Commercial ACT at 34,907 mt, the DAH and DAP at 33,821 mt, and the Recreational ACT at 2,443 mt.

Additionally, as recommended by the Council, NMFS proposes to maintain JVP at zero (the most recent allocation was 5,000 mt of JVP in 2004). In the past, the Council recommended a JVP greater than zero because it believed U.S. processors lacked the ability to process the total amount of mackerel that U.S. harvesters could land. However, for the past 8 years, the Council has recommended zero JVP because U.S. shoreside processing capacity for mackerel has expanded. The Council concluded that processing capacity was no longer a limiting factor relative to domestic production of mackerel.

The Magnuson-Stevens Act provides that the specification of TALFF, if any, shall be the portion of the optimum yield (OY) of a fishery that will not be harvested by U.S. vessels. TALFF would allow foreign vessels to harvest U.S. fish and sell their product on the world market, in direct competition with U.S. industry efforts to expand exports. While a surplus existed between ABC and the mackerel fleet's harvesting capacity for many years, that surplus has disappeared due to downward adjustments of the specifications in recent years. Based on analysis and a review of the state of the world mackerel market and possible increases in U.S. production levels, the Council concluded that specifying a DAH/DAP resulting in zero TALFF will yield positive social and economic benefits to both U.S. harvesters and processors, and to the Nation. For these reasons, consistent with the Council's recommendation, NMFS proposes to specify DAH at a level that can be fully harvested by the domestic fleet, thereby precluding the specification of a TALFF, in order to support the U.S. mackerel industry. NMFS concurs that it is reasonable to assume that in 2012 the commercial fishery has the ability to harvest 33,821 mt of mackerel.

Finally, this rule proposes that the commercial fishery be closed at 95 percent of the DAH, as recommended by the Council. The current closure threshold of 90 percent of the DAH was designed to accommodate misreporting in the commercial fishery, and the lack of a distinct allocation for the recreational fishery. A 95-percent closure threshold should be sufficient to prevent overages, given that a recreational allocation is now required by the FMP.

Butterfish

The current status of the butterfish stock is unknown because biomass reference points could not be determined in the SAW 49 assessment (February 2010). Though the butterfish population appears to be declining over time, fishing mortality does not seem to be the major cause. Butterfish have a high natural mortality rate, and the current estimated fishing mortality (F = 0.02) is well below all candidate overfishing threshold reference points. The assessment report noted that predation is likely an important component of the butterfish natural mortality rate (currently assumed to be 0.8), but also noted that estimates of consumption of butterfish by predators appear to be very low. In short, the underlying causes for population decline are unknown.

The SSC recommended an ABC of 3,622 mt (100 percent increase from 2011) because butterfish survey indices appear stable or increasing, there have been anecdotal observations of increased butterfish abundance, and fishing mortality appears low when compared to natural mortality.

The Council recommended setting the butterfish ACL equal to the ABC, and establishing a 10-percent buffer between ACL and ACT for management uncertainty, which would result in an ACT of 3,260 mt. Since discards have been roughly ⅔ of catch (1999–2008 average), the Council recommended setting the DAH and DAP at 1,087 mt (3,260 mt − 2,173 mt discards). Butterfish TALFF is only specified to address bycatch by foreign fleets targeting mackerel TALFF. Because there is no mackerel TALFF, butterfish TALFF would also be set at zero.

The Council recommended setting the butterfish mortality cap on the longfin squid fishery at 2,445 mt (75 percent of 3,260 mt). If the butterfish mortality cap is harvested during Trimester I (January–April) or Trimester III (September–December), the directed longfin squid fishery will close for the remainder of that trimester.

NMFS proposes specifications, consistent with the Council's recommendation, that would set the butterfish ABC/ACL at 3,622 mt, the ACT at 3,260 mt, the DAH and DAP at 1,087 mt, and the butterfish mortality cap on the longfin squid fishery at 2,445 mt. Additionally, consistent with MSB regulations, NMFS is proposing zero TALFF for butterfish in 2010 because mackerel TALFF is also specified at zero. Consistent with 2011, NMFS proposes that the 2012 butterfish mortality cap be allocated by Trimester as follows:

TABLE 2—PROPOSED TRIMESTER ALLOCATION OF BUTTERFISH MORTALITY CAP ON THE LONGFIN SQUID FISHERY FOR 2012

Trimester	Percent	Metric tons
I (Jan–Apr)	65	1,589.25
II (May–Aug)	3.3	80.69
III (Sep–Dec)	31.7	775.06
Total	100	2,445

Finally, the Council recommended, and NMFS proposes, that a 3-inch (76-mm) minimum codend mesh size requirement apply for vessels

possessing 2,000 lb (0.9 mt) or more of butterfish (up from 1,000 lb (0.45 mt) in 2011) in order to allow some portion of butterfish discards to be landed.

2012–2014 Proposed Specifications and Management Measures for *Illex* Squid and Longfin Squid

Illex Squid

The *Illex* stock was most recently assessed at SARC 42 in late 2005. While it was not possible to evaluate current stock status because there are no reliable current estimates of stock biomass or F, qualitative analyses determined that overfishing had not likely been occurring. The SSC recommended the status quo ABC of 24,000 mt based on observations that catches in this range, and up to 26,000 mt, have not caused any apparent harm to the stock.

The Council recommended that the ABC be reduced by a revised discard rate of 4.52 percent (the mean plus one standard deviation of the most recent 10 years of observed discards), which results in an IOY, DAH, and DAP for recommendation of 22,915 mt for the 2012–2014 fishing years.

Consistent with the Council's recommendation, NMFS proposes to specify the *Illex* ABC as 24,000 mt, and to specify IOY, DAH, and DAP as 22,915 mt for the 2012–2014 fishing years. The FMP does not authorize the specification of JVP and TALFF for the *Illex* fishery because of the domestic fishing industry's capacity to harvest and to process the OY from this fishery.

Longfin Squid

The 51st Northeast Regional Stock Assessment Workshop (SAW 51), published in January 2011, found that the longfin squid stock is not overfished, but that the overfishing status is unknown. The SSC used the updated stock assessment information to recommend an ABC of 23,400 mt for the 2012–2014 fishing years, subject to annual review. This recommendation corresponds to catch in the year with the highest observed exploitation fraction (catch divided by estimated biomass) during a period of light exploitation (1976–2009). The SSC interpreted this level of exploitation to be sustainable over the long term.

The Council recommended that the ABC be reduced by a revised discard rate of 4.08 percent (mean plus one standard deviation of the most recent 10 years of observed discards), which results in an IOY, DAH, and DAP for recommendation of 22,445 mt for the 2012–2014 fishing years.

NMFS concurs with the Council's recommendation; therefore, this action proposes an ABC of 23,400 mt, and an IOY, DAH, and DAP of 22,445 mt for the 2012–2014 fishing years. The FMP does not authorize the specification of JVP and TALFF for the longfin squid fishery because of the domestic industry's capacity to harvest and process the OY for this fishery.

Distribution of the Longfin DAH

The proposed 2012–2014 longfin DAH would be allocated into trimesters, according to percentages specified in the FMP, as follows:

TABLE 3—PROPOSED TRIMESTER ALLOCATION OF LONGFIN QUOTA FOR 2012–2014

Trimester	Percent	Metric tons
I (Jan–Apr)	43	9,651
II (May–Aug)	17	3,816
III (Sep–Dec)	40	8,978
Total	100	22,445

Longfin Squid Jigging Exemption

The Council recommended, and NMFS proposes, to allow Longfin Squid/Butterfish moratorium permit holders to possess longfin squid in excess of the 2,500-lb (0.93-mt) possession limit during any closures of the longfin squid fishery resulting from the butterfish mortality cap, provided that all trawl gear is appropriately stowed. The butterfish mortality cap was designed to limit butterfish bycatch in the longfin squid trawl fishery, and jigging for squid is not expected to result in substantial butterfish bycatch.

Corrections

This proposed rule also contains minor corrections to existing regulations. The corrections would not change the intent of any regulations; they would only clarify the intent of existing regulations by correcting technical errors. The proposed regulatory text restructures § 648.23(a). In addition, the *Illex* fishery gear exemption in § 648.23(a) (formerly at § 648.23(a)(3)(ii)) would be revised to clarify the timing of the exemption, and to match the stated gear requirements to those implemented for the longfin squid fishery through Amendment 10 to the MSB FMP. Finally, longfin squid was previously referred to as *Loligo* squid. Due to a recent change in the scientific name of longfin squid from *Loligo pealeii* to *Doryteuthis (Amerigo) pealeii,* the Council will now use the common name ''longfin squid'' in all official documents to avoid confusion. Accordingly, the regulatory text is amended to replace all references to ''*Loligo''* squid with the term ''longfin squid.''

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the Atlantic Mackerel, Squid, and Butterfish FMP, other provision of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

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

The Council prepared an IRFA, as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A summary of the analysis follows. A copy of this analysis is available from the Council or NMFS (see **ADDRESSES**) or via the Internet at *http://www.nero.noaa.gov.*

Statement of Objective and Need

This action proposes 2012 specifications for mackerel and butterfish, and 2012–2014 specifications for *Illex* and longfin squid. It also proposes to modify the closure threshold for the commercial mackerel fishery, to adjust the gear requirements for the butterfish fishery, to create an exemption for the use of jigs, should the longfin squid fishery be closed due to reaching the butterfish mortality cap. A complete description of the reasons why this action is being considered, and the objectives of and legal basis for this action, are contained in the preamble to this proposed rule and are not repeated here.

Description and Estimate of Number of Small Entities To Which the Rule Will Apply

Based on permit data for 2011, the numbers of potential fishing vessels in the 2012 fisheries are as follows: 351 Longfin squid/butterfish moratorium permits; 76 *Illex* moratorium permits; 2,201 mackerel permits; 1,904 incidental squid/butterfish permits; and 831 MSB party/charter permits. Small businesses operating in commercial and recreational (*i.e.,* party and charter vessel operations) fisheries have been defined by the Small Business Administration as firms with gross revenues of up to $4.0 and $6.5 million, respectively. There are no large entities participating in this fishery, as that term is defined in section 601 of the RFA. Therefore, there are no disproportionate economic impacts on small entities.

Many vessels participate in more than one of these fisheries; therefore, permit numbers are not additive.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

There are no new reporting or record keeping requirements contained in any of the alternatives considered for this action. In addition, there are no Federal rules that duplicate, overlap, or conflict with this proposed rule.

Minimizing Significant Economic Impacts on Small Entities

Proposed Actions

The recently finalized Omnibus Amendment, which applies to mackerel and butterfish, changes the structure of specifications compared to that used in past years. In order to facilitate comparison of alternatives, the discussions of mackerel and butterfish specifications below will focus on the effective limit on directed harvest, regardless of the terminology used for the specification. The specifications and terminology for *Illex* and longfin squid are unchanged from those used in 2011.

The mackerel commercial DAH proposed in this action (33,821 mt) represents a reduction from status quo (2011 DAH = 46,779 mt). Despite the reduction, the proposed DAH is above recent U.S. landings; mackerel landings for 2008–2010 averaged 18,830 mt. Thus, the reduction does not pose a constraint to vessels relative to the landings in recent years. In 2011, there was a soft allocation of 15,000 mt of the mackerel DAH for the recreational mackerel fishery. The Omnibus Amendment and MSB Amendment 11 established an explicit allocation for the recreational fishery, and this action proposes a Recreational ACT/RHL of 2,443 mt. Because recreational harvest from 2008–2010 averaged 738 mt, it does not appear that the new, explicit allocation for the recreational fishery will constrain recreational harvest. Overall, the proposed action is not expected to result in any reductions in revenues for vessels that participate in either the commercial or recreational mackerel fisheries.

The proposed change to the mackerel closure threshold, which would require the closure of the commercial mackerel fishery at 95 percent of the DAH, is a preventative measure intended to ensure that the commercial catch limit is not exceeded. The economic burden on fishery participants associated with this measure is expected to be minimal.

The butterfish DAH proposed in this action (1,087 mt) represents a 117-percent increase over the 2011 DAH (500 mt). Due to market conditions, there has not been a directed butterfish fishery in recent years; therefore, recent landings have been low. The proposed increase in the DAH has the potential to increase revenue for permitted vessels.

The proposed adjustment to the gear requirement for the butterfish fishery, which would require vessels possessing 2,000 lb (0.9 mt) or more of butterfish to fish with a 3-inch (76-mm) minimum codend mesh, is expected to result in a modest increase in revenue for fishery participants. This adjustment would enable additional retention of butterfish by vessels using small-mesh fishing gear. Previously, the mesh size requirement applied to vessels possessing 1,000 lb (0.45 mt) or more of butterfish.

The *Illex* IOY (22,915 mt) proposed in this action represents a slight decrease compared to status quo (23,328 mt). Though annual *Illex* landings have totaled over ⅔ of the IOY in the past 3 years (15,900 mt for 2008, 18,419 mt for 2009, and 15,825 for 2010), the landings were lower than the level being proposed. Thus, implementation of this proposed action should not result in a reduction in revenue or a constraint on expansion of the fishery in 2012.

The longfin squid IOY (22,445 mt) represents an increase from the status quo (20,000 mt). Because longfin squid landings from 2008–2010 averaged 9,182 mt, the proposed IOY provides an opportunity to increase landings, though if recent trends of low landings continue, there may be no increase in landings despite the increase in the allocation. No reductions in revenues for the longfin squid fishery are expected as a result of this proposed action.

As discussed in the Final Regulatory Flexibility Analysis (FRFA) for MSB Amendment 10, the butterfish mortality cap has a potential for economic impact on fishery participants. The longfin squid fishery will close during Trimesters I and III if the butterfish mortality cap is reached. If the longfin squid fishery is closed in response to butterfish catch before the entire longfin squid quota is harvested, then a loss in revenue is possible. The potential for longfin squid revenue loss is dependent upon the size of the butterfish mortality cap. The proposed 2012 butterfish mortality cap of 2,445 mt represents a 70-percent increase over status quo (1,436 mt). The 2011 butterfish mortality cap did not result in a closure of the longfin squid fishery in Trimester I. At the start of Trimester III, over 55 percent of the butterfish mortality cap (compared to 31.7 percent allocated at the start of the fishing year) was available for the longfin squid fishery for the duration of the fishing year. Though a majority of the cap is still available, it could still result in a closure of the longfin squid fishery late in the fishing year. Nonetheless, given that the lower cap has not yet constrained the longfin squid fishery, it is reasonable to expect that the proposed increase to the cap will also not constrain the longfin squid fishery. For that reason, additional revenue losses are not expected as a result of this proposed action.

The proposed jigging measure would allow Longfin Squid/Butterfish moratorium permit holders to possess longfin squid in excess of the possession limit during any closures of the longfin squid fishery resulting from the butterfish mortality cap. Jigging for longfin squid has been shown to be commercially infeasible. However, because butterfish bycatch in jig gear is expected to be very minimal, it seems reasonable to allow jig fishing for squid. If attempts to use jig gear for commercial longfin squid fishing are successful, the use of this gear could help mitigate economic impacts on fishery participants if the longfin squid fishery is closed due to the mortality cap.

Alternatives to the Proposed Rule

The Council analysis evaluated four alternatives to the proposed specifications for mackerel. The first (status quo) and second non-selected alternatives were based on the specifications structure that existed prior to the implementation of the Omnibus Amendment, and were not selected because they are no longer in compliance with the MSB FMP. The other alternatives differ in their specification of the stockwide ABC (80,000 mt in the preferred alternative). The same amount of expected Canadian catch (36,219 mt) was subtracted from the stockwide ABC in each alternative. The third alternative (least restrictive) would set the U.S. ABC and ACL at 63,781 mt (100,000 mt stockwide ABC minus 36,219 mt Canadian catch), the Commercial ACT at 50,853 mt, the DAH and DAP at 49,271 mt, and the Recreational ACT at 3,559 mt. The fourth alternative (most restrictive) would set the U.S. ABC and ACL at 23,781 mt (60,000 mt stockwide ABC minus 36,219 mt Canadian catch), the Commercial ACT at 18,961 mt, the DAH and DAP at 18,371 mt, and the Recreational ACT at 1,327 mt. These two alternatives were not selected because they were all inconsistent with the ABC recommended by the SSC.

The status quo closure threshold for the commercial mackerel fishery (90 percent) was considered overly precautionary when compared to the proposed closure threshold (95 percent). The status quo closure threshold, which was designed in part because there was no distinct allocation for the recreational mackerel fishery, is no longer considered appropriate.

There were four alternatives to the preferred action for butterfish that were not selected by the Council. The first (status quo) and second non-selected were based on the specifications structure that existed prior to the implementation of the Omnibus Amendment, and were not selected because they are no longer in compliance with the MSB FMP. The third alternative (least restrictive) would have set the ABC and ACL at 4,528 mt, the ACT at 4,075 mt, the DAH and DAP at 1,358 mt, and the butterfish mortality cap at 3,056 mt. The fourth alternative (most restrictive) would have set the ABC and ACL at 2,717 mt, the ACT at 2,445 mt, the DAH and DAP at 815 mt, and the butterfish mortality cap at 1,834 mt. These two alternatives were not selected because they were all inconsistent with the ABC recommended by the SSC.

There were two alternatives regarding proposed adjustment to the butterfish gear requirement. The status quo alternative requires vessels possessing 1,000 lb (0.45 mt) or more of butterfish to fish with a 3-inch (76-mm) minimum codend mesh. The preferred alternative (3-inch (76-mm) mesh to possess 2,000 lb (0.9 mt)) is expected to create some additional revenue in the form of butterfish landings for vessels using mesh sizes smaller than 3 inches (76 mm).

Three alternatives to the preferred action were considered for *Illex,* but were not selected by the Council. All alternatives would establish specifications for the 2012–2014 fishing years. The first alternative (status quo), shared the same 24,000-mt ABC as the proposed action. However, a discard rate of 2.8 percent was deducted to reach an IOY, DAH, and DAP at 23,328 mt rather than the 22,915 mt specified in this proposed action. The Council did not select the status quo alternative because it found the updated discard rate of 4.52 percent to be a more appropriate representation of discards in the *Illex* fishery. The second alternative (least restrictive) would have set ABC at 30,000 mt, and IOY, DAH, and DAP at 28,644 mt (ABC reduced by 4.52 percent for discards). This alternative was not selected because the higher specifications were inconsistent with the results of the most recent stock assessment. The third alternative (most restrictive) would have set ABC at 18,000 mt, and IOY, DAH, and DAP at 17,186 mt (ABC reduced by 4.52 percent for discards). The Council considered this alternative unnecessarily restrictive.

There were three alternatives to the proposed action evaluated for longfin squid. All alternatives would establish specifications for the 2012–2014 fishing years. The first alternative (status quo) would have set the ABC at 24,000 mt, and the IOY, DAH and DAP at 20,000 mt. The second alternative (least restrictive) would have set the ABC at 29,250 mt, and the IOY, DAH, and DAP at 28,057 mt (ABC reduced by 4.08 percent for discards). The third alternative (most restrictive) would have set the ABC at 17,550 mt, and the IOY, DAH and DAP at 16,834 mt (ABC reduced by 4.08 percent for discards). These three alternatives were not selected because they were all inconsistent with the ABC recommended by the SSC.

The alternatives for longfin squid RSA would allow up to 1.65 percent (status quo) or up to 3 percent (preferred) of the longfin squid IOY to be used to fund research projects for the 2012–2014 fishing years. In 2011, butterfish RSA was only awarded to cover butterfish discards by vessels fishing for longfin squid RSA. The small amount of butterfish RSA available in 2011 (15 mt, or 3 percent of 500 mt butterfish DAH) was only sufficient to cover discards for an amount of longfin squid RSA equal to 1.65 percent of the IOY. The recommended increase in the 2012 butterfish quota will allow for enough butterfish RSA (3 percent of the 1,087 mt butterfish DAH) to accommodate discards for longfin squid RSA equal to 3 percent of the IOY.

For the jigging exemption, the status quo alternative prevents Longfin squid/Butterfish moratorium permit holders from possessing or landing over 2,500 lb (1.13 mt) of longfin squid if the directed fishery is closed because of the butterfish mortality cap. The preferred alternative would allow such vessel to posses and land over 2,500 lb (1.13 mt) if using jigging gear. If the use of jigs for commercial longfin squid fishery proves successful, the preferred alternative may help reduce the economic impacts of closures of the longfin squid fishery resulting from the butterfish mortality cap.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: October 21, 2011.

Samuel D. Rauch III,

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

For the reasons set out in the preamble, 50 CFR part 648, as amended at 76 FR 60649, September 29, 2011, is proposed to be amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

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

2. In § 648.2, remove the definition for *Loligo,* revise the definition of *Squid,* and add the definition for *Longfin squid* in alphabetical order, to read as follows:

§ 648.2 Definitions.

* * * * *

Longfin squid means *Doryteuthis (Amerigo) pealeii* (formerly referred to as *Loligo pealeii*).

* * * * *

Squid means longfin squid (*Doryteuthis (Amerigo) pealeii,* formerly *Loligo pealeii*) or *Illex illecebrosus.*

* * * * *

3. In § 648.23, paragraph (a) is revised to read as follows:

§ 648.23 Mackerel, squid, and butterfish gear restrictions.

(a) *Mesh restrictions and exemptions.* Vessels subject to the mesh restrictions in this paragraph (a) may not have available for immediate use any net, or any piece of net, with a mesh size smaller than that specified in paragraphs (a)(1) and (a)(2) of this section.

(1) *Butterfish fishery.* Owners or operators of otter trawl vessels possessing 2,000 lb (0.9 mt) or more of butterfish harvested in or from the EEZ may only fish with nets having a minimum codend mesh of 3 inches (76 mm) diamond mesh, inside stretch measure, applied throughout the codend for at least 100 continuous meshes forward of the terminus of the net, or for codends with less than 100 meshes, the minimum mesh size codend shall be a minimum of one-third of the net, measured from the terminus of the codend to the headrope.

(2) *Longfin squid fishery.* Owners or operators of otter trawl vessels possessing longfin squid harvested in or from the EEZ may only fish with nets having a minimum mesh size of 2⅛ inches (54 mm) during Trimesters I (Jan–Apr) and III (Sept–Dec), or 1⅞ inches (48 mm) during Trimester II (May–Aug), diamond mesh, inside

stretch measure, applied throughout the codend for at least 150 continuous meshes forward of the terminus of the net, or, for codends with less than 150 meshes, the minimum mesh size codend shall be a minimum of one-third of the net measured from the terminus of the codend to the headrope, unless they are fishing consistent with exceptions specified in paragraph (b) of this section.

(i) *Net obstruction or constriction.* Owners or operators of otter trawl vessels fishing for and/or possessing longfin squid shall not use any device, gear, or material, including, but not limited to, nets, net strengtheners, ropes, lines, or chafing gear, on the top of the regulated portion of a trawl net that results in an effective mesh opening of less than 2⅛ inches (54 mm) during Trimesters I (Jan–Apr) and III (Sept–Dec), or 1⅞ inches (48 mm) during Trimester II (May–Aug), diamond mesh, inside stretch measure. ''Top of the regulated portion of the net'' means the 50 percent of the entire regulated portion of the net that would not be in contact with the ocean bottom if, during a tow, the regulated portion of the net were laid flat on the ocean floor. However, owners or operators of otter trawl vessels fishing for and/or possessing longfin squid may use net strengtheners (covers), splitting straps, and/or bull ropes or wire around the entire circumference of the codend, provided they do not have a mesh opening of less than 5 inches (12.7 cm) diamond mesh, inside stretch measure. For the purposes of this requirement, head ropes are not to be considered part of the top of the regulated portion of a trawl net.

(ii) *Jigging exemption.* During closures of the longfin squid fishery resulting from the butterfish mortality cap, described in § 648.26(c)(3), vessels fishing for longfin squid using jigging gear are exempt from the closure possession limit specified in § 648.26(b), provided that all otter trawl gear is stowed as specified in paragraph (b) of this section.

(3) *Illex fishery.* Seaward of the following coordinates, otter trawl vessels possessing longfin squid harvested in or from the EEZ and fishing for *Illex* during the months of June, July, August, in Trimester II, and September in Trimester III are exempt from the longfin squid gear requirements specified in paragraph (a)(2) of this section, provided that landward of the specified coordinates they do not have available for immediate use, as defined in paragraph (b) of this section, any net, or any piece of net, with a mesh size less than 1⅞ inches (48 mm) diamond mesh in Trimester II, and 2⅛ inches (54 mm) diamond mesh in Trimester III, or any piece of net, with mesh that is rigged in a manner that is prohibited by paragraph (a)(2) of this section.

Point	N. lat.	W. long.
M1	43°58.0′	67°22.0′
M2	43°50.0′	68°35.0′
M3	43°30.0′	69°40.0′
M4	43°20.0′	70°00.0′
M5	42°45.0′	70°10.0′
M6	42°13.0′	69°55.0′
M7	41°00.0′	69°00.0′
M8	41°45.0′	68°15.0′
M9	42°10.0′	67°10.0′
M10	41°18.6′	66°24.8′
M11	40°55.5′	66°38.0′
M12	40°45.5′	68°00.0′
M13	40°37.0′	68°00.0′
M14	40°30.0′	69°00.0′
M15	40°22.7′	69°00.0′
M16	40°18.7′	69°40.0′
M17	40°21.0′	71°03.0′
M18	39°41.0′	72°32.0′
M19	38°47.0′	73°11.0′
M20	38°04.0′	74°06.0′
M21	37°08.0′	74°46.0′
M22	36°00.0′	74°52.0′
M23	35°45.0′	74°53.0′
M24	35°28.0′	74°52.0′

* * * * *

4. In § 648.24, paragraph (b)(1) is revised to read as follows:

§ 648.24 Fishery closures and accountability measures.

* * * * *

(b) * * *

(1) *Mackerel commercial sector EEZ closure.* NMFS shall close the commercial mackerel fishery in the EEZ when the Regional Administrator projects that 95 percent of the mackerel DAH is harvested, if such a closure is necessary to prevent the DAH from being exceeded. The closure of the commercial fishery shall be in effect for the remainder of that fishing year, with incidental catches allowed as specified in § 648.26. When the Regional Administrator projects that the DAH for mackerel shall be landed, NMFS shall close the commercial mackerel fishery in the EEZ, and the incidental catches specified for mackerel in § 648.26 will be prohibited.

* * * * *

5. In the table below, for each section in the left column, remove the text from whenever it appears throughout the section and add the text indicated in the right column.

Section	Remove	Add	Frequency
§ 648.4(a)(5)(i)	*Loligo*	longfin	1
§ 648.4(a)(5)(i)(A)	*Loligo*	longfin	2
§ 648.4(a)(5)(i)(L)(ii)	*Loligo*	longfin	1
§ 648.4(a)(10)(iv)(C)(*1*)(*i*)	*Loligo*	longfin	1
§ 648.4(a)(10)(iv)(C)(*1*)(*ii*)	*Loligo*	longfin	1
§ 648.13(a)	*Loligo*	longfin squid	2
§ 648.14(g)(1)(ii)(B)	*Loligo*	longfin squid	2
§ 648.14(g)(1)(iii)	*Loligo*	longfin squid	1
§ 648.14(g)(2)(ii)	*Loligo*	longfin	2
§ 648.14(g)(2)(iii)	*Loligo*	longfin squid	1
§ 648.14(o)(1)(vi)	*Loligo*	longfin	1
§ 648.22(a)(2)	*Loligo*	longfin squid	1
§ 648.22(a)(4)	*Loligo*	longfin	1
§ 648.22(a)(5)	*Loligo*	longfin	1
§ 648.22(b)(1)	*Loligo*	longfin	1
§ 648.22(b)(1)(i)(A)	*Loligo*	longfin squid	1
§ 648.22(b)(3)(v)	*Loligo*	longfin squid	1
§ 648.22(c)(1)(i)	*Loligo*	longfin squid	1
§ 648.22(c)(3)	*Loligo*	longfin squid	1
§ 648.22(c)(6)	*Loligo*	longfin squid	1
§ 648.22(f)	*Loligo*	longfin	2
§ 648.24(a)	*Loligo*	longfin squid	4
§ 648.24(c)(3)	*Loligo*	longfin squid	2

Section	Remove	Add	Frequency
§ 648.26(b)	*Loligo*	longfin squid	7
§ 648.27 (heading)	*Loligo*	longfin squid	1
§ 648.27(a)	*Loligo*	longfin squid	1
§ 648.27(b)	*Loligo*	longfin squid	5
§ 648.27(c)	*Loligo*	longfin squid	3
§ 648.27(d)	*Loligo*	longfin squid	2
§ 648.124(a)(2)	*Loligo*	longfin	1
§ 648.124(b)(2)	*Loligo*	longfin	1

[FR Doc. 2011–27726 Filed 10–25–11; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 76, No. 207
Wednesday, October 26, 2011

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

October 20, 2011.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Animal Plant and Health Inspection Service

Title: Self Certification Medical Statement.

OMB Control Number: 0579–0196.

Summary of Collection: The United States Department of Agriculture is responsible for ensuring consumers that food and farm products are moved from producer to consumer in the most efficient, dependable, economical, and equitable system possible. 5 CFR part 339 authorizes an agency to obtain medical information about the applicant's health status to assist management in making employment decisions concerning positions that have specific medical standards or physical requirements in order to determine medical/physical fitness. The Marketing and Regulatory Programs (MRP) of the Animal Plant and Health Inspection Service (APHIS) of the U.S. Department of Agriculture hires individuals each year in commodity grading and inspection positions. These positions involve arduous duties and work under conditions, around moving machinery, slippery surfaces, and high noise level areas. APHIS will collect information using the MRP–5 form (Self-Certification Medical Statement).

Need and Use of the Information: The information collected from the prospective employees assists the MRP officials, administrative personnel, and servicing Human Resources Offices in determining an applicant's physical fitness and suitability for employment in positions with approved medical standards and physical requirements and direct contact with meat, dairy, fresh or processed fruits and vegetables, and poultry intended for human consumption and cotton and tobacco products intended for consumer use. Denial of the information would greatly hamper APHIS recruiting capability and adversely affect management's ability to facilitate hiring, placement, and utilization of qualified individuals into positions that have specific medical standards and physical requirements.

Description of Respondents: Individuals or households.

Number of Respondents: 524.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 88.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2011–27638 Filed 10–25–11; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

October 20, 2011.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it

displays a currently valid OMB control number.

Food Safety and Inspection Service

Title: Salmonella Initiative Program.

OMB Control Number: 0583–New.

Summary of Collection: The Food Safety and Inspection Service (FSIS) has been delegated the authority to exercise the functions of the Secretary as provided in the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601 *et seq.*), the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451 *et seq.*). These statutes mandate that FSIS protect the public by ensuring that meat and poultry products are safe, wholesome, unadulterated, and properly labeled and packaged. The Salmonella initiative Program (SIP) offers incentives to meat and poultry slaughter establishments to control Salmonella in their operations. SIP benefits public health because it encourages establishments to test for microbial pathogens, which is a key feature of effective process control.

Need and Use of the Information: Under SIP, establishments will share their data with the Food Safety and Inspection Service (FSIS); this will help the Agency in formulating its policy. Establishments that want to enter SIP must send a protocol to FSIS informing the Agency about their plans for implementing SIP in their establishment, including data collection, objectives and methods of evaluating the new technology for which they are receiving the regulator waiver.

Description of Respondents: Individuals or households.

Number of Respondents: 300.

Frequency of Responses: Recordkeeping; Reporting: On occasion.

Total Burden Hours: 206,000.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2011–27639 Filed 10–25–11; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Information Collection Activity; Comment Request

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended), the Rural Utilities Service's (RUS) invites comments on this information collection for which approval from the Office of Management and Budget (OMB) will be requested.

DATES: Comments on this notice must be received by December 27, 2011.

FOR FURTHER INFORMATION CONTACT: Michele L. Brooks, Director, Program Development & Regulatory Analysis, Rural Utilities Service, USDA, 1400 Independence Ave., SW., STOP 1522, Room 5168—South Building, Washington, DC 20250–1522. *Telephone:* (202) 690–1078. *Fax:* (202) 720–8435.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget's (OMB) regulation (5 CFR part 1320) implanting provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) requires that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). This notice identifies an information collection that RUS is submitting to OMB for extension.

Comments are invited on (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumption used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques on other forms of information technology. Comments may be sent to: MaryPat Daskal, Program Development and Regulatory Analysis, Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Ave., SW., Room 5166–South, STOP 1522, Washington, DC 20250–1522. *Fax:* (202) 720–8435. *E-mail: marypat.daskal@wdc.usda.gov.*

Title: 7 CFR Part 1726, Electric System Construction Policies and Procedures.

OMB Control Number: 0572–0107.

Type of Request: Extension of a previously approved collection.

Abstract: In order to facilitate the programmatic interest of the Rural Electrification Act of 1936, 7 U.S.C. 901 *et seq.* (RE Act), and, in order to assure that loans made or guaranteed by RUS are adequately secured, RUS, as a secured lender, has established certain standards and specifications for materials, equipment, and construction of electric systems. The use of standard forms, construction contracts, and procurement procedures helps assure RUS that appropriate standards and specification are maintained; RUS' loan security is not adversely affected; and the loan and loan guarantee funds are used effectively and for the intended purposes. The list of forms and corresponding purposes for this information collection are as follows:

1. RUS Form 168b, Contractor's Bond

This form is used to provide a surety bond for contracts on RUS Forms 200, 257, 786, 790, & 830.

2. RUS Form 168c, Contractor's Bond (less than $1 million)

This form is used to provide a surety bond in lieu of RUS Form 168b, when contractor's surety has accepted a small business administration guarantee.

3. RUS Form 187, Certificate of Completion—Contract Construction

This form is used for the closeout of RUS Forms 200, 257, 786, and 830.

4. RUS Form 198, Equipment Contract

This form is used for equipment purchases.

5. RUS Form 200, Construction Contract—Generating

This form is used for generating plant construction or for the furnishing and installation of major items of equipment.

6. RUS Form 213, Certificate (''Buy American'')

This form is used to document compliance with the ''Buy American'' requirement.

7. RUS Form 224, Waiver and Release of Lien

This form is used by subcontractors to provide a release of lien in connection with the closeout of RUS Forms 198, 200, 257, 786, 790, and 830.

8. RUS Form 231, Certificate of Contractor

This form is used for the closeout of RUS Forms 198, 200, 257, 786, and 830.

9. RUS Form 238, Construction or Equipment Contract Amendment

This form is used to amend contracts except for distribution line construction contracts.

10. RUS Form 254, Construction Inventory

This form is used to document the final construction in connection with the closeout of RUS Form 830.

11. RUS Form 257, Contract to Construct Buildings

This form is used to construct headquarter buildings, generating plant buildings and other structure construction.

12. RUS Form 307, Bid Bond

This form is used to provide a bid bond in RUS Forms 200, 257, 786, 790 and 830.

13. RUS Form 786, Electric System Communications and Control Equipment Contract

This form is used for delivery and installation of equipment for system communications.

14. RUS Form 790, Electric System Construction Contract Non-Site Specific Construction (Notice and Instructions to Bidders)

This form is used for limited distribution construction accounted for under work order procedure.

15. RUS Form 792b, Certificate of Contractor and Indemnity Agreement (Line Extensions)

This form is used in the closeout of RUS Form 790.

16. RUS Form 830, Electric System Construction Contract (Labor & Material)

This form is used for distribution and/or transmission project construction.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 1.5 minutes per response.

Respondents: Businesses or other for profits; not-for-profit institutions.

Estimated Number of Respondents: 1,210.

Estimated Number of Responses per Respondent: 4.

Estimated Total Annual Burden on Respondents: 104 hours.

Copies of this information collection, and related form and instructions, can be obtained from MaryPat Daskal, Program Development and Regulatory Analysis, at (202) 720–7853.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: October 19, 2011.

Jonathan Adelstein,

Administrator, Rural Utilities Service.

[FR Doc. 2011–27642 Filed 10–25–11; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–423–808]

Stainless Steel Plate in Coils From Belgium: Notice of Preliminary Results of Antidumping Duty Changed Circumstances Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In response to a request from the interested party, Aperam Stainless Belgium N.V. (''Aperam''), the Department of Commerce (''the Department'') initiated a changed circumstances review (''CCR'') of the antidumping duty order of stainless steel plate in coils (''SSPC'') from Belgium.[1] We have preliminarily determined that Aperam is the successor-in-interest to ArcelorMittal Stainless Belgium N.V. (''AMSB'') with respect to the antidumping duty order on SSPC from Belgium.[2] We invite interested parties to comment on these preliminary results. Parties who submit comments in these reviews are requested to submit with each argument (1) A statement of the issue and (2) a brief summary of the argument.

DATES: *Effective Date:* October 26, 2011.

FOR FURTHER INFORMATION CONTACT: George McMahon or Stephanie Moore, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–1167 and (202) 482–3692, respectively.

SUPPLEMENTARY INFORMATION:

Background

On May 21, 1999, the Department published in the **Federal Register** an antidumping duty order on stainless steel plate in coils from Belgium. *See Antidumping Order.* In the Department's initial less-than-fair-value investigation, the respondent company subject to investigation was ALZ N.V. On June 1, 2009, the Department determined that AMSB was the successor-in-interest to Ugine & ALZ Belgium (''U&A Belgium''), which was a successor-in-interest to ALZ N.V.[3] The Department is currently conducting an administrative review of Aperam covering the period of review of May 1, 2010 through April 30, 2011.[4]

On June 14, 2011, Aperam requested that the Department initiate and conduct an expedited changed circumstances review to determine that for purposes of the antidumping law, Aperam is the successor-in-interest to AMSB.[5] In response to Aperam's request, the Department initiated a changed circumstances review of the antidumping duty order on SSPC from Belgium. *See CCR Initiation Notice.* On August 8, 2011, the Department issued a questionnaire to Aperam and based on our analysis of its response, we preliminarily determine that Aperam is the successor-in-interest to AMSB, which was itself a successor-in-interest to the respondent in the less-than-fair-value investigation, and that, as such, Aperam is entitled to receive the same antidumping duty treatment accorded AMSB. We have received no comments from the petitioners[6] regarding Aperam's CCR request or questionnaire response.

Scope of the Antidumping Duty Order

The product covered by this order is certain stainless steel plate in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject plate products are flat-rolled products, 254 mm or over in width and 4.75 mm or more in thickness, in coils, and annealed or otherwise heat treated and pickled or

[1] *See Stainless Steel Plate in Coils From Belgium: Notice of Initiation of Antidumping Duty Changed Circumstances Review,* 76 FR 45511 (July 29, 2011) (''*CCR Initiation Notice*'').

[2] *See Antidumping Duty Orders; Certain Stainless Steel Plate in Coils From Belgium, Canada, Italy, the Republic of Korea, South Africa, and Taiwan,* 64 FR 27756 (May 21, 1999); *Notice of Amended Antidumping Duty Orders; Certain Stainless Steel Plate in Coils From Belgium, Canada, Italy, the Republic of Korea, South Africa, and Taiwan,* 68 FR 11520 (March 11, 2003); *Notice of Amended Antidumping Duty Orders; Certain Stainless Steel Plate in Coils From Belgium, Canada, Italy, the Republic of Korea, South Africa, and Taiwan,* 68 FR 16117 (April 2, 2003); *Notice of Correction to the Amended Antidumping Duty Orders; Certain Stainless Steel Plate in Coils From Belgium, Canada, Italy, the Republic of Korea, South Africa, and Taiwan,* 68 FR 20114 (April 24, 2003) (collectively, ''*Antidumping Order*'').

[3] *See, e.g.,* ''Successor-in-Interest Analysis'' Memorandum from G. McMahon to J. Terpstra, at page 2 (June 1, 2009), Attached as Appendix 4 to Aperam's request for a CCR; *see also Stainless Steel Plate in Coils From Belgium: Notice of Initiation of Antidumping Duty Changed Circumstances Review,* 76 FR 45511, 45512 (July 29, 2011).

[4] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part,* 76 FR 37781 (June 28, 2011).

[5] *See* Aperam's letter to the Secretary of Commerce, dated, June 14, 2011.

[6] Petitioners consist of: Allegheny Ludlum Corporation, North American Stainless, United Auto Workers Local 3303, Zanesville Arco Independent Organization, and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL–CIO/CLC.

otherwise descaled. The subject plate may also be further processed (*e.g.,* cold-rolled, polished, *etc.*) provided that it maintains the specified dimensions of plate following such processing. Excluded from the scope of this order are the following: (1) Plate not in coils; (2) Plate that is not annealed or otherwise heat treated and pickled or otherwise descaled; (3) Sheet and strip; and (4) Flat bars.

The merchandise subject to this order is currently classifiable in the Harmonized Tariff Schedule of the United States (''HTSUS'') at subheadings: 7219.11.00.30, 7219.11.00.60, 7219.12.00.06, 7219.12.00.21, 7219.12.00.26, 7219.12.00.51, 7219.12.00.56, 7219.12.00.66, 7219.12.00.71, 7219.12.00.81, 7219.31.00.10, 7219.90.00.10, 7219.90.00.20, 7219.90.00.25, 7219.90.00.60, 7219.90.00.80, 7220.11.00.00, 7220.20.10.10, 7220.20.10.15, 7220.20.10.60, 7220.20.10.80, 7220.20.60.05, 7220.20.60.10, 7220.20.60.15, 7220.20.60.60, 7220.20.60.80, 7220.90.00.10, 7220.90.00.15, 7220.90.00.60, and 7220.90.00.80. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise subject to these orders is dispositive.

Preliminary Results of Changed Circumstances Review

In making a successor-in-interest determination, the Department examines several factors including, but not limited to, changes in: (1) Management; (2) production facilities; (3) supplier relationships; and (4) customer base. *See, e.g., Carbon and Certain Alloy Steel Wire Rod From Trinidad and Tobago: Notice of Initiation and Preliminary Results of Antidumping Duty Changed Circumstances Review,* 73 FR 17952, 17953 (April 2, 2008), unchanged in *Carbon and Certain Alloy Steel Wire Rod From Trinidad and Tobago: Notice of Final Results of Antidumping Duty Changed Circumstances Review,* 73 FR 30052 (May 23, 2008); *see also Ball Bearings and Parts Thereof from Japan: Initiation and Preliminary Results of Changed-Circumstances Review,* 71 FR 14679, 14680 (March 23, 2006), unchanged in *Notice of Final Results of Antidumping Duty Changed-Circumstances Review: Ball Bearings and Parts Thereof from Japan,* 71 FR 26452 (May 5, 2006) (collectively, ''*CCR Japan*''). Although no single factor or combination of factors will necessarily provide a dispositive indication of a successor-in-interest relationship, the Department will generally consider the new company to be the successor to the previous company if its resulting operation is similar to that of its predecessor. *See CCR Japan; see also Brass Sheet and Strip From Canada; Final Results of Antidumping Duty Administrative Review,* 57 FR 20460 (May 13, 1992), and accompanying Issues and Decision Memorandum at Comment 1. Thus, if the evidence demonstrates that, with respect to the production and sale of the subject merchandise, the new company operates as the same business entity as the prior company, the Department will assign the new company the cash-deposit rate of its predecessor. *Id.; see also Circular Welded Non-Alloy Steel Pipe From the Republic of Korea; Preliminary Results of Antidumping Duty Changed Circumstances Review,* 63 FR 14679 (March 26, 1998), unchanged in *Circular Welded Non-Alloy Steel Pipe From Korea; Final Results of Antidumping Duty Changed Circumstances Review,* 63 FR 20572 (April 27, 1998), in which the Department found that a company which only changed its name and did not change its operations is a successor-in-interest to the company before it changed its name.

In accordance with 19 CFR 351.216, we preliminarily determine that Aperam is the successor-in-interest to AMSB. In its June 14, 2011, CCR request, Aperam provided evidence supporting its claim to be the successor-in-interest to AMSB. Documentation attached to Aperam's CCR request shows that the shareholders of Aperam's corporate parent, ArcelorMittal S.A., approved a spin-off of AMSB's stainless and specialty steels business into Aperam, and the resulting name change to Aperam Stainless Belgium N.V. resulted in little or no change in management, production facility, supplier relationships, or customer base. This documentation consists of: (1) Official minutes of the extraordinary general meeting of ArcelorMittal shareholders regarding the shareholders' approval of the spin-off of ArcelorMittal's stainless and specialty steels business into Aperam; (2) a letter from Lakshmi N. Mittal, CEO, dated December 13, 2010, regarding the announcement of the spin-off of the stainless steel business from ArcelorMittal to Aperam; (3) name change registration with the Economics Ministry, Government of Belgium; (4) the Department's ''Successor-in-Interest Analysis'' Memorandum, dated June 1, 2009, regarding a prior successor-in-interest determination and the criteria which served as the basis for this decision; (5) list of the AMSB and Aperam's shareholders which indicates no changes before and after the spin-off; and (6) organization charts which show that the management structure prior to and after the spin-off of the stainless business to Aperam is almost identical.

In its CCR questionnaire response, dated September 12, 2011, Aperam provided further information to support its claim that it is the successor-in-interest to AMSB. Specifically, Aperam reported that, pursuant to the corporate name change from AMSB to Aperam, there were no changes to the production facilities, production capacity of SSPC, channels of distribution, customer categories, major inputs from affiliated parties or sales to its affiliates. Aperam also indicated that there were no changes in the types of SSPC produced before and after the corporate name change from AMSB to Aperam. With regard to its customers in both the United States and in its home market, Aperam's response shows that there were no significant changes resulting from the corporate name change, and Aperam cited the current market situation as the basis for the changes which occurred. *Id.* at pages 2–6. Aperam states, ''{n}o changes have occurred at Aperam Stainless Belgium as a result of the spin-off, nor have there been any changes in the broader organization in terms of corporate strategy, organizational structure, management, ownership, production, or sales.'' *Id.* at page 7.

In summary, Aperam has presented evidence to support its claim of successorship. The record indicates that the corporate name change to Aperam has not significantly changed the operations of the company. The production facilities, supplier relationships, management, and customer base of Aperam are substantially unchanged from their status prior to the corporate name change. The record evidence demonstrates that Aperam operates essentially in the same manner as the predecessor company, AMSB.

We find that the evidence provided by Aperam is sufficient to preliminarily determine that the change of its corporate name from AMSB to Aperam did not affect the company's operations in a meaningful way. Therefore, based on the aforementioned reasons, we preliminarily determine that Aperam is the successor-in-interest to AMSB and, thus, should receive the same antidumping duty treatment with respect to stainless steel plate in coils from Belgium as the former AMSB.

Public Comment

Any interested party may request a hearing within 30 days of publication of this notice. Any hearing, if requested, will be held no later than 44 days after the date of publication of this notice, or the first workday thereafter. Case briefs from interested parties may be submitted not later than 30 days after the date of publication of this notice. Rebuttal briefs, limited to the issues raised in the case briefs, may be filed not later than 37 days after the date of publication of this notice. All written comments shall be submitted in accordance with 19 CFR 351.303. Persons interested in attending the hearing, if one is requested, should contact the Department for the date and time of the hearing. The Department intends to issue the final results within 270 days from the date of initiation of this changed circumstances review, in accordance with 19 CFR 351.216(e), including the results of its analysis of issues raised in any written comments.

The current requirement for a cash deposit of estimated antidumping duties on all subject merchandise will continue unless and until it is modified pursuant to the final results of this changed circumstances review.

We are issuing and publishing these results and notice in accordance with sections 751(b)(1) and 777(i)(1) and (2) of the Tariff Act of 1930, as amended, and 19 CFR 351.216.

Dated: October 20, 2011.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2011–27749 Filed 10–25–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA643

Snapper-Grouper Fishery Off the Southern Atlantic States and Coral and Coral Reefs Fishery in the South Atlantic; Exempted Fishing Permit

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

ACTION: Notice of receipt of an application for an exempted fishing permit; request for comments.

SUMMARY: NMFS announces the receipt of an application for an exempted fishing permit (EFP) from Keith Farmer, on behalf of the North Carolina Department of Environment and Natural Resources Aquariums Division (North Carolina Aquariums). If granted, the EFP would authorize North Carolina Aquariums to collect, with certain conditions, various species of reef fish and live rock in Federal waters off North Carolina. The specimens would be used in educational exhibits displaying North Carolina native species at aquariums located at Pine Knoll Shores, Roanoke Island, Fort Fisher, and Jeanette's Ocean Pier, NC.

DATES: Comments must be received no later than 5 p.m., eastern standard time, on November 25, 2011.

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

- *E-mail: Karla.Gore@noaa.gov.* Include in the subject line of the e-mail comment the following document identifier: ''North Carolina Aquariums''.
- *Mail:* Karla Gore, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

The application and related documents are available for review upon written request to any of the above addresses.

FOR FURTHER INFORMATION CONTACT: Karla Gore, 727–824–5305; *e-mail: karla.gore@noaa.gov.*

SUPPLEMENTARY INFORMATION: The EFP is requested under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C 1801 *et seq.*), and regulations at 50 CFR 600.745(b) concerning exempted fishing.

The proposed species collection involves activities covered by regulations implementing the Fishery Management Plan (FMP) for the Snapper-Grouper Fishery of the South Atlantic Region and the FMP for Coral, Coral Reefs, and Live/Hard Bottom Habitats of the South Atlantic Region. The applicant requires authorization to opportunistically collect 878 live fish in the South Atlantic snapper-grouper complex, and a specified quantity of live rock. The fish, listed by common name (total number of fish), and amount of live rock to be harvested over a 2-year period by North Carolina Aquariums includes: red hind (16), rock hind (16), red grouper (16), gag (16), scamp (16), red porgy (16), yellowfin grouper (9), yellowmouth grouper (16), snowy grouper (12), silk snapper (16), vermilion snapper (78), tomtate (200), smallmouth grunt (100), cottonwick (200), yellowedge grouper (9), graysby (16), coney (16), yellowtail snapper (84), schoolmaster snapper (26), and 300 lb (136 kg) of live rock.

Specimens would be collected in Federal waters from 3 miles (4.8 km) offshore out to 100 fathoms (182 m), from 33°10′ N lat. to 36°30′ N lat. off North Carolina. The project proposes to use hook-and-line gear, black sea bass pots and minnow traps to collect fish, and SCUBA gear to collect live rock by hand. This EFP would authorize sampling operations to be conducted on three vessels to be named by North Carolina Aquariums and designated in the EFP. The specimens would be opportunistically collected year-round for a period of up to 2 years, commencing on the date of issuance of the EFP. The EFP would not authorize the collection of species with an annual catch limit of zero (Red snapper, Warsaw grouper, and Speckled hind).

The overall intent of the project is to incorporate North Carolina native species into the educational exhibits at the four aquariums located at Pine Knoll Shores, Roanoke Island, Fort Fisher, and Jeanette's Ocean Pier, North Carolina. The aquariums use these displays of native North Carolina habitats and species to teach the public about conservation of these resources.

NMFS finds this application warrants further consideration. Based on a preliminary review, NMFS intends to issue an EFP. Possible conditions the agency may impose on this permit, if it is indeed granted, include but are not limited to, a prohibition of conducting research within marine protected areas, marine sanctuaries, special management zones, or artificial reefs without additional authorization. Additionally, NMFS prohibits the possession of Nassau grouper, goliath grouper, red snapper, speckled hind or Warsaw grouper, and requires any sea turtles taken incidentally during the course of fishing or scientific research activities to be handled with due care to prevent injury to live specimens, observed for activity, and returned to the water. The EFP would specify that any harvest of live rock would have to be replaced by an equivalent amount of new rock substrate, or be obtained from a commercial (aquaculture) source. A final decision on the issuance of the EFP will depend on NMFS' review of public comments received on the application, consultations with the affected state, the South Atlantic Fishery Management Council, and the U.S. Coast Guard, and a determination that it is consistent with all applicable laws.

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

Dated: October 21, 2011.

Emily H. Menashes,

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

[FR Doc. 2011–27745 Filed 10–25–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA788

North Pacific Fishery Management Council (NPFMC); Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The North Pacific Fishery Management Council's (Council) Gulf of Alaska (GOA) and Bering Sea/Aleutian Islands (BS/AI) Groundfish Plan Teams will meet in Seattle.

DATES: November 14–18, 2011. The meetings will begin at 9 a.m., Monday, November 14, and continue through Friday, November 18, 2011.

ADDRESSES: The meetings will be held at the Alaska Fisheries Science Center, 7600 Sand Point Way, NE., Building 4, Observer Training Room (GOA Plan Team) and Traynor Room (BS/AI Plan Team), Seattle, WA.

Council address: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: Jane DiCosimo or Diana Stram, NPFMC; *telephone:* (907) 271–2809.

SUPPLEMENTARY INFORMATION: The Plan Teams will compile and review the annual Groundfish Stock Assessment and Fishery Evaluation Report (SAFE), including the Economic Report, the Ecosystems Consideration Chapter, the stock assessments for BSAI and GOA groundfish, and recommend final groundfish catch specifications for 2012/13.

The Agenda is subject to change, and the latest version will be posted at *http://www.alaskafisheries.noaa.gov/npfmc/.*

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Gail Bendixen, (907) 271–2809, at least 5 working days prior to the meeting date.

Dated: October 20, 2011.

Tracey L. Thompson,

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

[FR Doc. 2011–27630 Filed 10–25–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Availability of Seats for the Cordell Bank National Marine Sanctuary Advisory Council

AGENCY: Office of National Marine Sanctuaries (ONMS), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice and request for applications.

SUMMARY: The ONMS is seeking applications for the following vacant seats on the Cordell Bank National Marine Sanctuary Advisory Council: Education, Primary and Alternate seats; Fishing, Primary and Alternate seats; Research, Alternate seat; Community-at-Large Mann County, Alternate seat; Community-at-Large Sonoma County, Alternate seat. Applicants are chosen based upon their particular expertise and experience in relation to the seat for which they are applying; community and professional affiliations; philosophy regarding the protection and management of marine resources; and possibly the length of residence in the area affected by the sanctuary. Applicants who are chosen as members should expect to serve three-year terms, pursuant to the council's Charter.

DATES: Applications are due by December 1, 2011.

ADDRESSES: Application kits may be obtained from *http://cordellbank.noaa.gov/* or Kaitlin Graiff, *kaitlin.graiff@noaa.gov,* P.O. Box 159, Olema, CA 94950. Completed applications should be sent to the above postal or e-mail address, or faxed to 415–663–0315 attn. Kaitlin Graiff.

FOR FURTHER INFORMATION CONTACT: Kaitlin Graiff, Advisory Council Coordinator, 415–663–0314 x105, *kaitlin.graiff@noaa.gov.*

SUPPLEMENTARY INFORMATION: The Cordell Bank National Marine Sanctuary Advisory Council was established in 2001 to ensure continued public participation in the management of the sanctuary. Council seats are occupied by members representing research, conservation, maritime activity, fishing, education, Mann and Sonoma County community-at-large, as well as Federal agency partners. Individual council members act as liaisons between the Sanctuary and their constituent groups. The council holds a minimum of four regular meetings per year, and an annual retreat in the summer.

Authority: 16 U.S.C. 1431, *et seq.*

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Dated: October 18, 2011.

Daniel J. Basta,

Director, Office of National Marine Sanctuaries, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. 2011–27584 Filed 10–25–11; 8:45 am]

BILLING CODE 3510–NK–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA650

Small Takes of Marine Mammals Incidental to Specified Activities; Pier 36/Brannan Street Wharf Project in the San Francisco Bay, CA

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

ACTION: Notice; proposed incidental harassment authorization; request for comments.

SUMMARY: NMFS has received a complete and adequate application from the United States Army Corps of Engineers, San Francisco District (USACE), on behalf of the Port of San Francisco (Port), for an Incidental Harassment Authorization (IHA) to take marine mammals, by harassment, incidental to pile driving during construction of the Brannan Street Wharf. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is proposing to issue an IHA to incidentally harass, by Level B harassment, four species of marine mammals during the specified activity within a specific geographic region and is requesting comments on its proposal.

DATES: Comments and information must be received no later than November 25, 2011.

ADDRESSES: Comments on the application and this proposal should be addressed to Michael Payne, Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225. The mailbox address for

providing e-mail comments is *ITP.Magliocca@noaa.gov.* NMFS is not responsible for e-mail comments sent to addresses other than the one provided here. Comments sent via e-mail, including all attachments, must not exceed a 10-megabyte file size.

Instructions: All comments received are a part of the public record and will generally be posted to *http://www.nmfs.noaa.gov/pr/permits/incidental.htm* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

A copy of the application containing a list of the references used in this document may be obtained by writing to the address specified above, telephoning the contact listed below (see **FOR FURTHER INFORMATION CONTACT**), or visiting the internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm.* Documents cited in this notice may also be viewed, by appointment, during regular business hours, at the aforementioned address.

FOR FURTHER INFORMATION CONTACT: Michelle Magliocca, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by United States citizens who engage in a specified activity (other than commercial fishing) within a specific geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as '' * * * an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

Section 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. Section 101(a)(5)(D) further established a 45-day time limit for NMFS' review of an application, followed by a 30-day public notice and comment period on any proposed authorizations for the incidental harassment of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny the authorization.

Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as:

> any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

Summary of Request

On May 6, 2011, NMFS received an application from the USACE, on behalf of the Port, requesting an IHA for the take, by Level B harassment, of small numbers of Pacific harbor seals (*Phoca vitulina*), California sea lions (*Zalophus californianus*), gray whales (*Eschrichtius robustus*), and Pacific harbor porpoises (*Phocoena phocoena*) incidental to pile driving activities during construction of the Brannan Street Wharf in San Francisco, California. Upon receipt of additional information and a revised application, NMFS determined the application complete and adequate on August 7, 2011.

The Port proposes to construct a pile-supported park that would be known as the ''Brannan Street Wharf'' and would replace the existing Pier 36 and provide recreational space for the public. The proposed project would require installation of 261 steel and concrete piles and 57,000 square feet (ft^2) of new decking. Because elevated sound levels from pile driving have the potential to result in marine mammal harassment, NMFS is proposing to issue an IHA for take incidental to the specified activity.

Description of the Specified Activity

The Port proposes to replace the existing Pier 36 with a pile-supported park along the San Francisco waterfront. The proposed park would provide a new open space for the purpose of public recreation and include the following: a 26,000 ft^2 raised lawn area; a waterside walkway with seating, shelters, and picnic tables; and a 2,000 ft^2 small craft float and accessible gangway for launching non-motorized recreational vessels.

To construct the 57,000 ft^2 open space, the existing overwater Pier 36 structures would be demolished, the existing supporting caissons would be removed, and 261 steel and concrete piles would be installed at the site using vibratory and impact pile driving. Demolition and removal of the caissons is not expected to harass marine mammals because these activities would occur above water and the height of the existing Pier 36 decking prevents marine mammals from hauling out. (The nearest haul-out site is over 3.2 kilometers (km) (2 miles [mi]) away at Yerba Buena Island.) The caissons would be removed using a barge mounted excavator and this method is not expected to generate sound at pressures outside of the ambient noise conditions. Installation of the new cast-in-place concrete decking would also occur above water. Installation of the 261 steel and concrete piles, however, would require in-water pile driving that could produce high-intensity sound and has the potential to harass marine mammals. A breakdown of proposed pile size and type is shown in Table 1.

TABLE 1—SUMMARY OF PILE TYPES AND PILE DRIVING ACTIVITY

Pile type	Total piles	Pile driver	Max piles per day
24-inch octagonal concrete	141	Impact	8
24-inch steel shell	116	Vibratory and impact	5
36-inch steel shell	4	Vibratory and impact	4

Of the 261 piles, about 141 would be 24-inch (in) octagonal concrete piles driven in water depths of 2 to 15 ft mean lower low water. These piles would be driven to a depth of 60 ft below the mudline elevation—like all the other piles—using an impact hammer. Each pile may take 20 minutes to drive into the substrate, which consists of about 20 ft of bay mud underlain by a sand mixture. Up to 800 blows from an impact hammer would be necessary for each concrete pile.

Of the 261 piles, about 116 would be 24-in steel shell piles driven in water depths of zero to 6 ft mean lower low water. These piles would be installed nearest the shoreline as pier support piles and would be used in place of concrete piles due to the presence of rock dike material along the shore. Installation would include about eight minutes of vibratory pile driving, followed by up to 300 blows from an impact hammer.

The remaining 4 piles would be 36-in steel shell piles used for the new floating dock. These piles would be installed in water depths of 10 to 15 ft mean lower low water. Each pile installation would begin with five to 15 minutes of vibratory pile driving, followed by about 600 blows from an impact hammer.

Only one pile type is expected to be installed on any given day. Conservatively assuming the maximum vibratory time and number of impact blows required for each pile, a total of 988 minutes of vibratory driving and 150,000 impact blows would be necessary over the 12-month duration of the project. All vibratory pile driving would use a standard frequency hammer similar to an APE 150, which produces up to 1,800 vibrations per minute. All impact pile driving would use a DelMag D46–32 diesel impact hammer, which produces about 122,000 foot-pounds maximum energy blow at 1.5 seconds per blow on average. A bubble curtain would be used as a sound attenuation device during impact pile driving for the 24-in and 36-in steel shell piles.

Region of Activity

The proposed activity would occur in the San Francisco Bay at Pier 36, four blocks south of the San Francisco Oakland Bay Bridge. More specifically, this area is located between Pier 30–32 and Pier 38, directly adjacent to the east side of the Embarcadero and within the South of Market district of San Francisco. San Francisco Bay and the adjacent Sacramento-San Joaquin Delta make up one of the largest estuarine systems on the continent. The Bay has undergone extensive industrialization, but remains an important environment for healthy marine mammal populations year round. The area surrounding the proposed activity is an intertidal landscape with heavy industrial use and boat traffic.

Dates of Activity

Wharf and pier demolition—which is not expected to harass marine mammals—may begin in January 2012 and last for five months. The new wharf construction, including pile driving, is scheduled to begin in May 2012 and end 13 months later; however, pile driving is expected to be complete by December 2012.

Sound Propagation

For background, sound is a mechanical disturbance consisting of minute vibrations that travel through a medium, such as air or water, and is generally characterized by several variables. Frequency describes the sound's pitch and is measured in hertz (Hz) or kilohertz (kHz), while sound level describes the sound's loudness and is measured in decibels (dB). Sound level increases or decreases exponentially with each dB of change. For example, 10 dB yields a sound level 10 times more intense than 1 dB, while a 20 dB level equates to 100 times more intense, and a 30 dB level is 1,000 times more intense. Sound levels are compared to a reference sound pressure (micro-Pascal) to identify the medium. For air and water, these reference pressures are ''re: 20 μPa'' and ''re: 1 μPa,'' respectively. Root mean square (RMS) is the quadratic mean sound pressure over the duration of an impulse. RMS is calculated by squaring all of the sound amplitudes, averaging the squares, and then taking the square root of the average (Urick, 1975). RMS accounts for both positive and negative values; squaring the pressures makes all values positive so that they may be accounted for in the summation of pressure levels (Hastings and Popper, 2005). This measurement is often used in the context of discussing behavioral effects, in part because behavioral effects, which often result from auditory cues, may be better expressed through averaged units rather than by peak pressures.

A review of numerous pile driving projects with comparable water depth and substrate conditions was conducted to identify source sound level data and estimate potential sound levels for pile driving activities around Pier 36. In their calculations, the Port conservatively assumed that the use of a bubble curtain for steel shell piles would reduce sound levels by 5 dB RMS. A conservative attenuation factor of 16 dB RMS (about 5 dB RMS per doubling of distance) was also assumed in the Port's analysis; sound attenuation would likely be greater than 16 dB RMS for such shallow water pile driving (CalTrans, 2009). Pile driving at Pier 36 is expected to occur in water depths of zero to 15 feet. Maximum sound pressure levels for pile driving activities are shown in Table 2.

TABLE 2—MEASURED UNATTENUATED SOUND PRESSURE LEVELS IN THE NEAR FIELD (10 M) DURING PILE DRIVING IN SAN FRANCISCO BAY (CALTRANS, 2009)

Pile type	Attenuation device	Sound level (impact)	Sound level (vibratory)
24-in octagonal concrete	None	170 dB	n/a
24-in steel shell	Bubble curtain	190 dB	165 dB
36-in steel shell	Bubble curtain	190 dB	175 dB

Description of Marine Mammals in the Area of the Specified Activity

Marine mammals with confirmed occurrences in San Francisco Bay are the Pacific harbor seal, California sea lion, gray whale, harbor porpoise, humpback whale (*Megaptera noveangliae*), and sea otter (*Enhydra lutris*). However, humpback whales are considered extremely rare in San Francisco Bay and are highly unlikely to be present in the project vicinity during pile driving. Sea otters are managed by the United States Fish and Wildlife Service. Therefore, these two species are not discussed further.

Pacific Harbor Seals

Pacific harbor seals reside in coastal and estuarine waters off Baja, California, north to British Columbia, west through the Gulf of Alaska, and in the Bering Sea. The most recent harbor seal counts estimate the California stock of Pacific harbor seals at 34,233 individuals. The population appears to be stabilizing at what may be their carrying capacity, and human-caused mortality is declining (NMFS, 2005). The California stock of Pacific harbor seals is not listed under the Endangered Species Act (ESA) nor considered depleted under the MMPA.

In California, approximately 400–500 harbor seal haul-out sites are widely distributed along the mainland and offshore islands, including intertidal sandbars, rocky shores, and beaches. The northside of Yerba Buena Island is the closest haul-out to the project location, approximately 3.2 km (2 mi) from Pier 36. Although harbor seals use this haul-out year-round, Yerba Buena Island is not considered a pupping site. In California, breeding occurs from March to May, and pupping between April and May depending on local populations. Harbor seals around Pier 36 would likely be transiting to and from their closest haul-out (Yerba Buena Island) or opportunistically foraging. Herring spawning events could result in harbor seals congregating and approaching the action area sporadically in an unpredictable manner (pers. comm., M. DeAngelis to M. Magliocca).

Pinnipeds produce a wide range of social signals, most occurring at relatively low frequencies (Southall *et al.,* 2007), suggesting that hearing is keenest at these frequencies. Pinnipeds communicate acoustically both on land and underwater, but have different hearing capabilities dependent upon the medium (air or water). Based on numerous studies, as summarized in Southall *et al.* (2007), pinnipeds are more sensitive to a broader range of sound frequencies underwater than in air. Underwater, pinnipeds can hear frequencies from 75 Hz to 75 kHz. In air, pinnipeds can hear frequencies from 75 Hz to 30 kHz (Southall *et al.,* 2007).

California Sea Lions

California sea lions reside throughout the Eastern North Pacific Ocean in shallow coastal and estuarine waters, ranging from Central Mexico to British Columbia, Canada. Their primary breeding range extends from Central Mexico to the Channel Islands in Southern California. The United States stock abundance is estimated at 238,000 sea lions (NMFS, 2007). This stock is approaching carrying capacity and is reaching ''optimum sustainable population'' limits, as defined by the MMPA. California sea lions are not listed under the ESA nor considered depleted under the MMPA.

Sandy beaches are preferred habitat for haul-out sites, but marina docks, jetties, and buoys are often used in California for resting, breeding, and molting. In San Francisco Bay, sea lions have been observed at Angel Island and are known to haul out on buoys and floating docks near Pier 39, which is about 3.6 km (2.2 mi) north of the proposed project site. Sea lions usually appear at Pier 39 after returning from the Channel Islands at the beginning of August. No other sea lion haul-out sites have been identified in the Bay and no pupping has been observed in the Bay. Sea lions observed within this area may be transiting to and from nearby piers or opportunistically foraging.

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Harbor Porpoises

Harbor porpoises have a wide and discontinuous range that includes the North Atlantic and North Pacific. In the Eastern North Pacific, harbor porpoises are found in coastal and inland waters from Point Conception, California to Alaska. Harbor porpoises in United States waters are divided into 10 stocks, based on genetics, movement patterns, and management. Any harbor porpoises encountered during the proposed project would likely be part of the San Francisco-Russian River stock, which has an estimated abundance of 9,189 animals. This stock appeared to be stable or declining between 1988 and 1991 and has steadily increased since 1993, although not significantly. Harbor porpoises are not commonly sighted in San Francisco Bay, but have been observed traveling in small pods of two to three animals on occasion (pers. comm., M. DeAngelis to M. Magliocca) and sightings have been reported by the California Department of Transportation. The closest sightings to Pier 36 have been near Yerba Buena Island, about 3.2 km (2 mi) away. They may occur in the action area during a time when they could be affected by pile driving activities; however, their presence in the vicinity is rare. Harbor porpoises in California are not listed under the ESA nor considered depleted under the MMPA.

Cetaceans are divided into three functional hearing groups: low-frequency, mid-frequency, and high-frequency. Harbor porpoises are considered high-frequency cetaceans and their estimated auditory bandwidth (lower to upper frequency hearing cut-off) ranges from 200 Hz to 180 kHz.

Gray Whales

Gray whales are large mysticetes, or baleen whales, found mainly in shallow coastal waters of the North Pacific Ocean. Two isolated geographic distributions of gray whales exist: the Eastern North Pacific stock and the Western North Pacific stock. The Eastern North Pacific stock migrates as far south as Baja, California for breeding and calving in the winter and as far north as the Bering and Chukchi Seas for summer feeding. During migration, gray whales occasionally enter rivers and bays in very low numbers. They could potentially be in the proposed project area during pile driving activities. The most recent 2008 stock assessment report estimated the Eastern North Pacific stock to be approximately 18,813 individuals with an increasing population trend over the past several decades. Gray whales were delisted from the ESA in 1994 and are not considered depleted under the MMPA.

Gray whales, like other baleen whales, are in the low-frequency hearing group. There are no empirical data on gray whale hearing; however, Wartzok and Ketten (1999) suggest that mysticete hearing is most sensitive at the same frequencies at which they vocalize. Underwater sounds produced by gray whales range from 20 Hz to 20 kHz (Richardson *et al.,* 1995).

Potential Effects on Marine Mammals

The proposed action consists of both in-water and above-water components, but the only activity with the potential to take marine mammals is pile driving. Elevated in-water sound levels from pile driving in the proposed project area may temporarily impact marine mammal behavior. Elevated in-air sound levels are not a concern because the nearest pinniped haul-out is approximately 3.2 km (2 mi) away. Marine mammals are continually exposed to many sources of sound. For example, lightning, rain, sub-sea earthquakes, and animals are

natural sound sources throughout the marine environment. Marine mammals produce sounds in various contexts and use sound for various biological functions including, but not limited to, (1) Social interactions; (2) foraging; (3) orientation; and (4) predator detection. Interference with producing or receiving these sounds may result in adverse impacts. Audible distance or received levels will depend on the sound source, ambient noise, and the sensitivity of the receptor (Richardson *et al.,* 1995). Marine mammal reactions to sound may depend on sound frequency, ambient sound, what the animal is doing, and the animal's distance from the sound source (Southall *et al.,* 2007).

Hearing Impairment

Marine mammals may experience temporary or permanent hearing impairment when exposed to loud sounds. Hearing impairment is classified by temporary threshold shift (TTS) and permanent threshold shift (PTS). There are no empirical data for when PTS first occurs in marine mammals; therefore, it must be estimated from when TTS first occurs and from the rate of TTS growth with increasing exposure levels. PTS is likely if the animal's hearing threshold is reduced by ≥40 dB of TTS. PTS is considered auditory injury (Southall *et al.,* 2007) and occurs in a specific frequency range and amount. Irreparable damage to the inner or outer cochlear hair cells may cause PTS; however, other mechanisms are also involved, such as exceeding the elastic limits of certain tissues and membranes in the middle and inner ears and resultant changes in the chemical composition of the inner ear fluids (Southall *et al.,* 2007). Due to proposed mitigation measures and source levels in the proposed project area, NMFS does not expect marine mammals to be exposed to PTS levels.

Temporary Threshold Shift (TTS)

TTS is the mildest form of hearing impairment that can occur during exposure to a loud sound (Kryter, 1985). While experiencing TTS, the hearing threshold rises and a sound must be louder in order to be heard. TTS can last from minutes or hours to days, occurs in specific frequency ranges (*i.e.,* an animal might only have a temporary loss of hearing sensitivity between the frequencies of 1 and 10 kHz), and can occur to varying degrees (*e.g.,* an animal's hearing sensitivity might be reduced by 6 dB or by 30 dB). For sound exposures at or somewhat above the TTS-onset threshold, hearing sensitivity recovers rapidly after exposure to the sound ends. Few data on sound levels and durations necessary to elicit mild TTS have been obtained for marine mammals. Southall *et al.* (2007) considers a 6 dB TTS (*i.e.,* baseline thresholds are elevated by 6 dB) sufficient to be recognized as an unequivocal deviation and thus a sufficient definition of TTS-onset. Because it is non-injurious, NMFS considers TTS as Level B harassment that is mediated by physiological effects on the auditory system; however, NMFS does not consider onset TTS to be the lowest level at which Level B harassment may occur.

Southall *et al.* (2007) summarizes underwater pinniped data from Kastak *et al.* (2005), indicating that a tested harbor seal showed a TTS of around 6 dB when exposed to a non-pulse noise at SPL 152 dB re: 1 µPa for 25 minutes. In contrast, a tested sea lion exhibited TTS-onset at 174 dB re: 1 µPa under the same conditions as the harbor seal. Data from a single study on underwater pulses found no signs of TTS-onset in sea lions at exposures up to 183 dB re: 1 µPa (peak-to-peak) (Finneran *et al.,* 2003). There is no information on species-specific TTS for harbor porpoises or gray whales.

Behavioral Effects

There are limited data available on the behavioral effects of non-pulse noise (for example, vibratory pile driving) on pinnipeds while underwater; however, field and captive studies to date collectively suggest that pinnipeds do not react strongly to exposures between 90 and 140 dB re: 1 microPa; no data exist from exposures at higher levels. Jacobs and Terhune (2002) observed wild harbor seal reactions to high-frequency acoustic harassment devices around nine sites. Seals came within 44 m of the active acoustic harassment devices and failed to demonstrate any behavioral response when received SPLs were estimated at 120–130 dB. In a captive study (Kastelein, 2006), scientists subjected a group of seals to non-pulse sounds between 8 and 16 kHz. Exposures between 80 and 107 dB did not induce strong behavioral responses; however, a single observation from 100 to 110 dB indicated an avoidance response. The seals returned to baseline conditions shortly following exposure. Southall *et al.* (2007) notes contextual differences between these two studies; the captive animals were not reinforced with food for remaining in the noise fields, whereas free-ranging animals may have been more tolerant of exposures because of motivation to return to a safe location or approach enclosures holding prey items.

Vibratory and impact pile driving may result in anticipated hydroacoustic levels between 165 and 190 dB root mean square. Southall *et al.* (2007) reviewed relevant data from studies involving pinnipeds exposed to pulse sounds and concluded that exposures to 150 to 180 dB generally have limited potential to induce avoidance behavior.

No known data exist for sound levels resulting from the type of vibratory hammer and pile sizes that would be used at the proposed project site; however, measured sound levels for the ''King Kong'' vibratory hammer used in Richmond, California ranged between 163 and 180 dB RMS (Illingworth and Rodkin, 2007). Sound levels at the proposed project site are expected to be lower because the vibratory hammer being used has an expected sound level of 165 dB for 24-in piles and 175 dB for 36-in piles. In addition, San Francisco Bay is highly industrialized and masking of the pile driver by other vessels and anthropogenic noise within the action area may, especially in the nearby shipping channel, make construction sounds difficult to hear at greater distances. Underwater ambient noise levels along the San Francisco waterfront may be around 133 dB RMS, based on measurements from the nearby Oakland Outer Harbor (Caltrans, 2009). Seals would likely also exhibit tolerance or habituation (Richardson *et al.,* 1999) due to the amount of anthropogenic noise within the proposed project area and San Francisco Bay as a whole.

No impacts to marine mammal reproduction are anticipated because there are no known pinniped haul-outs or rookeries within the proposed project area and San Francisco Bay is not a known breeding ground for cetaceans. Marine mammals may avoid the area around the hammer, thereby reducing their exposure to elevated sound levels. NMFS expects any impacts to marine mammal behavior to be temporary, Level B harassment (for example, avoidance or alteration of behavior). The Port conservatively assumes that five 24-in concrete piles would be installed per day, three 24-in steel piles would be installed per day, and four 36-in steel piles would be installed per day. Considering that only one pile type is expected to be installed on any given day, the maximum number of pile driving days is expected to be 69 over the eight-month period. Marine mammal injury or mortality is not likely, as the 180 dB isopleth (NMFS' Level A harassment threshold for cetaceans) for the impact hammer is 42 m (138 ft) and would be continuously monitored for marine mammals. Impact pile driving would

cease if a marine mammal is observed nearing or within a Level A harassment exclusion zone (50 m [164 ft]). For these reasons, NMFS expects any changes to marine mammal behavior to be temporary.

Anticipated Effects on Habitat

No permanent detrimental impacts to marine mammal habitat are expected to result from the proposed project. Pile driving (resulting in temporary ensonification) may impact prey species and marine mammals by resulting in avoidance or abandonment of the area; however, these impacts are expected to be local and temporary. Site conditions are expected to be improved or substantively unchanged from existing conditions. The proposed project would result in the net removal of approximately 3,550 ft^2 of pile fill and clearing of 47,000 ft^2 of timber debris that has collapsed at the end of Pier 36. This debris includes 350–400 creosote-treated wood pilings. Creosote can leach out of the wood over time, potentially causing long-term impacts to marine species. The proposed project would also result in a net reduction of 47,000 ft^2 of shadow fill (shading over the water). This increase of unshaded water is expected to be beneficial to benthic invertebrates, fish, and marine mammals through restoration of ambient light conditions and increased biological productivity. Overall, the proposed activity is not expected to cause significant or long-term adverse impacts on marine mammal habitat.

Proposed Mitigation

In order to issue an IHA under section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable adverse impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses.

The Port proposed the following mitigation measures to minimize adverse impacts to marine mammals:

Sound Attenuation Device

When using impact pile driving to install steel piles in water depths greater than two feet, an unconfined bubble curtain would be used to reduce hydroacoustic sound levels to avoid the potential for injury. The bubble curtain is expected to reduce sound levels by at least 5 dB.

Establishment of an Exclusion Zone

During all in-water impact pile driving, the Port would establish a preliminary marine mammal exclusion zone with 50 m (164 ft) radius around each pile to avoid exposure to sounds at or above 180 dB. This includes an 8-m (26-ft) buffer zone to further avoid marine mammals from entering the 180 dB isopleth. The exclusion zone would be monitored during all impact pile driving to ensure that no marine mammals enter the 50-m (164-ft) radius. The purpose of this area is to prevent Level A harassment (injury) of any marine mammal species. Once underwater sound measurements are taken, the exclusion zone may be adjusted accordingly so that marine mammals are not exposed to Level A harassment sound pressure levels. A safety zone for vibratory pile driving or installation of concrete piles is unnecessary as source levels would not exceed the Level A harassment threshold.

Pile Driving Shut Down and Delay Procedures

If a protected species observer sees a marine mammal within or approaching the exclusion zone prior to start of impact pile driving, the observer would notify the on-site resident engineer (or other authorized individual) who would then be required to delay pile driving until the marine mammal has moved outside of the exclusion zone or if the animal has not been resighted within 15 minutes for pinnipeds or 30 minutes for cetaceans. If a marine mammal is sighted within or on a path toward the exclusion zone during pile driving, pile driving should cease until that animal has cleared and is on a path away from the exclusion zone or 15/30 minutes (pinnipeds/cetaceans) has lapsed since the last sighting.

Soft-Start Procedures

A ''soft-start'' technique would be used at the beginning of each pile installation to allow any marine mammal that may be in the immediate area to leave before the pile hammer reaches full energy. For vibratory pile driving, the soft-start procedure requires contractors to initiate noise from the vibratory hammer for 15 seconds at 40–60 percent reduced energy followed by a 1-minute waiting period. The procedure would be repeated two additional times before full energy may be achieved. For impact hammering, contractors would be required to provide an initial set of three strikes from the impact hammer at 40 percent energy, followed by a 1-minute waiting period, then two subsequent three-strike sets. Soft-start procedures would be conducted prior to driving each pile if hammering ceases for more than 30 minutes.

Monitoring for Herring

Monitoring for herring spawning events would be conducted on a daily basis between December 1 and February (although pile driving is expected to be complete in December). If a herring spawning event is observed, in-water work would cease for a period of two weeks following the spawning event (a measure designed to reduce impacts to fish). Pinniped presence can be sporadic and unpredictable during herring runs in San Francisco Bay; therefore, this mitigation measure would minimize impacts to marine mammals.

NMFS has carefully evaluated the applicant's proposed mitigation measures and considered a range of other measures in the context of ensuring that NMFS prescribes the means of effecting the least practicable adverse impact on the affected marine mammal species and stocks and their habitat. Our evaluation of potential measures included consideration of the following factors in relation to one another: (1) The manner in which, and the degree to which, the successful implementation of the measure is expected to minimize adverse impacts to marine mammals; (2) the proven or likely efficacy of the specific measure to minimize adverse impacts as planned; and (3) the practicability of the measure for applicant implementation, including consideration of personnel safety, and practicality of implementation.

Based on our evaluation of the applicant's proposed measures, NMFS has preliminarily determined that the proposed mitigation measures provide the means of effecting the least practicable adverse impacts on marine mammals species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Proposed Monitoring and Reporting

In order to issue an IHA for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must set forth ''requirements pertaining to the monitoring and reporting of such taking.'' The MMPA implementing regulations at 50 CFR 216.104 (a)(13) indicate that requests for IHAs must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on

populations of marine mammals that are expected to be present.

Hydroacoustic monitoring would be performed at the initial installation of each pile type (24-in concrete, 24-in steel, and 36-in steel) to ensure that the harassment isopleths are not extending past the calculated distances described in this notice. The Port must designate at least one biologically-trained, on-site individual, approved in advance by NMFS, to monitor the Level B harassment zone area for marine mammals 30 minutes before, during, and 30 minutes after all impact pile driving activities and call for shut down if any marine mammal is observed within or approaching the designated exclusion zone (preliminarily set at 50 m [164 ft]). In addition, at least two NMFS-approved protected species observers would conduct behavioral monitoring out to 1,900 m during all vibratory pile driving for the first two weeks of activity to validate take estimates and evaluate the behavioral impacts piles driving has on marine mammals out to the Level B harassment isopleth. If there are no observations of marine mammals within the Level B harassment isopleth during this time, behavioral monitoring may be reduced to a level agreed upon by the applicant and NMFS. Note that for impact hammering, the initial Level B (160 dB) harassment isopleths are 42 m (138 ft) for the concrete piles and 750 m (2,460 ft) for the steel piles. For vibratory hammering, the initial estimated distance is 1,900 m (6,233 ft). If light condition is low (such as early morning or late afternoon), protected species observers would use infrared scopes to conduct their observations.

Protected species observers would be provided with the equipment necessary to effectively monitor for marine mammals (for example, high-quality binoculars, spotting scopes, compass, and range-finder) in order to determine if animals have entered into the exclusion zone or Level B harassment isopleth and to record species, behaviors, and responses to pile driving. If hydroacoustic monitoring indicates that threshold isopleths are greater than originally calculated, the Port would contact NMFS within 48 hours and make the necessary adjustments. Likewise, if threshold isopleths are actually less than originally calculated, adjustments may be made. Protected species observers would be required to submit a report to NMFS within 90 days of completion of pile driving. The report would include data from marine mammal sightings (such as species, group size, and behavior), any observed reactions to construction, distance to operating pile hammer, and construction activities occurring at time of sighting.

Estimated Take by Incidental Harassment

Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as:

> any act of pursuit, torment, or annoyance which (i) Has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

Based on the application and subsequent analysis, the impact of the described pile driving operations may result in, at most, short-term modification of behavior by small numbers of marine mammals within the action area. Marine mammals may avoid the area or temporarily alter their behavior at time of exposure.

Current NMFS practice regarding exposure of marine mammals to anthropogenic noise is that in order to avoid the potential for injury (PTS), cetaceans and pinnipeds should not be exposed to impulsive sounds of 180 and 190 dB or above, respectively. This level is considered precautionary as it is likely that more intense sounds would be required before injury would actually occur (Southall *et al.,* 2007). Potential for behavioral harassment (Level B) is considered to have occurred when marine mammals are exposed to sounds at or above 160 dB for impulse sounds (such as impact pile driving) and 120 dB for non-pulse noise (such as vibratory pile driving). These levels are also considered precautionary.

Distances to NMFS' harassment thresholds were calculated based on the sound levels at each source and the expected attenuation rate of sound (Table 3). Two sets of threshold distances were identified: one for concrete piles and one for steel piles. The threshold distances listed for the steel piles are those expected from the 36-in steel pile driving activities, as they would also encompass the isopleths for the 24-in steel piles. The 42-m (268-ft) distance to the Level A harassment threshold provides protected species observers plenty of time and adequate visibility to prevent marine mammals from entering the area during impact pile driving. This would prevent marine mammals from being exposed to sound levels that reach the Level A harassment threshold. In-air sound from pile driving also has the potential to affect marine mammals. However, in-air sound is not a concern here because there are no pinniped haul-outs near the project area.

TABLE 3—CALCULATED UNDERWATER DISTANCES TO NMFS' MARINE MAMMAL HARASSMENT THRESHOLD LEVELS

Threshold	Distance from source (24-in concrete piles)	Distance from source (36-in steel piles)
120 dB RMS (Level B—continuous)	n/a	1,900 m (6,233 ft).
160 dB RMS (Level B—impulse)	42 m (138 ft)	750 m (2,460 ft).
180/190 dB RMS (Level A)	n/a	42 m (138 ft).

The estimated number of marine mammals potentially taken is based on marine mammal monitoring reports prepared by the California Department of Transportation during similar activities in San Francisco Bay and on discussions with the NMFS Southwest Regional Office. The California Department of Transportation's San Francisco-Oakland Bay Bridge marine mammal monitoring reports were used to estimate the number of pinnipeds near the Pier 36/Brannan Street Wharf area as both sites are relatively close in distance and are similar in bathymetric features. However, monitoring conducted for the San Francisco-Oakland Bay Bridge project was in close proximity to a haul-out area, while the Pier 36/Brannan Street Wharf location is in an area of high commercial boat activity and no adjacent haul-outs. Therefore, the Caltrans data likely overestimate marine mammal abundance for the Pier 36/Brannan Street Wharf location. Based on consultation with the NMFS Southwest Regional Office, review of the monitoring reports described above, and the estimated number of pile driving

days, the Port requested authorization for the incidental take of 138 harbor seals (an average of 2 per day), 69 California sea lions (an average of 1 per day), 69 harbor porpoises (an average of 1 per day), and 2 gray whales (2 annually). Based on further consultation with the NMFS Southwest Regional Office and previous authorizations in this region, NMFS is proposing to authorize the take of five gray whales annually, rather than two. These numbers indicate the maximum number of animals expected to occur within the largest Level B harassment isopleth (1,900 m).

Negligible Impact and Small Numbers Analysis and Determination

NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''* * *an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.'' In making a negligible impact determination, NMFS considers a number of factors which include, but are not limited to, number of anticipated injuries or mortalities (none of which would be authorized here), number, nature, intensity, and duration of Level B harassment, and the context in which takes occur.

As described above, marine mammals would not be exposed to activities or sound levels which would result in injury (PTS), serious injury, or mortality. Pile driving would occur in shallow coastal waters of the Columbia River. The action area (waters around Terminal 5) is not considered significant habitat for pinnipeds. The closest haul-out is 3.2 km (2 mi) away, which is well outside the project area's largest harassment zone. Marine mammals approaching the action area would likely be traveling or opportunistically foraging. The amount of take the Port has requested, and NMFS proposes to authorize, is considered small (less than one percent) relative to the estimated populations of 34,233 Pacific harbor seals, 238,000 California sea lions, 9,189 harbor porpoises, and 18,813 gray whales. Marine mammals may be temporarily impacted by pile driving noise. However, marine mammals are expected to avoid the area, thereby reducing exposure and impacts. Pile driving activities are expected to occur for approximately 69 days. Furthermore, San Francisco Bay is a highly industrialized area, so animals are likely tolerant or habituated to anthropogenic disturbance, including low level vibratory pile driving operations, and noise from other anthropogenic sources (such as vessels) may mask construction related sounds. There is no anticipated effect on annual rates of recruitment or survival of affected marine mammals.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the mitigation and monitoring measures, NMFS preliminarily determines that the Port's proposed pile driving activities will result in the incidental take of small numbers of marine mammals, by Level B harassment only, and that the total taking from will have a negligible impact on the affected species or stocks.

Impact on Availability of Affected Species for Taking for Subsistence Uses

There are no relevant subsistence uses of marine mammals implicated by this action.

Endangered Species Act (ESA)

No marine mammal species listed under the ESA are anticipated to occur within the action area. Therefore, section 7 consultation under the ESA is not required.

National Environmental Policy Act (NEPA)

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), as implemented by the regulations published by the Council on Environmental Quality (40 CFR parts 1500–1508), and NOAA Administrative Order 216–6, NMFS is preparing an Environmental Assessment (EA) to consider the direct, indirect, and cumulative effects to marine mammals and other applicable environmental resources resulting from issuance of a one-year IHA and the potential issuance of future authorizations for incidental harassment for the ongoing project. Upon completion, this EA will be available on the NMFS Web site listed in the beginning of this document (see **ADDRESSES**).

Dated: October 19, 2011.

Helen M. Golde,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2011–27739 Filed 10–25–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DOD–2010–OS–0034]

Defense Transportation Regulation, Part IV

AGENCY: United States Transportation Command (USTRANSCOM), Department of Defense (DoD).

ACTION: Notice of announcement.

SUMMARY: Reference **Federal Register** Notice (FRN), Docket ID: DOD–2010–OS–0034, published April 1, 2010 (75 FR 16445–16446) and subsequently revised April 5, 2011 (76 FR 18737). We have taken industry recommendations into consideration regarding the incorporation of local moves into the intrastate/interstate program. The Surface Deployment and Distribution Command (SDDC) is conducting a Direct Procurement Method (DPM) feasibility study to determine how local moves could be better managed to serve our DoD customers. Industry will be notified of any subsequent DoD decisions associated with the future of local moves. We thank our industry partners for their review and important suggestions to improve the Defense Personal Property Program (DP3).

FOR FURTHER INFORMATION CONTACT: Mr. Jim Teague, United States Transportation Command, TCJ5/4–PI, 508 Scott Drive, Scott Air Force Base, IL 62225–5357; (618) 220–4803.

Dated: October 21, 2011.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2011–27654 Filed 10–25–11; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army

Withdrawal of the Notice of Intent To Prepare a Programmatic Environmental Impact Statement for the Stationing and Operation of Joint High Speed Vessels

AGENCY: Department of the Army, DoD.

ACTION: Notice of intent; withdrawal.

SUMMARY: On February 5, 2010, the Department of the Army announced in the **Federal Register** (75 FR 6003) its intention to prepare a Programmatic Environmental Impact Statement (PEIS) for the stationing and operation of up to 12 Joint High Speed Vessels (JHSVs). In May 2011, the Army's JHSVs were transferred to the U.S. Navy; therefore,

the Army is withdrawing the notice of intent.

ADDRESSES: Questions or comments regarding the withdrawal of this action should be forwarded to: Public Affairs Office, U.S. Army Environmental Command, Bldg 2264, Room 209–006, 2450 Connell Road, Fort Sam Houston, TX 78234–7664.

FOR FURTHER INFORMATION CONTACT: Public Affairs Office at (210) 466–0677 or e-mail *IMCOM-USAECPublicComments@conus.army.mil.*

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 2011–27693 Filed 10–25–11; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF DEFENSE

Department of the Army

Army Educational Advisory Committee

AGENCY: Department of the Army, DoD.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Sunshine in the Government Act of 1976 (5 U.S.C. § 552b, as amended), and 41 CFR 102–3.150, the following meeting notice is announced:

Name of Committee: U.S. Army War College Subcommittee of the Army Education Advisory Committee.

Dates of Meeting: November 15, 2011.

Place of Meeting: U.S. Army War College, 122 Forbes Avenue, Carlisle, PA, Command Conference Room, Root Hall, Carlisle Barracks, Pennsylvania 17013.

Time of Meeting: 8:30 a.m.–12:30 p.m.

Proposed Agenda: Receive various information briefings and updates and dialogue with the Commandant on issues and matters related to the continued growth and development of the United States Army War College.

FOR FURTHER INFORMATION CONTACT: To request advance approval or obtain further information, contact COL Donald Myers, (717) 245–3907 or *Donald.myers@us.army.mil.*

SUPPLEMENTARY INFORMATION: This meeting is open to the public. Interested persons may submit a written statement for consideration by the U.S. Army War College Subcommittee. Written statements should be no longer than two type-written pages and must address: the issue, discussion, and a recommended course of action. Supporting documentation may also be included as needed to establish the appropriate historical context and to provide any necessary background information.

Individuals submitting a written statement must submit their statement to the Designated Federal Officer at the following address: Attn: Designated Federal Officer, Dept. of Academic Affairs, 122 Forbes Avenue, Carlisle, PA 17013. At any point, however, if a written statement is not received at least 10 calendar days prior to the meeting, which is the subject of this notice, then it may not be provided to or considered by the U.S. Army War College Subcommittee until its next open meeting.

The Designated Federal Officer will review all timely submissions with the U.S. Army War College Subcommittee Chairperson, and ensure they are provided to members of the U.S. Army War College Subcommittee before the meeting that is the subject of this notice. After reviewing the written comments, the Chairperson and the Designated Federal Officer may choose to invite the submitter of the comments to orally present their issue during an open portion of this meeting or at a future meeting.

The Designated Federal Officer, in consultation with the U.S. Army War College Subcommittee Chairperson, may, if desired, allot a specific amount of time for members of the public to present their issues for review and discussion by the U.S. Army War College Subcommittee.

Donald Myers,

Colonel, U.S. Army, Executive Secretary.

[FR Doc. 2011–27695 Filed 10–25–11; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulation System

[Docket No. DARS–2011–0068–0001]

Submission for OMB Review; Comment Request

ACTION: Notice.

The Defense Acquisition Regulations System has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

DATES: Consideration will be given to all comments received by November 25, 2011.

Title, Associated Forms and OMB Number: Defense Federal Acquisition Regulation Supplement (DFARS) Part 216, Types of Contracts, and related clauses at DFARS 252.216–7000, Economic Price Adjustment—Basic Steel, Aluminum, Brass, Bronze, or Copper Mill Products; DFARS 252.216–7001, Economic Price Adjustment—Nonstandard Steel Items, and DFARS 252.216–7003, Economic Price Adjustment—Wage Rates or Material Prices Controlled by a Foreign Government; OMB Control Number 0704–0259.

Type of Request: Extension.

Number of Respondents: 2,247.

Responses per Respondent: Approximately 2.

Annual Responses: 4,488.

Average Burden per Response: Approximately 4 hours.

Annual Burden Hours: 17,952.

Needs and Uses: The clauses at DFARS 252.216–7000, 252.216–7001, and 252.216–7003 require contractors with fixed-price economic price adjustment contracts to submit information to the contracting officer regarding changes in established material prices or wage rates. The contracting officer uses this information to make appropriate adjustments to contract prices.

Affected Public: Businesses or other for-profit and not-for-profit institutions.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or maintain benefits.

OMB Desk Officer: Ms. Jasmeet Seehra.

Written comments and recommendations on the proposed information collection should be sent to Ms. Seehra at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

You may also submit comments, identified by docket number and title, by the following method:

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

Intructions: All submissions received must include the agency name, docket number, and title for the **Federal Register** document. The general policy for comments and other public submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information provided. To confirm receipt of your comment(s), please check *http://www.regulations.gov* approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

DoD Clearance Officer: Ms. Patricia Toppings.

Written requests for copies of the information collection proposal should be sent to Ms. Toppings at WHS/ESD/Information Management Division, 4800 Mark Center Drive, 2nd Floor, East Tower, Suite 02G09, Alexandria, VA 22350–3100.

Mary Overstreet,

Editor, Defense Acquisition Regulations System.

[FR Doc. 2011–27674 Filed 10–25–11; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Grant Partially Exclusive Patent License; BOLD Industries, Inc.

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant to BOLD Industries, Inc. a revocable, nonassignable, partially exclusive license to practice in the United States, the Government-owned inventions described in U.S. Patent Application No. 20110024405 filed on August 18, 2009: Method of Breaching a Barrier.// U.S. Patent Application No. 20110024403 filed on July 28, 2009: Portable Cutting Device for Breaching a Barrier.//U.S. Patent Application No. 20110036999 filed on August 28, 2009: Countermeasure Method for a Mobile Tracking Device.//U.S. Patent Application No. 20110036998 filed on August 14, 2009: Countermeasure Device for a Mobile Tracking Device.// U.S. Patent Application No. 20110113949 filed on May 12, 2010: Modulation Device for a Mobile Tracking Device.//U.S. Patent Application Serial No. 12/778,643 filed on May 12, 2010: High Powered Laser System.//U.S. Patent Application Serial No. 12/778,892 filed on May 12, 2010: Scene Illuminator.

DATES: Anyone wishing to object to the grant of this license must file written objections along with supporting evidence, if any, not later than November 10, 2011.

ADDRESSES: Written objections are to be filed with the Naval Surface Warfare Center, Crane Div, Code OOL, Bldg 2, 300 Highway 361, Crane, IN 47522–5001.

FOR FURTHER INFORMATION CONTACT: Mr. Christopher Monsey, Naval Surface Warfare Center, Crane Div, Code OOL, Bldg 2, 300 Highway 361, Crane, IN 47522–5001, telephone 812–854–4100.

Authority: 35 U.S.C. 207, 37 CFR Part 404.

Dated: October 19, 2011.

L.M. Senay,

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

[FR Doc. 2011–27661 Filed 10–25–11; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Committee on Measures of Student Success

AGENCY: National Center for Education Statistics, Institute of Education Sciences, U.S. Department of Education.

ACTION: Notice of an Open Teleconference Meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of an upcoming meeting of the Committee on Measures of Student Success (Committee). The notice also describes the functions of the Committee. Notice of this meeting is required by section 10(a)(2) of the Federal Advisory Committee Act (FACA) and is intended to notify the public of their opportunity to attend.

DATES: November 29, 2011.

Time: 11:00 a.m. to 12:30 p.m. Eastern Standard Time.

ADDRESSES: The Committee will meet by teleconference. Members of the public may attend and listen to the meeting proceedings in person at 1990 K Street, NW., Washington, DC 20006, 8th Floor Conference Center.

FOR FURTHER INFORMATION CONTACT: Archie Cubarrubia, Designated Federal Official, Committee on Measures of Student Success, U.S. Department of Education, 1990 K Street, NW., Washington, DC 20006. *E-mail: Archie.Cubarrubia@ed.gov. Telephone:* (202) 502–7601.

SUPPLEMENTARY INFORMATION: The Committee is established to advise the Secretary of Education in assisting two-year degree-granting institutions of higher education in meeting the completion or graduation rate disclosure requirements outlined in section 485 of the Higher Education Act of 1965, as amended. Specifically, the Committee shall develop recommendations regarding the accurate calculation and reporting of completion or graduation rates of entering certificate/degree-seeking, full-time, undergraduate students by two-year degree granting institutions of higher education. The Committee may also recommend additional or alternative measures of student success that are comparable alternatives to the completion or graduation rates of entering degree-seeking full-time undergraduate students and that consider the mission and role of two-year degree granting higher education institutions. These recommendations shall be provided to the Secretary no later than April 2012.

The agenda for the meeting will include a discussion among Committee members regarding the Committee's final report to the Secretary.

Individuals interested in attending the meeting must register in advance because of limited seating. To register, please send an e-mail request to *studentsuccess@ed.gov.* Individuals who will need accommodations for a disability in order to attend the meeting (*e.g.,* interpreting services, assistive listening devices, or materials in alternative format) should notify John Fink at (202) 502–7328 no later than November 21, 2011. We will attempt to meet requests for accommodations after this date but cannot guarantee their availability. The meeting site is accessible to individuals with disabilities.

There will not be a public comment period during this meeting. Opportunities for public comment are available through the Committee's Web site at *http://www2.ed.gov/about/bdscomm/list/acmss.ht*ml. Records are kept of all Committee proceedings and are available for public inspection on the Web site and at the National Center for Education Statistics, 1990 K Street, NW., Washington, DC 20006 from the hours of 9:00 a.m. to 5:00 p.m. E.S.T.

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fed-register/index.html.* To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free at 1–866–512–1830; or in the Washington, DC, area at (202) 512–0000.

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.*

John Q. Easton,

Director, Institute of Education Sciences.

[FR Doc. 2011–27655 Filed 10–25–11; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

Wind and Water Power Program

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

ACTION: Notice of public meeting.

SUMMARY: All programs with the U.S. Department of Energy's (DOE) Office of Energy Efficiency and Renewable Energy (EERE) are required to undertake rigorous, objective peer review of their funded projects in order to ensure and enhance the management, relevance, effectiveness, and productivity of those projects. The 2011 Wind and Water Power Program, Water Power Peer Review Meeting will review the Program's portfolio of conventional hydropower and marine and hydrokinetic research and development and projects. The 2011 Water Power Peer Review Meeting will be held November 1 through November 3, 2011 in Alexandria, VA.

DATES: DOE will hold a public meeting on Tuesday, November 1, 2011 from 12:45 p.m. to 5:30 p.m.; Wednesday, November 2, 2011 from 8:30 a.m. to 4:35 p.m.; and Thursday, November 3, 2011, from 8:30 a.m. to 5:30 p.m. in Alexandria, VA.

ADDRESSES: The public meeting will be held at the Hilton Alexandria Mark Center, 500 Seminary Road, Alexandria, VA 22311.

FOR FURTHER INFORMATION CONTACT: Mr. Hoyt Battey, Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. *Telephone:* (202) 586–0143. *E-mail: Hoyt.Battey@ee.doe.gov.*

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to:

- Review the strategy and goals of the Water Power Program; and
- Review the progress and accomplishments of the Program's conventional hydropower, and marine and hydrokinetics research and projects funded in FY2009 through FY2011

The purpose of this meeting is for the review of the Program's conventional hydropower, and marine and hydrokinetics research and projects funded in FY2009 through FY2011. Participants should limit information and comments to those based on personal experience, individual advice, information, or facts regarding this topic. It is not the object of this session to obtain any group position or consensus. Rather, this meeting is an opportunity for the peer reviewers to gain an individual understanding of the research and projects. To most effectively use the limited time, please refrain from passing judgment on another participant's recommendations or advice, and instead, concentrate on your individual experiences. Based upon the review of individual projects and the overall Water Power Program research portfolio, a report will be compiled by DOE, which will be publically posted on the DOE Wind and Water Power Program website.

Public Participation: Principal Investigators, expert reviewers, Water Power Program staff, and contract support staff will be in attendance. The event is open to the public based on space availability. Limited time for questions and answers are included for each project, however, oral questions from expert reviewers will be given priority. Additionally, questions may be submitted in writing during the meeting.

Pre-Registration: To pre-register, please contact Ms. Stacey Young via e-mail at *Stacey_Young@sra.com* or by telephone at 240–223–5578. Participants interested in attending should indicate the category or categories you would like to observe, your name, company name or organization (if applicable), telephone number, and email no later than the close of business on Monday, October 28 2011. All Principal Investigators required to present at the meeting must pre-register. Additionally, all expert reviewers, Water Power Program staff, and support contract staff must pre-register.

Agenda: Presentations from industry, academia, and National Laboratories will be time limited. Depending on the type of project, Principal Investigators will have anywhere from 5 to 60 minutes to present. Time is also allotted for question and answer sessions between the Principal Investigators and the expert reviewers.

Information on Services for Individuals with Disabilities: Individuals requiring special accommodations at the meeting, please contact Ms. Young no later than the close of business on October 28, 2011.

Minutes: The minutes of the meeting will be available for public review and copying at the DOE EERE Online Publication and Product Library at: *http://www1.eere.energy.gov/library/default.aspx.*

Issued in Washington, DC, on October 19, 2011.

Jose Zayas,

Wind and Water Power Program Manager, Office of Energy Efficiency and Renewable Energy.

[FR Doc. 2011–27682 Filed 10–25–11; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC11–60–001.

Applicants: Duke Energy Corporation.

Description: Compliance Filing of Duke Energy Corporation and Progress Energy, Inc.

Filed Date: 10/17/2011.

Accession Number: 20111017–5129.

Comment Date: 5 p.m. Eastern Time on Wednesday, November 16, 2011.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG12–3–000.

Applicants: South Chestnut LLC.

Description: Self-Certification of EWG Status of South Chestnut LLC.

Filed Date: 10/17/2011.

Accession Number: 20111017–5042.

Comment Date: 5 p.m. Eastern Time on Monday, November 07, 2011.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER11–4151–002.

Applicants: California Independent System Operator Corporation.

Description: California Independent System Operator Corporation submits tariff filing per 35: 2011–10–17 CAISO NRS–RA Compliance Filing to be effective 1/1/2012.

Filed Date: 10/17/2011.

Accession Number: 20111017–5116.

Comment Date: 5 p.m. Eastern Time on Monday, November 07, 2011.

Docket Numbers: ER12–94–000.

Applicants: Golden Spread Electric Cooperative, Inc.

Description: Golden Spread Electric Cooperative, Inc. submits tariff filing per 35.13(a)(2)(iii: Revised Wholesale Power Contracts Filing to be effective 12/16/2011.

Filed Date: 10/17/2011.

Accession Number: 20111017–5032.

Comment Date: 5 p.m. Eastern Time on Monday, November 07, 2011.

Docket Numbers: ER12–95–000.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii: Amended Duke-Vectren (SA 1391) to be effective 10/18/2011.

Filed Date: 10/17/2011.

Accession Number: 20111017–5033.

Comment Date: 5 p.m. Eastern Time on Monday, November 07, 2011.

Docket Numbers: ER12–96–000.

Applicants: South Chestnut LLC.

Description: South Chestnut LLC submits tariff filing per 35.12: Market-Based Rate Application to be effective 10/18/2011.

Filed Date: 10/17/2011.

Accession Number: 20111017–5041.

Comment Date: 5 p.m. Eastern Time on Monday, November 07, 2011.

Docket Numbers: ER12–97–000.

Applicants: Fairchild Energy, LLC.

Description: Fairchild Energy, LLC submits tariff filing per 35: Compliance Filing to be effective 9/23/2011.

Filed Date: 10/17/2011.

Accession Number: 20111017–5067.

Comment Date: 5 p.m. Eastern Time on Monday, November 07, 2011.

Docket Numbers: ER12–98–000; ER12–99–000.

Applicants: 330 Fund I, L.P., 330 Investment Management, LLC.

Description: 330 Investment Management, LLC submits notification of withdrawal of market based rate authority.

Filed Date: 10/17/2011.

Accession Number: 20111017–0201.

Comment Date: 5 p.m. Eastern Time on Monday, November 07, 2011.

Docket Numbers: ER12–100–000.

Applicants: Black Oak Capital, LLC.

Description: Black Oak Capital, LLC submits tariff filing per 35.12: Normal rate schedules to be effective 10/17/2011.

Filed Date: 10/17/2011.

Accession Number: 20111017–5087.

Comment Date: 5 p.m. Eastern Time on Monday, November 07, 2011.

Docket Numbers: ER12–101–000.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii: C004–P11 FCA (Ameren-Bishop Hill) to be effective 10/18/2011.

Filed Date: 10/17/2011.

Accession Number: 20111017–5095.

Comment Date: 5 p.m. Eastern Time on Monday, November 07, 2011.

Docket Numbers: ER12–102–000.

Applicants: Dominion Energy Brayton Point, LLC.

Description: Dominion Energy Brayton Point, LLC submits tariff filing per 35: Compliance Filing—MBR Tariff Order of Affiliate Restrictions to be effective 11/21/2011.

Filed Date: 10/17/2011.

Accession Number: 20111017–5115.

Comment Date: 5 p.m. Eastern Time on Monday, November 07, 2011.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: October 18, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–27623 Filed 10–25–11; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9483–3]

Clean Air Act Operating Permit Program; Petition for Objection to State Operating Permit for Public Service Company of Colorado dba Xcel Energy—Valmont Power Station

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final action.

SUMMARY: This document announces that the EPA Administrator has responded to a citizen petition asking EPA to object to an operating permit issued by the Colorado Department of Public Health and Environment (CDPHE). Specifically, the Administrator has denied the March, 2010, Petition, submitted by WildEarth Guardians (Petitioner), to object to CDPHE's March 1, 2010, title V permit issued to Public Service Company of Colorado dba Xcel Energy (Xcel)—Valmont Power Station.

Pursuant to section 505(b)(2) of the Clean Air Act (Act or CAA), Petitioners may seek judicial review of those portions of the petition that EPA denied in the United States Court of Appeals for the appropriate circuit. Any petition for review shall be filed within 60 days from the date this notice appears in the **Federal Register**, pursuant to section 307 of the Act.

ADDRESSES: You may review copies of the Final Order, the Petition, and other supporting information at the EPA Region 8 Office, 1595 Wynkoop Street, Denver, Colorado 80202–1129. EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the copies of the Final Order, the Petition, and other supporting information. You may view the hard copies Monday through Friday, 8 a.m. to 4 p.m., excluding Federal holidays. If you wish to examine these documents, you should make an appointment at least 24 hours in advance. Additionally, the Final Order for Public Service Company of Colorado—Valmont Power Station is available electronically at: *http://www.epa.gov/region07/air/title5/petitiondb/petitions/xcel_valmont_response2011.pdf.*

FOR FURTHER INFORMATION CONTACT: Donald Law, Air Program (8P–AR), EPA Region 8, 1595 Wynkoop Street, Denver, Colorado 80202–1129. *Phone:* (303) 312–7015. *E-mail: law.donald@epa.gov.*

SUPPLEMENTARY INFORMATION: The Act affords EPA a 45-day period to review and object to, as appropriate, a title V operating permit proposed by State permitting authorities. Section 505(b)(2) of the Act authorizes any person to petition the EPA Administrator, within 60 days after the expiration of this review period, to object to a title V operating permit if EPA has not done so. Petitions must be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided by the State, unless the petitioner demonstrates that it was impracticable to raise these issues during the comment period or the grounds for the issues arose after this period. EPA received a petition from WildEarth Guardians dated March 18, 2010, requesting that EPA object to the issuance of the title V operating permit to Public Service Company of Colorado for the operation of the Valmont Power Station. The Petition alleges that the Permit does not comply with 40 CFR part 70 in that it fails to assure compliance with: (I) A compliance plan for opacity monitoring requirements; (II) applicable opacity requirements; (III) particulate matter (PM) limits applicable to the coal-fired boiler; (IV) CAA section 112(j) for air toxics; and (V) PSD

requirements in regard to carbon dioxide (CO_2) emissions.

On September 29, 2011, the Administrator issued an Administrative Order denying the Petition. The Order explains the reasons behind EPA's conclusions.

Dated: October 19, 2011.

James B. Martin,

Regional Administrator, Region 8.

[FR Doc. 2011–27725 Filed 10–25–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9483–2]

Clean Air Act Operating Permit Program; Petition for Objection to State Operating Permit for Public Service Company of Colorado dba Xcel Energy—Cherokee Power Station

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final action.

SUMMARY: This document announces that the EPA Administrator has responded to a citizen petition asking EPA to object to an operating permit issued by the Colorado Department of Public Health and Environment (CDPHE). Specifically, the Administrator has denied the April 1, 2010, Petition, submitted by WildEarth Guardians (Petitioner), to object to CDPHE's April 1, 2010, title V permit issued to Public Service Company of Colorado dba Xcel Energy (Xcel)—Cherokee Power Station.

Pursuant to section 505(b)(2) of the Clean Air Act (Act or CAA), Petitioners may seek judicial review of those portions of the petition that EPA denied in the United States Court of Appeals for the appropriate circuit. Any petition for review shall be filed within 60 days from the date this notice appears in the **Federal Register**, pursuant to section 307 of the Act.

ADDRESSES: You may review copies of the Final Order, the Petition, and other supporting information at the EPA Region 8 Office, 1595 Wynkoop Street, Denver, Colorado 80202–1129. EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the copies of the Final Order, the Petition, and other supporting information. You may view the hard copies Monday through Friday, 8 a.m. to 4 p.m., excluding Federal holidays. If you wish to examine these documents, you should make an appointment at least 24 hours in advance. Additionally, the Final Order for Public Service Company of Colorado—Cherokee Power Station is available electronically at: *http://www.epa.gov/region07/air/title5/petitiondb/petitions/xcel_cherokee_response2011.pdf.*

FOR FURTHER INFORMATION CONTACT: Donald Law, Air Program (8P–AR), EPA Region 8, 1595 Wynkoop Street, Denver, Colorado 80202–1129. *Phone:* (303)312–7015. *E-mail: law.donald@epa.gov.*

SUPPLEMENTARY INFORMATION: The Act affords EPA a 45-day period to review and object to, as appropriate, a title V operating permit proposed by State permitting authorities. Section 505(b)(2) of the Act authorizes any person to petition the EPA Administrator, within 60 days after the expiration of this review period, to object to a title V operating permit if EPA has not done so. Petitions must be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided by the State, unless the petitioner demonstrates that it was impracticable to raise these issues during the comment period or the grounds for the issues arose after this period. EPA received a petition from WildEarth Guardians dated April 1, 2010, requesting that EPA object to the issuance of the title V operating permit to Public Service Company of Colorado for the operation of the Cherokee Power Station. The Petition alleges that the Permit does not comply with 40 CFR part 70 in that it fails to assure compliance with: (I) A compliance plan for opacity monitoring requirements; (II) applicable opacity requirements; (III) particulate matter (PM) limits applicable to the coal-fired boiler; (IV) CAA section 112(j) for air toxics; and (V) PSD requirements in regard to carbon dioxide (CO_2) emissions.

On September 29, 2011, the Administrator issued an Administrative Order denying the Petition. The Order explains the reasons behind EPA's conclusions.

Dated: October 19, 2011.

James B. Martin,

Regional Administrator, Region 8.

[FR Doc. 2011–27734 Filed 10–25–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OW–2008–0517; FRL–9483–4]

RIN 2040–AF06

Notice of Final 2010 Effluent Guidelines Program Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice presents the final 2010 Effluent Guidelines Program Plan(''final 2010 Plan''), which, as required under the Clean Water Act (CWA), identifies any new or existing industrial dischargers, both those discharging directly to surface waters and those discharging to publicly owned treatment works (POTWs), selected for effluent guidelines rulemaking and provides a schedule for such rulemakings. CWA section 304(m) requires EPA to biennially publish such a plan after public notice and comment. The Agency published the preliminary 2010 Plan on December 28, 2009 (74 FR 68599) and solicited comments from the public for 60 days.

After considering rulemakings already in development, the 2010 reviews, the preliminary Plan and public comments and input to determine what, if any, new rulemakings should be initiated, EPA has decided to develop effluent guidelines and standards for the discharge of wastewater from the Coalbed Methane Extraction (CBM) industry and will develop pretreatments requirements for discharges of mercury from the Dental industry, and for the discharges of wastewater from the Shale Gas Extraction (SGE) industry.

EPA is also issuing the detailed study report for the Coalbed Methane Extraction and the preliminary study report of the Ore Mining and Dressing industry.

This notice also solicits public comments on EPA's 2011 reviews pursuant to the authority of CWA sections 304(b), 304(g), 301(d) and 307(b).

DATES: Submit comments on or before November 25, 2011.

ADDRESSES: Submit your comments on the final 2010 Plan, identified by Docket ID No. EPA–HQ–OW–2008–0517, by one of the following methods:

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

(2) *E-mail: OW–Docket@epa.gov,* Attention Docket ID No. EPA–HQ–OW–2008–0517.

(3) *Mail:* Water Docket, Environmental Protection Agency, *Mailcode:* 4203M,

1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. EPA–HQ–OW–2008–0517. Please include a total of 3 copies.

(4) *Hand Delivery:* Water Docket, EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC, Attention Docket ID No. EPA–HQ–OW–2008–0517. Such deliveries are only accepted during the Docket's normal hours of operation and special arrangements should be made.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OW–2008–0517. 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 (see below for instructions on submitting CBI). Do not submit information that you consider to be CBI or otherwise protected through *regulations.gov* or e-mail. The federal *regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the 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.

Submitting Confidential Business Information

Do not submit confidential business information (CBI) to EPA through *http://www.regulations.gov* or e-mail. Any CBI you wish to submit should be sent via a trackable physical method, such as Federal Express or United Parcel Service, to Mr. M. Ahmar Siddiqui, Document Control Officer, Engineering and Analysis Division (4303T), Room 6231S EPA West, U.S. EPA, 1200 Pennsylvania Ave, NW., Washington, DC 20460. A CBI package should be double-wrapped, so that the CBI is in one package, which is itself inside another package. Clearly mark the part or all of the information that you claim to be CBI. For CBI information on 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 copy of the material that includes information claimed as CBI, a copy of the material that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

Docket: All documents in the docket are listed in the index at *http://www.regulations.gov.* Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically at *http://www.regulations.gov* or in hard copy at the Water Docket in the EPA Docket Center, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Water Docket is (202) 566–2426.

Key documents providing additional information about EPA's annual reviews and the final 2010 Effluent Guidelines Program Plan include the following:

- Technical Support Document for the 2010 Effluent Guidelines Program Plan, EPA–820–R–10–021, DCN 07320;
- *Coalbed Methane Point Source Category:* Detailed Study Report, EPA–820–R–10–022, DCN 09999;
- *Draft Guidance Document:* Best Management Practices for Unused Pharmaceuticals at Health Care Facilities, August 26, 2010, EPA–821–R–10–006.
- Ore Mining and Dressing Category Preliminary Study, EPA–820–R–10–025, DCN 07369.

Data and Information for the 2011 Annual Review

Submit any data and information you have for the 2011 annual reviews, identified by Docket ID No. EPA–HQ–OW–2010–0824, by one of the methods described above.

FOR FURTHER INFORMATION CONTACT: Mr. William F. Swietlik at (202) 566–1129 or *swietlik.william@epa.gov.*

SUPPLEMENTARY INFORMATION:

How is this document organized?

The outline of this notice follows.

I. General Information
II. Legal Authority
III. What is the purpose of this **Federal Register** notice?
IV. Background
V. EPA's 2010 Annual Review of Existing Effluent Guidelines and Pretreatment Standards Under CWA Sections 301(d), 304(b), 304(g), 304(m), and 307(b)
VI. EPA's 2010 Evaluation of Categories of Indirect Dischargers Without Categorical Pretreatment Standards To Identify Potential New Categories for Pretreatment Standards
VII. The Final 2010 Effluent Guidelines Program Plan
VIII. EPA's 2011 Annual Review of Existing Effluent Guidelines and Pretreatment Standards Under CWA Sections 301(d), 304(b), 304(g), and 307(b)
IX. Request for Comment and Information

I. General Information

A. Does this action apply to me?

This notice provides a summary of the Agency's effluent guidelines review and planning processes and priorities at this time, and does not contain any regulatory requirements. This notice also provides a summary of the Agency's pretreatment standards review.

B. What should I consider as I prepare my comments for EPA for the 2011 annual review?

1. Tips for Preparing Your Comments

When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.

- Explain your views as clearly as possible.
- Make sure to submit your comments by the comment period deadline identified.
- Follow the special procedures for submitting Confidential Business Information (CBI).

II. Legal Authority

This notice is published under the authority of the CWA, 33 U.S.C. 1251, *et seq.,* and in particular sections 301(d), 304(b), 304(g), 304(m), 306, 307(b), 308, 33 U.S.C. 1311(d), 1314(b), 1314(g), 1314(m), 1316, 1317(b), and 1318.

III. What is the purpose of this Federal Register notice?

This notice presents EPA's 2010 review of existing effluent guidelines and pretreatment standards under CWA sections 301, 304 and 307. It also presents EPA's evaluation of indirect dischargers without categorical pretreatment standards to identify potential new categories for pretreatment standards under CWA sections 304(g) and 307(b) and (c). This notice presents the final 2010 Effluent Guidelines Program Plan (''final 2010 Plan''), which, as required under CWA section 304(m), identifies any new or existing industrial categories selected for effluent guidelines rulemaking, as well as the establishment or revision of pretreatment standards, and provides a schedule for such rulemakings. CWA section 304(m) requires EPA to biennially publish such a plan after public notice and comment. The Agency published a preliminary 2010 Plan on December 28, 2009 (74 FRN 68599) and solicited comment through February 26, 2010. This notice also provides EPA's preliminary thoughts concerning its 2011 annual reviews under CWA sections 301(d), 304(b), 304(g), 306 and 307(b) and solicits comments, data and information to assist EPA in performing these reviews.

IV. Background

A. What are effluent guidelines and pretreatment standards?

The CWA directs EPA to promulgate effluent limitations guidelines and standards (''effluent guidelines'') that reflect pollutant reductions that can be achieved by categories or subcategories of industrial point sources using technologies that represent the appropriate level of control. See CWA sections 301(b)(2), 304(b), 306, 307(b), and 307(c). For point sources that introduce pollutants directly into the waters of the United States (direct dischargers), the effluent limitations guidelines and standards promulgated by EPA are implemented through National Pollutant Discharge Elimination System (NPDES) permits. See CWA sections 301(a), 301(b), and 402. For sources that discharge to publicly owned treatment works (POTWs), termed indirect dischargers, EPA promulgates pretreatment standards that apply to those sources and are enforced by the POTWs and State and Federal authorities. See CWA sections 307(b) and (c).

1. Best Practicable Control Technology Currently Available (BPT)—CWA Sections 301(b)(1)(A) & 304(b)(1)

EPA defines Best Practicable Control Technology Currently Available (BPT) effluent limitations for conventional, toxic, and non-conventional pollutants. Section 304(a)(4) designates the following as conventional pollutants: Biochemical oxygen demand (BOD_5), total suspended solids, fecal coliform, pH, and any additional pollutants defined by the Administrator as conventional. The Administrator designated oil and grease as an additional conventional pollutant on July 30, 1979 (44 FR 44501). EPA has identified 65 pollutants and classes of pollutants as toxic pollutants, of which 126 specific substances have been designated priority toxic pollutants. See Appendix A to part 423. All other pollutants are considered to be non-conventional.

In specifying BPT, EPA looks at a number of factors. EPA first considers the total cost of applying the control technology in relation to the effluent reduction benefits. The Agency also considers the age of the equipment and facilities, the processes employed, and any required process changes, engineering aspects of the control technologies, non-water quality environmental impacts (including energy requirements), and such other factors as the EPA Administrator deems appropriate. See CWA section 304(b)(1)(B). Traditionally, EPA establishes BPT effluent limitations based on the average of the best performances of facilities within the industry of various ages, sizes, processes, or other common characteristics. Where existing performance is uniformly inadequate, BPT may reflect higher levels of control than currently in place in an industrial category if the Agency determines that the technology can be practically applied.

2. Best Conventional Pollutant Control Technology (BCT)—CWA Sections 301(b)(2)(E) & 304(b)(4)

The 1977 amendments to the CWA required EPA to identify effluent reduction levels for conventional pollutants associated with Best Conventional Pollutant Control Technology (BCT) for discharges from existing industrial point sources. In addition to considering the other factors specified in section 304(b)(4)(B) to establish BCT limitations, EPA also considers a two part ''cost-reasonableness'' test. EPA explained its methodology for the development of BCT limitations in 1986. See 51 FR 24974 (July 9, 1986).

3. Best Available Technology Economically Achievable (BAT)—CWA Sections 301(b)(2)(A) & 304(b)(2)(B)

For toxic pollutants and non-conventional pollutants, EPA promulgates effluent guidelines based on the Best Available Technology Economically Achievable (BAT). See CWA section 301(b)(2)(A), (C), (D) and (F). The factors considered in assessing BAT include the cost of achieving BAT effluent reductions, the age of equipment and facilities involved, the process employed, potential process changes, non-water quality environmental impacts, including energy requirements, and other such factors as the EPA Administrator deems appropriate. See CWA section 304(b)(2)(B). The technology must also be economically achievable. See CWA section 301(b)(2)(A). The Agency retains considerable discretion in assigning the weight accorded to these factors. BAT limitations may be based on effluent reductions attainable through changes in a facility's processes and operations. Where existing performance is uniformly inadequate, BAT may reflect a higher level of performance than is currently being achieved within a particular subcategory based on technology transferred from a different subcategory or category. BAT may be based upon process changes or internal controls, even when these technologies are not common industry practice.

4. New Source Performance Standards (NSPS)—CWA Section 306

New Source Performance Standards (NSPS) reflect effluent reductions that are achievable based on the best available demonstrated control technology. New sources have the opportunity to install the best and most efficient production processes and wastewater treatment technologies. As a result, NSPS should represent the most

stringent controls attainable through the application of the best available demonstrated control technology for all pollutants (*i.e.,* conventional, non-conventional, and priority pollutants). In establishing NSPS, EPA is directed to take into consideration the cost of achieving the effluent reduction and any non-water quality environmental impacts and energy requirements.

5. Pretreatment Standards for Existing Sources (PSES)—CWA Section 307(b)

Pretreatment Standards for Existing Sources (PSES) are designed to prevent the discharge of pollutants that pass through, interfere with, or are otherwise incompatible with the operation of publicly owned treatment works (POTWs), including sludge disposal methods at POTWs. Pretreatment standards for existing sources are technology-based and are analogous to BAT effluent limitations guidelines. The General Pretreatment Regulations, which set forth the framework for the implementation of national pretreatment standards, are found at 40 CFR part 403.

6. Pretreatment Standards for New Sources (PSNS)—CWA Section 307(c)

Like PSES, Pretreatment Standards for New Sources (PSNS) are designed to prevent the discharges of pollutants that pass through, interfere with, or are otherwise incompatible with the operation of POTWs. PSNS are to be issued at the same time as NSPS. New indirect dischargers have the opportunity to incorporate into their facilities the best available demonstrated technologies. The Agency considers the same factors in promulgating PSNS as it considers in promulgating NSPS.

B. What are EPA's review and planning obligations under sections 301(d), 304(b), 304(g), 304(m), and 307(b)?

1. EPA's Review and Planning Obligations Under Sections 301(d), 304(b), and 304(m)—Direct Dischargers

Section 304(b) requires EPA to review its existing effluent guidelines for direct dischargers each year and to revise such regulations ''if appropriate.'' Section 304(m) supplements section 304(b) by requiring EPA to publish a plan every two years announcing its schedule for performing this annual review and its schedule for rulemaking for any effluent guidelines selected for possible revision as a result of that annual review. Section 304(m) also requires the plan to identify categories of sources discharging toxic or non-conventional pollutants for which EPA has not published effluent limitations guidelines under section 304(b)(2) or NSPS under section 306. See CWA section 304(m)(1)(B); S. Rep. No. 50, 99th Cong., 1st Sess. (1985); WQA87 Leg. Hist. 31 (indicating that section 304(m)(1)(B) applies to ''non-trivial discharges.''). Finally, under section 304(m), the plan must present a schedule for promulgating effluent guidelines for industrial categories for which it has not already established such guidelines, providing for final action on such rulemaking not later than three years after the industrial category is identified in a final Plan. See CWA section 304(m)(1)(C); *NRDC et al.* v. *EPA,* 542 F.3d 1235, 1251 (9th Cir. 2008). EPA is required to publish its preliminary Plan for public comment prior to taking final action on the plan. See CWA section 304(m)(2).

In addition, CWA section 301(d) requires EPA to review every five years the effluent limitations required by CWA section 301(b)(2) and to revise them if appropriate pursuant to the procedures specified in that section. Section 301(b)(2), in turn, requires point sources to achieve effluent limitations reflecting the application of the best practicable control technology (all pollutants), best available technology economically achievable (for toxic pollutants and non-conventional pollutants) and the best conventional pollutant control technology (for conventional pollutants), as determined by EPA under sections 304(b)(1), 304(b)(2) and 304(b)(4), respectively. For over three decades, EPA has implemented sections 301 and 304 through the promulgation of effluent limitations guidelines, resulting in regulations for 57 industrial categories. See *E.I. du Pont de Nemours & Co.* v. *Train,* 430 U.S. 113 (1977). Consequently, as part of its annual review of effluent limitations guidelines under section 304(b), EPA is also reviewing the effluent limitations they contain, thereby fulfilling its obligations under sections 301(d) and 304(b) simultaneously.

2. EPA's Review and Planning Obligations Under Sections 304(g) and 307(b)—Indirect Dischargers

Section 307(b) requires EPA to revise its pretreatment standards for indirect dischargers ''from time to time, as control technology, processes, operating methods, or other alternatives change.'' See CWA section 307(b)(2). Section 304(g) requires EPA to annually review these pretreatment standards and revise them ''if appropriate.'' Although section 307(b) only requires EPA to revise existing pretreatment standards ''from time to time,'' section 304(g) requires an annual review. Therefore, EPA meets its 304(g) and 307(b) requirements by reviewing all industrial categories subject to existing categorical pretreatment standards on an annual basis to identify potential candidates for revision.

Section 307(b)(1) also requires EPA to promulgate pretreatment standards for pollutants not susceptible to treatment by POTWs or that would interfere with the operation of POTWs, although it does not provide a timing requirement for the identification of new industries for pretreatment standards. EPA, in its discretion, periodically evaluates indirect dischargers not subject to categorical pretreatment standards to identify potential candidates for new pretreatment standards. The CWA does not require EPA to publish its review of pretreatment standards or identification of potential new categories, although EPA is exercising its discretion to do so in this notice.

EPA intends to repeat this publication schedule for future pretreatment standards reviews (*e.g.,* EPA will publish the 2011 annual pretreatment standards review in the notice containing the Agency's 2011 annual review of existing effluent guidelines and the preliminary 2012 plan). EPA intends that these contemporaneous reviews will provide meaningful insight into EPA's effluent guidelines and pretreatment standards program decision-making. Additionally, by providing a single notice for these and future reviews, EPA hopes to provide a consolidated source of information for the Agency's current and future effluent guidelines and pretreatment standards program reviews.

V. EPA's 2010 Annual Review of Existing Effluent Guidelines and Pretreatment Standards Under CWA Sections 301(d), 304(b), 304(g), 304(m), and 307(b)

A. What process did EPA use to review existing effluent guidelines and pretreatment standards under CWA Section 301(d), 304(b), 304(g), 304(m), and 307(b)?

1. Overview

In its 2010 annual review, EPA reviewed all industrial categories subject to existing effluent limitations guidelines and pretreatment standards, representing a total of 57 point source categories and over 450 subcategories. Generally, EPA uses four factors in a phased approach to review existing effluent limitations guidelines and pretreatment standards:

(1) Pollutants discharged in an industrial category's effluent,

(2) Potential pollution prevention and control technology options,

(3) Category growth and economic considerations of technology options, and

(4) Implementation and efficiency considerations of revising existing effluent guidelines or publishing new effluent guidelines (see December 21, 2006; 71 FR 76666).

In the 2010 annual review EPA incorporated, for the first time, discharge data from approximately 15,000 ''minor'' industrial dischargers. Point sources are generally classified as major or minor, depending on size and nature of the discharges. A major industrial discharger is a facility scoring over 80 points based on rating criteria. Minor industrial discharges are facilities that score below the criteria score of 80 on the rating scale.

2. What analyses did EPA perform for its 2009 and 2010 annual reviews of existing effluent guidelines and pretreatment standards?

a. Screening-Level Review

The first component of EPA's 2010 annual review consisted of a screening-level review of all industrial categories subject to existing effluent guidelines or pretreatment standards. EPA focused its efforts on collecting and analyzing data to identify industrial categories whose pollutant discharges potentially are the most significant. EPA used Toxic Release Inventory (TRI), Permit Compliance System (PCS) and Integrated Compliance Information System—National Pollutant Discharge Elimination System (ICIS–NPDES) data to estimate the mass of pollutant discharges from industrial facilities. Because pollutant toxicities are different, EPA converted the toxic and non-conventional pollutant discharges that are reported in a mass unit (pounds) into a measure of relative toxicity—a toxic-weighted pound equivalent or TWPE.

EPA calculated the TWPE for each pollutant discharged by multiplying the pollutant specific toxic weighting factor (TWF) and the mass of the pollutant discharge. Where data are available, these TWFs reflect both aquatic life and human health effects. EPA ranked point source categories according to their discharges of toxic and non-conventional pollutants (reported in units of TWPE) to assess the significance of these toxic and non-conventional pollutant discharges to human health or the environment. EPA conducted this process for the 2010 annual reviews using the most recent TRI, PCS and ICIS–NPDES data (2008).

Based on this methodology, EPA prioritized for potential revision industrial categories that offered the greatest potential for reducing hazard to human health and the environment. EPA assigned those categories with the lowest estimates of toxic-weighted pollutant discharges a lower priority for revision (*i.e.,* industrial categories marked ''(3)'' in the ''Findings'' column in Table V–1 in section V.B.4 of this notice).

In order to further focus its inquiry during the 2010 annual review, EPA assigned a lower priority for potential revision to categories for which effluent guidelines had been recently promulgated or revised, or for which effluent guidelines rulemaking was currently underway. EPA removed an industrial point source category from further consideration during the current review cycle if EPA established, revised, or reviewed in a rulemaking context the category's effluent guidelines after August 2003 (*i.e.,* the last seven years). EPA chose seven years because this is the time it customarily takes for the effects of effluent guidelines or pretreatment standards to be fully reflected in pollutant loading data and TRI reports (in large part because effluent limitations guidelines are often incorporated into NPDES permits only upon re-issuance of those permits, which could be up to five years after the effluent guidelines or pretreatment standards are promulgated). EPA also removed an industrial point source category from further consideration during the current review cycle if EPA recently completed a preliminary study or a detailed study and determined that no further action is necessary at this time. These categories are marked ''(1)'' in the ''Findings'' column in Table V–1 in section V.B.4 of this notice.

Because there are 57 point source categories (including over 450 subcategories) with existing effluent guidelines and pretreatment standards that must be reviewed annually, EPA believes it is important to prioritize its review so as to focus on industries where changes to the existing effluent guidelines or pretreatment standards are most likely to result in further pollutant discharge reduction. In general, industries for which effluent guidelines or pretreatment standards have recently been promulgated are less likely to warrant such changes.

As part of the 2010 annual review, EPA also considered the number of facilities responsible for the majority of the estimated toxic-weighted pollutant discharges associated with an industrial activity. EPA applied a lower priority for potential revision to industrial categories where only a few facilities in a category accounted for the vast majority of toxic-weighted pollutant discharges (*i.e.,* categories marked ''(2)'' in the ''Findings'' column in Table V–1 in section V.B.4 of this notice). EPA believes that revision of individual permits for such facilities may be more effective than a revised national rulemaking. Individual permit requirements can be better tailored to these few facilities and may take considerably less time and resources to establish than revising the national effluent guidelines. The Docket accompanying this notice lists facilities that account for the vast majority of the estimated toxic-weighted pollutant discharges for a particular category (see DCN 07320). For these facilities, EPA will consider identifying pollutant control and pollution prevention technologies that will assist permit writers in developing facility-specific technology-based effluent limitations on a best professional judgment (BPJ) basis. In future annual reviews, EPA also intends to re-evaluate each category based on the information available at the time in order to evaluate the effectiveness of the BPJ permit-based support.

EPA also applied a lower priority to categories without sufficient data to determine whether revision would be appropriate. For any industrial categories marked ''(5)'' in the ''Findings'' column in Table V–1 in section V.B.4 of this notice, EPA lacks sufficient information at this time on the magnitude of the toxic-weighted pollutant discharges. EPA will continue reviewing available data on the discharges and will seek additional information on the discharges from these categories in the next annual review in order to determine whether a detailed study is warranted. See the appropriate section in the TSD for the final 2010 Plan (see DCN 07320) for EPA's data needs for these industrial categories. This assessment provides an additional level of quality assurance on the reported pollutant discharges and number of facilities that represent the majority of toxic-weighted pollutant discharges.

For industrial categories marked ''(4)'' in the ''Findings'' column in Table V–1 in section V.B.4 of this notice, EPA had sufficient information on the toxic-weighted pollutant discharges to continue or complete a detailed study of these industrial categories.

For industrial categories marked ''(6)'' in the ''Findings'' column in Table V–1 in section V.B.4 of this notice, EPA is identifying this industry for a revised effluent guidelines rulemaking.

Next, EPA considered the availability of technologies to reduce pollutant discharges. EPA does not have, for all of the 57 existing industrial categories, information about the availability of treatment or process technologies to reduce pollutant wastewater discharges beyond the performance of the technologies upon which existing effluent guidelines and standards were developed. At present 46 states and one U.S. territory are authorized to administer the CWA NPDES program. Under the CWA, permitting authorities must include water-quality based effluent limits where the technology-based effluent limits are not sufficient to meet applicable water quality standards. Therefore, dischargers may have already installed technologies that reduce pollutant discharges to a level below the original technology-based requirements in order to meet such water-quality based effluent limitations.

Analyzing the significance of the remaining pollutant discharges is most useful for assessing the potential effectiveness of additional technologies because such an analysis focuses on the amount and significance of pollutant discharges that would actually be removed through new, technology-based nationally-applicable regulations for these categories. Where potential pollutant discharge reductions are not significant, there are likely few effective technology options for a technology-based rule. Once EPA determined which industries have the potential for significant additional pollutant removals, EPA further examined the availability of technologies for certain industries. For example, EPA identified technologies to minimize pollutant discharges from coalbed methane extraction facilities (see Coalbed Methane Point Source Category: Detailed Study Report, EPA–820–R–10–022, DCN 09999).

EPA also considered whether there was a way to develop a suitable tool for comprehensively evaluating the availability and affordability of treatment or process technologies, but determined that there is not, because the universe of facilities is too broad and complex. EPA could not find a reasonable way to prioritize the industrial categories based on readily available engineering and economic data. In the past, EPA has gathered information regarding technologies and economic achievability for one industrial category at a time through detailed questionnaires distributed to hundreds of facilities within a category or subcategory for which EPA has commenced rulemaking. Such information-gathering is subject to the requirements of the Paperwork Reduction Act (PRA), 33 U.S.C. 3501, *et seq.* The information acquired in this way is valuable to EPA in its rulemaking efforts, but the process of gathering, validating and analyzing the data can consume considerable time and resources. EPA does not think it is appropriate or feasible to conduct this level of analysis for all point source categories in conducting an annual review. Rather, EPA uses its analyses of existing pollutant discharges to identify the categories with the largest toxic-weighted discharges. From this smaller list of categories, EPA evaluates the possibility of effective technologies and selects certain industries for further examination (*e.g.,* Preliminary Category Reviews, Detailed Studies).

Additionally, when EPA becomes aware of the growth of a new industrial activity within an existing category or where new concerns are identified for previously unevaluated pollutants discharged by facilities within an industrial category, EPA applies more scrutiny to the category in a subsequent review.

EPA also considers whether there are industrial activities not currently subject to effluent guidelines or pretreatment standards that should be included with these existing categories, either as part of existing subcategories or as potential new subcategories. These industries are sometimes suggested by commenters during the public comment period or may come to EPA's attention in other ways.

EPA also continued to use the quality assurance project plan (QAPP) developed for the 2009 annual review to document the type and quality of data needed to make the decisions in this 2010 annual review and to describe the methods for collecting and assessing those data (see EPA–820–R–10–021). EPA performed quality assurance checks on the data used to develop estimates of toxic-weighted pollutant discharges (*i.e.,* verifying 2008 discharge data reported to TRI, PCS and ICIS–NPDES) to determine whether any of the pollutant discharge estimates relied on incorrect or suspect data. For example, EPA contacted facilities and permit writers to confirm and, as necessary, correct TRI, PCS or ICIS–NPDES data for facilities that EPA had identified in its screening-level review as the significant dischargers.

In summary, through its screening level review, EPA focused on those point source categories that appeared to have the greatest potential for reducing hazard to human health and the environment. This enabled EPA to concentrate its resources on conducting more in-depth reviews of the higher priority categories.

b. Further Review of Prioritized Categories

EPA conducts a preliminary category review when it lacks sufficient data to determine whether a regulatory revision would be appropriate and for which EPA is performing a further assessment of pollutant discharges before starting a detailed study. These assessments provide an additional level of quality assurance on the reported pollutant discharges and number of facilities that represent the majority of toxic-weighted pollutant discharges.

In conducting a preliminary category review, EPA uses the same types of data sources used for the detailed studies or effluent guidelines development but in less depth. As part of the preliminary category reviews, EPA may evaluate technologies that could achieve better control of pollutant discharges. EPA might also conduct surveys or collect data from additional sources. The full description of EPA's methodology for the 2010 annual review is presented in the Technical Support Document (TSD) for the final 2010 Plan (see DCN 07320).

c. Detailed Studies

EPA conducts detailed studies to obtain information on hazard, availability and cost of technology options, and other factors in order to determine if it would be appropriate to identify the category for possible effluent guidelines revision. The full description of EPA's methodology for the 2010 review is presented in the Technical Support Document (TSD) for the final 2010 Plan (see DCN 07320).

3. How did EPA's 2009 annual review influence its 2010 annual review of point source categories with existing effluent guidelines and pretreatment standards?

In view of the annual nature of its reviews of existing effluent guidelines and pretreatment standards, EPA believes that each annual review can and should influence succeeding annual reviews, *e.g.,* by indicating data gaps, identifying new pollutants or pollution reduction technologies, or otherwise highlighting industrial categories for additional scrutiny in subsequent years.

During its 2009 annual review, which concluded the end of December 2009, EPA continued detailed studies of the existing effluent guidelines and pretreatment standards for two industrial categories: Oil and Gas Extraction category (Part 435) for the purpose of assessing whether to revise the limits to include coalbed methane

extraction as a new subcategory, and Hospitals (Part 460) which is part of the Health Care Industry detailed study on the management of unused pharmaceuticals. In addition, EPA conducted a preliminary study of the Ore Mining and Dressing category (part 440) during 2009. EPA used the findings, data and comments on the 2009 annual review to inform its 2010 annual review and the final 2010 Plan. The 2010 review also built on the previous reviews by incorporating some refinements to assigning discharges to categories and updating toxic weighting factors.

EPA published the findings from its 2009 annual review with its preliminary 2010 Plan (December 28, 2009, 74 FRN 68599), making the pollutant discharge and industry profile data available for public comment. Docket No. EPA–HQ–OW–2008–0517.

4. How did EPA consider public comments in its 2010 annual review?

EPA's annual review process considers information provided by stakeholders regarding the need for new or revised effluent limitations guidelines and pretreatment standards. Public comments received on EPA's prior reviews and Plans helped the Agency prioritize its analysis of existing effluent guidelines and pretreatment standards during the 2010 review. Public comments, depending on the number, the issues, the data and information submitted and the recommendations made therein, can influence the annual review.

In accordance with CWA section 304(m)(2), EPA published the preliminary 2010 Plan for public comment prior to this publication of the final 2010 Plan. See December 28, 2009 (74 FRN 68599). The Docket accompanying this notice includes a complete set of all of the comments submitted, as well as the Agency's responses (see DCN 07368). The Agency received 51 sets of comments on the preliminary 2010 Plans.

Commenting organizations representing industry included the American Petroleum Institute, American Health Care Association, Independent Petroleum Association of America, National Association of Clean Water Agencies, American Dental Association, American Water Works Association, and the National Mining Association.

Six environmental groups commented, including the Northern Plains Resources Council, Earth Justice, Environmental Integrity Project and the Powder River Basin Council.

Eight states, or state representing organizations, also commented, including the states of WY, MT, NY, WI, OR, FL, ID and the Quicksilver Caucus.

EPA received comments from 22 private individuals, all addressing the issue of the environmental impacts of hydraulic fracturing used in shale gas extraction. Most of these individuals were from NY and PA, and their comments reflected concerns about shale gas extraction in the Marcellus Shale formation.

EPA also received comments from one Tribal Nation (the Northern Cheyenne) and four local organizations (Tompkins County Senior Citizen Council, St. Paul MetroCouncil, Bay Area Pollution Prevention Group and Albany Medical College).

Comments were distributed among the following subject areas, in order of abundance:

—Coalbed Methane and Shale Gas Extraction (40 comments)
—Health Care Industry—(unused pharmaceuticals) (35 comments)
—Ore Mining and Dressing (2 comments)
—Steam Electric Power Generation (2 comments)
—Effluent limitation guidelines (ELGs) and Plan process in general (2 comments)
—Dental Amalgam (1 comment)
—Other (2 comments)

For coalbed methane, there were seven comments that also expressed concern with the practice of shale gas extraction; 13 comments requesting that EPA examine shale gas extraction in the coalbed methane detailed study; seven requests to not add shale gas extraction to the coalbed methane study; six commenters who suggested that EPA should do a coalbed methane ELG rule; and seven commenters who suggested that EPA not do a rule.

For the Health Care industry, in particular the management of unused pharmaceuticals, EPA received three comments supporting the detailed study; three comments suggesting EPA work more closely with the U.S. Drug Enforcement Agency (DEA); four comments that explained EPA should work with the Food and Drug Administration (FDA) and health insurance companies to encourage unused pharmaceutical returns and a coordinated message about such; twelve comments indicating EPA should develop BMPs, disposal guidance, flyers and other disposal information; three comments supporting take-back programs; six comments that suggested current disposal practices are barriers to return/reuse; and four comments indicating that pharmaceutical flushing should be controlled by sewage treatment authorities.

For the Ore Mining and Dressing category there were two comments that stated EPA should not develop a new ELG.

For the Steam Electric Power Generation industry, which is currently undergoing a revised ELG as a result of last year's Plan, there was one comment that supported EPA's selection of the steam electric industry for rulemaking, and one commenter that believed EPA made several errors in its detailed study final report.

One commenter asked EPA to select the dental industry for an ELG rulemaking, arguing that the industry is responsible for half of the national mercury loadings to Publicly Owned Treatment Works (POTWs), and the ongoing activities under the Dental Amalgam control MOU are insufficient.

A more detailed summary table of the comments can be found in the 2010 TSD, EPA–820–R–10–021 (DCN 07320). EPA carefully considered all public comments and information submitted in developing the final 2010 Plan. A comment response document is also available at (DCN 07368).

B. What were EPA's findings from its 2010 annual review for categories subject to existing effluent guidelines and pretreatment standards?

1. Screening-Level Review

In its 2010 screening level review, EPA considered hazard, and the other factors described in section V.A.2. above, in prioritizing effluent guidelines for potential revision. See Table V–1 in section V.B.4 of this notice for a summary of EPA's findings with respect to each existing category; see also the TSD for the final 2010 Plan, EPA–820–R–10–021, DCN 07320). Of the categories subject only to the screening level review in 2010, EPA is not identifying any for effluent guidelines rulemaking at this time, based on the factors described in section V.A above and in light of the effluent guidelines rulemakings in progress.

EPA carefully examined the industrial categories currently regulated by existing effluent guidelines that cumulatively comprise 95% of the reported hazard (reported in units of toxic-weighted pound equivalent or TWPE). The TSD for the preliminary 2010 Plan presents a summary of EPA's review of these 21 industrial categories (see DCN 07320).

EPA identified one category where additional data are required to evaluate toxic-weighted pollutant discharges. EPA will initiate a preliminary category review for the cellulosic products

segment of the Plastics Molding and Forming (part 463) industrial category.

Although EPA identified only one industrial category for preliminary category review in the 2010 annual review, EPA also identified that estimated toxic-weighted pollutant discharges of lead from the Pulp, Paper, and Paperboard (part 430) industrial category need further investigation. EPA intends to continue reviewing the Pulp, Paper and Paperboard industry during the 2011 annual review.

EPA identified the need for additional data review as part of the 2011 annual review for three industrial categories. See the appropriate section in the TSD for the final 2010 Plan, EPA–820–R–10–021, (see DCN 07320) for a detailed discussion of EPA's findings for these industrial categories: Mineral Mining and Processing (part 436); Landfills (Part 445); and Waste Combustors (part 444). See Section IX of this notice for the requested public comments. Based on new data submitted with public comment and screening-level data collected as part of the 2011 annual review, EPA intends to re-evaluate the category toxic-weighted pollutant discharges.

2. Results of Detailed Studies

Oil and Gas Extraction (part 435)

As a result of prior 304(m) planning, EPA initiated a detailed study of the coalbed methane industry and its wastewater discharges. Coalbed methane extraction is considered a subcategory of the Oil and Gas Extraction Point Source Category, although it is not currently subject to the effluent guidelines promulgated for this category. Since 2006, the coalbed methane industry has expanded. In addition, EPA received comments in 2005, 2008, and again during the 2010 review from citizens and environmental advocacy groups requesting development of a regulation for coalbed methane extraction as well as for shale gas extraction, another subcategory of the Oil and Gas Extraction Point Source Category. Unlike coalbed methane extraction, however, shale gas extraction is now subject to effluent guidelines for the Oil and Gas Extraction Point Source Category, although there are currently no applicable categorical pretreatment standards for shale gas extraction.

Coalbed methane-produced water discharges can impact receiving surface waters and soils. Saline discharges from coalbed methane operations can adversely affect aquatic life. The large volume of water discharged can also cause stream bank erosion and salt deposition, creating hardpan soil. Long-term impacts include sodium buildup, reduction of plant diversity, mobilization of salts and other elements, and alteration of surface and subsurface hydrology.

Overview of Operations:

Methane gas is naturally created during the geologic process of converting plant material to coal (coalification). To extract the methane, coalbed methane operators drill wells into coal seams and pump out ground water. Removing the ground water from the formation is necessary to produce coalbed methane, as the water removal reduces the pressure and allows the methane to release from the coal to produce flowing natural gas. In 2008, 252 coalbed methane operators managed approximately 55,500 coalbed methane wells in the U.S. in 13 distinct regions, called basins.

Produced Water

The ground water that has been pumped out of the well, called ''produced water,'' like most ground water found deep below the surface of the earth, has high salinity and can include pollutants such as chloride, sodium, sulfate, bicarbonate, fluoride, iron, barium, magnesium, ammonia, and arsenic. To quantify the amount of pollutants in coalbed methane produced waters, EPA relied on measuring total dissolved solids (TDS) and electrical conductivity (EC), which are bulk parameters for quantifying the total amount of dissolved solids in a wastewater.

A single coalbed methane well can discharge thousands of gallons of produced water per day, and may discharge produced water for anywhere from 5 to 15 years. Coalbed methane wells have a distinctive production history characterized by an early stage when large amounts of water are produced to reduce reservoir pressure which in turn encourages release of gas; a stable stage when quantities of produced gas increase as the quantities of produced water decrease; and a late stage when the amount of gas produced declines and water production remains low.

The quantity and quality of produced water varies from basin to basin, within a particular basin, from coal seam to coal seam, and over the lifetime of a coalbed methane well. For example, coalbed methane produced water volumes range from 1,000 gallons per day per well in the San Juan Basin to 17,000 gallons per day per well in the Powder River Basin.

Management of Produced Water

Coalbed methane operators need to dispose of thousands of gallons of produced water per day for each coalbed methane well. Operators can employ a range of options for treatment and management of this wastewater.

Preliminary estimates based on survey data predict that approximately 47 billion gallons of produced water are pumped annually from coal seams across the country. Approximately 45% of those produced waters are directly discharged to waters of the U.S., for a total national discharge of 22 billion gallons per year.

Surface water discharge is most prevalent in three U.S. coalbed methane basins: The Black Warrior Basin in Alabama and Mississippi (11% of total coalbed methane surface discharges), the Powder River Basin in Wyoming and Montana (72% of total coalbed methane surface discharges), and the Raton Basin in Colorado and New Mexico (11% of total coalbed methane surface discharges). Many of these discharges are largely untreated. Surface discharge occurs rarely, if at all, in the other major commercial basins.

In the other commercial basins in the U.S, coalbed methane operators are, for the most part, able to prevent discharging their produced water by discharging the water to land (where there may be other impacts to the soil or vegetation), re-injecting the produced water back into the ground, or using the water in one of many beneficial use options (*e.g.,* stock watering, irrigation).

Treatment of Produced Waters

Available technology options for adequately removing pollutants from produced water include ion exchange and reverse osmosis.

Summary of Outreach

In 2007 EPA conducted several site visits to coalbed methane basins throughout the country and gathered information on potential treatment technologies for coalbed methane-produced water discharges. EPA also conducted widespread outreach with stakeholders, both in the industry and from the communities adjacent to coalbed methane basins. EPA conducted more than 30 site visits to locations in six coalbed methane basins and met with over 300 different stakeholders. EPA also conducted 13 meetings and teleconferences with over 150 stakeholders. In addition to the extensive information collection through site visits and outreach, EPA acknowledged that an informed decision about rulemaking would

require even more detailed information. EPA developed an industry questionnaire, solicited public comment twice, and in 2009 obtained OMB approval under the Paperwork Reduction Act, to conduct a mandatory survey directed at operators of coalbed methane projects which consist of a single well or a group of wells operated by the same company. The questionnaire collected technical and economic data in a two-part survey, a screener and a detailed survey, on the operations and operators of coalbed methane projects. Questionnaire responses arrived in early 2010 and the data was used by EPA to create national estimates of pollutant discharges across the country from the coalbed methane industry and to develop an economic profile of the industry.

In response to the 2010 preliminary Plan, EPA received 32 comments on coalbed methane extraction. Comments from industry sources did not support rulemaking for coalbed methane, suggesting an effluent guideline was not appropriate due to the variability of produced water quality, quantity and available management techniques across the country. Additionally, industry stated that the current regulatory framework of site-specific BPJ permits was adequately addressing pollutant discharges from produced water discharges.

The final detailed study report for coalbed methane is being issued concurrent with the publication of this FR Notice and is a part of the final 2010 Plan. The study report is available at DCN 09999.

Coalbed methane production represents about 8% of natural gas production in this country, and coalbed methane extraction is expected to continue for decades. Of the 22 billion gallons of water discharged to surface water each year some has high total dissolved solids. The detailed study also found that there are readily available technologies to treat this produced water. As a result of the information gathered in the detailed study, EPA has decided to initiate rulemaking for coalbed methane extraction, a currently unregulated subcategory of the Oil and Gas Extraction Point Source Category.

3. Results of Preliminary Category Reviews

Ore Mining and Dressing (Part 440)

As discussed in the 2008 Final Effluent Guidelines Program Plan, EPA conducted a preliminary study of facilities covered under 40 CFR part 440 ''Ore Mining and Dressing Point Source Category'' to examine why toxic weighted pollutant discharges by the ore mining industry ranked relatively high compared to other industries in the 2002 through 2008 annual reviews. The purpose of the study was to identify, collect, and review readily available existing data and information on toxic pollutants in wastewater discharges to determine whether additional analysis or revision of 40 CFR part 440 might be warranted to better control toxic discharges.

The preliminary study focused on active ore mines covered under 40 CFR part 440 subpart J: ''Copper, Lead, Zinc, Gold, Silver, and Molybdenum Ores.'' These types of mines comprise approximately 76 percent (263) of the approximately 345 ore mines in the United States. Inactive ore mines were not included as they are not covered by the effluent guidelines.

Approximately 294 ore mines currently have National Pollutant Discharge Elimination System (NPDES) wastewater discharge permits. There is a difference between the total number of ore mines and the number with NPDES permits because not all ore mines have wastewater discharges. The approximately 1,870 placer mines, covered under 40 CFR part 440 subpart M, were not examined in this study because they employ mining practices and wastewater streams that are fundamentally different from mines covered under the other subparts of 40 CFR part 440.

The preliminary study examined information pertaining to the two types of wastewater discharged by ore mines: Process wastewater (including mine drainage) and stormwater. Process wastewater is covered under 40 CFR part 440. Stormwater is not covered under 40 CFR part 440 unless it is commingled with process wastewater prior to discharge to a surface waterbody.

The study was limited by incomplete national-level process wastewater discharge data, and the lack of any nationally representative stormwater data for the ore mines of interest. EPA did review available ore mine-specific process wastewater discharge information, available Total Maximum Daily Load (TMDL) reports, information for ore mine site stormwater discharges, and an industrial wastewater treatment technology, known as high density sludge recycling, which was identified during the course of the study.

Based on EPA's review of toxic pollutant data, EPA found that in 2007, the most recent year for which quality-checked data are available, approximately only two percent of ore mining facilities were responsible for approximately 90 percent of toxic weighted discharges by the ore mining industry for toxic pollutants.

Given that only a small percentage of active ore mines account for the majority of toxic weighted discharges, this can best be addressed through permitting, compliance, and enforcement activities for the specific ore mining sources, rather than by revision of 40 CFR part 440.

While the available toxic pollutant data does not suggest that EPA revisit the ELG for ore mining and dressing (40 CFR part 440) at this time, the Agency currently remains concerned about many other types of mining-related water quality impairments. EPA has a number of activities that address discharges of pollutants from mines including interim guidance on Improving EPA Review of Appalachian Surface Coal Mining Operations Under the Clean Water Act, National Environmental Policy Act, and the Environmental Justice Executive Order, plans to revise the water quality criteria for selenium, increased attention on compliance with, and enforcement of, individual permit limits; improved permitting guidance and more stringent discharge monitoring requirements in permits.

The Ore Mining Preliminary Study report is being issued concurrent with the publication of this FR Notice and represents a portion of the final 2010 Plan. The Ore Mining Preliminary Study report (EPA–820–R–10–025) is available at DCN 07369.

4. Other Reviews

Shale Gas Extraction

Overview

As discussed in the March 2011 ''Blueprint for a Secure Energy Future,'' (''Blueprint'') the production of domestic natural gas enhances energy security and fuels our nation's economy (DCN 07496). In 2010, U.S. natural gas production reached its highest level in more than 30 years with much of the increase resulting from the production of natural gas from shale formations. This is due to recent advances in horizontal drilling and hydraulic fracturing that have made extraction of natural gas from shale formations more technically and economically feasible. The increase is expected to continue. The U.S. Department of Energy projects shale gas production as a percentage of the U.S. natural gas production will increase over the next 25 years from the current level of 14% to an estimated 45%.

As indicated in the ''Blueprint,'' the Administration is taking several steps to

ensure natural gas is developed in a safe and environmentally responsible manner. The ''Blueprint'' lists several initiatives to support these goals, including disclosure of fracturing chemicals, public meetings, EPA- and DOE-led research, the establishment of an expert panel to examine fracturing issues, and technical assistance to State regulators. In particular, the ''Blueprint'' directed the Secretary of Energy, in consultation with the EPA Administrator and Secretary of the Interior, to task the Secretary of Energy Advisory Board (SEAB) with establishing a subcommittee to examine issues related to shale gas production through hydraulic fracturing. The subcommittee is supported by DOE, EPA and DOI, and its membership extends beyond SEAB members to include leaders from industry, the environmental community, academia, and states. The subcommittee is working to identify both immediate steps that can be taken to improve the safety and environmental performance of fracturing and to provide consensus recommended advice to the agencies on practices for shale extraction to ensure the protection of public health and the environment. On August 11, 2011, the Subcommittee submitted a 90-day report with its preliminary recommendations (DCN 07504). The report recommends measures to increase public disclosure and transparency and address concerns about air and water pollution. The report also recommends a range of tools for implementing these measures, including regulation, continuous improvement in best practices by industry, and ongoing research and development.

Today's decision to initiate rulemaking is consistent with these initiatives in that it addresses potential environmental impacts associated with hydraulic fracturing. This is part of the Administration's commitment in the ''Blueprint'' to continue to review existing regulatory structures governing both onshore and offshore oil and gas development to identify potential efficiencies in those processes and any crucial gaps that pose safety and environmental risks.

EPA will carefully consider the SEAB's preliminary and final recommendations as EPA develops regulatory options. EPA's regulatory action will complement and benefit by the initiatives already announced in the President's ''Blueprint.''

Introduction

The production of natural gas from shale formations has increased over the past few years and the upward trend is expected to continue. For example, data from the Pennsylvania Department of Environmental Protection shows that the number of shale gas wells drilled in Pennsylvania increased substantially in the past few years, with more wells drilled and permits issued between January and April of 2010, than during all of 2008 (DCN 07474). As the number of shale gas wells in the U.S. increases, so too does the volume of shale gas wastewater that requires disposal. Wastewater associated with shale gas extraction can contain high levels of total dissolved solids (TDS), fracturing fluid additives, metals, and naturally occurring radioactive materials (NORM).

EPA requested comments in the 2010 Preliminary Effluent Guidelines Plan on whether to include shale gas extraction as part of the Coal Bed Methane Detailed Study. Many of the comments on this topic expressed general concern about drinking water contamination and water quality impacts from shale gas extraction.

Industry commenters asserted that a shale gas rulemaking was not needed since existing Oil and Gas Effluent Guidelines require zero discharge from shale gas extraction. Although the existing regulations for onshore oil and gas extraction prohibit direct discharges of wastewaters from shale gas extraction, the current regulations do not contain pretreatment standards for pollutants associated with these discharges. EPA also has data that document pollutants in wastewaters associated with shale gas extraction are not treated by the technologies typically used at publicly and privately owned treatment facilities (DCN 07477 and DCN 07472A1).

EPA ultimately decided not to expand the Coal Bed Methane Study to include shale gas extraction. However, as a result of public comments, EPA began reviewing available data to inform a decision on whether or not a rulemaking to establish pretreatment standards for shale gas extraction was appropriate.

Overview of Shale Gas Operations

The term ''Shale Gas'' is typically used to describe natural gas trapped in underground shale deposits. Well operators use the process of hydraulic fracturing to extract this gas. Hydraulic fracturing is a method of extracting natural gas from highly impermeable rock formations by injecting large amounts of fracturing fluids (typically 3 to 5 million gallons) at high pressures to create a network of fissures, typically 250 feet in length (with occasional fractures as long as 1,000 feet), in the rock formations and provide the natural gas a pathway to travel to the well for extraction.

While the composition of the fracturing fluids varies from region to region, and is specific to the formation to be fractured, the classes of compounds in the fluids are largely the same. The major components of fracturing fluid are water and proppant (typically sand), used to keep the fractures open after the fracturing has been complete, and chemical additives. EPA has reviewed data presented by industry sources including Chesapeake Energy, Talisman Energy, the Gas Technology Institute (GTI) and Halliburton, regarding the different classes of compounds in fracturing fluids, such as biocides, friction reducers, surfactants, scale and corrosion inhibiters and acids. Additionally, EPA has reviewed a registry developed jointly by the Ground Water Protection Council and the Interstate Oil and Gas Commission of chemicals used in fracturing fluids voluntarily provided by oil and gas companies (*http://www.fracfocus.org*).

A portion of the injected fracturing fluid will remain in the fractures. The precise amount of fluid retention is uncertain and depends on the geologic formation. The fluids not retained in the formation will ultimately return to the surface as ''flowback'' or ''produced water.'' These wastewaters may contain the chemicals originally found in the fracturing fluids as well as other naturally occurring constituents that may be released into the fluid as the rock formations are broken.

Produced Waters From Shale Gas Extraction

A shale gas well has two distinct phases of water production from the formation. The first phase typically occurs during the first 30 days following the fracturing process (DCN 07482A10 and DCN 07482A23), also known as the ''flowback period.'' During this time a portion of the injected fracturing fluid will return to the surface.

There are varying reports on the actual volume of flowback; multiple studies and presentations report that volumes ranging from 10–75% of the injected fracturing fluids are returned during the flowback period. The amount of ''flowback'' is dependent, in part, on the geology of the shale basin (DCN 07477).

After this initial surge of flowback passes, produced water will continue to come to the surface for the life of the well. Chesapeake Energy provided data indicating that ''long term'' produced water volumes range from 200–1,000 gallons per million cubic feet of gas

produced depending on the basin in which the well is located. Currently, the Barnett shale formation has the highest long term flowback volumes and the Marcellus shale formation has the lowest. While there is no consensus on when the initial ''flowback'' period ends, some operators choose to view all water passing from the formation up through the wellbore as ''produced water'' regardless of the time period in which it occurs.

Pollutants in Shale Gas Wastewaters

Produced waters (shale gas wastewaters) generally contain elevated concentrations of fracturing fluid additives, salt content (often expressed as total dissolved solids—TDS), conventional pollutants, organics, metals, and NORM (naturally occurring radioactive material).

EPA has multiple sources of shale gas produced water characterization data including reports published by the Department of Energy (DCN 07476 and DCN 07474) and industry flowback analysis made available by Chesapeake Energy, Talisman Energy, Devon Energy, Superior Well Services, and GTI.

Total dissolved solids is the most reported pollutant. Data on TDS concentrations are widely available due to the potential negative impact of high concentrations of TDS on the ability to re-use the shale gas wastewater. Elevated TDS levels may also impact the effectiveness of the additives in the fracturing fluids (DCN 07482A03).

High concentrations of TDS are common in shale gas wastewater across the country, although the levels may vary from basin to basin. TDS concentrations of 100,000 ppm are typical and can be as high as 400,000 ppm (DCN 07476). For comparison, sea water contains approximately 35,000 ppm TDS. The main component ion of TDS in shale gas wastewater appears to be chloride, which accounts for approximately 60% of the TDS found in shale gas wastewater. Chloride has been measured in shale gas wastewater water at levels of 8,800—153,000 ppm. Other components may include barium (21—13,900 ppm), strontium (Non-Detect—3,700 ppm), calcium (314—23,500 ppm), magnesium (135—5,000 ppm) and sodium (2,800—65,000 ppm). Additionally, the concentrations of TDS in produced water from each well tend to increase over time (DCN 07482A13, DCN 07482A10, DCN 07482A23, and DCN 07482A15).

Organic and inorganic pollutants appear to be less frequently sampled in comparison to the well documented TDS concentrations. EPA has reviewed limited data on organic pollutants in produced water and found a range of pollutant concentrations: phenol (Non-Detect—3,700 ppb), pyridine (Non-Detect—534 ppb), benzene (1—3,400 ppb), ethyl benzene (Non-Detect—1,400 ppb), toluene (Non-Detect—11,400 ppb), total xylenes (2—14,500 ppb), and glycol (10,000—120,000 ppb). Additionally, bromide linked to shale gas wastewater has been measured in POTW outfalls (1,020—1,100 ppm) (DCN 07481A04, DCN 07481A03, DCN 07479A06, and DCN 07481A02).

NORM is an acronym for naturally occurring radioactive material. The U.S. Department of Energy published a report in 2009 that includes a description of the process by which NORM in the rock formations would be brought to the surface by hydraulic fracturing (DCN 07476). Radium 226, which has a half life of over 1,000 years, has been found to be present in concentrations up to 16,030 pCi/l in the Marcellus Shale produced water as reported by the New York State Department of Environmental Conservation in 2009 (DCN 07473). This reported radionuclide concentration exceeds the drinking water Maximum Contaminant Level of 5 pCi/L for Radium 226.

While EPA has some data on the additives in fracturing fluid, EPA is not aware of any substantial sampling data on the presence or absence of these additives in shale gas wastewaters.

Shale Gas Wastewater Disposal and Treatment

Up to 1 million gallons of shale gas wastewater may be produced from a single well within the first 30 days following fracturing. Smaller volumes of shale gas wastewater will also be produced throughout the life of the well. Many well operators transport this wastewater to Underground Injection Control (UIC) program permitted brine injection wells where the wastewater is permanently emplaced underground, a common practice in the oil and gas industry. The ability to inject shale gas wastewater varies based on local geology and permitting requirements. For example, this practice is widely used in the Barnett (Texas) formation where the state has more than 12,000 brine disposal wells, and less so in the Marcellus formation (PA, WV, OH, NY, MD). For comparison purposes, the Marcellus formation states presently have less than 300 brine disposal wells. The state of Pennsylvania, where most Marcellus shale drilling occurs, has six brine disposal wells.

Some operators elect to re-use a portion of the wastewater to replace and/or supplement fresh water in formulating fracturing fluid for a future well [1]. Re-use of shale gas wastewater is, in part, dependent on the levels of pollutants in the wastewater and the proximity of other fracturing sites that might re-use the wastewater. This practice has increased over the last couple of years, especially in regions of the country where fresh water is not plentiful.

When injection and re-use are not viable options for shale gas wastewater disposal, operators may dispose of this wastewater by sending it to POTWs or to private centralized waste treatment facilities (CWTs). The vast majority of POTWs employ equalization, bulk solids removal, biological treatment, and disinfection. POTWs are likely effective in treating only some of the pollutants in shale gas wastewater, such as the conventional and organic pollutants. These treatment technologies are not designed to treat high levels of TDS, NORM, or high levels of metals [2]; it is believed that much of these pollutants pass through the POTW untreated. Many CWTs, of which 90% discharge to POTWs, are similarly not designed to treat for high TDS or NORM (DCN 07474).

High concentrations of TDS may also lead to inhibition or disruptions of POTW treatment efficiency. However, most POTWs that accept shale gas wastewaters blend small volumes with traditional POTW wastewaters (1% shale gas wastewater by volume) to reduce pollutant concentrations through dilution to prevent POTW inhibition (DCN 07474).

Local Limits for Shale Gas Extraction Wastewater Introductions to POTWs

Under the Clean Water Act statutory and regulatory framework, POTWs must establish requirements for any introduction of wastewater to the POTW or its collection system if it either would cause ''pass through'' or ''interference'' (*e.g.,* cause the POTW to violate its permits limits, or interfere with the operation of the POTW or the beneficial use of its sewage sludge). POTWs are subject to the secondary treatment effluent limitations at 40 CFR part 133, which do not address the parameters of concern in shale gas extraction wastewater (*e.g.,* TDS, chloride, radionuclides, *etc*). If a water quality

[1] In order to prepare shale gas wastewater for re-use, the produced water is filtered to remove suspended solids from wastewater and then combined with fresh water and additives to formulate fracturing fluid. Typically re-used shale gas wastewater makes up only a small percentage of water demand for fracturing operations.

[2] Metcalf & Eddy Inc. (2003) Wastewater Engineering: Treatment and Reuse McGraw-Hill, New York.

based effluent limit for these parameters is not included in the POTW permit, and if there is no evidence of interference, or sewage sludge contamination, the POTW may not have a basis to develop appropriate local limits. Independent of CWA requirements, POTWs can establish local limits under their sewer use ordinances for any parameters they determine could cause problems at the POTW. Currently, however, it is uncommon that POTWs have established local limits for the parameters of concern here, or that POTWs have water quality-based effluent limitations (WQBELs) for such parameters. Possible Impacts of Shale Gas Wastewater Discharges to Drinking Water Sources and Aquatic Life.

TDS has been shown to have negative impacts on aquatic life and drinking water. The level at which these impacts may occur is far less than the level of TDS typically found in shale gas wastewater. As described above, the average concentration of TDS in shale gas wastewaters is typically 100,000 ppm and can be as high as 400,000 ppm. Available data indicates the levels of TDS in shale gas wastewaters can often exceed recommended drinking water concentrations [3] by a factor of 200. Because TDS concentrations in fresh non-brackish drinking water sources are typically well below the recommended drinking water levels, few drinking water treatment facilities have technologies to remove TDS.

Aquatic life toxicity of freshwater contaminated with high TDS is dependent on the specific ionic composition of the water. In shale gas wastewaters, the largest single contributor to TDS is chlorides. Macroinvertebrates, and more specifically aquatic insects, have an open circulatory system and are more sensitive to pollutants like chloride, which at elevated exposure concentrations, negatively affect their ability to maintain the right concentration of salts and water in the body, which involves excreting metabolic wastes that would be toxic to the organism if allowed to accumulate. Based on laboratory toxicity data from EPA's 1988 chloride criteria document and more recent studies, invertebrate sensitivity to chloride acute effect concentrations ranged from 953 ppm to 13,691 ppm and chronic effect concentrations ranged from 489 ppm to 556 ppm. Aquatic vertebrates such as fish and frogs are less sensitive to chloride with acute effect concentrations ranging from 3,959 ppm to 14,500 ppm and chronic effect concentrations of 646 ppm to 955 ppm (DCN 07483). Available data on maximum chloride concentrations in shale gas wastewaters exceed the acute effect concentration by a factor of over 100 [4] (DCN 07482A15).

In addition to the laboratory data, EPA also has data from a 2009 Pennsylvania Department of Environmental Protection violation report documenting a fishkill attributed to a spill of diluted produced water in Hopewell Township, PA. A sample of the receiving water at the location of the fishkill was analyzed and TDS was measured as high as 7,000 ppm. The report documents the effects of the TDS on aquatic species such as fish and salamanders and frogs, including mortalities (DCN 07471).[5]

Moreover, bromide found in shale gas wastewater may react with disinfectants used at water treatment plants, creating potentially harmful disinfection byproducts such as trihalomethane. Bromide, linked to shale gas wastewater, has been recorded in POTW effluents in concentrations as high as 1,100 ppm (DCN 07472 and DCN 07481A02).

Conclusion:

Natural gas can increase our domestic energy options, thus, reducing dependence on non-U.S. sources, and it has the potential to improve air quality, increase stability in energy prices, and provide greater certainty about future energy reserves. Also, natural gas can serve as a bridge fuel from coal to even more efficient energy sources that can further reduce greenhouse-gas emissions. Natural gas holds great potential for our energy future and for our environment and EPA supports the commitment in the ''Blueprint,'' to responsible development of this important domestic resource and to proactively addressing the concerns that have been raised regarding potential negative impacts associated with hydraulic fracturing of shale formations.

We have heard from the public and environmental organizations that they are concerned about the safety of natural gas production and the possible impacts that shale gas development could have on American communities. Some states have allowed development; others have put a hold on any development, cautious about the environmental impacts of shale gas production. Some states have asked that national standards be promulgated, and have also requested resources to help deal with these possible impacts. We have also heard from industry that shale gas extraction is currently regulated under the existing Oil and Gas Effluent Limitation Guidelines and those regulations are sufficient. What we know is that shale gas extraction generates extremely large volumes of wastewater that contain considerable pollutant loads. Some of this is being responsibly reinjected into appropriate underground wells; other volumes of wastewater are likely not being treated effectively by existing treatment facilities. Resulting discharges have the potential to affect both drinking water supplies and aquatic life. These concerns and issues will not dissipate as shale gas production is expected to increase. As a result, EPA has decided to initiate rulemaking to decide the appropriate level of pretreatment standards for this industry. As noted above, EPA will carefully consider the SEAB's recommendations as EPA develops regulatory options.

As a first step in developing a regulation, EPA will conduct extensive data gathering, including site visits, stakeholder outreach, and development of a national survey of the industry. More specifically, EPA will visit natural gas extraction operations where hydraulic fracturing is occurring to obtain data directly from the well operators on well drilling and fracturing operations, produced water characteristics, and wastewater management. In addition to the site visits, EPA will reach out to stakeholders and other affected entities to identify and better understand concerns regarding environmental impacts associated with fracturing wastewater and potential industry implications of the regulation. Finally, EPA will begin the process of developing and seeking approval to distribute a nationally representative survey to collect information on the shale gas industry. This survey will assist EPA in obtaining national data on the operations, economics, and wastewater characteristics associated with hydraulic fracturing, as well as data pertaining to available treatment technologies for shale gas wastewater.

In 2010, Congress directed EPA to ''carry out a study on the relationship between hydraulic fracturing and

[3] Two published standards regarding TDS include EPA's secondary maximum contaminant level for TDS of 500 ppm and the U.S. Public Health Service recommendation that TDS in drinking water should not exceed 500 ppm.

[4] As discussed, many of the POTWs that accept shale gas wastewaters blend small volumes with traditional POTW wastewaters and reduce pollutant concentrations through dilution, so high concentrations in shale gas wastewaters do not necessarily lead to concentrations that exceed aquatic life criteria at the point of discharge.

[5] While not related to shale gas wastewater, negative impacts of high TDS, including fish kills, were documented during 2009 at Dunkard Creek located in Monongalia County, Pennsylvania.

drinking water, using a credible approach that relies on the best available science, as well as independent sources of information. The conferees expect the study to be conducted through a transparent, peer-reviewed process that will ensure the validity and accuracy of the data.'' In accordance with this direction from Congress, EPA conducted extensive stakeholder outreach to solicit advice regarding the design of the study. In February 2011, EPA submitted a draft study plan to the Science Advisory Board for peer review. In March and May 2011, the Science Advisory Board subcommittee met to provide peer review of the EPA's draft study plan. Consistent with the operating procedures of the SAB, an opportunity was provided for stakeholders and the public to provide comments for the SAB to take into account during their review. EPA is revising the study plan in response to the SAB's comments and initial study results are expected by the end of 2012. However, certain portions of the work will be long-term projects that are not likely to be finished at that time. Additional reports of study findings will be published as the longer-term projects progress. While the primary focus of this study is on impacts of hydraulic fracturing on drinking water resources, including surface water impacts, EPA will carefully review and consider any relevant information that is collected to support this study. Likewise, any data collected pursuant to this new rulemaking will be shared with the EPA office that is conducting the Congressionally-mandated study.

Should the report or EPA's rulemaking survey, in combination with other data gathering and public outreach, indicate that POTWs are already adequately treating shale gas wastewater so that it is not causing pass through or interference with POTW operations, including sludge management, EPA is open to adjusting its rulemaking plans accordingly. However, EPA believes that beginning rulemaking now, and particularly the data collection necessary to support such a rule, is an appropriate step given what we already know about wastewater discharges from the industry.

5. Summary of 2010 Annual Review Findings

The summary of the findings of the 2010 annual review is presented below in Table V–1 (see also the TSD for the final 2010 Plan for greater details). This table uses the following codes to describe the Agency's findings with respect to each existing industrial category.

(1) Effluent guidelines or pretreatment standards for this industrial category were recently revised through an effluent guidelines rulemaking, or a rulemaking is currently underway. Or EPA recently completed a preliminary study or a detailed study, and no further action is necessary at this time.

(2) Revising the national effluent guidelines or pretreatment standards is not the best tool for this industrial category because most of the toxic and non-conventional pollutant discharges are from one or a few facilities in this industrial category. EPA will consider assisting permitting authorities in identifying pollutant control and pollution prevention technologies for the development of technology-based effluent limitations by best professional judgment (BPJ) on a facility-specific basis.

(3) Not identified as a priority based on data available at this time (*e.g.,* not among industries that cumulatively comprise 95% of discharges as measured in units of TWPE).

(4) EPA intends to start or continue a detailed study of this industry in its 2011 annual review to determine whether to identify the category for effluent guidelines rulemaking.

(5) EPA is continuing or initiating a preliminary category review or will continue to review discharges using screening-level data because incomplete data are currently available to determine whether to conduct a detailed study or identify for possible revision. EPA typically performs a further assessment of the pollutant discharges before starting a detailed study of the industrial category. This assessment provides an additional level of quality assurance on the reported pollutant discharges and number of facilities that represent the majority of toxic-weighted pollutant discharges. EPA may also develop a preliminary list of potential wastewater pollutant control technologies before conducting a detailed study.

(6) EPA is identifying this industry for a revision of an existing effluent guideline.

Note that dental mercury is not included in the analysis below, as dental facilities do not currently have an effluent guideline.

TABLE V–1—FINDINGS FROM THE 2010 ANNUAL REVIEW OF EFFLUENT GUIDELINES AND PRETREATMENT STANDARDS CONDUCTED UNDER SECTION 301(d), 304(b), 304(g), AND 307(b)

No.	Industry category (listed alphabetically)	40 CFR Part	Findings *
1	Aluminum Forming	467	(3)
2	Asbestos Manufacturing	427	(3)
3	Battery Manufacturing	461	(3)
4	Canned and Preserved Fruits and Vegetable Processing	407	(3)
5	Canned and Preserved Seafood Processing	408	(3)
6	Carbon Black Manufacturing	458	(3)
7	Cement Manufacturing	411	(3)
8	Centralized Waste Treatment	437	(3)
9	Coal Mining	434	(3)
10	Coil Coating	465	(3)
11	Concentrated Animal Feeding Operations (CAFO)	412	(1)
12	Concentrated Aquatic Animal Production	451	(1)
13	Construction and Development	450	(1)
14	Copper Forming	468	(3)
15	Dairy Products Processing	405	(3)
16	Electrical and Electronic Components	469	(3)
17	Electroplating	413	(1)
18	Explosives Manufacturing	457	(3)
19	Ferroalloy Manufacturing	424	(3)
20	Fertilizer Manufacturing	418	(3)
21	Glass Manufacturing	426	(3)

TABLE V–1—FINDINGS FROM THE 2010 ANNUAL REVIEW OF EFFLUENT GUIDELINES AND PRETREATMENT STANDARDS CONDUCTED UNDER SECTION 301(d), 304(b), 304(g), AND 307(b)—Continued

No.	Industry category (listed alphabetically)	40 CFR Part	Findings *
22	Grain Mills	406	(3)
23	Gum and Wood Chemicals	454	(3)
24	Hospitals	460	(1)
25	Ink Formulating	447	(3)
26	Inorganic Chemicals **[Note 1]**	415	(1) and (3)
27	Iron and Steel Manufacturing	420	(1)
28	Landfills	445	(5)
29	Leather Tanning and Finishing	425	(3)
30	Meat and Poultry Products	432	(1)
31	Metal Finishing	433	(1)
32	Metal Molding and Casting	464	(3)
33	Metal Products and Machinery	438	(1)
34	Mineral Mining and Processing	436	(5)
35	Nonferrous Metals Forming and Metal Powders	471	(3)
36	Nonferrous Metals Manufacturing	421	(2)
37	Oil and Gas Extraction	435	(6)
38	Ore Mining and Dressing	440	(2)
39	Organic Chemicals, Plastics, and Synthetic Fibers **[Note 1]**	414	(1) and (3)
40	Paint Formulating	446	(3)
41	Paving and Roofing Materials (Tars and Asphalt)	443	(3)
42	Pesticide Chemicals	455	(3)
43	Petroleum Refining	419	(3)
44	Pharmaceutical Manufacturing	439	(3)
45	Phosphate Manufacturing	422	(3)
46	Photographic	459	(3)
47	Plastic Molding and Forming	463	(5)
48	Porcelain Enameling	466	(3)
49	Pulp, Paper, and Paperboard	430	(5)
50	Rubber Manufacturing	428	(3)
51	Soaps and Detergents Manufacturing	417	(3)
52	Steam Electric Power Generating	423	(1)
53	Sugar Processing	409	(3)
54	Textile Mills	410	(3)
55	Timber Products Processing	429	(3)
56	Transportation Equipment Cleaning	442	(3)
57	Waste Combustors	444	(5)

* The descriptions of the ''Findings'' codes are presented immediately prior to this table.

Note 1: Two codes (''(1)'' and ''(3)'') are used for this category as both codes are applicable to this category and do not overlap. The first code (''(1)'') refers to the ongoing effluent guidelines rulemaking for the Chlorinated and Chlorinated Hydrocarbons (CCH) manufacturing sector, which includes facilities currently regulated by the OCPSF and Inorganics effluent guidelines. The second code (''(3)'') indicates that the remainder of the facilities in these two categories does not represent a hazard priority at this time.

VI. EPA's 2010 Evaluation of Categories of Indirect Dischargers Without Categorical Pretreatment Standards To Identify Potential New Categories for Pretreatment Standards

A. EPA's Evaluation of Pass Through and Interference of Toxic and Non-Conventional Pollutants Discharged to POTWs

All indirect dischargers are subject to general pretreatment standards (40 CFR part 403), including a prohibition on discharges causing ''pass through'' or ''interference'' (See 40 CFR 403.5). All POTWs with approved pretreatment programs must develop local limits to implement the general pretreatment standards. All other POTWs must develop such local limits where they have experienced ''pass through'' or ''interference'' and such a violation is likely to recur. There are approximately 1,500 POTWs with approved pretreatment programs and 13,500 small POTWs that are not required to develop and implement pretreatment programs.

In addition, EPA establishes technology-based national regulations, termed ''categorical pretreatment standards,'' for categories of industry discharging pollutants to POTWs that may pass through, interfere with or otherwise be incompatible with POTW operations (CWA section 307(b)). Generally, categorical pretreatment standards are designed such that wastewaters from direct and indirect industrial dischargers are subject to similar levels of treatment. EPA has promulgated such pretreatment standards for 35 industrial categories.

One of the tools traditionally used by EPA in evaluating whether pollutants ''pass through'' a POTW, is a comparison of the percentage of a pollutant removed by POTWs with the percentage of the pollutant removed by discharging facilities applying BAT. Pretreatment standards for existing sources are technology based and are analogous to BAT effluent limitations guidelines. In most cases, EPA has concluded that a pollutant passes through the POTW when the median percentage removed nationwide by representative POTWs (those meeting secondary treatment requirements) is less than the median percentage removed by facilities complying with BAT effluent limitations guidelines for that pollutant.

This approach to the definition of ''pass through'' satisfies two competing objectives set by Congress: (1) That standards for indirect dischargers be equivalent to standards for direct dischargers; and (2) that the treatment capability and performance of POTWs be recognized and taken into account in

regulating the discharge of pollutants from indirect dischargers.

The term ''interference'' means a discharge which, alone or in conjunction with a discharge or discharges from other sources, both: (1) Inhibits or disrupts the POTW, its treatment processes or operations, or its sludge processes, use or disposal; and (2) therefore is a cause of a violation of any requirement of the POTW's NPDES permit (including an increase in the magnitude or duration of a violation) or of the prevention of sewage sludge use or disposal in compliance with applicable regulations or permits. See 40 CFR 403.3(k). To determine the potential for ''interference,'' EPA generally evaluates the industrial indirect discharges in terms of: (1) The compatibility of industrial wastewaters and domestic wastewaters (*e.g.,* type of pollutants discharged in industrial wastewaters compared to pollutants typically found in domestic wastewaters); (2) concentrations of pollutants discharged in industrial wastewaters that might cause interference with the POTW collection system, the POTW treatment system, or biosolids disposal options; and (3) the potential for variable pollutant loadings to cause interference with POTW operations (*e.g.,* batch discharges or slug loadings from industrial facilities interfering with normal POTW operations).

If EPA determines a category of indirect dischargers causes pass through or interference, EPA would then consider the BAT and BPT factors (including ''such other factors as the Administrator deems appropriate'') specified in section 304(b) to determine whether to establish pretreatment standards for these activities. Examples of ''such other factors'' include a consideration of the magnitude of the hazard posed by the pollutants discharged as measured by: (1) The total annual TWPE discharged by the industrial sector; and (2) the average TWPE discharged among facilities that discharge to POTWs. Additionally, EPA would consider whether other regulatory tools (*e.g.,* use of local limits under part 403) or voluntary measures would better control the pollutant discharges from this category of indirect dischargers. For example, EPA relied on a similar evaluation of ''pass through potential'' in its prior decision not to promulgate national categorical pretreatment standards for the Industrial Laundries industry. See *64 FR 45071* (August 18, 1999). EPA noted in this 1999 final action that, ''While EPA has broad discretion to promulgate such [national categorical pretreatment] standards, EPA retains discretion not to do so where the total pounds removed do not warrant national regulation and there is not a significant concern with pass through and interference at the POTW.'' See *64 FR 45077* (August 18, 1999).

B. Hospitals (Part 460) (Health Care Industry Detailed Study of the Management of Unused Pharmaceuticals)

Pharmaceutical chemicals have been detected in our nation's waterways, leading to concerns that these compounds may affect aquatic life and possible human health through drinking water sources. As a result of public comments on the Final 2006 Effluent Guidelines Program Plan, EPA initiated a study of unused pharmaceutical disposal practices at health care facilities. The focus of this study was on disposal to water via sewers. EPA studied medical facilities; including, hospitals, hospices, long-term care facilities, health care clinics, physician offices, and veterinary facilities. A standard disposal practice at many health care facilities is to flush unused pharmaceuticals down the toilet or drain.

Unused pharmaceuticals include leftover medication that is expired, not dispensed, and/or partially used, and residues from delivery devices. During the study, EPA conducted intensive outreach to over 700 stakeholders and evaluated a range of management practices to reduce the generation of unused pharmaceuticals and their disposal down the drain. Based on the information collected through the outreach, EPA has drafted a guidance document, ''Best Management Practices for Unused Pharmaceuticals at Health Care Facilities''. The guidance document was made available for a 60 day public review and comment as announced in a **Federal Register** Notice, published on September 8, 2010. The draft guidance document was posted on the Agency's Web site.

In summary, the guidance recommends the following practices to prevent or minimize the amount of pharmaceuticals being disposed in water:

—Conduct an inventory of pharmaceuticals and pharmaceutical waste to quantify the amount of medication the facility is disposing of;
—Reduce pharmaceutical waste by reviewing purchasing practices, use limited dose or unit dose dispensing, replace pharmaceutical samples with vouchers, and perform on-going inventory control and stock rotation;
—Reuse or donate unused pharmaceuticals when possible; return unused pharmaceuticals to the pharmacy; send unused pharmaceuticals to a reverse distributor for credit and proper disposal in accordance with the facility's state environmental regulations; properly identify and manage hazardous pharmaceutical wastes in accordance with federal and state regulations; use EPA recommended practices to dispose of non-hazardous pharmaceutical waste at the facility;
—Segregate waste for disposal to ensure regulations are met;
—Train staff in proper disposal methods.

EPA received 89 comments on the proposed guidance on November 8, 2010 and is reviewing suggested changes to the document and working with relevant Federal Agencies to ensure any incorporated comments are consistent with other Federal laws and policies.

C. Dental Amalgam

In the 2008 final Plan, EPA decided it would not initiate an effluent limitation guideline rulemaking for discharges of dental amalgam from dentists' offices. However, at that time EPA indicated it would examine whether a significant majority of dentists began utilizing amalgam separators and stated that after such examination, EPA may re-evaluate its decision not to initiate an effluent guidelines rulemaking for this sector.

After assessing the progress made under the Memorandum of Understanding to Reduce Dental Amalgam Discharges (MOU), and other factors, EPA announced, in September 2010, it will initiate a rulemaking to control mercury associated with dental amalgam discharges to sewer systems from dental offices.

Background

Across the United States, many States and municipal wastewater treatment plants (publicly owned treatment works—POTWs) are working toward the goal of reducing discharges of mercury into sewer collection systems. Many studies have been conducted in an attempt to identify the sources of mercury entering these collection systems. According to the 2002 Mercury Source Control and Pollution Prevention Program Final Report prepared for the National Association of Clean Water Agencies (NACWA), dental offices are the largest source of mercury discharges to POTWs. The American

Dental Association (ADA) estimated in 2003 that up to 50% of mercury entering POTWs was caused by dental offices (see DCN 04698).

EPA estimates there are approximately 160,000 dentists working in 120,000 dental offices that use or remove amalgam in the United States—almost all of which discharge their wastewater exclusively to POTWs. Mercury in dental wastewater originates from waste particles associated with the placement and removal of amalgam fillings. Most dental offices currently use some type of basic filtration system to reduce the amount of mercury solids passing into the sewer system. However, best management practices and the installation of amalgam separators, which generally have a removal efficiency of 95% or greater, can reduce discharges even further. A recent study funded by NACWA (see DCN 04225) concluded that the use of amalgam separators results in reductions in POTW influent concentrations and biosolids mercury concentrations.

In December, 2008 EPA entered into the MOU with NACWA and ADA. The purpose of the MOU was to estimate the number of dental facilities with amalgam separators installed, establish interim goals for increases in the number of separators voluntarily installed, and conduct outreach to dentists.

EPA learned from several states that their efforts to increase the number of amalgam separator installations on a voluntary basis were largely unsuccessful. Additionally, several environmental organizations have urged EPA to establish pretreatment standards for dental amalgam. The Quicksilver Caucus commented on the preliminary 2010 Plan requesting that EPA initiate a rulemaking to establish pretreatment standards for discharges of dental amalgam.

Given the human health and aquatic-life impacts associated with mercury, the level of stakeholder interest, and the availability of a technological solution, EPA decided to initiate rulemaking to develop pretreatment standards for dental mercury to more thoroughly and expeditiously address this water pollution problem.

VII. The Final 2010 Effluent Guidelines Program Plan

EPA views the effluent guidelines planning process as a mechanism designed to promote regular and transparent priority-setting on the part of the Agency. A plan is ultimately a statement of choices and priorities. These priorities necessarily need to take into account all the other statutory mandates and policy initiatives designed to implement the CWA's goals and the funds appropriated by Congress to execute them.

By requiring this planning process, culminating in the publication of a plan after public notice and comment, Congress assured that EPA would regularly re-evaluate its policy choices and priorities (including whether to identify an activity for effluent guidelines rulemaking) to account for changed circumstances. Ultimately, however, Congress left the content of the plan to EPA's discretion—befitting the role that effluent guidelines play in the overall structure of the CWA and their relationship to other tools for addressing water pollution.

A. EPA's Schedule for Annual Review and Revision of Existing Effluent Guidelines under Section 304(b)

1. Schedule for 2011 and 2012 Annual Reviews Under Section 304(b)

As noted in section IV.B, CWA section 304(m)(1)(A) requires EPA to publish a biennial plan that establishes a schedule for the annual review and revision, in accordance with section 304(b), of the effluent guidelines that EPA has promulgated under that section. Today's plan announces EPA's schedule for performing its section 304(b) reviews for 2011 and 2012. The schedule is to coordinate its annual review of existing effluent guidelines under section 304(b) with its publication of preliminary and final Effluent Guidelines Program Plans under CWA section 304(m). In other words, in odd-numbered years, EPA intends to complete its annual review upon publication of the preliminary Effluent Guidelines Program Plan that EPA must publish for public review and comment under CWA section 304(m)(2). In even-numbered years, EPA intends to complete its annual review upon the publication of the final Plan. EPA's 2011 annual review is the review cycle ending upon the publication of the preliminary Plan in 2011 and its 2012 annual review is the review cycle ending upon publication of the 2012 final Plan.

2. Schedule for Revision of Effluent Guidelines Promulgated Under Section 304(b)

Currently, EPA is engaged in effluent limitations guideline (ELG) rulemakings to revise the following existing guidelines:

Steam Electric Power Generation—this rulemaking involves the revision of an existing ELG for about 1200 power-generating facilities with a particular focus on about 500 coal-fired power plants. The decision to revise the current effluent guidelines for this industry was largely driven by the high level of toxic-weighted pollutant discharges from coal fired power plants and the expectation that these discharges will increase significantly in the next few years as new air pollution controls are installed. EPA is under a consent decree obligation to issue a final rule for this industry in 2014.

- Chlorine and Chlorinated Hydrocarbons Manufacturing—EPA is currently conducting a rulemaking to potentially revise existing effluent guidelines and pretreatment standards for the following categories: Organic Chemicals, Plastics and Synthetic Fibers (OCPSF) and Inorganic Chemicals (to address discharges from Vinyl Chloride and Chlor-Alkali facilities identified for effluent guidelines rulemaking in the final 2004 Plan, now termed the ''Chlorine and Chlorinated Hydrocarbon (CCH) manufacturing'' rulemaking). EPA previously indicated it would conduct an industry survey for this effluent guidelines rulemaking (April 18, 2006; 71 FR 19887). EPA is considering its next steps for this survey and the rulemaking as it reviews data from a voluntary industry monitoring program. EPA worked with industry to develop the extensive monitoring program to better understand the category's dioxin discharges.

In addition, EPA is today announcing initiation of an effluent limitations guideline (ELG) rulemaking to revise the following existing guidelines:

- Oil and Gas Extraction—As explained in Section V.B.2, EPA is initiating a rulemaking for Coalbed Methane Extraction, a currently unregulated subcategory of the Oil and Gas Extraction Point Source Category. Because of concern over high TDS levels in the wastewater for Coalbed, availability of treatment technologies, and the fact that Coalbed Methane production will continue to grow, EPA believes the initiation of a rulemaking to address direct discharges to surface waters and discharges to POTWs is appropriate.

B. Identification of Point Source Categories Under CWA Section 304(m)(1)(B)

The Effluent Guidelines Program Plan must identify categories of sources discharging non-trivial amounts of toxic or non-conventional pollutants for which EPA has not published effluent limitations guidelines under section 304(b)(2) or new source performance standards NSPS) under section 306. See CWA section 304(m)(1)(B). The Plan

must also establish a schedule for the promulgation of effluent guidelines for the categories identified under section 304(m)(1)(B) not later than three years after such identification. See CWA section 304(m)(1)(C). EPA is currently taking the following actions on new industry categories:

• Airport De-icing—This final ELG rulemaking addresses the environmental impact of aircraft and airfield deicing fluid on the environment at the about 200 airports in this country that conduct deicing operations. This rule is complicated by the shared responsibility for deicing operations between the airports and the airlines that use them. EPA currently plans to issue a final rule for this category in 2011.

• Drinking Water Treatment Industry—EPA is not at this time continuing its effluent guidelines rulemaking for the Drinking Water Treatment industry. In the 2004 Plan, EPA announced that it would begin development of a regulation to control the pollutants discharged from drinking water treatment plants. See 69 FR 53720 (September 2, 2004). Based on a preliminary study and on public comments, EPA was interested in the potential volume of discharges associated with drinking water facilities. The preliminary data were not conclusive, and the Agency proceeded with additional study and analysis of treatability, including an industry survey. After considering extensive information about the industry, its treatment residuals, wastewater treatment options, and discharge characteristics, and after considering other priorities, EPA has suspended work on this rulemaking.

The ELG Program is also developing the cooling water intake existing facility rule—Under section 316(b) of the CWA, EPA plans to issue a final rule in 2012 addressing the withdrawal of trillions of aquatic organisms from waters of the U.S. by about 1260 power plants and manufacturing facilities which withdraw water for cooling purposes.

Also for the 2010 Plan, EPA is issuing the detailed study report for the coalbed methane industry and is issuing the preliminary study report for the Ore Mining and Dressing industry, and will be taking no further action on this industry at this time. EPA initiated a preliminary study of cellulose manufacturers in the Plastic Molding and Forming category (part 463) due, in part, to high carbon disulfide discharges which were revealed during the 2010 review.

Finally, EPA interprets section 304(m)(1)(B) to give EPA the discretion to identify in the Plan only those potential new categories for which an effluent guidelines rulemaking may be an appropriate tool for controlling discharges. Therefore, EPA does not identify in the Plan all potential new categories discharging toxic and non-conventional pollutants. Rather, EPA identifies only those potential new categories for which it believes that effluent guidelines may be appropriate, taking into account Agency priorities, resources and the full range of other CWA tools available for addressing industrial discharges. In this Plan, EPA is not identifying for rulemaking any new categories discharging toxic and non-conventional pollutants.

EPA is continuously investigating and solicits comment on how to improve its analyses (see section IX. Request for Comment and Information for the 2011 Annual Reviews).

C. Identification of Guidelines for Pretreatment of Pollutants under CWA Section 304(g)(1) and 307(b)(1)

EPA has decided to initiate rulemaking for two industries to address their indirect industrial discharges to POTWs. This includes the indirect discharge of dental amalgam from dental offices and wastewater from shale gas extraction to publicly owned treatment works (POTWs) that may cause pass-through, interfere with, or are otherwise incompatible with POTWs.

With regard to dental amalgam discharges from dental offices, EPA was asked by some states and environmental groups to revisit its 2008 decision not to initiate rulemaking for this industry. Dental amalgam contains mercury, which is a concern to human health because mercury is a persistent, bioaccumulative toxic element. EPA estimates that dentists discharge approximately 3.7 tons of mercury each year to publicly owned treatment works. In addition, EPA has not seen significant increases in the installation of amalgam separators under current voluntary efforts. Consequently, EPA has decided to initiate rulemaking which will reduce mercury discharges from dental facilities more completely, and in a more predictable timeframe than has been demonstrated through voluntary means alone.

EPA also is initiating rulemaking for shale gas extraction, another subcategory of the Oil and Gas Extraction Point Source Category, which is now subject to effluent guidelines under this Category but not to applicable pretreatment standards. Because of concern over high TDS levels in the wastewater for shale gas extraction, availability of treatment technologies, and the fact that shale gas extraction production will continue to grow, EPA believes the initiation of a rulemaking to address discharges to POTWs is appropriate.

D. Current Rulemakings

Airport Deicing and Steam Electric Power Generation:

Schedules

Airport Deicing:
—Final ELG Rule—Fall 2011
Steam Electric Power Generation:
—Proposed Rule—July 2012
—Final Rule—January 2014

E. New Rulemakings

Dental Amalgam

Schedule to Develop the Regulation for Dental Amalgam:
—Proposed Rule—October 2011
—Final Rule—October 2012

Coalbed Methane Extraction

Schedule to Develop the Regulation for Coalbed Methane Extraction:
—Proposed Rule—2013

Shale Gas Extraction

Schedule to Develop the Regulation for Shale Gas Extraction:
—Proposed Rule—2014

These Agency decisions, announcements and the studies described previously fulfill EPA's obligations to annually review both existing effluent limitations guidelines for direct dischargers and existing pretreatment standards for indirect dischargers under CWA sections 304(b) and (g), as well as other review requirements under CWA section 301(d) and 307(b).

VIII. EPA's 2011 Annual Review of Existing Effluent Guidelines and Pretreatment Standards Under CWA Sections 301(d), 304(b), 304(g), 304(m) and 307(b)

This notice also provides EPA's preliminary thoughts concerning its 2011 annual reviews under CWA sections 304(b) and 304(g) as well as its reviews under 301(d) and 307(b) and solicits comments, data and information to assist EPA in performing these reviews.

A. Schedule for the 2011 Annual Reviews Under Section 304(b)

As noted in section IV.B, CWA section 304(m)(1)(A) requires EPA to publish a Plan every two years that establishes a schedule for the annual review and revision, in accordance with section 304(b), of the effluent guidelines that EPA has promulgated under that

section. This final 2010 Plan announces EPA's schedule for performing its section 304(b) reviews in 2011.

The schedule is as follows: EPA will coordinate its annual review of existing effluent guidelines with its publication of the preliminary and final Plans under CWA section 304(m). In other words, in odd-numbered years, EPA intends to complete its annual review upon publication of the preliminary Plan that EPA must publish for public review and comment under CWA section 304(m)(2). In even-numbered years, EPA intends to complete its annual review upon the publication of the final Plan. EPA's 2010 annual review is the review cycle ending upon the publication of this final 2010 Plan.

EPA is coordinating its annual reviews with publication of Plans under section 304(m) for several reasons. First, the annual review is inextricably linked to the planning effort, because the results of each annual review can inform the content of the preliminary and final Plans, *e.g.,* by identifying candidates for effluent guidelines revision for which EPA can schedule rulemaking in the Plan, or by calling to EPA's attention point source categories for which EPA has not promulgated effluent guidelines. Second, even though not required to do so under either section 304(b) or section 304(m), EPA believes that the public interest is served by periodically presenting to the public a description of each annual review (including the review process employed) and the results of the review. Doing so at the same time EPA publishes preliminary and final plans makes both processes more transparent. Third, by requiring EPA to regularly review all existing effluent guidelines, Congress appears to have intended that each successive review would build upon the results of earlier reviews. Therefore, by describing the 2010 annual review along with the final 2010 final Plan, EPA hopes to gather and receive data and information that will inform its reviews for 2011 and 2012 and the final 2012 Plan.

IX. Request for Comment and Information for the 2011 Annual Reviews

A. EPA Requests Information on

1. Data Sources and Methodologies

EPA solicits comments on whether EPA used the correct evaluation factors, criteria, and data sources in conducting its annual review and developing this final Plan. EPA also solicits comment on other data sources EPA can use in its annual reviews and biennial planning process. Please see the docket for a more detailed discussion of EPA's analysis supporting the reviews in this notice (see DCN 07320).

EPA is also soliciting comments on ways to enhance its Plan analysis. In particular: Are there new or additional factors that should be brought to bear for screening existing industries for revisions to their current guidelines? Are there approaches that could be used to better identify new industries that currently do not have guidelines that should? EPA is interested in receiving comment on all aspects of its current methodology.

2. Climate Change and Water Efficiency

EPA solicits comments, and data and information on whether the actions described under this Plan will have effects on water conservation or on climate change. In particular, will certain technologies or actions help to conserve water, and thereby energy and thus reduce the consumption of fossil fuels, or will the actions envisioned by this plan waste water and/or energy resources. Likewise, will the actions and potential industry changes contemplated by this Plan result in greater emission of green house gases, or are there opportunities for industry to reduce green house gas emissions.

3. BPJ Permit-Based Support

EPA solicits comments on whether, and if so, how the Agency should provide EPA Regions and States with permit-based support instead of revising effluent guidelines (*e.g.,* when the vast majority of the hazard is associated with one or a few facilities). EPA solicits comment on categories for which the Agency should provide permit-based support.

4. Implementation Issues Related to Existing Effluent Guidelines and Pretreatment Standards

As a factor in its decision-making, EPA considers opportunities to eliminate inefficiencies or impediments to pollution prevention or technological innovation, or opportunities to promote innovative approaches such as water quality trading, including within-plant trading. Consequently, EPA solicits comment on implementation issues related to existing effluent guidelines and pretreatment standards.

5. EPA's Evaluation of Categories of Indirect Dischargers Without Categorical Pretreatment Standards To Identify Potential New Categories for Pretreatment Standards

EPA solicits comments on its evaluation of categories of indirect dischargers without categorical pretreatment standards. Specifically, EPA solicits wastewater characterization data (*e.g.,* wastewater volumes, concentrations of discharged pollutants), current examples of pollution prevention, treatment technologies, and local limits for all industries without pretreatment standards. EPA also solicits comment on whether there are industrial sectors discharging pollutants that cause interference issues that cannot be adequately controlled through the general pretreatment standards. Finally, EPA solicits comment on how better to access and aggregate discharge data reported to local pretreatment programs. Currently, pollutant discharge data are collected by the local pretreatment program to demonstrate compliance with pretreatment standards and local limits but are not typically electronically transmitted to the States or EPA Regions.

6. Data and Information on Discharges of Pollutants From Waste Combustors

EPA solicits data and information on discharges of wastewater from waste combustors. DMR data suggest the consistent discharge of metals and possible discharge of pesticides from waste combustors. EPA's analysis for the 2010 ELG Final Plan shows that pesticides are discharged at concentrations below limits of detection. EPA is requesting information on waste combustors metals and pesticide discharges, to determine if they are present at concentrations below treatable levels.

7. Data and Information on Discharges of Pollutants From Shale Gas Extraction

EPA solicits data and information on the pollutants generated by the Shale Gas extraction industry. In particular EPA is soliciting data and information on the type of pollutants in shale gas wastewaters, including the type and toxicity of additives, the volumes of flowback and concentrations of the pollutants in the flowback, the fate and transport of pollutants to ground waters, and data and information on the pass-through of pollutants at publicly owned treatment works (POTWs). EPA also solicits documented impacts of these pollutants on aquatic life and human health.

8. Data and Information on Discharges of Nanosilver From Industrial Manufacturing

Nanosilver is becoming a more commonly used substance in industrial materials and commercial products as an active pesticide ingredient. In some uses, fabric is impregnated with

nanosilver as an anti-microbial during manufacturing and nanosilver discharges may result. In other applications, nanosilver is used as a preservative in textile products which could also lead to nanosilver discharges. Other products, such as household washing machines, are being manufactured with the washer drum coated with nanosilver polymers to kill bacteria during clothes laundering. Since many of the nanosilver applications have the potential to create a source of silver in wastewater discharges from industries using nanosilver in the manufacture of products, or use of products containing nanosilver, EPA is interested in gathering as much information as possible on the fate, transport and effects of nanosilver on the aquatic environment and human health.

EPA is soliciting data and information on the manufacture, use, and environmental release of silver materials, including nanosilver. EPA is requesting information on the manufacturing of silver materials, including:

—Raw silver products, such as colloidal nanosilver;
—Intermediates such as polymers or fibers embedded with silver, nanosilver, or silver compounds; and
—End products, such as silver-embedded textile and plastic products, or appliances with nanosilver coated surfaces.

Dated: October 20, 2011.

Nancy K. Stoner,

Acting Assistant Administrator for Water.

[FR Doc. 2011–27742 Filed 10–25–11; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on the agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within ten days of the date this notice appears in the **Federal Register**. Copies of the agreements are 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.: 012032–008.

Title: CMA CGM/MSC/Maersk Line North and Central China-U.S. Pacific Coast Two-Loop Space Charter, Sailing and Cooperative Working Agreement.

Parties: A.P. Moller-Maersk A/S, CMA CGM S.A., and Mediterranean Shipping Company S.A.

Filing Party: Wayne R. Rohde, Esq.; Cozen O'Connor; 1627 I Street, NW., Suite 1100, Washington, DC 20006.

Synopsis: The Amendment provides for a further slot exchange between Maersk Line and MSC with corresponding changes in the Agreement and delays the introduction of a service loop.

Agreement No.: 012142.

Title: Vessel Sharing Agreement for Transpacific Service between Hainan P O Shipping Co., Ltd. and T.S. Lines.

Parties: Hainan P O Shipping Co., Ltd. and T.S. Lines Ltd.

Filing Party: Neal A. Mayer, Esq.; Hoppel, Mayer, & Coleman; 1050 Connecticut Avenue, NW., 10th Floor, Washington, DC 20036.

Synopsis: The agreement authorizes the parties to share vessel space in the trade between U.S. West Coast ports and ports in China and Korea.

By Order of the Federal Maritime Commission.

Dated: October 21, 2011.

Karen V. Gregory,

Secretary.

[FR Doc. 2011–27706 Filed 10–25–11; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application 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.

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 November 21, 2011.

A. Federal Reserve Bank of Atlanta (Chapelle Davis, Assistant Vice President) 1000 Peachtree Street, NE., Atlanta, Georgia 30309:

1. *Raymond James Financial, Inc.,* St. Petersburg, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of Raymond James Bank, FSB, St. Petersburg, Florida, to be named Raymond James Bank, N.A., upon its conversion to a national bank.

B. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *Bluechip Bancshares,* LLC, Oklahoma City, Oklahoma; to become a bank holding company by acquiring 100 percent of the voting shares of Elmore City Bancshares, Inc., and First State Bank, both in Elmore City, Oklahoma.

Board of Governors of the Federal Reserve System.

Dated: October 21, 2011.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2011–27675 Filed 10–25–11; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Employee Thrift Advisory Council

TIME AND DATE: 2 p.m. (EST), November 15, 2011.

PLACE: 4th Floor, Conference Room, 1250 H Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of the minutes of the April 18, 2011 meeting.
2. Report of the Executive Director on Thrift Savings Plan status:
   (a) Updated TSP statistics.
   (b) Update on implementation of Roth TSP accounts.
3. Legislation:
   (a) Update on Board Member nominations.
   (b) Nonappropriated Fund status.
   (c) 3-year statute of limitations for claims against the TSP.
   (d) IRS Levy.
   (e) TSP contributions from terminal Annual Leave.

4. New Business.

CONTACT PERSON FOR MORE INFORMATION: Thomas J. Trabucco, Director, Office of External Affairs, (202) 942–1640.

Dated: October 24, 2011.

Thomas K. Emswiler,

General Counsel, Federal Retirement Thrift Investment Board.

[FR Doc. 2011–27886 Filed 10–24–11; 4:15 pm]

BILLING CODE 6760–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: OS–0990-New; 30-Day Notice]

Agency Information Collection Request, 30-Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed collection for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, e-mail your request, including your address, phone number, OMB number, and OS document identifier, to *Sherette.funncoleman@hhs.gov,* or call the Reports Clearance Office on (202) 690–5683. Send written comments and recommendations for the proposed information collections within 30 days of this notice directly to the OS OMB Desk Officer; faxed to OMB at 202–395–5806.

Proposed Project: Multisite Evaluation of the *In Community Spirit* Program—Prevention of HIV/AIDS for Native/American Indian and Alaska Native Women Living in Rural and Frontier Indian Country (NEW)—OMB No. 0990–NEW—Office on Women's Health (OWH).

Abstract: The Office on Women's Health (OWH), within the Office of the Assistant Secretary for Health, will conduct the Multisite Evaluation of the *In Community Spirit* Program—Prevention of HIV/AIDS for Native/American Indian and Alaska Native (AI/AN) Women Living in Rural and Frontier Indian Country (*In Community Spirit* Program). The *In Community Spirit* Program is an initiative comprising three types of program components being implemented with women in AI/AN communities for HIV prevention: (1) Community awareness, (2) capacity building, and (3) prevention education. The multisite evaluation will provide data on the content and context of programs and the outcomes of program activities on participant knowledge and behavior related to sexual health.

The multisite evaluation is comprised of two main activities across three program components: (1) Surveys and (2) key informant interviews. There are two versions of key informant interviews: baseline and follow-up. There are also two versions of the survey: (1) Community Awareness Version for administration with women targeted through the community awareness activities and (2) Prevention Education Version to be administered to women who receive prevention education through the program.

The average annual respondent burden is estimated below. The estimate reflects the average annual number of respondents, the average annual number of responses, the time it will take for each response, and the average annual burden across 3 years of OMB clearance, which includes 2 years of data collection.

ESTIMATED ANNUALIZED BURDEN TABLE

Form	Type of respondent	Number of respondents	Number of responses per respondent per year	Average burden per response (hrs)	Total burden hours
Key Informant Interviews	Agency Provider (Administrator)	6	1	45/60	5
Key Informant Interviews	Agency Staff (Health Educators and Support Workers).	24	1	45/60	18
HEAL Survey—Community Awareness.	Community Member	900	0.5	15/60	113
HEAL Survey—Prevention Education.	Community Member	1200	1.5	15/60	450
Total		2130			586

Mary Forbes,

Office of the Secretary, Paperwork Reduction Act Clearance Officer.

[FR Doc. 2011–27733 Filed 10–25–11; 8:45 am]

BILLING CODE 4150–33–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier OS–0990–New; 30-day notice]

Agency Information Collection Request, 30-Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed collection for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated

burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, e-mail your request, including your address, phone number, OMB number, and OS document identifier, to *Sherette.funncoleman@hhs.gov,* or call the Reports Clearance Office on (202) 690–5683. Send written comments and recommendations for the proposed information collections within 30 days of this notice directly to the OS OMB Desk Officer; faxed to OMB at 202–395–5806.

Proposed Project: Descriptive information of solutions provided to the Federal government in response to Challenge and Competition solicitations posted on Challenge.gov—OMB No. 0990–NEW—Immediate Office of the Secretary.

Abstract: This request is to seek generic clearance for the collection of routine information requested of responders to solicitations the Federal government makes during the issuance of challenges and competitions posted on the General Service Administration (GSA)'s Challenge.gov Web site. Since passage of the America COMPETES Act of 2011, challenge competitions are increasingly being used by Federal agencies to solve complex problems and obtain innovative solutions. In this role, the Federal government places a description of a problem and parameters of the solution on the Challenge.gov Web site. The solutions are evaluated by the submitting agency and typically prizes (monetary and non-monetary) are awarded to the winning entries.

This clearance applies to challenges posted on Challenge.gov which uses a common platform for the solicitation of challenges from the public. Each agency designs the criteria for its solicitations based on the goals of the challenge and the specific needs of the agency. There is no standard submission format for solution providers to follow. We anticipate that approximately 100 challenges would be issued each year by HHS, with an average of 15 submissions to each challenge solicitation. It is expected that other federal agencies will issue a similar number of challenges. There is no set schedule for the issuance of challenges; they are developed and issued on an ''as needs'' basis in response to issues the federal agency wishes to solve. The respondents to the challenges, who are participating voluntarily, are unlikely to reply to more than one or several of the challenges.

Although in recent memoranda the GSA and Office of Management and Budget (OMB) described circumstances whereby OMB approval of a PRA request is not needed, program officials at HHS have identified several sets of information that will typically need to be requested of solution providers to enable the solutions to be adequately evaluated by the federal agency issuing the challenge.

ESTIMATED ANNUALIZED BURDEN TABLE

Forms	Type of respondent	Number of respondents	Number of responses per respondent	Average burden (in hours) per response	Total burden hours
Challenge Template A	Individuals or Households	500	1	20/60	166.6
Challenge Template A	Organizations	500	1	20/60	166.6
Challenge Template A	Businesses	500	1	20/60	166.6
Challenge Template A	State, territory, tribal or local governments.	30	1	20/60	10
Challenge Template A	Federal government	30	1	20/60	10
Total		1560			519.8

Mary Forbes,

Office of the Secretary, Paperwork Reduction Act Clearance Officer.

[FR Doc. 2011–27730 Filed 10–25–11; 8:45 am]

BILLING CODE 4150–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Announcement of Requirements and Registration for Leading Health Indicators App Challenge

AGENCY: Department of Health and Human Services, Office of the Secretary, Office of the Assistant Secretary for Health, Office of Disease Prevention and Health Promotion.

ACTION: Notice.

Authority: 15 U.S.C. 3719.

SUMMARY: October 31, 2011 marks the national release of the Healthy People 2020 leading health indicators (LHIs). The LHIs were developed to communicate high-priority health issues to the public, and actions that can be taken to address them. The Office of Disease Prevention and Health Promotion, in partnership with Health 2.0 and the Office of the National Coordinator of Health IT, is launching an LHI App Challenge to encourage teams of developers and health professionals to build an application that addresses one or more LHI topics on a community level. The overall purpose of the Challenge is to provide public health practitioners, business, elected officials, clinicians and the public with applications to help achieve national priority health goals.

DATES: Effective on October 31, 2011. Important dates include the following:

October 31, 2011: Announcement of the LHI App Challenge at the 139th Annual APHA Meeting.

March 16, 2012: Deadline for Submissions.

April 10, 2012: Winners will be announced during the 2012 Health Promotion Summit in Washington, DC.

ADDRESSES: Registration opens on challenge.gov and *http://www.health2challenge.org.*

FOR FURTHER INFORMATION CONTACT: Silje Lier, MPH, Communication and eHealth Service Fellow, Office of Disease Prevention and Health Promotion, *Silje.Lier@hhs.gov,* 240–453–6113.

SUPPLEMENTARY INFORMATION:

Subject of Challenge Competition: Leading Health Indicators App Challenge.

Eligibility Rules for Participating in the Competition:

To be eligible to win a prize under this challenge, an individual or entity—

(1) Shall have registered to participate in the competition under the rules promulgated by HHS;

(2) Shall have complied with all the requirements under this section;

(3) In the case of a private entity, shall be incorporated in and maintain a primary place of business in the United States, and in the case of an individual, whether participating singly or in a group, shall be a citizen or permanent resident of the United States; and

(4) May not be a Federal entity or Federal employee acting within the scope of their employment.

(5) Shall not be an HHS employee working on their applications or submissions during assigned duty hours.

(6) Shall not be in the reporting chain of Dr. Howard Koh in the Office of the Assistant Secretary for Health.

(7) Federal grantees may not use Federal funds to develop COMPETES Act challenge applications unless consistent with the purpose of their grant award.

(8) Federal contractors may not use Federal funds from a contract to develop COMPETES Act challenge applications or to fund efforts in support of a COMPETES Act challenge submission.

An individual or entity shall not be deemed ineligible because the individual or entity used Federal facilities or consulted with Federal employees during a competition if the facilities and employees are made available to all individuals and entities participating in the competition on an equitable basis.

Challenge participants will be expected to sign a liability release as part of the contest registration process. The liability release will use the following language:

By participating in this competition, I agree to assume any and all risks and waive claims against the Federal Government and its related entities, except in the case of willful misconduct, for any injury, death, damage, or loss of property, revenue, or profits, whether direct, indirect, or consequential, arising from my participation in this prize contest, whether the injury, death, damage, or loss arises through negligence or otherwise.

Registration Process for Participants:

Participants can register for the Challenge by visiting *http://www.health2challenge.org* or *http://www.challenge.gov.* Registration will be open from October 31, 2011 to March 15, 2012.

Amount of the Prize:

Challenge winners will be provided monetary cash prizes, totaling $15,000. The first place winner will receive $10,000. The second place winner will receive $3,000. And the third place winner will receive $2,000. Winners will be invited to demonstrate their apps at the 2012 Health Promotion Summit in Washington, DC.

Basis Upon Which Winner Will be Selected:

Challenge submissions will be reviewed by a panel of judges with relevant expertise in health IT and in Healthy People 2020. Winners will be selected based on the following criteria:

(1) Easy Access and Navigation.

(2) Platform Neutrality.

(3) User Appeal.

(4) Innovative Design.

(5) Broad Applicability.

(6) Integration of Health Data.

(7) Evidence of Co-Design and Collaboration.

Judges will also award bonus points to submissions that align with Section 508 of the Rehabilitation Act of 1973, and ones that incorporate plain language and health literacy principles.

Award Approving Official: Carter Blakey, Acting Director, Office of Disease Prevention and Health Promotion.

Additional Information: The Healthy People Web site, *http://www.HealthyPeople.gov,* contains objectives, targets, and baseline data for all of the Healthy People 2020 topic areas. From *healthypeople.gov,* challenge participants will also be able to access the corresponding leading health indicators from the HHS Health Indicators Warehouse.

Dated: October 18, 2011.

Carter Blakey,

Acting Director, Office of Disease Prevention and Health Promotion.

[FR Doc. 2011–27681 Filed 10–25–11; 8:45 am]

BILLING CODE 4150–32–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Scientific Information Request on Phototherapy for Treatment of Chronic Plaque Psoriasis

AGENCY: Agency for Healthcare Research and Quality (AHRQ), HHS.

ACTION: Request for scientific information submissions.

SUMMARY: The Agency for Healthcare Research and Quality (AHRQ) is seeking scientific information submissions from manufacturers of Phototherapy medical devices for treatment of chronic plaque psoriasis. Scientific information is being solicited to inform our Comparative Effectiveness Review of Biologic and Nonbiologic Systemic Agents and Phototherapy for Treatment of Chronic Plaque Psoriasis, which is currently being conducted by the Evidence-based Practice Centers for the AHRQ Effective Health Care Program. Access to published and unpublished pertinent scientific information on this device will improve the quality of this comparative effectiveness review. AHRQ is requesting this scientific information and conducting this comparative effectiveness review pursuant to Section 1013 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, Public Law 108–173.

DATES: Submission Deadline on or before November 25, 2011.

ADDRESSES: *Online submissions: http://effectivehealthcare.AHRQ.gov/index.cfm/submit-scientific-information-packets/.* Please select the study for which you are submitting information from the list of current studies and complete the form to upload your documents.

E-mail submissions: ehcsrc@ohsu.edu (please do not send zipped files—they are automatically deleted for security reasons).

Print submissions: Robin Paynter, Oregon Health and Science University, Oregon Evidence-based Practice Center, 3181 SW. Sam Jackson Park Road, Mail Code: BICC, Portland, OR 97239–3098.

FOR FURTHER INFORMATION CONTACT: Robin Paynter, Research Librarian, *Telephone:* 503–494–0147 or E-mail: *ehcsrc@ohsu.edu.*

SUPPLEMENTARY INFORMATION: In accordance with Section 1013 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, Public Law 108–173, the Agency for Healthcare Research and Quality has commissioned the Effective Health Care (EHC) Program Evidence-based Practice Centers to complete a comparative effectiveness review of the evidence for Biologic and Nonbiologic Systemic Agents and Phototherapy for Treatment of Chronic Plaque Psoriasis.

The EHC Program is dedicated to identifying as many studies as possible that are relevant to the questions for each of its reviews. In order to do so, we are supplementing the usual manual and electronic database searches of the literature by systematically requesting information (*e.g.,* details of studies conducted) from medical device industry stakeholders through public information requests, including via the **Federal Register** and direct postal and/or online solicitations. We are looking

for studies that report on phototherapy for treatment of chronic plaque psoriasis, including those that describe adverse events, as specified in the key questions detailed below. The entire research protocol, including the key questions, is also available online at: *http://effectivehealthcare.AHRQ.gov/index.cfm/search-forouides-reviews-and-reports/?pageaction=displayproduct&productid=793.*

This notice is a request for industry stakeholders to submit the following:

- A current product label, if applicable (preferably an electronic PDF file).
- Information identifying published randomized controlled trials and observational studies relevant to the clinical outcomes. Please provide both a list of citations and reprints if possible.
- Information identifying unpublished randomized controlled trials and observational studies relevant to the clinical outcomes. If possible, please provide a summary that includes the following elements: study number, study period, design, methodology, indication and diagnosis, proper use instructions, inclusion and exclusion criteria, primary and secondary outcomes, baseline characteristics, number of patients screened/eligible/enrolled/lost to withdrawn/followup/analyzed, and effectiveness/efficacy and safety results.
- *Registered ClinicalTrials.gov* studies. Please provide a list including the *ClinicalTrials.gov* identifier, condition, and intervention.

Your contribution is very beneficial to this program. AHRQ is not requesting and will not consider marketing material, health economics information, or information on other indications. This is a voluntary request for information, and all costs for complying with this request must be borne by the submitter. In addition to your scientific information please submit an index document outlining the relevant information in each file along with a statement regarding whether or not the submission comprises all of the complete information available.

Please Note: The contents of all submissions, regardless of format, will be available to the public upon request unless prohibited by law.

The draft of this review will be posted on AHRQ's EHC program Web site and available for public comment for a period of 4 weeks. If you would like to be notified when the draft is posted, please sign up for the e-mail list at: *http://effectivehealthcare.AHRQ.gov/index.cfm/join-the-email-list1/.*

Key Questions

Proposed Key Questions (KQs) were posted for public comments and were modified with consideration of the comments received. Since controversy surrounds the classification of psoriasis as mild or moderate-to-severe, moderate-to-severe disease was not included as an explicit inclusion criterion in the systematic search of the literature or in the comparative effectiveness review. As suggested in the public comments, we will consider when evaluating efficacy data whether patients were naïve to biologics, were treated previously with biologics, or were allowed drug holidays. Although a suggestion was made to evaluate combination therapy and to compare harms in patients without psoriasis or untreated controls with psoriasis, such an evaluation falls outside the scope of our review. We have now specified the measures that will be used for health-related quality of life in KQ.

1. The Psoriasis Area and Severity Index (PAST) score will be considered not only as a binary outcome but as a continuous outcome as suggested. Although we had proposed the Psoriasis Scalp Severity Index (PSSI) and the Nail Psoriasis Severity Index (NAPSI) scores as outcomes, patient-reported improvement in scalp pruritus and scalp pain were suggested as additional outcomes in KQ 1; scalp pruritus and scalp pain are not as commonly reported in the literature and are less likely to add extra value over the body-wide assessments. We have not listed specific malignancies (hepatosplenic T-cell lymphoma and other lymphomas) and infections (tuberculosis and histoplasmosis) in KQ 2 as suggested to be more comprehensive. Weight and impact of neutralizing antibodies have been added as characteristics that will be evaluated in KQ 3. We did not move major adverse cardiovascular events (MACE) from final health outcomes to harms, because this is an outcome of the disease process rather than of therapeutic interventions. Subgroup analyses based on duration of followup were discussed with the Technical Expert Panelists (TEP).

The acronyms used in the questions below are defined within the text and the list under Definitions of Terms.

Question 1

In patients with chronic plaque psoriasis, what is the comparative effectiveness of systemic biologic agents and systemic nonbiologic agents (between-class comparisons) or phototherapy when evaluating intermediate (plaque BSA measurement, PAST score, Patient's Assessment of Global Improvement, PGA, and individual symptom improvement) and final health outcomes (mortality, HRQoL [*e.g.,* DLQI, HAQ–DI, EQ–5D] and other patient-reported outcomes, MACE, diabetes, and psychological comorbidities [*e.g.,* depression, suicide])?

Question 2

In patients with chronic plaque psoriasis, what is the comparative safety of systemic biologic agents and systemic nonbiologic agents (between-class comparisons) or phototherapy (hepatotoxicity [*e.g.,* AST, ALT], nephrotoxicity [*e.g.,* SCr, GFR], hematologic toxicity [*e.g.,* TCP, anemia, neutropenia], hypertension, alteration in metabolic parameters [*e.g.,* glucose, lipids, weight, BMI, thyroid function], injection site reaction, malignancy, infection, and study withdrawal)?

Question 3

In patients with chronic plaque psoriasis treated with systemic biologic therapy, systemic nonbiologic therapy, or phototherapy, which patient or disease characteristics (*e.g.,* age, gender, race, weight, smoking status, psoriasis severity, presence or absence of concomitant psoriatic arthritis, disease duration, baseline disease severity, affected BSA, disease location, number and type of previous treatments, failure of previous treatments and presence of neutralizing antibodies) affect intermediate and final outcomes?

Details regarding the specific therapies considered in each class of interventions and comparators can be found in Tables 1–5. There are no specific requirements in terms of followup period that will be evaluated in these key questions. The setting will include inpatient, outpatient and home therapy.

Dated: October 14, 2011.

Carolyn M. Clancy,

Director, AHRQ.

[FR Doc. 2011–27563 Filed 10–25–11; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Statement of Organization, Functions, and Delegations of Authority

Part C (Centers for Disease Control and Prevention) of the Statement of Organization, Functions, and Delegations of Authority of the

Department of Health and Human Services (45 FR 67772–76, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 76 FR 50223—50224, dated August 12, 2011) is amended to reflect the reorganization of the Office of Public Health Preparedness and Response, Centers for Disease Control and Prevention.

Section C–B, Organization and Functions, is hereby amended as follows:

After item (7) in the functional statement for the Office of Public Health Preparedness and Response (CG), Division of Strategic National Stockpile (CGE), Office of the Director (CGE1), insert the following: And (8) provides leadership, guidance, and technical assistance to state, tribal and local territories for healthcare preparedness and emergency response and for the integration of preparedness planning across the public health, healthcare, and emergency management sectors.

Dated: October 14, 2011.

Sherri A. Berger,

Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2011–27497 Filed 10–25–11; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[CMS–3180–N2]

Food and Drug Administration

[Docket No. FDA–2010–N–0308]

Pilot Program for Parallel Review of Medical Products; Correction

AGENCY: Food and Drug Administration, Centers for Medicare and Medicaid Services, HHS.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration (FDA) and the Centers for Medicare and Medicaid Services (CMS) are correcting a notice that appeared in the **Federal Register** of October 11, 2011 (76 FR 62808). The document announced a pilot program for sponsors of innovative device technologies to participate in a program of parallel FDA–CMS review. The document was published with an incorrect Web page address and an incorrect email address. This document corrects those errors.

FOR FURTHER INFORMATION CONTACT: Jean Olson, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, rm. 4434, Silver Spring, MD 20993–0002, 301–796–6579.

SUPPLEMENTARY INFORMATION: In FR Doc. 2011–25907, appearing on page 62808 in the **Federal Register** of Tuesday, October 11, 2011, the following corrections are made:

1. On page 62808, in the third column, under the heading ''A. *Parallel Review Proposal,*'' the Web site address ''*http://www.parallel-review.fda.gov*'' is corrected to read ''*http://www.fda.gov/parallel-review*''.

2. On page 62809, in the second column, under the heading ''B. *Appropriate Candidates,*'' the e-mail address ''*parallel-review@fda.gov*'' is corrected to read ''*parallel-review@fda.hhs.gov*''.

3. On page 62809, in the third column, under the heading ''1. *Nomination,*'' the Web site address ''*http://www.parallel-review.fda.gov*'' is corrected to read ''*http://www.fda.gov/parallel-review*''.

Dated: October 17, 2011.

Jacquelyn Y. White,

Director, Office of Strategic Operations and Regulatory Affairs. Centers for Medicare & Medicaid Services.

Dated: October 19, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy, Food and Drug Administration.

[FR Doc. 2011–27694 Filed 10–25–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Title: Affordable Care Act Tribal Maternal, Infant and Early Childhood Home Visiting Program Annual Report.

OMB No.: New.

Description

Section 511(h)(2)(A) of Title V of the Social Security Act, as added by Section 2951 of the Patient Protection and Affordable Care Act of 2010 (Pub. L. 111–148, Affordable Care Act or ACA), authorizes the Secretary of HHS to award grants to Indian Tribes (or a consortium of Indian Tribes), Tribal Organizations, or Urban Indian Organizations to conduct an early childhood home visiting program.

The legislation sets aside 3 percent of the total ACA Maternal, Infant, and Early Childhood Home Visiting Program appropriation (authorized in Section 511(j)) for grants to Tribal entities and requires that the Tribal grants, to the greatest extent practicable, be consistent with the requirements of the Maternal, Infant, and Early Childhood Home Visiting Program grants to States and territories (authorized in Section 511(c)), and include (1) Conducting a needs assessment similar to the assessment required for all States under the legislation and (2) establishing quantifiable, measurable 3- and 5-year benchmarks consistent with the legislation.

The Administration for Children and Families, Office of Child Care, in collaboration with the Health Resources and Services Administration, Maternal and Child Health Bureau, has awarded grants for the Tribal Maternal, Infant, and Early Childhood Home Visiting Program (Tribal Home Visiting). The Tribal Home Visiting grant awards support 5-year cooperative agreements to conduct community needs assessments, plan for and implement (in accordance with an Implementation Plan submitted at the end of Year 1) high-quality, culturally-relevant, evidence-based and promising home visiting programs in at-risk Tribal communities, and participate in research and evaluation activities to build the knowledge base on home visiting among Native populations.

In the Affordable Care Act Tribal Maternal, Infant, and Early Childhood Home Visiting Program Needs Assessment and Plan for Responding to Identified Needs (''Implementation Plan Guidance'') (OMB Control No. 0970–0389, Expiration Date 6/30/14), grantees were notified that in Years 2–5 of their grant they must comply with the requirement for submission of an Annual Report to the Secretary regarding the program and activities carried out under the program.

This Report Shall Address the Following

Home Visiting Program Goals and Objectives.

Implementation of Home Visiting Program in Targeted Community(ies).

Progress toward Meeting Legislatively Mandated Benchmark Requirements.

Research and Evaluation Update.

Home Visiting Program Continuous Quality Improvement (CQI) Efforts.

Administration of Home Visiting Program.

Technical Assistance Needs.

Respondents

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Tribal Home Visiting Program Annual Report	25	1	50	1,250
Estimated Total Annual Burden Hours				1,250

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, *Attn:* ACF Reports Clearance Officer. *E-mail address: infocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2011–27611 Filed 10–25–11; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Annual Report/ACF 204 (State MOE).

OMB No.: 0970–0248.

Description

The Administration for Children and Families (ACF) is requesting a three-year extension of the ACF–204 (Annual MOE Report). The report is used to collect descriptive program characteristics information on the programs operated by States and Territories in association with their Temporary Assistance for Needy Families (TANF) programs. All State and Territory expenditures claimed toward States and Territories MOE requirements must be appropriate, i.e., meet all applicable MOE requirements. The Annual MOE Report provides the ability to learn about and to monitor the nature of State and Territory expenditures used to meet States and Territories MOE requirements, and it is an important source of information about the different ways that States and Territories are using their resources to help families attain and maintain self-sufficiency. In addition, the report is used to obtain State and Territory program characteristics for ACFs annual report to Congress, and the report serves as a useful resource to use in Congressional hearings about how TANF programs are evolving, in assessing State the Territory MOE expenditures, and in assessing the need for legislative changes.

Respondents

The 50 States of the United States, the District of Columbia, Guam, Puerto Rico, and the Virgin Islands.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
ACF–204	54	1	118	6,372

Estimated Total Annual Burden Hours: 6,372.

Additional Information

Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 370 L'Enfant Promenade, SW., Washington, DC 20447, *Attn:* ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. *E-mail address: infocollection@acf.hhs.gov.*

OMB Comment

OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, *Fax:* 202–395–7285, *E-mail: OIRA_SUBMISSION@OMB.EOP.GOV, Attn:* Desk Officer for the Administration for Children and Families.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2011–27602 Filed 10–25–11; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0724]

Draft Documents To Support Submission of an Electronic Common Technical Document; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; request for comments.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the following draft versions of documents that support making regulatory submissions in electronic format using the electronic Common Technical Document (eCTD) specifications entitled ''The eCTD Backbone Files Specification for Module 1, version 2.0'' (which includes the U.S. regional document type definition, version 3.0) and ''Comprehensive Table of Contents Headings and Hierarchy, version 2.0.'' Supporting technical files are also being made available on the Agency Web site. These draft documents represent FDA's major updates to Module 1 of the eCTD, which contains regional information.

DATES: Submit either electronic or written comments on the draft documents by December 27, 2011.

ADDRESSES: Submit written requests for single copies of the documents to the Division of Drug Information, Center for Drug Evaluation and Research (CDER), Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 2201, Silver Spring, MD 20993–0002; or Office of Communication, Outreach and Development (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the documents.

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

FOR FURTHER INFORMATION CONTACT: Virginia Hussong, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, rm. 1161, Silver Spring, MD 20993, *Esub@fda.hhs.gov;* or Mary Padgett, Center for Biologics Evaluation and Research (HFM–25), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852, 301–827–0373, *mary.padgett@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The eCTD is an International Conference on Harmonisation (ICH) standard based on specifications developed by ICH and its member parties. CDERCBER have been receiving submissions in the eCTD format since 2003, and the eCTD has been the standard for electronic submissions to CDER and CBER since January 1, 2008. The majority of new electronic submissions are now received in eCTD format. Since adoption of the eCTD standard, it has become necessary to update the administrative portion of the eCTD (Module 1) to reflect regulatory changes, to provide clarification of business rules for submission processing and review, to refine the characterization of promotional marketing and advertising material, and to facilitate automated processing of submissions. In preparation for the Module 1 update, FDA is making available for comment the following draft documents:

- ''The eCTD Backbone Files Specification for Module 1, version 2.0'' provides specifications for creating the eCTD backbone file for Module 1 for submission to CDER and CBER. It should be used in conjunction with the guidance for industry entitled ''Providing Regulatory Submissions in Electronic Format—Human Pharmaceutical Applications and Related Submissions,'' which will be revised as part of the implementation of the updated eCTD backbone files specification.
- ''The Comprehensive Table of Contents Headings and Hierarchy, version 2.0'' reflects updated headings that are specified in the draft document entitled ''The eCTD Backbone Files Specification for Module 1, version 2.0,'' as well as mappings to regulations and legislation.

Supporting technical files are also being made available on the Agency Web site.

The draft documents include the following changes:

- Providing for processing of bundled submissions (*e.g.,* a supplement can be applied to more than one new drug application or biologics license application),
- Providing detailed contact information so that companies can specify points of contacts to discuss technical matters that may arise with a submission,
- Clarifying headings, and
- Using attributes in place of certain headings to provide flexibility for future changes without revising the specification itself.

The draft documents contain complete lists of the changes to Module 1.

II. Comments

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

III. Electronic Access

Persons with access to the Internet may obtain the documents at either *http://www.fda.gov/Drugs/DevelopmentApprovalProcess/FormsSubmissionRequirements/ElectronicSubmissions/ucm253101.htm, http://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/Guidances/default.htm,* or *http://www.regulations.gov*.

Dated: October 21, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–27658 Filed 10–25–11; 8:45 am]

BILLING CODE 4160–01–P

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Notice of ACHP Quarterly Business Meeting

AGENCY: Advisory Council on Historic Preservation.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Advisory Council on Historic Preservation (ACHP) will meet Thursday, November 10, 2011. The meeting will be held at 8:30 a.m. in Room M09 in the Old Post Office Building, 1100 Pennsylvania Ave., NW., Washington, DC 20004.

The ACHP was established by the National Historic Preservation Act of 1966 (16 U.S.C. 470 *et seq.*) to advise the President and Congress on national historic preservation policy and to comment upon federal, federally assisted, and federally licensed undertakings having an effect upon properties listed in or eligible for

inclusion in the National Register of Historic Places. The ACHP's members are the Architect of the Capitol; the Secretaries of the Interior, Agriculture, Defense, Housing and Urban Development, Commerce, Education, Veterans Affairs, and Transportation; the Administrator of the General Services Administration; the Chairman of the National Trust for Historic Preservation; the President of the National Conference of State Historic Preservation Officers; a Governor; a Mayor; a Native American; and eight non-federal members appointed by the President.

Call to Order_8:30 a.m.
I. Chairman's Welcome
II. Presentation of Chairman's Award
III. Chairman's Report
IV. ACHP Management Issues
- A. Credentials Committee Report and Recommendations—Update
- B. Alumni Foundation Report
- C. ACHP FY 2012 Budget

V. Historic Preservation Policy and Programs
- A. Preservation Action Federal Preservation Task Force Report and Recommendations
- B. National Park Service ''Call to Action''
- C. National Trust for Historic Preservation's ''Preservation 10X'' and the ACHP
- D. White House American Latino Heritage Initiative
- E. Legislative Agenda
- F. Navy War of 1812 Initiative
- G. Rightsizing Task Force Report
- H. Sustainability Task Force Report
- I. Federal Preservation Funding for Disaster Recovery

VI. Section 106 Issues
- A. Section 3 Report Development
- B. Native American Traditional Cultural Landscapes Action Plan
- C. Department of Veterans Affairs Section 106 Issues
- D. Administration's Priority Projects—Report

VII. New Business
VIII. Adjourn

Note: The meetings of the ACHP are open to the public. If you need special accommodations due to a disability, please contact the Advisory Council on Historic Preservation, 1100 Pennsylvania Avenue, NW., Room 803, Washington, DC, (202) 606–8503, at least seven (7) days prior to the meeting. For further information: Additional information concerning the meeting is available from the Executive Director, Advisory Council on Historic Preservation, 1100 Pennsylvania Avenue, NW., #803, Washington, DC 20004.

Dated: October 19, 2011.

Reid Nelson,

Acting Executive Director.

[FR Doc. 2011–27533 Filed 10–25–11; 8:45 am]

BILLING CODE 4310–K6–M

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2011–0079]

Agency Information Collection Activities: Submission for Review; Information Collection Request for the Department of Homeland Security (DHS), Science and Technology, Biodefense Knowledge Center (BKC)

AGENCY: Science and Technology Directorate, DHS.

ACTION: 30-day Notice and request for comment.

SUMMARY: The Department of Homeland Security (DHS), Science & Technology (S&T) Directorate invites the general public to comment on data collection forms for the Biodefense Knowledge Center (BKC) program. BKC is responsible for coordinating the collection of Life Sciences Subject Matter Experts (SMEs) information with the Office of the Director of National Intelligence (ODNI), which operates under the authority of the National Security act of 1947, as amended by the Intelligence Reform and Terrorism Prevention Act of 2004. These authorities charge the ODNI with responsibility to coordinate and rationalize the activities of the Intelligence Community components. The SME information is necessary to understand who can provide scientific expertise for peer review of life science programs. In addition, the directory makes it easier to identify scientific specialty areas for which there is a shortage of Subject Matter Experts (SMEs) with appropriate security clearances.

The DHS invites interested persons to comment on the following form and instructions (hereinafter ''Forms Package'') for the S&T BKC: (1) Subject Matter Expert Registration Form (DHS FORM 10043 (2/08)). Interested persons may receive a copy of the Forms Package by contacting the DHS S&T PRA Coordinator. This notice and request for comments is required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35).

DATES: Comments are encouraged and will be accepted until November 25, 2011.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to: Desk Officer for the Department of Homeland Security, Science and Technology Directorate, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974. Please include docket number DHS–2011–0079 in the subject line of the message.

FOR FURTHER INFORMATION CONTACT: DHS S&T PRA Coordinator Millie Ives (202) 254–6828 (Not a toll free number).

SUPPLEMENTARY INFORMATION: The information is collected via the DHS S&T BKC secure Web site at *https://bkms.llnl.gov/sme.* The BKC Web site only employs secure web-based technology (*i.e.,* electronic registration form) to collect information from users to both reduce the burden and increase the efficiency of this collection.

The Department is committed to improving its information collection and urges all interested parties to suggest how these materials can further reduce burden while seeking necessary information under the Act.

DHS is particularly interested in comments that:

(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) Suggest ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Suggest ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Renewal of information collection

(2) *Title of the Form/Collection:* Science and Technology, Biodefense Knowledge Center (BKC) program.

(3) *Agency Form Number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Department of Homeland Security, Science &

Technology Directorate—(1) Subject Matter Expert Registration Form (DHS FORM 10043 (2/08)).

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* The Subject Matter Experts (SME) information is necessary to understand who can provide scientific expertise for peer review of life science programs. The directory makes it easier to identify scientific specialty areas for which there is a shortage of SMEs with appropriate security clearances. SME contact information, scientific expertise, and level of education is collected electronically through a web portal developed by DHS S&T. The SME information is shared with U.S. Government program managers and other members of the biodefense community who have a legitimate need to identify life sciences SMEs. Cleared SMEs are necessary to accomplish scientific reviews and attend topical meetings.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:*

a. *Estimate of the total number of respondents:* 4000.

b. *An estimate of the time for an average respondent to respond:* 0.25 burden hours.

c. *An estimate of the total public burden (in hours) associated with the collection:* 1000 burden hours.

Dated: October 19, 2011.

Tara O'Toole,

Under Secretary for Science and Technology.

[FR Doc. 2011–27636 Filed 10–25–11; 8:45 am]

BILLING CODE 9110–9F–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2011–0975]

National Maritime Security Advisory Committee; Meeting

AGENCY: Coast Guard, DHS.

ACTION: Notice of Federal Advisory Committee Meeting.

SUMMARY: The National Maritime Security Advisory Committee (NMSAC) will meet via teleconference on November 15, 2011 to discuss the results of a working group tasked with reviewing the Draft Certain Dangerous Cargo (CDC) Security Strategy. This meeting will be open to the public.

DATES: The Committee will meet on Tuesday, November 15, 2011 from 11 a.m. to 1 p.m. This meeting may close early if all business is finished.

All written material and requests to make oral presentations should reach the Coast Guard on or before November 7, 2011.

ADDRESSES: The Committee will meet via telephone conference, on November 15, 2011. As there are only 100 teleconference lines, public participation will be on a first come basis. To participate via teleconference, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** Section.

For information on facilities or services for individuals with disabilities or to request special assistance at the teleconference, contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section as soon as possible.

To facilitate public participation, we are inviting public comment on the issues to be considered by the committee as listed in the ''Agenda'' section below. You may submit written materials and requests to make oral presentations no later than November 7, 2011, and identified by docket number [USCG–2011–0975] using one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instruction for submitting comments.
- *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001. We encourage use of electronic submissions because security screening may delay delivery of mail.
- *Fax:* (202) 493–2251.
- *Hand Delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays. The telephone number is 202–366–9329.

Instructions: All submissions received must include the words ''Department of Homeland Security'' and docket number [USCG–2011–0975]. All submissions received will be posted without alteration at *http://www.regulations.gov*, including any personal information provided. You may review a Privacy Act notice regarding our public dockets in the January 17, 2008 issue of the **Federal Register** (73 FR 3316).

Docket: Any background information or presentations available prior to the meeting will be published in the docket. For access to the docket to read background documents or submissions received by the NMSAC, go to *http://www.regulations.gov* ''USCG–2011–0975) in the ''Keyword'' box, and then click ''Search''.

Public comment period will be held during the meeting on November 15, 2011 from 12:30 p.m. to 1 p.m. Speakers are requested to limit their comments to 2 minutes. Please note that the public comment period will end following the last call for comments. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to register as a speaker.

FOR FURTHER INFORMATION CONTACT: Mr. Ryan Owens, Alternate Designated Federal Officer (ADFO) of NMSAC, 2100 2nd Street, SW., Stop 7581, Washington, DC 20593–7581; telephone 202–372–1108 or e-mail *ryan.f.owens@uscg.mil*. If you have any questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. NMSAC operates under the authority of 46 U.S.C. 70112. NMSAC provides advice, consults with, and makes recommendations to the Secretary of Homeland Security, via the Commandant of the Coast Guard, on matters affecting national maritime security.

Agenda of Meeting

As a result of the report issued by NMSAC at its April 2011 meeting and public listening sessions held by the Coast Guard in August 2011, the Coast Guard has developed a Certain Dangerous Cargo (CDC) Security Strategy. A NMSAC working group was created to review the following five goals of the strategy. The committee will review the information presented on each issue, deliberate on any recommendations presented in the Work Group reports, and formulate the recommendations for the Department's consideration.

a. Provide to internal and external stakeholders real-time national, regional, and local awareness of the risk of intentional attacks on the CDC Marine Transportation System.

b. Consistently assess vulnerability to threats of intentional attacks on the CDC Marine Transportation System and mitigate the vulnerability to an acceptable level.

c. Dynamically assess the potential consequences of an intentional attack on the CDC Marine Transportation System and capably mitigate, through coordinated response, the impact of a successful attack.

d. Lead the development of national, regional, and local resiliency/recovery capability from successful attacks on the CDC Marine Transportation System.

e. Establish the internal organization and processes, and external stakeholder

relationships, to manage the national maritime CDC security program to an acceptable risk level.

Dated: October 20, 2011.

K.C. Kiefer,

Captain, U.S. Coast Guard, Office of Port and Facility Activities, Designated Federal Official, NMSAC.

[FR Doc. 2011–27724 Filed 10–25–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2011–0724]

RIN 1625–1148

Lower Mississippi River Waterway Safety Advisory Committee

AGENCY: Coast Guard, DHS.

ACTION: Notice of Federal Advisory Committee Meeting.

SUMMARY: The Lower Mississippi River Waterway Safety Advisory Committee (LMRWSAC) will hold its bi-annual meeting on December 6, 2011, in New Orleans, Louisiana. The meeting will be open to the public.

DATES: LMRWSAC will meet on Tuesday, December 6, 2011, from 9 a.m. to 12 p.m. Please note that the meeting may close early if the committee has completed its business. Written materials and requests to make oral presentation should reach the Coast Guard on or before November 21, 2011.

ADDRESSES: The meeting will be held at the U.S. Coast Guard Sector New Orleans Building, 200 Hendee Street, New Orleans, Louisiana 70114, First Floor, Training Room A.

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact LCDR Marcie Kohn as soon as possible.

To facilitate public participation, we are inviting public comment on the issues to be considered by the committee as listed by the ''Agenda'' section below. Comments must be submitted in writing no later than November 21, 2011 and must be identified by USCG–2011–0724 and may be submitted by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments (preferred method to avoid delays in processing).
- *Fax:* 202–493–2251.
- *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.
- *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays. The telephone number is 202–366–9329.

Instructions: All submissions received must include the words ''Department of Homeland Security'' and the docket number for this action. Comments received will be posted without alteration at *http://www.regulations.gov,* including any personal information provided. You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Docket: For access to the docket to read background documents or comments related to this notice, go to *http://www.regulations.gov*, enter the docket number for this notice (USCG–2011–0724) in the ''Keyword'' box, and then click ''Search.''

A public comment period will be held at the end of the meeting on December 6, 2011 from 9 a.m until 12 p.m. Speakers are requested to limit their comments to 10 minutes. Please note that the public comment period may end before the time indicated, following the last call for comments.

Contact the individual listed below to register as a speaker.

FOR FURTHER INFORMATION CONTACT: Lieutenant Marcie Kohn, Assistant Designated Federal Officer of the Lower Mississippi River Waterway Safety Advisory Committee, telephone 504–365–2281 or e-mail at *Marcie.L.Kohn@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the *Federal Advisory Committee Act (FACA),* 5 U.S.C. App. (Pub. L. 92–463). The LMRWSAC is an advisory committee authorized in Section 19 of the Coast Guard Authorization Act of 1991, (Pub. L. 102–241) as amended by section 621 of the Coast Guard Authorization Act of 2010 (Pub. L. 111–281) and chartered under the provisions of FACA. LMRWSAC provides advice and recommendations to the Department of Homeland Security on matters relating to communications, surveillance, traffic management, anchorages, development and operation of New Orleans Vessel Traffic Service (VTS), and other related topics dealing with navigation safety on the Lower Mississippi River (LMR) as required by the U.S. Coast Guard.

Agenda

(1) Opening comments by Chairman;
(2) Introduction of committee members and distinguished guests;
(3) Approval of the March 24th, 2011 meeting minutes;
(4) Remarks from Coast Guard Captain of the Port, Captain Peter Gautier, Commander, Sector New Orleans, Designated Federal Officer (DFO) of LMRWSAC;
(5) Remarks from Rear Admiral R. A. Nash, Commander 8th Coast Guard District;
(6) Committee Administration issues to include nomination and selection of Vice-Chairman;
(7) Baton Rouge LA Vessel Traffic Operations report;
(8) Discussion on possible establishment of Belmont Anchorage;
(9) U.S. Army Corps of Engineers report on Dredging Operations;
(10) National Oceanic and Administration report;
(11) Public Comments/Presentations;
(12) Adjournment.

Reports and Meeting Minutes: The reports which will be discussed by the Committee and minutes of the meeting may be viewed in our online docket. Go to *http://www.regulations.gov,* enter the docket number for this notice (USCG–2011–0724) in the ''Keyword'' box, and then click ''Search.''

Dated: October 12, 2011.

P. Troedsson,

Captain, U.S. Coast Guard, Acting Commander, Eighth Coast Guard District.

[FR Doc. 2011–27643 Filed 10–25–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5480–N–104]

Notice of Submission of Proposed Information Collection to OMB Requirements for Single Family Mortgage Instruments

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.

This information is used to verify that a mortgage has been properly recorded

and is eligible for FHA mortgage insurance.

DATES: Comments Due Date: November 25, 2011.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2502–0404) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; e-mail *OIRA-Submission@omb.eop.gov;* fax: 202–395–5806.

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Colette Pollard at *Colette.Pollard@hud.gov;* or telephone (202) 402–3400. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

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: Requirements For Single Family Mortgage Instruments.

OMB Approval Number: 2502–0404.

Form Numbers: None.

Description of the Need for the Information and Its Proposed Use

This information is used to verify that a mortgage has been properly recorded and is eligible for FHA mortgage insurance.

Frequency of Submission: On Occasion.

	Number of respondents	Annual response	×	Hours per response	=	Burden hours
Reporting Burden	9,000	1		0.5		4,500

Total Estimated Burden Hours: 4,500.

Status: Revision of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: October 20, 2011.

Colette Pollard,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2011–27667 Filed 10–25–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5487–N–18]

Notice of Proposed Information Collection for Public Comment for the Family Unification Program (FUP)

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, as amended). The Department is soliciting public comments on the subject proposal.

DATES: Comments Due Date: December 27, 2011.

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: Colette Pollard, Departmental Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street, SW. Room 4178, Washington, DC 20410–5000; telephone 202–402–3400, (this is not a toll free number) or e-mail Ms. Pollard at *Colette.Pollard@hud.gov* for a information on the data collected. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339. (Other than the HUD USER information line and TTY numbers, telephone numbers are not toll-free.)

FOR FURTHER INFORMATION CONTACT: Arlette A. Mussington, Office of Policy, Programs and Legislative Initiatives, PIH, Department of Housing and Urban Development, 470 L'Enfant Plaza, SW., Suite 2206, Washington, DC 20024, telephone 202–402–4109, (this is not a toll-free number) or e-mail at *Arlette.A.Mussington@hud.gov.*

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, as amended).

This notice 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 submissions of responses.

This Notice also lists the following information:

Title of Proposal: Family Unification Program (FUP).

OMB Control Number: 2577–0259.

Description of the Need for the Information and Proposed Use: The Family Unification Program (FUP) is a program, authorized under section 8(x) of the United States Housing Act of 1937 {42 U.S.C. 1437(X)}, that provides housing choice vouchers to PHAs to assist families for whom the lack of adequate housing is a primary factor in the imminent placement of the family's child, or children, in out-of-home care; or the delay in the discharge of the child, or children, to the family from

out-of-home care. Youths at least 18 years old and not more than 21 years old (have not reached 22nd birthday) who left foster care at age 16 or older and who do not have adequate housing are also eligible to receive housing assistance under the FUP. As required by statute, a FUP voucher issued to such a youth may only be used to provide housing assistance for the youth for a maximum of 18 months.

Vouchers awarded under FUP are administered by PHAs under HUD's regulations for the Housing Choice Voucher program (24 CFR Part 982).

Agency form numbers: HUD–52515 (OMB Approval #2577–0169), HUD 50058 (OMB approval #2577–0083), HUD–2993 (OMB Approval #2577–0259), HUD–96010 (OMB Approval #2535–0114), HUD 96011 (OMB approval #2535–0118), HUD–2990, HUD–2991 (OMB Approval #2506–0112) and HUD 2880 (OMB Approval #2510–0011), SF–424 (OMB Approval #0348–0043), SF LLL (OMB Approval #0348–0043).

Members of the Affected Public: Public Housing Agencies.

Estimation of the total number of hours needed to prepare the information collection including number of respondents: The total burden for data collection is estimated at 6,188.45 hours. It is anticipated that approximately 265 PHAs will apply for FUP vouchers each year the program is funded. The estimate of the total annual cost burden to respondents/record keepers resulting from the collection of this information is: 6,188.45 burden hours × $34.34 = $212,511.37; assuming a Manager's hourly rate at the GS–13/Step 1 level.

* Burden hours for forms showing zero burden hours in this collection are reflected in the OMB approval number cited or do not have a reportable burden. The burden hours for this collection is 6,188.45.

Status of the Proposed Information Collection: Revision of a currently approved collection.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35, as amended.

Dated: October 18, 2011.

Merrie Nichols-Dixon,

Deputy Director for Office of Policy, Program and Legislative Initiatives.

[FR Doc. 2011–27683 Filed 10–25–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5480–N–106]

Notice of Submission of Proposed Information Collection to OMB, Multifamily Insurance Benefits Claims Package

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.

When the terms of a Multifamily contract are breached or when a mortgagee meets conditions stated within the Multifamily contract for an automatic assignment, the holder of the mortgage may file for insurance benefits. To receive these benefits, the mortgagee must prepare and submit to HUD the Multifamily Insurance Benefits Claims Package. HUD uses the information collection to determine the insurance benefits owed to the mortgagee.

DATES: Comments Due Date: November 25, 2011.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2502–0418) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; e-mail *OIRA-Submission@omb.eop.gov* fax: 202–395–5806.

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Colette Pollard at *Colette.Pollard@hud.gov;* or telephone (202) 402–3400. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

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: Multifamily Insurance Benefits Claims Package.

OMB Approval Number: 2502–0418.

Form Numbers: HUD–2741, HUD–2742, HUD–2744–A, HUD–2744–B, HUD–2744–C, HUD–2744–D, HUD–2744–E, HUD–434, HUD–1044–D.

Description of the Need for the Information and Its Proposed Use

When the terms of a Multifamily contract are breached or when a mortgagee meets conditions stated within the Multifamily contract for an automatic assignment, the holder of the mortgage may file for insurance benefits. To receive these benefits, the mortgagee must prepare and submit to HUD the Multifamily Insurance Benefits Claims Package. HUD uses the information collection to determine the insurance benefits owed to the mortgagee.

Frequency of Submission: On Occasion.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	150	9		0.471		637

Total Estimated Burden Hours: 637.

Status: Revision of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: October 20, 2011.

Colette Pollard,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2011–27662 Filed 10–25–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5480–N–105]

Notice of Submission of Proposed Information Collection to OMB Energy Efficient Mortgages

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.

Lenders provide information required to determine the eligibility of a mortgage to be insured under Section 513 of the Housing and Community Development Act of 1992 (Section 106 of the Energy Policy Act of 1992).

DATES: *Comments Due Date:* November 25, 2011.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2502–0561) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; e-mail *OIRA-Submission@omb.eop.gov;* fax: 202–395–5806.

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Colette Pollard at *Colette.Pollard@hud.gov;* or telephone (202) 402–3400. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

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: Energy Efficient Mortgages.

OMB Approval Number: 2502–0561.

Form Numbers: None.

Description of the Need for the Information and Its Proposed Use

Lenders provide information required to determine the eligibility of a mortgage to be insured under Section 513 of the Housing and Community Development Act of 1992 (Section 106 of the Energy Policy Act of 1992).

Frequency of Submission: On Occasion.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	1,066	3.5		1.133		4,229

Total Estimated Burden Hours: 4,229.

Status: Revision of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: October 20, 2011.

Colette Pollard,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2011–27664 Filed 10–25–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5480–N–107]

Notice of Submission of Proposed Information Collection to OMB; Management Reviews of Multifamily Housing Programs

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.

HUD staff and Contract Administrators complete the form HUD–9834 during on-site reviews. The information gathered from the form is used to evaluate the quality of management, determine causes of problems, and devise corrective actions to safeguard the Department's financial interest and ensure that tenants are provided with decent, safe, and sanitary housing.

DATES: *Comments Due Date:* November 25, 2011.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2502–0178) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; e-mail *OIRA–Submission@omb.eop.gov fax:* 202–395–5806.

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Colette Pollard at *Colette.Pollard@hud.gov;* or telephone (202) 402–3400. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

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: Management Reviews of Multifamily Housing Programs.

OMB Approval Number: 2502–0178.

Form Numbers: HUD 9834.

Description of the Need for the Information and its Proposed Use

HUD staff and Contract Administrators complete the form HUD–9834 during on-site reviews. The information gathered from the form is used to evaluate the quality of management, determine causes of problems, and devise corrective actions to safeguard the Department's financial interest and ensure that tenants are provided with decent, safe, and sanitary housing.

Frequency Of Submission: On Occasion.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	25,649	1		6.956		178,423

Total Estimated Burden Hours: 178,423.

Status: Revision of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: October 20, 2011.

Colette Pollard,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2011–27660 Filed 10–25–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5415–FA–41]

Announcement of Funding Awards; Limited English Proficiency Initiative Program (LEPI), Fiscal Year 2010/2011

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, the Department of Housing and Urban Development, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding decisions made by the Department for funding under the Notice of Funding Availability (NOFA) for the Limited English Proficiency Initiative (LEPI) Program for Fiscal Year (FY) 2010/2011. This announcement contains the names and addresses of those award recipients selected for funding based on the rating and ranking of all applications and the amount of the awards.

FOR FURTHER INFORMATION CONTACT: Pamela Walsh, Director, Office of Policy, Legislative Initiatives, and Outreach, Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 5246, Washington, DC 20410. Telephone number (202) 402–7017 (this is not a toll-free number). Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION: Executive Order 13166 signed in August 2000 requires all federal agencies to improve access to federally conducted and federally assisted programs and activities for persons who, as a result of national origin, are limited in the English proficiency (LEP). Each agency is to examine the services they provide, identify any need for services to those with limited English proficiency (LEP), and develop and implement a system to provide those services so LEP persons can have meaningful access to them. This LEPI NOFA sponsors organizations to help ensure that LEP persons can have meaningful access the Department of Housing and Urban Development's programs, services, and activities.

The Department published its Limited English Proficiency Initiative (LEPI) NOFA on July 11, 2011, amended July 18, 2011, announcing the availability of $650,000 to go to up to seven organizations to make HUD programs more accessible to LEP persons. This Notice announces six grant awards of approximately $100,000 each and one grant award of $50,000 for organizations to assist locally targeted LEP individuals.

For the FY 2010/2011 NOFA, the Department reviewed, evaluated, and scored the applications received based on the criteria in the FY 2010/2011 LEPI NOFA. As a result, HUD has decided to fund the applications announced in Appendix A, and in accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, 42 U.S.C. 3545), the Department is hereby publishing details concerning the recipients of funding awards in Appendix A of this document.

The Catalog of Federal Domestic Assistance Number for currently funded Initiatives under the Limited English Proficiency Initiative Program is 14.421.

Dated: October 18, 2011.

John D. Trasviña,

Assistance Secretary for Fair Housing and Equal Opportunity.

Appendix A

FY 2010/2011—LIMITED ENGLISH PROFICIENCY INITIATIVE NOFA

Applicant name	Contact	Region	Award amt.
Chhaya Community Development Center, 37–43 77th Street, 2nd Floor, Jackson Heights, NY 11372–6629.	Seema Agnani 718–478–3848	2	$100,000.00
Equal Rights Center, 11 Dupont Circle NW, Washington, DC 20036	Adriana Lopez 202–234–3062	3	100,000.00

FY 2010/2011—LIMITED ENGLISH PROFICIENCY INITIATIVE NOFA—Continued

Applicant name	Contact	Region	Award amt.
Southwest Minnesota Housing Partnership, 2401 Broadway Avenue, Suite 4, Slayton, MN 56172–1142.	Ali Joens 507–836–1605	5	100,000.00
International Institute of St. Louis, 3654 S. Grand Street, St. Louis, MO 63118–3404.	Suzanne LeLaurin 314–773–9090	7	99,998.00
Lutheran Children and Family Services, 5902 North 5th Street, Philadelphia, PA 19120–1824.	Rosemary Bauersmith 215–643–6335.	3	99,101.00
Kurdish Human Rights Center, 10560 Main Street, Suite 207, Fairfax, VA 22030–7176.	Pary Karadaghi 703–385–3806	3	100,000.00
The Legal Aid Society of Hawaii, 924 Bethel Street, Honolulu, HI 96813–4304.	Elise von Dohlen 808–527–8056	9	50,000.00

[FR Doc. 2011–27668 Filed 10–25–11; 8:45 am]
BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5569–N–01]

Notice of Certain Operating Cost Adjustment Factors for 2012

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: This notice establishes operating cost adjustment factors (OCAFs) for project based assistance contracts for eligible multifamily housing projects having an anniversary date on or after February 11, 2012. OCAFs are annual factors used to adjust Section 8 rents renewed under section 524 of the Multifamily Assisted Housing Reform and Affordability Act of 1997 (MAHRA).

DATES: *Effective Dates:* February 11, 2012.

FOR FURTHER INFORMATION CONTACT: Stan Houle, Housing Program Manager, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410; telephone number 202–402–2572 (this is not a toll-free number). Hearing- or speech-impaired individuals may access this number through TTY by calling the toll-free Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

I. OCAFs

Section 514(e)(2) of MAHRA requires HUD to establish guidelines for rent adjustments based on an OCAF. The statute requiring HUD to establish OCAFs for LIHPRHA projects and projects with contract renewals or adjustments under section 524(b)(1)(A) of MAHRA is similar in wording and intent. HUD has therefore developed a single factor to be applied uniformly to all projects utilizing OCAFs as the method by which renewal rents are established or adjusted.

LIHPRHA projects are low-income housing projects insured by the Federal Housing Administration (FHA). LIHPRHA projects are primarily low-income housing projects insured under section 221(d)(3) below-market interest rate (BMIR) and section 236 of the National Housing Act, respectively. Both categories of projects have low-income use restrictions that have been extended beyond the 20-year period specified in the original documents, and both categories of projects also receive assistance under section 8 of the U.S. Housing Act of 1937 to support the continued low-income use.

MAHRA gives HUD broad discretion in setting OCAFs—referring, for example, in sections 524(a)(4)(C)(i), 524(b)(1)(A), 524(b)(3)(A) and 524(c)(1) simply to ''an operating cost adjustment factor established by the Secretary.'' The sole limitation to this grant of authority is a specific requirement in each of the foregoing provisions that application of an OCAF ''shall not result in a negative adjustment.'' Contract rents are adjusted by applying the OCAF to that portion of the rent attributable to operating expenses exclusive of debt service.

The OCAFs provided in this notice and applicable to eligible projects having a project based assistance contracts anniversary date of on or after February 11, 2012, are calculated using the same method as those published in HUD's 2011 OCAF notice published on November 8, 2010 (75 FR 68616). Specifically, OCAFs are calculated as the sum of weighted average cost changes for wages, employee benefits, property taxes, insurance, supplies and equipment, fuel oil, electricity, natural gas, and water/sewer/trash using publicly available indices. The weights used in the OCAF calculations for each of the nine cost component groupings are set using current percentages attributable to each of the nine expense categories. These weights are calculated in the same manner as in HUD's November 8, 2010, notice. Average expense proportions were calculated using three years of audited Annual Financial Statements from projects covered by OCAFs. The expenditure percentages for these nine categories have been found to be very stable over time, but using three years of data increases their stability. The nine cost component weights were calculated at the state level, which is the lowest level of geographical aggregation with enough projects to permit statistical analysis. These data were not available for the Western Pacific Islands, so data for Hawaii were used as the best available indicator of OCAFs for these areas.

The best current price data sources for the nine cost categories were used in calculating annual change factors. State-level data for fuel oil, electricity, and natural gas from Department of Energy surveys are relatively current and continue to be used. Data on changes in employee benefits, insurance, property taxes, and water/sewer/trash costs are only available at the national level. The data sources for the nine cost indicators selected used were as follows:

- *Labor Costs:* First quarter, 2011 Bureau of Labor Statistics (BLS) ECI, Private Industry Wages and Salaries, All Workers (Series ID CIU2020000000000I) at the national level and Private Industry Benefits, All Workers (Series ID CIU2030000000000I) at the national level.
- *Property Taxes:* 2009–2010 Census Quarterly Summary of State and Local Government Tax Revenue—Table 1 *http://www2.census.gov/govs/qtax/2011/q1t1.pdf.* Annual property taxes are computed as the total of four quarters of tax receipts. Total annual taxes are then divided by number of households to arrive at average annual tax per household. For 2009, the number of households is taken from the estimates program at the Bureau of the Census. *http://www.census.gov/popest/housing/HU-EST2009.html.* At the time

of computation data on the number of households was not yet available for 2010 so the 2009 number was used in its place.

• *Goods, Supplies, Equipment:* April 2010 to April 2011 Bureau of Labor Statistics (BLS) Consumer Price Index, All Items Less Food, Energy and shelter (Series ID CUUR0000SA0L12E) at the national level.

• *Insurance:* April 2010 to April 2011 Bureau of Labor Statistic (BLS) Consumer Price Index, Tenants and Household Insurance Index (Series ID CUUR0000SEHD) at the national level.

• *Fuel Oil:* Energy Information Agency, 2009 to 2010 Retail Price of No. 2 Fuel Oil to Residential Consumers cents per gallon excluding taxes. Department of Energy multi-state fuel oil grouping averages used for the States with insufficient fuel oil consumption to have separate estimates. *http://www.eia.gov/dnav/pet/pet_sum_mkt_a_EPD2_PRT_dpgal_a.htm*

• *Electricity:* Energy Information Agency, March 2011 ''Electric Power Monthly'' report, Table 5.6.B. *http://www.eia.doe.gov/cneaf/electricity/epm/epm_sum.html*

• *Natural Gas:* Energy Information Agency, Natural Gas, Residential Energy Price, 2009–2010 annual prices in dollars per 1,000 cubic feet at the state level. Due to EIA data quality standards several states were missing data for one or two months in 2010; in these cases, data for these missing months were estimated using data from the surrounding months in 2010 and the relationship between that same month and the surrounding months in 2009. *http://www.eia.doe.gov/dnav/ng/ng_pri_sum_a_EPG0_PRS_DMcf_a.htm*

• *Water and Sewer:* April 2010 to April 2011 Consumer Price Index, All Urban Consumers, Water and Sewer and Trash Collection Services (Series ID CUUR0000SEHG) at the national level.

The sum of the nine cost component percentage weights equals 100 percent of operating costs for purposes of OCAF calculations. To calculate the OCAFs, state-level cost component weights developed from AFS data are multiplied by the selected inflation factors. For instance, if wages in Virginia comprised 50 percent of total operating cost expenses and increased by 4 percent from 2009 to 2010, the wage increase component of the Virginia OCAF for 2012 would be 2.0 percent (50% * 4%). This 2.0 percent would then be added to the increases for the other eight expense categories to calculate the 2012 OCAF for Virginia. The OCAFs for 2012 are included as an Appendix to this Notice.

II. MAHRA and LIHPRHA OCAF Procedures

MAHRA, as amended, created the Mark-to-Market Program to reduce the cost of federal housing assistance, enhance HUD's administration of such assistance, and ensure the continued affordability of units in certain multifamily housing projects. Section 524 of MAHRA authorizes renewal of Section 8 project-based assistance contracts for projects without restructuring plans under the Mark-to-Market Program, including projects that are not eligible for a restructuring plan and those for which the owner does not request such a plan. Renewals must be at rents not exceeding comparable market rents except for certain projects. As an example, for Section 8 Moderate Rehabilitation projects, other than single room occupancy projects (SROs) under the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11301 *et seq.*), that are eligible for renewal under section 524(b)(3) of MAHRA, the renewal rents are required to be set at the lesser of: (1) The existing rents under the expiring contract, as adjusted by the OCAF; (2) fair market rents (less any amounts allowed for tenant-purchased utilities); or (3) comparable market rents for the market area.

LIHPRHA (see, in particular, section 222(a)(2)(G)(i), 12 U.S.C. 4112 (a)(2)(G) and HUD's regulations at 24 CFR. 248.145(a)(9)) requires that future rent adjustments for LIHPRHA projects be made by applying an annual factor, to be determined by HUD to the portion of project rent attributable to operating expenses for the project and, where the owner is a priority purchaser, to the portion of project rent attributable to project oversight costs.

III. Findings and Certifications

Environmental Impact

This issuance sets forth rate determinations and related external administrative requirements and procedures that do not constitute a development decision affecting the physical condition of specific project areas or building sites. Accordingly, under 24 CFR 50.19(c)(6), this notice is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance Number for this program is 14.187.

Dated: October 20, 2011.

Carol J. Galante,

Acting Assistant Secretary for Housing—Federal Housing Commissioner.

Appendix

Operating Cost Adjustment Factors for 2012

Alabama	1.8
Alaska	2.2
Arizona	1.8
Arkansas	1.3
California	2.3
Colorado	2.2
Connecticut	1.6
Delaware	1.3
District of Columbia	1.8
Florida	1.3
Georgia	1.9
Hawaii	4.3
Idaho	1.8
Illinois	2.1
Indiana	1.2
Iowa	1.8
Kansas	2.0
Kentucky	1.8
Louisiana	2.4
Maine	2.5
Maryland	1.3
Massachusetts	1.0
Michigan	2.3
Minnesota	1.8
Mississippi	1.6
Missouri	2.1
Montana	1.4
Nebraska	1.8
Nevada	1.7
New Hampshire	2.0
New Jersey	1.2
New Mexico	2.2
New York	2.4
North Carolina	1.9
North Dakota	2.1
Ohio	1.7
Oklahoma	2.2
Oregon	2.0
Pacific Islands	1.9
Pennsylvania	2.0
Puerto Rico	2.0
Rhode Island	1.7
South Carolina	1.9
South Dakota	2.3
Tennessee	1.6
Texas	1.3
Utah	1.8
Vermont	3.3
Virgin Islands	2.3
Virginia	1.6
Washington	2.3
West Virginia	2.3
Wisconsin	1.9
Wyoming	1.6
U.S. Average	1.8

[FR Doc. 2011–27816 Filed 10–24–11; 4:15 pm]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R4–R–2011–N216;40136–1265–0000–S3]

Proposed Establishment of Everglades Headwaters National Wildlife Refuge and Conservation Area; Draft Land Protection Plan and Environmental Assessment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; extension of comment period.

SUMMARY: We, the Fish and Wildlife Service (Service), advise the public that we are extending the public comment period for the proposed establishment of the Everglades Headwaters National Wildlife Refuge (NWR) and Conservation Area. If you have previously submitted comments, please do not resubmit them, because we have already incorporated them in the public record and will fully consider them in our final decision.

DATES: To ensure consideration, please send your written comments by November 25, 2011.

ADDRESSES: Send comments concerning the draft land protection plan and environmental assessment to Everglades Headwaters Proposal, by U.S. mail at U.S. Fish and Wildlife Service, P.O. Box 2683, Titusville, FL 32781–2683, by e-mail at *EvergladesHeadwaters Proposal@fws.gov,* or to 321/861–1276 (fax). For document availability, see below.

FOR FURTHER INFORMATION CONTACT: Ms. Cheri M. Ehrhardt, Natural Resource Planner, at 321/861–2368 (telephone) or Mr. Charlie Pelizza, Refuge Manager, at 772/562–3909, extension 244 (telephone).

SUPPLEMENTARY INFORMATION: On September 8, 2011, we published a **Federal Register** notice (76 FR 55699) announcing the proposed establishment of the Everglades Headwaters NWR and Conservation Area in Polk, Osceola, Highlands, and Okeechobee Counties in central and south Florida in accordance with the National Environmental Policy Act (40 CFR 1506.6 (b)) requirements. We originally opened this comment period on September 8, 2011 (76 FR 55699). For background and more information on the proposed establishment of the Everglades Headwaters NWR and Conservation Area, please see that notice. We are extending the public comment period on the proposed establishment of this refuge and conservation area in response to the high level of interest we have received.

Document Availability

Copies of the draft land protection plan and environmental assessment are available by writing to the U.S. mail address and e-mail address under **ADDRESSES** as listed above, or by calling 321/861–0067 (telephone), 321/861–1276 (fax). Alternatively, you may download the document from our Internet Site at *http://www.fws.gov/southeast/evergladesheadwaters/.*

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 may 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

This notice is published under the authority of the National Wildlife Refuge System Improvement Act of 1997, Public Law 105–57.

Dated: October 21, 2011.

Paul Steblein,

Acting Assistant Director, National Wildlife Refuge System.

[FR Doc. 2011–27748 Filed 10–24–11; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R1–R–2011–N225; 10137–8555–11RG–8H]

Long Range Transportation Plan for Fish and Wildlife Service Lands in Hawai'i, Idaho, Northern Nevada, Oregon, Washington, and the Pacific Island Territories; Correction

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: On October 18, 2011, via a **Federal Register** notice, we, the U.S. Fish and Wildlife Service, announced the availability of the final draft Long Range Transportation Plan (LRTP) for our lands in Hawai'i, Idaho, Northern Nevada, Oregon, Washington, and the Pacific Island Territories (the Service's Region 1) for public review and comment. However, in that notice we gave an incorrect contact phone number, which we now correct. Note that if you already submitted a comment, you need not resubmit it.

DATES: Please provide your comments by November 17, 2011.

ADDRESSES: The Draft LRTP is available on our Web site at *http://www.fws.gov/pacific/planning/.* We also have a limited number of printed and CD–ROM copies of the Draft LRTP. You may request a copy or submit comments by any of the following methods:

- *E-mail: fw1LRTPComments@fws.gov.*
- *U.S. Mail:* Jeff Holm, Regional Transportation Coordinator, U.S. Fish and Wildlife Service, 911 NE., 11th Avenue, Portland, OR 97232.
- *Fax:* Attn: Jeff Holm, (503) 231–2364.
- *In-Person Viewing or Drop-off:* During regular business hours to Jeff Holm, Regional Transportation Coordinator, U.S. Fish and Wildlife Service, 911 NE., 11th Avenue, Portland, OR 97232.

FOR FURTHER INFORMATION CONTACT: Jeff Holm, 503–231–2161.

SUPPLEMENTARY INFORMATION: On October 18, 2011, via a **Federal Register** notice (76 FR 64376), we announced the availability of the final draft Long Range Transportation Plan (LRTP) for public review and comment. However, in that notice, we gave an incorrect contact phone number under **FOR FURTHER INFORMATION CONTACT**. We now supply the correct phone number, which is 503–231–2161. Note that if you already submitted a comment, you need not resubmit it.

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.

For more information about the Draft LRTP, and its mission, goals, and objectives, see our October 18, 2011, notice.

Dated: October 20, 2011.

Sara Prigan,

Federal Register Liaison.

[FR Doc. 2011–27666 Filed 10–25–11; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLID9570000.LL14200000.BJ0000]

Idaho: Filing of Plats of Survey

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Filing of Plats of Surveys.

SUMMARY: The Bureau of Land Management (BLM) has officially filed the plats of survey of the lands described below in the BLM Idaho State Office, Boise, Idaho, effective 9 a.m., on the dates specified.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 1387 South Vinnell Way, Boise, Idaho 83709–1657.

SUPPLEMENTARY INFORMATION: These surveys were executed at the request of the BLM to meet their administrative needs. The lands surveyed are:

The plat representing the dependent resurvey of portions of T. 7 S., R. 2 E., T. 8 S., R. 4 E., T. 10 S., R. 3 E., and T. 10 S., R. 4 ., of the Boise Meridian, Idaho, Group Number 1317, was accepted July 22, 2011.

The plat representing the dependent resurvey of a portion of the north boundary and a portion of the subdivisional lines, and a portion of the boundaries of mineral survey No. 3416 in sections 1, 2, and 3, T. 47 N., R. 4 E., of the Boise Meridian, Idaho, Group Number 1246, was accepted September 16, 2011.

The plat representing the dependent resurvey of a portion of the subdivisional lines, and a metes-and-bounds survey in sections 5 and 8, T. 11 N., R. 17 E., of the Boise Meridian, Idaho, Group Number 1322, was accepted September 19, 2011.

These surveys were executed at the request of the Bureau of Indian Affairs to meet their administrative needs. The lands surveyed are:

The plat representing the dependent resurvey of portions of the 7th Standard Parallel North (north boundary) and subdivisional lines, and the subdivision of sections 3, 11, 14, and 23, T. 35 N., R. 1 E., Boise Meridian, Idaho, Group Number 1233, was accepted July 13, 2011.

The plat representing the dependent resurvey of portions of the west boundary and subdivisional lines, and the subdivision of secs. 19 and 30, and the metes-and-bounds survey of lots 7, 8, 9, and 10, in sec. 30, T. 46 N., R. 4 W., Boise Meridian, Idaho, Group Number 1299, was accepted July 15, 2011.

The plat representing the dependent resurvey of a portion of the subdivisional lines, and the subdivision of sec. 25, T. 46 N., R. 5 W., Boise Meridian, Idaho, Group Number 1301, was accepted July 15, 2011.

The plat representing the dependent resurvey of a portion of the west boundary and a metes-and-bounds survey in section 13, T. 45 N., R. 6 W., of the Boise Meridian, Idaho, Group Number 1256, was accepted September 12, 2011.

The supplemental plat in 34, T. 37 N., R. 1 E., Boise Meridian, Idaho, Group Number 1346, was prepared to show amended lottings, was accepted September 30, 2011.

These surveys were executed at the request of the U.S. Forest Service to meet their administrative needs. The lands surveyed are:

The supplemental plat in sec. 22, T. 54 N., R. 2 W., Boise Meridian, Idaho, Group Number 1364, was prepared to show amended lottings, was accepted September 30, 2011.

SUMMARY: The Bureau of Land Management (BLM) will file the plat of survey of the lands described below in the BLM Idaho State Office, Boise, Idaho, 30 days from the date of publication in the **Federal Register**. This survey was executed at the request of the U.S. Fish and Wildlife Service to meet certain administrative and management purposes.

The plats constituting the entire survey record of the survey of certain islands in the Snake River, Tps 1 and 2 N., R. 3 W., T. 2 N., R. 4 W., T. 3 N., R. 4 W., T. 3 N., R. 5 W., and T. 4 N., R. 5 W., Boise Meridian, Idaho, were accepted July 29, 2011.

Dated: October 7, 2011.

Bruce E. Ogonowski,

Acting Chief Cadastral Surveyor for Idaho.

[FR Doc. 2011–27665 Filed 10–25–11; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLOR957000–L63100000–HD0000: HAG12–0018]

Filing of Plats of Survey: Oregon/Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands are scheduled to be officially filed in the Bureau of Land Management Oregon/Washington State Office, Portland, Oregon, 30 days from the date of this publication.

Willamette Meridian

Oregon

T. 20 S., R. 4 W.,
accepted October 7, 2011.
T. 29 S., R. 6 W.,
accepted October 7, 2011.
T. 29 S., R. 7 W.,
accepted October 7, 2011.
T. 4 S., R. 2 E.,
accepted October 7, 2011.
T. 9 S., R. 2 E.,
accepted October 7, 2011.
T. 4 N., R. 3 W.,
accepted October 14, 2011.
T. 16 S., R. 1 W.,
accepted October 14, 2011.
T. 27 S., R. 12 W.
accepted October 14, 2011.
T. 38 S., R. 1 W.,
accepted October 14, 2011.

Washington

T. 23 N., R. 10 W.,
accepted October 14, 2011.

ADDRESSES: A copy of the plats may be obtained from the Land Office at the Bureau of Land Management, Oregon/Washington State Office, 333 SW., 1st Avenue, Portland, Oregon 97204, upon required payment. A person or party who wishes to protest against a survey must file a notice that they wish to protest (at the above address) with the Oregon/Washington State Director, Bureau of Land Management, Portland, Oregon.

FOR FURTHER INFORMATION CONTACT: Kyle Hensley, (503) 808–6124, Branch of Geographic Sciences, Bureau of Land Management, 333 SW., 1st Avenue, Portland, Oregon 97204. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: 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.

Mary J.M. Hartel,

Chief, Chief, Cadastral Surveyor of Oregon/Washington.

[FR Doc. 2011–27649 Filed 10–25–11; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRNHL–1011–8618; 2200–3200–665]

National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before October 1, 2011. Pursuant to section 60.13 of 36 CFR part 60, written comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation. Comments may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St., NW., MS 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service,1201 Eye St., NW., 8th floor, Washington DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by November 10, 2011. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

J. Paul Loether,

Chief, National Register of Historic Places, National Historic Landmarks Program.

AMERICAN SAMOA

Eastern District

U.S. Naval Station Tutuila Samoa Hydro Electric Plant, Pipeline, and Dam, Off end of Main Rd., Fagatogo, 11000789

GEORGIA

Crawford County

Hawkins, Col. Benjamin, Gravesite, Benjamin Hawkins Rd., Roberta, 11000790

KENTUCKY

Calloway County

Murray Woman's Club Clubhouse, The, 704 Vine St., Murray, 11000792

Kenton County

LaSalette Academy, 702 Greenup St., Covington, 11000791

Laurel County

London Downtown Historic District, Main St. between W. 6th & W. 5th Sts., London, 11000793

Livingston County

Livingston County Courthouse and Clerk's Offices, 351 Court St., Smithland, 11000794

Mercer County

Lexington and Cane Run Historic District, E. Lexington & Cane Run Sts., Harrodsburg, 11000795

North Main Street Historic District, 105–414 N. Main St., 109 W. Lexington, 101 W. Broadway, 163 E. Broadway, Harrodsburg, 11000796

Baldwin's Tourist Court Residence—Office, 321 W. Stephen Foster Ave., Bardstown, 11000797

Kurtz Restaurant and Bardstown—Parkview Motel—Office, 418 E. Stephen Foster Ave., Bardstown, 11000798

Old Kentucky Home Motel, 414 Stephen Foster Ave., Bardstown, 11000799

Wilson Motel, 530 N. 3rd St., Bardstown, 11000800

Todd County

Guthrie Historic District, Roughly bounded by Ewing, Park & Cherry Sts., Guthrie, 11000801

Warren County

Hardcastle Store, The, 7286 Cemetery Rd., Bowling Green, 11000802

Washington County

Springfield Main Street Historic District, Roughly Commercial Ave. to College St. & McCord, High Sts. to E. Depot St., Springfield, 11000803

LOUISIANA

Orleans Parish

Lykes Brothers Steamship Company Historic District, 1770, 1744–46 Tchoupitoulas St., New Orleans, 11000804

NEW YORK

Monroe County

Brockport Central Rural High School, 40 Allen St., Brockport, 11000805

TENNESSEE

Davidson County

Park—Elkins Historic District, Roughly along Park & Elkins between 42nd & 50th Aves., Nashville, 11000806

Lincoln County

Whitaker—Motlow House, 740 Lynchburg Hwy., Mulberry, 11000807

Sullivan County

Piney Flats Historic District, Main, McKamey, & Methodist Church Sts. & parts of Tank Hill, Piney Flats, Austin Springs & Mountain View Rds., Piney Flats, 11000808

Washington County

Johnson City Country Club, 1901 E. Unaka Ave., Johnson City, 11000809

WISCONSIN

Ozaukee County

ISLAND CITY (schooner) Shipwreck, (Great Lakes Shipwreck Sites of Wisconsin MPS) 9 mi. SE. of Port Washington in Lake Michigan, Mequon, 11000810

Sheboygan County

WALTER B. ALLEN (canaller) Shipwreck, (Great Lakes Shipwreck Sites of Wisconsin MPS) 7 mi. NE. of Sheboygan in Lake Michigan, Mosel, 11000811

A request for REMOVAL has been made for the following resources:

TENNESSEE

Williamson County

Lamb—Stevens House, (Williamson County MRA) Burke Hollow Rd. 1½ mi. E of Wilson Pike, Franklin, 88000299

Russwurm, John S., House, (Williamson County MRA) Spann Town Rd. ½ mi. E of US Alt. 41, Triune, 88000349

[FR Doc. 2011–27640 Filed 10–25–11; 8:45 am]

BILLING CODE 4312–51–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection

AGENCY: Office of Surface Mining Reclamation and Enforcement.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing that the information collection request related to the certification of blasters in Federal program states and on Indian lands, and Form OSM–74, has been forwarded to the Office of Management and Budget (OMB) for review and reauthorization. The information collection package was previously approved and assigned clearance number 1029–0083. This notice describes the nature of the information collection activity and the expected burdens and costs.

DATES: OMB has up to 60 days to approve or disapprove the information collection but may respond after 30

days. Therefore, public comments should be submitted to OMB by November 25, 2011, in order to be assured of consideration.

ADDRESSES: Submit comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, *Attention:* Department of the Interior Desk Officer, by telefax at (202) 395–5806 or via e-mail to *OIRA_Docket@omb.eop.gov.* Also, please send a copy of your comments to John Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave., NW., Room 203—SIB, Washington, DC 20240, or electronically to *jtrelease@osmre.gov.*

FOR FURTHER INFORMATION CONTACT: To receive a copy of the information collection request contact John Trelease at (202) 208–2783, or electronically at *jtrelease@osmre.gov.* You may also review this collection request by going to *http://www.reginfo.gov* (Information Collection Review, Currently Under Review, Agency is Department of the Interior, DOI–OSMRE).

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities [see 5 CFR 1320.8(d)]. OSM has submitted a request to OMB to renew its approval for the collection of information for 30 CFR 955 and the Form OSM–74, Certification of Blasters in Federal program states and on Indian lands. OSM is requesting a 3-year term of approval for these information collection activities.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for this collection of information is listed in 30 CFR 955.10 and on the Form OSM–74, which is 1029–0083.

As required under 5 CFR 1320.8(d), a **Federal Register** notice soliciting comments on the collection of information was published on June 28, 2011 (76 FR 37829). No comments were received from that notice. This notice provides the public with an additional 30 days in which to comment on the following information collection activity:

Title: 30 CFR 955—Certification of Blasters in Federal Program States and on Indian Lands.

OMB Control Number: 1029–0083.

Summary: This information is being collected to ensure that the applicants for blaster certification are qualified. This information, with blasting tests, will be used to determine the eligibility of the applicant. The affected public will be blasters who want to be certified by the Office of Surface Mining Reclamation and Enforcement to conduct blasting on Indian lands or in Federal program states.

Bureau Form Number: OSM–74.

Frequency of Collection: On occasion.

Description of Respondents: Individuals intent on being certified as blasters in Federal program states and on Indian lands.

Total Annual Responses: 44 blasters.

Total Annual Burden Hours: 110 hours.

Total Annual Non-Wage Burden Cost: $3,782.

Send comments on the need for the collection of information for the performance of the functions of the agency; the accuracy of the agency's burden estimates; ways to enhance the quality, utility and clarity of the information collection; and ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information, to the addresses listed under **ADDRESSES**. Please refer to OMB control number 1029–0083 in your correspondence.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: October 19, 2011.

John A. Trelease,

Acting Chief, Division of Regulatory Support.

[FR Doc. 2011–27401 Filed 10–25–11; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Advanced Media Workflow Association, Inc.

Notice is hereby given that, on September 26, 2011, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Advanced Media Workflow Association, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Isilon Systems, Inc., Seattle, WA; Panasonic AVC Networks Company, Kadoma City, Osaka, JAPAN; VSN Video Steam Networks, S.L., Barcelona, SPAIN; Yangaroo, Inc., Toronto, Ontario, CANADA; Patrick Cusack (individual member), Los Angeles, CA; and James Trainor (individual member), Kanata, Ontario, CANADA, have been added as parties to this venture.

Also, Chime Media, Weston, VA; E!Entertainment, Los Angeles, CA; and MAGIX AG, Berlin, GERMANY, have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Advanced Media Workflow Association, Inc. intends to file additional written notifications disclosing all changes in membership.

On March 28, 2000, Advanced Media Workflow Association, Inc. filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on June 29, 2000 (65 FR 40127).

The last notification was filed with the Department on June 23, 2011. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on July 20, 2011 (76 FR 43347).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2011–27399 Filed 10–25–11; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Cooperative Research Group on Nasgro Development and Support

Notice is hereby given that, on October 3, 2011, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Southwest Research Institute—

Cooperative Research Group on NASGRO Development and Support (''NASGRO'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership and period of performance. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Alcoa Technical Center, New York, NY; Honda R&D Co., Ltd., Saitama, JAPAN; Space Exploration Technologies Corp., Hawthorne, CA; United Launch Alliance, Littleton, CO; Agusta Westland, Casina Costa di Samarate, ITALY; and Mitsubishi Heavy Industries, Ltd., Nagoya, JAPAN, have been added as parties to this venture. Additionally, the period of performance has been extended to June 30, 2013.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and NASGRO intends to file additional written notifications disclosing all changes in membership.

On October 3, 2001, NASGRO filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on January 22, 2002 (67 FR 2910).

The last notification was filed with the Department on July 22, 2008. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on August 18, 2008 (73 FR 48242).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2011–27400 Filed 10–25–11; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Cooperative Research Group on Development of a Predictive Model for Corrosion-Fatigue of Materials in Sour Environment

Notice is hereby given that, on September 26, 2011, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Southwest Research Institute—Cooperative Research Group on Development of a Predictive Model for Corrosion-Fatigue of Materials in Sour Environment (''Model-CFM'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Shell Global Solutions US Inc., Houston, TX, has been added as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Model-CFM intends to file additional written notifications disclosing all changes in membership.

On May 17, 2011, Model-CFM filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on July 7, 2011 (76 FR 39901).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2011–27398 Filed 10–25–11; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

[OMB Number 1110-New]

Agency Information Collection Activities: Proposed Collection, Comments Requested; E–FOIA

ACTION: 60-day notice of information collection under review.

The Department of Justice, Federal Bureau of Investigation, Records Management Division Record Information Dissemination Section (RIDS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with established review procedures of the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted until December 27, 2011. This process is conducted in accordance with 5 CFR 1320.10.

Written comments concerning this information collection should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: DOJ Desk Officer. The best way to ensure your comments are received is to e-mail them to *oira_submission@omb.eop.gov* or fax them to 202–395–7285. All comments should reference the 8 digit OMB number for the collection or the title of the collection. If you have questions concerning the collection, please call Jason Combs at 540–868–4995, or the DOJ Desk Officer at 202–395–3176.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Comments 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 of other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection:

(1) *Type of information collection:* Revision of a currently approved collection.

(2) *The title of the form/collection:* E–FOIA Submission Form.

(3) *The agency form number, if any, and the applicable component of the department sponsoring the collection:* Records Management Division/Record Information Dissemination Section, Federal Bureau of Investigation, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: FOIA requesters (general public, educational institutions, commercial requesters *etc*).

Abstract: The Record/Information Dissemination Section (RIDS) effectively plans, develops, directs, and manages responses to requests for access to FBI records and information. The requests and disclosure comply with the Freedom of Information and Privacy Acts (Title 5, United States Code, Sections 552 and 552a) and the Freedom

of Information Act Executive Order 13392, as well as the Classified National Security Information Executive Order 13526, other Presidential, Attorney General, and FBI policies, procedures, and mandates; judicial decisions; and Congressional directives.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* Of the approximately 18,445 government entities that are eligible to submit cases, it is estimated that twenty to thirty percent will actually submit cases to RMD/RIDS. The time burden of the respondents is less than 15 minutes per form.

(6) *An estimate of the total public burden (in hours) associated with this collection:* There are approximately 1,350 hours, annual burden, associated with this information collection.

If additional information is required contact: Jerri Murray, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, United States Department of Justice, 145 N Street, NE., Room 2E–508, Washington, DC 20530.

Jerri Murray,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. 2011–27605 Filed 10–25–11; 8:45 am]

BILLING CODE 4410–02–P

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

Meeting of the Compact Council for the National Crime Prevention and Privacy Compact

AGENCY: Federal Bureau of Investigation.

ACTION: Meeting notice.

SUMMARY: The purpose of this notice is to announce a meeting of the National Crime Prevention and Privacy Compact Council (Council) created by the National Crime Prevention and Privacy Compact Act of 1998 (Compact). Thus far, the Federal Government and 29 states are parties to the Compact which governs the exchange of criminal history records for licensing, employment, and similar purposes. The Compact also provides a legal framework for the establishment of a cooperative federal-state system to exchange such records.

The United States Attorney General appointed 15 persons from state and federal agencies to serve on the Council. The Council will prescribe system rules and procedures for the effective and proper operation of the Interstate Identification Index system for noncriminal justice purposes.

Matters for discussion are expected to include:

(1) Changes to the Security and Management Control Outsourcing Standards;

(2) National Fingerprint File (NFF) State Audit Criteria Changes; and

(3) Guiding principle documents for privacy during the fingerprint-based background check process.

The meeting will be open to the public on a first-come, first-seated basis. Any member of the public wishing to file a written statement with the Council or wishing to address this session of the Council should notify the Federal Bureau Of Investigation (FBI) Compact Officer, Mr. Gary S. Barron at (304) 625–2803, at least 24 hours prior to the start of the session. The notification should contain the requestor's name and corporate designation, consumer affiliation, or government designation, along with a short statement describing the topic to be addressed and the time needed for the presentation. Requesters will ordinarily be allowed up to 15 minutes to present a topic.

DATES AND TIMES: The Council will meet in open session from 9 a.m. until 5 p.m., on December 08–09, 2011.

ADDRESSES: The meeting will take place at the Hyatt Regency Albuquerque, 330 Tijeras Avenue NW., Albuquerque, New Mexico, telephone (505) 842–1234.

FOR FURTHER INFORMATION CONTACT: Inquiries may be addressed to Mr. Gary S. Barron, FBI Compact Officer, Compact Council Office, Module D3, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306, telephone (304) 625–2803, facsimile (304) 625–2868.

Dated: October 11, 2011.

Kimberly J. Del Greco,

Section Chief, Biometric Services Section, Criminal Justice Information, Services Division, Federal Bureau of Investigation.

[FR Doc. 2011–27546 Filed 10–25–11; 8:45 am]

BILLING CODE 4410–02–M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Well-Being Supplement to the American Time Use Survey

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Bureau of Labor Statistics (BLS) sponsored information collection request (ICR) titled, ''Well-being Supplement to the American Time Use Survey,'' to the Office of Management and Budget (OMB) for review and approval for use in accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 *et seq.*).

DATES: Submit comments on or before November 25, 2011.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the *RegInfo.gov* Web site, *http://www.reginfo.gov/public/do/PRAMain,* on the day following publication of this notice or by contacting Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or sending an e-mail to *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request to the Office of Information and Regulatory Affairs, *Attn:* OMB Desk Officer for the Department of Labor, Bureau of Labor Statistics (BLS), Office of Management and Budget, Room 10235, Washington, DC 20503, *Telephone:* 202–395–6929/Fax: 202–395–6881 (these are not toll-free numbers), e-mail: *OIRA_submission@omb.eop.gov.*

FOR FURTHER INFORMATION: Contact Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or by e-mail at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: This ICR seeks approval for a new information collection. The American Time Use Survey (ATUS) is the first national Federally administered continuous survey on time use in the United States. The ATUS measures, for example, time spent with children, working, sleeping, or doing leisure activities. The Well-being Module questions, if approved, would be asked immediately after the ATUS and would follow up on some of the information ATUS respondents provide in their time diary. The Well-being Module would collect information about how people experience their time, specifically how happy, tired, sad, stressed, and in pain they felt the day before the interview. Respondents would be asked these questions about three randomly selected activities from the activities reported in the ATUS time diary. The time diary refers to the core part of the ATUS, in which respondents report the activities they did from 4 a.m. on the day before the interview to 4 a.m. on the day of the interview. A few activities, such as sleeping and private

activities, will never be selected. The module also would collect data on whether people were interacting with anyone while doing the selected activities and how meaningful the activities were to them. Some general health questions, a question about overall life satisfaction, and a question about respondents' overall emotional experience the day before also would be asked. The proposed Well-being Module is nearly identical to a module that was collected in 2010 under the ATUS, approved under OMB Number (1220–0175).

Data from the proposed Wellbeing Module will support the BLS mission of providing relevant information on economic and social issues. The data also will closely support the mission of the module sponsor, the National Institute on Aging (NIA) of the National Institutes of Health, to improve the health and well-being of older Americans.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information if the collection of information does not display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6. For additional information, see the related notice published in the **Federal Register** on July 13, 2011 (76 FR 41302).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within 30 days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should reference OMB ICR Reference Number 201108–1220–001. The OMB 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., permitting electronic submission of responses.

Agency: Bureau of Labor Statistics (BLS).

Title of Collection: Well-being Supplement to the American Time Use Survey.

OMB ICR Reference Number: 201108–1220–001.

Affected Public: Individuals or Households.

Total Estimated Number of Respondents: 12,800.

Total Estimated Number of Responses: 12,800.

Total Estimated Annual Burden Hours: 1067.

Total Estimated Annual Other Costs Burden: $0.

Dated: October 20, 2011.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2011–27699 Filed 10–25–11; 8:45 am]

BILLING CODE 4510–24–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–80,185]

Iron Mountain Information Management, Inc., Corporate Service Group, Information Technology (IT) Division, Including On-Site Leased Workers From TEK Systems, Professional Alternative, Randstad US/Sapphire Technologies, Spherion Staffing Services/Technisource, Manpower, Advantage (Formerly Known as TAC), and Mccallion Boston, Massachusetts, and Including Off-Site Workers From California, Florida, Louisiana, Massachusetts, Michigan, Missouri, North Carolina, New Jersey, Nevada, Oregon, Pennsylvania, Texas, Vermont and Washington Reporting to Boston, Massachusetts; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on September 1, 2011, applicable to workers of Iron Mountain Information Management, Inc., Corporate Service Group, Information Technology (IT) Division, including on-site leased workers from TEK Systems, Professional Alternative, Randstad US/Sapphire Technologies, Spherion Staffing Services/Technisource and Manpower, Boston, Massachusetts and including off-site workers from California, Florida, Louisiana, Massachusetts, Michigan, Missouri, North Carolina, New Jersey, Nevada, Oregon, Pennsylvania, Texas, Vermont and Washington reporting to Boston, Massachusetts. The workers are engaged in activities related to the production of digital imaging software. The notice was published in the **Federal Register** on September 19, 2011 (76 FR 58046).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. New information shows that workers leased from Advantage (formerly known as TAC) and McCallion Staffing were employed on-site at the Boston, Massachusetts location of Iron Mountain Information Management, Inc., Corporate Service Group, Information Technology (IT) Division.

The Department has determined that these workers were sufficiently under the control of Iron Mountain Information Management, Inc., Corporate Service Group, Information Technology (IT) Division be considered leased workers.

The intent of the Department's certification is to include all workers of the subject firm adversely affected by actual/likely increase in imports following a shift abroad.

Based on these findings, the Department is amending this certification to include workers leased from Advantage (formerly known as TAC), and McCallion working on-site at the Boston, Massachusetts location of the subject firm.

The amended notice applicable to TA–W–80,185 is hereby issued as follows:

All workers of Iron Mountain Management, Inc., Corporate Service Group, Information Technology (IT) Division, including on-site leased workers from TEK Systems, Professional Alternative, Randstad US/Sapphire Technologies, Spherion Staffing Services/Technisource, Manpower Advantage (formerly known as TAC), and McCallion, Boston, Massachusetts including off-site workers from California, Florida, Louisiana, Massachusetts, Michigan,

Missouri, North Carolina, New Jersey, Nevada, Oregon, Pennsylvania, Texas, Vermont and Washington reporting to Boston, Massachusetts, who became totally or partially separated from employment on or after May 17, 2010, through September 1, 2013, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC, this 13th day of October 2011.

Elliott S. Kushner,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2011–27703 Filed 10–25–11; 8:45 am]

BILLING CODE ;P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–80,110]

Callaway Golf Ball Operations, Inc., Including On-Site Leased Workers From Reliable Temp Services, Inc., Johnson & Hill Staffing and Apollo Security, Chicopee, MA; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on June 24, 2011, applicable to workers of Callaway Golf Ball Operations, Inc., including on-site leased workers from Reliable Temp Services, Inc., and Johnson and Hill Staffing, Chicopee, Massachusetts. The workers are engaged in activities related to the production of golf balls. The notice was published in the **Federal Register** on July 8, 2011 (76 FR 40401).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. New information shows that workers leased from Apollo Security were employed on-site at the Chicopee, Massachusetts location of Callaway Golf Ball Operations, Inc. The Department has determined that these workers were sufficiently under the control of Callaway Golf Ball Operations, Inc. to be considered leased workers.

The intent of the Department's certification is to include all workers of the subject firm adversely affected by increased company imports.

Based on these findings, the Department is amending this certification to include workers leased from Apollo Security working on-site at the Chicopee, Massachusetts location of the subject firm.

The amended notice applicable to TA–W–80,110 is hereby issued as follows:

All workers of Callaway Golf Ball Operations, Inc., including on-site leased workers from Reliable Temp Services, Inc., Johnson & Hill Staffing and Apollo Security, Chicopee, Massachusetts, who became totally or partially separated from employment on or after July 1, 2011, through June 24, 2013, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC this 12th day of October, 2011.

Del Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2011–27702 Filed 10–25–11; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) number and alternative trade adjustment assistance (ATAA) by (TA–W) number issued during the period of October 11, 2011 through October 14, 2011.

In order for an affirmative determination to be made for workers of a primary firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(a) of the Act must be met.

I. Section (a)(2)(A) all of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. the sales or production, or both, of such firm or subdivision have decreased absolutely; and

C. increased imports of articles like or directly competitive with articles produced by such firm or subdivision have contributed importantly to such workers' separation or threat of separation and to the decline in sales or production of such firm or subdivision; or

II. Section (a)(2)(B) both of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. there has been a shift in production by such workers' firm or subdivision to a foreign country of articles like or directly competitive with articles which are produced by such firm or subdivision; and

C. One of the following must be satisfied:

1. The country to which the workers' firm has shifted production of the articles is a party to a free trade agreement with the United States;

2. the country to which the workers' firm has shifted production of the articles to a beneficiary country under the Andean Trade Preference Act, African Growth and Opportunity Act, or the Caribbean Basin Economic Recovery Act; or

3. there has been or is likely to be an increase in imports of articles that are like or directly competitive with articles which are or were produced by such firm or subdivision.

Also, in order for an affirmative determination to be made for secondarily affected workers of a firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(b) of the Act must be met.

(1) Significant number or proportion of the workers in the workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) the workers' firm (or subdivision) is a supplier or downstream producer to a firm (or subdivision) that employed a group of workers who received a certification of eligibility to apply for trade adjustment assistance benefits and such supply or production is related to the article that was the basis for such certification; and

(3) either—

(A) The workers' firm is a supplier and the component parts it supplied for

the firm (or subdivision) described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) a loss or business by the workers' firm with the firm (or subdivision) described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

In order for the Division of Trade Adjustment Assistance to issue a certification of eligibility to apply for Alternative Trade Adjustment Assistance (ATAA) for older workers, the group eligibility requirements of Section 246(a)(3)(A)(ii) of the Trade Act must be met.

1. Whether a significant number of workers in the workers' firm are 50 years of age or older.

2. Whether the workers in the workers' firm possess skills that are not easily transferable.

3. The competitive conditions within the workers' industry (*i.e.,* conditions within the industry are adverse).

Affirmative Determinations for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (increased imports) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA–W–80,142; Ditan Distribution, LLC, Forest Park, GA: April 27, 2010

TA–W–80,142A; Ditan Distribution, LLC, Plainfield, IN: April 27, 2010

TA–W–80,307; CommScope, Inc., Catawba, NC: July 20, 2010

TA–W–80,307A; CommScope, Inc., Conover, NC: July 20, 2010

TA–W–80,380; Pulse Electronics, San Diego, CA: August 18, 2010

TA–W–80,444; Spang and Company, East Butler, PA: August 13, 2011

TA–W–80,444A; Spang and Company, Pittsburgh, PA: August 13, 2011

TA–W–80,445; Masco, Waverly, OH: October 17, 2011

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (shift in production) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA–W–80,331; Sloan Transportation Products, Holland, MI: July 22, 2010

TA–W–80,450; Cadent, Inc., Carlstadt, NJ: September 19, 2010

The following certifications have been issued. The requirements of Section 222(b) (supplier to a firm whose workers are certified eligible to apply for TAA) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA–W–80,388; Phoenix Trim Works, Inc., Williamsport, PA: August 20, 2011

TA–W–80,422; Coastal Lumber Company, Buckhannon, WV: September 7, 2010

TA–W–80,422A; Coastal Lumber Company, Elgon, WV: September 7, 2010

TA–W–80,422B; Coastal Lumber Company, Elkins, WV: September 7, 2010

TA–W–80,422C; Coastal Lumber Company, Smithburg, WV: September 7, 2010

TA–W–80,422D; Coastal Lumber Company, Frametown, WV: September 7, 2010

TA–W–80,422E; Coastal Lumber Company, Hacker Valley, WV: September 7, 2010

TA–W–80,422F; Coastal Lumber Company, Gassaway, WV: September 7, 2010

TA–W–80,422G; Coastal Lumber Company, Dailey, WV: September 7, 2010

TA–W–80,422H; Coastal Lumber Company, Dailey, WV: September 7, 2010

TA–W–80,422I; Coastal Lumber Company, Charlottesville, WV: September 7, 2010

TA–W–80,422J; Coastal Lumber Company, Hopwood, PA: September 7, 2010

Determinations Terminating Investigations of Petitions for Worker Adjustment Assistance

After notice of the petitions was published in the **Federal Register** and on the Department's Web site, as required by Section 221 of the Act (19 U.S.C. 2271), the Department initiated investigations of these petitions.

The following determinations terminating investigations were issued because the petitioning groups of workers are covered by active certifications. Consequently, further investigation in these cases would serve no purpose since the petitioning group of workers cannot be covered by more than one certification at a time.

TA–W–80,427; Coastal Lumber Company, Hopwood, PA

I hereby certify that the aforementioned determinations were issued during the period of October 11, 2011 through October 14, 2011. Copies of these determinations may be requested under the Freedom of Information Act. Requests may be submitted by fax, courier services, or mail to FOIA Disclosure Officer, Office of Trade Adjustment Assistance (ETA), U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 or *tofoiarequest@dol.gov.* These determinations also are available on the Department's Web site at *http://www.doleta.gov/tradeact* under the searchable listing of determinations.

Dated: October 20, 2011.

Michael W. Jaffe,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2011–27701 Filed 10–25–11; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) number and alternative trade adjustment assistance (ATAA) by (TA–W) number issued during the period of October 3, 2011 through October 7, 2011.

In order for an affirmative determination to be made for workers of a primary firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(a) of the Act must be met.

I. Section (a)(2)(A), all of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. The sales or production, or both, of such firm or subdivision have decreased absolutely; and

C. Increased imports of articles like or directly competitive with articles produced by such firm or subdivision have contributed importantly to such workers' separation or threat of separation and to the decline in sales or production of such firm or subdivision; or

II. Section (a)(2)(B), both of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or

an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. There has been a shift in production by such workers' firm or subdivision to a foreign country of articles like or directly competitive with articles which are produced by such firm or subdivision; and

C. One of the following must be satisfied:

1. The country to which the workers' firm has shifted production of the articles is a party to a free trade agreement with the United States;

2. The country to which the workers' firm has shifted production of the articles is a beneficiary country under the Andean Trade Preference Act, African Growth and Opportunity Act, or the Caribbean Basin Economic Recovery Act; or

3. There has been or is likely to be an increase in imports of articles that are like or directly competitive with articles which are or were produced by such firm or subdivision.

Also, in order for an affirmative determination to be made for secondarily affected workers of a firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(b) of the Act must be met.

(1) Significant number or proportion of the workers in the workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The workers' firm (or subdivision) is a supplier or downstream producer to a firm (or subdivision) that employed a group of workers who received a certification of eligibility to apply for trade adjustment assistance benefits and such supply or production is related to the article that was the basis for such certification; and

(3) Either—

(A) The workers' firm is a supplier and the component parts it supplied for the firm (or subdivision) described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) A loss of business by the workers' firm with the firm (or subdivision) described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

In order for the Division of Trade Adjustment Assistance to issue a certification of eligibility to apply for Alternative Trade Adjustment Assistance (ATAA) for older workers, the group eligibility requirements of Section 246(a)(3)(A)(ii) of the Trade Act must be met.

1. Whether a significant number of workers in the workers' firm are 50 years of age or older.

2. Whether the workers in the workers' firm possess skills that are not easily transferable.

3. The competitive conditions within the workers' industry (*i.e.,* conditions within the industry are adverse).

Affirmative Determinations for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (increased imports) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA–W–80,373 Hamburg Industries, Inc., Hamburg, PA: August 16, 2010

TA–W–80,391; Vertis, Inc., North Haven, CT: August 6, 2011

TA–W–80,426; PCT International, Jackson, MI: September 8, 2010

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (shift in production) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA–W–80,376; Nordson Corporation, Norcross, GA: July 8, 2010

TA–W–80,384; Leviton Southern Devices, Morganton, NC: August 19, 2010

TA–W–80,461; Wilson Sporting Goods Company, Sparta, TN: September 23, 2010

Negative Determinations for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In the following cases, the investigation revealed that the eligibility criteria for worker adjustment assistance have not been met for the reasons specified.

Because the workers of the firm are not eligible to apply for TAA, the workers cannot be certified eligible for ATAA.

The investigation revealed that criteria (a)(2)(A)(I.C.) (increased imports) and (a)(2)(B)(II.B.) (shift in production to a foreign country) have not been met.

TA–W–80,199; Stimson Lumber Co., Gaston, OR

TA–W–80,310; Applabs, Inc., Deerfield Beach, FL

TA–W–80,334; RR Donnelley, Eldridge, IA

TA–W–80,379; Hewlett Packard Company, Corvallis, OR

TA–W–80.394; Deluxe Printing Co, Inc., Hickory, NC

TA–W–80,474; Simonton Windows, McAlester, OK

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–80,407; CHEP USA, Orlando, FL

TA–W–80,441; Online Buddies, Inc., Cambridge, MA

TA–W–80,462; Tradewins, LLC, Woodinville, WA

Determinations Terminating Investigations of Petitions for Worker Adjustment Assistance

After notice of the petitions was published in the **Federal Register** and on the Department's Web site, as required by Section 221 of the Act (19 U.S.C. 2271), the Department initiated investigations of these petitions.

The following determinations terminating investigations were issued because the petitioning groups of workers are covered by active certifications. Consequently, further investigation in these cases would serve no purpose since the petitioning group of workers cannot be covered by more than one certification at a time.

TA–W–80,344; Flextronics International USA, Inc., Foothill Ranch, CA

TA–W–80,364; Gray Interplant Systems, Inc., Peoria, IL

I hereby certify that the aforementioned determinations were issued during the period of October 3, 2011 through October 7, 2011. Copies of these determinations may be requested under the Freedom of Information Act. Requests may be submitted by fax, courier services, or mail to FOIA Disclosure Officer, Office of Trade Adjustment Assistance (ETA), U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 or *tofoiarequest@dol.gov.* These determinations also are available on the Department's Web site at *http://www.doleta.gov/tradeact* under the searchable listing of determinations.

Dated: October 14, 2011.

Michael W. Jaffe,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2011–27705 Filed 10–25–11; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221 (a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than November 7, 2011.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than November 7, 2011.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room N–5428, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 20th day of October 2011

Michael Jaffe,

Certifying Officer, Office of Trade Adjustment Assistance.

APPENDIX

[20 TAA petitions instituted between 10/10/11 and 10/14/11]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
80500	IBM (State/One-Stop)	San Francisco, CA	10/11/11	10/07/11
80501	TT Electronics (Company)	Boone, NC	10/11/11	10/10/11
80502	LexisNexis (Company)	Miamisburg, OH	10/11/11	10/06/11
80503	Viam Manufacturing, Inc. (Company)	Santa Fe Springs, CA	10/11/11	10/06/11
80504	BASF Corporation (Company)	Belvidere, NJ	10/14/11	10/11/11
80505	Haldex (State/One-Stop)	Kansas City, MO	10/14/11	10/12/11
80506	JVC–USA Product Return Center (State/One-Stop)	McAllen, TX	10/14/11	10/12/11
80507	Kerry Ingredients & Flavours (Union)	Turtle Lake, WI	10/14/11	10/12/11
80508	Stateline Warehouse (Workers)	Ridgeway, VA	10/14/11	10/07/11
80509	ON Semiconductor (Company)	Phoenix, AZ	10/14/11	10/06/11
80510	Suntron Corporation (Company)	Sugar Land, TX	10/14/11	10/12/11
80511	Specialty Bar Products Co. (Workers)	Blairsville, PA	10/14/11	10/05/11
80512	Pilgrim's Pride—Dallas Processing Plant (State/One-Stop)	Dallas, TX	10/14/11	09/30/11
80513	Centurion Medical Products (Workers)	Jeanette, PA	10/14/11	10/13/11
80514	Intier Magna (State/One-Stop)	Shreveport, LA	10/14/11	10/13/11
80515	AI Android Industries (State/One-Stop)	Shreveport, LA	10/14/11	10/13/11
80516	Travelers (Workers)	Elmira, NY	10/14/11	10/13/11
80517	AGS Automotive (State/One-Stop)	Shreveport, LA	10/14/11	10/13/11
80518	KV Pharmaceuticals (State/One-Stop)	Bridgeton, MO	10/14/11	10/13/11
80519	Verso Paper Corp. (Union)	Bucksport, ME	10/14/11	10/13/11

[FR Doc. 2011–27700 Filed 10–25–11; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221 (a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than November 7, 2011.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than November 7, 2011.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room N–5428, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 12 day of October 2011.

Michael W. Jaffe,

Certifying Officer, Office of Trade Adjustment Assistance.

APPENDIX

[14 TAA petitions instituted between 10/3/11 and 10/7/11]

TA–W	Subject Firm (petitioners)	Location	Date of institution	Date of petition
80486	Lattice Semiconductor (Workers)	Bethlehem, PA	10/03/11	09/22/11
80487	Stimson Lumber Company (Workers)	Colville, WA	10/03/11	09/27/11
80488	Plexus Services Corp. (Company)	Nampa, ID	10/03/11	09/30/11
80489	Citi Group (State/One-Stop)	Elk Grove Village, IL	10/03/11	09/30/11
80490	Novartis Pharmaceuticals (State/One-Stop)	East Hanover, NJ	10/04/11	10/03/11
80491	Staffmark (Workers)	Poplar Bluff, MO	10/04/11	09/30/11
80492	Rock-Tenn-Milwaukee Folding Plant (Union)	Milwaukee, WI	10/05/11	10/04/11
80493	Molded Fiber Glass Companies (MFG Texas) (State/One-Stop).	Gainesville, TX	10/05/11	10/04/11
80494	Anthelio Healthcare Solutions Inc. (State/One-Stop)	Dallas, TX	10/05/11	10/04/11
80495	BCI—The Newark Group, Inc. (State/One-Stop)	Fitchburg, MA	10/06/11	10/05/11
80496	Ben-Mar Hosiery (Company)	Ft. Payne, AL	10/07/11	10/05/11
80497	Southwoods, LLC (Company)	Manning, SC	10/07/11	10/06/11
80498	InterMetro Industries (Company)	Fostoria, OH	10/07/11	10/05/11
80499	Standard Insurance Company (Workers)	Portland, OR	10/07/11	09/26/11

[FR Doc. 2011–27704 Filed 10–25–11; 8:45 am]

BILLING CODE 4510–FN–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–302; NRC–2011–0248]

Florida Power Corporation; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (NRC or the Commission) has granted the request of Florida Power Corporation (the licensee) to withdraw its March 24, 2011, application for proposed amendment to Facility Operating License No. DPR–72 for the Crystal River Unit 3 Nuclear Generating Plant located in Citrus County, Florida.

The proposed amendment would have modified the facility technical specifications to adopt Technical Specification Task Force (TSTF), Improved Standard Technical Specifications Change Traveler, TSTF–248, Revision 0, ''Revise Shutdown Margin Definition for Stuck Rod Exception.'' The proposed amendment would have revised the definition of shutdown margin to include a provision allowing an exception to the highest reactivity worth stuck control rod penalty if there are two independent means of confirming that all control rods are fully inserted in the reactor core.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on June 28, 2011 (76 FR 37848). However, by letter dated September 7, 2011, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated March 24, 2011, and the licensee's letter dated September 7, 2011, which withdrew the application for license amendment. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available documents created or received at the NRC are accessible electronically through the Agencywide Documents Access and Management System (ADAMS) in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1–800–397–4209 or 301–415–4737, or by e-mail to *pdr.resource@nrc.gov.*

Dated at Rockville, Maryland, this 17th day of October 2011.

For the Nuclear Regulatory Commission.

Farideh E. Saba,

Senior Project Manager, Plant Licensing Branch II–2, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2011–27689 Filed 10–25–11; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2011–0249]

Appointments to Performance Review Boards for Senior Executive Service

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Appointment to Performance Review Boards for Senior Executive Service.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has announced the following appointments to the NRC Performance Review Boards.

The following individuals are appointed as members of the NRC Performance Review Board (PRB) responsible for making recommendations to the appointing and awarding authorities on performance appraisal ratings and performance awards for Senior Executives and Senior Level employees:

Darren B. Ash, Deputy Executive Director for Corporate Management, Office of the Executive Director for Operations.

R.W. Borchardt, Executive Director for Operations.

Stephen G. Burns, General Counsel.

James E. Dyer, Chief Financial Officer.

Kathryn O. Greene, Director, Office of Administration.

Catherine Haney, Director, Office of Nuclear Material Safety and Safeguards.

Eric J. Leeds, Director, Office of Nuclear Reactor Regulation.

Victor M. McCree, Regional Administrator, Region II.

Annette L. Vietti-Cook, Secretary of the Commission, Office of the Secretary.

Martin J. Virgilio, Deputy Executive Director for Reactor and Preparedness Programs, Office of the Executive Director for Operations.

Michael F. Weber, Deputy Executive Director for Materials, Waste, Research, State, Tribal, and Compliance Programs, Office of the Executive Director for Operations.

James T. Wiggins, Director, Office of Nuclear Security and Incident Response.

The following individuals will serve as members of the NRC PRB Panel that was established to review appraisals and make recommendations to the appointing and awarding authorities for NRC PRB members:

Marvin L. Itzkowitz, Associate General Counsel for Hearings, Enforcement, and Administration, Office of the General Counsel.

Michael R. Johnson, Director, Office of New Reactors.

Mark A. Satorius, Director, Office of Federal and State Materials and Environmental Management Programs.

All appointments are made pursuant to Section 4314 of Chapter 43 of Title 5 of the United States Code.

DATES: *Effective Date*: October 26, 2011.

FOR FURTHER INFORMATION CONTACT: Secretary, Executive Resources Board, U.S. Nuclear Regulatory Commission, Washington, DC 20555, (301) 492–2076.

Dated at Bethesda, Maryland, this 18th day of October, 2011.

For the U.S. Nuclear Regulatory Commission.

Miriam L. Cohen,

Secretary, Executive Resources Board.

[FR Doc. 2011–27688 Filed 10–25–11; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–261; NRC–2011–0247]

Carolina Power & Light Company, H.B. Robinson Steam Electric Plant, Unit No. 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an exemption pursuant to Title 10 of the *Code of Federal Regulations* (10 CFR) 50.46, ''Acceptance criteria for emergency core cooling systems for light-water nuclear power reactors,'' and 10 CFR part 50, appendix k, ''ECCS [Emergency Core Cooling System] Evaluation Models,'' to allow for the use of M5 alloy fuel rod cladding for Facility Operating License No. DPR–23, issued to Carolina Power & Light Company (the licensee), for operation of the H. B. Robinson Steam Electric Plant, Unit 2 (HBRSEP), located in Darlington County, South Carolina. In accordance with 10 CFR 51.21, ''Criteria for and identification of licensing and regulatory actions requiring environmental assessments,'' the NRC staff prepared an environmental assessment documenting its finding. The NRC staff concluded that the proposed action will have no significant environmental impact.

Environmental Assessment

Identification of the Proposed Action

The proposed action would exempt the licensee from certain requirements of 10 CFR 50.46 and appendix K to 10 CFR part 50. Specifically, 10 CFR 50.46, paragraph (a)(1)(i) provides requirements for reactors containing uranium oxide fuel pellets clad in either zircaloy or ZIRLO. Additionally, appendix K to 10 CFR part 50 specifies the use of zircaloy or ZIRLO fuel cladding when doing calculations for energy release, cladding oxidation, and hydrogen generation after a postulated loss-of-coolant accident. Therefore, both of these regulations either state that either zircaloy or ZIRLO is used as the fuel rod cladding material. The proposed exemption would allow the licensee use of M5 cladding fuel assemblies into the core of HBRESP, Unit 2. The proposed action is in accordance with the licensee's application dated October 19, 2010.

The Need for the Proposed Action

The proposed exemption is needed to allow the licensee to allow for the use of M5 alloy fuel rod cladding at HBRSEP, Unit No. 2. The licensee has requested an exemption from the requirements of 10 CFR 50.46 and 10 CFR part 50, appendix K to allow for loading of M5 cladding fuel assemblies, in lieu of zircaloy or ZIRLO, into the core during Refueling Outage 27 that is currently scheduled to begin on October 29, 2011.

Environmental Impacts of the Proposed Action

The NRC has completed its evaluation of the proposed action and concludes that there are no environmental impacts associated with the proposed exemption. The details of the NRC staff's safety evaluation will be provided in the exemption that, if approved by the NRC, will be issued as part of the letter to the licensee approving the exemption to the regulation.

The proposed action will not significantly increase the probability or consequences of accidents. No changes are being made in the types of effluents that may be released offsite. There is no significant increase in the amount of any effluent released offsite. There is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does not result in changes to land use or water use, or result in changes to the quality or quantity of nonradiological effluents. No changes to the National Pollution Discharge Elimination system permit are needed. No effects on the aquatic or terrestrial habitat in the vicinity or the plant, or to threatened, endangered, or protected specifies under the Endangered Species Act, or impacts to essential fish habitat covered by the Magnuson-Stevens Act are expected. There are no impacts to the air or ambient air quality. There are no impacts to historical and cultural resources. In addition, there are also no known socioeconomic or environmental justice impacts associated with such proposed action. Therefore, there are no significant nonradiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the NRC staff considered denial of the proposed action (*i.e.,* the ''no action'' alternative). Denial of the exemption request would result in no change in current environmental impacts. If the proposed action was denied, the licensee would have to comply with the ECCS rules in 10 CFR 50.46 and appendix K to 10 CFR part 50 regarding use of M5 cladding into the HBRSEP, Unit 2 core during the upcoming refueling outage. This would cause unnecessary burden on the licensee, without a significant benefit in environmental impacts. The environmental impacts of the proposed exemption and the ''no action'' alternative are similar.

Alternative Use of Resources

The action does not involve the use of any different resources than those considered in the Final Environmental Statement for the HBRSEP, dated April 1975, as supplemented through the ''Generic Environmental Impact Statement for License Renewal of Nuclear Plants: H.B. Robinson Steam Electric Plant, Unit 2—Final Report (NUREG—1437, Supplement 13).''

Agencies and Persons Consulted

In accordance with its stated policy, on October 17, 2011, the NRC staff consulted with the South Carolina State official, Mark Yeager of the South Carolina Bureau of Land and Waste Management, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Pursuant to 10 CFR 51.32, ''Finding of No Significant Impact,'' and on the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated October 19, 2010 (Agencywide Documents Access and Management System (ADAMS), Accession No. ML102980142). This document may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records are accessible electronically through ADAMS in the NRC Library on the internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.*

Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1–800–397–4209 or 301–415–4737, or send an e-mail to *pdr.resource@nrc.gov.*

Dated at Rockville, Maryland, this 17th day of October 2011.

For the Nuclear Regulatory Commission.

Farideh E. Saba,

Senior Project Manager, Plant Licensing Branch II–2, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2011–27691 Filed 10–25–11; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2009–0435]

Final Environmental Assessment and Finding of No Significant Impact for the Proposed License Renewal for Nuclear Fuel Services, Inc. in Erwin, TN

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Availability of Final Environmental Assessment and Finding of No Significant Impact.

SUMMARY: Notice is hereby given that the U.S. Nuclear Regulatory Commission (NRC) is issuing a final environmental assessment (EA) regarding the proposed renewal of NRC special nuclear material license SNM–124 (License SNM–124), which authorizes operations at the Nuclear Fuel Services, Inc. (NFS) fuel fabrication facility in Erwin, Tennessee. On June 30, 2009, NFS submitted to the NRC an application requesting that License SNM–124 be renewed for a 40-year period. The EA makes a finding of no significant impact (FONSI) regarding the proposed action.

ADDRESSES: You can access publicly available documents related to this document using the following methods:

• *NRC's Public Document Room (PDR):* The public may examine and have copied, for a fee, publicly available documents related to the NFS facility and license renewal at the NRC's PDR, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. Members of the public can contact the NRC's PDR reference staff by calling 1–800–397–4209, by faxing a request to 301–415–3548, or by e-mail to *pdr.resource@nrc.gov.* Hard copies of the documents are available from the PDR for a fee.

• *NRC's Agencywide Documents Access and Management System (ADAMS):* Publicly available documents created or received at the NRC are available online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* From this page, the public can gain entry into ADAMS, which provides text and image files of the NRC's public documents. From this Web site, the following documents related to the NRC's environmental review can be obtained by entering the accession numbers provided:

The NFS license renewal application (ADAMS Accession Number: ML091880040) and the accompanying environmental report (ADAMS Accession Number: ML091900072);

The NRC request for additional information (ADAMS Accession Number: ML100680426);

The NFS response providing additional information (ADAMS Accession Number: ML101590160); and

The NRC Final EA (ADAMS Accession Number: ML112560265).

Additionally, copies of the EA will be available at the following public libraries:

Unicoi County Public Library, 201 Nolichucky Avenue, Erwin, Tennessee 37650–1239. 423–743–6533.

Jonesborough Branch, Washington County Library, 200 Sabin Drive, Jonesborough, Tennessee 37659–1306. 423–753–1800.

Greeneville/Green County Public Library, 210 North Main Street, Greeneville, Tennessee 37745–3816. 423–638–5034.

FOR FURTHER INFORMATION CONTACT: For information about the EA or the environmental review process, please contact James Park, *telephone:* 301–415–6935; *e-mail: James.Park@nrc.gov.* For general or technical information associated with the ongoing safety review of the NFS license renewal application, please contact Kevin Ramsey, *telephone:* 301–492–3123; *e-mail: Kevin.Ramsey@nrc.gov.*

SUPPLEMENTARY INFORMATION: On June 30, 2009, NFS submitted its license renewal application and accompanying environmental report (ER) to the NRC. On October 6, 2009, the NRC provided notice in the **Federal Register** (74 FR 51323) of its receipt of the license renewal application and also noticed an opportunity to request a hearing on the application. No requests for a hearing were received. Under the conditions of License SNM–124, NFS operates a nuclear fuel fabrication facility located in Erwin, Tennessee. If granted as requested, the renewed license would allow NFS to continue operations and activities at the site for a 40-year period that would begin with issuance of the renewed license.

The NRC staff's environmental review of the proposed 40-year license renewal is documented in the EA, in accordance with NRC regulations at Title 10 of the *Code of Federal Regulations* (10 CFR) part 51, which implement the National Environmental Policy Act of 1969, as amended (NEPA). The EA also follows NRC staff guidance in NUREG–1748, ''Environmental Review Guidance for Licensing Actions Associated with NMSS Programs.'' The EA identifies and evaluates the potential environmental impacts of the proposed action, and reasonable alternatives. The NRC staff has determined that renewal of License SNM–124 for a 40-year period would not significantly affect the quality of the human environment, and the EA thus makes a FONSI. The NRC staff further finds that preparation of an environmental impact statement (EIS) for the proposed action is not warranted.

The NRC staff published for public comment a draft EA for the proposed action on October 15, 2010 (75 FR 63519). The NRC staff accepted comments on the draft EA until December 31, 2010, and hosted a meeting in Erwin, Tennessee on October 26, 2010, to accept oral and written public comments. Comments were identified from the transcript of statements made at the public meeting, and from letters and e-mails submitted by members of the public. Appendix B of the Final EA includes summaries of

the approximately 375 individual comments identified, and the NRC staff's responses to those comments. The NRC staff revised the draft EA in response to some of the comments.

Preparation of the EA is part of the NRC's process to decide whether to renew the NFS license, pursuant to 10 CFR parts 20 and 70, and thus authorize continued operations at the NFS facility. In accordance with the provisions of 10 CFR part 70, the current license authorizes NFS to receive, possess, store, use, and ship special nuclear material enriched up to 100 percent. Under the proposed action, NFS would continue production of reactor fuel for the U.S. Navy, and for commercial domestic operations.

In addition to the NFS proposed action to renew its license for 40 years, the NRC staff analyzed two alternatives: (1) The no-action alternative; and (2) renewing the NFS license for 10 years. Under the no-action alternative, NRC would not renew License SNM–124, and operations at the NFS site would no longer be authorized. NFS then would be required under 10 CFR 70.38 to submit a detailed site-wide decommissioning plan, and facility decommissioning would begin upon NRC approval of that plan.

Regarding the 10-year license renewal alternative, the potential transportation and waste management impacts of this alternative to the proposed action are addressed in the EA. The magnitude of these expected impacts are one-fourth of those projected over the proposed 40-year license renewal period. As shown in the first table below, the local transportation impacts are rated as moderate and the overall transportation impacts are rated as small for both the 10-year and the 40-year proposed license renewal periods. The potential waste management impacts are rated as small for both the 10-year and the 40-year proposed license renewal periods.

The NRC staff did not separately address the 10-year alternative for the other resource areas evaluated in the EA, because the staff determined that the types of potential environmental impacts associated with site operations during the proposed 40-year license renewal period would be the same as those during a 10-year license renewal period.

Additionally, for the 10-year alternative, the NRC staff does not consider the potential impacts from NFS discharges of effluents that are in compliance with 10 CFR part 20 annual regulatory limits (and discharges that are in compliance with the permit conditions issued by other Federal, State, or local agencies) to differ either in type or in magnitude with the potential impacts for the requested 40-year period. The annual regulatory limits in 10 CFR part 20 and the respective permit conditions are protective of public health and safety and the environment. Discharges in compliance with those limits and conditions would thus not be expected to pose undue cumulative risks to human health and the environment.

In response to comments on the draft EA, impacts from site decommissioning are evaluated in the final EA for the proposed action and the 10-year alternative, in addition to the no-action alternative. In doing so, the NRC staff recognizes that site decommissioning will be a reasonably foreseeable future action for the NFS facility and site. In conducting its evaluation, the staff also recognized that continued operations over 40 years or 10 years has the potential for increased site contamination that would need to be addressed in the detailed site decommissioning plan that NFS will be required to submit for NRC review when NFS decides to permanently cease its licensed operations. In further response to comments, the issue of cancer risk is discussed in the final EA's section on potential public health impacts.

The tables below list the resource areas evaluated in the EA, and provide the findings regarding the potential environmental impacts for each of the three alternatives. In accordance with Council of Environmental Quality regulations (40 CFR 1508.27), the significance of potential impacts of the proposed action have been determined by examining their context and intensity. Context is related to the affected region, the affected interests, and the locality, while intensity refers to the severity of the impact, which is based on a number of considerations. In evaluating the significance of potential impacts, the NRC staff in the EA used the following significance levels identified in NUREG–1748, which account for context and intensity:

- Small—environmental effects are not detectable or are so minor that they will neither destabilize nor noticeably alter any important attribute of the resource;
- Moderate—environmental effects are sufficient to alter noticeably, but not to destabilize, important attributes of the resource; or
- Large—environmental effects are clearly noticeable and are sufficient to destabilize important attributes of the resource.

SUMMARY OF POTENTIAL ENVIRONMENTAL IMPACTS FROM OPERATIONS

Resource area	Proposed action	10-Year renewal	No-action
Land Use	SMALL to MODERATE	SMALL to MODERATE	SMALL.
Transportation	SMALL (overall) MODERATE (local).	SMALL (overall) MODERATE (local).	SMALL.
Socioeconomics	SMALL	SMALL	SMALL to MODERATE.
Air Quality	SMALL	SMALL	SMALL.
Water Resources—Surface Water	SMALL	SMALL	SMALL.
Water Resources—Groundwater	SMALL to MODERATE	SMALL to MODERATE	SMALL.
Geology & Soils	SMALL (geology) SMALL to MODERATE (soils).	SMALL (geology) SMALL to MODERATE (soils).	SMALL (geology) SMALL to MODERATE (soils).
Ecology	SMALL	SMALL	SMALL.
Noise	SMALL	SMALL	SMALL.
Historic & Cultural	SMALL	SMALL	SMALL.
Scenic & Visual	SMALL	SMALL	SMALL.
Public & Occupational Health	SMALL	SMALL	SMALL.
Public & Occupational Health—Accidents.	MODERATE	MODERATE	SMALL.
Waste Management	SMALL	SMALL	SMALL.

SUMMARY OF POTENTIAL ENVIRONMENTAL IMPACTS FROM DECOMMISSIONING

Resource area	Proposed action	10-Year renewal	No-action
Land Use	MODERATE	MODERATE	MODERATE.
Transportation	SMALL (overall) MODERATE (local).	SMALL (overall) MODERATE (local).	SMALL (overall) MODERATE (local).
Socioeconomics	SMALL to MODERATE	SMALL to MODERATE	SMALL to MODERATE.
Air Quality	SMALL	SMALL	SMALL.
Water Resources—Surface Water	SMALL to MODERATE	SMALL to MODERATE	SMALL to MODERATE.
Water Resources—Groundwater	SMALL to MODERATE	SMALL to MODERATE	SMALL to MODERATE.
Geology & Soils	SMALL (geology) SMALL to MODERATE (soils).	SMALL (geology) SMALL to MODERATE (soils).	SMALL (geology) SMALL to MODERATE (soils).
Ecology	SMALL to MODERATE	SMALL to MODERATE	SMALL to MODERATE.
Noise	SMALL to MODERATE	SMALL to MODERATE	SMALL to MODERATE.
Historic & Cultural	SMALL	SMALL	SMALL.
Scenic & Visual	MODERATE	MODERATE	MODERATE.
Public & Occupational Health	SMALL	SMALL	SMALL.
Public & Occupational Health—Accidents.	SMALL to MODERATE	SMALL to MODERATE	SMALL to MODERATE.
Waste Management	MODERATE	MODERATE	MODERATE.

Based on its review of the proposed action relative to the requirements set forth in 10 CFR part 51, the NRC staff has determined that renewal of License SNM–124, for a period of 40 years would not significantly affect the quality of the human environment. In its license renewal request, NFS is proposing no changes in how it processes enriched uranium, and no significant changes in NFS' authorized operations are planned during the proposed license renewal period. The impacts of ongoing and planned construction actions—including those related to the physical protection and safeguarding of licensed materials—are not expected to significantly affect the quality of the human environment. Gaseous emissions and liquid effluents generated by the NFS facility are presently controlled and monitored by permit, and would continue to be required to meet regulatory limits for non-radiological and radiological components. Public and occupational radiological dose exposures that would be generated by continued NFS facility operations would continue to be required to meet 10 CFR part 20 regulatory limits. Pursuant to 10 CFR 51.31 and 51.32, the NRC staff concludes that a FONSI is appropriate, and that preparation of an EIS is not warranted for the proposed action.

Dated at Rockville, Maryland, this 20th day of October, 2011.

For the Nuclear Regulatory Commission.

Christopher McKenney,

Acting Deputy Director, Environmental Protection and Performance Assessment Directorate, Division of Waste Management and Environmental Protection, Office of Federal and State Materials and Environmental Management Programs.

[FR Doc. 2011–27685 Filed 10–25–11; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket No. A2012–11; Order No. 910]

Post Office Closing

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: This document informs the public that an appeal of the closing of the Ardenvoir, Washington, post office has been filed. It identifies preliminary steps and provides a procedural schedule. Publication of this document will allow the Postal Service, petitioners, and others to take appropriate action.

DATES: *Administrative record due (from Postal Service):* October 28, 2011; *deadline for notices to intervene:* November 14, 2011, 4:30 p.m., eastern time. *See* the Procedural Schedule in the **SUPPLEMENTARY INFORMATION** section for other dates of interest.

ADDRESSES: Submit comments electronically by accessing the ''Filing Online'' link in the banner at the top of the Commission's Web site (*http://www.prc.gov*) or by directly accessing the Commission's Filing Online system at *https://www.prc.gov/prc-pages/filing-online/login.aspx.* Commenters who cannot submit their views electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section as the source for case-related information for advice on alternatives to electronic filing.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, at 202–789–6820 (case-related information) or *DocketAdmins@prc.gov* (electronic filing assistance).

SUPPLEMENTARY INFORMATION: Notice is hereby given that, pursuant to 39 U.S.C. 404(d), on October 13, 2011, the Commission received a petition for review of the Postal Service's determination to close the Ardenvoir post office in Ardenvoir, Washington. The petition for review was filed by Christine Mallon (Petitioner) and is postmarked September 30, 2011. The Commission hereby institutes a proceeding under 39 U.S.C. 404(d)(5) and establishes Docket No. A2012–11 to consider Petitioner's appeal. If Petitioner would like to further explain her position with supplemental information or facts, Petitioner may either file a Participant Statement on PRC Form 61 or file a brief with the Commission no later than November 17, 2011.

Issues apparently raised. Petitioner contends that: (1) The Postal Service failed to consider the effect of the closing on the community (*see* 39 U.S.C. 404(d)(2)(A)(i)); and (2) the Postal Service failed to consider whether or not it will continue to provide a maximum degree of effective and regular postal services to the community (*see* 39 U.S.C. 404(d)(2)(A)(iii)).

After the Postal Service files the administrative record and the Commission reviews it, the Commission may find that there are more legal issues than those set forth above, or that the Postal Service's determination disposes of one or more of those issues. The deadline for the Postal Service to file the applicable administrative record with the Commission is October 28, 2011. *See* 39 CFR 3001.113. In addition, the due date for any responsive pleading by the Postal Service to this Notice is October 28, 2011.

Availability; Web site posting. The Commission has posted the appeal and supporting material on its Web site at *http://www.prc.gov.* Additional filings in this case and participants'

submissions also will be posted on the Commission's Web site, if provided in electronic format or amenable to conversion, and not subject to a valid protective order. Information on how to use the Commission's Web site is available online or by contacting the Commission's Webmaster via telephone at 202–789–6873 or via electronic mail at *prc-webmaster@prc.gov.*

The appeal and all related documents are also available for public inspection in the Commission's docket section. Docket section hours are 8 a.m. to 4:30 p.m., Eastern Time, Monday through Friday, except on Federal government holidays. Docket section personnel may be contacted via electronic mail at *prc-dockets@prc.gov* or via telephone at 202–789–6846.

Filing of documents. All filings of documents in this case shall be made using the Internet (Filing Online) pursuant to Commission rules 9(a) and 10(a) at the Commission's Web site, *http://www.prc.gov,* unless a waiver is obtained. *See* 39 CFR 3001.9(a) and 3001.10(a). Instructions for obtaining an account to file documents online may be found on the Commission's Web site or by contacting the Commission's docket section at *prc-dockets@prc.gov* or via telephone at 202–789–6846.

The Commission reserves the right to redact personal information which may infringe on an individual's privacy rights from documents filed in this proceeding.

Intervention. Persons, other than Petitioner and respondent, wishing to be heard in this matter are directed to file a notice of intervention. *See* 39 CFR 3001.111(b). Notices of intervention in this case are to be filed on or before November 14, 2011. A notice of intervention shall be filed using the Internet (Filing Online) at the Commission's Web site unless a waiver is obtained for hardcopy filing. *See* 39 CFR 3001.9(a) and 3001.10(a).

Further procedures. By statute, the Commission is required to issue its decision within 120 days from the date it receives the appeal. *See* 39 U.S.C. 404(d)(5). A procedural schedule has been developed to accommodate this statutory deadline. In the interest of expedition, in light of the 120-day decision schedule, the Commission may request the Postal Service or other participants to submit information or memoranda of law on any appropriate issue. As required by the Commission rules, if any motions are filed, responses are due 7 days after any such motion is filed. *See* 39 CFR 3001.21.

It is ordered:

1. The Postal Service shall file the applicable administrative record regarding this appeal no later than October 28, 2011.

2. Any responsive pleading by the Postal Service to this Notice is due no later than October 28, 2011.

3. The procedural schedule listed below is hereby adopted.

4. Pursuant to 39 U.S.C. 505, Cassandra L. Hicks is designated officer of the Commission (Public Representative) to represent the interests of the general public.

5. The Secretary shall arrange for publication of this notice and order in the **Federal Register**.

By the Commission.

Shoshana M. Grove,

Secretary.

PROCEDURAL SCHEDULE

October 13, 2011	Filing of Appeal.
October 28, 2011	Deadline for the Postal Service to file the applicable administrative record in this appeal.
October 28, 2011	Deadline for the Postal Service to file any responsive pleading.
November 14, 2011	Deadline for notices to intervene (*see* 39 CFR 3001.111(b)).
November 17, 2011	Deadline for Petitioners' Form 61 or initial brief in support of petition (*see* 39 CFR 3001.115(a) and (b)).
December 7, 2011	Deadline for answering brief in support of the Postal Service (*see* 39 CFR 3001.115(c)).
December 22, 2011	Deadline for reply briefs in response to answering briefs (*see* 39 CFR 3001.115(d)).
December 29, 2011	Deadline for motions by any party requesting oral argument; the Commission will schedule oral argument only when it is a necessary addition to the written filings (*see* 39 CFR 3001.116).
January 30, 2012	Expiration of the Commission's 120-day decisional schedule (*see* 39 U.S.C. 404(d)(5)).

[FR Doc. 2011–27646 Filed 10–25–11; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL REGULATORY COMMISSION

[Docket No. A2012–12; Order No. 911]

Post Office Closing

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: This document informs the public that an appeal of the closing of the Ruth, Mississippi, post office has been filed. It identifies preliminary steps and provides a procedural schedule. Publication of this document will allow the Postal Service, petitioners, and others to take appropriate action.

DATES: *Administrative record due (from Postal Service):* October 28, 2011; *deadline for notices to intervene:* November 14, 2011, 4:30 p.m., eastern time. *See* the Procedural Schedule in the **SUPPLEMENTARY INFORMATION** section for other dates of interest.

ADDRESSES: Submit comments electronically by accessing the ''Filing Online'' link in the banner at the top of the Commission's Web site (*http://www.prc.gov*) or by directly accessing the Commission's Filing Online system at *https://www.prc.gov/prc-pages/filing-online/login.aspx.* Commenters who cannot submit their views electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section as the source for case-related information for advice on alternatives to electronic filing.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, at 202–789–6820 (case-related information) or *DocketAdmins@prc.gov* (electronic filing assistance).

SUPPLEMENTARY INFORMATION: Notice is hereby given that, pursuant to 39 U.S.C. 404(d), on October 13, 2011, the Commission received a petition for review of the Postal Service's determination to close the Ruth post office in Ruth, Mississippi. The petition for review was filed by Bonnie Ard (Petitioner) and is postmarked October 6, 2011. The Commission hereby

institutes a proceeding under 39 U.S.C. 404(d)(5) and establishes Docket No. A2012–12 to consider Petitioner's appeal. If Petitioner would like to further explain her position with supplemental information or facts, Petitioner may either file a Participant Statement on PRC Form 61 or file a brief with the Commission no later than November 17, 2011.

Issues apparently raised. Petitioner contends that the Postal Service failed to: (1) Consider the effect of the closing on the community (*see* 39 U.S.C. 404(d)(2)(A)(i)); and (2) Petitioner contends that there are factual errors contained in the Final Determination.

After the Postal Service files the administrative record and the Commission reviews it, the Commission may find that there are more legal issues than those set forth above, or that the Postal Service's determination disposes of one or more of those issues. The deadline for the Postal Service to file the applicable administrative record with the Commission is October 28, 2011. *See* 39 CFR 3001.113. In addition, the due date for any responsive pleading by the Postal Service to this Notice is October 28, 2011.

Availability; Web site posting. The Commission has posted the appeal and supporting material on its Web site at *http://www.prc.gov.* Additional filings in this case and participants' submissions also will be posted on the Commission's Web site, if provided in electronic format or amenable to conversion, and not subject to a valid protective order. Information on how to use the Commission's Web site is available online or by contacting the Commission's webmaster via telephone at 202–789–6873 or via electronic mail at *prc-webmaster@prc.gov.*

The appeal and all related documents are also available for public inspection in the Commission's docket section. Docket section hours are 8 a.m. to 4:30 p.m., eastern time, Monday through Friday, except on Federal government holidays. Docket section personnel may be contacted via electronic mail at *prc-dockets@prc.gov* or via telephone at 202–789–6846.

Filing of documents. All filings of documents in this case shall be made using the Internet (Filing Online) pursuant to Commission rules 9(a) and 10(a) at the Commission's Web site, *http://www.prc.gov,* unless a waiver is obtained. *See* 39 CFR 3001.9(a) and 3001.10(a). Instructions for obtaining an account to file documents online may be found on the Commission's Web site or by contacting the Commission's docket section at *prc-dockets@prc.gov* or via telephone at 202–789–6846.

The Commission reserves the right to redact personal information which may infringe on an individual's privacy rights from documents filed in this proceeding.

Intervention. Persons, other than Petitioner and respondent, wishing to be heard in this matter are directed to file a notice of intervention. *See* 39 CFR 3001.111(b). Notices of intervention in this case are to be filed on or before November 14, 2011. A notice of intervention shall be filed using the Internet (Filing Online) at the Commission's Web site unless a waiver is obtained for hardcopy filing. *See* 39 CFR 3001.9(a) and 3001.10(a).

Further procedures. By statute, the Commission is required to issue its decision within 120 days from the date it receives the appeal. *See* 39 U.S.C. 404(d)(5). A procedural schedule has been developed to accommodate this statutory deadline. In the interest of expedition, in light of the 120-day decision schedule, the Commission may request the Postal Service or other participants to submit information or memoranda of law on any appropriate issue. As required by the Commission rules, if any motions are filed, responses are due 7 days after any such motion is filed. *See* 39 CFR 3001.21.

It is ordered:

1. The Postal Service shall file the applicable administrative record regarding this appeal no later than October 28, 2011.

2. Any responsive pleading by the Postal Service to this Notice is due no later than October 28, 2011.

3. The procedural schedule listed below is hereby adopted.

4. Pursuant to 39 U.S.C. 505, Patricia A. Gallagher is designated officer of the Commission (Public Representative) to represent the interests of the general public.

5. The Secretary shall arrange for publication of this notice and order in the **Federal Register**.

By the Commission.

Shoshana M. Grove,

Secretary.

PROCEDURAL SCHEDULE

October 13, 2011	Filing of Appeal.
October 28, 2011	Deadline for the Postal Service to file the applicable administrative record in this appeal.
October 28, 2011	Deadline for the Postal Service to file any responsive pleading.
November 14, 2011	Deadline for notices to intervene (*see* 39 CFR 3001.111(b)).
November 17, 2011	Deadline for Petitioners' Form 61 or initial brief in support of petition (*see* 39 CFR 3001.115(a) and (b)).
December 7, 2011	Deadline for answering brief in support of the Postal Service (*see* 39 CFR 3001.115(c)).
December 22, 2011	Deadline for reply briefs in response to answering briefs (*see* 39 CFR 3001.115(d)).
December 29, 2011	Deadline for motions by any party requesting oral argument; the Commission will schedule oral argument only when it is a necessary addition to the written filings (*see* 39 CFR 3001.116).
February 3, 2012	Expiration of the Commission's 120-day decisional schedule (*see* 39 U.S.C. 404(d)(5)).

[FR Doc. 2011–27648 Filed 10–25–11; 8:45 am]
BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65602; File No. 4–640]

Inaugural Roundtable of the Financial Reporting Series Entitled ''Uncertainty in Financial Statements: How Much To Recognize and How Best To Communicate It''

AGENCY: Securities and Exchange Commission.

ACTION: Notice of roundtable discussion; request for comment.

SUMMARY: The Commission staff will hold a public roundtable discussion to consider financial statement measurements (and associated disclosures) that incorporate judgments about future events. The discussion will be open to the public with seating on a first-come, first-served basis. Members of the public may also listen by webcast on the SEC Web site at *http://www.sec.gov*. The roundtable discussion will take place in the Multipurpose Room (Room L–006) at the SEC Headquarters located at 100 F Street, NE., Washington, DC. Feedback is welcomed regarding any of the topics to be addressed at the roundtable.

DATES: The roundtable discussion will take place on Tuesday, November 8, 2011, commencing at 10 a.m. and ending at 5 p.m. The Commission will accept comments regarding issues addressed at the roundtable until December 8, 2011.

FOR FURTHER INFORMATION CONTACT: J. Mike Starr, Deputy Chief Accountant, or Eric West, Associate Chief Accountant, at (202) 551–5300, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549.

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 4–640 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 4–640. 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*). Comments are also 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.

SUPPLEMENTARY INFORMATION: This will be the inaugural roundtable of the Financial Reporting Series. The Financial Reporting Series was instituted by SEC staff to assist in the proactive identification of risks related to, and areas of potential improvements in, the reliability and usefulness of financial information provided to investors. In this regard, the Financial Reporting Series is intended to facilitate balanced discussions of implementation issues or emerging issues in financial reporting.

Feedback is welcomed regarding any of the topics to be addressed at the roundtable. The panel discussions will focus on the following topics and questions:

1. Please provide feedback on any topics where the extent of uncertainty in an accounting measurement is less useful to investors and why a more certain measurement would be preferable. Likewise, provide feedback on those topics where a measurement with uncertainty gives investors useful information and why it is preferable to a more certain measurement.

2. For those topics where uncertain measurements are useful to investors, how should the uncertainties be incorporated into the measure? Please explain the reasons for the measurement method(s) you selected.

3. What information do investors utilize to understand uncertainty? Please describe why such information is useful and, if it is not disclosed in the financial statements, indicate its source.

4. What are the challenges for investors in understanding the nature and extent of measurement uncertainty?

5. As measurement uncertainty increases, please explain whether (and how, if applicable) it changes the investor's expectation of preparers and auditors.

6. For preparers, what are the challenges in or impediments to providing investors with information to understand the nature and extent of measurement uncertainties?

7. What are the challenges for auditors in evaluating management's judgments related to measurement uncertainties?

8. Please provide feedback on whether (and how) a change in the auditor's responsibility or role would enhance the investor's understanding of the nature and extent of measurement uncertainties.

9. Please provide any additional comments or suggestions pertinent to how much uncertainty to recognize and how best to communicate it.

Dated: October 20, 2011.

By the Commission.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–27696 Filed 10–25–11; 8:45 am]
BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65601; File No. SR–NYSEArca-2011–63]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Approving a Proposed Rule Change To List and Trade Shares of the United States Metals Index Fund, the United States Agriculture Index Fund and the United States Copper Index Fund Under NYSE Arca Equities Rule 8.200

October 20, 2011.

I. Introduction

On August 19, 2011, NYSE Arca, Inc. (''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares of the United States Metals Index Fund (''USMI''), the United States Agriculture Index Fund (''USAI'') and the United States Copper Index Fund (''USCUI'') (collectively, the ''Funds'') under NYSE Arca Equities Rule 8.200. The proposed rule change was published for comment in the **Federal Register** on September 9, 2011.[3] The Commission received no comments on the proposal. This order approves the proposed rule change.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 65249 (September 2, 2011), 76 FR 55956 (''Notice'').

II. Description of the Proposed Rule Change

The Exchange proposes to list and trade shares (''Units'') of the Funds [4] pursuant to NYSE Arca Equities Rule 8.200, Commentary .02, which permits the trading of Trust Issued Receipts either by listing or pursuant to unlisted trading privileges.[5] The Units represent beneficial ownership interests in the Funds, as described in the Registration Statement. The Funds are commodity pools that are series of the Trust, a Delaware statutory trust. The Funds are managed and controlled by United States Commodity Funds LLC (''Sponsor''). The Sponsor is a Delaware limited liability company that is registered as a commodity pool operator (''CPO'') with the Commodity Futures Trading Commission (''CFTC'') and is a member of the National Futures Association (''NFA'').

A. USMI

USMI's trading advisor is SummerHaven Investment Management, LLC (''SummerHaven''). The Sponsor expects to manage USMI's investments directly, using the trading advisory services of SummerHaven for guidance with respect to the Metals Index and the Sponsor's selection of investments on behalf of USMI. The Sponsor, SummerHaven Indexing and SummerHaven are not affiliated with a broker-dealer and are subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the Metals Index or USMI's portfolio.[6]

The investment objective of USMI is for the daily changes in percentage terms of its Units' net asset value (''NAV'') to reflect the daily changes in percentage terms of the SummerHaven Dynamic Metals Index Total Return (the ''Metals Index''), less USMI's expenses.[7] The Metals Index is a metal sector index designed to broadly represent industrial and precious metals while overweighting the components that are assessed to be in a low inventory state and underweighting the components assessed to be in a high inventory state. The Metals Index consists of six base metals—aluminum, copper, zinc, nickel, tin, and lead—and four precious metals: gold, silver, platinum, and palladium. Each metal is assigned a base weight in the Metals Index based on an assessment of market liquidity and the metal's overall economic importance.

Futures contracts for metals in the Metals Index that are traded on New York Mercantile Exchange (''NYMEX''), London Metal Exchange (''LME''), and Commodity Exchange, Inc. (''COMEX'') are collectively referred to herein as ''Eligible Metals Futures Contracts.'' The 10 Eligible Metals Futures Contracts that at any given time have been designated as a component of the Metals Index are referred to as the ''Benchmark Component Metals Futures Contracts.'' The relative weighting of the Benchmark Component Metals Futures Contracts will change on a monthly basis, based on quantitative formulas developed by SummerHaven Indexing relating to the prices of the Benchmark Component Metals Futures Contracts.[8] USMI's investments also will be rebalanced on a monthly basis to track the changing nature of the Metals Index.

USMI will seek to achieve its investment objective by investing to the fullest extent possible in Benchmark Component Metals Futures Contracts. Then, if constrained by regulatory requirements (as described below) or in view of market conditions (as described below), USMI will invest next in other Eligible Metals Futures Contracts based on the same metal as the futures contracts subject to such regulatory constraints or market conditions, and finally, to a lesser extent, in other exchange-traded futures contracts that are economically identical or substantially similar to the Benchmark Component Metals Futures Contracts if one or more other Eligible Metals Futures Contracts is not available. When USMI has invested to the fullest extent possible in exchange-traded futures contracts, USMI may then invest in other contracts and instruments based on the Benchmark Component Metals Futures Contracts or the metals included in the Metals Index, such as cash-settled options, forward contracts, cleared swap contracts and swap contracts other than cleared swap contracts. Other exchange-traded futures contracts that are economically identical or substantially similar to the Benchmark Component Metals Futures Contracts and other contracts and instruments based on the Benchmark Component Metals Futures Contracts, as well as metals included in the Metals Index, are collectively referred to as ''Other Metals-Related Investments,'' and together with Benchmark Component Metals Futures Contracts and other Eligible Metals Futures Contracts, ''Metals Interests.''

USMI also invests in short-term Treasury Securities or holds cash to meet its current or potential margin or collateral requirements with respect to its investments in Metals Interests and invests cash not required to be used as margin or collateral.

Regulatory Requirements. As noted above, USMI may at times invest in other Eligible Metal Futures Contracts based on the same metal as the futures contracts subject to regulatory constraints (as described below), and then, to a lesser extent, in Other Metals-Related Investments in order to comply with regulatory requirements. An example of such regulatory requirements would be if USMI is required by law or regulation, or by one of its regulators, including a futures exchange, to reduce its position in one or more Benchmark Component Metals Futures Contracts to the applicable position limit or to a specified accountability level for such contracts, USMI's assets could be invested in one or more other Eligible Metal Futures Contracts. If one or more such Eligible Metal Futures Contracts were unavailable or economically impracticable, USMI could invest in Other Metals-Related Investments that are intended to replicate the return on the Metals Index or particular Benchmark Component Metals Futures Contracts. Another example would be if, because USMI's assets were reaching higher levels, it exceeded position limits, accountability levels or other regulatory limits and, to avoid triggering such limits or levels, it invested in one or more other Eligible Metal Futures Contracts to the extent practicable and then in Other Metals-Related Investments.

When investing in Other Metals-Related Investments, USMI will first invest in other exchange traded futures contracts that are economically identical or substantially similar to the Benchmark Component Metals Futures Contracts and then in cash-settled

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[4] *See* the Funds' registration statement on Form S–1 for the United States Commodity Index Funds Trust, dated November 24, 2010 (File No. 333–170844) relating to the Funds (''Registration Statement'').

[5] Commentary .02 to NYSE Arca Equities Rule 8.200 applies to Trust Issued Receipts that invest in ''Financial Instruments.'' The term ''Financial Instruments,'' as defined in Commentary .02(b)(4) to NYSE Arca Equities Rule 8.200, means any combination of investments, including cash; securities; options on securities and indices; futures contracts; options on futures contracts; forward contracts; equity caps, collars and floors; and swap agreements.

[6] The Sponsor represents that, in the event the Sponsor, SummerHaven Indexing, or SummerHaven becomes affiliated with a broker-dealer, it will implement a fire wall with respect to such broker-dealer regarding access to information concerning the composition and/or changes to a portfolio.

[7] The Metals Index is owned and maintained by SummerHaven Index Management, LLC (''SummerHaven Indexing'') and calculated and published by the Exchange.

[8] More information about the Metals Index is available in the Notice and also may be obtained from SummerHaven Indexing's Web site at *http//www.summerhavenindex.com.*

options, forward contracts, cleared swap contracts and swap contracts other than cleared swap contracts.

Market Conditions. As also noted above, there may be market conditions that could cause USMI to invest in other Eligible Metal Futures Contracts that are based on the same metal as the futures contracts subject to such market conditions (as described below). One such type of market condition would be where demand for Benchmark Component Metals Futures Contracts exceeded supply and as a result USMI was able to obtain more favorable terms under other Eligible Metal Futures Contracts. An example of more favorable terms would be where the aggregate costs to USMI from investing in other Eligible Metal Futures Contracts (including actual or expected direct costs such as the costs to buy, hold, or sell such investments, as well as indirect costs such as opportunity costs) were less than the costs of investing in Benchmark Component Metal Futures Contracts. Only after USMI becomes subject to position limits in any Eligible Metal Futures Contracts will USMI invest in Other Metals-Related Investments to replicate exposure to the Eligible Metal Futures Contract that is position-limited. Generally, USMI will only invest in this manner in other Eligible Metal Futures Contracts or Other Metals-Related Investments if it results in materially more favorable terms, and if such investments result in a specific benefit for USMI or its shareholders, such as being able to more closely track its benchmark.

B. USAI

USAI's trading advisor is SummerHaven. The Sponsor expects to manage USAI's investments directly, using the trading advisory services of SummerHaven for guidance with respect to the Agriculture Index and the Sponsor's selection of investments on behalf of USAI. The Sponsor, SummerHaven Indexing and SummerHaven are not affiliated with a broker-dealer and are subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the Agriculture Index or USAI's portfolio.[9]

The investment objective of USAI is for the daily changes in percentage terms of its Units' NAV to reflect the daily changes in percentage terms of the SummerHaven Dynamic Agriculture Index Total Return (the ''Agriculture Index''),[10] less USAI's expenses. The Agriculture Index consists of fourteen agricultural markets: soybeans, corn, soft red winter wheat, hard red winter wheat, soybean oil, soybean meal, canola, sugar, cocoa, coffee, cotton, live cattle, feeder cattle and lean hogs. Each agricultural commodity is assigned a base weight in the Agriculture Index based on an assessment of market liquidity and the commodity's overall economic importance.[11]

Futures contracts for agricultural commodities in the Agriculture Index that are currently traded on the ICE Futures (''ICE Futures''), Chicago Board of Trade (''CBOT''), Chicago Mercantile Exchange (''CME''), Kansas City Board of Trade (''KCBT'') and ICE Futures Canada are collectively referred to herein as ''Eligible Agriculture Futures Contracts.'' The 14 Eligible Agriculture Futures Contracts that at any given time have been designated as a component of the Agriculture Index are referred to as the ''Benchmark Component Agriculture Futures Contracts.'' The relative weighting of the Benchmark Component Agriculture Futures Contracts will change on a monthly basis, based on quantitative formulas developed by SummerHaven Indexing relating to the prices of the Benchmark Component Agriculture Futures Contracts. USAI's investments also will be rebalanced on a monthly basis to track the changing nature of the Agriculture Index.

USAI will seek to achieve its investment objective by investing to the fullest extent possible in Benchmark Component Agriculture Futures Contracts. Then, if constrained by regulatory requirements (described below) or in view of market conditions (described below), USAI will invest next in other Eligible Agriculture Futures Contracts based on the same agricultural commodity as the futures contracts subject to such regulatory constraints or market conditions, and finally, to a lesser extent, in other exchange traded futures contracts that are economically identical or substantially similar to the Benchmark Component Agriculture Futures Contracts, if one or more Eligible Agriculture Futures Contracts is not available. When USAI has invested to the fullest extent possible in exchange-traded futures contracts, USAI may then invest in other contracts and instruments based on the Benchmark Component Agriculture Futures Contracts or the agricultural commodities included in the Agriculture Index, such as cash-settled options, forward contracts, cleared swap contracts and swap contracts other than cleared swap contracts. Other exchange-traded futures contracts that are economically identical or substantially similar to the Benchmark Component Agriculture Futures Contracts and other contracts and instruments based on the Benchmark Component Agriculture Futures Contracts, as well as metals included in the Agriculture Index, are collectively referred to as ''Other Agriculture-Related Interests,'' and together with Benchmark Component Agriculture Futures Contracts and other Eligible Agriculture Futures Contracts, ''Agriculture Interests.''

USAI also invests in short-term Treasury Securities or holds cash to meet its current or potential margin or collateral requirements with respect to its investments in Agriculture Interests and invests cash not required to be used as margin or collateral.

Regulatory Requirements. As noted above, USAI may at times invest in Eligible Agriculture Futures Contracts based on the same agricultural commodity as the futures contracts subject to regulatory constraints (as described below), and then to a lesser extent in Other Agriculture-Related Investments in order to comply with regulatory requirements. An example of such regulatory requirements would be if USAI is required by law or regulation, or by one of its regulators, including a futures exchange, to reduce its position in one or more Benchmark Component Agriculture Futures Contracts to the applicable position limit or to a specified accountability level for such contracts, USAI's assets could be invested in one or more other Eligible Agriculture Futures Contracts. If one or more such Eligible Agriculture Futures Contracts was unavailable or economically impracticable, USAI could invest in Other Agriculture-Related Investments that are intended to replicate the return on the Agriculture Index or particular Benchmark Component Agriculture Futures Contracts. Another example would be if because USAI's assets were reaching higher levels, it exceeded position limits, accountability levels or other regulatory limits and, to avoid triggering such limits or levels, it invested in one or more other Eligible Agriculture Futures Contracts to the extent practicable and then in Other Agriculture-Related Investments.

When investing in Other Agriculture-Related Investments, USAI will first invest in other exchange traded futures

[9] *See supra* note 6.

[10] The Agriculture Index is owned and maintained by SummerHaven Indexing and calculated and published by the Exchange.

[11] More information about the Agriculture Index is available in the Notice and also may be obtained from SummerHaven Indexing's Web site at *http://www.summerhavenindex.com.*

contracts that are economically identical or substantially similar to the Benchmark Component Agriculture Futures Contracts and then in cash settled options, forward contracts, cleared swap contracts and swap contracts other than cleared swap contracts.

Market Conditions. As also noted above, there may be market conditions that could cause USAI to invest in other Eligible Agriculture Futures Contracts that are based on the same agricultural commodity as the futures contracts subject to such market conditions (as described below). One such type of market condition would be where demand for Benchmark Component Agriculture Futures Contracts exceeded supply and as a result USAI was able to obtain more favorable terms under other Eligible Agriculture Futures Contracts. An example of more favorable terms would be where the aggregate costs to USAI from investing in other Eligible Agriculture Futures Contracts or Other Agriculture-Related Investments (including actual or expected direct costs such as the costs to buy, hold, or sell such investments, as well as indirect costs such as opportunity costs) were less than the costs of investing in Benchmark Component Agriculture Futures Contracts. Only after USAI becomes subject to position limits in any Eligible Agriculture Futures Contract will USAI invest in Other Agriculture-Related Investments to replicate exposure to the Eligible Agriculture Futures Contract that is position-limited. Generally, USAI will only invest in this manner in other Eligible Agriculture Futures Contracts or Other Agriculture-Related Investments if it results in materially more favorable terms, and if such investments result in a specific benefit for USAI or its shareholders, such as being able to more closely track its benchmark.

C. USCUI

USCUI's trading advisor is SummerHaven. The Sponsor expects to manage USCUI's investments directly, using the trading advisory services of SummerHaven for guidance with respect to the Copper Index and the Sponsor's selection of investments on behalf of USCUI. The Sponsor, SummerHaven Indexing and SummerHaven are not affiliated with a broker-dealer and are subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the Copper Index or USCUI's portfolio.[12]

The investment objective of USCUI is for the daily changes in percentage terms of its Units' NAV to reflect the daily changes in percentage terms of the SummerHaven Copper Index Total Return (the ''Copper Index''),[13] less USCUI's expenses. The Copper Index is designed to reflect the performance of the investment returns from a portfolio of futures contracts for copper that are traded on the COMEX (such futures contracts, collectively, ''Eligible Copper Futures Contracts''). The Copper Index attempts to maximize backwardation and minimize contango while utilizing contracts in liquid portions of the futures curve.[14] The Copper Index is comprised of either two or three Eligible Copper Futures Contracts that are selected on a monthly basis based on quantitative formulas relating to the prices of the Eligible Copper Futures Contracts developed by SummerHaven Indexing. USCUI's positions in Copper Interests will be rebalanced on a monthly basis in order to track the changing nature of the Copper Index.

USCUI will seek to achieve its investment objective by investing to the fullest extent possible in the Benchmark Component Copper Futures Contracts, which are the Eligible Copper Futures Contracts that at any given time make up the Copper Index. Then if constrained by regulatory requirements (described below) or in view of market conditions (described below), USCUI will invest next in other Eligible Copper Futures Contracts, and finally to a lesser extent, in other exchange-traded futures contracts that are economically identical or substantially similar to the Benchmark Component Copper Futures Contracts if one or more other Eligible Copper Futures Contracts is not available. When USCUI has invested to the fullest extent possible in exchange-traded futures contracts, USCUI may then invest in other contracts and instruments based on the Benchmark Component Copper Futures Contracts, other Eligible Copper Futures Contracts or copper, such as cash-settled options, forward contracts, cleared swap contracts and swap contracts other than cleared swap contracts. Other exchange-traded futures contracts that are economically identical or substantially similar to the Benchmark Component Copper Futures Contracts and other contracts and instruments based on the Benchmark Component Copper Futures Contracts, are collectively referred to as ''Other Copper-Related Investments,'' and together with Benchmark Component Copper Futures Contracts and other Eligible Copper Futures Contracts, ''Copper Interests.''

After fulfilling the margin and collateral requirements with respect to USCUI's Copper Interests, the Sponsor will invest the remainder of USCUI's proceeds from the sale of baskets in Treasury Securities or cash equivalents, and/or hold such assets in cash (generally in interest-bearing accounts).

Regulatory Requirements. As noted above, USCUI may at times invest in other Eligible Copper Futures Contracts based on the same metal as the futures contracts subject to regulatory constraints (as described below), and finally to a lesser extent, in other exchange traded futures contracts that are economically identical or substantially similar to the Benchmark Component Copper Futures Contracts if one or more other Eligible Copper Futures Contracts is not available in order to comply with regulatory requirements. An example of such regulatory requirements would be if USCUI is required by law or regulation, or by one of its regulators, including a futures exchange, to reduce its position in one or more Benchmark Component Copper Futures Contracts to the applicable position limit or to a specified accountability level for such contracts, USCUI's assets could be invested in one or more other Eligible Copper Futures Contracts. If one or more such Eligible Copper Futures Contracts were unavailable or economically impracticable, USCUI could invest in Other Copper-Related Investments that are intended to replicate the return on the Copper Index or particular Benchmark Component Copper Futures Contracts. Another example would be if, because USCUI's assets were reaching higher levels, it exceeded position limits, accountability levels or other regulatory limits and, to avoid triggering such limits or levels, it invested in one or more other Eligible Copper Futures Contracts to the extent practicable and then in Other Copper-Related Investments.

When investing in Other Copper-Related Investments, USCUI will first invest in other exchange traded futures contracts that are economically identical or substantially similar to the Benchmark Component Copper Futures Contracts, other Eligible Copper Futures Contracts, and then in cash-settled options, forward contracts, cleared swap contracts and swap contracts other than cleared swap contracts.

[12] *See supra* note 6.

[13] The Copper Index is owned and maintained by SummerHaven Indexing and calculated and published by the Exchange.

[14] More information about the Copper Index is available in the Notice and also may be obtained from SummerHaven Indexing's Web site at *http://www.summerhavenindex.com.*

Market Conditions. As also noted above, there may be market conditions that could cause USCUI to invest in other Eligible Copper Futures Contracts that are based on the same metal as the futures contracts subject to such market conditions (as described below). One such type of market condition would be where demand for Benchmark Component Copper Futures Contracts exceeded supply and as a result USCUI was able to obtain more favorable terms under other Eligible Copper Futures Contracts. An example of more favorable terms would be where the aggregate costs to USCUI from investing in other Eligible Copper Futures Contracts (including actual or expected direct costs such as the costs to buy, hold, or sell such investments, as well as indirect costs such as opportunity costs) were less than the costs of investing in Benchmark Component Copper Futures Contracts. Only after USCUI becomes subject to position limits in any Eligible Copper Futures Contract will USCUI invest in Other Copper-Related Investments to replicate exposure to the Eligible Copper Futures Contract that is position-limited. Generally, USCUI will only invest in this manner in other Eligible Copper Futures Contracts or Other Copper-Related Investments if it results in materially more favorable terms, and if such investments result in a specific benefit for USCUI or its shareholders, such as being able to more closely track its benchmark.

Additional details regarding the Trust, Units, trading policies of the Funds, creations and redemptions of the Units, investment risks, Benchmark performance, NAV calculation, the dissemination and availability of information about the underlying assets, trading halts, applicable trading rules, surveillance, and the Information Bulletin, among other things, can be found in the Notice and/or the Registration Statement, as applicable.[15]

III. Discussion and Commission's Findings

After careful review, the Commission finds that the proposed rule change to list and trade the Units of the Funds is consistent with the requirements of Section 6 of the Act and the rules and regulations thereunder applicable to a national securities exchange.[16] In particular, the Commission finds that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act,[17] which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission notes that the Funds and the Units must comply with the requirements of NYSE Arca Equities Rule 8.200 and Commentary .02 thereto to be listed and traded on the Exchange.

The Commission finds that the proposal to list and trade the Units on the Exchange is consistent with Section 11A(a)(1)(C)(iii) of the Act,[18] which sets forth Congress's finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for, and transactions in, securities. Quotation and last-sale information for the Units will be available via the Consolidated Tape Association high-speed line, and the underlying index levels will be disseminated by the Exchange and will be updated at least every 15 seconds during NYSE Arca Core Trading Hours, from 9:30 a.m. E.T. to 4 p.m. E.T., except for the period between the close of trading of all applicable futures contracts on futures exchanges and the close of the NYSE Arca Core Trading Session, at which point the underlying index values will be static.[19] In addition, the Indicative Fund Value (''IFV'') for each Fund will be disseminated on a per-Unit basis by the Exchange at least every 15 seconds during the NYSE Arca Core Trading Session.[20] The NAV for the Funds' Units will be calculated by the Administrator once a day and will be disseminated daily to all market participants after 4 p.m. E.T. The Funds will provide Web site disclosure of portfolio holdings daily and will include, as applicable, the names and value (in U.S. dollars) of financial instruments and characteristics of such instruments and cash equivalents, and amount of cash held in the portfolios of the Funds. The closing prices and settlement prices of the futures contracts also are readily available from the Web sites of the relevant futures exchanges, automated quotation systems, published or other public sources, or on-line information services such as Bloomberg or Reuters. Complete real-time data for the futures contracts is available by subscription from Reuters and Bloomberg. The relevant futures exchanges also provide delayed futures information on current and past trading sessions and market news free of charge on their respective Web sites. The specific contract specifications for the futures contracts are also available on such Web sites, as well as other financial informational sources. Information regarding exchange-traded cash-settled options and cleared swap contracts will be available from the applicable exchanges and major market data vendors.

The Commission further believes that the proposal to list and trade the Units is reasonably designed to promote fair disclosure of information that may be necessary to price the Units appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. If the Exchange becomes aware that the NAV with respect to the Units is not disseminated to all market participants at the same time, it will halt trading in the Units until such time as the NAV is available to all market participants. Further, the Exchange represents that it may halt trading during the day in which an interruption to the dissemination of the IFV or the value of the underlying futures contracts occurs. If the interruption to the dissemination of the IFV or the value of the underlying futures contracts persists past the trading day in which it occurred, the Exchange will halt trading no later than

[15] *See* Notice and Registration Statement, *supra* notes 3 and 4, respectively.

[16] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[17] 15 U.S.C. 78f(b)(5).

[18] 15 U.S.C. 78k–1(a)(1)(C)(iii).

[19] In addition, the closing prices and settlement prices of the futures contracts held by the Funds are readily available from the Web sites of the relevant futures exchanges, automated quotation systems, published or other public sources, or on-line information services such as Bloomberg or Reuters. The relevant futures exchanges also provide delayed futures information on current and past trading sessions and market news free of charge on their respective Web sites.

[20] The normal trading hours of the relevant futures exchanges vary, with some ending their trading hours before the close of the Core Trading Session on NYSE Arca (for example, the normal trading hours of the NYMEX are 10 a.m. E.T. to 2:30 p.m. E.T.). When a Fund holds applicable Benchmark Component Futures Contracts from futures exchanges with different trading hours than NYSE Arca, there will be a gap in time at the beginning and/or the end of each day during which Units will be traded on NYSE Arca, but real-time futures exchange trading prices for Applicable Benchmark Component Futures Contracts traded on such futures exchanges will not be available. As a result, during those gaps there will be no update to the IFV. A static IFV will be disseminated between the close of trading of all applicable Futures Contracts on futures exchanges and the close of the NYSE Arca Core Trading Session.

the beginning of the trading day following the interruption. In addition, the Web site disclosure of the portfolio composition of each Fund will occur at the same time as the disclosure by the Sponsor of the portfolio composition to authorized participants so that all market participants are provided portfolio composition information at the same time. Therefore, the same portfolio information will be provided on the public Web site as well as in electronic files provided to authorized purchasers. Accordingly, each investor will have access to the current portfolio composition of the Funds through each Fund's Web site. The Exchange may halt trading in the Units if trading is not occurring in the underlying futures contracts or if other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.[21] In addition, the Exchange represents that the Sponsor, SummerHaven Indexing and SummerHaven are not affiliated with a broker-dealer and are subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the underlying index levels or the Funds' portfolios. Lastly, the trading of the Units will be subject to NYSE Arca Equities Rule 8.200, Commentary .02(e), which sets forth certain restrictions on ETP Holders [22] acting as registered Market Makers [23] in Trust Issued Receipts to facilitate surveillance.

The Exchange has represented that the Units are deemed to be equity securities, thus rendering trading in the Units subject to the Exchange's existing rules governing the trading of equity securities. In support of this proposal, the Exchange has made representations, including:

(1) The Funds will be subject to the criteria in NYSE Arca Equities Rule 8.200 and Commentary .02 thereto for initial and continued listing of the Units.

(2) The Exchange has appropriate rules to facilitate transactions in the Units during all trading sessions.

(3) The Exchange's surveillance procedures are adequate to properly monitor Exchange trading of the Units in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.

(4) With respect to the Funds' futures contracts traded on exchanges, not more than 10% of the weight of such futures contracts in the aggregate shall consist of components whose principal trading market is not a member of the Intermarket Surveillance Group or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement.

(5) Prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Units. Specifically, the Information Bulletin will discuss the following: (a) The risks involved in trading the Units during the Opening and Late Trading Sessions when an updated IFV will not be calculated or publicly disseminated; (b) the procedures for purchases and redemptions of Units in creation baskets and redemption baskets (and that Units are not individually redeemable); (c) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Units; (d) how information regarding the IFV is disseminated; (e) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Units prior to or concurrently with the confirmation of a transaction; and (f) trading information.

(6) A minimum of 100,000 Units for each Fund will be outstanding as of the start of trading on the Exchange.

(7) With respect to application of Rule 10A–3 [24] under the Act, the Trust relies on the exception contained in Rule 10A–3(c)(7).[25]

This approval order is based on the Exchange's representations.[26]

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act [27] and the rules and regulations thereunder applicable to a national securities exchange.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[28] that the proposed rule change (SR–NYSEArca–2011–63) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[29]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2011–27698 Filed 10–25–11; 8:45 am]

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[21] With respect to trading halts, the Exchange may consider other relevant factors in exercising its discretion to halt or suspend trading in the Units of the Funds. Trading in the Units of the Funds will be subject to halts caused by extraordinary market volatility pursuant to the Exchange's circuit breaker rules in NYSE Arca Equities Rule 7.12. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Units inadvisable.

[22] *See* NYSE Arca Equities Rule 1.1(n) (defining ETP Holder).

[23] *See* NYSE Arca Equities Rule 1.1(u) (defining Market Maker).

[24] 17 CFR 240.10A–3.

[25] 17 CFR 240.10A–3(c)(7).

[26] The Commission notes that it does not regulate the market for futures in which the Fund plans to take positions, which is the responsibility of the Commodity Futures Trading Commission (''CFTC''). The CFTC has the authority to set limits on the positions that any person may take in futures. These limits may be directly set by the CFTC or by the markets on which the futures are traded. The Commission has no role in establishing position limits on futures, even though such limits could impact an exchange-traded product that is under the jurisdiction of the Commission.

[27] 15 U.S.C. 78f(b)(5).

[28] 15 U.S.C. 78s(b)(2).

[29] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65599; File No. SR–FINRA–2011–043]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving Proposed Rule Change To Amend FINRA Rule 0160 (Definitions in FINRA By-Laws)

October 20, 2011.

I. Introduction

On August 31, 2011, Financial Industry Regulatory Authority, Inc. (''FINRA'') (f/k/a National Association of Securities Dealers (''NASD'')) filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend FINRA Rule 1060 (Definitions in FINRA By-Laws). The proposed rule change was published for comment in the **Federal Register** on September 16, 2011.[3] The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

FINRA is proposing to amend FINRA Rule 0160 (Definitions in FINRA By-Laws). As part of the process of developing the new consolidated rulebook (''Consolidated FINRA Rulebook''),[4] the proposed rule change

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

[3] *See* Securities Exchange Act Release No. 65313 (September 12, 2011), 76 FR 57784 (''Notice'').

[4] The current FINRA rulebook consists of (1) FINRA Rules; (2) NASD Rules; and (3) rules incorporated from NYSE (''Incorporated NYSE Rules'') (together, the NASD Rules and Incorporated NYSE Rules are referred to as the ''Transitional Rulebook''). While the NASD Rules generally apply to all FINRA members, the Incorporated NYSE

will amend FINRA Rule 0160. The proposed rule change will transfer certain defined terms from NASD Rule 0120 (Definitions) to FINRA Rule 0160, subject to certain amendments, as well as add new defined terms to reflect the conventions of the Consolidated FINRA Rulebook.[5] The proposed rule change will also eliminate as unnecessary or duplicative certain definitions contained in NASD Rule 0120. In addition, the proposed rule change will eliminate NASD Rule 0120 from the current FINRA rulebook.[6]

The proposed rule change will also transfer certain terms with either no or minor substantive changes to FINRA Rule 0160, as well as make minor and conforming changes to NASD Rule 0120(f)(2) and (f)(3) and FINRA Rule 0160(b)(3)(B) and (3)(C). The proposed rule change will also add defined terms to FINRA Rule 0160 because such terms are used throughout the Consolidated FINRA Rulebook.[7] Although the proposed rule change will not incorporate certain defined terms in NASD Rule 0120, FINRA represents that this will not eliminate any substantive FINRA requirements.[8]

FINRA will announce the implementation date of the proposed rule change in a *Regulatory Notice* to be published no later than 90 days following this Commission approval. The effective date will be no later than 150 days following this Commission approval.

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with Section 15A(b)(6) of the Act,[9] which requires, among other things, that FINRA rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The Commission believes that the proposed rule change will provide clarity with respect to the defined terms for the Consolidated FINRA Rulebook by transferring certain defined terms from NASD Rule 0120 to FINRA Rule 0160 (subject to certain amendments), adding new defined terms to FINRA Rule 0160 to reflect the conventions of the Consolidated FINRA Rulebook and eliminating as unnecessary or duplicative certain definitions contained in NASD Rule 0120.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[10] that the proposed rule change (SR–FINRA–2011–043) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2011–27697 Filed 10–25–11; 8:45 am]

BILLING CODE 8011–01–P

Rules apply only to those members of FINRA that are also members of the NYSE. The FINRA Rules apply to all FINRA members, unless such rules have a more limited application by their terms. For more information about the rulebook consolidation process, *see Information Notice,* March 12, 2008 (Rulebook Consolidation Process). For convenience, the Incorporated NYSE Rules are referred to as the NYSE Rules.

[5] FINRA Rule 0160 would be reorganized so that the defined terms are arranged alphabetically, as amended.

[6] Notwithstanding the proposed transfer of certain defined terms from NASD Rule 0120 to FINRA Rule 0160 in the Consolidated FINRA Rulebook, the defined terms in FINRA Rule 0160 would continue to apply equally to both the Transitional Rulebook and the Consolidated FINRA Rulebook, as applicable. *See also* Securities Exchange Act Release No. 58643 (September 25, 2008), 73 FR 57174 (October 1, 2008) (Order Approving SR–FINRA–2008–021), discussing ''Rules of General Applicability.''

[7] *See* Notice at 57785.

[8] *Id.*

[9] 15 U.S.C. 78*o*–3(b)(6).

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 7650]

U.S. Advisory Commission on Public Diplomacy; Notice of Meeting

The U.S. Advisory Commission on Public Diplomacy will hold a public meeting on November 29, 2011, in Santa Monica, CA, in partnership with the RAND Corporation. The meeting will take place at the RAND offices at 1176 Main Street in Santa Monica, CA, in the Forum Auditorium. The meeting will begin at 9 a.m. and end at 3 p.m. (doors open for registration and continental breakfast at 8:30 a.m.).

The topic is narratives: what they are, how they are shaped and countered. The conference will delve into the impact on narratives of actions and words (primarily U.S. but also others if lessons for us are clearly articulated), and the impact of environmental factors.

This meeting is open to the public, Members and staff of Congress, the State Department, Defense Department, the media, and other governmental and non-governmental organizations. To request further information, or to request reasonable accommodation, contact the Commission at (202) 203–7463 or *pdcommission@state.gov.* To attend, contact the RAND Corporation by phone at (412) 683–2300 ext 4906 or e-mail to *maria_falvo@rand.org* and provide your full name, citizenship (U.S. citizenship is not required to attend), and institutional/organizational affiliation.

The United States Advisory Commission on Public Diplomacy appraises U.S. Government activities intended to understand, inform, and influence foreign publics. The Advisory Commission may conduct studies, inquiries, and meetings, as it deems necessary. It may assemble and disseminate information and issue reports and other publications, subject to the approval of the Chairperson, in consultation with the Executive Director. The Advisory Commission may undertake foreign travel in pursuit of its studies and coordinate, sponsor, or oversee projects, studies, events, or other activities that it deems desirable and necessary in fulfilling its functions.

The Commission consists of seven members appointed by the President, by and with the advice and consent of the Senate. The members of the Commission shall represent the public interest and shall be selected from a cross section of educational, communications, cultural, scientific, technical, public service, labor, business, and professional backgrounds. Not more than four members shall be from any one political party. The President designates a member to chair the Commission.

The current members of the Commission are: Mr. William Hybl of Colorado, Chairman; Ambassador Lyndon Olson of Texas, Vice Chairman; Ambassador Penne Korth-Peacock of Texas; Ms. Lezlee Westine of Virginia; and, Mr. Sim Farar of California. Two seats on the Commission are currently vacant.

The following individual has been nominated to the Commission but awaits Senate confirmation as of this writing: Anne Wedner of Illinois.

The Advisory Commission was originally established under Section 604 of the United States Information and Exchange Act of 1948, as amended (22 U.S.C. 1469) and Section 8 of Reorganization Plan Numbered 2 of 1977. The U.S. Advisory Commission on Public Diplomacy is authorized by Public Law 101–246 (2009), 22 U.S.C. 6553, and has been further authorized through November 18, 2011. In the absence of subsequent legislation extending the authority for the Commission, this meeting will be cancelled.

Dated: October 17, 2011.

Jamice M. Clayton,

Administrative Assistant, U.S. Department of State.

[FR Doc. 2011–27732 Filed 10–25–11; 8:45 am]

BILLING CODE 4710–11–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities; Requests for Comments: Clearance of Renewed Approval of Information Collection; Organization Designation Authorization

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on August 24, 2011, vol. 76, no. 164, page 53023–53024. This collection involves organizations applying to perform certification functions on behalf of the FAA, including approving data and issuing various aircraft and organization certificates.

DATES: Written comments should be submitted by November 25, 2011.

FOR FURTHER INFORMATION CONTACT: Kathy DePaepe at (405) 954–9362, or by e-mail at: *Kathy A. DePaepe @faa.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120–0704.

Title: Organization Designation Authorization.

Form Numbers: FAA Forms 8100–11, 8100–12, 8100–13.

Type of Review: Renewal of an information collection.

Background: Subpart D to part 183 allows the FAA to appoint organizations as representatives of the administrator. As authorized, these organizations perform certification functions on behalf of the FAA. Applications are submitted to the appropriate FAA office and are reviewed by the FAA to determine whether the applicant meets the requirements necessary to be authorized as a representative of the Administrator. Procedures manuals are submitted and approved by the FAA as a means to ensure that the correct processes are utilized when performing functions on behalf of the FAA. These requirements are necessary to manage the various approvals issued by the organization and to document approvals issued and must be maintained in order to address potential future safety issues.

Respondents: Approximately 83 applicants.

Frequency: Information is collected on occasion.

Estimated Average Burden per Response: 41.7 hours.

Estimated Total Annual Burden: 5,158 hours.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the attention of the Desk Officer, Department of Transportation/FAA, and sent via electronic mail to *oira_submission@omb.eop.gov,* or faxed to (202) 395–6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street, NW., Washington, DC 20503.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Issued in Washington, DC, on October 20, 2011.

Albert R. Spence,

FAA Assistant Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. 2011–27712 Filed 10–25–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities; Requests for Comments: Clearance of Renewed Approval of Information Collection; General Aviation and Air Taxi Activity and Avionics Survey

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. Respondents to this survey are owners of general aviation aircraft. This information is used by FAA, NTSB, and other government agencies, the aviation industry, and others for safety assessment, planning, forecasting, cost/benefit analysis, and to target areas for research.

DATES: Written comments should be submitted by December 27, 2011.

FOR FURTHER INFORMATION CONTACT: Kathy DePaepe at (405) 954–9362, or by e-mail at: *Kathy A. DePaepe @faa.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120–0060.

Title: General Aviation and Air Taxi Activity and Avionics Survey.

Form Numbers: There are no FAA forms associated with this collection.

Type of Review: Renewal of an information collection.

Background: Title 49, United States Code, empowers the Secretary of Transportation to collect and disseminate information relative to civil aeronautics, to study the possibilities for development of air commerce and the aeronautical industries, and to make long-range plans for, and formulate policy with respect to, the orderly development and use of the navigable airspace, radar installations and all other aids for air navigation. Respondents to this survey are owners of general aviation aircraft. This information is used by FAA, NTSB, and other government agencies, the aviation industry, and others for safety assessment, planning, forecasting, cost/benefit analysis, and to target areas for research.

Respondents: Approximately 83,500 owners of general aviation aircraft.

Frequency: Information is collected annually.

Estimated Average Burden per Response: 20 minutes.

Estimated Total Annual Burden: 13,000 hours.

ADDRESSES: Send comments to the FAA at the following address: Ms. Kathy DePaepe, Room 126B, Federal Aviation Administration, AES–200, 6500 S. MacArthur Blvd, Oklahoma City, OK 73169.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to

enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Issued in Washington, DC on October 20, 2011.

Albert R. Spence,

FAA Assistant Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. 2011–27628 Filed 10–25–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities; Requests for Comments: Clearance of Renewed Approval of Information Collection; Type Certification Procedures for Changed Products

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. 14 CFR part 21 may require applicants to demonstrate compliance with the latest regulations in effect on the date of application for amended Type Certificates (TC) or Supplemental TCs for aeronautical products.

DATES: Written comments should be submitted by December 27, 2011.

FOR FURTHER INFORMATION CONTACT: Kathy DePaepe at (405) 954–9362, or by e-mail at: *Kathy A. DePaepe @faa.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120–0657.

Title: Type Certification Procedures for Changed Products.

Form Numbers: There are no FAA forms associated with this collection.

Type of Review: Renewal of an information collection.

Background: 14 CFR part 21 requires that, with certain exceptions, all aviation product changes comply with the latest airworthiness standards when determining the certification basis for aeronautical products. This process is intended to increase safety by applying the latest regulations where practicable. A certification application request, in letter form, and a supporting data package is made to the appropriate Federal Aviation Administration (FAA) Aircraft Certification Office by an aircraft/product manufacturer/modifier.

Respondents: Approximately 2,558 manufacturers/modifiers.

Frequency: Information is collected on occasion.

Estimated Average Burden per Response: 7.35 hours.

Estimated Total Annual Burden: 18,815 hours.

ADDRESSES: Send comments to the FAA at the following address: Ms. Kathy DePaepe, Room 126B, Federal Aviation Administration, AES–200, 6500 S. MacArthur Blvd., Oklahoma City, OK 73169.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Issued in Washington, DC on October 19, 2011.

Albert R. Spence,

FAA Assistant Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. 2011–27635 Filed 10–25–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities; Requests for Comments: Clearance of Renewed Approval of Information Collection; Hazardous Materials Training Requirements

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on August 24, 2011, vol. 76, no. 164, page 53024–53025. The collection involves requirements for certain repair stations to provide documentation showing that persons handling hazmat for transportation have been trained following DOT guidelines.

DATES: Written comments should be submitted by November 25, 2011.

FOR FURTHER INFORMATION CONTACT: Kathy DePaepe at (405) 954–9362, or by e-mail at: *Kathy A. DePaepe @faa.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120–0705.

Title: Hazardous Materials Training Requirements.

Form Numbers: There are no FAA forms associated with this collection.

Type of Review: Renewal of an information collection.

Background: The FAA, as prescribed in 14 CFR parts 121 and 135, requires certificate holders to submit manuals and hazmat training programs, or revisions to an approved hazmat training program to obtain initial and final approval as part of the FAA certification process. Original certification is completed in accordance with 14 CFR part 119. Continuing certification is completed in accordance with part 121 and part 135. The FAA uses the approval process to determine compliance of the hazmat training programs with the applicable regulations, national policies and safe operating practices. The FAA must ensure that the documents adequately establish safe operating procedures.

Respondents: Approximately 2,772 operators.

Frequency: Information is collected on occasion.

Estimated Average Burden per Response: 7 hours.

Estimated Total Annual Burden: 6,900 hours.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the attention of the Desk Officer, Department of Transportation/FAA, and sent via electronic mail to *oira_submission@omb.eop.gov,* or faxed to (202) 395–6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street, NW., Washington, DC 20503.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to

enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Issued in Washington, DC, on October 20, 2011.

Albert R. Spence,

FAA Assistant Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. 2011–27713 Filed 10–25–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities; Requests for Comments: Clearance of Renewed Approval of Information Collection; Aviation Insurance

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on August 24, 2011, vol. 76, no. 164, page 53022–53023. The requested information is included in air carriers applications for insurance when insurance is not available from private sources.

DATES: Written comments should be submitted by November 25, 2011.

FOR FURTHER INFORMATION CONTACT: Kathy DePaepe at (405) 954–9362, or by e-mail at: *Kathy A. DePaepe @faa.gov.*

SUPPLEMENTARY INFORMATION: *OMB Control Number:* 2120–0514.

Title: Aviation Insurance.

Form Numbers: There are no FAA forms associated with this collection.

Type of Review: Renewal of an information collection.

Background: The information submitted by applicants for insurance under Chapter 443 of Title 49 U.S.C. is used by the FAA to identify the eligibility of parties to be insured, the amount of coverage required, and insurance premiums. Without collection of this information, the FAA would not be able to issue required insurance.

Respondents: Approximately 61 applicants.

Frequency: Information is collected on occasion.

Estimated Average Burden per Response: 4 hours.

Estimated Total Annual Burden: 616 hours.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the attention of the Desk Officer, Department of Transportation/FAA, and sent via electronic mail to *oira_submission@omb.eop.gov,* or faxed to (202) 395–6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street, NW., Washington, DC 20503.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Issued in Washington, DC, on October 20, 2011.

Albert R. Spence,

FAA Assistant Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. 2011–27710 Filed 10–25–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: FAA Airport Master Record

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on August 24, 2011, vol. 76, no. 164, page 53025. The Airport Safety Data Program involves the collection and dissemination of civil aeronautics information.

DATES: Written comments should be submitted by November 25, 2011.

FOR FURTHER INFORMATION CONTACT: Kathy DePaepe at (405) 954–9362, or by e-mail at: *Kathy A. DePaepe @faa.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120–0015.

Title: FAA Airport Master Record.

Form Numbers: FAA Forms 5010–1, 5010–2, 5010–3, 5010–5.

Type of Review: Renewal of an information collection.

Background: 49 U.S.C. 329(b) empowers and directs the Secretary of Transportation to collect and disseminate information on civil aeronautics. Aeronautical information is required to be collected by the FAA in order to carry out agency missions such as those related to aviation flying safety, flight planning, airport engineering and federal grants analysis, aeronautical chart and flight information publications, and the promotion of air commerce as required by statute.

Respondents: Approximately 19,800 airport owners/managers and state inspectors.

Frequency: Information is collected on occasion.

Estimated Average Burden per Response: 1 hour.

Estimated Total Annual Burden: 8,870 hours.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the attention of the Desk Officer, Department of Transportation/FAA, and sent via electronic mail to *oira_submission@omb.eop.gov,* or faxed to (202) 395–6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street, NW., Washington, DC 20503.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity

of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Issued in Washington, DC, on October 20, 2011.

Albert R. Spence,

FAA Assistant Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. 2011–27709 Filed 10–25–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities; Requests for Comments: Clearance of Renewed Approval of Information Collection; Training and Qualification Requirements for Check Airmen and Flight Instructors

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The rule allows some experienced pilots who would otherwise qualify as flight instructors or check airmen, but who are not medically eligible to hold the requisite medical certificate, to perform flight instructor or check airmen functions in a simulator.

DATES: Written comments should be submitted by December 27, 2011.

FOR FURTHER INFORMATION CONTACT: Kathy DePaepe at (405) 954–9362, or by e-mail at: *KathyA.DePaepe@faa.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120–0600.

Title: Training and Qualification Requirements for Check Airmen and Flight Instructors

Form Numbers: There are no FAA forms associated with this collection.

Type of Review: Renewal of an information collection.

Background: Federal Aviation Regulations (FAR) Parts 121.411(d), 121.412(d), 135.337(d), and 135.338(d) require the collection of this data. This collection is necessary to insure that instructors and check airmen have completed necessary training and checking required to perform instructor and check airmen functions.

Respondents: Approximately 3,000 check airmen and flight instructors.

Frequency: Information is collected on occasion.

Estimated Average Burden per Response: 15 seconds.

Estimated Total Annual Burden: 13 hours.

ADDRESSES: Send comments to the FAA at the following address: Ms. Kathy DePaepe, Room 126B, Federal Aviation Administration, AES–200, 6500 S. MacArthur Blvd, Oklahoma City, OK 73169.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Dated: Issued in Washington, DC on October 20, 2011.

Albert R. Spence,

FAA Assistant Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. 2011–27632 Filed 10–25–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities; Requests for Comments: Clearance of Renewed Approval of Information Collection; Financial Responsibility for Licensed Launch Activities

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on August 24, 2011, vol. 76, no. 164, page 53024. Information is used to determine if licensees have complied with financial responsibility requirements (including maximum probable loss determination) as set forth in FAA regulations.

DATES: Written comments should be submitted by November 25, 2011.

FOR FURTHER INFORMATION CONTACT: Kathy DePaepe at (405) 954–9362, or by e-mail at: *Kathy A. DePaepe @faa.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120–0601.

Title: Financial Responsibility for Licensed Launch Activities.

Form Numbers: There are no FAA forms associated with this collection.

Type of Review: Renewal of an information collection.

Background: This collection is applicable upon concurrence of requests for conducting commercial launch operations as prescribed in 14 CFR, Parts 401, et al., Commercial Space Transportation Licensing Regulation. A commercial space launch services provider must complete the Launch Operators License, Launch-Specific License or Experimental Permit in order to gain authorization for conducting commercial launch operations.

Respondents: 6 commercial space launch services providers.

Frequency: Information is collected on occasion.

Estimated Average Burden per Response: 100 hours.

Estimated Total Annual Burden: 600 hours.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the attention of the Desk Officer, Department of Transportation/FAA, and sent via electronic mail to *oira_submission@omb.eop.gov,* or faxed to (202) 395–6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street, NW., Washington, DC 20503.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Issued in Washington, DC, on October 20, 2011.

Albert R. Spence,

FAA Assistant Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. 2011–27711 Filed 10–25–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Eighteenth Meeting: RTCA Special Committee 205/EUROCAE WG–71: Software Considerations in Aeronautical Systems

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

ACTION: Notice of RTCA Special Committee 205/EUROCAE WG–71 meeting: Software Considerations in Aeronautical Systems.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 205/EUROCAE WG–71: Software Considerations in Aeronautical Systems Agenda for the 18th meeting.

DATES: The meeting will be held November 15–18, 2011, from 8:30 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at Embry-Riddle Aeronautical University Instructional Center Auditorium, Clyde Morris Boulevard, Daytona Beach, FL 32218.

FOR FURTHER INFORMATION CONTACT: The RTCA Secretariat, 1150 18th Street, NW., Suite 910, Washington, DC 20036, or by telephone at (202) 833–9339, fax at (202) 833–9434, or Web site at *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.), notice is hereby given for a Special Committee 205/EUROCAE WG–71, Software Considerations in Aeronautical Systems. The agenda will include the following:

Agenda

November 15, 2011

- Open Plenary Session
- Chairman's Introductory Remarks
- Facilities Review
- Recognition of the FAA and EASA Representatives
- Review of Meeting Agenda
- Review and Approval of Seventeenth Meeting Minutes
- Road Map to Completion
- Embry-Riddle Aeronautical University (Host Presentation)
- Presentation of FRAC/OC Changes and Approval
- IP60/IP61–12B/DO–178B (Object Oriented and RT), Post FRAC Changes
- IP58/IP59 (Model Based): Post FRAC Changes
- Lunch
- Presentation of FRAC/OC Changes and Approval
- IP58/IP59 (Model Based): Post FRAC Changes
- P52/IP53 (Clarifications): Post FRAC Changes
- Break-out Sessions
- IP52—Clarifications
- IP60—Object Oriented
- IP58—Model Based
- Others as Required

November 16, 2011

- Break-out Sessions
- IP52—Clarifications
- IP60—Object Oriented
- IP58—Model Based
- Others as required
- Presentation of any Further Corrections and Approval
- IP52, 58 or 60
- Lunch
- Presentation of any Further Corrections and Approval
- IP52, 58 or 60
- Break-out Sessions
- IP52—Clarifications
- IP60—Object Oriented
- IP58—Model Based
- Others as required

November 17, 2011

- Break-out Sessions (as required to work comments)
- IP58\8—Model based Design
- IP60—Object Oriented
- IP52/IP53—FAQs *et al.*
- Presentations of any further Corrections and Approval
- IP52—Model based Design
- IP58—Object Oriented
- IP60—FAQs *et al.*
- Lunch
- Presentations of any further Corrections and Approval
- IP52—Model based Design
- IP58—Object Oriented
- IP60—FAQs *et al.*
- Break-out Sessions
- IP52—Clarifications
- IP58—Object Oriented
- IP60—Model Based
- Others as Required

November 18, 2011

- Presentations of any further Corrections and Approval
- IP52, 58 or 60
- Summary of results of Voting Sessions
- Closing Remarks
- Adjourn

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on October 20, 2011.

Robert L. Bostiga,

Manager, RTCA Advisory Committee.

[FR Doc. 2011–27708 Filed 10–25–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Eighth Meeting: RTCA Special Committee 222 Inmarsat Aeronautical Mobile Satellite (Route) Services

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

ACTION: Notice of RTCA Special Committee 222, Inmarsat Aeronautical Mobile Satellite (Route) Services meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 222, Inmarsat Aeronautical Mobile Satellite (Route) Services for the Eighth Meeting.

DATES: The meeting will be held November 17, 2011, from 1–5 p.m.

ADDRESSES: The meeting will be held at Inmarsat, 1101 Connecticut Avenue, NW., Suite 1200, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: The RTCA Secretariat, 1150 18th Street, NW., Suite 910, Washington, DC 20036, or by telephone at (202) 833–9339, fax at (202) 833–9434, or Web site at *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a) (2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.), notice is hereby given for a Special Committee 222, Inmarsat Aeronautical Mobile Satellite (Route) Services. The agenda will include the following:

Agenda

November 17, 2011

- Co-Chair Welcomes & Introductions
- Review of Minutes of previous meeting
- Review of topics for current agenda
- Review of current industry status

• Review of status from briefing to PMC in March 2011.
• Discuss of PMC request to prepare generic GOLD-based document.
• Discuss update to terms of reference to be submitted to PMC
• Review of suggested modifications to MOPS (DO–210 and DO–262 SBB technique-specific) testing and qualification.
• Review of any new MASPS material.
• Review of any working papers
• Discussion of work plan
• Discussion of next meeting
• Adjourn

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on October 21, 2011.

Robert L. Bostiga,

Manager, RTCA Advisory Committee.

[FR Doc. 2011–27707 Filed 10–25–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2011–47]

Petition for Exemption; Summary of Petition Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petitions or their final disposition.

DATES: Comments on these petitions must identify the petition docket number involved and must be received on or before November 15, 2011.

ADDRESSES: You may send comments identified by Docket Number FAA–2011–1084 using any of the following methods:

• *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.

• *Mail:* Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.

• *Fax:* Fax comments to the Docket Management Facility at 202–493–2251.

• *Hand Delivery:* Bring comments to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy: We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Docket: To read background documents or comments received, go to *http://www.regulations.gov* at any time or to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Tyneka L. Thomas, 202–267–7626, or Ralen Gao, 202–267–3168, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on October 21, 2011.

Dennis R. Pratte,

Acting Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2011–1084.

Petitioner: Era Helicopters, LLC.

Section of 14 CFR Affected: Special Federal Aviation Regulations 77.

Description of Relief Sought:

Era Helicopters, LLC (Era) requests an exemption from Special Federal Aviation Regulations 77 which would allow Era to operate helicopters as a contract carrier primarily for oil companies and other potential clients to transport passengers and provide medevac services.

[FR Doc. 2011–27735 Filed 10–25–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2011–48]

Petition for Exemption; Summary of Petition Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number involved and must be received on or before November 15, 2011.

ADDRESSES: You may send comments identified by Docket Number FAA–2011–1129 using any of the following methods:

• *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.

• *Mail:* Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.

• *Fax:* Fax comments to the Docket Management Facility at 202–493–2251.

• *Hand Delivery:* Bring comments to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy: We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act

Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Docket: To read background documents or comments received, go to *http://www.regulations.gov* at any time or to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Keira Jones (202) 267–4024, Tyneka Thomas (202) 267–7626, or David Staples (202) 267–4058, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on October 21, 2011.

Dennis R. Pratte,

Acting Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2011–1129.

Petitioner: American Airlines.

Section of 14 CFR Affected: 14 CFR 60.17(d).

Description of Relief Sought: Petitioner requests relief to allow their B757 FSTD to be qualified to Level D and for the FSTD to remain under its initial Qualification Test Guide (QTG) criteria described by Advisory Circular (AC) 120–40B.

[FR Doc. 2011–27738 Filed 10–25–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Request To Release Airport Property

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Notice of Intent to Rule on Request to Release Airport Property at the Halifax County Airport (RZZ), Roanoke Rapids, North Carolina.

SUMMARY: The FAA proposes to rule and invites public comment on the release of land at the Halifax County Airport (RZZ), Roanoke Rapids, NC under the provisions of 49 U.S.C. 47107(h).

DATES: Comments must be received on or before November 25, 2011.

ADDRESSES: Comments on this application may be mailed or delivered to the FAA at the following address: Larry F. Clark, Assistant Manager, Federal Aviation Administration, Atlanta Airports District Office, 1701 Columbia Ave., Campus Building, Suite 2–260, College Park, GA 30337.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to: Tony N. Brown, Halifax County Manager, 10 North King Street, Halifax, NC 27839.

FOR FURTHER INFORMATION CONTACT: Larry F. Clark, Assistant Manager, Federal Aviation Administration, Atlanta Airports District Office, 1701 Columbia Avenue, Campus Building, Suite 2–260, College Park, GA 30337.

The request to release property may be reviewed, by appointment, in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA invites public comment on the request to release approximately 292 acres of property known as the Halifax County Airport (RZZ) under the provisions of 49 U.S.C. 47107(h)(2). In May, 2009, the Halifax-Northampton Regional Airport Authority opened the new Halifax-Northampton Regional Airport (IXA) as a replacement for the Halifax County Airport (RZZ). On April 20, 2010, the Chairman of the Board of Commissioners of Halifax County and the Mayor of Roanoke Rapids notified the FAA that because of the opening of the new Halifax-Northampton Regional Airport and the subsequent decommissioning of RZZ that they were officially requesting a full release of the affected property from federal obligations. All operations at RZZ have ceased. The FAA has determined that the request to release property at RZZ submitted by the airport sponsors meets the procedural requirements of the FAA. The release of this property does not and will not impact future aviation needs in the region. The FAA may approve the request in whole no sooner than 30 days after publication of this notice.

The Following Is a Brief Overview of the Request

The Airport Sponsors are proposing the release of the entire airport property and associated facilities. The release of land is necessary to comply with FAA Grant Assurances that do not allow federally acquired airport property to be used for non-aviation purposes. The permanent abandonment of the subject property will result in the lands of RZZ being changed from aeronautical to nonaeronautical use and release of the lands from the conditions of the AIP Grant Agreement Grant Assurances. In accordance with 49 U.S.C. 47107(c)(2)(B)(i) and (iii), the Airport Sponsor has reinvested an amount equal to the fair market value of RZZ in the recently-constructed IXA.

Any person may inspect, by appointment, the request in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may, upon appointment and request, inspect the application, notice and other documents determined by the FAA to be related to the application in person at the Halifax County Manager's Office, 10 North King Street, Halifax, NC.

Issued in College Park, Georgia on October 12, 2011.

Scott L. Seritt,

Manager, FAA Atlanta Airports District Office.

[FR Doc. 2011–27634 Filed 10–25–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Reports, Forms and Record Keeping Requirements, Agency Information Collection Activity Under OMB Review

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collections and their expected burden. The **Federal Register** Notice with a 60-day comment period was published on June 24, 2011 [76 FR 37189].

DATES: Comments must be submitted on or before November 25, 2011.

FOR FURTHER INFORMATION CONTACT: National Highway Traffic Safety Administration, Office of Defects Investigation, 202–493–0210. 1200 New Jersey Avenue, SE., W48–221, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

National Highway Traffic Safety Administration

(1) *Title:* Replaceable Light Source Dimensional Information Collection, 49 CFR part 564.

OMB Number: 2127–0563.

Type of Request: Extension of a currently approved collection.

Affected Public: Business or other for profit organizations.

Abstract: The information to be collected is in response to 49 CFR part 564, ''Replaceable Light Source

Dimensional Information.'' Persons desiring to use newly designed replaceable headlamp light sources are required to submit interchangeability and performance specifications to the agency. After a short agency review to assure completeness, the information is placed in a public docket for use by any person who would desire to manufacture headlamp light sources for highway motor vehicles. In Federal Motor Vehicle Safety Standard No. 108, Lamps, reflective devices and associated equipment,'' part 564 submission are referenced as being the source of information regarding the performance and interchangeability information for legal headlamp light sources, whether original equipment or replacement equipment. Thus, the submitted information about headlamp light sources becomes the basis for certification of compliance with safety standards.

Estimated Total Annual Burden: 28.

Estimated Number of Respondents: 7.

(2) *Title:* Compliance Labeling of Retroreflective Materials heavy Trailer Conspicuity.

OMB Number: 2127–0569.

Type of Request: Extension of a currently approved collection.

Affected Public: Business or other for profit organizations.

Abstract: Federal Motor Vehicle Safety Standard No. 108, ''Lamps Reflective Devices, and Associated Equipment,'' specifies requirements for vehicle lighting for the purposes of reducing traffic accidents and their tragic results by providing adequate roadway illumination, improved vehicle conspicuity, appropriate information transmission through signal lamps, in both day, night, and other conditions of reduced visibility. For certifications and identification purposes, the Standard requires the permanent marking of the letters ''DOT–C2,'' ''DOT–C3'', or ''DOT –C4'' at least 3mm high at regular intervals on retroreflective sheeting material having adequate performance to provide effective trailer conspicuity.

The manufacturers of new tractors and trailers are required to certify that their products are equipped with retroreflective material complying with the requirements of the standard. The Federal Motor Carrier Safety Administration (FMCSA) enforces this and other standards through roadside inspections of trucks. There is no practical field test for the performance requirements, and labeling is the only objectives way of distinguishing trailer conspicuity grade material from lower performance material. Without labeling, FMCSA will not be able to enforce the performance requirements of the standard and the compliance testing of new tractors and trailers will be complicated. Labeling is also important to small trailer manufactures because it may help them to certify compliance. Because wider stripes or material of lower brightness also can provide the minimum safety performance, the marking system serves the additional role of identifying the minimum stripe width required for retroreflective brightness of the particular material. Since the differences between the brightness grades of suitable retroreflective conspicuity material is not obvious from inspection, the marking system is necessary for tractor and trailer manufacturers and repair shops to assure compliance and for FMCSA to inspect tractors and trailers in use. Permanent labeling is used to identify retroreflective material having the minimum properties required for effective conspicuity of trailers at night. The information enables the FMCSA to make compliance inspections, and it aids tractor and trailer owners and repairs shops in choosing the correct repair materials for damaged tractors and trailers. It also aids smaller trailer manufacturers in certifying compliance of their products.

The FMCSA will not be able to determine whether trailers are properly equipped during roadside inspections without labeling. The use of cheaper and more common reflective materials, which are ineffective for the application, would be expected in repairs without the labeling requirement.

Estimated Total Annual Burden: 1.

Estimated Number of Respondents: 3.

ADDRESSES: Send comments, within 30 days, to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503, Attention NHTSA Desk Officer.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A Comment to OMB is most effective if OMB receives it within 30 days of publication.

Issued in Washington, DC, on October 20, 2011.

Nathaniel Beuse,

Director, Office of Crash Avoidance Standards.

[FR Doc. 2011–27656 Filed 10–25–11; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2010–0047; Notice 2]

Tireco, Inc., Grant of Petition for Decision of Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Grant of Petition for Decision of Inconsequential Noncompliance.

SUMMARY: Tireco, Inc., (Tireco), has determined that approximately 6,170 of its ''GEO-Trac'' brand P235/75R15 passenger car tires, manufactured between June 12, 2009 and August 20, 2009 by the fabricating manufacturer, the Shandong Linglong Tyre Co., Ltd., and imported into the United States by Tireco, do not comply with paragraph S5.5(c) of Federal Motor Vehicle Safety Standard (FMVSS) No. 139, *New pneumatic radial tires for light vehicles.* Tireco has filed an appropriate report pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports* (dated August 31, 2009).

Pursuant to 49 U.S.C. 30118(d) and 30120(h) and the rule implementing those provisions at 49 CFR part 556, Tireco 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.

Notice of receipt of Tireco's petition was published, with a 30-day public comment period, on April 21, 2010, in the **Federal Register** (75 FR 20879). No comments were received. To view the petition and all supporting documents log onto the Federal Docket Management System Web site at: *http://www.regulations.gov/.* Then follow the online search instructions to locate docket number ''NHTSA–2010–0047.''

For further information on this decision, contact Mr. George Gillespie, Office of Vehicle Safety Compliance, the National Highway Traffic Safety Administration (NHTSA), telephone (202) 366–5299, facsimile (202) 366–7002.

Affected are approximately 6,170 tires imported into the United States by

Tireco who identified the tires as ''Geo-Trac'' brand P235/75R15 passenger car tires. In consultation with the fabricating manufacturer, the Shandong Linglong Tyre Co., Ltd., Tireco has determined that all of the noncompliant tires were manufactured between June 12, 2009 (Serial Week 24) and August 20, 2009 (Serial Week 34). A total of 6,170 these noncompliant tires have been recovered from its distributors and dealers and are currently in Tireco's possession for relabeling. The remaining tires (approximately 3,370) are still in the hands of Tireco's customers.

Tireco explains that the noncompliance is that the markings on the non-compliant tires specifying the maximum inflation pressure in kPa and in psi are reversed from the order required by paragraph S5.5.5(c). The Company said that the maximum inflation pressure should have been marked as ''300 kPa (44 psi)'' but were ''inadvertently'' marked on both sidewalls with a maximum inflation pressure of ''44 kPa (300 psi).'' Tireco reported that this noncompliance was brought to their attention on August 19, 2009 by one of the company's distributor customers.

Tireco argues that no vehicle operator would ever inflate the tires to the incorrect pressures that appear on the sidewalls of the subject tires, and specifically stated that ''it would be virtually impossible to do so.'' Tireco supports this conclusion with the following statements:

- With respect to the erroneous psi marking, no commercially available air compressor used in tire retail stores, at gas stations, or for home use has the capacity to inflate tires to 300 psi, and consumers would immediately be aware from their past experience that a pressure of 300 psi could not be correct.
- With respect to the erroneous kPa marking, it [is] extremely unlikely that a consumer would attempt to inflate the tires to 44 kPa, since (1) Drivers in the United States almost always utilize the psi parameter rather than kPa value when they inflate their tires; and (2) any driver who used the kPa parameter would know that the 44 kPa value was not correct, since all passenger car tires have a maximum inflation pressure of at least 240 kPa. Moreover, even if a consumer were to attempt to inflate the tires to 44 kPa (which is equivalent to approximately 7 psi), he or she would immediately be aware that the tires were drastically underinflated, and would not be in a drivable state.

Tireco concludes that the subject non-compliance ''cannot result in the tires being overloaded, or any other adverse safety consequence to the tires or to the vehicles on which they are mounted.'' Additionally, Tireco cites three cases which it believes support its conclusion that NHTSA has previously granted tire companies inconsequentiality exemptions relating to errors in the marking of maximum inflation pressure. (See *Michelin North America, Inc.,* 70 FR 10161 (March 2, 2005); *Kumho Tire Co., Inc.,* 71 FR 6129 (February 6, 2006); and *Michelin North America, Inc.,* 74 FR 10805 (March 12, 2009).

Furthermore, Tireco points out three other substantive factors that support its petition:

- The subject tires meet or exceed all of the substantive performance requirements of FMVSS No. 139.
- There have been no complaints regarding this issue from vehicle owners (the incorrect markings were brought to Tireco's attention by one of its distributors).
- The manufacturer of these tires, Shandong Linglong Tyre Co., Ltd., has corrected the molds at its factory, so that this noncompliance will not be repeated in current or future production.

Supported by all of the above stated reasons, Tireco believes that the described noncompliance of its tires to meet the requirements of FMVSS No. 139 is inconsequential to motor vehicle safety, and 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 Decision: The agency agrees with Tireco that the noncompliance is inconsequential to motor vehicle safety. The agency believes that the true measure of inconsequentiality to motor vehicle safety in this case is that there is no effect of the noncompliances on the operational safety of vehicles on which these tires are mounted. In the agency's judgment, the incorrect labeling of the tire inflation information will not have any consequential effect on motor vehicle safety because it is extremely unlikely that the consumer will inflate the tires to an incorrect pressure.

The safety of people working in the tire retread, repair, and recycling industries was also to be considered. As with consumers, it is extremely unlikely that this noncompliance will cause anyone working in those businesses to incorrectly inflate these tires in a manner that will cause a measureable effect on motor vehicle safety.

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. Therefore, this decision only applies to the 3,370 [1] passenger car replacement tires that Tireco no longer controlled at the time that it determined that a noncompliance existed.

In consideration of the foregoing, NHTSA has decided that Tireco has met its burden of persuasion that the subject FMVSS No. 139 labeling noncompliances are inconsequential to motor vehicle safety. Accordingly, Tireco's petition is granted and the petitioner is exempted from the obligation of providing notification of, and a remedy for, the subject noncompliance under 49 U.S.C. 30118 and 30120.

Authority: (49 U.S.C. 30118, 30120: delegations of authority at CFR 1.50 and 501.8)

Issued on: October 20, 2011.

Claude H. Harris,

Acting Associate Administrator for Enforcement.

[FR Doc. 2011–27651 Filed 10–25–11; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35544]

DesertXpress Enterprises, LLC and DesertXpress HSR Corporation—Construction and Operation Exemption—in Victorville, CA and Las Vegas, NV

AGENCY: Surface Transportation Board, DOT.

ACTION: Notice of construction and operation exemption.

SUMMARY: The Board grants an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10901 for DesertXpress Enterprises, LLC and its subsidiary (DXE) to build and operate a 190-mile rail line between Victorville, Cal. and Las Vegas, Nev., in order to provide high-speed passenger rail service. This exemption is subject to environmental mitigation conditions and the condition that DXE build the route designated as environmentally preferable.

[1] Tireco's petition, which was filed under 49 CFR part 556, requests an agency decision to exempt Tireco as a manufacturer from the notification and recall responsibilities of 49 CFR part 573 for 3, 370 of the affected tires. However, a decision on this petition cannot relieve distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant tires under their control after Tireco notified them that the subject noncompliance existed.

DATES: The exemption will be effective on November 25, 2011; petitions to reopen must be filed by November 15, 2011.

ADDRESSES: An original and 10 copies of all pleadings, referring to Docket No. FD 35544, must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. In addition, one copy of all pleadings must be served on petitioner's representative: Linda J. Morgan, Nossaman LLP, 1666 K Street, NW., Suite 500, Washington, DC 20006.

Copies of filings will be available for viewing at the Board's Web site.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar at 202–245–0395. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision, which is available on our Web site at: ''*http://www.stb.dot.gov*''.

Decided: October 20, 2011.

By the Board, Chairman Elliott, Vice Chairman Begeman, and Commissioner Mulvey.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2011–27679 Filed 10–25–11; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

October 20, 2011.

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 November 25, 2011 to be assured consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0001.

Type of Review: Revision of a currently approved collection.

Title: Employer's Annual Railroad Retirement Tax Return.

Forms: CT–1, CT–1X.

Abstract: Railroad employers are required to file an annual return to report employer and employee Railroad Retirement Tax Act (RRTA). Form CT–1 is used for this purpose. IRS uses the information to insure that the employer has paid the correct tax.

Respondents: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 39,455.

OMB Number: 1545–0003.

Type of Review: Extension without change of a currently approved collection.

Title: Application for Employer Identification Number; Solicitud de Numero de Identificacion Patronal (EIN).

Forms: SS–4, SS–4–PR.

Abstract: Taxpayers are required to have an identification number for use on any return, statement, or other document must prepare and file Form SS–4 or Form SS–4PR (Puerto Rico only) to obtain a number. The information is used by the IRS and the SSA in tax administration and by the Bureau of the Census for business statistics.

Respondents: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 15,941,913.

OMB Number: 1545–0024.

Type of Review: Revision of a currently approved collection.

Title: Claim for Refund and Request for Abatement.

Form: 843.

Abstract: IRC section 6402, 6404, and sections 301.6404–2, and 301.6404–3 of the regulations, allow for refunds of taxes (except income taxes) or refund, abatement, or credit of interest, penalties, and additions to tax in the event of errors or certain action by the IRS. Form 843 is used by taxpayers to claim these refunds, credits, or abatements.

Respondents: Individuals and Households.

Estimated Total Burden Hours: 875,295.

OMB Number: 1545–0049.

Type of Review: Extension without change of a currently approved collection.

Title: Form 990–BL, Information and Initial Excise Tax Return for Black Lung Benefit Trusts and Certain Related Persons; Form 6069, Return of Excise Tax on Excess Contributions to BL Trust.

Forms: 990–BL, 6069.

Abstract: IRS uses Form 990–BL to monitor activities of black lung benefit trusts, and to collect excise taxes on these trusts and certain related persons if they engage in proscribed activities. The tax is figured on Schedule A and attached to Form 990–BL. Form 6069 is used by coal mine operators to figure the maximum deduction to a black lung benefit trust. If excess contributions are made, IRS uses the form to figure and collect the tax on excess contributions.

Respondents: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 563.

OMB Number: 1545–0058.

Type of Review: Extension without change of a currently approved collection.

Title: Application for Recognition of Exemption Under Section 521 of the Internal Revenue Code.

Form: 1028.

Abstract: Farmers' cooperatives must file Form 1028 to apply for exemption from Federal income tax as being organizations described in IRC section 521. The information on Form 1028 provides the basis for determining whether the applicants are exempt.

Respondents: Private Sector: Businesses or other for-profits, Farms.

Estimated Total Burden Hours: 2,545.

OMB Number: 1545–0152.

Type of Review: Extension without change of a currently approved collection.

Title: Application for Change in Accounting Method.

Form: 3115.

Abstract: Form 3115 is used by taxpayers who wish to change their method of computing their taxable income. The form is used by the IRS to determine if electing taxpayers have met the requirements and are able to change to the method requested.

Respondents: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 929,066.

OMB Number: 1545–0216.

Type of Review: Extension without change of a currently approved collection.

Title: International Boycott Report.

Form: 5713 and Schedules A, B, and C to Form 5713.

Abstract: Form 5713 and related Schedules A, B, and C are used by any entity that has operations in a ''boycotting'' country. If that entity cooperates with or participates in an international boycott it loses a portion of the foreign tax credit, or deferral of FSC and IC–DISC benefits. The IRS uses Form 5713 to determine if any of the above benefits should be lost. The

information is also used as the basis for a report to the Congress.

Respondents: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 69,495.

OMB Number: 1545–0284.

Type of Review: Extension without change of a currently approved collection.

Title: Application for Determination of Employee Stock Ownership Plan.

Form: 5309.

Abstract: Form 5309 is used in conjunction with Form 5300 or Form 5303 when applying for a determination letter as to a deferred compensation plan's qualification status under section 409 or 4975(e)(7) of the Internal Revenue Code. The information is used to determine whether the plan qualifies.

Respondents: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 26,975.

OMB Number: 1545–0723.

Type of Review: Extension without change of a currently approved collection.

Title: T.D. 8043—Manufacturers Excise Taxes and Sporting Goods and Firearms and Other Administrative Provisions of Special Application to Manufacturers and Retailers Excise Taxes.

Abstract: This document contains final regulations which revise and update the regulations on manufacturers excise taxes on sporting goods and firearms and other administrative provisions especially applicable to manufacturers and retailers excise taxes. These amendments revise and update Part 48 to achieve greater clarity and conform the regulations to numerous amendments to the Internal Revenue Code of 1954 made after 1964. These regulations provide necessary guidance to the public for compliance with the law.

Respondents: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 475,000.

OMB Number: 1545–0795.

Type of Review: Extension without change of a currently approved collection.

Title: Exemption From Withholding on Compensation for Independent (and Certain Dependent) Personal Services of a Nonresident Alien Individual.

Form: 8233.

Abstract: Compensation paid to a nonresident alien (NRA) individual for independent personal services (self-employment) is generally subject to 30% withholding or graduated rates. However, compensation may be exempt from withholding because of a U.S. tax treaty or personal exemption amount. Form 8233 is used to request exemption from withholding.

Respondents: Individuals and Households.

Estimated Total Burden Hours: 1,320,000.

OMB Number: 1545–0879.

Type of Review: Extension without change of a currently approved collection.

Title: IA–195–78 (Final) Certain Returned Magazines, Paperbacks or Records.

Abstract: The regulations provide rules relating to an exclusion from gross income for certain returned merchandise. The regulations provide that in addition to physical return of the merchandise, a written statement listing certain information may constitute evidence of the return. Taxpayers who receive physical evidence of the return may, in lieu of retaining physical evidence, retain documentary evidence of the return. Taxpayers in the trade or business of selling magazines, paperbacks, or records, who elect to use a certain method of accounting, are affected.

Respondents: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 8,125.

OMB Number: 1545–0922.

Type of Review: Extension without change of a currently approved collection.

Title: Form 8329, Lender's Information Return for Mortgage Credit Certificates (MCCs); Form 8330, Issuer's Quarterly Information Return for Mortgage Credit Certificates (MCCs).

Forms: 8329, 8330.

Abstract: Form 8329 is used by lending institutions and Form 8330 is used by state and local governments to report on mortgage credit certificates (MCCs) authorized under IRC Section 25. IRS matches the information supplied by lenders and issuers to ensure that the credit is computed properly.

Respondents: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 73,720.

OMB Number: 1545–1100.

Type of Review: Extension without change of a currently approved collection.

Title: REG–209106–89 (NPRM) Changes With Respect to Prizes and Awards and Employee Achievement Awards.

Abstract: This regulation requires recipients of prizes and awards to maintain records to determine whether a qualifying designation has been made. The affected public are prize and award recipients who seek to exclude the cost of a qualifying prize or award.

Respondents: Individuals and Households.

Estimated Total Burden Hours: 1,275.

OMB Number: 1545–1139.

Type of Review: Extension without change of a currently approved collection.

Title: PS–264–82 (Final) Adjustments to Basis of Stock and Indebtedness to Shareholders of S Corporations and Treatment of Distributions by S Corporations to Shareholders; REG–144859–04—Section 1367 Regard.

Abstract: The regulations provide the procedures and the statements to be filed by S corporations for making the election provided under section 1368, and by shareholders who choose to reorder items that decrease their basis. Statements required to be filled will be used to verify that taxpayers are complying with the requirements imposed by Congress.

Respondents: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 450.

OMB Number: 1545–1269.

Type of Review: Extension without change of a currently approved collection.

Title: T.D. 8461—Nuclear Decommissioning Fund Qualification Requirements.

Abstract: This document contains final regulations relating to the qualification requirements of a nuclear decommissioning fund. Pursuant to former section 468A(e)(4)(C) of the Internal Revenue Code, current regulations require that nuclear decommissioning funds invest directly in permissible assets and permitted two or more such funds to combine assets for investment purposes. The Comprehensive National Energy Policy Act of 1992 repealed the investment restriction contained in section 468A(e)(4)(C). These final regulations amend the existing regulations to reflect the statutory change.

Respondents: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 150.

OMB Number: 1545–1375.

Type of Review: Extension without change of a currently approved collection.

Title: T.D. 8537—Carryover of Passive Activity Losses and Credits and At Risk Losses to Bankruptcy Estates of Individuals.

Abstract: This document contains final regulations relating to the

application of carryover of passive activity losses and credits and at risk losses to the bankruptcy estates of individuals. The final regulations affect individual taxpayers who file bankruptcy petitions under chapter 7 or chapter 11 of title 11 of the United States Code and have passive activity losses and credits under section 469 or losses under section 465.

Respondents: Individuals and Households.

Estimated Total Burden Hours: 100.

OMB Number: 1545–1381.

Type of Review: Extension without change of a currently approved collection.

Title: T.D. 8546—Limitations on Corporate Net Operating Loss.

Abstract: This document contains final income tax regulations providing rules for allocating net operating loss or taxable income, and net capital loss or gain, within the taxable year in which a loss corporation has an ownership change under section 382 of the Internal Revenue Code of 1986. These regulations permit the loss corporation to elect to allocate these amounts between the period ending on the change date and the period beginning on the day after the change date as if its books were closed on the change date.

Respondents: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 200.

OMB Number: 1545–1393.

Type of Review: Extension without change of a currently approved collection.

Title: EE–14–81 (NPRM) Deductions and Reductions in Earnings and Profits (or Accumulated Profits) With Respect to Certain Foreign Deferred Compensation Plans Maintained by Certain Foreign Corporations or by Foreign Branches of Domestic Corporations.

Abstract: The regulation provides guidance regarding the limitations on deductions and adjustments to earnings and profits (or accumulated profits) for certain foreign deferred compensation plans. Respondents will be multinational corporations.

Respondents: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 200.

OMB Number: 1545–1407.

Type of Review: Extension without change of a currently approved collection.

Title: Consent To Extend the Time to Assess the Branch Profits Tax Under Regulations Sections 1.884–2(a) and (c).

Form: 8848.

Abstract: Form 8848 is used by foreign corporations that have (a) completely terminated all of their U.S. trade or business within the meaning of Temporary Regulations section 1.884–2T(a) during the tax year or (b) transferred their U.S. assets to a domestic corporation in a transaction described in Code section 381(a), if the foreign corporation was engaged in a U.S. trade or business at that time.

Respondents: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 22,500.

OMB Number: 1545–1409.

Type of Review: Extension without change of a currently approved collection.

Title: Election to Use Different Annualization Periods for Corporate Estimated Tax.

Form: 8842.

Abstract: Form 8842 is used by corporations (including S corporations), tax-exempt organizations subject to the unrelated business income tax, and private foundations to annually elect the use of an annualization period in section 6655(e)(2)(c)(i) or (ii) for purpose of figuring the corporation's estimated tax payments under the annualized income installment method.

Respondents: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 4,335.

OMB Number: 1545–1435.

Type of Review: Extension without change of a currently approved collection.

Title: TD 8706—Electronic Filing of Form W–4.

Abstract: This document contains final regulations relating to Form W–4, Employee's Withholding Allowance Certificate. The final regulations authorize employers to establish electronic systems for use by employees in filing their Forms W–4. The regulations provide employers and employees with guidance necessary to comply with the law. The regulations affect employers that establish electronic systems and their employees.

Respondents: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 40,000.

OMB Number: 1545–1485.

Type of Review: Extension without change of a currently approved collection.

Title T.D. 8743—Sale of Residence From Qualified Personal Residence Trust.

Abstract: This document contains final regulations permitting the reformation of a personal residence trust or a qualified personal residence trust in order to comply with the applicable requirements for such trusts. The final regulations also provide that the governing instruments of such trusts must prohibit the sale of a residence held in the trust to the grantor of the trust, the grantor's spouse, or an entity controlled by the grantor or the grantor's spouse.

Respondents: Individuals and Households.

Estimated Total Burden Hours: 625.

OMB Number: 1545–1486.

Type of Review: Extension without change of a currently approved collection.

Title T.D. 8697—Simplification of Entity Classification Rules.

Abstract: This regulation provides rules to allow certain unincorporated business organizations to elect to be treated as corporations or partnerships for federal tax purposes. The election is made by filing Form 8832, Entity Classification Election. The information collected on the election will be used to verify the classification of electing organizations.

Respondents: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 1.

OMB Number: 1545–1491.

Type of Review: Extension without change of a currently approved collection.

Title T.D. 8746—Amortizable Bond Premium.

Abstract: This document contains final regulations relating to the federal income tax treatment of bond premium and bond issuance premium. The regulations reflect changes to the law made by the Tax Reform Act of 1986 and the Technical and Miscellaneous Revenue Act of 1988. The regulations will provide needed guidance to holders and issuers of debt instruments.

Respondents: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 7,500.

OMB Number: 1545–1493.

Type of Review: Extension without change of a currently approved collection.

Title T.D. 8684—Treatment of Gain From the Disposition of Interest in Certain Natural Resource Recapture Property by S Corporations and Their Shareholders.

Abstract: This document contains final regulations relating to the tax treatment by S Corporations and their shareholders of gain from the disposition by an S corporation (and a corporation that was formerly an S corporation) of certain natural resource recapture property (section 1254 property after enactment of the Tax Reform Act of 1986 and oil, gas, or

geothermal property before enactment of the Tax Reform Act of 1986), and also rules relating to the disposition of stock in an S corporation that holds certain natural resource recapture property. Changes to the applicable tax law were made by the Tax Reform Act of 1986, and the Subchapter S Revision Act of 1982. The regulations provide the public with guidance in complying with the changed tax laws.

Respondents: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 1,000.

OMB Number: 1545–1496.

Type of Review: Extension without change of a currently approved collection.

Title: REG–209673–93 Mark to Market for Dealers in Securities (TD 8700 (final)).

Abstract: Under section 1.475(b)–4, the information required to be recorded is required by the IRS to determine whether exemption from mark-to-market treatment is properly claimed, and will be used to make that determination upon audit of taxpayer's books and records. Also, under section 1.475(c)–1(a)(3)(iii), the information is necessary for the Service to determine whether a consolidated group has elected to disregard inter-member transactions in determining a member's status as a dealer in securities.

Respondents: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 2,950.

OMB Number: 1545–1581.

Type of Review: Extension without change of a currently approved collection.

Title: T.D. 8812—Continuation Coverage Requirements Applicable to Group Health Plans.

Abstract: The Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) added health care continuation requirements that apply to group health plans. Coverage required to be provided under those requirements is referred to as COBRA continuation coverage. This document contains final regulations based on these two sets of proposed regulations. The final regulations also reflect statutory amendments to the COBRA continuation coverage requirements since COBRA was enacted. The regulations will generally affect sponsors of and participants in group health plans and they provide plan sponsors and plan administrators with guidance necessary to comply with the law.

Respondents: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 404,640.

OMB Number: 1545–1633.

Type of Review: Extension without change of a currently approved collection.

Title: T.D. 8802—Certain Asset Transfers to a Tax-Exempt Entity.

Abstract: This document contains final regulations that implement provisions of the Tax Reform Act of 1986 and the Technical and Miscellaneous Revenue Act of 1988. The final regulations generally affect a taxable corporation that transfers all or substantially all of its assets to a tax-exempt entity or converts from a taxable corporation to a tax-exempt entity in a transaction other than a liquidation, and generally require the taxable corporation to recognize gain or loss as if it had sold the assets transferred at fair market value.

Respondents: Private Sector: Not-for-profit institutions.

Estimated Total Burden Hours: 125.

OMB Number: 1545–1641.

Type of Review: Extension without change of a currently approved collection.

Title: Rev. Proc. 99–17—Mark to Market Election for Commodities Dealers and Securities and Commodities Traders.

Abstract: The revenue procedure prescribes the time and manner for dealers in commodities and traders in securities or commodities to elect to use the mark-to-market method of accounting under Sec. 475(e) or (f) of the Internal Revenue Code. The collections of information in sections 5 and 6 of this revenue procedure are required by the IRS in order to facilitate monitoring taxpayers changing accounting methods resulting from making the elections under Sec. 475(e) or (f).

Respondents: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 500.

OMB Number: 1545–1643.

Type of Review: Extension without change of a currently approved collection.

Title: REG–209484–87 (TD 8814 final) Federal Insurance Contributions Act (FICA) Taxation of Amounts Under Employee Benefit Plans.

Abstract: This regulation provides guidance as to when amounts deferred under or paid from a nonqualified deferred compensation plan are taken into account as wages for purposes of the employment taxes imposed by the Federal Insurance Contributions Act (FICA). Section 31.3121(v)(2)–1(a)(2) requires that the material terms of a plan be set forth in writing.

Respondents: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 12,500.

OMB Number: 1545–1646.

Type of Review: Extension without change of a currently approved collection.

Title: T.D. 8851—Return Requirement for United States Persons who acquire or dispose of an interest in a foreign partnership, or whose proportional interest in a foreign partnership changes.

Abstract: This document contains final regulations under section 6046A of the Internal Revenue Code relating to the requirement that United States persons, in certain circumstances, file a return if they acquire or dispose of an interest in a foreign partnership, or if their proportional interest in a foreign partnership changes. The burden of complying with the collection of information is reported on Form 8865.

Respondents: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 1.

OMB Number: 1545–1649.

Type of Review: Extension without change of a currently approved collection.

Title: Rev. Proc. 99–21—Disability Suspension.

Abstract: The information is needed to establish a claim that a taxpayer was financially disabled for purposes of section 6511(h) of the Internal Revenue Code (which was added by section 3203 of the Internal Revenue Service Restructuring and Reform Act of 1998). Under section 6511(h), the statute of limitations on claims for credit or refund is suspended for any period of an individual taxpayer's life during which the taxpayer is unable to manage his or her financial affairs because of a medically determinable mental or physical impairment, if the impairment can be expected to result in death, or has lasted (or can be expected to last) for a continuous period of not less than 12 months. Section 6511(h)(2)(A) requires that proof of the taxpayer's financial disability be furnished to the Internal Revenue Service.

Respondents: Individuals and Households.

Estimated Total Burden Hours: 24,100.

OMB Number: 1545–1654.

Type of Review: Extension without change of a currently approved collection.

Title: T.D. 8902—Capital Gains, Partnership and Subchapter S, and Trust Provisions.

Abstract: This document contains final regulations relating to sales or exchanges of interests in partnerships, S

corporations, and trusts. The regulations interpret the look-through provisions of section 1(h), added by section 311 of the Taxpayer Relief Act of 1997 and amended by sections 5001 and 6005(d) of the Internal Revenue Service Restructuring and Reform Act of 1998, and explain the rules relating to the division of the holding period of a partnership interest. The regulations affect partnerships, partners, S corporations, S corporation shareholders, trusts, and trust beneficiaries.

Respondents: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 1.

OMB Number: 1545–1655

Type of Review: Extension without change of a currently approved collection.

Title: T.D. 8861—Private Foundation Disclosure Rules.

Abstract: This document contains final regulations that amend the regulations relating to the public disclosure requirements described in section 6104(d) of the Internal Revenue Code. These final regulations implement changes made by the Tax and Trade Relief Extension Act of 1998, which extended to private foundations the same rules regarding public disclosure of annual information returns that apply to other tax-exempt organizations. These final regulations provide guidance for private foundations required to make copies of applications for recognition of exemption and annual information returns available for public inspection and to comply with requests for copies of those documents.

Respondents: Private Sector: Not-for-profit institutions.

Estimated Total Burden Hours: 32,596.

OMB Number: 1545–1658.

Type of Review: Extension without change of a currently approved collection.

Title: T.D. 8940—Purchase Price Allocations in Deemed Actual Asset Acquisitions.

Abstract: This document contains final regulations relating to deemed and actual asset acquisitions under sections 338 and 1060. The final regulations affect sellers and buyers of corporate stock that are eligible to elect to treat the transaction as a deemed asset acquisition. The final regulations also affect sellers and buyers of assets that constitute a trade or business.

Respondents: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 25.

OMB Number: 1545–1759.

Type of Review: Extension without change of a currently approved collection.

Title: Amended Quarterly Federal Excise Tax Return.

Form: 720X.

Abstract: Form 720X is used to make adjustments to correct errors on form 720 filed for previous quarters. It can be filed by itself or it can be attached to any subsequent Form 720. Code section 6416(d) allows taxpayers to take a credit on a subsequent return rather than filing a refund claim.

Respondents: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 152,460.

OMB Number: 1545–1762.

Type of Review: Extension without change of a currently approved collection.

Title: Direct Deposit of Corporate Tax Refund.

Form: 8050.

Abstract: File Form 8050 to request that the IRS deposit a corporate income tax refund (including a refund of $1 million or more) directly into an account at any U.S. bank or other financial institution (such as a mutual fund or brokerage firm) that accepts direct deposits.

Respondents: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 348,600.

OMB Number: 1545–1763.

Type of Review: Extension without change of a currently approved collection.

Title: Direct Deposit of Refund of $1 Million or more.

Form: 8302.

Abstract: This form is used to request a deposit of a tax refund of $1 million or more directly into an account at any U.S. bank or other financial institution.

Respondents: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 1,088.

OMB Number: 1545–1765.

Type of Review: Extension without change of a currently approved collection.

Title: T.D. 9171—New Markets Tax Credit.

Abstract: The regulations provide guidance for taxpayers claiming the new markets tax credit under section 45D of the Internal Revenue Code. The reporting requirements in the regulations require a qualified community development entity (CDE) to provide written notice to: (1) Any taxpayer who acquires an equity investment in the CDE at its original issue that the equity investment is a qualified equity investment entitling the taxpayer to claim the new markets tax credits; and (2) each holder of a qualified equity investment, including all prior holders of that investment that a recapture event has occurred. CDE's must comply with such reporting requirements to the Secretary as the Secretary may prescribe.

Respondents: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 210.

OMB Number: 1545–1767.

Type of Review: Extension without change of a currently approved collection.

Title: T.D. 8976—Dollar-Value LIFO Regulations; Inventory Price Index Computation Method.

Abstract: This document contains final regulations under section 472 of the Internal Revenue Code that relate to accounting for inventories under the last-in, first-out (LIFO) method. The final regulations provide guidance regarding methods of valuing dollar-value LIFO pools and affect persons who elect to use the dollar-value LIFO and inventory price index computation (IPIC) methods or who receive dollar-value LIFO inventories in certain nonrecognition transactions.

Respondents: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 1.

OMB Number: 1545–1768.

Type of Review: Extension without change of a currently approved collection.

Title: Revenue Procedure 2003–84, Optional Election to Make Monthly Sec. 706 Allocations.

Abstract: This revenue procedure allows certain partnerships with money market fund partners to make an optional election to close the partnership's books on a monthly basis with respect to the money market fund partners.

Respondents: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 500.

OMB Number: 1545–1773.

Type of Review: Extension without change of a currently approved collection.

Title: Revenue Procedure 2002–23, Taxation of Canadian Retirement Plans Under U.S.-Canada Income Tax Treaty.

Abstract: This Revenue Procedure provides guidance for the application by U.S. citizens and residents of the U.S.-Canada Income Tax Treaty, as amended by the 1995 protocol, in order to defer U.S. Income taxes on income accrued in certain Canadian retirement plans.

Respondents: Individuals and Households.

Estimated Total Burden Hours: 10,000.

OMB Number: 1545–1776.

Type of Review: Extension without change of a currently approved collection.

Title: U.S. Income Tax Return for Electing Alaska Native Settlement Trusts.

Form: 1041–N.

Abstract: An Alaska Native Settlement Trust (ANST) may elect under section 646 to have the special income tax treatment of that section apply to the trust and its beneficiaries. This one-time election is made by filing Form 1041–N and the form is used by the ANST to report its income, etc., and to compute and pay any income tax. Form 1041–N is also used for the special information reporting requirements that apply to ANST's.

Respondents: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 680.

OMB Number: 1545–1783.

Type of Review: Extension without change of a currently approved collection.

Title: TD 8989—Guidance Necessary to Facilitate Electronic Tax Administration.

Abstract: The regulations provide a regulatory statement of IRS authority to prescribe what return information or documentation must be filed with a return, statement or other document required to be made under any provision of the internal revenue laws or regulations. In addition, the regulations eliminate regulatory impediments to electronic filing of Form 1040.

Respondents: Individuals and Households.

Estimated Total Burden Hours: 1.

OMB Number: 1545–1792.

Type of Review: Extension without change of a currently approved collection.

Title: REG–164754–01 (Final) Split-Dollar Life Insurance Arrangements.

Abstract: The proposed regulations provide guidance for loans made pursuant to a split-dollar life insurance arrangement. To obtain a particular treatment under the regulations for certain split- dollar loans, the parties to the loan must make a written representation, which must be kept as part of their books and records and a copy filed with their federal income tax returns. In addition, if a split-dollar loan provides for contingent payments, the lender must produce a projected payment schedule for the loan and give the borrower a copy of the schedule. This schedule is used by parties to compute their interest accruals and any imputed transfers for tax purposes.

Respondents: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 32,500.

OMB Number: 1545–1794.

Type of Review: Extension without change of a currently approved collection.

Title: T.D. 9088—Compensatory Stock Options Under Section 482.

Abstract: This document contains final regulations that provide guidance regarding the application of the rules of section 482 governing qualified cost sharing arrangements. These regulations provide guidance regarding the treatment of stock-based compensation for purposes of the rules governing qualified cost sharing arrangements and for purposes of the comparability factors to be considered under the comparable profits method.

Respondents: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 2,000.

OMB Number: 1545–1919.

Type of Review: Extension without change of a currently approved collection.

Title: Prior Government Service Information.

Form: 12854.

Abstract: This product is used to identify applicants who have had prior government services in order to request the OPF from federal records and to identify possible pay setting issues.

Respondents: Individuals and Households.

Estimated Total Burden Hours: 6,230.

OMB Number: 1545–1920.

Type of Review: Extension without change of a currently approved collection.

Title: Notice Regarding Repayment of a Buyout Prior to Re-employment with the Federal Government.

Form: 12311.

Abstract: This form outlines the regulations requiring those employees being rehired by the government and received a buyout from their previous job to make repayment of the buyout before they will be hired again.

Respondents: Individuals and Households.

Estimated Total Burden Hours: 2,757.

OMB Number: 1545–1921.

Type of Review: Extension without change of a currently approved collection.

Title: Continuation Sheet for Item #16 (Additional Information) OF–306, Declaration for Federal Employment.

Form: 12114.

Abstract: Form 12114 is used as a continuation to the OF–306 to provide additional space for capturing additional information.

Respondents: Individuals and Households.

Estimated Total Burden Hours: 6,203.

OMB Number: 1545–1924.

Type of Review: Extension without change of a currently approved collection.

Title: Biodiesel Fuels Credit.

Form: 12114.

Abstract: IRC section 40A provides a credit for biodiesel or qualified biodiesel mixtures. IRC section 38(b)(17) allows a nonrefundable income tax credit for businesses that sell or use biodiesel. Form 8864 is used to figure the credits.

Respondents: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 310.

OMB Number: 1545–1926.

Type of Review: Extension without change of a currently approved collection.

Title: Notice 2005–10, Domestic Reinvestment Plans and Other Guidance under Section 965.

Abstract: This document provides guidance under new section 965 enacted by the American Jobs Creation Act of 2004 (Pub. L.108–357). In general, and subject to limitations and conditions, section 965(a) provides that a corporation that is a U.S. shareholder of a controlled foreign corporation (CFC) may elect, for one taxable year, an 85 percent dividends received deduction (DRD) with respect to certain cash dividends it receives from its CFC's. Section 965(f) provides that taxpayers may elect the application of section 965 for either the taxpayer's last taxable year which begins before October 22, 2004, or the taxpayer's first taxable year to which the taxpayer intends to elect section 965 to apply prior to the issuance of Form 8895, the election must be made on a statement that is attached to its timely-filed tax return (including extensions) for such taxable year. In addition, because the taxpayer must establish to the satisfaction of the Commissioner that it has satisfied the conditions to take the DRD, the taxpayer is required under this guidance to report specified information and provide specified documentation.

Respondents: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 3,750,000.

OMB Number: 1545–1927.

Type of Review: Extension without change of a currently approved collection.

Title: IRS e-file Electronic Funds Withdrawal Authorization for Form 7004.

Form: 8878–A.

Abstract: Form 8878–A is used by a corporate officer or agent and an electronic return originator (ERO) to use a personal identification number (PIN) to authorize an electronic funds withdrawal for a tax payment made with a request to extend the filing due date for a corporate income tax return.

Respondents: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 505,400.

Bureau Clearance Officer: Yvette Lawrence, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224; (202) 927–4374.

OMB Reviewer: Shagufta Ahmed, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; (202) 395–7873.

Dawn D. Wolfgang,

Treasury PRA Clearance Officer.

[FR Doc. 2011–27671 Filed 10–25–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds: Western National Mutual Insurance Company

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: This is Supplement No. 2 to the Treasury Department Circular 570, 2011 Revision, published July 1, 2011, at 76 FR 38892.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874–6850.

SUPPLEMENTARY INFORMATION: A Certificate of Authority as an acceptable surety on Federal bonds is hereby issued under 31 U.S.C. 9305 to the following company: Western National Mutual Insurance Company (NA1C # 15377). *Business Address:* P.O. Box 1463, Minneapolis, MN 55440. *Phone:* (952) 835–5350. *Underwriting Limitation b/:* $24,552,000. *Surety Licenses Cl:* IL, IA, MN, NE, ND, OR, SD, WI. *Incorporated In:* Minnesota.

Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570 (''Circular''), 2011 Revision, to reflect this addition.

Certificates of Authority expire on June 30th each year, unless revoked prior to that date. The Certificates are subject to subsequent annual renewal as long as the companies remain qualified (see 31 CFR part 223). A list of qualified companies is published annually as of July 1st in the Circular, which outlines details as to the underwriting limitations, areas in which companies are licensed to transact surety business, and other information.

The Circular may be viewed and downloaded through the Internet at *http://www.fms.treas.gov/c570.*

Questions concerning this Notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Financial Accounting and Services Division, Surety Bond Branch, 3700 East-West Highway, Room 6F01, Hyattsville, MD 20782.

Dated: October 7, 2011.

Laura Carrico,

Director, Financial Accounting and Services Division.

[FR Doc. 2011–27539 Filed 10–25–11; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Quarterly Publication of Individuals, Who Have Chosen To Expatriate, as Required by Section 6039G

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: This notice is provided in accordance with IRC section 6039G, as amended, by the Health Insurance Portability and Accountability Act (HIPPA) of 1996. This listing contains the name of each individual losing their United States citizenship (within the meaning of section 877(a) or 877A) with respect to whom the Secretary received information during the quarter ending September 30, 2011.

Last name	First name	Middle name/initials
ABRAHAM	GABRIELLE	TONY
ADUSUMILLI	PANDURANGA	R
AGUILAR	MARIA	L
AHMAD	IBRAHEEM	MUSTAFA
AJAMI	RAMI	MOHAMAD
ALEXIOU	ANDREW	CHRISTOPHER
ALIREZA	MISHAEL	FAHD
ALTOE	SUSANNE	NICOLE
AMITTAI	DEKEL	
AMRINE	DOUGLAS	SCOTT
ANDREWS	PHILIP	NEWTON
AOKI	HISAE	
ARP	WILLIAM	FRED
ARYA	JAI	
ARYA	ROHINI	
ASHKENAZY	ALEXANDRA	INGA
ATKINSON	EVON	ST PATRICK CULLITON
AUERBACH	MELINA	
AVERY	THOMAS	YUL
BAER	JULIAN	JULIUS
BAGGETT	SUSAN	
BANKES	FLORA	JUNE
BARBALACO	STEPHEN	
BATES	LIAM	ROBERT
BAXTER	CALEB	CHRISTOPHER
BERG	SHANE	DAVID
BERNARD	STEVEN	JACQUES
BERTSCHI	HANSPETER	ANDREA
BINER	ALFRED	ALEXANDER P
BIRDWELL	NATALIE	

Last name	First name	Middle name/initials
BLANK	JASON	MARSHALL
BLIN	JEAN	
BOEY	MARK	FREDERICK
BONNARD BARBIER	CARINE	AYMONE
BORTHEN	JUST CHRISTPHER	WESTCOTT
BOTNAR	RENE	M
BRIDGES	STEPHEN	JACK
BRONIMANN	ANDREA	JANE
BROWER	LAWRENCE	EDWARD
BRUNNER	STEPHAN	CONRAD
BURKHARDT	ROBERT	RYAN
CALCAGNITI	FRANCISCO	
CARLIN	ALEXIS	ANNE
CASPERS	FLORIAN	BENJAMIN
CHAE	BRANDON	JAE
CHAE	JENNIFER	ANN
CHAMPETIER	VINCENT	
CHAN	VIOLA	K
CHEE	GLENN	WEN HAN
CHEN	ANDY	PAUL
CHEN	EUNICE	JOY
CHEN	MAX	HAN-LI
CHENG	HUAYI	
CHEONG	TIMOTHY	HSIA WEN
CHEUNG	SIN	TING ALICE
CHIANG	ANDREW	YU-CHING
CHIU	GEORGIANA	KONG SUIT
CHO	ALEXANDER	HAN
CHOI	SUN	YOUNG
CHOONG	CAROLINE	VICTORIA
CHOU	PATRICK	JAMES
CHOU	TOM	CHI-KWAN
CHRISTENSON	DEBORAH	
CHRISTENSON	STEPHEN	V
CHUA	CHOON	MUI
CHUA	KEVIN	WEI QIANG
CHUNG	JUDY	
CLUBB	BRYCE	STEVEN
COFFEY	ROSALIND	M
COHEN	CLAUDE	SOL
CONGER	RONALD	EUGENE
CONWAY	KATE	
COTTON	JUDITH	F
CSAPO	JOHN	FRANK
D'AMATO	MARCELO	
DASKALOVIC	MONIQUE	
DAWSON	HEIDI	KATHRYN
DE MORANVILLE	CLAUDE	V C SELLIERS
DE PAIVA	JULIA	SOUZA
DEAN	JANET	TERESA
DEBLESER	ALEXANDER	
DENTON	CHRIS	EDWARD
DEURING	ALEXANDER	ALBERT
DI DONATO	ROBERTO	
DOERHOLT	DOROTHE	
DORRES LOSCH	PAULA	MICHELLE
DREVER	RONALD	
DU	YUXIANG	
DUBE	BRENDA	MARIE
DUBE	MICHEL	
DUGU	NANXUN	NATHAN
DUIMICH	RITSUKO	
EASTON	ANDREW	
EASTON	ELIZABETH	
EGBERTS	JAN	H
ELARDO	MARK	ALLEN
ELKIN	SARAH	
ELLIOTT	SUSAN	
EMERSON	CATHERINE	E
EMERSON	DAVID	
ENDZWEIG	ELIZABETH	
ERB	PRISCA	REGINA
EVESTAFF	HATIM	SALIM
FAKHOURIE	SHAHINE	ELIZABETH

Last name	First name	Middle name/initials
FANG	HENRY	H L
FARSTAD	ANNE	CHRISTINE
FENG	DAI	
FINDANI	ROBERT	M
FISCHER	JOAN	DORIS
FRAZIER	TATTAYA	
FRIES	ANNA-	CORINNA
FUSE	TETSUHARU	
GALBRAITH	JOSEPH	BENSON
GANG	DINESH	
GANN	HEIDI	CAROL
GARCIA	TERCIO	B
GASS	VERENA	LIPP
GHAI	CHINTU	
GIBSON	LORRAINE	FRANCES
GONZALES	REX	BRUCE
GRABER	IRENE	KLARA
GRACIE	JAMES	S
GRACIE	KATHERINE	J
GRANOV	ADI	
GREEN	KATHERINE	LOUISA
GREER	BUEFORD	D
GRIFFITHS	DAVID	THOMAS
GRIMM	CHRISTOPH	
GRIMM	KATJA	
GULINO	SAYAN	
HABIB	OK	YO
HACKETT	PAMELA	D. J.
HALL	NATALIE	JUDITH
HAMI	AMIR	
HAMI	HOSSEIN	
HAN	JIAHUAI	
HANICK	SUZIE	
HANSEN	MICHAEL	LEIF
HANSSON	KARL	STEFAN
HARRIGAN	TERRY	TOLEDO CARADINE
HART	MARIANNE	DANIELE
HARVEY	BRUCE	E
HASSAN	ADRIAN	
HAYDEN	RICHARD	MICHAEL
HEALEY	EDWARD	JAMES
HEALEY	SARAH	ANGELA
HELM	EVA	
HERRMANN	MARTINE	S
HESS	CLINTON	A
HESSER	BORIS	A
HEUBACH	JOHANN	GABRIEL
HEUSS	STELLA	IRENE GERTRUD
HICKERSBERGER	JOSEF	ADRIAN
HILLESLAND	SONJA	KARIN LYNCH
HIRAO	HIROKAZU	
HO	JASON	HON SUM
HO	SALENA	CHI KIT
HOLLENSTEIN	PETER	
HOLLENSTEIN	URSULA	
HONG	RICK	KWANGBUM
HOON	ELIZABETH	LI-PING
HOU	HSIEN	LIANG
HSU	MIKE	
HSU	ZE-YI	
HU	KE	
IN	KEUN	WOO
ISA	NOOR	LIZA MD
JAFFER	OMER	
JAGGI MCCOY	ISABELLE	MARY
JARDINE	KATHERINE	ALLEN
JOHNSON	ANTHONY	W
JOHNSON	RICHARD	M
JOHNSON	RUTH	
JOSEPH	CHANG	CHO YAM
KANEKO	TAIZO	
KANG	QIAO	
KANSEKINE	BETTY	
KAWKABANI	JAMES	ROBERT

Last name	First name	Middle name/initials
KAZMI	KRISTINA	ZEHRA
KIANG	LILLIAN	SHIN PING
KIM	CHONG	AE
KIM	JULIA	
KIM	WILLIAM	
KINGMAN	MARCUS	
KOENIG	JENNIFER	RENEE
KONST	SOLVEIG	
KORZINEK	ROBERT	JAMES
KRAUSE	MARTIN	WERNER
KUSCHILL	TIMOTHY	JOHN
KWAK	PAUL	
LAGIER	DIANE	LUCE
LAL	DEEPAK	K
LANDAU	JENNIFER	MAY
LANDI	TOMMASO	
LANG	VICENTE	C
LANGHAM	ELAINE	GRACE
LAU	DOROTHY	WAN HANG
LAU	KIMBERLY	SIU YAN KAIULANI
LAU	LUCY	
LAUBE	WERNER	JOHN
LAULUND	HENRIK	
LEE	HAE	WON
LEE	HAN	YOUNG
LEE	KAI	FU
LEE	SHEN	LING
LEE	YONG	YE
LEES	MARIA	ADELAIDA BIBI
LEO	LIONEL	
LERCHBAUMER	ANDREAS	JOSEF
LEUENBERGER	STEPHAN	DAVID
LEUNG	ANDREA	TSE-HING
LEUNG	SUSAN	O
LEWIS	TODD	GRAHAM
LI	BRYAN	CHEE KEUNG
LI	LYDIA	KWAN
LIEBMANN	BRAD	HUNTER
LIM	LILLAN	YUXIAN
LIM	VIVIAN	YUJING
LIN	CHARLYN	
LINCKE	THOMAS	ROBERT
LING	PHYLLIS	T
LO	ALEXANDER	CHUN HIM
LOWENHARDT	SANNE	
LUKAC	SAVA	R
LUTHI	MAJA	CHRISTINA
MA	YUWEI	
MAC HALE	LAURA	JANE
MACFARLAND	FREDERIK	CHARLES
MAHON	ALEXANDRA	ROSE
MANINA	GEORGE	
MANSOUR	MICHAEL	
MAOR	DROR	
MAPLE	JOHN	RANDALL
MARINCEK	BORIS	CHRISTIAN
MARSHALL	PAUL	DUNCAN
MATSUNO	SATOSHI	
MC DANIEL	CRISTINA	ELENA
MCCOY	RAINER	FRANZ
MEDEIROS	PATRICIA	FARIA VASCONCELLOS
MEHES	ERIKA	
MEIER WALTER	SUSANNE	
MELVIN	STEPHEN	JENKINS
MEYER	BARBARA	JEAN
MII	MITSUKO	
MII	NOBUO	
MOLKO	ALBERT	
MONAUNI	CHRISTIAN	KARL
MONAUNI	CHRISTINE	G
MONNIER	CHARLES	EDWARD
MONNIER	SUSAN	HEFFNER
MORITZ	ERIKA	
MORITZ	GUNNAR	H

Last name	First name	Middle name/initials
MURPHY	MICHAEL	N
MUSE	RODNEY	CHADWICK
NA	EDWARD	YOON
NADRAG	KARIN	
NADRAG	ROLF	PETER
NARWANI	AMIT	ARJAN
NEWMAN	BRIAN	MICHAEL
NG	KEILEM	
NIEM	CHRISTINE	CHEN
NIETO	ANTONIO	L
NITSCHE	MARC	ERIC
NORSTEBO	ASTRID	CHRISTINE
OKHAI	LEYLA	JIHAN
ONG	JASMINE	ANGIE
OTHON-LEVIN	AURA	
PALMER	EDWARD	LEWIS
PAN	ANDY	KUO-AN
PAN	THOMAS	
PANGBURN	STEVEN	
PAPIN	JOHN	PHILLIP
PARK	JAMES	
PARK	KYUNG	SOOK
PATTY	ELAINE	FLORENCE
PIKE	JOE	B
PIKE	KATHRYN	ANNE
PIKE	LAURA	A
PISTOR	LUDGER	
PORTER	TINA	DENISE
POSEN	KEVIN	
PREET	GARY	V
QUEEN	BRENDA	JANE
QUEK	SARAH	YING HUI
QUINN	EMMA	JANE VICTORIA
REDDING	THURSTAN	LAM
REED	KUN	TIN
RICHARD	NANCY	G
RICHTER	CHRISTOPHER	L
RICHTER	YVONNE	
RIGBY	DAVID	KEITH
RILEY	MICHAEL	SHAWN
RITCHIE	AARON	ROBERT THANKE
ROBERTSON	PENNY	SAMANTHA
ROGER	CHRISTINE	LEE
ROSS	ANNE	
ROSS	ROBERT	
RUEGG	JOSEF	NICKOLAUS
RUEGG	URSULA	MARIA
RUTLEDGE	TRACY	MARIE
SACHS	ALEXANDER	CLAUS
SACHS	PHILIPP	GUNTER MOHSEN
SAGENKAHN	DAVA	ILISE
SALAM	SAED	
SANNAREDDY	RAVINDRA	B
SAP	JAN	M
SCHAUFELBERGER	HENRI	
SCHAUFELBERGER	MARGRIT	
SCHNEIDER	ANETTE	
SCHNEIDER	MANFRED	OTTO
SCHROEDER	PETER	L
SCHRURS	ALBERT	MAURICE
SCHWARZ	MARKUS	WILLIAM
SCOTT	JUNE	E
SCOTT	ROBERT	P
SCOTT	SUSAN	ANN
SEBBA	HENRIETTA	AMY
SEIF- ELYAZAL	HATEM	SAID
SEILERN	HENRY	OGDEN
SENEFF	ELIZABETH	VICTORIA
SHATTAN	COLIN	MICHAEL
SHELTON	SCOTT	H
SHI	YIGONG	
SHIA	LOVE	
SHIPP	TIMOTHY	R
SHIUE	YEONG	RUEY

Last name	First name	Middle name/initials
SHOKROLLAHI	MOHAMMAD	AMIN
SIDERMAN	PETER	M
SIMON	KENNETH	ROBERT
SIMPSON	DERMOT	MATTHEW
SMINKEY (AKA SMINKEY, TAKUMA)	PAUL	
SOLA	JOHN	BEN
SOLARES	SIGMUND	JOSEPH
SON	KENNY	HO
STAVRINOU	ALEXANDROS	IASONAS
STELLING	DONALD	KAY
STILTNER	MI	RYUNG
STOKES	GWYNETH	EVELYN
STOPFORD	ROBERT	WOODMAN
SU	TSUNG	HSUAN
SUBRAMANIAM	SUBITHA	
SUTTON	RICHARD	DODGE
SUZUKI	AKIKO	
SUZUKI	KAZUNORI	
SZABO	EILEEN	ROSE
TABATZNIK	RISA	
TABATZNIK	SETH	BENJAMIN
TAGAMI	MARIKO	K
TANNER	NICOLE	CAROLINE
THAM	SALOON	
THE	E	DELORES
THOMPSON	ALDIN	EUGENE
TIZARD	ROBERT	
TRAUB	ANJA	
TRIMBLE	PETER	W
TSE	MAXIMILIEN	HONG LIN
TSO	REBECCA	MAN CHI
ULIVI	JUAN	ARMANDO
URBANC	PETER	VLADIMIR
VALDEZ	LANCE	ORMAND
VAN DER GRACHT DE ROMMERSWAEL	PHILIPPE	GUY J.
VARGAS	ASTRID	PRAG
VAUGHAN	GREGORY	JEROME
VOSSEN	EMILY	SUZANNE
WAIBEL	SIGOURNEY	
WALKER	DOUGLAS	GORDON
WALLEY	AMANDA	CLARE
WALTER	FELIX	PAUL
WALZ	GERD	
WAN	SANDY	SAN-MING
WANG	DAVID	TSUNG-HO
WANG	WENNING	
WARMINGTON	CLIFFORD	EVERALD ERROL
WEBER	SONJA	HELENE
WERREN	MARKUS	PAUL
WILDE	OSAMU	
WILLCOCK	KENNETH	MILNER
WINGERT	MICHAEL	L
WINGERT	MONICA	
WITSCHI	MARION	RUTH
WOLF	LINDA	
WONG	BYRON	ANDREW
WONG	CHING	TONG
WONG	DEREK	SHU LUEN
WONG	KATHLEEN	
WONG	PHYLLIS	PO-YAN
WOU	LYNDON	LIEN-SUN
WU	BIN	
WU	HUI-YEN	
WU	KE	ISABELLA
XU	HUAZHANG	
YAMAMOTO	HARUHISA	
YANG	JUSTIN	
YANG	ROSA	
YECHIEL	JORDANA	
YOAZ	ADIEL	MENACHEM
YU	BING	
YUEN	REGINA	SI-HUI
YUNG	JEFFREY	YAN-LEUN
ZEIN	SOLAIMAN	MAZEN

Last name	First name	Middle name/initials
ZHAO	RUI	
ZORZINO	LUCA	ALESSIO
ZUCKERBRAUN	LOUIS	DAVID

Dated: October 12. 2011.

Ann V. Gaudeli,

Manager Team 103, Examinations Operations—Philadelphia Compliance Services.

[FR Doc. 2011–27570 Filed 10–25–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Joint Biomedical Laboratory Research and Development and Clinical Science Research and Development Services Scientific Merit Review Board; Notice of Meetings

The Department of Veterans Affairs gives notice under the Public Law 92–463 (Federal Advisory Committee Act) that the panels of the Joint Biomedical Laboratory Research and Development and Clinical Science Research and Development Services Scientific Merit Review Board will meet from 8 a.m. to 5 p.m. on the dates indicated below:

Panel	Date(s)	Location
Hematology	November 16, 2011	The Sheraton Crystal City.
Neurobiology-A	November 17, 2011	The Sheraton Crystal City.
Neurobiology-E	November 17, 2011	The Sheraton Crystal City.
Endocrinology-B	November 18, 2011	The Sheraton Crystal City.
Cellular & Molecular Medicine	November 21, 2011	The Sheraton Crystal City.
Surgery	November 22, 2011	The Sheraton Crystal City.
Endocrinology-A	November 29–30, 2011	The Sheraton Crystal City.
Neurobiology-D	November 29, 2011	The Sheraton Crystal City.
Neurobiology-C	December 1–2, 2011	The Sheraton Crystal City.
Infectious Diseases-B	December 2, 2011	The Sheraton Crystal City.
Pulmonary Medicine	December 2, 2011	The Sheraton Crystal City.
Cardiovascular Studies	December 5, 2011	The Sheraton Crystal City.
Infectious Diseases-A	December 5, 2011	*VA Central Office.
Epidemiology	December 7, 2011	*VA Central Office.
Immunology	December 7, 2011	The Sheraton Crystal City.
Nephrology	December 8, 2011	The Sheraton Crystal City.
Oncology	December 8–9, 2011	The Sheraton Crystal City.
Clinical Research Program	December 8–9, 2011	The Sheraton Crystal City.
Gastroenterology	December 9, 2011	The Sheraton Crystal City.
Mental Hlth & Behav Sci-A	December 12, 2011	The Sheraton Crystal City.
Mental Hlth & Behav Sci-B	December 14, 2011	The Sheraton Crystal City.

The addresses of the hotel and VA Central Office are:
The Sheraton Crystal City, 1800 Jefferson Davis Highway, Arlington, VA.
*VA Central Office, 131 M Street, NE., Washington, DC.

Teleconference

The purpose of the Merit Review Board is to provide advice on the scientific quality, budget, safety and mission relevance of investigator-initiated research proposals submitted for VA merit review consideration. Proposals submitted for review by the Board involve a wide range of medical specialties within the general areas of biomedical, behavioral and clinical science research.

The panel meetings will be open to the public for approximately one hour at the start of each meeting to discuss the general status of the program. The remaining portion of each panel meeting will be closed to the public for the review, discussion, and evaluation of initial and renewal research proposals.

The closed portion of each meeting involves discussion, examination, reference to staff and consultant critiques of research proposals. During this portion of each meeting, discussions will deal with scientific merit of each proposal, qualifications of personnel conducting the studies, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, as well as research information, the premature disclosure of which could significantly frustrate implementation of proposed agency action regarding such research proposals.

As provided by subsection 10(d) of Public Law 92–463, as amended, closing portions of these panel meetings is in accordance with 5 U.S.C., 552b(c) (6) and (9)(B). Those who plan to attend or would like to obtain a copy of minutes of the panel meetings and rosters of the members of the panels should contact LeRoy G. Frey, Ph.D., Chief, Program Review (10P9B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 at (202) 443–5674.

Dated: October 21, 2011.

By Direction of the Secretary.

Vivian Drake,

Committee Management Officer.

[FR Doc. 2011–27717 Filed 10–25–11; 8:45 am]

BILLING CODE P



FEDERAL REGISTER

Vol. 76 Wednesday,

No. 207 October 26, 2011

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Review of Native Species That Are Candidates for Listing as Endangered or Threatened; Annual Notice of Findings on Resubmitted Petitions; Annual Description of Progress on Listing Actions; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R9–ES–2011–0061; MO–9221050083–B2]

Endangered and Threatened Wildlife and Plants; Review of Native Species That Are Candidates for Listing as Endangered or Threatened; Annual Notice of Findings on Resubmitted Petitions; Annual Description of Progress on Listing Actions

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of review.

SUMMARY: In this Candidate Notice of Review (CNOR), we, the U.S. Fish and Wildlife Service (Service), present an updated list of plant and animal species native to the United States that we regard as *candidates* for or have proposed for addition to the Lists of Endangered and Threatened Wildlife and Plants under the Endangered Species Act of 1973, as amended. Identification of candidate species can assist environmental planning efforts by providing advance notice of potential listings, allowing landowners and resource managers to alleviate threats and thereby possibly remove the need to list species as endangered or threatened. Even if we subsequently list a candidate species, the early notice provided here could result in more options for species management and recovery by prompting candidate conservation measures to alleviate threats to the species.

The CNOR summarizes the status and threats that we evaluated in order to determine that species qualify as candidates and to assign a listing priority number (LPN) to each species or to determine that species should be removed from candidate status. Additional material that we relied on is available in the Species Assessment and Listing Priority Assignment Forms (species assessment forms) for each candidate species.

Overall, this CNOR recognizes three new candidates, changes the LPN for seven candidates, and removes three species from candidate status. Combined with other decisions for individual species that were published separately from this CNOR in the past year, the current number of species that are candidates for listing is 244.

This document also includes our findings on resubmitted petitions and describes our progress in revising the Lists of Endangered and Threatened Wildlife and Plants (Lists) during the period October 1, 2010, through September 30, 2011.

We request additional status information that may be available for the 244 candidate species identified in this CNOR.

DATES: We will accept information on any of the species in this Candidate Notice of Review at any time.

ADDRESSES: This notice is available on the Internet at *http://www.regulations.gov* and *http://www.fws.gov/endangered/what-e-do/cnor.html.* Species assessment forms with information and references on a particular candidate species' range, status, habitat needs, and listing priority assignment are available for review at the appropriate Regional Office listed below in **SUPPLEMENTARY INFORMATION** or at the Office of Communications and Candidate Conservation, Arlington, VA (see address under **FOR FURTHER INFORMATION CONTACT**), or on our Web site (*http://ecos.fws.gov/tess_public/pub/SpeciesReport.do?listingType=C&mapstatus=1*). Please submit any new information, materials, comments, or questions of a general nature on this notice to the Arlington, VA, address listed under **FOR FURTHER INFORMATION CONTACT.** Please submit any new information, materials, comments, or questions pertaining to a particular species to the address of the Endangered Species Coordinator in the appropriate Regional Office listed in **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: The Endangered Species Coordinator(s) in the appropriate Regional Office(s), or Chief, Office of Communications and Candidate Conservation, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Room 420, Arlington, VA 22203 (telephone 703–358–2171). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION: We request additional status information that may be available for any of the candidate species identified in this CNOR. We will consider this information to monitor changes in the status or LPN of candidate species and to manage candidates as we prepare listing documents and future revisions to the notice of review. We also request information on additional species to consider including as candidates as we prepare future updates of this notice.

You may submit your information concerning this notice in general or for any of the species included in this notice by one of the methods listed in the **ADDRESSES** section.

Species-specific information and materials we receive will be available for public inspection by appointment, during normal business hours, at the appropriate Regional Office listed below under Request for Information in **SUPPLEMENTARY INFORMATION**. General information we receive will be available at the Office of Communications and Candidate Conservation, Arlington, VA (see address under **FOR FURTHER INFORMATION CONTACT**).

Candidate Notice of Review

Background

The Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (ESA), requires that we identify species of wildlife and plants that are endangered or threatened, based on the best available scientific and commercial information. As defined in section 3 of the ESA, an endangered species is any species which is in danger of extinction throughout all or a significant portion of its range, and a threatened species is any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. Through the Federal rulemaking process, we add species that meet these definitions to the List of Endangered and Threatened Wildlife at 50 CFR 17.11 or the List of Endangered and Threatened Plants at 50 CFR 17.12. As part of this program, we maintain a list of species that we regard as candidates for listing. A candidate species is one for which we have on file sufficient information on biological vulnerability and threats to support a proposal to list as endangered or threatened, but for which preparation and publication of a proposal is precluded by higher priority listing actions. We may identify a species as a candidate for listing after we have conducted an evaluation of its status on our own initiative, or after we have made a positive finding on a petition to list a species, in particular we have found that listing is warranted but precluded by other higher priority listing action (see the Petition Findings section, below).

We maintain this list of candidates for a variety of reasons: To notify the public that these species are facing threats to their survival; to provide advance knowledge of potential listings that could affect decisions of environmental planners and developers; to provide information that may stimulate and guide conservation efforts that will remove or reduce threats to these species and possibly make listing unnecessary; to request input from interested parties to help us identify

those candidate species that may not require protection under the ESA or additional species that may require the ESA's protections; and to request necessary information for setting priorities for preparing listing proposals. We strongly encourage collaborative conservation efforts for candidate species, and offer technical and financial assistance to facilitate such efforts. For additional information regarding such assistance, please contact the appropriate Regional Office listed under Request for Information or visit our Web site, *http://www.fws.gov/endangered/what-we-do/cca.html.*

Previous Notices of Review

We have been publishing candidate notices of review (CNOR) since 1975. The most recent CNOR (prior to this CNOR) was published on November 10, 2010 (75 FR 69222). CNORs published since 1994 are available on our Web site, *http://www.fws.gov/endangered/what-we-do/cnor.html.* For copies of CNORs published prior to 1994, please contact the Office of Communications and Candidate Conservation (see **FOR FURTHER INFORMATION CONTACT** section above).

On September 21, 1983, we published guidance for assigning an LPN for each candidate species (48 FR 43098). Using this guidance, we assign each candidate an LPN of 1 to 12, depending on the magnitude of threats, immediacy of threats, and taxonomic status; the lower the LPN, the higher the listing priority (that is, a species with an LPN of 1 would have the highest listing priority). Section 4(h)(3) of the ESA (15 U.S.C. 1533(h)(3)) requires the Secretary to establish guidelines for such a priority-ranking guidance system. As explained below, in using this system we first categorize based on the magnitude of the threat(s), then by the immediacy of the threat(s), and finally by taxonomic status.

Under this priority-ranking system, magnitude of threat can be either ''high'' or ''moderate to low.'' This criterion helps ensure that the species facing the greatest threats to their continued existence receive the highest listing priority. It is important to recognize that all candidate species face threats to their continued existence, so the magnitude of threats is in relative terms. For all candidate species, the threats are of sufficiently high magnitude to put them in danger of extinction, or make them likely to become in danger of extinction in the foreseeable future. But for species with higher magnitude threats, the threats have a greater likelihood of bringing about extinction or are expected to bring about extinction on a shorter timescale (once the threats are imminent) than for species with lower magnitude threats. Because we do not routinely quantify how likely or how soon extinction would be expected to occur absent listing, we must evaluate factors that contribute to the likelihood and time scale for extinction. We therefore consider information such as: The number of populations or extent of range of the species affected by the threat(s) or both; the biological significance of the affected population(s), taking into consideration the life-history characteristics of the species and its current abundance and distribution; whether the threats affect the species in only a portion of its range, and if so the likelihood of persistence of the species in the unaffected portions; the severity of the effects and the rapidity with which they have caused or are likely to cause mortality to individuals and accompanying declines in population levels; whether the effects are likely to be permanent; and the extent to which any ongoing conservation efforts reduce the severity of the threat.

As used in our priority-ranking system, immediacy of threat is categorized as either ''imminent'' or ''nonimminent'' and is based on when the threats will begin. If a threat is currently occurring or likely to occur in the very near future, we classify the threat as imminent. Determining the immediacy of threats helps ensure that species facing actual, identifiable threats are given priority for listing proposals over those for which threats are only potential or species that are intrinsically vulnerable to certain types of threats but are not known to be presently facing such threats.

Our priority ranking system has three categories for taxonomic status: Species that are the sole members of a genus; full species (in genera that have more than one species); and subspecies and distinct population segments of vertebrate species (DPS).

The result of the ranking system is that we assign each candidate a listing priority number of 1 to 12. For example, if the threat(s) is of high magnitude, with immediacy classified as imminent, the listable entity is assigned an LPN of 1, 2, or 3 based on its taxonomic status (i.e., a species that is the only member of its genus would be assigned to the LPN 1 category, a full species to LPN 2, and a subspecies or DPS would be assigned to LPN 3). In summary, the LPN ranking system provides a basis for making decisions about the relative priority for preparing a proposed rule to list a given species. No matter which LPN we assign to a species, each species included in this notice as a candidate is one for which we have sufficient information to prepare a proposed rule to list it because it is in danger of extinction or likely to become endangered within the foreseeable future throughout all or a significant portion of its range.

For more information on the process and standards used in assigning LPNs, a copy of the 1983 guidance is available on our Web site at: *http://www.fws.gov/endangered/esa-library/pdf/48fr43098-43105.pdf.* For more information on the LPN assigned to a particular species, the species assessment for each candidate contains the LPN chart and a rationale for the determination of the magnitude and immediacy of threat(s) and assignment of the LPN; that information is summarized in this CNOR.

This revised notice supersedes all previous animal, plant, and combined candidate notices of review.

Summary of This CNOR

Since publication of the previous CNOR on November 10, 2010 (75 FR 69222), we reviewed the available information on candidate species to ensure that a proposed listing is justified for each species, and reevaluated the relative LPN assigned to each species. We also evaluated the need to emergency-list any of these species, particularly species with high priorities (i.e., species with LPNs of 1, 2, or 3). This review and reevaluation ensures that we focus conservation efforts on those species at greatest risk first.

In addition to reviewing candidate species since publication of the last CNOR, we have worked on numerous findings in response to petitions to list species, and on proposed and final determinations for rules to list species under the ESA. Some of these findings and determinations have been completed and published in the **Federal Register**, while work on others is still under way (see *Preclusion and Expeditious Progress,* below, for details).

Based on our review of the best available scientific and commercial information, with this CNOR we identify 3 new candidate species (see New Candidates, below), change the LPN for 7 candidates (see Listing Priority Changes in Candidates, below) and determine that a listing proposal is not warranted for 3 species and thus remove them from candidate status (see Candidate Removals, below). Combined with the other decisions published separately from this CNOR for individual species that previously were candidates, a total of 244 species (including 104 plant and 140 animal

species) are now candidates awaiting preparation of rules proposing their listing. These 244 species, along with the 48 species currently proposed for listing (includes 4 species proposed for listing due to similarity in appearance), are included in Table 1.

Table 2 lists the changes from the previous CNOR, and includes 14 species identified in the previous CNOR as either proposed for listing or classified as candidates that are no longer in those categories. This includes nine species for which we published a final listing rule, one species for which we published an emergency listing rule, one species for which we published a withdrawal of a proposed rule, plus the three species that we have determined do not meet the definition of endangered or threatened and therefore do not warrant listing. We have removed these species from candidate status in this CNOR. Also included in Table 2 are three species for which we published an emergency listing rule due to similarity in appearance; these three species were not previously candidate species.

New Candidates

Below we present a brief summary of one new snail (magnificent ramshorn), one new insect (Poweshiek skipperling), and one new plant candidate (*Streptanthus bracteatus*), which are additions to this year's CNOR. Complete information, including references, can be found in the species assessment forms. You may obtain a copy of these forms from the Regional Office having the lead for the species, or from our Web site (*http://ecos.fws.gov/tess_public/pub/SpeciesReport.do?listingType=C&mapstatus=1*). For these species, we find that we have on file sufficient information on biological vulnerability and threats to support a proposal to list as endangered or threatened, but that preparation and publication of a proposal is precluded by higher priority listing actions (i.e., it met our definition of a candidate species). We also note below that 18 other species—Pacific walrus, gopher tortoise (eastern population), striped newt, 7 species of Hawaiian yellow-faced bees (*Hylaeus anthracinus, H. assimulans, H. facilis, H. hilaris, H. kuakea, H. longiceps,* and *H. mana*), Hermes copper butterfly, Mt. Charleston blue butterfly, Puerto Rican harlequin butterfly, *Boechera pusilla* (Fremont County rockcress), *Eriogonum soredium* (Frisco buckwheat), *Lepidium ostleri* (Ostler's peppergrass), *Pinus albicaulis* (whitebark pine), *Trifolium friscanum* (Frisco clover)—were identified as candidates earlier this year as a result of separate petition findings published in the **Federal Register.**

Mammals

Pacific walrus (*Odobenus rosmarus divergens*)—We previously announced candidate status for this species, and described the reasons and data on which the finding was based, in a separate warranted-but-precluded 12-month petition finding published on February 10, 2011 (76 FR 7634).

Reptiles

Gopher tortoise, eastern population (*Gopherus polyphemus*)—We previously announced candidate status for this species, and described the reasons and data on which the finding was based, in a separate warranted-but-precluded 12-month petition finding published on July 27, 2011 (76 FR 45130).

Amphibians

Striped newt (*Notophthalmus perstriatus*)—We previously announced candidate status for this species, and described the reasons and data on which the finding was based, in a separate warranted-but-precluded 12-month petition finding published on June 7, 2011 (76 FR 32911).

Snails

Magnificent ramshorn (*Planorbella magnifica*)—The following summary is based on information in our files. No new information was provided in the petition received on April 20, 2010 (after we initiated our assessment of this species). The magnificent ramshorn is a freshwater snail in the family Planorbidae (Pilsbry 1903). It is the largest North American snail in this family. The magnificent ramshorn is endemic to the lower Cape Fear River basin, North Carolina. The species has been recorded from only four sites in the lower Cape Fear River Basin in New Hanover and Brunswick Counties, North Carolina, but is believed to be extirpated from all four of these sites. The only known surviving population is a captive population, comprised of approximately 100 adults, being maintained and propagated by a private biologist.

Available information indicates that suitable habitat for the species is restricted to relatively shallow, sheltered portions of still or sluggish, freshwater bodies with an abundance and diversity of submerged aquatic vegetation and a circumneutral pH (pH within the range of 6.8–7.5). The only known records for the species are post-1900 and are from manmade millponds constructed in the 1700s to provide a freshwater source for rice agriculture. However, these impoundments closely replicate beaver-pond habitat, and it is plausible that the species was once a faunal component of beaver ponds. The species may also have once inhabited backwater and other sluggish portions of the main channel of lower Cape Fear River.

Beaver-pond habitat was eliminated for several decades throughout much of the lower Cape Fear River as a result of the extirpation of the North American beaver due to trapping and hunting during the 19th and early 20th centuries. This, together with draining and destruction of beaver ponds for development, agriculture, and other purposes, is believed to have led to a significant decline in the snail's habitat. Also, dredging and deepening of the Cape Fear River channel, which began as early as 1822, and opening of the Atlantic Intercoastal Waterway (through Snow's Cut) in 1930 for navigational purposes have caused saltwater intrusion, altered the diversity and abundance of aquatic vegetation, and changed flows and current patterns far up the river channel and its lower tributaries. Under these circumstances, the magnificent ramshorn could have survived only in areas of tributary streams not affected by salt water intrusion and other changes, such as the millponds protected from saltwater intrusion by their dams. The species is believed to have been eliminated from the millponds from which it has been recorded due to saltwater intrusion during severe storms (Hurricane Fran) and drought conditions, increased input of nutrients and other pollutants from development activities adversely affecting water quality/chemistry and leading to increased nuisance aquatic plant and algae growth, and efforts, harmful to the snail, by landowners to control nuisance plant and algae growth.

While efforts have been made to restore habitat for the magnificent ramshorn at one of the sites known to have previously supported the species, all of the sites known to have previously supported the snail continue to be affected or threatened by most of the same factors (i.e., saltwater intrusion and other water quality degradation, nuisance aquatic plant control, storms, sea level rise, etc.) believed to have resulted in extirpation of the species from the wild. Currently, only a single captive population of the species is known to exist. Although this captive population of the species has been maintained since 1993, a single catastrophic event, such as a severe storm, disease, or predator infestation, affecting this captive population could

result in extinction of the species. Accordingly, the magnitude of the threats to the species' survival is high. The threats are ongoing and therefore imminent. Thus, we have assigned an LPN of 2 to this species.

Insects

Hawaiian yellow-faced bees (*Hylaeus anthracinus, H. assimulans, H. facilis, H. hilaris, H. kuakea, H. longiceps,* and *H. mana*)—We previously announced candidate status for these species, and described the reasons and data on which the finding was based, in a separate warranted-but-precluded 12-month petition finding published on September 6, 2011 (76 FR 55170).

Hermes copper butterfly (*Hermelycaena* [*Lycaena*] *hermes*)—We previously announced candidate status for this species, and described the reasons and data on which the finding was based, in a separate warranted-but-precluded 12-month petition finding published on April 14, 2011 (76 FR 20918).

Mt. Charleston blue butterfly (*Plebejus shasta charlestonensis*)—We previously announced candidate status for this species, and described the reasons and data on which the finding was based, in a separate warranted-but-precluded 12-month petition finding published on March 8, 2011 (76 FR 12667).

Puerto Rican harlequin butterfly (*Atlantea tulita*)—We previously announced candidate status for this species, and described the reasons and data on which the finding was based, in a separate warranted-but-precluded 12-month petition finding published on May 31, 2011 (76 FR 31282).

Poweshiek skipperling (*Oarisma poweshiek*) —The following summary is based on information contained in our files. The Poweshiek skipperling is a small butterfly that currently inhabits high-quality tallgrass prairie in Iowa, Minnesota, North Dakota, South Dakota, and Wisconsin and prairie fens in Michigan; it also occurs in the province of Manitoba, Canada. The species is presumed to be extirpated from Illinois and Indiana and from many sites within occupied States.

The Poweshiek skipperling is threatened by degradation of its native prairie habitat by overgrazing, invasive species, gravel mining, and herbicide applications; inbreeding, population isolation, and prescribed fire threaten some populations. Prairie succeeds to shrubland or forest without periodic fire, grazing, or mowing; thus, the species is also threatened at sites where such disturbances are not applied. The Service, State agencies, the Sisseton-Wahpeton Sioux Tribe, and private organizations (e.g., The Nature Conservancy) protect and manage some Poweshiek skipperling sites. Careful and considered management is always necessary to ensure its persistence, even at protected sites. The species may be secure at a few sites where public and private landowners manage native prairie in ways that conserve Poweshiek skipperling, but approximately one-quarter of the inhabited sites are privately owned with little or no protection. A few private sites are protected from conversion by easements, but these do not preclude adverse effects from overgrazing. The threats are such that the Poweshiek skipperling warrants listing; the threats are high in magnitude because habitat degradation and other stressors has resulted in sharp declines in the western portion of its range which contains more than 90 percent of the species site records. We assigned this species an LPN of 2 to reflect the ongoing, and therefore, imminent threats to the species' habitat and sharp population declines documented recently, especially in Iowa and Minnesota.

Flowering Plants

Boechera pusilla (Fremont County rockcress) —We previously announced candidate status for this species, and described the reasons and data on which the finding was based, in a separate warranted-but-precluded 12-month petition finding published on June 9, 2011 (76 FR 33924).

Eriogonum soredium (Frisco buckwheat)—We previously announced candidate status for this species, and described the reasons and data on which the finding was based, in a separate warranted-but-precluded 12-month petition finding published on February 23, 2011 (76 FR 10166).

Lepidium ostleri (Ostler's peppergrass)—We previously announced candidate status for this species, and described the reasons and data on which the finding was based, in a separate warranted-but-precluded 12-month petition finding published on February 23, 2011 (76 FR 10166).

Pinus albicaulis (whitebark pine)—We previously announced candidate status for this species, and described the reasons and data on which the finding was based, in a separate warranted-but-precluded 12-month petition finding published on July 19, 2011 (76 FR 42631).

Streptanthus bracteatus (bracted twistflower)—The following summary is based on information obtained from our files, on-line herbarium databases, surveys and monitoring data, seed-collection data, and scientific publications. Bracted twistflower, an annual herbaceous plant of the Brassicaceae (mustard family), is endemic to a small portion of the Edwards Plateau of Texas. From 1989 to 2010, 32 populations have been documented in five counties; of these, 15 populations remain with intact habitat, 9 persist in degraded or partially destroyed habitats, and 8 are presumed extirpated. Only 9 of the intact populations occur in protected natural areas.

The continued survival of bracted twistflower is imminently threatened by habitat destruction from urban development, severe herbivory from very dense herds of white-tailed deer, and the increased density of woody plant cover. Additional ongoing threats include erosion and trampling from foot and mountain-bike trails, a pathogenic fungus of unknown origin, and insufficient protection by existing regulations. Furthermore, due to the small size and isolation of remaining populations and lack of gene flow between them, several populations are now inbred and may have insufficient genetic diversity for long-term survival. The consistent failure of pilot reintroduction efforts has so far prevented the augmentation and reintroduction of populations in protected, managed sites. Optimal vegetation management of bracted twistflower populations may be incompatible with the management of golden-cheeked warbler nesting habitat. The species is potentially threatened by as-yet unknown impacts of climate change. The Service has established a voluntary Memorandum of Agreement with Texas Parks and Wildlife Department, the City of Austin, Travis County, the Lower Colorado River Authority, and the Lady Bird Johnson Wildflower Center to protect bracted twistflower and its habitats on tracts of Balcones Canyonlands Preserve. The threats to bracted twistflower are of moderate magnitude, and are ongoing and, therefore, imminent. We find that bracted twistflower is warranted for listing throughout all of its range and assigned it an LPN of 8.

Trifolium friscanum (Frisco clover)—We previously announced candidate status for this species, and described the reasons and data on which the finding was based, in a separate warranted-but-precluded 12-month petition finding published on February 23, 2011 (76 FR 10166).

Listing Priority Changes in Candidates

We reviewed the LPN for all candidate species and are changing the numbers for the following species discussed below. Some of the changes reflect actual changes in either the magnitude or immediacy of the threats. For some species, the LPN change reflects efforts to ensure national consistency as well as closer adherence to the 1983 guidelines in assigning these numbers, rather than an actual change in the nature of the threats.

Birds

Kittlitz's murrelet (*Brachyramphus brevirostris*)—The following summary is based on information contained in our files and the petition we received on May 9, 2001. Kittlitz's murrelet is a small diving seabird that inhabits Alaskan coastal waters discontinuously, from Point Lay south to northern portions of southeast Alaska, west to the tip of the Aleutian Islands, and the eastern coastline of Russia. During the breeding season, most Kittlitz's murrelets are associated with tidewater glaciers, but breeding has also been documented throughout their range in areas where glaciers no longer exist. We concluded in the past that the loss of tidewater glaciers was a threat to the species and the magnitude of that threat was high because of the rate of change in the glaciers. There is no doubt that tidewater glaciers are receding most likely due to climate change. It is also clear that in one part of their range, Kittlitz's murrelets are associated with glacially influenced waters during the summer breeding period. What is unclear is the nature of the association and if these areas are more important to the Kittlitz's murrelet's population viability than other areas. Nests have been documented throughout their range; what is unknown is if nest survival is better near glaciers. Although we know that Kittlitz's murrelet habitat will continue to be modified as glaciers continue to recede, we currently do not have evidence that this modification will lead to conditions that will lead to a population-level decline.

In the past we had a high level of concern over the population decline and its magnitude. Although we still conclude that the population has declined, based on ongoing analyses, the magnitude of the decline is much less certain. Work is currently underway to evaluate past surveys and the status and trend of Kittlitz's murrelet across its range. We anticipate that our ability to evaluate trends and population size will be greatly improved when these projects are completed and published.

Based on new information, the focus of our concern has shifted to the low reproductive success of Kittlitz's murrelet. Our concern is based on three lines of reasoning: at the locations where we have the most complete information, Agattu and Kodiak Islands, nest success is very low (less than 10 percent); few juvenile birds have been documented; and there are indications that few females (approximately 10 percent) are breeding in spite of the fact (based on blood chemistry) that approximately 90 percent appear to be physiologically prepared to breed. Although the implications of these results are serious, we must temper our concern with the knowledge that the results are limited to small parts of the murrelet's range and for a long-lived bird, we have data for relatively few years. Consequently, we conclude that the magnitude of this threat is moderate.

For a K-selected species such as Kittlitz's murrelet, loss of the adults is particularly important, and we have identified several sources of adult mortality such as hydrocarbon contamination, entanglement in gillnets, and predation. Although none of these sources of mortality alone rises to the level of a threat, in total, the chronic, low-level loss of adults, in combination with evidence that a small proportion of the population is breeding, and the low reproductive success lead us to conclude that it will be difficult for this species to maintain a stable population level or rebound from a stochastic event that causes population loss. The magnitude of threat from these sources is low to moderate, depending on events that occur in a given year (number and location of oil spills/ship wrecks, number and location of gillnets).

For these reasons, this year, our focus shifted from the loss of glaciers to poor reproductive success. Poor nest success (as opposed to adult mortality) could be the underlying reason for the population decline, and if it is occurring rangewide, the population would be expected to continue to decline. Currently, our most detailed nest information comes from Agattu and Kodiak Islands. Whether these locations and the timeframe observed are representative of the rangewide situation is unknown; therefore, we have determined that threat magnitude is moderate, not high. Because the identified threats are currently occurring, they are imminent. Thus, we are changing the LPN from a 2 to an 8.

Sprague's pipit (*Anthus spragueii*)—The following summary is based on information contained in our files and in the petition we received on October 15, 2008. This species occurs in Arizona, Colorado, Kansas, Louisiana, Minnesota, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, Canada, and Mexico. The Sprague's pipit is a small grassland bird characterized by its high flight display and otherwise very secretive behavior. Sprague's pipits are strongly tied to native prairie (land which has never been plowed) throughout their life cycle.

Threats to this species include: Habitat loss and conversion, habitat fragmentation on the breeding grounds, energy development, roads, and inadequacy of existing regulatory mechanisms. Only 15 to 18 percent of the historical breeding habitat in the United States remains due to prairie habitat loss and fragmentation. The Breeding Bird Survey and Christmas Bird Count both show a 40-year decline of 73 to 79 percent (3.23 to 4.1 percent annually). We anticipate that prairie habitat will continue to be converted and fragmented. Most of the breeding range, including those areas where grassland habitat still remains, has been identified as a prime area for wind energy development, and an oil and gas boom is occurring in the central part of the breeding range in the United States and Canada. On the wintering range, conversion of grassland to agriculture and other uses appears to be accelerating. We recently announced candidate status for Sprague's pipit in a warranted-but-precluded 12-month petition finding published on September 15, 2010 (75 FR 56028). Because of an error in our original GIS analysis of the magnitude of the threats (as presented in our 12-month finding), we have now determined that the magnitude of threats is moderate as a smaller area of the range is affected by the threats, thereby reducing the effect of the threats to a lower level. Thus, we are changing the LPN of the Sprague's pipit from a 2 to an 8.

Reptiles

Eastern massasauga rattlesnake (*Sistrurus catenatus*)—Until 2011, the eastern massasauga was considered one of three recognized subspecies of massasauga. Recent information indicates that the eastern massasauga represents a distinct species, and we recognize it as such beginning in 2011. It is a small, thick-bodied rattlesnake that occupies shallow wetlands and adjacent upland habitat in portions of Illinois, Indiana, Iowa, Michigan, Minnesota, New York, Ohio, Pennsylvania, Wisconsin, and Ontario. Populations in Missouri, formerly included within the previously recognized subspecies of eastern

massasauga, are now considered to be the western massasauga, *Sistrurus tergeminus tergeminus.*

Although the current range of *S. catenatus* resembles the species' historical range, the geographic distribution has been restricted by the loss of the species from much of the area within the boundaries of that range. Approximately 40 percent of the counties that were historically occupied by *S. catenatus* no longer support the species. *Sistrurus catenatus* is currently listed as endangered in every State and province in which it occurs, except for Michigan where it is designated as a species of special concern. Each State and Canadian province across the range of *S. catenatus* has lost more than 30 percent, and for the majority more than 50 percent, of their historical populations. Furthermore, less than 35 percent of the remaining populations are considered secure. Approximately 59 percent of the remaining *S. catenatus* populations occur wholly or in part on public land, and Statewide and site-specific Candidate Conservation Agreements with Assurances (CCAAs) are currently being developed for many of these areas in Iowa, Illinois, Michigan, and Wisconsin. In 2004, a Candidate Conservation Agreement (CCA) with the Lake County Forest Preserve District in Illinois was completed. In 2005, a CCA with the Forest Preserve District of Cook County in Illinois was completed. In 2006, a CCAA with the Ohio Department of Natural Resources Division of Natural Areas and Preserves was completed for Rome State Nature Preserve in Ashtabula County.

The magnitude of threats is moderate at this time. However, a recently completed extinction risk model, and information provided by species experts, indicates that other populations are likely to suffer additional losses in abundance and genetic diversity and some will likely be extirpated unless threats are removed in the near future. Declines have continued or may be accelerating in several States. Thus, we are monitoring the status of this species to determine if a change in listing priority is warranted. Threats of habitat modification, habitat succession, incompatible land management practices, illegal collection for the pet trade, and human persecution are ongoing and imminent threats to many remaining populations, particularly those inhabiting private lands. We do not believe emergency listing is warranted. We are changing the LPN from a 9 to an 8, reflecting the recent information indicating that this snake should be recognized as a species rather than a subspecies.

Amphibians

Relict leopard frog (*Lithobates onca*) (formerly in *Rana*)—The following summary is based on information contained in our files. Natural relict leopard frog populations occur in two general areas in Nevada: near the Overton Arm area of Lake Mead and Black Canyon below Lake Mead. These two areas include a small fraction of the historical distribution of the species. Its historical range included springs, streams, and wetlands within the Virgin River drainage downstream from the vicinity of Hurricane, Utah; along the Muddy River, Nevada; and along the Colorado River from its confluence with the Virgin River downstream to Black Canyon below Lake Mead, Nevada and Arizona.

Factors contributing to the decline of the species include alteration, loss, and degradation of aquatic habitat due to water developments and impoundments, and scouring and erosion; changes in plant communities that result in dense growth and the prevalence of vegetation; introduced predators; climate change; and stochastic events. The presence of chytrid fungus in relict leopard frogs at Lower Blue Point Spring in 2010 warrants further evaluation of the threat of disease to the relict leopard frog. The size of natural and translocated populations is small, and therefore these populations are vulnerable to stochastic events, such as floods and wildfire. Climate change that results in reduced spring flow, habitat loss, and increased prevalence of wildfire would adversely affect relict leopard frog populations.

In 2005, the National Park Service, in cooperation with the Fish and Wildlife Service and other Federal, State, and local partners, developed a conservation agreement and strategy intended to improve the status of the species through prescribed management actions and protection. Conservation actions identified in the agreement and strategy include captive rearing of tadpoles for translocation and refugium populations, habitat and natural history studies, habitat enhancement, population and habitat monitoring, and translocation. New sites within the historical range of the species have been successfully established with captive-reared frogs. Conservation is proceeding under the agreement and strategy; however, additional time is needed to determine whether or not the agreement and strategy will be effective in eliminating or reducing the threats to the point that the relict leopard frog can be removed from candidate status. In consideration of these conservation efforts and the overall threat level to the species, we determined the magnitude of existing threats is moderate to low. However, because water development and other habitat effects, presence of introduced predators, presence of chytrid fungus, limited distribution, small population size, and climate change are ongoing or will occur in the near future, the threats are imminent. The discovery of chytrid fungus in relict leopard frogs in 2010 is a new and potentially serious threat. Therefore, we changed the LPN from an 11 to an 8 for this species.

Snails

Huachuca springsnail (*Pyrgulopsis thompsoni*)—The following is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. The Huachuca springsnail inhabits approximately 19 springs in southeastern Arizona and two springs in Sonora, Mexico. The springsnail is typically found in shallow water habitats, often in rocky seeps at the spring source. Potential threats include habitat modification and destruction through catastrophic wildfire and unmanaged grazing. Overall, the threats are low in magnitude because threats are not occurring throughout the range of the species uniformly and not all populations would likely be affected simultaneously by the known threats. The available information indicates that threats are not currently ongoing in or adjacent to occupied habitats. Accordingly, threats are nonimminent. Therefore, we are reducing the LPN from an 8 to an 11 for this species.

Insects

Meltwater lednian stonefly (*Lednia tumana*)—The following summary is based on information contained in our files and in the petition we received on July 30, 2007. This species is an aquatic insect in the order Plecoptera (stoneflies). Stoneflies are primarily associated with clean, cool streams and rivers. Eggs and nymphs (juveniles) of the meltwater lednian stonefly are found in high-elevation, alpine, and subalpine streams, most typically in locations closely linked to glacial runoff. The species is generally restricted to streams with mean summer water temperature less than 10 °C (50 °F). Adults emerge from the nymph stage and mate in streamside vegetation. The only known meltwater lednian stonefly occurrences are within Glacier National Park (NP), Montana. Climate change, and the associated effects of glacier loss (with glaciers predicted to

be gone by 2030), reduced streamflows, and increased water temperatures, is expected to significantly reduce the occurrence of populations and extent of suitable habitat for the species in Glacier NP. In addition, the existing regulatory mechanisms do not address environmental changes due to global climate change. We recently announced candidate status for the meltwater lednian stonefly in a warranted-but-precluded 12-month petition finding published on April 5, 2011 (76 FR 18684). We originally assigned the species an LPN of 4 based on three criteria: (1) The high magnitude of threat, which is projected to substantially reduce the amount of suitable habitat relative to the species' current range; (2) the low imminence of the threat based on the lack of documented evidence that populations are being affected by climate change now; and (3) the taxonomic status of the species, which was the only described member of its genus (monotypic taxon). Recently, stonefly specimens discovered in Mount Rainier NP, North Cascades NP, and in the Sierra Nevada Mountains of California have been formally described as two additional species in the *Lednia* genus—*L. borealis* and *L. sierra*—which indicates that the meltwater lednian stonefly is no longer in a monotypic genus. Based on this new taxonomic information, we are changing the LPN of this species from a 4 to a 5.

Arachnids

Warton's cave meshweaver (*Cicurina wartoni*)—The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. Warton's Cave meshweaver is an eyeless, cave-dwelling, unpigmented, 0.23-inch-long invertebrate known only from female specimens. This meshweaver is known to occur in only one cave (Pickle Pit) in Travis County, Texas. Primary threats to the species and its habitat are predation and competition from red-imported fire ants, surface and subsurface effects from polluted runoff from an adjacent subdivision, unauthorized entry into the area surrounding the cave, and trash dumping that may include toxic materials near the feature. The magnitude of threats is low to moderate based on observations made during an April 5, 2011, site visit. In addition, Pickle Pit occurs in a preserve established for mitigation for the endangered golden-cheeked warbler; hence the meshweaver receives some protection. Due to a reduction in the magnitude of threats, we changed the LPN for this species from a 2 to an 8.

Candidate Removals

As summarized below, we have evaluated the threats to the following species and considered factors that, individually and in combination, currently or potentially could pose a risk to these species and their habitats. After a review of the best available scientific and commercial data, we conclude that listing these species under the Endangered Species Act is not warranted because these species are not likely to become an endangered species within the foreseeable future throughout all or a significant portion of their ranges. Therefore, we find that proposing a rule to list them is not warranted, and we no longer consider them to be candidate species for listing. We will continue to monitor the status of these species and to accept additional information and comments concerning this finding. We will reconsider our determination in the event that new information indicates that the threats to the species are of a considerably greater magnitude or imminence than identified through assessments of information contained in our files, as summarized here.

Snails

Gila springsnail (*Pyrgulopsis gilae*)—The following summary is based on information contained in our files and the petition we received on November 20, 1985. Also see our 12-month petition finding published in the **Federal Register** on October 4, 1988 (53 FR 38969). The Gila springsnail is an aquatic species previously known from 13 populations in New Mexico. Surveys conducted in 2008 and 2009 located 37 additional populations, bringing the known total to 50.

The long-term persistence of the Gila springsnail is contingent upon protection of the riparian corridor and maintenance of flow to ensure continuous, oxygenated, flowing water within the species' required thermal range. Based on new information, we now foresee no threats to the habitat of the Gila springsnail. Disturbance to the species from recreational activity is occurring rarely, with minimal effects to the species, and is not likely to become a threat in the foreseeable future due to the inaccessibility of the springsnail populations. Livestock grazing may have affected Gila springsnails in the past, but exclusion of livestock from the riparian habitat has removed this threat. Current springsnail populations are located in areas with minimal fire or flood risk. Groundwater use for geothermal development is unlikely to occur within Gila springsnail habitat. Additionally, the discovery of additional populations in 2008 and 2009 reveals the species is secure from stochastic, habitat-modifying events.

The distribution of the species and variance in the location of its habitat reduces the risk of the loss of the species from stochastic, habitat-modifying events. We have no indication that collection of the species is occurring, other than rarely by researchers confirming its discovery at new springs. Also, as the Gila springsnail occurs on Forest Service land with limited access, we do not anticipate any future collections for other purposes. There are no known diseases that affect Gila springsnails, and no native or nonnative predators occur at these springs. Additionally, we are not aware of any introduced species at the springs that would affect the springsnails.

The effects of future climate change may serve to exacerbate habitat loss from other factors. However, as we have determined that the Gila springsnail is not threatened with habitat loss, we cannot predict with any certainty that the effects of climate change will exacerbate any future habitat concerns sufficiently to consider climate change, on its own, a threat to the species. Therefore, we have determined that climate change is not currently a threat to the Gila springsnail now or in the foreseeable future. In conclusion, due to the lack of threats to the continued existence of the Gila springsnail under any of the five factors now or in the foreseeable future, we find that the Gila springsnail does not meet the definition of a threatened or endangered species and no longer warrants listing throughout all or a significant portion of its range, and we removed it from the candidate list.

New Mexico springsnail (*Pyrgulopsis thermalis*)—The following summary is based on information contained in our files and the petition received on November 20, 1985. Also see our 12-month petition finding published on October 4, 1988 (53 FR 38969). The New Mexico springsnail is an aquatic species that was previously known from only two separate populations associated with a series of spring-brook systems along the Gila River in the Gila National Forest in Grant County, New Mexico. Subsequent surveys in 2008 and 2009 discovered 12 additional populations, for a total of 14 separate populations.

The long-term persistence of the New Mexico springsnail is contingent upon protection of the riparian corridor and maintenance of flow to ensure

continuous, oxygenated, flowing water within the species' required thermal range. Based on new information, we now foresee no threats to the habitat of the New Mexico springsnail. Disturbance to the species from recreational activity is occurring rarely, with minimal impacts to the species, and is not likely to become a threat in the foreseeable future due to the inaccessibility of the springsnail populations. Livestock grazing may have affected New Mexico springsnails in the past, but exclusion of livestock from the riparian habitat has removed this threat. Current springsnail populations are located in areas with minimal fire or flood risk. Groundwater use for geothermal development is unlikely to occur within New Mexico springsnail habitat. Additionally, the discovery of additional populations in 2008 and 2009 reveals the species is secure from stochastic, habitat-modifying events.

The distribution of the species and variance in the location of its habitat reduces the risk of the loss of the species from stochastic, habitat-modifying events. We have no indication that collection of the species is occurring, other than rarely by researchers confirming its discovery at new springs. Also, as the New Mexico springsnail occurs on Forest Service land with limited access, we do not anticipate any future collections for other purposes. There are no known diseases that affect New Mexico springsnails, and no native or nonnative predators occur at these springs. Additionally, we are not aware of any introduced species at the springs that would affect the springsnails.

The effects of future climate change may serve to exacerbate habitat loss from other factors. However, as we have determined that the New Mexico springsnail is not threatened with habitat loss, we cannot predict with any certainty that the effects of climate change will exacerbate any future habitat concerns sufficiently to consider climate change, on its own, a threat to the species. Therefore, we have determined that climate change is not currently a threat to the New Mexico springsnail now or in the foreseeable future.

In conclusion, due to the lack of threats to the continued existence of the New Mexico springsnail under any of the five factors now or in the foreseeable future, we find that the New Mexico springsnail does not meet the definition of a threatened or endangered species and no longer warrants listing throughout all or a significant portion of its range. As a result, we have removed it from the candidate list.

Insects

Wekiu bug (*Nysius wekiuicola*)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. The wekiu bug belongs to the true bug family, Lygaeidae, and occurs only on the summit of Mauna Kea on the island of Hawaii. The wekiu bug was believed to be limited in range to six pu'us (cinder cones) in the summit area and was threatened by loss of habitat on Mauna Kea due to development of observatory facilities, which was believed to be causing a severe decline in its numbers. Surveys and other studies carried out over the last 11 years suggest the wekiu bug has a broader distribution on Mauna Kea than previously known. Surveys now indicate that the wekiu bug is currently found on 16 pu'us. Two of these 16 pu'us occur in an area that has undergone development of astronomy observatory facilities. The previous trend toward loss of habitat due to observatory construction has been curtailed, and no new construction, including the currently planned Thirty-meter Telescope project, will occur on any pu'u occupied by the species. Management of the Mauna Kea summit area by the Office of Mauna Kea Management includes continued monitoring of the wekiu bug and its habitat, and scientific studies to assist in managing and protecting wekiu bug populations and habitat. The 2000 Mauna Kea Science Reserve Management Plan, the Mauna Kea Comprehensive Management Plan, the four subplans (natural resources management plan, cultural resources management plan, decommissioning plan, and public access plan), and a procedure for formal review of new projects on Mauna Kea all contribute to the protection and conservation of the wekiu bug.

Studies over the last 11 years also indicate the wekiu bug has a stable population, and demonstrate that this species exhibits extreme variability in terms of annual densities at any given site, such that the normal bounds of natural population variance for this species are much wider than previously understood. Based on our review of the best available information we no longer conclude that threats across the wekiu bug's expanded range put the species in danger of extinction. In summary, because the wekiu bug is likely stable in numbers, the wekiu bug is more widespread than previously believed, current threats are minimized and restricted within the larger range of the species, and future potential threats are monitored, we find the wekiu bug does not meet the definition of a threatened or endangered species and no longer warrants listing throughout all or a significant portion of its range. Thus, we have removed it from candidate status.

Petition Findings

The ESA provides two mechanisms for considering species for listing. One method allows the Secretary, on his own initiative, to identify species for listing under the standards of section 4(a)(1). We implement this through the candidate program, discussed above. The second method for listing a species provides a mechanism for the public to petition us to add a species to the Lists. The CNOR serves several purposes as part of the petition process: (1) In some instances (in particular, for petitions to list species that the Service has already identified as candidates on its own initiative), it serves as the petition finding; (2) it serves as a ''resubmitted'' petition finding that the ESA requires the Service to make each year; and (3) it documents the Service's compliance with the statutory requirement to monitor the status of species for which listing is warranted-but-precluded to ascertain if they need emergency listing.

First, the CNOR serves as a petition finding in some instances. Under section 4(b)(3)(A), when we receive a listing petition, we must determine within 90 days, to the maximum extent practicable, whether the petition presents substantial information indicating that listing may be warranted (a ''90-day finding''). If we make a positive 90-day finding, we must promptly commence a status review of the species under section 4(b)(3)(A); we must then make and publish one of three possible findings within 12 months of the receipt of the petition (a ''12-month finding''):

(1) The petitioned action is not warranted;

(2) The petitioned action is warranted (in which case we are required to promptly publish a proposed regulation to implement the petitioned action; once we publish a proposed rule for a species, section 4(b)(5) and 4(b)(6) govern further procedures regardless of whether we issued the proposal in response to a petition); or

(3) The petitioned action is warranted but (a) the immediate proposal of a regulation and final promulgation of a regulation implementing the petitioned action is precluded by pending proposals to determine whether any species is endangered or threatened, and

(b) expeditious progress is being made to add qualified species to the Lists of Endangered or Threatened Wildlife and Plants. (We refer to this third option as a ''warranted-but-precluded finding.'').

We define ''candidate species'' to mean those species for which the Service has on file sufficient information on biological vulnerability and threat(s) to support issuance of a proposed rule to list, but for which issuance of the proposed rule is precluded (61 FR 64481; December 5, 1996). This standard for making a species a candidate through our own initiative is identical to the standard for making a warranted-but-precluded 12-month petition finding on a petition to list, and we add all petitioned species for which we have made a warranted-but-precluded 12-month finding to the candidate list.

Therefore, all candidate species identified through our own initiative already have received the equivalent of substantial 90-day and warranted-but-precluded 12-month findings. Nevertheless, we review the status of the newly petitioned candidate species and through this CNOR publish specific section 4(b)(3) findings (i.e., substantial 90-day and warranted-but-precluded 12-month findings) in response to the petitions to list these candidate species. We publish these findings as part of the first CNOR following receipt of the petition. On April 20, 2010, we received a petition to list the magnificent ramshorn (see summary above under New Candidates) after we had initiated our assessment of this species for candidate status. In addition, the following species that were already on our candidate list were also included in this petition: Black Warrior waterdog, sicklefin redhorse, rabbitsfoot, black mudalia, Coleman cave beetle, and *Solidago plumosa* (Yadkin River goldenrod). The petition did not provide any new information on these species. We published a separate substantial 90-day finding for all of the above species on September 27, 2011 (76 FR 59836). As part of this notice, we are making the warranted-but-precluded 12-month finding for these species. We have identified the candidate species for which we received petitions by the code ''C*'' in the category column on the left side of Table 1 below.

Second, the CNOR serves as a ''resubmitted'' petition finding. Section 4(b)(3)(C)(i) of the ESA 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. Thus, we must make a 12-month petition finding in compliance with section 4(b)(3)(B) of the ESA at least once a year, until we publish a proposal to list the species or make a final not-warranted finding. We make these annual findings for petitioned candidate species through the CNOR.

Third, through undertaking the analysis required to complete the CNOR, the Service determines if any candidate species needs emergency listing. Section 4(b)(3)(C)(iii) of the ESA requires us to ''implement a system to monitor effectively the status of all species'' for which we have made a warranted-but-precluded 12-month finding, and to ''make prompt use of the [emergency listing] authority [under section 4(b)(7)] to prevent a significant risk to the well being of any such species.'' The CNOR plays a crucial role in the monitoring system that we have implemented for all candidate species by providing notice that we are actively seeking information regarding the status of those species. We review all new information on candidate species as it becomes available, prepare an annual species assessment form that reflects monitoring results and other new information, and identify any species for which emergency listing may be appropriate. If we determine that emergency listing is appropriate for any candidate we will make prompt use of the emergency listing authority under section 4(b)(7). For example, on August 10, 2011, we emergency listed the Miami blue butterfly (76 FR 49542). We have been reviewing and will continue to review, at least annually, the status of every candidate, whether or not we have received a petition to list it. Thus, the CNOR and accompanying species assessment forms constitute the Service's annual finding on the status of petitioned species under section 4(b)(3)(C)(i) of the ESA.

A number of court decisions have elaborated on the nature and specificity of information that must be considered in making and describing the petition findings in the CNOR. The CNOR published on November 9, 2009 (74 FR 57804), describes these court decisions in further detail. As with previous CNORs, we continue to incorporate information of the nature and specificity required by the courts. For example, we include a description of the reasons why the listing of every petitioned candidate species is both warranted and precluded at this time. We make our determinations of preclusion on a nationwide basis to ensure that the species most in need of listing will be addressed first and also because we allocate our listing budget on a nationwide basis (see below). Regional priorities can also be discerned from Table 1, below, which includes the lead region and the LPN for each species. Our preclusion determinations are further based upon our budget for listing activities for unlisted species only, and we explain the priority system and why the work we have accomplished does preclude action on listing candidate species.

In preparing this CNOR, we reviewed the current status of, and threats to, the 204 candidates and 5 listed species for which we have received a petition and for which we have found listing or reclassification from threatened to endangered to be warranted but precluded. Included in this work is our review of the current status of, and threats to, the Canada lynx in New Mexico for which we received a petition to add that State to the listed range. We find that the immediate issuance of a proposed rule and timely promulgation of a final rule for each of these species has been, for the preceding months, and continues to be, precluded by higher priority listing actions. Additional information that is the basis for this finding is found in the species assessments and our administrative record for each species.

Our review included updating the status of, and threats to, petitioned candidate or listed species for which we published findings, under section 4(b)(3)(B) of the ESA, in the previous CNOR. We have incorporated new information we gathered since the prior finding and, as a result of this review, we are making continued warranted-but-precluded 12-month findings on the petitions for these species.

The immediate publication of proposed rules to list these species was precluded by our work on higher priority listing actions, listed below, during the period from October 1, 2010, through September 30, 2011. We will continue to monitor the status of all candidate species, including petitioned species, as new information becomes available to determine if a change in status is warranted, including the need to emergency-list a species under section 4(b)(7) of the ESA.

In addition to identifying petitioned candidate species in Table 1 below, we also present brief summaries of why each of these candidates warrants listing. More complete information, including references, is found in the species assessment forms. You may obtain a copy of these forms from the Regional Office having the lead for the species, or from the Fish and Wildlife Service's Internet Web site: *http://ecos.fws.gov/tess_public/pub/SpeciesReport.do?listingType=C&mapstatus=1.* As described above, under section 4 of

the ESA, we may identify and propose species for listing based on the factors identified in section 4(a)(1), and section 4 also provides a mechanism for the public to petition us to add species to the Lists of Endangered or Threatened Wildlife and Plants under the ESA. Below we describe the actions that continue to preclude the immediate proposal and final promulgation of a regulation implementing each of the petitioned actions for which we have made a warranted-but-precluded finding, and we describe the expeditious progress we are making to add qualified species to, and remove species from, the Lists of Endangered or Threatened Wildlife and Plants.

Preclusion and Expeditious Progress

Preclusion is a function of the listing priority of a species in relation to the resources that are available and the cost and relative priority of competing demands for those resources. Thus, in any given fiscal year (FY), multiple factors dictate whether it will be possible to undertake work on a listing proposal regulation or whether promulgation of such a proposal is precluded by higher priority listing actions.

The resources available for listing actions are determined through the annual Congressional appropriations process. The appropriation for the Listing Program is available to support work involving the following listing actions: Proposed and final listing rules; 90-day and 12-month findings on petitions to add species to the Lists of Endangered and Threatened Wildlife and Plants (Lists) or to change the status of a species from threatened to endangered; annual ''resubmitted'' petition findings on prior warranted-but-precluded petition findings as required under section 4(b)(3)(C)(i) of the ESA; critical habitat petition findings; proposed and final rules designating critical habitat; and litigation-related, administrative, and program-management functions (including preparing and allocating budgets, responding to Congressional and public inquiries, and conducting public outreach regarding listing and critical habitat). The work involved in preparing various listing documents can be extensive, and may include, but is not limited to: Gathering and assessing the best scientific and commercial data available and conducting analyses used as the basis for our decisions; writing and publishing documents; and obtaining, reviewing, and evaluating public comments and peer-review comments on proposed rules and incorporating relevant information into final rules. The number of listing actions that we can undertake in a given year also is influenced by the complexity of those listing actions; that is, more complex actions generally are more costly. The median cost for preparing and publishing a 90-day finding is $39,276; for a 12-month finding, $100,690; for a proposed rule with critical habitat, $345,000; and for a final listing rule with critical habitat, $305,000.

We cannot spend more than is appropriated for the Listing Program without violating the Anti-Deficiency Act (see 31 U.S.C. 1341(a)(1)(A)). In addition, in FY 1998 and for each fiscal year since then, Congress has placed a statutory cap on funds which may be expended for the Listing Program, equal to the amount expressly appropriated for that purpose in that fiscal year. This cap was designed to prevent funds appropriated for other functions under the ESA (for example, recovery funds for removing species from the Lists), or for other Service programs, from being used for Listing Program actions (see House Report 105–163, 105th Congress, 1st Session, July 1, 1997).

Since FY 2002, the Service's budget has included a critical habitat subcap to ensure that some funds are available for other work in the Listing Program (''The critical habitat designation subcap will ensure that some funding is available to address other listing activities'' (House Report No. 107–103, 107th Congress, 1st Session, June 19, 2001)). In FY 2002 and each year until FY 2006, the Service has had to use virtually the entire critical habitat subcap to address court-mandated designations of critical habitat, and consequently none of the critical habitat subcap funds have been available for other listing activities. In some FYs since 2006, we have been able to use some of the critical habitat subcap funds to fund proposed listing determinations for high-priority candidate species. In other FYs, while we were unable to use any of the critical habitat subcap funds to fund proposed listing determinations, we did use some of this money to fund the critical habitat portion of some proposed listing determinations so that the proposed listing determination and proposed critical habitat designation could be combined into one rule, thereby being more efficient in our work. For FY 2011, we were again able to use some of the critical habitat subcap funds to fund proposed listing determination.

We make our determinations of preclusion on a nationwide basis to ensure that the species most in need of listing will be addressed first and also because we allocate our listing budget on a nationwide basis. Through the listing cap, the critical habitat subcap, and the amount of funds needed to address court-mandated critical habitat designations, Congress and the courts have in effect determined the amount of money available for other listing activities nationwide. Therefore, the funds in the listing cap, other than those needed to address court-mandated critical habitat for already listed species, represent the resources we must take into consideration when we make our determinations of preclusion and expeditious progress.

Congress identified the availability of resources as the only basis for deferring the initiation of a rulemaking that is warranted. The Conference Report accompanying Public Law 97–304, which established the current statutory deadlines and the warranted-but-precluded finding, states that the amendments were ''not intended to allow the Secretary to delay commencing the rulemaking process for any reason other than that the existence of pending or imminent proposals to list species subject to a greater degree of threat would make allocation of resources to such a petition [that is, for a lower-ranking species] unwise.'' Although that statement appeared to refer specifically to the ''to the maximum extent practicable'' limitation on the 90-day deadline for making a ''substantial information'' finding, that finding is made at the point when the Service is deciding whether or not to commence a status review that will determine the degree of threats facing the species, and therefore the analysis underlying the statement is more relevant to the use of the warranted-but-precluded finding, which is made when the Service has already determined the degree of threats facing the species and is deciding whether or not to commence a rulemaking.

In FY 2011, on April 15, 2011, Congress passed the Full-Year Continuing Appropriations Act (Pub. L. 112–10), which provided funding through September 30, 2011. The Service was provided $20,902,000 for the listing program. Of that, the Service used $9,472,000 for determinations of critical habitat for already listed species. Also $500,000 was appropriated for foreign species listings under the ESA. The Service thus had $10,930,000 available to fund work in the following categories: Compliance with court orders and court-approved settlement agreements requiring that petition findings or listing determinations be completed by a specific date; section 4 (of the ESA) listing actions with absolute statutory deadlines; essential

litigation-related, administrative, and listing program-management functions; and high-priority listing actions for some of our candidate species. In FY 2010, the Service received many new petitions and a single petition to list 404 species. The receipt of petitions for a large number of species is consuming the Service's listing funding that is not dedicated to meeting court-ordered commitments. Absent some ability to balance effort among listing duties under existing funding levels, the Service was only able to initiate a few new listing determinations for candidate species in FY 2011.

In 2009, the responsibility for listing foreign species under the ESA was transferred from the Division of Scientific Authority, International Affairs Program, to the Endangered Species Program. Therefore, starting in FY 2010, we used a portion of our funding to work on the actions described above for listing actions related to foreign species. In FY 2011, we allocated $500,000 for work on listing actions for foreign species, which reduced funding available for domestic listing actions. Although there are no foreign species issues included in our high-priority listing actions (these are accounted for separately in the Annual Notice of Review for foreign species published on May 3, 2011 (76 FR 25150)), many actions had statutory or court-approved settlement deadlines, thus increasing their priority. The budget allocations for each specific listing action are identified in the Service's FY 2011 Allocation Table (part of our record).

Because of the large number of high-priority species, we further ranked the candidate species with an LPN of 2 by using the following extinction-risk type criteria: International Union for the Conservation of Nature and Natural Resources (IUCN) Red list status/rank, Heritage rank (provided by NatureServe), Heritage threat rank (provided by NatureServe), and species currently with fewer than 50 individuals, or 4 or fewer populations. Those species with the highest IUCN rank (critically endangered), the highest Heritage rank (G1), the highest Heritage threat rank (substantial, imminent threats), and currently with fewer than 50 individuals, or fewer than 4 populations, originally comprised a group of approximately 40 candidate species (''Top 40''). These 40 candidate species have had the highest priority to receive funding to work on a proposed listing determination. As we work on proposed and final listing rules for those 40 candidates, we apply the ranking criteria to the next group of candidates with an LPN of 2 and 3 to determine the next set of highest priority candidate species. Finally, proposed rules for reclassification of threatened species to endangered are lower priority, because as listed species, they are already afforded the protections of the ESA and implementing regulations. However, for efficiency reasons, we may choose to work on a proposed rule to reclassify a species to endangered if we can combine this with work that is subject to a court-determined deadline.

With our workload so much bigger than the amount of funds we have to accomplish it, it is important that we be as efficient as possible in our listing process. Therefore, as we work on proposed rules for the highest priority species in the next several years, we are preparing multi-species proposals when appropriate, and these may include species with lower priority if they overlap geographically or have the same threats as a species with an LPN of 2. In addition, we take into consideration the availability of staff resources when we determine which high-priority species will receive funding to minimize the amount of time and resources required to complete each listing action.

Based on these prioritization factors, we continue to find that proposals to list the petitioned candidate species included in Table 1 are all precluded by higher priority listing actions including those with court-ordered and court-approved settlement agreements, listing actions with absolute statutory deadlines, and work on proposed listing determinations for candidate species with higher listing priorities.

As explained above, a determination that listing is warranted but precluded must also demonstrate that expeditious progress is being made to add and remove qualified species to and from the Lists of Endangered and Threatened Wildlife and Plants. As with our ''precluded'' finding, the evaluation of whether progress in adding qualified species to the Lists has been expeditious is a function of the resources available for listing and the competing demands for those funds. (Although we do not discuss it in detail here, we are also making expeditious progress in removing species from the list under the Recovery program in light of the resource available for delisting, which is funded by a separate line item in the budget of the Endangered Species Program. During FY 2011, we have completed delisting rules for three species.) Given the limited resources available for listing, we find that we made expeditious progress in FY 2011 in the Listing Program. This progress included preparing and publishing the following determinations:

FY 2011 COMPLETED LISTING ACTIONS

Publication date	Title	Actions	FR pages
10/6/2010	Endangered Status for the Altamaha Spinymussel and Designation of Critical Habitat.	Proposed Listing Endangered	75 FR 61664–61690
10/7/2010	12-Month Finding on a Petition to list the Sacramento Splittail as Endangered or Threatened.	Notice of 12-Month petition finding, Not warranted.	75 FR 62070–62095
10/28/2010	Endangered Status and Designation of Critical Habitat for Spikedace and Loach Minnow.	Proposed Listing Endangered (uplisting)	75 FR 66481–66552
11/2/2010	90-Day Finding on a Petition to List the Bay Springs Salamander as Endangered.	Notice of 90-day Petition Finding, Not substantial.	75 FR 67341–67343
11/2/2010	Determination of Endangered Status for the Georgia Pigtoe Mussel, Interrupted Rocksnail, and Rough Hornsnail and Designation of Critical Habitat.	Final Listing Endangered	75 FR 67511–67550
11/2/2010	Listing the Rayed Bean and Snuffbox as Endangered.	Proposed Listing Endangered	75 FR 67551–67583

FY 2011 COMPLETED LISTING ACTIONS—Continued

Publication date	Title	Actions	FR pages
11/4/2010	12-Month Finding on a Petition to List Cirsium wrightii (Wright's Marsh Thistle) as Endangered or Threatened.	Notice of 12-month petition finding, Warranted but precluded.	75 FR 67925–67944
12/14/2010	Endangered Status for Dunes Sagebrush Lizard.	Proposed Listing Endangered	75 FR 77801–77817
12/14/2010	12-Month Finding on a Petition to List the North American Wolverine as Endangered or Threatened.	Notice of 12-Month petition finding, Warranted but precluded.	75 FR 78029–78061
12/14/2010	12-Month Finding on a Petition to List the Sonoran Population of the Desert Tortoise as Endangered or Threatened.	Notice of 12-Month petition finding, Warranted but precluded.	75 FR 78093–78146
12/15/2010	12-Month Finding on a Petition to List *Astragalus microcymbus* and *Astragalus schmolliae* as Endangered or Threatened.	Notice of 12-Month petition finding, Warranted but precluded.	75 FR 78513–78556
12/28/2010	Listing Seven Brazilian Bird Species as Endangered Throughout Their Range.	Final Listing Endangered	75 FR 81793–81815
1/4/2011	90-Day Finding on a Petition to List the Red Knot subspecies *Calidris canutus roselaari* as Endangered.	Notice of 90-day Petition Finding, Not substantial.	76 FR 304–311
1/19/2011	Endangered Status for the Sheepnose and Spectaclecase Mussels.	Proposed Listing Endangered	76 FR 3392–3420
2/10/2011	12-Month Finding on a Petition to List the Pacific Walrus as Endangered or Threatened.	Notice of 12-Month petition finding, Warranted but precluded.	76 FR 7634–7679
2/17/2011	90-Day Finding on a Petition To List the Sand Verbena Moth as Endangered or Threatened.	Notice of 90-day Petition Finding, Substantial.	76 FR 9309–9318
2/22/2011	Determination of Threatened Status for the New Zealand-Australia Distinct Population Segment of the Southern Rockhopper Penguin.	Final Listing Threatened	76 FR 9681–9692
2/22/2011	12-Month Finding on a Petition to List *Solanum conocarpum* (marron bacora) as Endangered.	Notice of 12-Month petition finding, Warranted but precluded.	76 FR 9722–9733
2/23/2011	12-Month Finding on a Petition to List Thorne's Hairstreak Butterfly as Endangered.	Notice of 12-Month petition finding, Not warranted.	76 FR 9991–10003
2/23/2011	12-Month Finding on a Petition to List *Astragalus hamiltonii, Penstemon flowersii, Eriogonum soredium, Lepidium ostleri,* and *Trifolium friscanum* as Endangered or Threatened.	Notice of 12-Month petition finding, Warranted but precluded & Not Warranted.	76 FR 10166–10203
2/24/2011	90-Day Finding on a Petition to List the Wild Plains Bison or Each of Four Distinct Population Segments as Threatened.	Notice of 90-day Petition Finding, Not substantial.	76 FR 10299–10310
2/24/2011	90-Day Finding on a Petition to List the Unsilvered Fritillary Butterfly as Threatened or Endangered.	Notice of 90-day Petition Finding, Not substantial.	76 FR 10310–10319
3/8/2011	12-Month Finding on a Petition to List the Mt. Charleston Blue Butterfly as Endangered or Threatened.	Notice of 12-Month petition finding, Warranted but precluded.	76 FR 12667–12683
3/8/2011	90-Day Finding on a Petition to List the Texas Kangaroo Rat as Endangered or Threatened.	Notice of 90-day Petition Finding, Substantial.	76 FR 12683–12690
3/10/2011	Initiation of Status Review for Longfin Smelt.	Notice of Status Review	76 FR 13121–13122
3/15/2011	Withdrawal of Proposed Rule to List the Flat-tailed Horned Lizard as Threatened.	Proposed rule withdrawal	76 FR 14210–14268
3/15/2011	Proposed Threatened Status for the Chiricahua Leopard Frog and Proposed Designation of Critical Habitat.	Proposed Listing Threatened; Proposed Designation of Critical Habitat.	76 FR 14126–14207
3/22/2011	12-Month Finding on a Petition to List the Berry Cave Salamander as Endangered.	Notice of 12-Month petition finding, Warranted but precluded.	76 FR 15919–15932
4/1/2011	90-Day Finding on a Petition to List the Spring Pygmy Sunfish as Endangered.	Notice of 90-Day Petition Finding, Substantial.	76 FR 18138–18143
4/5/2011	12-Month Finding on a Petition to List the Bearmouth Mountainsnail, Byrne Resort Mountainsnail, and Meltwater Lednian Stonefly as Endangered or Threatened.	Notice of 12-Month petition finding, Not Warranted and Warranted but precluded.	76 FR 18684–18701

FY 2011 COMPLETED LISTING ACTIONS—Continued

Publication date	Title	Actions	FR pages
4/5/2011	90-Day Finding on a Petition To List the Peary Caribou and Dolphin and Union population of the Barren-ground Caribou as Endangered or Threatened.	Notice of 90-Day Petition Finding, Substantial.	76 FR 18701–18706
4/12/2011	Proposed Endangered Status for the Three Forks Springsnail and San Bernardino Springsnail, and Proposed Designation of Critical Habitat.	Proposed Listing Endangered; Proposed Designation of Critical Habitat.	76 FR 20464–20488
4/13/2011	90-Day Finding on a Petition To List Spring Mountains Acastus Checkerspot Butterfly as Endangered.	Notice of 90-Day Petition Finding, Substantial.	76 FR 20613–20622
4/14/2011	90-Day Finding on a Petition to List the Prairie Chub as Threatened or Endangered.	Notice of 90-Day Petition Finding, Substantial.	76 FR 20911–20918
4/14/2011	12-Month Finding on a Petition to List Hermes Copper Butterfly as Endangered or Threatened.	Notice of 12-Month petition finding, Warranted but precluded.	76 FR 20918–20939
4/26/2011	90-Day Finding on a Petition to List the Arapahoe Snowfly as Endangered or Threatened.	Notice of 90-Day Petition Finding, Substantial.	76 FR 23256–23265
4/26/2011	90-Day Finding on a Petition to List the Smooth-Billed Ani as Threatened or Endangered.	Notice of 90-Day Petition Finding, Not substantial.	76 FR 23265–23271
5/12/2011	Withdrawal of the Proposed Rule to List the Mountain Plover as Threatened.	Proposed Rule, Withdrawal	76 FR 27756–27799
5/25/2011	90-Day Finding on a Petition To List the Spot-tailed Earless Lizard as Endangered or Threatened.	Notice of 90-Day Petition Finding, Substantial.	76 FR 30082–30087
5/26/2011	Listing the Salmon-Crested Cockatoo as Threatened Throughout its Range with Special Rule.	Final Listing Threatened	76 FR 30758–30780
5/31/2011	12-Month Finding on a Petition to List Puerto Rican Harlequin Butterfly as Endangered.	Notice of 12-Month petition finding, Warranted but precluded.	76 FR 31282–31294
6/2/2011	90-Day Finding on a Petition to Reclassify the Straight-Horned Markhor (*Capra falconeri jerdoni*) of Torghar Hills as Threatened.	Notice of 90-Day Petition Finding, Substantial.	76 FR 31903–31906
6/2/2011	90-Day Finding on a Petition to List the Golden-winged Warbler as Endangered or Threatened.	Notice of 90-Day Petition Finding, Substantial.	76 FR 31920–31926
6/7/2011	12-Month Finding on a Petition to List the Striped Newt as Threatened.	Notice of 12-Month petition finding, Warranted but precluded.	76 FR 32911–32929
6/9/2011	12-Month Finding on a Petition to List *Abronia ammophila, Agrostis rossiae, Astragalus proimanthus, Boechera* (*Arabis*) *pusilla,* and *Penstemon gibbensii* as Threatened or Endangered.	Notice of 12-Month petition finding, Not Warranted and Warranted but precluded.	76 FR 33924–33965
6/21/2011	90-Day Finding on a Petition to List the Utah Population of the Gila Monster as an Endangered or a Threatened Distinct Population Segment.	Notice of 90-Day Petition Finding, Not substantial.	76 FR 36049–36053
6/21/2011	Revised 90-Day Finding on a Petition To Reclassify the Utah Prairie Dog From Threatened to Endangered.	Notice of 90-day Petition Finding, Not substantial.	76 FR 36053–36068
6/28/2011	12-Month Finding on a Petition to List *Castanea pumila* var. *ozarkensis* as Threatened or Endangered.	Notice of 12-Month petition finding, Not warranted.	76 FR 37706–37716
6/29/2011	90-Day Finding on a Petition to List the Eastern Small-Footed Bat and the Northern Long-Eared Bat as Threatened or Endangered.	Notice of 90-Day Petition Finding, Substantial.	76 FR 38095–38106
6/30/2011	12-Month Finding on a Petition to List a Distinct Population Segment of the Fisher in Its United States Northern Rocky Mountain Range as Endangered or Threatened with Critical Habitat.	Notice of 12-Month petition finding, Not warranted.	76 FR 38504–38532
7/12/2011	90-Day Finding on a Petition to List the Bay Skipper as Threatened or Endangered.	Notice of 90-Day Petition Finding, Substantial.	76 FR 40868–40871

FY 2011 COMPLETED LISTING ACTIONS—Continued

Publication date	Title	Actions	FR pages
7/19/2011	12-Month Finding on a Petition to List *Pinus albicaulis* as Endangered or Threatened with Critical Habitat.	Notice of 12-Month petition finding, Warranted but precluded.	76 FR 42631–42654
7/19/2011	Petition To List Grand Canyon Cave Pseudoscorpion.	Notice of 12-Month petition finding, Not warranted.	76 FR 42654–42658
7/26/2011	12-Month Finding on a Petition to List the Giant Palouse Earthworm (*Drilolerius americanus*) as Threatened or Endangered.	Notice of 12-Month petition finding, Not warranted.	76 FR 44547–44564
7/26/2011	12-Month Finding on a Petition to List the Frigid Ambersnail as Endangered.	Notice of 12-Month petition finding, Not warranted.	76 FR 44566–44569
7/27/2011	Determination of Endangered Status for *Ipomopsis polyantha* (Pagosa Skyrocket) and Threatened Status for *Penstemon debilis* (Parachute Beardtongue) and *Phacelia submutica* (DeBeque Phacelia).	Final Listing Endangered, Threatened	76 FR 45054–45075
7/27/2011	12-Month Finding on a Petition to List the Gopher Tortoise as Threatened in the Eastern Portion of its Range.	Notice of 12-Month petition finding, Warranted but precluded.	76 FR 45130–45162
8/2/2011	Proposed Endangered Status for the Chupadera Springsnail (*Pyrgulopsis chupaderae*) and Proposed Designation of Critical Habitat.	Proposed Listing Endangered	76 FR 46218–46234
8/2/2011	90-Day Finding on a Petition to List the Straight Snowfly and Idaho Snowfly as Endangered.	Notice of 90-Day Petition Finding, Not substantial.	76 FR 46238–46251
8/2/2011	12-Month Finding on a Petition to List the Redrock Stonefly as Endangered or Threatened.	Notice of 12-Month petition finding, Not warranted.	76 FR 46251–46266
8/2/2011	Listing 23 Species on Oahu as Endangered and Designating Critical Habitat for 124 Species.	Proposed Listing Endangered	76 FR 46362–46594
8/4/2011	90-Day Finding on a Petition To List Six Sand Dune Beetles as Endangered or Threatened.	Notice of 90-Day Petition Finding, Not substantial and substantial.	76 FR 47123–47133
8/9/2011	Endangered Status for the Cumberland Darter, Rush Darter, Yellowcheek Darter, Chucky Madtom, and Laurel Dace.	Final Listing Endangered	76 FR 48722–48741
8/9/2011	12-Month Finding on a Petition to List the Nueces River and Plateau Shiners as Threatened or Endangered.	Notice of 12-Month petition finding, Not warranted.	76 FR 48777–48788
8/9/2011	Four Foreign Parrot Species [crimson shining parrot, white cockatoo, Philippine cockatoo, yellow-crested cockatoo].	Proposed Listing Endangered and Threatened; Notice of 12-Month petition finding, Not warranted.	76 FR 49202–49236
8/10/2011	Proposed Listing of the Miami Blue Butterfly as Endangered, and Proposed Listing of the Cassius Blue, Ceraunus Blue, and Nickerbean Blue Butterflies as Threatened Due to Similarity of Appearance to the Miami Blue Butterfly.	Proposed Listing Endangered Similarity of Appearance.	76 FR 49408–49412
8/10/2011	90-Day Finding on a Petition To List the Saltmarsh Topminnow as Threatened or Endangered Under the Endangered Species Act.	Notice of 90-Day Petition Finding, Substantial.	76 FR 49412–49417
8/10/2011	Emergency Listing of the Miami Blue Butterfly as Endangered, and Emergency Listing of the Cassius Blue, Ceraunus Blue, and Nickerbean Blue Butterflies as Threatened Due to Similarity of Appearance to the Miami Blue Butterfly.	Emergency Listing Endangered and Similarity of Appearance.	76 FR 49542–49567
8/11/2011	Listing Six Foreign Birds as Endangered Throughout Their Range.	Final Listing Endangered	76 FR 50052–50080
8/17/2011	90-Day Finding on a Petition to List the Leona's Little Blue Butterfly as Endangered or Threatened.	Notice of 90-Day Petition Finding, Substantial.	76 FR 50971–50979
9/01/2011	90-Day Finding on a Petition to List All Chimpanzees (*Pan troglodytes*) as Endangered.	Notice of 90-Day Petition Finding, Substantial.	76 FR 54423–54425

FY 2011 COMPLETED LISTING ACTIONS—Continued

Publication date	Title	Actions	FR pages
9/6/2011	12-Month Finding on Five Petitions to List Seven Species of Hawaiian Yellow-faced Bees as Endangered.	Notice of 12-Month petition finding, Warranted but precluded.	76 FR 55170–55203
9/8/2011	12-Month Petition Finding and Proposed Listing of *Arctostaphylos franciscana* as Endangered.	Notice of 12-Month petition finding, Warranted; Proposed Listing Endangered.	76 FR 55623–55638
9/8/2011	90-Day Finding on a Petition To List the Snowy Plover and Reclassify the Wintering Population of Piping Plover.	Notice of 90-Day Petition Finding, Not substantial.	76 FR 55638–55641
9/13/2011	90-Day Finding on a Petition To List the Franklin's Bumble Bee as Endangered.	Notice of 90-Day Petition Finding, Substantial.	76 FR 56381–56391
9/13/2011	90-Day Finding on a Petition to List 42 Great Basin and Mojave Desert Springsnails as Threatened or Endangered with Critical Habitat.	Notice of 90-Day Petition Finding, Substantial and Not substantial.	76 FR 56608–56630
9/21/2011	12-Month Finding on a Petition to List Van Rossem's Gull-billed Tern as Endangered or Threatened.	Notice of 12-Month petition finding, Not warranted.	76 FR 58650–58680
9/22/2011	Determination of Endangered Status for Casey's June Beetle and Designation of Critical Habitat.	Final Listing Endangered	76 FR 58954–58998
9/27/2011	12-Month Finding on a Petition to List the Tamaulipan Agapema, *Sphingicampa blanchardi* (no common name), and *Ursia furtiva* (no common name) as Endangered or Threatened.	Notice of 12-Month petition finding, Not warranted.	76 FR 59623–59634
9/27/2011	Partial 90-Day Finding on a Petition to List 404 Species in the Southeastern United States as Endangered or Threatened With Critical Habitat.	Notice of 90-Day Petition Finding, Substantial.	76 FR 59836–59862
9/29/2011	90-Day Finding on a Petition to List the American Eel as Threatened.	Notice of 90-Day Petition Finding, Substantial.	76 FR 60431–60444
10/4/2011	12-Month Finding on a Petition to List the Lake Sammamish Kokanee Population of *Oncorhynchus nerka* as an Endangered or Threatened Distinct Population Segment.	Notice of 12-Month petition finding, Not warranted.	76 FR 61298–61307
10/4/2011	12-Month Finding on a Petition to List *Calopogon oklahomensis* as Threatened or Endangered.	Notice of 12-Month petition finding, Not warranted.	76 FR 61307–61321
10/4/2011	12-Month Finding on a Petition To List the Amargosa River Population of the Mojave Fringe-toed Lizard as an Endangered or Threatened Distinct Population Segment.	Notice of 12-Month petition finding, Not warranted.	76 FR 61321–61330
10/4/2011	Endangered Status for the Alabama Pearlshell, Round Ebonyshell, Southern Sandshell, Southern Kidneyshell, and Choctaw Bean, and Threatened Status for the Tapered Pigtoe, Narrow Pigtoe, and Fuzzy Pigtoe; with Critical Habitat.	Proposed Listing Endangered	76 FR 61482–61529
10/4/2011	90-Day Finding on a Petition To List 10 Subspecies of Great Basin Butterflies as Threatened or Endangered with Critical Habitat.	Notice of 90-Day Petition Finding, Substantial and Not substantial.	76 FR 61532–61554

Our expeditious progress also included work on listing actions that we funded in FY 2010 and FY 2011 but have not yet been completed to date. These actions are listed below. Actions in the top section of the table are being conducted under a deadline set by a court. Actions in the middle section of the table are being conducted to meet statutory timelines, that is, timelines required under the ESA. Actions in the bottom section of the table are high-priority listing actions. These actions include work primarily on species with an LPN of 2, and, as discussed above, selection of these species is partially based on available staff resources, and when appropriate, include species with a lower priority if they overlap geographically or have the same threats as the species with the high priority. Including these species together in the same proposed rule results in considerable savings in time and funding, compared to preparing separate proposed rules for each of them in the future.

ACTIONS FUNDED IN FY 2010 AND FY 2011 BUT NOT YET COMPLETED

Species	Action
Actions Subject to Court Order/Settlement Agreement	
4 parrot species (military macaw, yellow-billed parrot, red-crowned parrot, scarlet macaw) [5]	12-month petition finding.
4 parrot species (blue-headed macaw, great green macaw, grey-cheeked parakeet, hyacinth macaw) [5].	12-month petition finding.
Longfin smelt	12-month petition finding.
Actions With Statutory Deadlines	
5 Bird species from Colombia and Ecuador	Final listing determination.
Queen Charlotte goshawk	Final listing determination.
Ozark hellbender [4]	Final listing determination.
Altamaha spinymussel [3]	Final listing determination.
6 Birds from Peru & Bolivia	Final listing determination.
Loggerhead sea turtle (assist National Marine Fisheries Service) [5]	Final listing determination.
2 mussels (rayed bean (LPN = 2), snuffbox No LPN) [5]	Final listing determination.
CA golden trout [4]	12-month petition finding.
Black-footed albatross	12-month petition finding.
Cactus ferruginous pygmy-owl [1]	12-month petition finding.
Northern leopard frog	12-month petition finding.
Tehachapi slender salamander	12-month petition finding.
Coqui Llanero	12-month petition finding/Proposed listing.
Dusky tree vole	12-month petition finding.
Leatherside chub (from 206 species petition)	12-month petition finding.
Platte River caddisfly (from 206 species petition) [5]	12-month petition finding.
3 South Arizona plants (*Erigeron piscaticus, Astragalus hypoxylus, Amoreuxia gonzalezii*) (from 475 species petition).	12-month petition finding.
5 Central Texas mussel species (3 from 475 species petition)	12-month petition finding.
14 parrots (foreign species)	12-month petition finding.
Mohave Ground Squirrel [1]	12-month petition finding.
Ashy storm-petrel [5]	12-month petition finding.
Honduran emerald	12-month petition finding.
Eagle Lake trout [1]	90-day petition finding.
32 Pacific Northwest mollusks species (snails and slugs) [1]	90-day petition finding.
Spring Mountains checkerspot butterfly	90-day petition finding.
11 of 404 Southeast species	90-day petition finding.
Aztec gilia [5]	90-day petition finding.
White-tailed ptarmigan [5]	90-day petition finding.
San Bernardino flying squirrel [5]	90-day petition finding.
Bicknell's thrush [5]	90-day petition finding.
Sonoran talussnail [5]	90-day petition finding.
2 AZ Sky Island plants (*Graptopetalum bartrami* & *Pectis imberbis*) [5]	90-day petition finding.
I'iwi [5]	90-day petition finding.
Humboldt marten	90-day petition finding.
Desert massasauga	90-day petition finding.
Western glacier stonefly (*Zapada glacier*)	90-day petition finding.
Thermophilic ostracod (*Potamocypris hunteri*)	90-day petition finding.
Sierra Nevada red fox [5]	90-day petition finding.
Boreal toad (eastern or southern Rocky Mtn population) [5]	90-day petition finding.
Alexander Archipelago wolf [5]	90-day petition finding.
High-Priority Listing Actions	
20 Maui-Nui candidate species [2] (17 plants, 3 tree snails) (14 with LPN = 2, 2 with LPN = 3, 3 with LPN = 8).	Proposed listing.
Umtanum buckwheat (LPN = 2) and white bluffs bladderpod (LPN = 9) [4]	Proposed listing.
Grotto sculpin (LPN = 2) [4]	Proposed listing.
2 Arkansas mussels (Neosho mucket (LPN = 2) & Rabbitsfoot (LPN = 9)) [4]	Proposed listing.
Diamond darter (LPN = 2) [4]	Proposed listing.
Gunnison sage-grouse (LPN = 2) [4]	Proposed listing.
Coral Pink Sand Dunes Tiger Beetle (LPN = 2) [5]	Proposed listing.
Lesser prairie chicken (LPN = 2)	Proposed listing.
4 Texas salamanders (Austin blind salamander (LPN = 2), Salado salamander (LPN = 2), Georgetown salamander (LPN = 8), Jollyville Plateau (LPN = 8)) [3].	Proposed listing.
5 West Texas aquatics (Gonzales Spring Snail (LPN = 2), Diamond Y springsnail (LPN = 2), Phantom springsnail (LPN = 2), Phantom Cave snail (LPN = 2), Diminutive amphipod (LPN = 2)) [3].	Proposed listing.
2 Texas plants (Texas golden gladecress (*Leavenworthia texana*) (LPN = 2), Neches River rose-mallow (*Hibiscus dasycalyx*) (LPN = 2)) [3].	Proposed listing.
4 AZ plants (Acuna cactus (*Echinomastus erectocentrus* var. *acunensis*) (LPN = 3), Fickeisen plains cactus (*Pediocactus peeblesianus fickeiseniae*) (LPN = 3), Lemmon fleabane (*Erigeron lemmonii*) (LPN = 8), Gierisch mallow (*Sphaeralcea gierischii*) (LPN = 2)) [5].	Proposed listing.

ACTIONS FUNDED IN FY 2010 AND FY 2011 BUT NOT YET COMPLETED—Continued

Species	Action
FL bonneted bat (LPN = 2)[3]	Proposed listing.
3 Southern FL plants (Florida semaphore cactus (*Consolea corallicola*) (LPN = 2), shellmound applecactus (*Harrisia* (=*Cereus*) *aboriginum* (=*gracilis*)) (LPN = 2), Cape Sable thoroughwort (*Chromolaena frustrata*) (LPN = 2))[5].	Proposed listing.
21 Big Island (HI) species[5] (includes 8 candidate species—6 plants & 2 animals; 4 with LPN = 2, 1 with LPN = 3, 1 with LPN = 4, 2 with LPN = 8).	Proposed listing.
12 Puget Sound prairie species (9 subspecies of pocket gopher (*Thomomys mazama* ssp.) (LPN = 3), streaked horned lark (LPN = 3), Taylor's checkerspot (LPN = 3), Mardon skipper (LPN = 8))[3].	Proposed listing.
2 TN River mussels (fluted kidneyshell (LPN = 2), slabside pearlymussel (LPN = 2))[5]	Proposed listing.
Jemez Mountain salamander (LPN = 2)[5]	Proposed listing.

[1] Funds for listing actions for these species were provided in previous FYs.
[2] Although funds for these high-priority listing actions were provided in FY 2008 or 2009, due to the complexity of these actions and competing priorities, these actions are still being developed.
[3] Partially funded with FY 2010 funds and FY 2011 funds.
[4] Funded with FY 2010 funds.
[5] Funded with FY 2011 funds.

We also funded work on resubmitted petitions findings for 204 candidate species (species petitioned prior to the last CNOR). We did not include new information in our resubmitted petition finding for the Columbia Basin population of the greater sage-grouse in this notice, as the significance of the Columbia Basin DPS to the greater sage-grouse will require further review and we will update our finding at a later date (see 75 FR 13910; March 23, 2010). We also did not include new information in our resubmitted petition findings for the 64 candidate species for which we are preparing proposed listing determinations; see summaries below regarding publication of these determinations (these species will remain on the candidate list until a proposed listing rule is published). We also funded revised 12-month petition findings for the candidate species that we are removing from candidate status, which are being published as part of this CNOR (see Candidate Removals). Because the majority of these species were already candidate species prior to our receipt of a petition to list them, we had already assessed their status using funds from our Candidate Conservation Program. We also continue to monitor the status of these species through our Candidate Conservation Program. The cost of updating the species assessment forms and publishing the joint publication of the CNOR and resubmitted petition findings is shared between the Listing Program and the Candidate Conservation Program.

During FY 2011, we also funded work on resubmitted petition findings for uplisting two listed species, for which petitions were previously received.

Given the limited resources available for listing, we find that we are making expeditious progress to add qualified species to the lists of threatened and endangered species. First, as the tables above show, we are making expeditious progress by listing qualified species. In FY 2011, we resolved the status of 29 species that we determined, or had previously determined, qualified for listing; for 27 of those 29 species, the resolution was to add them to the lists of threatened and endangered species. We also proposed to list an additional 45 qualified species.

Second, we are making expeditious progress by working on adding qualified species to the lists. In FY 2011, we worked on developing final listing determinations for an additional 17 species, and proposed listing rules for another 85 species. Although we have not yet completed those actions, we are making expeditious progress towards doing so.

Third, we are making expeditious progress to add qualified species to the lists by identifying additional species that qualify for listing. In FY 2011, we completed 90-day petition findings for 480 species, and 12-month petition findings for 52 species. Of those 52 species, we determined that listing of 26 of the species was warranted but precluded. In FY 2011 we also worked on 90-day findings for an additional 50 species and 12-month findings for an additional 43 species.

Finally, the Service is making expeditious progress to add qualified species to the list by developing and beginning to implement a work plan that establishes a framework and schedule for resolving by September 30, 2016, the status of all of the species that the Service had determined to be qualified as of the 2010 Candidate Notice of Review. The Service submitted such a work plan to the U.S. District Court for the District of Columbia in *In re Endangered Species Act Section 4 Deadline Litigation,* No. 10–377 (EGS), MDL Docket No. 2165 (D. DC May 10, 2011), and obtained the court's approval. The Service has already begun to implement that work plan, because we completed most of the work identified in the above tables in accordance with the schedule set out in that work plan.

We have endeavored to make our listing actions as efficient and timely as possible, given the requirements of the relevant law and regulations, and constraints relating to workload and personnel. We are continually considering ways to streamline processes or achieve economies of scale, such as by batching related actions together. Given our limited budget for implementing section 4 of the ESA, the actions described above collectively constitute expeditious progress.

Although we have not been able to resolve the listing status of many of the candidates, several programs in the Service contribute to the conservation of these species. In particular, the Candidate Conservation program, which is separately budgeted, focuses on providing technical expertise for developing conservation strategies and agreements to guide voluntary on-the-ground conservation work for candidate and other at-risk species. The main goal of this program is to address the threats facing candidate species. Through this program, we work with our partners (other Federal agencies, State agencies, Tribes, local governments, private landowners, and private conservation organizations) to address the threats to candidate species and other species at-risk. We are currently working with our partners to implement voluntary conservation agreements for more than 140 species covering 5 million acres of habitat. In some instances, the sustained implementation of strategically designed conservation efforts

culminates in making listing unnecessary for species that are candidates for listing or for which listing has been proposed.

Findings for Petitioned Candidate Species

Below are updated summaries for petitioned candidates for which we published findings, under section 4(b)(3)(B). We are making continued warranted-but-precluded 12-month findings on the petitions for these species (for our revised 12-month petition findings for species we are removing from candidate status, see summaries above under ''Candidate Removals'').

Mammals

Florida bonneted bat (*Eumops floridanus*)—The following summary is based on information in our files. No new information was presented in the petition received on January 29, 2010. Endemic to south Florida, this species has been found at 12 locations, 5 on private land and 7 on public land. The entire population may number less than a few hundred individuals. Results from a rangewide acoustical survey found a small number of locations where calls were recorded, and low numbers of calls were recorded at each location. Few active roost sites are known; all are artificial (i.e., bat houses). Prolonged cold temperatures in January and February 2010 affected one active roost. Additional cold temperatures occurred in south Florida in December 2010. In the short term, severe and prolonged cold events resulted in mortality of at least several adult Florida bonneted bats. The long-term effects of prolonged and repeated cold events on the species are not known. Efforts are underway to confirm presence at all previously documented sites. Additionally, a study to determine the northern and southern extent of the species' range and estimate overall abundance was initiated in 2011.

Occurrences are threatened by loss and conversion of habitat to other uses and habitat alteration (e.g., removal of old trees with cavities, removal of manmade structures with suitable roosting sites); this threat is expected to continue and increase. Although occurrences on conservation lands are inherently more protected than those on private lands, habitat alteration during management practices may affect natural roosting sites even on conservation lands if Florida bonneted bats are present but undetected. Therefore, occupied and potential habitat on forested or wooded lands, both private and public, continues to be at risk. The species is vulnerable to a wide array of natural and human factors: low population size, restricted range, low fecundity, large distances between occupied locations, and small number of occupied locations. Such factors may make recolonization unlikely if any site is extirpated, and may make the species vulnerable to extinction due to genetic drift, inbreeding depression, extreme weather events, and random or chance changes to the environment. Where the species occurs in or near human dwellings or structures, it is at risk to persecution, removal, and disturbance. Disturbance from humans, either intentional or inadvertent, can take place at any of the occurrences of this bat on either private or conservation lands. Disturbance of maternity roosts is of particular concern due to the low fecundity and small population of this species. Pesticide applications may be affecting its foraging base, especially in coastal areas.

Due to its overall vulnerability, intense hurricanes are a significant threat; this threat is expected to continue or increase in the future. Intense storms can cause mortality during the storm, exposure to predation immediately following the storm, loss of roost sites, impacts on foraging areas and insect abundance, and disruption of the maternal period. Prolonged and repeated periods of cold temperatures may have severe impacts on the population and increase risks from other threats by weakening individuals, extirpating colonies, or further reducing colony sizes. Although disease is a significant threat for other bat species, it is not known to be a threat for the Florida bonneted bat at this time. The protection currently afforded the Florida bonneted bat is limited, provides little protection to the species' occupied habitat, and includes no provisions to protect suitable but unoccupied habitat within the vicinity of known colony sites. Overall, we find the magnitude of threats is high due to the severity of the threats to this species. We find that most of the threats are currently occurring and, consequently, overall, threats are imminent. Therefore, we assigned an LPN of 2 to this species.

Pacific sheath-tailed bat, American Samoa DPS (*Emballonura semicaudata semicaudata*)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. This small bat is a member of the Emballonuridae, an Old World bat family that has an extensive distribution, primarily in the tropics. The Pacific sheath-tailed bat was once common and widespread in Polynesia and Micronesia, and it is the only insectivorous bat recorded from a large part of this area. The species as a whole (*E. semicaudata*) occurred on several of the Caroline Islands (Palau, Chuuk, and Pohnpei), Samoa (Independent and American), the Mariana Islands (Guam and the Commonwealth of the Northern Mariana Islands (CNMI)), Tonga, Fiji, and Vanuatu. While populations appear to be healthy in some locations, mainly in the Caroline Islands, they have declined substantially in other areas, including Independent and American Samoa, the Mariana Islands, Fiji, and possibly Tonga. Scientists recognize four subspecies: *E. s. rotensis,* endemic to the Mariana Islands (Guam and CNMI); *E. s. sulcata,* occurring in Chuuk and Pohnpei; *E. s. palauensis,* found in Palau; and *E. s. semicaudata,* occurring in American and Independent Samoa, Tonga, Fiji, and Vanuatu. This candidate assessment addresses the distinct population segment (DPS) of *E. s. semicaudata* that occurs in American Samoa.

E. s. semicaudata historically occurred in American and Independent Samoa, Tonga, Fiji, and Vanuatu. It is extant in Fiji and Tonga, but may be extirpated from Vanuatu and Independent Samoa. There is some concern that it is also extirpated from American Samoa, the location of this DPS, where surveys are currently ongoing to ascertain its status. The factors that led to the decline of this subspecies and the DPS are poorly understood; however, current threats to this subspecies and the DPS include habitat loss, predation by introduced species, and its small population size and distribution, which make the taxon extremely vulnerable to extinction due to typhoons and similar natural catastrophes. Thus, since the threats affect the entire DPS, and would likely be permanent, the threats are high in magnitude. The Pacific sheath-tailed bat may also be susceptible to disturbance to roosting caves. The LPN for *E. s. semicaudata* is 3 because the magnitude of the threats is high; the threats are ongoing, and therefore imminent; and the taxon is a distinct population segment of a subspecies.

Pacific sheath-tailed bat (*Emballonura semicaudata rotensis*), Guam and the Commonwealth of the Northern Mariana Islands (CNMI)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. This small bat is a member of the Emballonuridae, an Old World bat family that has an extensive distribution, primarily in the tropics.

The Pacific sheath-tailed bat was once common and widespread in Polynesia and Micronesia, and it is the only insectivorous bat recorded from a large part of this area. *E. s. rotensis* is historically known from the Mariana Islands and formerly occurred on Guam and in the CNMI on Rota, Aguiguan, Tinian (known from prehistoric records only), Saipan, and possibly Anatahan and Maug. Currently, *E. s. rotensis* appears to be extirpated from all but one island in the Mariana archipelago. The single remaining population of this subspecies occurs on Aguiguan, CNMI.

Threats to this subspecies have not changed over the past year. The primary threats to the subspecies are ongoing habitat loss and degradation as a result of feral goat (*Capra hircus*) activity on the island of Aguiguan and the taxon's small population size and limited distribution. Predation by nonnative species and human disturbance are also potential threats to the subspecies. The subspecies is believed near the point where stochastic events, such as typhoons, are increasingly likely to affect its continued survival. The disappearance of the remaining population on Aguiguan would result in the extinction of the subspecies. Thus, since the threats affect the entire subspecies, and would likely be permanent, the threats are high in magnitude. The LPN for *E. s. rotensis* remains at 3 because the magnitude of the threats is high; the threats are ongoing, and therefore imminent; and the taxon is a subspecies.

New England cottontail (*Sylvilagus transitionalis*)—The following summary is based on information contained in our files and information received in response to our notice published on June 30, 2004, when we announced our 90-day petition finding and initiation of a status review (69 FR 39395). We received the petition on August 30, 2000.

The New England cottontail (NEC) is a medium- to large-sized cottontail rabbit that may reach 1,000 grams in weight, and is one of two species within the genus *Sylvilagus* occurring in New England. NEC is considered a habitat specialist, in so far as it is dependent upon early-successional habitats typically described as thickets. The species is the only endemic cottontail in New England. Historically, the NEC occurred in seven States and ranged from southeastern New York (east of the Hudson River) north through the Champlain Valley, southern Vermont, the southern half of New Hampshire, and southern Maine and south throughout Massachusetts, Connecticut, and Rhode Island. The current range of the NEC has declined substantially, and occurrences have become increasingly separated. The species' distribution is fragmented into five apparently isolated metapopulations. The area occupied by the cottontail has contracted from approximately 90,000 sq km to 12,180 sq km. Surveys indicate that the long-term decline in NEC continues. For example, surveys for the species in 2009 documented the presence of NEC in only 7 of the 23 New Hampshire locations that were known to be occupied in 2002 and 2003. Similarly, surveys in Maine found the species no longer present in 9 of the 19 towns identified in an extensive survey that spanned the years 2000 to 2004. Similar surveys were conducted during the winter of 2010–2011 in Rhode Island, but the results are not yet available. Rangewide, it is estimated that less than one third of the occupied sites occur on lands in conservation status and fewer than 10 percent are being managed for early-successional forest species.

The primary threat to the NEC is loss of habitat through succession and alteration. Isolation of occupied patches by areas of unsuitable habitat and high predation rates are resulting in local extirpation of NECs from small patches. The range of the NEC has contracted by 75 percent or more since 1960, and current land uses in the region indicate that the rate of change, about 2 percent range loss per year, will continue. Additional threats include competition for food and habitat with introduced eastern cottontails and large numbers of native white-tailed deer, inadequate regulatory mechanisms to protect habitat, and mortality from predation. The magnitude of the threats continues to be high, because they occur rangewide and have a negative effect on the survival of the species. The threats are imminent because they are ongoing. Thus, we retained an LPN of 2 for this species. Conservation measures that address the threats to the species are being developed.

Fisher, West Coast DPS (*Martes pennanti*)—The following summary is based on information in our files and in the Service's initial warranted-but-precluded finding published in the **Federal Register** on April 8, 2004 (69 FR 18770). The fisher is a carnivore in the family Mustelidae, and is the largest member of the genus *Martes.* Historically, the West Coast population of the fisher extended south from British Columbia into western Washington and Oregon, and in the North Coast Ranges, Klamath-Siskiyou Mountains, and Sierra Nevada in California. Because of a lack of detections with standardized survey efforts over much of the fisher's historical range, the fisher is believed to be extirpated or reduced to scattered individuals from the lower mainland of British Columbia through Washington and northern Oregon and in the central and northern Sierra Nevada in California. Native extant populations of fisher are isolated to the North Coast of California, the Klamath-Siskiyou Mountains of northern California and southern Oregon, and the southern Sierra Nevada in California. Descendents of a fisher reintroduction effort also occur in the southern Cascades in Oregon. The Washington Department of Fish and Wildlife in conjunction with the Olympic National Park has completed the third year of a reintroduction effort as the State's first step in implementing their recovery goals for fisher. The California Department of Fish and Game and other collaborators are in the second year of their translocation efforts into the northern Sierra Nevada. Both of the reintroduction efforts still need several years to determine if populations are successfully established. Estimates of fisher numbers in native populations of the West Coast DPS vary widely. A rigorous monitoring program is lacking for the northern California-southwestern Oregon and southern Oregon Cascades populations, making estimates of fisher numbers for these two populations difficult. The fisher monitoring program in the southern Sierra Nevada population has provided preliminary estimates indicating no decline in the index of abundance within the monitored portion of the population. The two populations of native fisher in the northern California southern Oregon and southern Sierra Nevada are separated by four times the species' maximum dispersal distance. The extant fisher populations are either small (southern Sierra Nevada and southern Oregon Cascades) or isolated from one another or both.

Major threats that fragment or remove key elements of fisher habitat include various forest vegetation management practices such as timber harvest and fuels reduction treatments. Other potential major threats in portions of the range include: Large stand-replacing wildfires, changes in forest composition and structure related to the effects of climate change, forest and fuels management, and urban and rural development. Threats to fishers that lead to direct mortality and injury include: Collisions with vehicles; predation; rodenticides; and viral borne diseases such as rabies, parvovirus, and canine distemper. Existing regulatory mechanisms on Federal, State, and

private lands do not provide sufficient protection for the key elements of fisher habitat, or the certainty that conservation efforts will be effective or implemented. The magnitude of threats is high as they occur across the range of the DPS resulting in negative impacts on fisher distribution and abundance. However, the threats are nonimminent as the greatest long-term risks to the fisher in its west coast range are the subsequent ramifications of the isolation of small populations and their interactions with the listed threats. Therefore, we assigned an LPN of 6 to this DPS.

New Mexico meadow jumping mouse (*Zapus hudsonius luteus*)—The following summary is based on information contained in our files and the petition we received on October 15, 2008. The New Mexico meadow jumping mouse (jumping mouse) is endemic to New Mexico, Arizona, and a small area of southern Colorado. The jumping mouse nests in dry soils but uses moist, streamside, dense, riparian/wetland vegetation. Recent genetic studies confirm that the New Mexico meadow jumping mouse is a distinct subspecies from other *Zapus hudsonius* subspecies, confirming the currently accepted subspecies designation.

The threats that have been identified are excessive grazing pressure, water use and management, highway reconstruction, development, recreation, and beaver removal.

Since the early to mid-1990s, over 100 historical localities have been surveyed. Currently only 25 are believed to be extant including 1 in Colorado, 11 in New Mexico (including one that is contiguous with another Colorado locality), and 13 in Arizona. Moreover, the highly fragmented nature of its distribution is also a major contributor to the vulnerability of this species and increases the likelihood of very small, isolated populations being extirpated. The insufficient number of secure populations, and the destruction, modification, or curtailment of its habitat, continue to pose the most immediate threats to this species. Because the threats affect the jumping mouse in all but two of the extant localities, and the populations are small and fragmented, the impact of the threats on the species is of high severity. Thus, the threats are of a high magnitude. These threats are currently occurring and, therefore, are imminent. Thus, we continue to assign an LPN of 3 to this subspecies.

Mazama pocket gopher (*Thomomys mazama* ssp. *couchi, douglasii, glacialis, louiei, melanops, pugetensis, tacomensis, tumuli, yelmensis*) — We continue to find that listing this species is warranted but precluded as of the date of publication of this notice. However, we are working on a proposed listing rule that we expect to publish prior to making the next annual resubmitted petition 12-month finding.

Canada lynx, within the State of New Mexico (*Lynx canadensis*)—In our finding of December 17, 2009 (74 FR 66937), we determined that adding the lynx in New Mexico to the listing of the lynx DPS was warranted, because the lynx is now present in the state as a result of the Colorado reintroduction effort, and we assigned an LPN of 12 to amending the listing of lynx to include New Mexico. We reconfirm that assigning an LPN of 12 is appropriate based on nonimminent threats of a low magnitude. The threats to the lynx in New Mexico from human-caused mortality are low in magnitude, because they do not occur at a level that creates a significant threat to the lynx DPS in the contiguous United States. We do not consider lynx in New Mexico, or its habitat in New Mexico, to be essential to the survival or recovery of the DPS; as a result, neither human-caused mortality nor habitat modification in New Mexico occurs at a level such that it creates a significant threat to the lynx DPS in the contiguous United States. Potential impacts to the habitat in New Mexico have not been documented to threaten lynx, either in New Mexico or outside of it. The amount of suitable habitat for lynx in New Mexico is considered negligible relative to the amount of habitat within the listed range, and the majority of lynx habitats within the contiguous United States are already protected by the Act. The threats are also nonimminent, because they occur infrequently. Because lynx in the lower 48 are already listed as a DPS and conditions affecting the lynx in New Mexico are neither imminent nor of sufficient magnitude to pose a threat to the lynx DPS throughout the contiguous United States, the appropriate LPN for this level of magnitude and immediacy of threats is 12.

Gunnison's prairie dog (*Cynomys gunnisoni*)—Gunnison's prairie dogs occur in Arizona, Colorado, New Mexico, and Utah. In our February 5, 2008, 12-month finding (73 FR 6660), we determined that listing the Gunnison prairie dog was warranted but precluded, with an LPN of 6, due to threats in a significant portion of its range—the montane portion of the species' range within Colorado and New Mexico—where the effects from plague and other factors threaten those populations. This finding was challenged by WildEarth Guardians in September of 2008. On September 30, 2010, the Court set aside our 2008 finding and remanded the matter back to us for further action. The Court found that we arbitrarily and capriciously ''determined that something other than a species was an endangered or threatened species which warranted listing.''

In response to the decision of the Court, we will reevaluate the status of the Gunnison's prairie dog and deliver a revised 12-month finding to the **Federal Register**. However, we are currently unable to complete a status review due to budget and workload limitations. Furthermore, initiating a revised status review for the species would be premature at this time because of a significant ongoing genetics study initiated by the Colorado Division of Wildlife (CDOW) addressing Gunnison's prairie dog taxonomy. CDOW indicates preliminarily that this work strongly supports the existence of genetic differences between Gunnison's prairie dogs in the montane and prairie portions of its range indicating that they may constitute two putative subspecies. We anticipate the analysis of these data will likely be completed by the fall of 2011 and we will evaluate the information thereafter. It is critical for us to consider this potentially significant taxonomic revision in our revised status review after the CDOW releases its final genetics report. Gunnison's prairie dogs will remain a candidate within the montane portion of their range until we complete this analysis.

Southern Idaho ground squirrel (*Spermophilus brunneus endemicus*)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. The southern Idaho ground squirrel is endemic to four counties in southwest Idaho; its total known range is approximately 426,000 hectares (1,050,000 acres). Threats to southern Idaho ground squirrels include: Habitat degradation and fragmentation; direct killing from shooting, trapping, or poisoning; predation; competition with Columbian ground squirrels; and inadequacy of existing regulatory mechanisms. Habitat degradation and fragmentation appear to be the primary threats to the species. Nonnative annuals now dominate much of this species' range, have changed the species composition of vegetation used as forage for the southern Idaho ground squirrel, and have altered the fire regime by accelerating the frequency of wildfire. Nonnative annuals do not provide

consistent forage quality for southern Idaho ground squirrels as compared to the native vegetation. Habitat deterioration, destruction, and fragmentation contribute to the current patchy distribution of southern Idaho ground squirrels. However, some human-altered landscapes, such as golf courses and row crops of alfalfa, seem to provide habitat sufficient to maintain high densities of southern Idaho ground squirrels.

Two candidate conservation agreements with assurances (CCAAs) have been completed for this species. Both CCAAs include conservation measures that minimize ground-disturbing activities, allow for the investigation of methods to restore currently degraded habitat, provide additional protection to southern Idaho ground squirrels from recreational shooting and other direct killing on enrolled lands, and also allow for the translocation of squirrels to or from enrolled lands, if necessary. The acreage enrolled through these two CCAAs is 38,000 ha (94,000 ac), or approximately 9 percent of the approximate known range. While the ongoing conservation efforts have helped to reduce the magnitude of threats to moderate, habitat degradation remains the primary threat to the species throughout most of its range. This threat is imminent due to the ongoing and increasing prevalence of nonnative vegetation, and the current patchy distribution of the species. Thus, we assign an LPN of 9 to this subspecies.

Washington ground squirrel (*Spermophilus washingtoni*)—The following summary is based on information contained in our files and in the petition we received on March 2, 2000. The Washington ground squirrel is endemic to the Deschutes-Columbia Plateau sagebrush-steppe and grassland communities in eastern Oregon and south-central Washington. Although widely abundant historically, recent surveys suggest that its current range has contracted toward the center of its historical range. Approximately two-thirds of the Washington ground squirrel's total historical range has been converted to agricultural and residential uses. The most contiguous, least-disturbed expanse of suitable habitat within the species' range occurs on a site owned by Boeing, Inc., and on the Naval Weapons Systems Training Facility near Boardman, Oregon. In Washington, the largest expanse of known suitable habitat occurs on State and Federal lands.

Agricultural, residential, and wind power development, among other forms of development, continue to eliminate Washington ground squirrel habitat in portions of its range. Throughout much of its range, Washington ground squirrels are threatened by the establishment and spread of invasive plant species, particularly cheatgrass, which alter available cover and food quantity and quality, and increase fire intervals. Additional threats include habitat fragmentation, recreational shooting, genetic isolation and drift, and predation. Potential threats include disease, drought, and possible competition with related species in disturbed habitat at the periphery of their range. In Oregon, some threats are being addressed as a result of the State listing of this species, and by implementation of the Threemile Canyon Farms Multi-Species CCAA. In Washington, there are currently no formal agreements with private landowners or with State or Federal agencies to protect the Washington ground squirrel. Additionally, no State or Federal management plans have been developed that specifically address the needs of the species or its habitat. Since current and potential threats are widespread, and, in some areas, severe, we conclude the magnitude of threats remains high. The Washington ground squirrel has both imminent and nonimminent threats. At a range-wide scale, we conclude the threats are nonimminent based largely on the following: The CCAA addressed the imminent loss of a large portion of habitat to agriculture; there are no other large-scale efforts to convert suitable habitat to agriculture; and wind power project impacts can be minimized through compliance with the Oregon State Endangered Species Act (OESA) and/or the Columbia Basin Ecoregion wind energy siting and permitting guidelines. We also consider the potential development of shooting ranges on the Naval Weapons Systems Training Facility as nonimminent, because the proposed action is still being developed, making us unable to assess its timing and impact, which could be minimized through compliance with the OESA. We, therefore, have retained an LPN of 5 for this species.

North American wolverine, contiguous U.S. DPS (*Gulo gulo luscus*)—The following summary is based on information contained in our files, in the petition received July 13, 2000 and in our initial warranted-but-precluded finding published in the **Federal Register** on December 14, 2010 (75 FR 78030). The wolverine is a terrestrial mammal that occurs in a wide variety of alpine, boreal, and arctic habitats. Wolverines naturally occur at low densities, and require cold areas that maintain deep, persistent snow cover into the warm season for successful denning. Within the contiguous United States, which constitutes a DPS, wolverine habitat is restricted to high-elevation areas in the West. Their current distribution includes functioning populations in the North Cascades Mountains and the northern Rocky Mountains, as well as populations that have not yet reestablished in the southern Rocky Mountains and the Sierra Nevada. The primary threat to this DPS is from habitat and range loss due to climate warming. Climate changes are predicted to reduce wolverine habitat and range by 23 percent over the next 30 years, and 63 percent over the next 75 years, rendering remaining habitat significantly smaller and more fragmented. This increased fragmentation and isolation of subpopulations is expected to limit the regular dispersal of wolverines that is necessary to maintain genetic exchange and metapopulation dynamics. Other secondary threats to the wolverine that could work in concert with climate change include harvest, disturbance, infrastructure, transportation corridors, and small effective population sizes. The primary threat of habitat and range loss due to climate change would affect wolverine habitat across the entire DPS and, therefore, the magnitude of threats to the wolverine is high. However climate change has not yet had a detectable effect on the DPS to this point in time; the threat is nonimminent. Therefore, we have assigned the wolverine contiguous U.S. DPS an LPN of 6.

Birds

Spotless crake, American Samoa DPS (*Porzana tabuensis*)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. *Porzana tabuensis* is a small, dark, cryptic rail found in wetlands and rank scrub or forest in the Philippines, Australia, Fiji, Tonga, Society Islands, Marquesas, Independent Samoa, and American Samoa (Ofu, Tau). The genus *Porzana* is widespread in the Pacific, where it is represented by numerous island-endemic and flightless species (many of which are extinct as a result of anthropogenic disturbances) as well as several more cosmopolitan species, including *P. tabuensis.* No subspecies of *P. tabuensis* are recognized.

The American Samoa population is the only population of spotless crakes

under U.S. jurisdiction. The available information indicates that distinct populations of the spotless crake, a species not noted for long-distance dispersal, are definable. The population of spotless crakes in American Samoa is discrete in relation to the remainder of the species as a whole, which is distributed in widely separated locations. Although the spotless crake (and other rails) have dispersed widely in the Pacific, island rails have tended to reduce or lose their power of flight over evolutionary time and so become isolated (and vulnerable to terrestrial predators such as rats). The population of this species in American Samoa is therefore distinct based on geographic and distributional isolation from spotless crake populations on other islands in the oceanic Pacific, the Philippines, and Australia. The American Samoa population of the spotless crake links the Central and Eastern Pacific portions of the species' range. The loss of this population would result in an increase of roughly 500 miles (805 kilometers) in the distance between the central and eastern Polynesian portions of the spotless crake's range, and could result in the isolation of the Marquesas and Society Islands populations by further limiting the potential for even rare genetic exchange. Based on the discreteness and significance of the American Samoa population of the spotless crake, we consider this population to be a distinct vertebrate population segment.

Threats to this population have not changed over the past year. The population in American Samoa is threatened by small population size, limited distribution, predation by nonnative and native animals, continued development of wetland habitat, and natural catastrophes such as hurricanes. The co-occurrence of a known predator of ground-nesting birds, the Norway rat (*Rattus norvegicus*), and native predators, including the Pacific boa (*Candoia bibroni*) and the purple swamphen (*Porphyrio porphyrio*), along with the extremely restricted observed distribution and low numbers, indicate that the magnitude of the threats to the American Samoa DPS of the spotless crake continues to be high, because the threats have a significant likelihood of bringing about extinction on a short time frame. The threats are ongoing, and therefore imminent. Based on this assessment of existing information about the imminence and high magnitude of these threats, we assigned the spotless crake an LPN of 3.

Yellow-billed cuckoo, western U.S. DPS (*Coccyzus americanus*)—We continue to find that listing this species is warranted, but precluded as of the date of publication of this notice. However, we are working on a proposed listing rule that we expect to publish prior to making the next annual resubmitted petition 12-month finding.

Friendly ground-dove, American Samoa DPS (*Gallicolumba stairi*)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. The genus *Gallicolumba* is distributed throughout the Pacific and Southeast Asia. The genus is represented in the oceanic Pacific by six species: Three are endemic to Micronesian islands or archipelagos, two are endemic to island groups in French Polynesia; and *G. stairi* is endemic to Samoa, Tonga, and Fiji. Some authors recognize two subspecies of the friendly ground-dove, one, slightly smaller, in the Samoan archipelago (*G. s. stairi*); and one in Tonga and Fiji (*G. s. vitiensis*). However, because morphological differences between the two are minimal, we are not recognizing separate subspecies at this time.

In American Samoa, the friendly ground-dove has been found on the islands of Ofu and Olosega (Manua Group). Threats to this subspecies have not changed over the past year. Predation by nonnative species and natural catastrophes such as hurricanes are the primary threats to the subspecies. Of these, predation by nonnative species is thought to be occurring now and likely has been occurring for several decades. This predation may be an important impediment to increasing the population. Predation by introduced species has played a significant role in reducing, limiting, and extirpating populations of island birds, especially ground-nesters like the friendly ground-dove, in the Pacific and other locations worldwide. Nonnative predators known or thought to occur in the range of the friendly ground-dove in American Samoa are feral cats (*Felis catus*), Polynesian rats (*Rattus exulans*), black rats (*R. rattus*), and Norway rats (*R. norvegicus*).

In January 2004 and February 2005, hurricanes virtually destroyed the habitat of *G. stairi* in the area on Olosega Island where the species had been most frequently recorded. Although this species has coexisted with severe storms for millennia, this example illustrates the potential for natural disturbance to exacerbate the effects of anthropogenic disturbance on small populations. Consistent monitoring using a variety of methods over the last 5 years yielded few observations and no change in the relative abundance of this taxon in American Samoa. The total population size is poorly known, but is unlikely to number more than a few hundred pairs. The distribution of the friendly ground-dove is limited to steep, forested slopes with an open understory and a substrate of fine scree or exposed earth; this habitat is not common in American Samoa. The threats are ongoing, and therefore imminent, and the magnitude is moderate because the relative abundance has remained the same for several years. Thus, we assign this subspecies an LPN of 9.

Streaked horned lark (*Eremophila alpestris strigata*)—We continue to find that listing this species is warranted, but precluded as of the date of publication of this notice. However, we are working on a proposed listing rule that we expect to publish prior to making the next annual resubmitted petition 12-month finding.

Red knot (*Calidris canutus rufa*)—The following summary is based on information contained in our files and information provided by petitioners. Four petitions to emergency list the red knot have been received: one on August 9, 2004, two others on August 5, 2005, and the most recent on February 27, 2008. The *rufa* subspecies is one of six recognized subspecies of red knot and one of three subspecies occurring in North America. This subspecies makes one of the longest distance migrations known in the animal kingdom, as it travels between breeding areas in the central Canadian Arctic and wintering areas that are primarily in southern South America along the coast of Chile and Argentina. They migrate along the Atlantic coast of the United States, where they may be found from Maine to Florida.

The Delaware Bay area (in Delaware and New Jersey) is the largest known spring migration stopover area, with far fewer migrants congregating elsewhere along the Atlantic coast. The concentration in the Delaware Bay area occurs from the middle of May to early June, corresponding to the spawning season of horseshoe crabs. The knots feed on horseshoe crab eggs, rebuilding energy reserves needed to complete migrations to the Arctic and arrive on the breeding grounds in good condition. In the past, horseshoe crab eggs at Delaware Bay were so numerous that a red knot could dependably eat enough in 2 to 3 weeks to double its weight.

Surveys at wintering areas and at Delaware Bay during spring migration indicate a substantial decline in the red knot in recent years. At the Delaware Bay area, peak counts between 1982 and 1998 were as high as 95,360 individuals.

Counts may vary considerably between years. Some of the fluctuations can be attributed to predator-prey cycles on the breeding grounds, and counts show that knots rebound from such reductions. Peak counts of red knots observed during aerial surveys flown in Delaware Bay from 2004 to 2008 were consistently below 16,000 birds, with an all time low of only 12,375 red knots found in 2007. In recent years, the highest concentrations of red knots at the Delaware Bay stopover have been within Mispillion Harbor, Delaware, an area that has likely been undercounted during past aerial surveys.

Beginning in 2009, a new survey methodology was implemented for the Delaware Bay stopover area to include ground counts that more accurately reflect concentrations of red knots using Mispillion Harbor and to include aerial surveys of red knots using Atlantic coastal marshes near Stone Harbor, New Jersey. The highest count using the new methodology showed 27,187 red knots in Delaware and 900 in New Jersey, for a total count of 28,087 birds. Poor weather conditions in 2009 prevented aerial surveys during the period when red knots were thought to be at a peak, so no comparison with the past aerial survey peak count method was possible. While the number of red knots using Delaware Bay likely increased in 2009, much of the increase is attributed to improved survey methods and an expanded area of coverage. In 2010, the peak aerial count of red knots was 14,475; however, flight delays and scheduling issues prevented simultaneous aerial and ground counts, so aerial counts could not be calibrated. Further analysis is needed to correlate peak counts using the new methodology with the past aerial-survey-only counts.

Counts in recent years in South America also are substantially lower than in the past. In the mid-1980s, an estimated 67,500 red knots were observed from Tierra del Fuego, Chile, and along the coast of Argentina to northern Patagonia. Since 2003, the largest concentrations of red knots have occurred at the principal wintering areas in Bahia Lomas and other portions of Tierra del Fuego and southern Patagonia, with few birds found farther north along the coast of Argentina. More than 50,000 red knots were counted in the principal winter areas in 1985 and 2000. Since 2005, fewer than 18,000 have been counted within the same area, with only 16,260 red knots observed in 2010.

The primary threat to the red knot has been attributed to destruction and modification of its habitat, particularly the reduction in key food resources resulting from reductions in horseshoe crabs, which are harvested primarily for use as bait and secondarily to support a biomedical industry. Commercial harvest increased substantially in the 1990s. Research shows that, since 1998, a high proportion of red knots leaving the Delaware Bay failed to achieve threshold departure masses needed to fly to breeding grounds and survive an initial few days of snow cover, and this corresponded to reduced annual survival rates and reduced reproductive success. Since 1999, to protect the Atlantic coast population of the horseshoe crab and to increase availability of horseshoe crab eggs in Delaware Bay for hemispheric migratory shorebird populations, a series of timing restrictions and substantially lower harvest quotas have been adopted by the Atlantic States Marine Fisheries Commission, as well as by the States of New Jersey, Delaware, and Maryland. In March 2008, New Jersey passed legislation imposing a moratorium on horseshoe crab harvest or landing within the State until the red knot has fully recovered.

The reductions in commercial horseshoe crab harvest by Atlantic coastal States since 1999 are substantial. From 2004 to 2009, annual landings of horseshoe crabs have been reduced by over 70 percent from the reference period landings of the mid to late 1990s. For Delaware and New Jersey, horseshoe crab landings for bait have decreased from 726,660 reported in 1999, to a preliminary number of 102,659 in Delaware and none in New Jersey in 2009. No horseshoe crabs have been landed for bait in New Jersey since 2007, as a result of the State-imposed harvest moratorium. In the Delaware Bay area, continued recruitment of small horseshoe crabs has been observed, with a substantial increase in numbers of the smallest sizes of immature males and females in 2009 over previous years. The continued increase in immature males and females would be expected in a recovering population and suggests recent harvest restrictions may be having the desired effect, but it may be several more years until this increase is realized in spawning age adults, as horseshoe crabs need 8 to 10 years to reach sexual maturity.

Other identified threat factors include habitat destruction due to beach erosion and various shoreline protection and stabilization projects that are affecting areas used by migrating knots for foraging, the inadequacy of existing regulatory mechanisms, human disturbance, and competition with other species for limited food resources. Also, the concentration of red knots in the Delaware Bay areas and at a relatively small number of wintering areas makes the species vulnerable to potential large-scale events such as oil spills or severe weather. Overall, we conclude that the threats, in particular the modification of habitat through the effects, particularly of the past, harvesting of horseshoe crabs, are severe enough to put the viability of the red knot at substantial risk and are therefore of a high magnitude. The threats are currently occurring and therefore imminent because of continuing suppressed horseshoe-crab-egg forage conditions for the red knot within the Delaware Bay stopover. Based on imminent threats of a high magnitude, we retain an LPN of 3 for this species.

Yellow-billed loon (*Gavia adamsii*)—The following summary is based on information contained in our files and the petition we received on April 5, 2004. The yellow-billed loon is a migratory bird. Solitary pairs breed on lakes in the arctic tundra of the United States, Russia, and Canada from June to September. During the remainder of the year, the species winters in more southern coastal waters of the Pacific Ocean and the Norway and North Seas.

During most of the year, individual yellow-billed loons are so widely dispersed that high adult mortality from any single factor is unlikely. However, during migration, yellow-billed loons are more concentrated, and hundreds are likely subject to subsistence harvest, based on the best available information; the population could decline substantially if such harvest continues. Future subsistence harvest in Alaska, by itself, constitutes a threat to the species rangewide. This subsistence harvest is occurring despite the species being closed to hunting under the Migratory Bird Treaty Act (16 U.S.C. 703–712). In addition, up to several hundred yellow-billed loons may be taken annually on Russian breeding grounds, and small numbers of yellow-billed loons may be taken in Canada. Other risk factors evaluated were found to be threats to the species; these included oil and gas development (i.e., disturbance, changes in freshwater chemistry and pollutant loads, and changes in freshwater hydrology); pollution; overfishing; climate change; vessel traffic; commercial- and subsistence-fishery bycatch; and contaminants other than those associated with oil and gas. Although these other risk factors may not rise to the level of a threat individually, when taken collectively with the effects of subsistence hunting in other areas, they may reduce the rangewide population even further. The

primary threat of subsistence harvest is currently occurring and one or more of the threats discussed above is occurring throughout the range of the yellow-billed loon, either in its breeding or wintering grounds, or during migration; therefore, the threats are imminent. The magnitude of the primary threat to the species, subsistence harvest, is moderate. Although subsistence harvest is ongoing, the numbers taken have varied substantially between years; however, we have concerns about the accuracy and precision of the numbers reported in harvest surveys. Thus, we assigned the yellow-billed loon an LPN of 8.

Kittlitz's murrelet (*Brachyramphus brevirostris*)—See above in ''Listing Priority Changes in Candidates.'' The above summary is based on information contained in our files.

Xantus's murrelet (*Synthliboramphus hypoleucus*)—The following summary is based on information contained in our files and the petition we received on April 16, 2002. The Xantus's murrelet is a small seabird in the family Alcidae that occurs along the west coast of North America in the United States, Mexico, and Canada. The species has a limited breeding distribution, only nesting on the Channel Islands in southern California and on islands off the west coast of Baja California, Mexico. Although data on population trends are scarce, the population is suspected to have declined greatly over the last century, mainly due to predators such as rats (*Rattus* sp.) and feral cats (*Felis catus*) introduced to nesting islands, with possible extirpations on three islands in Mexico. A dramatic decline (up to 70 percent) from 1977 to 1991 was detected at the largest nesting colony in southern California, possibly due to high levels of predation on eggs by the endemic deer mouse (*Peromyscus maniculatus elusus*). Identified threats include introduced predators at nesting colonies, oil spills and oil pollution, reduced prey availability, human disturbance, and artificial light pollution.

Although substantial declines in the Xantus's murrelet population likely occurred over the last century, some of the largest threats are being addressed, and, to some degree, ameliorated. Declines and possible extirpations at several nesting colonies were thought to have been caused by nonnative predators, which have been removed from many of the islands where they once occurred. Most notably, since 1994, Island Conservation and Ecology Group has systematically removed rats, cats, and dogs from every murrelet nesting colony in Mexico, with the exception of cats and dogs on Guadalupe Island. In 2002, rats were eradicated from Anacapa Island in southern California, which has resulted in improvements in reproductive success at that island. In southern California, efforts to restore nesting habitat on Santa Barbara Island through the Montrose Settlements Restoration Project may benefit the Xantus's murrelet population at that island.

Artificial lighting from squid fishing and other vessels, or lights on islands, remains a potential threat to the species. Bright lights make Xantus's murrelets more susceptible to predation, and they can also become disoriented and exhausted from continual attraction to bright lights. Chicks can become disoriented and separated from their parents at sea, which could result in death of the dependent chicks. High-wattage lights on commercial market squid (*Loligo opalescens*) fishing vessels used at night to attract squid to the surface of the water in the Channel Islands was the suspected cause of unusually high predation on Xantus's murrelets by western gulls (*Larus occidentalis*) and barn owls (*Tyto alba*) at Santa Barbara Island in 1999. To address this threat, in 2000, the California Fish and Game Commission required light shields and a limit of 30,000 watts per boat; it is unknown if this is sufficient to reduce impacts. Since 1999, no significant squid fishing has occurred near any of the colonies in the Channel Islands; however, this remains a potential future threat.

A proposal to build three liquid natural gas facilities near the Channel Islands could affect the nesting colonies due to bright lights at night from the facility and visiting tanker vessels, noise from the facilities or from helicopters visiting the facilities, and the threat of oil spills associated with visiting tanker vessels. However, these facilities are early in the complex and long-term planning processes, and it is possible that none of these facilities will be built. In addition, none of them is directly adjacent to nesting colonies, where the impacts would be expected to be more significant. The remaining threats to the species are of a high magnitude, because they have the potential to compromise the only nesting areas for the species. However, because the liquid natural gas facilities are early in the planning process and may not be completed and currently, little squid fishing vessels occurs near the nesting colonies, the threats are nonimminent. Therefore, we retained a LPN of 5 for this species.

Sprague's pipit (*Anthus spragueii*)—See above in ''Listing Priority Changes in Candidates.'' The above summary is based on information contained in our files.

Lesser prairie-chicken (*Tympanuchus pallidicinctus*)—We continue to find that listing this species is warranted, but precluded as of the date of publication of this notice. However, we are working on a proposed listing rule that we expect to publish prior to making the next annual resubmitted petition 12-month finding.

Gunnison sage-grouse (*Centrocercus minimus*)—We continue to find that listing this species is warranted, but precluded as of the date of publication of this notice. However, we are working on a proposed listing rule that we expect to publish prior to making the next annual resubmitted petition 12-month finding.

Greater sage-grouse (*Centrocercus urophasianus)*—The following summary is based on information in our files and in the petition we received on January 30, 2002. Currently, greater sage-grouse occur in 11 States (Washington, Oregon, California, Nevada, Idaho, Montana, Wyoming, Colorado, Utah, South Dakota, and North Dakota), and 2 Canadian provinces (Alberta and Saskatchewan), occupying approximately 56 percent of their historical range. Greater sage-grouse depend on a variety of shrub-steppe habitats throughout their life cycle, and are considered obligate users of several species of sagebrush. The primary threat to greater sage-grouse is ongoing fragmentation and loss of shrub-steppe habitats through a variety of mechanisms. Most importantly, increasing fire cycles and invasive plants (and the interaction between them) in more westerly parts of the range, along with energy development and related infrastructure in more easterly areas are negatively affecting species' persistence. In addition, direct loss of habitat and fragmentation is occurring due to agriculture, urbanization, and infrastructure such as roads and power lines built in support of several activities. We also have determined that existing regulatory mechanisms are inadequate to protect the species from these ongoing threats. However, many of these habitat impacts are being actively addressed through conservation actions taken by local working groups, and State and Federal agencies. Notably, the National Resource Conservation Service has committed significant financial and technical resources to address threats to this species on private lands through their Sage-grouse Initiative. These efforts, when fully implemented, will potentially provide important conservation benefits to the greater sage-

grouse and its habitats. We consider the threats to the greater sage-grouse to be of moderate magnitude, because the threats are not occurring with uniform intensity or distribution across the wide range of the species at this time, and substantial habitat still remains to support the species in many areas. The threats are imminent because the species is currently facing them in many portions of its range. Therefore, we assigned the greater sage-grouse an LPN of 8.

Greater sage-grouse, Bi-State DPS (*Centrocercus urophasianus*) — We continue to find that listing this species is warranted, but precluded as of the date of publication of this notice. However, we are working on a proposed listing rule that we expect to publish prior to making the next annual resubmitted petition 12-month finding.

Greater sage-grouse, Columbia Basin DPS (*Centrocercus urophasianus*)—The following summary is based on information in our files and a petition, dated May 14, 1999, requesting the listing of the Washington population of the western sage-grouse (*C. u. phaios*). On May 7, 2001, we concluded that listing the Columbia Basin DPS of the western sage-grouse was warranted, but precluded by higher priority listing actions (66 FR 22984); this population was historically found in northern Oregon and central Washington. Following our May 7, 2001, finding, the Service received additional petitions requesting listing actions for various other greater sage-grouse populations, including one for the nominal western subspecies, dated January 24, 2002, and three for the entire species, dated June 18, 2002, and March 19 and December 22, 2003. The Service subsequently found that the petition for the western subspecies did not present substantial information (68 FR 6500; February 7, 2003), and that listing the greater sage-grouse throughout its historical range was not warranted (70 FR 2244; January 12, 2005). These two findings were challenged, and remanded to the Service for further consideration. In response, we initiated a new rangewide status review for the entire species (73 FR 10218; February 26, 2008). On March 5, 2010, we found that listing of the greater sage-grouse was warranted but precluded by higher priority listing actions (75 FR 13910; March 23, 2010), and it was added to the list of candidates. We also found that the western subspecies of the greater sage-grouse, the taxonomic entity on which we based our DPS analysis for the Columbia Basin population, was no longer considered a valid subspecies. In light of our conclusions regarding the invalidity of the western sage-grouse subspecies, we will now need to analyze the significance of the Columbia Basin DPS to the greater sage-grouse. As priorities allow, the Service intends to complete an analysis to determine if this population continues to warrant recognition as a DPS in accordance with our Policy Regarding the Recognition of Distinct Vertebrate Population Segments (61 FR 4722; February 7, 1996). Until that time, the Columbia Basin DPS will remain a candidate for listing as a separate population of sage-grouse. Even if this population does not meet our DPS policy, the sage-grouse population in the Columbia Basin will remain a candidate for listing as part of the process for listing the greater sage-grouse entity.

Band-rumped storm-petrel, Hawaii DPS (*Oceanodroma castro*)—The following summary is based on information contained in our files and the petition we received on May 8, 1989. No new information was provided in the second petition received on May 11, 2004. The band-rumped storm-petrel is a small seabird that is found in several areas of the subtropical Pacific and Atlantic Oceans. In the Pacific, there are three widely separated breeding populations: one in Japan, one in Hawaii, and one in the Galapagos. Populations in Japan and the Galapagos are comparatively large and number in the thousands, while the Hawaiian birds represent a small, remnant population of possibly only a few hundred pairs. Band-rumped storm-petrels are most commonly found in close proximity to breeding islands. The three populations in the Pacific are separated by long distances across the ocean where birds are not found. Extensive at-sea surveys of the Pacific have revealed a broad gap in distribution of the band-rumped storm-petrel to the east and west of the Hawaiian Islands, indicating that the distribution of birds in the central Pacific around Hawaii is disjunct from other nesting areas. The available information indicates that distinct populations of band-rumped storm-petrels are definable and that the Hawaiian population is distinct based on geographic and distributional isolation from other band-rumped storm-petrel populations in Japan, the Galapagos, and the Atlantic Ocean. A population also can be considered discrete if it is delimited by international boundaries that have differences in management control of the species. The Hawaiian population of the band-rumped storm-petrel is the only population within U.S. borders or under U.S. jurisdiction. Loss of the Hawaiian population would cause a significant gap in the distribution of the band-rumped storm-petrel in the Pacific, and could result in the complete isolation of the Galapagos and Japan populations without even occasional genetic exchanges. Therefore, the population is both discrete and significant, and constitutes a DPS.

The band-rumped storm-petrel probably was common on all of the main Hawaiian Islands when Polynesians arrived about 1,500 years ago, based on storm-petrel bones found in middens on the island of Hawaii and in excavation sites on Oahu and Molokai. Nesting colonies of this species in the Hawaiian Islands currently are restricted to remote cliffs on Kauai and Lehua Island and high-elevation lava fields on Hawaii. Vocalizations of the species were heard in Haleakala Crater on Maui as recently as 2006; however, no nesting sites have been located on the island to date. The significant reduction in numbers and range of the band-rumped storm-petrel is due primarily to predation by nonnative predators introduced by humans, including the domestic cat (*Felis catus*), small Indian mongoose (*Herpestes auropunctatus*), common barn owl (*Tyto alba*), black rat (*Rattus rattus*), Polynesian rat (*R. exulans*), and Norway rat (*R. norvegicus*), which occur throughout the main Hawaiian Islands, with the exception of the mongoose, which is not established on Kauai. Attraction of fledglings to artificial lights, which disrupts their night-time navigation, resulting in collisions with building and other objects, and collisions with artificial structures such as communication towers and utility lines are also threats. Erosion of nest sites caused by the actions of nonnative ungulates is a potential threat in some locations. Efforts are under way in some areas to reduce light pollution and mitigate the threat of collisions, but there are no large-scale efforts to control nonnative predators in the Hawaiian Islands. The threats are imminent because they are ongoing, and they are of a high magnitude because they can severely affect the survival of this DPS throughout its range, leading to a relatively high likelihood of extinction. Therefore, we assign this distinct population segment an LPN of 3.

Elfin-woods warbler (*Dendroica angelae*)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. *Dendroica angelae,* or elfin-woods warbler, is a small, entirely black and white warbler, distinguished by its white eyebrow stripe, white patches on

ear covers and neck, incomplete eye ring, and black crown. The elfin-woods warbler was at first thought to occur only in high elevations at dwarf or elfin forests, but it has since been found at lower elevations including shade coffee plantations and secondary forests. These birds build a compact cup nest, usually close to the trunk and well hidden among the epiphytes of small trees. Its breeding season extends from March to June. Elfin-woods warblers forage in the middle part of trees, gleaning insects from leaves in the outer portion of tree crowns. The species has been documented from four locations in Puerto Rico: Luquillo Mountains, Sierra de Cayey, and the Commonwealth forests of Maricao and Toro Negro. However, it has not been recorded again in Toro Negro and Sierra de Cayey, following the passing of Hurricane Hugo in 1989. In 2003 and 2004, surveys were conducted for the elfin-woods warbler in the Carite Commonwealth Forest, Toro Negro Forest, Guilarte Forest, Bosque del Pueblo, Maricao Forest and the El Yunque National Forest. These surveys only reported sightings at Maricao Commonwealth Forest (778 individuals), and El Yunque National Forest (196 individuals).

The elfin-woods warbler is potentially threatened by habitat modification. Elfin-woods warblers have been historically common in the elfin woodland of El Yunque National Forest and the *Podocarpus* forest type of Maricao Commonwealth Forest. Removal and replacement of this forest vegetation with infrastructure (e.g., telecommunication towers, recreational facilities) may have impacted the species in the past. Although this loss of habitat has been permanent and restoration process would take a few decades, present regulatory process at both the Commonwealth and Federal levels have reduced this threat. Unrestricted development within the El Yunque buffer zone needs to be addressed to determine the impact on the migratory behavior of the species. Conversion of elfin-woods warbler habitat (e.g., mature secondary forests, young secondary forests, and shaded-coffee plantations) along the periphery of the Maricao Commonwealth Forest to marginal habitat (e.g., pastures, dry slope forests, residential rural forests, gallery forests, and unshaded coffee plantations), has affected potential corridors for the elfin-woods warbler, resulting in a reduced dispersal and expansion capability of the species. These threats are not imminent because most of the range of the species is within protected lands. The magnitude of threat to *Dendroica angelae* is low to moderate because there is no indication that the two populations of the elfin-woods warbler are declining in numbers. The species can thrive in disturbed and plantation habitats, although abundance of the species on these habitats is lower than in primary habitats. Moreover, elfin-woods warblers appear to recover well, and in a relatively short time, from damaging effects of hurricanes to the forest structure. Therefore, we assign a listing priority number of 11 to *Dendroica angelae.*

Reptiles

Northern Mexican Gartersnake (*Thamnophis eques megalops*)—The following summary is based on information contained in our files. The northern Mexican gartersnake generally occurs in three types of habitat: (1) Ponds and cienegas; (2) lowland river riparian forests and woodlands; and (3) upland stream gallery forests. Within the United States, the distribution of the northern Mexican gartersnake has been reduced by close to 90 percent, and it occurs in fragmented populations within the middle and upper Verde River drainage, middle and lower Tonto Creek, and the upper Santa Cruz River, as well as in a small number of isolated wetland habitats in southeastern Arizona; its status in New Mexico is uncertain. Within Mexico, the northern Mexican gartersnake is distributed along the Sierra Madre Occidental and the Mexican Plateau in the Mexican States of Sonora, Chihuahua, Durango, Coahila, Zacatecas, Guanajuato, Nayarit, Hidalgo, Jalisco, San Luis Potosí, Aguascalientes, Tlaxacala, Puebla, México, Michoacán, Oaxaca, Veracruz, and Querétaro. The primary threat to the northern Mexican gartersnake is competition and predation from nonnative species such as sportfish, bullfrogs, and crayfish. Degradation and elimination of its habitat and native prey base are also significant threats, most notably in areas where nonnative species co-occur. Threats, particularly competition and predation by nonnative species, are high in magnitude because they result in direct mortality or reduced reproductive capacity and may be irreversible in complex habitat. The threats are ongoing and, therefore, imminent. Thus, we retained an LPN of 3 for this subspecies.

Eastern massasauga rattlesnake (*Sistrurus catenatus*)—See above in ''Listing Priority Changes in Candidates.'' The above summary is based on information contained in our files.

Black pine snake (*Pituophis melanoleucus lodingi*)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. There are historical records for the black pine snake from one parish in Louisiana, 14 counties in Mississippi, and 3 counties in Alabama west of the Mobile River Delta. Black pine snake surveys and trapping indicate that this species has been extirpated from Louisiana and from four counties in Mississippi. Moreover, the distribution of remaining populations has become highly restricted due to the destruction and fragmentation of the remaining longleaf pine habitat within the range of the subspecies. Most of the known Mississippi populations are concentrated on the DeSoto National Forest. In Alabama, populations occurring on properties managed by State and other governmental agencies, as gopher tortoise mitigation banks or wildlife sanctuaries, represent the best opportunities for long-term survival of the subspecies there. Other factors affecting the black pine snake include vehicular mortality and low reproductive rates, which magnify the threats from destruction and fragmentation of longleaf pine habitat and increase the likelihood of local extinctions. Due to the imminent threats of high magnitude caused by the past destruction of most of the longleaf pine habitat of the black pine snake, and the continuing persistent degradation of the habitat that remains, we assigned an LPN of 3 to this subspecies.

Louisiana pine snake (*Pituophis ruthveni*)—The following summary is based on information contained in our files and the petition we received on July 20, 2000, and updated through April 30, 2011. The Louisiana pine snake historically occurred in the fire-maintained longleaf pine ecosystem within west-central Louisiana and extreme east-central Texas. The historic and ongoing loss of potential habitat (via fire suppression, conversion to pine plantations, increases in the number and width of roads, and urbanization) on private lands in the matrix between these extant populations reduces the potential for dispersal among remnant populations and the potential for natural re-colonization of vacant suitable habitat patches. The primary threats coupled with the disruption of natural fire regimes have reduced the Louisiana pine snake to seven isolated populations. Several of these remnant populations may be vulnerable to factors associated with low population

sizes and demographic isolation such as reduced genetic heterozygosity. Because it is unlikely that corridors linking extant populations will be established, the loss of any extant population is likely to be permanent. Additional threats that may occur even within quality Louisiana pine snake habitat include mortality from on- and off-road mortality, entanglement in erosion control devices installed in rights-of-way, and intentional killing. Finally, the Louisiana pine snake has an extremely low reproductive rate, thereby magnifying the effects of the above listed threats. Currently occupied habitat in Louisiana and Texas is estimated to be approximately 163,000 acres, with 53 percent occurring on public lands and 47 percent in private ownership.

Louisiana pine snake populations on Federal lands have received increased management attention (via prescribed burning and thinning) in recent years, and as a result, the successional degradation of occupied and potential habitat within these populations has been stabilized or reversed. Nonetheless, not all areas of occupied habitat on Federal lands have received recent prescribed burning, and in the absence of adequate burning, Louisiana pine snake habitat becomes degraded via vegetative succession. The largest and perhaps most important extant Louisiana pine snake population exists on private industrial timberland. Although two conservation areas are managed to benefit Louisiana pine snakes on this property, the majority of the occupied habitat between the conservation areas is threatened by land management activities (habitat conversion to short-rotation pine plantations) that are expected to decrease habitat quality. The candidate conservation agreement (CCA) for the Louisiana pine snake which includes the Service, U.S. Forest Service, Department of Defense, Texas Parks and Wildlife, and Louisiana Department of Wildlife was completed in 2003, and is currently being implemented. The CCA is designed to identify and establish management for the Louisiana pine snake on Federal lands in Louisiana and Texas, and provides a means for the partnering agencies to work cooperatively on projects that avoid and minimize impacts to the snake. It also sets up a mechanism to exchange information on successful management practices and coordinate research efforts.

In 2001, the Service provided funds, through the Private Stewardship Grant Program, to a private landowner for habitat restoration and prescribed burning on several tracts of their Bienville Parish property containing a known Louisiana pine snake population. A habitat management plan for those sites was developed, and in August of 2005, that landowner was awarded a grant for continued habitat improvement on that same property. Subsequently, that property has been transferred to a new landowner. Through the use of those grant funds and voluntary investment, those private landowners have converted lands to longleaf pine within those Core Management Areas and completed prescribed burning.

The Louisiana Pine Snake Conservation Group consists of representatives from a variety of organizations having an interest in Louisiana pine snake conservation and includes approximately 90 individuals representing State and Federal government, non-profit and private organizations, zoos, academia, and private landowners. This group has been holding annual stakeholder meetings since 2003. At those meetings, stakeholders discuss issues and threats to the Louisiana pine snake, identify possible strategies to deal with those threats, report on land management activities beneficial to stability or recovery, and discuss and share successful results. Five significant actions have resulted from cooperative efforts of this group's members: (1) Completion of a threats assessment; (2) development and completion of a landscape—scaled resources selection function model; (3) training and experimental testing of a scent dog to assist in survey efforts; (4) initiation of an experimental captive breeding and reintroduction program; and (5) initiation of a DNA microsatellite study that will help define genetic structure among populations.

While the extent of Louisiana pine snake habitat loss has been great in the past and much of the remaining habitat has been degraded, habitat loss does not represent an imminent threat, primarily because the rate of habitat loss appears to be declining on public lands. However, all populations require active habitat management, and the lack of adequate habitat remains a threat for several populations. The potential threats to a large percentage of extant Louisiana pine snake populations, coupled with the likely permanence of these effects and the species' low fecundity and low population sizes, lead us to conclude that the threats have significant effects on the survival of the species and therefore remain high in magnitude. Thus, based on nonimminent, high-magnitude threats, we assign a LPN of 5 to this species. We find that listing this species is warranted throughout all its range.

Tucson shovel-nosed snake (*Chionactis occipitalis klauberi*)—The Tucson shovel-nosed snake is a small, burrowing snake in the Colubridae family that occupied a roughly 35-mile-wide swath running along the Phoenix-Tucson corridor in northeastern Pima, southwestern Pinal, and eastern Maricopa Counties, Arizona. No systematic surveys have been conducted to assess the status of the subspecies throughout its range, but it has apparently disappeared from some areas.

Threats to the Tucson shovel-nosed snake include urban and rural development; road construction, use, and maintenance; concentration of solar power facilities and transmission corridors; agriculture; wildfires; and lack of adequate management and regulation. Comprehensive plans encompassing the entire range of the snake encourage large growth areas in the next 20 years and beyond. These plans also call for an increase in roads and transportation corridors, which have been documented to affect the snake through direct mortality. Additionally, development of solar energy facilities and transmission corridors throughout the State is being pursued, and demand for these facilities will likely increase. Some of these facilities are being considered within the range of the Tucson shovel-nosed snake. Wildfires due to infestations of nonnative grasses in the snake's habitat, dominated by native plants not adapted to survive wildfires, are likely to increase in frequency and magnitude in the future as these invasive grasses continue to spread rapidly. Regulations are not in place to minimize or mitigate these threats to the Tucson shovel-nosed snake and its habitat, and, therefore, they are likely to put the snake at risk of local extirpation or extinction. These threats, particularly those that lead to a loss of habitat, are likely to reduce the population of the Tucson shovel-nosed snake across its entire range. Given the limited geographic distribution of this snake and the fact that its entire range lies within the path of development in the foreseeable future, these threats are of high magnitude and are imminent. Accordingly, we have assigned an LPN of 3 for the Tucson shovel-nosed snake.

Desert tortoise, Sonoran DPS (*Gopherus agassizii*)—The following summary is based on information contained in our files. Sonoran desert tortoises are most closely associated with Sonoran and Mojave desertscrub vegetation types, but may also be found

in other habitat types within their distribution and elevation range. They occur most commonly on rocky, steep slopes and bajadas in paloverde-mixed cacti associations. Washes and valley bottoms may be used in dispersal and, in some areas, as all or part of home ranges. Most Sonoran desert tortoises in Arizona occur between 904 to 4,198 feet (275 to 1280 meters) in elevation. The Sonoran desert tortoise is distributed south and east of the Colorado River in Arizona in all counties except for Navajo, Apache, Coconino, and Greenlee Counties, south to the Rio Yaqui in southern Sonora, Mexico. A recently published paper on the genetics of desert tortoise indicates this population should be treated as a separate species. We will be analyzing this new information, and will make any necessary changes to the nomenclature and LPN in the next candidate notice.

Threats include nonnative plant species invasions and altered fire regimes; urban and agricultural development, and human population growth; barriers to dispersal and genetic exchange; off-highway vehicles; roads and highways; historical ironwood and mesquite tree harvest in Mexico; improper livestock grazing (predominantly in Mexico); undocumented human immigration and interdiction activities; illegal collection; predation from feral dogs; human depredation and vandalism; drought; and climate change. Threats to the Sonoran desert tortoise differ geographically and are highly synergistic in their effects on the population. The threats identified to affect the Sonoran desert tortoise currently or in the foreseeable future are of high magnitude but, overall, are nonimminent. Therefore, we assigned an LPN of 6 to this population of desert tortoise.

Sonoyta mud turtle (*Kinosternon sonoriense longifemorale*)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. The Sonoyta mud turtle occurs in a spring and pond at Quitobaquito Springs on Organ Pipe Cactus National Monument in Arizona, and in the Rio Sonoyta and Quitovac Spring of Sonora, Mexico. Loss and degradation of stream habitat from water diversion and groundwater pumping, along with its very limited distribution, are the primary threats to the Sonoyta mud turtle. Sonoyta mud turtles are highly aquatic and depend on permanent water for survival. The area of southwest Arizona and northern Sonora where the Sonoyta mud turtle occurs is one of the driest regions in the Southwest. Due to continued drought, irrigated agriculture, and development in the region, surface water in the Rio Sonoyta can be expected to dwindle further and therefore have a significant impact on the survival of this subspecies, which may also be vulnerable to aerial spraying of pesticides on nearby agricultural fields. We retained an LPN of 3 for this subspecies because threats are of a high magnitude and continue to date, and therefore are imminent.

Amphibians

Columbia spotted frog, Great Basin DPS (*Rana luteiventris*)—The following summary is based on information contained in our files and the petition we received on May 1, 1989. Currently, Columbia spotted frogs appear to be widely distributed throughout southwestern Idaho, southeastern Oregon, and northeastern and central Nevada, but local populations within this general area appear to be small and isolated from each other. Recent work by researchers in Idaho and Nevada have documented the loss of historically known sites, reduced numbers of individuals within local populations, and declines in the reproduction of those individuals.

Small, highly fragmented populations, characteristic of the majority of existing populations of Columbia spotted frogs in the Great Basin, are highly susceptible to extinction processes. Threats to Columbia spotted frog include poor management of habitat including water development, improper grazing, mining activities, and nonnative species, all of which have contributed, and continue to contribute, to the degradation and fragmentation of habitat. Emerging fungal diseases, such as chytridiomycosis, and the spread of parasites may be contributing factors to Columbia spotted frog's population declines throughout portions of its range. Effects of climate change, such as drought, and stochastic events, such as fire, often have detrimental effects to small, isolated populations and can often exacerbate existing threats. A 10-year conservation agreement and strategy was signed in September 2003 for both the Northeast and the Toiyabe subpopulations in Nevada. The goals of the conservation agreements are to reduce threats to Columbia spotted frogs and their habitat to the extent necessary to prevent populations from becoming extirpated throughout all or a portion of their historical range and to maintain, enhance, and restore a sufficient number of populations of Columbia spotted frogs and their habitat to ensure their continued existence throughout their historical range. Additionally, a candidate conservation agreement with assurances was completed in 2006, for the Owyhee subpopulation at Sam Noble Springs, Idaho. Several habitat enhancement projects have been conducted throughout the range that have benefitted these populations. We conclude that the threats are of moderate magnitude, because the DPS is still widely distributed, and several regulatory mechanisms are benefitting the populations and working to reduce threats. Based on imminent threats of moderate magnitude, we assigned an LPN of 9 to this DPS of the Columbia spotted frog.

Mountain yellow-legged frog, Sierra Nevada DPS (*Rana muscosa*)—The following summary is based on information contained in our files and the petition received on February 8, 2000. Also see our 12-month petition finding published on January 16, 2003 (68 FR 2283) and our amended 12-month petition finding published on June 25, 2007 (72 FR 34657). The mountain yellow-legged frog inhabits the high elevation lakes, ponds, and streams in the Sierra Nevada Mountains of California, from near 4,500 feet (ft) (1,370 meters (m)) to 12,000 ft (3,650 m). The distribution of the mountain yellow-legged frog is from Butte and Plumas Counties in the north to Tulare and Inyo Counties in the south. A separate population in southern California is already listed as endangered (67 FR 44382; July 2, 2002). Based on mitochondrial DNA, morphological, and acoustic studies, Vredenburg *et al.* recently recognized two distinct species of mountain yellow-legged frog in the Sierra Nevada, *R. muscosa* and *R. sierrae.* This taxonomic distinction has been recently adopted by the American Society of Ichthyologists and Herpetologists, the Herpetologists' League, and the Society for the Study of Amphibians and Reptiles. The Vredenburg study determined that two species exist, as described by Camp in 1917, but have different geographical ranges than first described. Camp described *R. muscosa* as only occurring in southern California. A recent study determined that *R. muscosa* also occurs in the southern portion of the Sierra Nevada and that *R. sierrae* occurs both in the southern and northern portions of the Sierra Nevada with no range overlap. We accept the taxonomic distinction of two species, and the taxonomic split between the mountain yellow-legged frogs in the northern and central Sierra Nevada Mountains of California (*Rana sierrae*)

and the mountain yellow-legged frogs in the southern Sierra Nevada and the mountains of southern California (*R. muscosa*) and we intend to propose this taxonomic change in a proposed rule. In the interim, we continue to recognize all mountain yellow-legged frogs in the Sierra Nevada Mountains of California as *R. muscosa* and as the candidate entity.

Predation by introduced trout is the best-documented cause of the decline of the Sierra Nevada mountain yellow-legged frog, because it has been repeatedly observed that fishes and mountain yellow-legged frogs rarely co-exist. Mountain yellow-legged frogs and trout (native and nonnative) do co-occur at some sites, but these co-occurrences probably are mountain yellow-legged frog populations with negative population growth rates in the absence of immigration. To help reverse the decline of the mountain yellow-legged frog, the Sequoia and Kings Canyon National Parks have been removing introduced trout since 2001. Over 18,000 introduced trout have been removed from 11 lakes since the project started in 2001. The lakes are completely, to mostly, fish-free, and substantial mountain yellow-legged frog population increases have resulted. The California Department of Fish and Game (CDFG) has also removed or is in the process of removing nonnative trout from a total of between 10 and 20 water bodies in the Inyo, Humboldt-Toiyabe, Sierra, and El Dorado National Forests. In the El Dorado National Forest, golden trout were removed from Leland Lake, and attempts have been made to remove trout from two sites near Gertrude Lake, three lakes in the Pyramid Creek watershed, and a tributary of Cole Creek; no data showing increase in mountain yellow-legged frogs at these sites were available.

In California, chytridiomycosis, more commonly known as chytrid fungus (*Batrachochytrium dendrobatidis*) or Bd, has been detected in many amphibian species, including the mountain yellow-legged frog within the Sierra Nevada. Recent research has shown that this pathogenic fungus has become widely distributed throughout the Sierra Nevada, and that infected mountain yellow-legged frogs often die soon after metamorphosis. Several infected and uninfected populations were monitored in Sequoia and Kings Canyon National Parks over multiple years, documenting dramatic declines and extirpations in infected but not in uninfected populations. In the summer of 2005, 39 of 43 populations assayed in Yosemite National Park were positive for chytrid fungus.

The current distribution of the Sierra Nevada mountain yellow-legged frog is restricted primarily to public lands at high elevations, including streams, lakes, ponds, and meadow wetlands located on national forests, including wilderness and non-wilderness on the forests, and national parks. In several areas where detailed studies of the effects of chytrid fungus on the mountain yellow-legged frog are ongoing, substantial declines have been observed over the past several years. For example, in 2007 surveys in Yosemite National Park, mountain yellow-legged frogs were not detectable at 37 percent of 285 sites where they had been observed in 2000–2002; in 2005 in Sequoia and Kings Canyon National Parks, mountain yellow-legged frogs were not detected at 54 percent of sites where they had been recorded 3 to 8 years earlier. A compounding effect of disease-caused extinctions of mountain yellow-legged frogs is that recolonization may never occur because streams connecting extirpated sites to extant populations now contain introduced fishes, which act as barriers to frog movement within metapopulations. The most recent assessment of the species status in the Sierra Nevada indicates that mountain-yellow legged frogs occur at less than 8 percent of the sites from which they were historically observed. A group of prominent scientists further suggest a 10-percent decline per year in the number of remaining *Rana mucosa.* Based on threats that are imminent (because they are ongoing) and high-magnitude (because they significantly affect the survival of the DPS throughout its range), we continue to assign the population of mountain yellow-legged frog in the Sierra Nevada an LPN of 3.

Oregon spotted frog (*Rana pretiosa*)—The following summary is based on information contained in our files and the petition we received on May 4, 1989. Historically, the Oregon spotted frog ranged from British Columbia to the Pit River drainage in northeastern California. Based on surveys of historical sites, the Oregon spotted frog is now absent from at least 76 percent of its former range. The majority of the remaining Oregon spotted frog populations are small and isolated.

The threats to the species' habitat include development, livestock grazing, introduction of nonnative plant species, vegetation succession, changes in hydrology due to construction of dams and alterations to seasonal flooding, lack of management of exotic vegetation, predators, and poor water quality. Additional threats to the species are predation by nonnative fish and introduced bullfrogs; competition with bullfrogs and nonnative fish for habitat; and diseases, such as oomycete water mold *Saprolegnia* and chytrid fungus infections. The magnitude of threat is high for this species because this wide range of threats to both individuals and their habitats could seriously reduce or eliminate any of these isolated populations and further reduce the species' range and potential survival. Habitat restoration and management actions have not prevented population declines. The threats are imminent because each population is faced with multiple ongoing and potential threats as identified above. Therefore, we retain an LPN of 2 for the Oregon spotted frog.

Relict leopard frog (*Lithobates onca*)—See above in ''Listing Priority Changes in Candidates.'' The above summary is based on information contained in our files.

Austin blind salamander (*Eurycea waterlooensis*)—We continue to find that listing this species is warranted, but precluded as of the date of publication of this notice. However, we are working on a proposed listing rule that we expect to publish prior to making the next annual resubmitted petition 12-month finding.

Berry Cave salamander (*Gyrinophilus gulolineatus*)—The following summary is based on information in our files. We have no new information since this species was afforded candidate status through our 12-month warranted-but-precluded finding published on March 22, 2011 (76 FR 15919). The Berry Cave salamander is recorded from Berry Cave in Roane County; from Mud Flats, Aycock Spring, Christian, Meades Quarry, Meades River, and Fifth Caves in Knox County; from Blythe Ferry Cave in Meigs County; and from an unknown cave in Athens, McMinn County, Tennessee. These cave systems are all located within the Upper Tennessee River and Clinch River drainages. A total of 113 caves in Middle and East Tennessee were surveyed from the time period of April 2004 through June 2007, resulting in observations of 63 Berry Cave salamanders. These surveys concluded that Berry Cave salamander populations are robust at Berry and Mudflats Caves, where population declines had been previously reported, and documented two new populations of Berry Cave salamanders at Aycock Spring and Christian caves.

Ongoing threats to this species include lye leaching in the Meades Quarry Cave as a result of past quarrying activities, a proposed roadway with potential to impact the recharge area for the Meades Quarry Cave system, urban

development in Knox County, water quality impacts despite existing State and Federal laws, and possibly hybridization between spring salamanders and Berry Cave salamanders in Meades Quarry Cave. These threats, coupled with confined distribution of the species and apparent low population densities, leave the Berry Cave salamander vulnerable to extirpation. We have determined that the Berry Cave salamander faces imminent threats, and that the threats are of moderate magnitude, because some populations appear to be robust and new populations are emerging. We have therefore assigned it an LPN of 8.

Georgetown salamander (*Eurycea naufragia*)—We continue to find that listing this species is warranted, but precluded as of the date of publication of this notice. However, we are working on a proposed listing rule that we expect to publish prior to making the next annual resubmitted petition 12-month finding.

Jollyville Plateau salamander (*Eurycea tonkawae*)—We continue to find that listing this species is warranted, but precluded as of the date of publication of this notice. However, we are working on a proposed listing rule that we expect to publish prior to making the next annual resubmitted petition 12-month finding.

Salado salamander (*Eurycea chisholmensis*)—We continue to find that listing this species is warranted, but precluded as of the date of publication of this notice. However, we are working on a proposed listing rule that we expect to publish prior to making the next annual resubmitted petition 12-month finding.

Yosemite toad (*Anaxyrus canorus*)—The following summary is based on information contained in our files and the petition we received on April 3, 2000. See also our 12-month petition finding published on December 10, 2002 (67 FR 75834). Yosemite toads are moderately sized toads with females having black spots that are edged with white or cream, and set against a grey, tan, or brown background. Males have a nearly uniform coloration of yellow-green to olive drab to greenish brown. Yosemite toads have been grouped within the genus ''*Bufo.*'' Recently, Frost *et al.* divided the ''*Bufo*'' genus into three separate genera, assigning the North American toads to the genus *Anaxyrus.* This taxonomic distinction has been recently adopted by the American Society of Ichthyologists and Herpetologists, the Herpetologists' League, and the Society for the Study of Amphibians and Reptiles, and we are acknowledging the change in genus name, and referring to the Yosemite toad accordingly in this document.

Yosemite toads are most likely to be found in areas with thick meadow vegetation or patches of low willows near or in water, and use rodent burrows for overwintering and temporary refuge during the summer. Breeding habitat includes the edges of wet meadows, slow-flowing streams, shallow ponds, and shallow areas of lakes. The historic range of Yosemite toads in the Sierra Nevada occurs from the Blue Lakes region north of Ebbetts Pass (Alpine County) to south of Kaiser Pass in the Evolution Lake/Darwin Canyon area (Fresno County). The historic elevational range of Yosemite toads is 1,460 to 3,630 m (4,790 to 11,910 ft).

The threats facing the Yosemite toad include cattle grazing, timber harvesting, recreation, disease, and climate change. Inappropriate grazing has been shown to cause loss in vegetative cover and to destroy peat layers in meadows, both of which lower groundwater tables and summer flows of surface water. This may increase the stranding and mortality of tadpoles, or make these areas completely unsuitable for Yosemite toads. Grazing can also degrade or destroy moist upland areas used as non-breeding habitat by Yosemite toads and collapse rodent burrows used by Yosemite toads as cover and hibernation sites. Timber harvesting and associated road construction could severely alter the terrestrial environment and result in the reduction and occasional extirpation of amphibian populations in the Sierra Nevada. Habitat gaps created by timber harvest and road construction may act as dispersal barriers and contribute to the fragmentation of Yosemite toad habitat and populations. Trails (foot, horse, bicycle, or off-highway motor vehicle) compact soil in riparian habitat, which increases erosion, displaces vegetation, and can lower the water table. Trampling or the collapsing of rodent burrows by recreationists, pets, and vehicles could lead to direct mortality of all life stages of the Yosemite toad and disrupt the species' behavior. Various diseases have been confirmed in Yosemite toads. Mass die-offs of amphibians have been attributed to: Chytrid fungal infections of metamorphs and adults; saprolegnia fungal infections of eggs; iridovirus infection of larvae, metamorphs, or adults; and bacterial infections. Yosemite toads probably are exposed to a variety of pesticides and other chemicals throughout their range. Environmental contaminants could negatively affect the species by causing direct mortality; suppressing the immune system; disrupting breeding behavior, fertilization, growth or development of young; and disrupting the ability to avoid predation.

There is no indication that any of these threats are ongoing or planned; therefore the threats are nonimminent. In addition, as there are a number of substantial populations and these threats tend to have localized effects, the threats are moderate to low in magnitude. We therefore retained an LPN of 11 for the Yosemite toad.

Black Warrior waterdog (*Necturus alabamensis*)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. The Black Warrior waterdog is a salamander that inhabits streams above the Fall Line within the Black Warrior River Basin in Alabama. There is very little specific locality information available on the historical distribution of the Black Warrior waterdog as little attention was given to this species between its description in 1937 and the 1980s. At that time, there were a total of only 11 known historical records from four Alabama counties. Two of these sites have now been inundated by impoundments. Extensive survey work was conducted in the 1990s to look for additional populations. As a result of that work, the species was documented at 14 sites in five counties.

Water-quality degradation is the biggest threat to the continued existence of the Black Warrior waterdog. Most streams that have been surveyed for the waterdog showed evidence of pollution and many appeared biologically depauperate. Sources of point and nonpoint pollution in the Black Warrior River Basin have been numerous and widespread. Pollution is generated from inadequately treated effluent from industrial plants, sanitary landfills, sewage treatment plants, poultry operations, and cattle feedlots. Surface mining represents another threat to the biological integrity of waterdog habitat. Runoff from old, abandoned coal mines generates pollution through acidification, increased mineralization, and sediment loading. The North River, Locust Fork, and Mulberry Fork, all streams that this species inhabits, are on the Environmental Protection Agency's list of impaired waters. An additional threat to the Black Warrior waterdog is the creation of large impoundments that have flooded thousands of square hectares of its habitat. These impoundments are likely marginal or unsuitable habitat for the salamander. Suitable habitat for the Black Warrior

waterdog is limited, and available data indicate extant populations are small and their viability is questionable. This situation is pervasive and problematic; water-quality issues are persistent, and regulatory mechanisms are not ameliorating these threats, although we have no indication of population declines, at present. Therefore, the overall magnitude of the threat is moderate. Water-quality degradation in the Black Warrior basin is ongoing. Therefore, the threats are imminent. Additional surveys, initiated in 2011, may clarify the status of populations in the face of existing threats. We assigned an LPN of 8 to this species.

Fishes

Headwater chub (*Gila nigra*)—The following summary is based on information contained in our files, in the 12-month finding published in the **Federal Register** on May 3, 2006 (71 FR 26007), and in the petition received November 9, 2009. The headwater chub is a moderate-sized cyprinid fish. The range of the headwater chub has been reduced by approximately 60 percent. Twenty-three streams (125 miles (200 kilometers) of stream) are thought to be occupied out of 26 streams (312 miles (500 kilometers) of stream) formerly occupied in the Gila River Basin in Arizona and New Mexico. All remaining populations are fragmented and isolated, and threatened by a combination of factors.

Headwater chubs are threatened by introduced, nonnative fish that prey on them and compete with them for food. Habitat destruction and modification have occurred and continue to occur as a result of dewatering, impoundment, channelization, and channel changes caused by alteration of riparian vegetation and watershed degradation from mining, grazing, roads, water pollution, urban and suburban development, groundwater pumping, and other human actions. Existing regulatory mechanisms do not appear to be adequate for addressing the impact of nonnative fish and also have not removed or eliminated the threats that continue to be posed through habitat degradation. The fragmented nature and rarity of existing populations makes them vulnerable to other natural or manmade factors, such as drought and wildfire. Climate change is predicted to worsen these threats through increased aridity of the region, thus reducing stream flows and warming aquatic habitats, which makes the habitat more suitable to nonnative species.

The Arizona Game and Fish Department has finalized the Arizona Statewide Conservation Agreement for Roundtail Chub (*G. robusta*), Headwater Chub, Flannelmouth Sucker (*Catostomus latipinnis*), Little Colorado River Sucker (*Catostomus* spp.), Bluehead Sucker (*C. discobolus*), and Zuni Bluehead Sucker (*C. discobolus yarrowi*). The New Mexico Department of Game and Fish has listed the headwater chub as endangered and created a recovery plan for the species: Colorado River Basin Chubs (Roundtail Chub, Gila Chub (*G. intermedia*), and Headwater Chub) Recovery Plan, which was approved by the New Mexico State Game Commission on November 16, 2006. Both Arizona's agreement and New Mexico's recovery plan recommend preservation and enhancement of extant populations and restoration of historical headwater-chub populations. The recovery and conservation actions prescribed by Arizona's and New Mexico's plans, which we predict will reduce and remove threats to this species, will require further discussions and authorizations before they can be implemented. The recently completed Arizona Game and Fish Department Sportfish Stocking Program's Conservation and Mitigation Program contains significant conservation actions for the headwater chub that will be implemented over the next 10 years.

Although threats are ongoing, existing information indicates long-term persistence and stability of existing populations. Currently 7 of the 23 extant stream populations are considered stable based on abundance and evidence of recruitment. We evaluated information provided in the 2009 petition relating to our 2008 change in LPN for the headwater chub from 2 to 8 as part of our annual analysis. In making that 2008 decision, we recognize that we inadvertently relied on some information and did not consider other available information. Additional information will be available on population status and threats later in 2011 that we will use to reassess the LPN for the headwater chub next year. We have retained an LPN of 8 for this species at this time.

Least Chub (*Iotichthys phlegethontis*)—The following summary is based on information contained in our files and in the petition received June 25, 2007. The least chub is a small, colorful fish species in Utah that follows thermal patterns for habitat use. Least chub use flooded, warmer, vegetated marsh areas to spawn in the spring, and retreat to spring heads to overwinter as the water recedes in the late summer and fall. Historically, many least chub occurrences were reported across the State of Utah, but the current distribution of the species is highly reduced from its historic range. Currently, only six known wild populations remain, but one of these is considered functionally extirpated. Least chub also currently exist at several genetic refuge sites. The species faces threats from the effects of livestock grazing, which affects most least chub sites despite efforts to protect least chub habitat with grazing enclosures and management plans. Least chub habitat also is affected by current and proposed future groundwater withdrawals, especially when combined with the threat of drought. These threats also act cumulatively with climate change to put the least chub at further risk. Existing regulatory mechanisms are currently inadequate to regulate groundwater withdrawals and ameliorate their effects on least chub habitat. Nonnative species, particularly mosquitofish, also are a continuing threat to least chub. There is no known means of controlling mosquitofish, and they have already caused the functional extirpation of one wild least chub population.

In 1998, several State and Federal agencies including the Service and the Utah Division of Wildlife Resources developed a Least Chub Conservation Agreement and Strategy, and formed the Least Chub Conservation Team. Their objectives are to eliminate or significantly reduce threats to the least chub and its habitat, and to ensure the continued existence of the species by restoring and maintaining a minimum number of least chub populations throughout its historic range. Recent State-led least chub conservation actions have included restoration of habitat affected by grazing, reintroduction and range expansion, nonnative removal, population monitoring, and working cooperatively with landowners to conserve water and aquatic habitat. This group also has recently begun a structured decision making modeling process that will provide additional guidance for conservation activities.

Although grazing, groundwater withdrawal, and predation by nonnative species are high magnitude threats to some populations, they are of low magnitude or nonexistent in other populations. Therefore the threats to the least chub are of moderate magnitude overall. The threats are imminent because they are identifiable and the species is currently facing them in many portions of its range. Therefore, we have assigned the least chub an LPN of 7.

Roundtail chub (*Gila robusta*), Lower Colorado River DPS—The following summary is based on information contained in our files and the 12-month

finding published in the **Federal Register** on July 7, 2009 (74 FR 32352). The roundtail chub is a moderate to large cyprinid fish. The range of the roundtail chub has been reduced by approximately 68 to 82 percent. Thirty-two streams are currently occupied, representing approximately 18 to 32 percent of the species' former range, or 800 km (500 miles) to 1,350 km (840 mi) of 3,050 km (1,895 mi) of formerly occupied streams in the Gila River Basin in Arizona and New Mexico. Most of the remaining populations are fragmented and isolated, and all are threatened by a combination of factors.

Roundtail chub are threatened by introduced, nonnative fish that prey on them and compete with them for food. Habitat destruction and modification have occurred and continue to occur as a result of dewatering, impoundment, channelization, and channel changes caused by alteration of riparian vegetation and watershed degradation from mining, grazing, roads, water pollution, urban and suburban development, groundwater pumping, and other human actions. Existing regulatory mechanisms do not appear to be adequate for addressing the impact of nonnative fish and also have not removed or eliminated the threats that continue to be posed through habitat destruction or modification. The fragmented nature and rarity of existing populations makes them vulnerable to other natural or manmade factors, such as drought and wildfire. Climate change is predicted to worsen these threats through increased aridity of the region, thus reducing stream flows and warming aquatic habitats, which makes the habitat more suitable to nonnative species.

The Arizona Game and Fish Department has finalized the Arizona Statewide Conservation Agreement for Roundtail Chub, Headwater Chub (*G. nigra*), Flannelmouth Sucker (*Catostomus latipinnis*), Little Colorado River Sucker (*Catostomus* spp.), Bluehead Sucker (*C. discobolus*), and Zuni Bluehead Sucker (*C. discobolus yarrowi*). The New Mexico Department of Game and Fish lists the roundtail chub as endangered and has created a recovery plan for the species: Colorado River Basin Chubs (Roundtail Chub, Gila Chub (*G. intermedia*), and Headwater Chub) Recovery Plan, which was approved by the New Mexico State Game Commission on November 16, 2006. Both the Arizona Agreement and the New Mexico Recovery Plan recommend preservation and enhancement of extant populations and restoration of historical roundtail chub populations. The recovery and conservation actions prescribed by the Arizona and New Mexico plans, which we predict will reduce and remove threats to this species, will require further discussions and authorizations before they can be implemented, although some actions have been completed and several are planned for the immediate future. The recently completed Arizona Game and Fish Department Sportfish Stocking Program's Conservation and Mitigation Program contains significant conservation actions for the roundtail chub that will be implemented over the next 10 years.

Although threats are ongoing, existing information indicates long-term persistence and stability of existing populations. Currently, 9 of the 32 extant stream populations are considered stable, based on abundance and evidence of recruitment. Based on our assessment, threats (primarily nonnative species and habitat loss from land uses) remain imminent and are of a moderate magnitude. Thus, we have retained an LPN of 9 for this distinct population segment.

Arkansas darter (*Etheostoma cragini*)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. This fish species occurs in Arkansas, Colorado, Kansas, Missouri, and Oklahoma. The species is found most often in sand- or pebble-bottomed pools of small, spring-fed streams and marshes, with cool water and broadleaved aquatic vegetation. Its current distribution is indicative of a species that once was widely dispersed throughout its range, but has been relegated to isolated areas surrounded by unsuitable habitat that prevents dispersal. Factors influencing the current distribution include: Surface and groundwater irrigation resulting in decreased flows or stream dewatering; the dewatering of long reaches of riverine habitat necessary for species movement when surface flows do occur; conversion of prairie to cropland, which influences groundwater recharge and spring flows; water quality degradation from a variety of sources; and the construction of dams, which act as barriers preventing emigration upstream and downstream through the reservoir pool. The magnitude of threats facing this species is moderate to low, given the number of different locations where the species occurs and the fact that no single threat or combination of threats affects more than a portion of the widespread population occurrences. Overall, the threats are nonimminent as groundwater pumping is declining and development, spills, and runoff are not currently affecting the species rangewide. Thus, we are retaining an LPN of 11 for the Arkansas darter.

Pearl darter (*Percina aurora*)—The following summary is based on information contained in our files. Little is known about the specific habitat requirements or natural history of the Pearl darter. Pearl darters have been collected from a variety of river/stream attributes, mainly over gravel bottom substrate. This species is historically known only from localized sites within the Pascagoula and Pearl River drainages in Mississippi and Louisiana. Currently, the Pearl darter is considered extirpated from the Pearl River drainage and rare in the Pascagoula River drainage. Since 1983, the range of the Pearl darter has decreased by 55 percent.

The Pearl darter is vulnerable to nonpoint source pollution caused by urbanization and other land use activities; gravel mining and resultant changes in river geomorphology, especially head cutting; and the possibility of water quantity decline from the proposed Department of Energy Strategic Petroleum Reserve project and a proposed dam on the Bouie River. Additional threats are posed by the apparent lack of adequate State and Federal water quality regulations due to the continuing degradation of water quality within the species' habitat. The Pearl darter's localized distribution and apparent low population numbers may indicate a species with lower genetic diversity, and this would also make the species more vulnerable to catastrophic events. Threats affecting the Pearl darter are localized in nature, affecting portions of the population within the drainage; thus, a threat magnitude of moderate to low is assigned for this species. In addition, the threats are imminent because the identified threats are currently affecting this species in some portions of its range. Therefore, we have assigned an LPN of 8 for this species.

Arctic grayling, Upper Missouri River DPS (*Thymallus arcticus*)—The following summary is based on information contained in our files. This fish species has a broad, nearly circumpolar distribution, occurring in a variety of cold-water habitats including small streams, large rivers, lakes, and even bogs. We determined in our September 8, 2010, status review (75 FR 54708) that the upper Missouri River population of arctic grayling in Montana and Wyoming represents a DPS because it is discrete due to geographic separation and genetic differences, and it is significant to the taxon as a whole.

The historical range of Arctic grayling in the upper Missouri River basin has declined dramatically in the past century. The five remaining indigenous populations are isolated from one another by dams or other factors.

All populations face potential threats from competition with and predation by nonnative trout, and most populations face threats resulting from the alteration of their habitats, such as habitat fragmentation from dams or irrigation diversion structures, stream dewatering, high summer water temperatures, loss of riparian habitats, and entrainment in irrigation ditches. Severe drought likely also affects all populations by reducing water availability and reducing the extent of thermally suitable habitat. Projected climate changes will likely influence the severity and scope of these threats in the future. As applied, existing regulatory mechanisms do not appear to be adequate to address the primary threats to arctic grayling. In addition, four of five populations are at risk from random environmental fluctuations and genetic drift due to their low abundance and isolation. The magnitude of these threats is high because one or more of these threats occurs in each known population in the Missouri River basin. The threats are imminent because they are currently occurring and expected to continue in the foreseeable future. Therefore, we have assigned the upper Missouri River DPS of arctic grayling an LPN of 3.

Sicklefin redhorse (*Moxostoma* sp.)—The following summary is based on information contained in our files. No new information was provided in the petition we received on April 20, 2010. The sicklefin redhorse, a freshwater fish, occupies cool to warm, moderate gradient creeks and rivers; during parts of its early life stages, it also occupies the near-shore areas in large reservoirs. It feeds and spawns in gravel, cobble, and boulder substrates with no, or very little, silt overlay. There are only two metapopulations of the species known to survive: one in the Hiwassee River system in North Carolina and Georgia, and one in the Little Tennessee River system in North Carolina.

All of the surviving occurrences of the sicklefin redhorse continue to be restricted to relatively short reaches of the streams they occupy and expansion of the populations is to a large degree prohibited by existing hydropower dams and in several cases cold-water discharges from hydroelectric dam operations. Other impacts and threats to the species and its habitat include: Siltation resulting from inadequate erosion/sedimentation control during agricultural, timbering, and construction activities; run-off and discharge of organic and inorganic pollutants from industrial, municipal, agricultural, and other point and nonpoint sources; habitat alterations associated with channelization and instream dredging/mining activities; and other natural and human-related factors that adversely modify the aquatic environment (e.g., illegal dumping, introduction of invasive predators, drought, flooding). The sicklefin redhorse's limited distribution make the species extremely vulnerable to the effects from single catastrophic events (such as toxic chemical spills, major sedimentation events, channel modification, etc.) and the cumulative effects of lesser impacts to the species habitat and numbers. Although the majority of the streams still occupied by the species occur in areas that are presently primarily rural, many of the communities within the watersheds of these streams are experiencing increasing development pressure, both commercial and residential, and continue to develop and implement plans for upgrading and improving their infrastructure (e.g., roads, water supplies, sewer/wastewater treatment systems, etc.) to provide for increased densities of development. Because of the effects this development can have on water quality and habitat suitability for the sicklefin, along with its restricted distribution, the magnitude of the threat to the species is high; however, although the threats faced by the sicklefin redhorse are significant, it is not anticipated that the species will be subjected to these threats in the immediate future (within the next 1 to 2 years) and the immediacy of the threats thus remains nonimminent. Accordingly, we have assigned an LPN of 5 to this species.

Grotto sculpin (*Cottus* sp., sp. nov.)—We continue to find that listing this species is warranted, but precluded as of the date of publication of this notice. However, we are working on a proposed listing rule that we expect to publish prior to making the next annual resubmitted petition 12-month finding.

Sharpnose shiner (*Notropis oxyrhynchus*)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. The sharpnose shiner is a small, slender minnow, endemic to the Brazos River Basin in Texas. Historically, the sharpnose shiner existed throughout the Brazos River and several of its major tributaries. It has also been found in the Wichita River (within the Red River Basin) where it may have once naturally occurred, but has since been extirpated. Current information indicates that the population upstream of Possum Kingdom Reservoir is apparently stable, while the downstream population may be extirpated, representing a 69-percent reduction of its historical range.

The most significant threat to the existence of the sharpnose shiner is reservoir development within its current range. The current water plan for Texas provides several reservoir options that could be implemented within the Brazos River drainage. Additional threats include irrigation and water diversion, sedimentation, desalination, industrial and municipal discharges, agricultural activities, instream sand and gravel mining, and the spread of invasive saltcedar. The current limited distribution of the sharpnose shiner within the Upper Brazos River Basin makes it vulnerable to catastrophic events such as the introduction of competitive species or prolonged drought. The magnitude of threat is considered high as reservoir development within the species' current range may render remaining habitat unsuitable. The immediacy of threat is nonimminent because the most significant threat—major reservoir construction—is not likely to occur in the near future, and there is potential for implementing other water supply options that could preclude reservoir development. For these reasons, we assigned an LPN of 5 to this species.

Smalleye shiner (*Notropis buccula*)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. The smalleye shiner is a small, pallid minnow endemic to the Brazos River Basin in Texas. Smalleye shiners were historically known to occur downstream of the three major reservoirs occurring on the Brazos River. Currently, the species is found upstream of Possum Kingdom Reservoir (Upper Brazos River drainage) and may be extirpated from the downstream reach, representing a 54-percent reduction of its historical range.

The most significant threat to the existence of the smalleye shiner is reservoir development within its current range. The current water plan for Texas provides several reservoir options that could be implemented within the Brazos River drainage. Additional threats include irrigation and water diversion, sedimentation, desalination, industrial and municipal discharges, agricultural activities, instream sand and gravel mining, and the spread of invasive saltcedar. The current limited distribution of the smalleye shiner within the Upper Brazos River drainage

makes it vulnerable to catastrophic events such as the introduction of competitive species or prolonged drought. State law does not provide protection for the smalleye shiner. The magnitude of threat is considered high, as reservoir development within the species' current range may render remaining habitat unsuitable. The immediacy of threat is nonimminent because the most significant threat—major reservoir construction—is not likely to occur in the near future, and there is potential for implementing other water supply options that could preclude reservoir development. For these reasons, we assigned a LPN of 5 to this species.

Zuni bluehead sucker (*Catostomus discobolus yarrowi*)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. The Zuni bluehead sucker is a colorful fish less than 20 centimeters (8 inches) long. The range of the Zuni bluehead sucker has been reduced by over 95 percent. The Zuni bluehead sucker currently occupies 4.8 river kilometers (3 miles) in three headwater streams of the Rio Nutria in New Mexico, and potentially occurs in 44 river kilometers (27.5 miles) in the Kinlichee drainage of Arizona. However, the number of occupied miles in Arizona is unknown, and the genetic composition of these fish is still under investigation.

Zuni bluehead sucker's range reduction and fragmentation is caused by discontinuous surface-water flow, introduced species, and habitat degradation from fine sediment deposition. The Zuni bluehead sucker persists in very small creeks that are subject to very low flows and drying during periods of drought. Because of climate change (warmer air temperatures), streamflow is predicted to decrease in the Southwest. Warmer winter and spring temperatures cause an increased fraction of precipitation to fall as rain, resulting in a reduced snow pack, an earlier snow melt, and a longer dry season leading to decreased streamflow in the summer and a longer fire season. These changes would have a negative effect on Zuni bluehead sucker. Another major impact to populations of Zuni bluehead sucker was the application of fish toxicants through at least two dozen treatments in the Rio Nutria and Rio Pescado between 1960 and 1975. Large numbers of Zuni bluehead suckers were killed during these treatments. The Zuni bluehead sucker is most likely extirpated from Rio Pescado, as not one has been collected from that river since 1993.

The New Mexico Department of Game and Fish developed a recovery plan for Zuni bluehead sucker, which was approved by the New Mexico State Game Commission on December 15, 2004. The recovery plan recommends preservation and enhancement of extant populations and restoration of historical Zuni bluehead sucker populations. We predict that the recovery actions prescribed by the recovery plan will reduce and remove threats to this subspecies, but these actions will require further development and authorization before they can be implemented and threats are reduced. Because of the ongoing (imminent) threats of high magnitude, including loss of habitat (historical and current from beaver activity), degradation of remaining habitat (nonnative species and land development), drought, fire, and climate change, we maintained an LPN of 3 for this subspecies.

Rio Grande cutthroat trout (*Oncorhynchus clarki virginalis*)—The following summary is based on information contained in our files and our status review published on May 14, 2008 (73 FR 27900). Rio Grande cutthroat trout is one of 14 subspecies of cutthroat trout found in the western United States. Populations of this subspecies are in New Mexico and Colorado in drainages of the Rio Grande, Pecos, and Canadian Rivers. Although once widely distributed in connected stream networks, Rio Grande cutthroat trout populations now occupy about 10 percent of historical habitat, and the populations are fragmented and isolated from one another. The majority of populations occur in high-elevation streams.

Major threats include the loss of suitable habitat that has occurred and is likely to continue occurring due to water diversions, dams, stream drying, habitat quality degradation, and, changes in hydrology; introduction of nonnative trout and ensuing competition, predation, and hybridization; and whirling disease. In addition, average air temperatures in the Southwest have increased about 1 °C (2.5 °F) in the past 30 years, and they are projected to increase by another 1.2 to 2.8 °C (3 to 7 °F) by 2050. Because trout require cold water, and water temperatures depend in large part on air temperature, there is concern that the habitat of Rio Grande cutthroat trout will further decrease in response to warmer water temperatures caused by climate change. Wildfire and drought (stream drying) are additional threats to Rio Grande cutthroat trout populations that are likely to increase in magnitude in response to climate change. Research is occurring to assess the effects of climate change on this subspecies, and agencies are working to restore historically occupied streams and develop a conservation plan to direct conservation. The threats are of moderate magnitude because there is good distribution and a comparatively large number of populations across the landscape, some populations have few threats present, and in other areas management actions are being taken to help control the threat of nonnative trout. Overall, the threats are ongoing and, therefore, imminent. Based on imminent threats of moderate magnitude, we assigned an LPN of 9 to this subspecies.

Clams

Texas hornshell (*Popenaias popei*)—The following summary is based on information contained in our files and information provided by the New Mexico Department of Game and Fish and Texas Parks and Wildlife Department. The Texas hornshell is a freshwater mussel found in the Black River in New Mexico, and in the Rio Grande and the Devils River in Texas. Until March 2008, the only known extant populations were in New Mexico's Black River and one locality in the Rio Grande near Laredo, Texas. In March 2008, two new localities were confirmed in Texas: one in the Devils River, and one in the mainstem Rio Grande in the Rio Grande Wild and Scenic River segment downstream of Big Bend National Park. In 2011, the Rio Grande population near Laredo was resurveyed and found to be large and robust.

The primary threats to this species are habitat alterations such as streambank channelization, impoundments, and diversions for agriculture and flood control, including a proposed low-water diversion dam just downstream of the Rio Grande population near Laredo; contamination of water by oil and gas activity; alterations in the natural riverine hydrology; and increased sedimentation and flood pulses from prolonged overgrazing and loss of native vegetation. Although riverine habitats throughout the species' known occupied range are under constant threat from these ongoing or potential activities, numerous conservation actions that will benefit the species are under way in New Mexico, including the completion of a State recovery plan for the species and the drafting of a candidate conservation agreement with assurances, and are beginning in Texas on the Big Bend reach of the Rio Grande. Due to these ongoing conservation efforts, and because at

least one of the populations appears to be robust, the magnitude of the threats is moderate. However, the threats to the species are ongoing, and remain imminent. Thus, we maintained the LPN of 8 for this species.

Fluted kidneyshell (*Ptychobranchus subtentum*)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. The fluted kidneyshell is a freshwater mussel (Unionidae) endemic to the Cumberland and Tennessee River systems (Cumberlandian Region) in Alabama, Kentucky, Tennessee, and Virginia. It requires shoal habitats in free-flowing rivers to survive and successfully recruit new individuals into its populations.

This species has been extirpated from numerous regional streams and is no longer found in the State of Alabama. Habitat destruction and alteration (e.g., impoundments, sedimentation, and pollutants) are the chief factors that contributed to its decline. The fluted kidneyshell was historically known from at least 37 streams but is currently restricted to no more than 12 isolated populations. Current status information for most of the 12 populations deemed to be extant is available from recent periodic sampling efforts (sometimes annually) and other field studies, particularly in the upper Tennessee River system. Some populations in the Cumberland River system have had recent surveys as well (e.g., Wolf, Little Rivers; Little South Fork; Horse Lick, Buck Creeks). Populations in Buck Creek, Little South Fork, Horse Lick Creek, Powell River, and North Fork Holston River have clearly declined over the past two decades. Based on recent information, the overall population of the fluted kidneyshell is declining rangewide. At this time, there is only one population—the Clinch River/Copper Creek –where the species remains in large numbers and is viable, although smaller, viable populations remain (e.g., Wolf, Little, North Fork Holston Rivers; Rock Creek). Most other populations are of questionable or limited viability, with some on the verge of extirpation (e.g., Powell River; Little South Fork; Horse Lick, Buck, and Indian Creeks). Newly reintroduced populations in the Little Tennessee, Nolichucky, and Duck Rivers will hopefully begin to reverse the downward population trend of this species. The threats are high in magnitude, as the majority of populations of this species are severely affected by numerous threats (impoundments, sedimentation, small population size, isolation of populations, gravel mining, municipal pollutants, agricultural runoff, nutrient enrichment, and coal processing pollution) that result in mortality or reduced reproductive output. As the threats are ongoing, they are imminent. We assigned an LPN of 2 to this mussel species.

Neosho mucket (*Lampsilis rafinesqueana*)—We continue to find that listing this species is warranted, but precluded as of the date of publication of this notice. However, we are working on a proposed listing rule that we expect to publish prior to making the next annual resubmitted petition 12-month finding.

Slabside pearlymussel (*Lexingtonia dolabelloides*)—The following summary is based on information contained in our files. The slabside pearlymussel is a freshwater mussel (Unionidae) endemic to the Cumberland and Tennessee River systems (Cumberlandian Region) in Alabama, Kentucky, Tennessee, and Virginia. It requires shoal habitats in free-flowing rivers to survive and successfully recruit new individuals into its populations.

Habitat destruction and alteration (e.g., impoundments, sedimentation, and pollutants) are the chief factors contributing to the decline of this species, which has been extirpated from numerous regional streams and is no longer found in Kentucky. The slabside pearlymussel was historically known from at least 32 streams, but is currently restricted to no more than 11 isolated stream segments. Current status information for most of the 11 populations deemed to be extant is available from recent periodic sampling efforts (sometimes annually) and other field studies. Comprehensive surveys have taken place in the Middle and North Forks of the Holston River, Paint Rock River, and Duck River in the past several years. Based on recent information, the overall population of the slabside pearlymussel is declining rangewide. Of the five streams in which the species remains in good numbers (i.e., Clinch, North and Middle Forks of the Holston River, Paint Rock River, and Duck River), the Middle and upper North Fork Holston Rivers have undergone drastic recent declines, while the Clinch population has been in a longer-term decline. Most of the remaining five populations (i.e., Powell River, Big Moccasin Creek, Hiwassee River, Elk River, Bear Creek) have doubtful viability, and several if not all of them may be on the verge of extirpation.

The threats remain high in magnitude, as all populations of this species are severely affected in numerous ways (impoundments, sedimentation, small population size, isolation of populations, gravel mining, municipal pollutants, agricultural runoff, nutrient enrichment, and coal processing pollution) that result in mortality or reduced reproductive output. As the threats are ongoing, they are imminent. We assigned an LPN of 2 to this mussel species.

Rabbitsfoot (*Quadrula cylindrica cylindrica*)—We continue to find that listing this species is warranted, but precluded as of the date of publication of this notice. However, we are working on a proposed listing rule that we expect to publish prior to making the next annual resubmitted petition 12-month finding.

Snails

Black mudalia (*Elimia melanoides*)—The following summary is based on information contained in our files. No new information was provided in the petition we received on April 20, 2010. The black mudalia is a small snail that is found clinging to clean gravel, cobble, boulders and/or logs in flowing water on shoals and riffles. The historical distribution of the black mudalia encompassed over 250 miles of stream channel in the upper the Black Warrior River drainage in Alabama. The species has been extirpated from more than 80 percent of that range by the construction of two major dams on the main stem Black Warrior River and another dam on the lower Sipsey Fork. Other historical causes of range curtailment in the un-dammed river and stream channels of the upper Black Warrior River drainage include coal mine drainage, industrial and municipal pollution events, and agricultural runoff. The mudalia is currently known from 10 shoal populations in five streams.

Water quality and habitat degradation are the biggest threats to the continued existence of the black mudalia. Sources of point and nonpoint pollution in the Black Warrior River Basin have been numerous and widespread. Pollution is generated from inadequately treated effluent from industrial plants, sanitary landfills, sewage treatment plants, poultry operations, and cattle feedlots. Surface mining represents another threat to the biological integrity of stream habitats. Runoff from old, abandoned coal mines generates pollution through acidification, increased mineralization, and sediment loading. Most of the stream segments draining into black mudalia habitat currently support their water quality classification standards. However, the reach of the Locust Fork where the species is found is identified on the

Alabama 303(d) List (a list of water bodies failing to meet their designated water-use classifications) as impaired by siltation, nutrients, or other habitat alterations. Additional surveys that were initiated in 2011, will clarify the extent and status of black mudalia populations. Because most of the stream segments currently occupied by black mudalia have sufficient water quality, we conclude that the threats to the species are moderate. Based on ongoing threats of moderate magnitude, we assigned an LPN of 8 to this species.

Phantom Cave snail (*Cochliopa texana*) and Phantom springsnail (*Tryonia cheatumi*)—We continue to find that listing these species is warranted, but precluded as of the date of publication of this notice. However, we are working on a proposed listing rule that we expect to publish prior to making the next annual resubmitted petition 12-month finding.

Sisi snail (*Ostodes strigatus*)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. The sisi snail is a ground-dwelling species in the Potaridae family, and is endemic to American Samoa. The species is now known from a single population on the island of Tutuila, American Samoa.

This species is currently threatened by habitat loss and modification and by predation from nonnative predatory snails. The decline of the sisi snail in American Samoa has resulted, in part, from loss of habitat to forestry and agriculture, and loss of forest structure to hurricanes and alien weeds that establish after these storms. All live sisi snails have been found in the leaf litter beneath remaining intact forest canopy. No snails were found in areas bordering agricultural plots or in forest areas that were severely damaged by three hurricanes (1987, 1990, and 1991). Under natural historical conditions, loss of forest canopy to storms did not pose a great threat to the long-term survival of these snails; enough intact forest with healthy populations of snails would support dispersal back into newly regrown canopy forest. However, the presence of alien weeds such as mile-a-minute vine (*Mikania micrantha*) may reduce the likelihood that native forest will re-establish in areas damaged by the hurricanes. This loss of habitat to storms is greatly exacerbated by expanding agriculture. Agricultural plots on Tutuila have spread from low elevations up to middle and some high elevations, greatly reducing the forest area and thus reducing the resilience of native forests and Tutuila's populations of native snails. These reductions also increase the likelihood that future storms will lead to the extinction of populations or species that rely on the remaining canopy forest. In an effort to eradicate the giant African snail (*Achatina fulica*), the alien rosy carnivore snail (*Euglandia rosea*) was introduced in 1980. The rosy carnivore snail has spread throughout the main island of Tutuila. Numerous studies show that the rosy carnivore snail feeds on endemic island snails including the sisi, and is a major agent in their declines and extirpations. At present, the major threat to long-term survival of the native snail fauna in American Samoa is predation by nonnative predatory snails. These threats are ongoing and are therefore imminent. As the threats occur throughout the entire range of the species and have a severe effect on the survival of the snails, leading to a relatively high likelihood of extinction, they are of a high magnitude. Therefore we assigned this species an LPN of 2.

Diamond Y Spring snail (*Pseudotryonia adamantina*) and Gonzales springsnail (*Tryonia circumstriata*)—We continue to find that listing these species is warranted but precluded as of the date of publication of this notice. However, we are working on a proposed listing rule that we expect to publish prior to making the next annual resubmitted petition 12-month finding.

Rosemont talussnail (*Sonorella rosemontensis*)—the following summary is based on information in our files. The petition we received on June 24, 2010, provided no new information beyond what we had already included in our assessment of this species. The Rosemont talussnail, a land snail in the family Helminthoglyptidae, is known from three talus slopes in the Santa Rita Mountains, Pima County, Arizona. The primary threat to Rosemont talussnail is hard rock mining. The entire range of the species is located on patented mining claims and can reasonably be expected to be subjected to mining activities in the foreseeable future. Hard rock mining typically involves the blasting of hillsides and the crushing of ore-laden rock. Such activities would kill talussnails and render their habitats unsuitable for occupation. Because mining may occur across the entire range of the species within the foreseeable future, potentially resulting in rangewide habitat destruction and population losses, the threats are of a high magnitude. However, mining on patented mining claims, although a reasonably anticipated action, is neither currently ongoing nor imminent. Although the Rosemont Copper Mine is scheduled to commence operations in the near future, there exists uncertainty regarding its scope, and therefore its potential effect on habitat of the Rosemont talussnail. Accordingly, we find that overall threats to the Rosemont talussnail are nonimminent, and we retain an LPN of 5 for this species.

Fragile tree snail (*Samoana fragilis*)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. A tree-dwelling species, the fragile tree snail is a member of the Partulidae family of snails, and is endemic to the islands of Guam and Rota (Mariana Islands). Requiring cool and shaded native forest habitat, the species is now known from one population on Guam and from one population on Rota.

This species is currently threatened by habitat loss and modification and by predation from nonnative predatory snails and flatworms. Large numbers of Philippine deer (*Cervus mariannus*) (Guam and Rota), pigs (*Sus scrofra*) (Guam), water buffalo (*Bubalus bubalis*) (Guam), and cattle (*Bos taurus*) (Rota) directly alter the understory plant community and overall forest microclimate, making it unsuitable for snails. Predation by the alien rosy carnivore snail (*Euglandina rosea*), the Manokwar flatworm (*Platydemus manokwari*), and possibly rats (*Rattus* spp.) is a serious threat to the survival of the fragile tree snail. Field observations have established that the rosy carnivore snail and the Manokwar flatworm will readily feed on native Pacific island tree snails, including the Partulidae, such as those of the Mariana Islands. The rosy carnivore snail has caused the extirpation of many populations and species of native snails throughout the Pacific islands. The Manokwar flatworm has also contributed to the decline of native tree snails, in part due to its ability to ascend into trees and bushes that support native snails. Areas with populations of the flatworm usually lack partulid tree snails or have declining numbers of snails. In addition, predation by rats may be a serious and ongoing threat to the fragile tree snail. Because all of the threats occur rangewide and have a significant effect on the survival of this snail species, leading to a relatively high likelihood of extinction, they are high in magnitude. The threats are also ongoing and thus are imminent. Therefore, we assigned this species an LPN of 2.

Guam tree snail (*Partula radiolata*)—The following summary is based on information contained in our files. No new information was provided in the

petition we received on May 11, 2004. A tree-dwelling species, the Guam tree snail is a member of the Partulidae family of snails and is endemic to the island of Guam. Requiring cool and shaded native forest habitat, the species is now known from 22 populations on Guam.

This species is primarily threatened by predation from nonnative predatory snails, flatworms, and possibly rats (*Rattus* spp.). In addition, the species is also threatened by habitat loss and degradation. Predation by the alien rosy carnivore snail (*Euglandina rosea*) and the alien Manokwar flatworm (*Platydemus manokwari*) is a serious threat to the survival of the Guam tree snail (see summary for the fragile tree snail, above). In addition, predation by rats may be a serious and ongoing threat to the Guam tree snail. On Guam, open agricultural fields and other areas prone to erosion were seeded with tangantangan (*Leucaena leucocephala*) by the U.S. military. Tangantangan grows as a single species stand with no substantial understory. The microclimatic condition is dry with little accumulation of leaf litter humus and is particularly unsuitable as Guam tree snail habitat. In addition, native forest cannot reestablish and grow where this alien weed has become established. Because all of the threats occur rangewide and have a significant effect on the survival of this snail species, leading to a relatively high likelihood of extinction, they are high in magnitude. The threats are also ongoing and thus are imminent. Therefore, we assigned this species an LPN of 2.

Humped tree snail (*Partula gibba*)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. A tree-dwelling species, the humped tree snail is a member of the Partulidae family of snails, and was originally known from the island of Guam and the Commonwealth of the Northern Mariana Islands (islands of Rota, Aguiguan, Tinian, Saipan, Anatahan, Sarigan, Alamagan, and Pagan). Most recent surveys revealed a total of 14 populations on the islands of Guam, Rota, Aguiguan, Sarigan, Saipan, Alamagan, and Pagan. Although still the most widely distributed tree snail endemic in the Mariana Islands, remaining population sizes are often small.

This species is currently threatened by habitat loss and modification and by predation from nonnative predatory snails, flat worms, and possibly rats (*Rattus* spp.). Throughout the Mariana Islands, feral ungulates (pigs (*Sus scrofa*), Philippine deer (*Cervus mariannus*), cattle (*Bos taurus*), water buffalo (*Bubalus bubalis*), and goats (*Capra hircus*)) have caused severe damage to native forest vegetation by browsing directly on plants, causing erosion and retarding forest growth and regeneration. This in turn reduces the quantity and quality of forested habitat for the humped tree snail. Currently, populations of feral ungulates are found on the islands of Guam (deer, pigs, and water buffalo), Rota (deer and cattle), Aguiguan (goats), Saipan (deer, pigs, and cattle), Alamagan (goats, pigs, and cattle), and Pagan (cattle, goats, and pigs). Goats were eradicated from Sarigan in 1998, and the humped tree snail has increased in abundance on that island, likely in response to the removal of all the goats. However, the population of humped tree snails on Anatahan is likely extirpated due to the massive volcanic explosions of the island beginning in 2003 and still continuing, and the resulting loss of up to 95 percent of the vegetation on the island. Predation by the alien rosy carnivore snail (*Euglandina rosea*) and the alien Manokwar flatworm (*Platydemus manokwari*) is a serious threat to the survival of the humped tree snail (see summary for the fragile tree snail, above). In addition, predation by rats (*Rattus* spp.) may be a serious and ongoing threat to the humped tree snail. The magnitude of threats is high because these alien predators cause significant population declines to the humped tree snail rangewide. These threats are ongoing and thus are imminent. Therefore, we assigned this species an LPN of 2.

Lanai tree snail (*Partulina semicarinata*)—We continue to find that listing this species is warranted, but precluded as of the date of publication of this notice. However, we are working on a proposed listing rule that we expect to publish prior to making the next annual resubmitted petition 12-month finding.

Lanai tree snail (*Partulina variabilis*)—We continue to find that listing this species is warranted, but precluded as of the date of publication of this notice. However, we are working on a proposed listing rule that we expect to publish prior to making the next annual resubmitted petition 12-month finding.

Langford's tree snail (*Partula langfordi*)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. A tree-dwelling species, Langford's tree snail is a member of the Partulidae family of snails, and is known from one population on the island of Aguiguan.

This species is currently threatened by habitat loss and modification and by predation from nonnative predatory snails. In the 1930s, the island of Aguiguan was mostly cleared of native forest to support sugar cane and pineapple production. The abandoned fields and airstrip are now overgrown with alien weeds. The remaining native forest understory has greatly suffered from large and uncontrolled populations of alien goats and the invasion of weeds. Goats (*Capra hircus*) have caused severe damage to native forest vegetation by browsing directly on plants, causing erosion and retarding forest growth and regeneration. This in turn reduces the quantity and quality of forested habitat for Langford's tree snail. Predation by the alien rosy carnivore snail (*Euglandina rosea*) and by the Manokwar flatworm (*Platydemus manokwari*) (see summary for the fragile tree snail, above) is also a serious threat to the survival of Langford's tree snail. In addition, predation by rats (*Rattus* spp.) may be a serious and ongoing threat to Langford's tree snail. All of the threats are occurring rangewide, and no efforts to control or eradicate the nonnative predatory snail species or rats, or to reduce habitat loss, are being undertaken. The magnitude of threats is high because they result in direct mortality or significant population declines to Langford's tree snail rangewide. A survey of Aguiguan in November 2006 failed to find any live Langford's tree snails. These threats are also ongoing and thus are imminent. Therefore, we assigned this species an LPN of 2.

Newcomb's tree snail (*Newcombia cumingi*)—We continue to find that listing this species is warranted, but precluded as of the date of publication of this notice. However, we are working on a proposed listing rule that we expect to publish prior to making the next annual resubmitted petition 12-month finding.

Tutuila tree snail (*Eua zebrina*)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. A tree-dwelling species, the Tutuila tree snail is a member of the Partulidae family of snails, and is endemic to American Samoa. The species is known from 32 populations on the islands of Tutuila, Nuusetoga, and Ofu.

This species is currently threatened by habitat loss and modification and by predation from nonnative predatory snails and rats. All live Tutuila tree snails were found on understory

vegetation beneath remaining intact forest canopy. No snails were found in areas bordering agricultural plots or in forest areas that were severely damaged by three hurricanes (1987, 1990, and 1991). (See summary for the sisi snail, above, regarding impacts of alien weeds and of the rosy carnivore snail.) Rats (*Rattus* spp.) have also been shown to devastate snail populations, and rat-chewed snail shells have been found at sites where the Tutuila snail occurs. At present, the major threat to the long-term survival of the native snail fauna in American Samoa is predation by nonnative predatory snails and rats. The magnitude of threats is high because they result in direct mortality or significant population declines to the Tutuila tree snail rangewide. The threats are also ongoing and thus are imminent. Therefore, we assigned this species an LPN of 2.

Elongate mud meadows springsnail (*Pyrgulopsis notidicola*)—The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. The following summary is based on information contained in our files. *Pyrgulopsis notidicola* is endemic to Soldier Meadow, which is located at the northern extreme of the western arm of the Black Rock Desert in the transition zone between the Basin and Range Physiographic Province and the Columbia Plateau Province, Humboldt County, Nevada. The type locality, and the only known location of the species, occurs in four separate stretches of thermal (between 45° and 32 °C, 113° and 90 °F) aquatic habitat. The first stretch is the largest at approximately 600 m (1,968 ft) long and 2 m (6.7 ft) wide. The other stretches where *P. notidicola* occurs are less than 6 m (19.7 ft) long and 0.5 m (1.6 ft) wide. *Pyrgulopsis notidicola* occurs only in shallow, flowing water on gravel substrate. The species does not occur in deep water (i.e., impoundments) where water velocity is low, gravel substrate is absent, and sediment levels are high.

The species and its habitat are threatened by recreational use in the areas where it occurs as well as the ongoing impacts of past water diversions and livestock grazing and current off-highway vehicle travel. Conservation measures implemented by the Bureau of Land Management include installing fencing to exclude livestock, wild horses, burros and other large mammals; closing access roads to spring, riparian, and wetland areas and the limiting vehicles to designated routes; establishing a designated campground away from the habitats of sensitive species; installing educational signage; and increasing staff presence, including law enforcement and a volunteer site steward during the 6-month period of peak visitor use. These conservation measures have reduced the magnitude of threats to the species to moderate to low; all remaining threats are nonimminent and involve long-term changes to the habitat for the species resulting from past impacts. Until we can get data from a monitoring program that allows us to assess the long-term trend of the species, we have assigned a LPN of 11.

Gonzales springsnail (*Tryonia circumstriata*)—See summary above under Diamond Y Spring snail (*Pseudotryonia adamantina*).

Huachuca springsnail (*Pyrgulopsis thompsoni*)—See above in ''*Listing* Priority Changes in Candidates.'' The above summary is based on information contained in our files.

Page springsnail (*Pyrgulopsis morrisoni*)—The following summary is based on information contained in our files. The Page springsnail is known to exist only within a complex of springs located within an approximately 0.93-mi (1.5-km) stretch along the west side of Oak Creek around the community of Page Springs, and within springs located along Spring Creek, tributary to Oak Creek, Yavapai County, Arizona.

The primary threat to the Page springsnail is modification of habitat by domestic use, agriculture, ranching, fish hatchery operations, recreation, and groundwater withdrawal. Many of the springs where the species occurs have been subjected to some level of modification. Based on recent survey data, it appears that the Page springsnail is abundant within natural habitats and persists in modified habitats, albeit at reduced densities. Arizona Game and Fish Department (AGFD) management plans for the Bubbling Ponds and Page Springs fish hatcheries include commitments to replace lost habitat and to monitor remaining populations of invertebrates such as the Page springsnail. The candidate conservation agreement with assurances (CCAA) for the Page springsnail calls for implementation of conservation measures such as restoration and creation of natural springhead integrity, including springs on AGFD properties. In fact, several conservation measures benefitting the species have already been implemented. Additionally, the National Park Service has expressed an interest in restoring natural springhead integrity to Shea Springs, a site historically occupied by Page springsnail. Accordingly, ongoing implementation of the CCAA reduces the magnitude of threats to a moderate level and greatly reduces the chances of extirpation or extinction. The immediacy of the threat of groundwater withdrawal is uncertain, due to conflicting information regarding imminence. However, overall, the threats are imminent, because modification of the species' habitat by threats other than groundwater withdrawal is currently occurring. Therefore, we retain an LPN of 8 for the Page springsnail.

Phantom springsnail (*Tyronia cheatumi*)—See summary above under Phantom Cave snail (*Cochliopa texana*).

Insects

Mariana eight spot butterfly (*Hypolimnas octucula mariannensis*)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. The Mariana eight spot butterfly is a nymphalid butterfly species that feeds upon two host plants, *Procris pedunculata* and *Elatostema calcareum.* Endemic to the islands of Guam and Saipan, the species is now known from 10 populations on Guam. This species is currently threatened by predation and parasitism. The Mariana eight spot butterfly has extremely high mortality of eggs and larvae due to predation by alien ants and wasps. Because the threat of parasitism and predation by nonnative insects occur rangewide and can cause significant population declines to this species, they are high in magnitude. The threats are imminent because they are ongoing. Therefore, we assigned an LPN of 3 for this subspecies.

Mariana wandering butterfly (*Vagrans egestina*)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. The Mariana wandering butterfly is a nymphalid butterfly species that feeds upon a single host plant species, *Maytenus thompsonii.* Originally known from and endemic to the islands of Guam and Rota, the species is now known from one population on Rota. This species is currently threatened by alien predation and parasitism. The Mariana wandering butterfly is likely predated by alien ants and parasitized by native and nonnative parasitoids. Because the threats of parasitism and predation by nonnative insects occur rangewide and can cause significant population declines to this species, leading to a relatively high likelihood of extinction, they are high in magnitude. These threats are imminent because they are ongoing. Therefore, we assigned an LPN of 2 for this species.

Sequatchie caddisfly (*Glyphopsyche sequatchie*)—The following summary is based on information in our files. No new information was provided in the petition we received on May 11, 2004. The Sequatchie caddisfly is known from two spring runs that emerge from caves in Marion County, Tennessee: Owen Spring Branch (the type locality) and Martin Spring run in the Battle Creek system. In 1998, biologists estimated population sizes at 500 to 5,000 individuals for Owen Spring Branch and 2 to 10 times higher at Martin Spring, due to the greater amount of apparently suitable habitat. In spite of greater amounts of suitable habitat at the Martin Spring run, Sequatchie caddisflies are more difficult to find at this site, and in 2001 (the most recent survey) the Sequatchie caddisfly was relatively ''abundant'' at the Owen Spring Branch location, while only two individuals were observed at the Martin Spring.

Threats to the Sequatchie caddisfly include siltation, point and nonpoint discharges from municipal and industrial activities, and introduction of toxicants during episodic events. These threats, coupled with the extremely limited distribution of the species, its apparent small population size, the limited amount of occupied habitat, ease of accessibility, and the annual life cycle of the species, are all factors that leave the Sequatchie caddisfly vulnerable to extirpation. Therefore, the magnitude of the threat is high. These threats are gradual, and there is no basis to conclude that they are imminent. Based on high-magnitude and nonimminent threats, we assigned this species an LPN of 5.

Clifton Cave beetle (*Pseudanophthalmus caecus*)—The following summary is based upon information contained in our files. No new information was provided in the petition we received on May 11, 2004. Clifton Cave beetle is a small, eyeless, reddish-brown, predatory insect that feeds upon small cave invertebrates. It is cave dependent, and is not found outside the cave environment. Clifton Cave beetle is only known from two privately owned Kentucky caves. Soon after the species was first collected in 1963 in one cave, the cave entrance was enclosed due to road construction. We do not know whether the species still occurs at the original location or if it has been extirpated from the site by the closure of the cave entrance. Other caves in the vicinity of this cave were surveyed for the species during 1995 and 1996, and only one additional site was found to support the Clifton Cave beetle. The limestone caves in which the Clifton Cave beetle is found provide a unique and fragile environment that supports a variety of species that have evolved to survive and reproduce under the demanding conditions found in cave ecosystems. The limited distribution of the species makes it vulnerable to isolated events that would only have a minimal effect on more wide-ranging insects. Events such as toxic chemical spills, discharges of large amounts of polluted water or indirect impacts from off-site construction activities, closure of entrances, alteration of entrances, or the creation of new entrances could have serious adverse impacts on this species. Therefore, the magnitude of threat is high for this species. The threats are nonimminent because there are no known projects planned that would affect the species in the near future. We therefore have assigned an LPN of 5 to this species.

Coleman cave beetle (*Pseudanophthalmus colemanensis*)—The following summary is based upon information contained in our files. No new information was provided in the petition we received on April 20, 2010. The Coleman cave beetle is a small, eyeless, reddish-brown, predatory insect that feeds upon small cave invertebrates. It is cave dependent and is not found outside the cave environment. It is only known from three Tennessee caves.

The limestone caves in which this species is found provide a unique and fragile environment that support a variety of species that have evolved to survive and reproduce under the demanding conditions found in cave ecosystems. Caves and the species that are completely dependent upon them receive the energy that forms the basis of the cave food chain from outside the cave. This energy can be in the form of bat guano deposited by cave-dependent bats, large or small woody debris washed or blown into the cave, or tiny bits of organic matter carried into the cave by water through small cracks in the rocks overlaying the cave.

The Coleman cave beetle was originally known only from the privately owned Coleman Cave in Montgomery County. This cave formerly supported a colony of endangered gray bats. The bats have abandoned this cave because of air flow changes in the cave caused by closure of an upper entrance to the cave. Although the cave is protected by a cooperative management agreement with the landowner, the upper entrance has not been restored and the bats have not returned to the cave. A new location for the species was discovered during a biological inventory of Foster Cave (also known as Darnell Cave) when one specimen of the species was found during that survey. Foster Cave is on a preserve owned and managed by the Tennessee Department of Conservation. In 2006, specimens of this species were discovered in Bellamy Cave and in Darnell Spring Cave (part of the same cave complex as Foster Cave). All of these sites are in close proximity to each other. Bellamy Cave is owned and managed by the Tennessee Wildlife Resources Agency (TWRA). Both Foster Cave and Bellamy Cave were first acquired and protected by The Nature Conservancy and later transferred to the State for long-term protection and management.

The threats are nonimminent because there are no known projects planned that would affect the species in the next few years. Because it occurs at three locations and it receives some protection under a cooperative management agreement and protective ownership, the magnitude of threats is moderate to low. Thus, we have assigned an LPN of 11 to this species.

Icebox Cave beetle (*Pseudanophthalmus frigidus*)—The following summary is based upon information contained in our files. No new information was provided in the petition we received on May 11, 2004. Icebox Cave beetle is a small, eyeless, reddish-brown, predatory insect that feeds upon small cave invertebrates. It is not found outside the cave environment, and is only known from one privately owned Kentucky cave.

The limestone cave in which this species is found provides a unique and fragile environment that supports a variety of species that have evolved to survive and reproduce under the demanding conditions found in cave ecosystems. The species has not been observed since it was originally collected, but species experts believe that it may still exist in the cave in low numbers. The limited distribution of the species makes it vulnerable to isolated events that would only have a minimal effect on more wide-ranging insects. Events such as toxic chemical spills or discharges of large amounts of polluted water, or indirect impacts from off-site construction activities, closure of entrances, alteration of entrances, or the creation of new entrances, could have serious adverse impacts on this species. Therefore, the magnitude of threat is high for this species because it is limited in distribution and the threats would result in a high level of mortality or reduced reproductive capacity. The threats are nonimminent because there are no known projects planned that would affect the species in the near

future. We therefore have assigned an LPN of 5 to this species.

Inquirer Cave beetle (*Pseudanophthalmus inquisitor*)—The following summary is based upon information contained in our files. No new information was provided in the petition we received on May 11, 2004. The Inquirer Cave beetle is a fairly small, eyeless, reddish-brown, predatory insect that feeds upon small cave invertebrates. It is not found outside the cave environment, and is only known from one privately owned Tennessee cave.

The limestone cave in which this species is found provides a unique and fragile environment that supports a variety of species that have evolved to survive and reproduce under the demanding conditions found in cave ecosystems. The species was last observed in 2006. The limited distribution of the species makes it vulnerable to isolated events that would only have a minimal effect on more wide-ranging insects. The area around the only known site for the species is in a rapidly expanding urban area. The entrance to the cave is protected by the landowner through a cooperative management agreement with the Service, The Nature Conservancy, and Tennessee Wildlife Resources Agency; however, a sinkhole that drains into the cave system is located away from the protected entrance and is near a highway. Events such as toxic chemical spills, discharges of large amounts of polluted water, or indirect impacts from off-site construction activities could adversely affect the species and the cave habitat.

The magnitude of threat is high for this species because it is limited in distribution and the threats would have negative impacts on its continued existence. The threats are nonimminent because there are no known projects planned that would affect the species in the near future and the species receives some protection under a cooperative management agreement. We therefore have assigned an LPN of 5 to this species.

Louisville Cave beetle (*Pseudanophthalmus troglodytes*)—The following summary is based upon information contained in our files. No new information was provided in the petition we received on May 11, 2004. The Louisville cave beetle is a small, eyeless, reddish-brown, predatory insect that feeds upon cave invertebrates. It is not found outside the cave environment, and is only known from two privately owned Kentucky caves.

The limestone caves in which this species is found provide a unique and fragile environment that supports a variety of species that have evolved to survive and reproduce under the demanding conditions found in cave ecosystems. The limited distribution of the species makes it vulnerable to isolated events that would only have a minimal effect on more wide-ranging insects. Events such as toxic chemical spills, discharges of large amounts of polluted water, or indirect impacts from off-site construction activities, closure of entrances, alteration of entrances, or the creation of new entrances could have serious adverse impacts on this species. The magnitude of threat is high for this species, because it is limited in distribution and the threats would have severe negative impacts on the species. The threats are nonimminent because there are no known projects planned that would affect the species in the near future. We therefore have assigned an LPN of 5 to this species.

Tatum Cave beetle (*Pseudanophthalmus parvus*) — The following summary is based upon information contained in our files. No new information was provided in the petition we received on May 11, 2004. Tatum Cave beetle is a small, eyeless, reddish-brown, predatory insect that feeds upon cave invertebrates. It is not found outside the cave environment, and is only known from one privately owned Kentucky cave.

The limestone cave in which this species is found provides a unique and fragile environment that supports a variety of species that have evolved to survive and reproduce under the demanding conditions found in cave ecosystems. The species has not been observed since 1965, but species experts believe that it still exists in low numbers. The limited distribution of the species makes it vulnerable to isolated events that would only have a minimal effect on more wide-ranging insects. Events such as toxic chemical spills, discharges of large amounts of polluted water, or indirect impacts from off-site construction activities, closure of entrances, alteration of entrances, or the creation of new entrances could have serious adverse impacts on this species. The magnitude of threat is high for this species, because its limited numbers mean that any threats could severely affect its continued existence. The threats are nonimminent because there are no known projects planned that would affect the species in the near future. We therefore have assigned an LPN of 5 to this species.

Taylor's (Whulge, Edith's) checkerspot butterfly (*Euphydryas editha taylori*)—We continue to find that listing this species is warranted, but precluded as of the date of publication of this notice. However, we are working on a proposed listing rule that we expect to publish prior to making the next annual resubmitted petition 12-month finding.

Orangeblack Hawaiian damselfly (*Megalagrion xanthomelas*)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. The orangeblack Hawaiian damselfly is a stream-dwelling species endemic to the Hawaiian Islands of Kauai, Oahu, Molokai, Maui, Lanai, and Hawaii. The species no longer is found on Kauai, and is now restricted to 16 populations on the islands of Oahu, Maui, Molokai, Lanai, and Hawaii. This species is threatened by predation from alien aquatic species such as fish and predacious insects, and habitat loss through dewatering of streams and invasion by nonnative plants. Nonnative fish and insects prey on the naiads of the damselfly, and loss of water reduces the amount of suitable naiad habitat available. Invasive plants (e.g., California grass (*Brachiaria mutica*)) also contribute to loss of habitat by forming dense, monotypic stands that completely eliminate any open water. Nonnative fish and plants are found in all the streams the orangeblack damselfly occur in, except the Oahu location, where there are no nonnative fish. We assigned this species an LPN of 8 because, although the threats are ongoing and therefore imminent, they affect the survival of the species in varying degrees throughout the range of the species and are therefore of moderate magnitude.

Picture-wing fly (*Drosophila digressa*)—We continue to find that listing this species is warranted but precluded as of the date of publication of this notice. However, we are working on a proposed listing rule that we expect to publish prior to making the next annual resubmitted petition 12-month finding.

Stephan's riffle beetle (*Heterelmis stephani*)—The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. The Stephan's riffle beetle is an endemic riffle beetle found in limited spring environments within the Santa Rita Mountains, Pima County, Arizona. The beetle is known from Sylvester Spring in Madera Canyon, within the Coronado National Forest. Threats to that spring are largely from habitat modification, recreational activities in the springs, and potential changes in water quality and quantity due to

catastrophic natural events and climate change. The threats are of low to moderate magnitude based on our current knowledge of the permanence of threats and the likelihood that the species will persist in areas that are unaffected by the threats. Although the threats from climate change are expected to occur over many years, the threats from recreational use are ongoing. Therefore, the threats are imminent. Thus, we retain an LPN of 8 for the Stephan's riffle beetle.

Dakota skipper (*Hesperia dacotae*)—The following summary is based on information contained in our files, including information from the petition received on May 12, 2003. The Dakota skipper is a small- to mid-sized butterfly that inhabits high-quality tallgrass and mixed-grass prairie in Minnesota, North Dakota and South Dakota in the United States, and the provinces of Manitoba and Saskatchewan in Canada. The species is presumed to be extirpated from Iowa and Illinois and from many sites within occupied U.S. States.

The Dakota skipper is threatened by degradation of its native prairie habitat by overgrazing, invasive species, gravel mining, and herbicide applications; inbreeding, population isolation, and prescribed fire threaten some populations. Prairie succeeds to shrubland or forest without periodic fire, grazing, or mowing; thus, the species is also threatened at sites where such disturbances are not applied. The Service and other Federal agencies, State agencies, the Sisseton-Wahpeton Sioux Tribe, and some private organizations (e.g., The Nature Conservancy) protect and manage some Dakota skipper sites. Careful and considered management is always necessary to ensure the species' persistence, even at protected sites. The species may be secure at a few sites where public and private landowners manage native prairie in ways that conserve Dakota skipper, but approximately half of the inhabited sites are privately owned with little or no protection. A few private sites are protected from conversion by easements, but these do not preclude adverse effects from overgrazing. The threats are such that the Dakota skipper warrants listing. The threats are moderate in magnitude because some sites are protected through careful and considered management, and therefore they do not affect the species uniformly throughout its range. The threats are ongoing, and therefore imminent. We assigned this species an LPN of 8 to reflect the immediacy of threats to remnant habitat, particularly on private lands.

Mardon skipper (*Polites mardon*)—We continue to find that listing this species is warranted, but precluded as of the date of publication of this notice. However, we are working on a proposed listing rule that we expect to publish prior to making the next annual resubmitted petition 12-month finding.

Meltwater lednian stonefly (*Lednia tumana*)—See above in ''Listing Priority Changes in Candidates.'' The above summary is based on information contained in our files.

Coral Pink Sand Dunes tiger beetle (*Cicindela limbata albissima*)—We continue to find that listing this species is warranted but precluded as of the date of publication of this notice. However, we are working on a proposed listing rule that we expect to publish prior to making the next annual resubmitted 12-month petition finding.

Highlands tiger beetle (*Cicindela highlandensis*)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. The Highlands tiger beetle is narrowly distributed and restricted to areas of bare sand within scrub and sandhill on ancient sand dunes of the Lake Wales Ridge in Polk and Highlands Counties, Florida. Adult tiger beetles have been most recently found at 40 sites at the core of the Lake Wales Ridge. In 2004–2005 surveys, a total of 1,574 adults were found at 40 sites, compared with 643 adults at 31 sites in 1996, 928 adults at 31 sites in 1995, and 742 adults at 21 sites in 1993. Of the 40 sites in the 2004–2005 surveys with one or more adults, results ranged from 3 sites with large populations of over 100 adults, to 13 sites with fewer than 10 adults. Results from a limited removal study at four sites and similar studies suggest that the actual population size at some survey sites can be as much as two times as high as indicated by the visual index counts. If assumptions are correct and unsurveyed habitat is included, then the total number of adults at all survey sites might be 3,000 to 4,000.

Habitat loss and fragmentation and lack of fire and disturbances to create open habitat conditions are serious threats; remaining patches of suitable habitat are disjunct and isolated. Populations occupy relatively small patches of habitat and are small and isolated; individuals have difficulty dispersing between suitable habitats. These factors pose serious threats to the species. Although significant progress in implementing prescribed fire has occurred over the last 10 years through collaborative partnerships and the Lake Wales Ridge Prescribed Fire Team, a backlog of long-unburned habitat within conservation areas remains. Overcollection and pesticide use are additional concerns. Because this species is narrowly distributed with specific habitat requirements and small populations, any of the threats could have a significant impact on the survival of the species. Therefore, the magnitude of threats is high. Although the majority of its historical range has been lost, degraded, and fragmented, numerous sites are protected and land managers are implementing prescribed fire at some sites; these actions are expected to restore habitat and help reduce threats and have already helped stabilize and improve the populations. Therefore, overall, the threats are nonimminent, and we assigned the Highlands tiger beetle an LPN of 5.

Arachnids

Warton's cave meshweaver (*Cicurina wartoni*)—See above in ''Listing Priority Changes in Candidates.'' The above summary is based on information contained in our files.

Crustaceans

Anchialine pool shrimp (*Metabetaeus lohena*)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. *Metabetaeus lohena* is an anchialine pool-inhabiting species of shrimp belonging to the family Alpheidae. This species is endemic to the Hawaiian Islands and is currently known from populations on the islands of Oahu, Maui, and Hawaii. The primary threats to this species are predation by fish (which do not naturally occur in the pools inhabited by this species) and habitat loss from degradation (primarily from illegal trash dumping). The pools where this species occurs on the islands of Maui and Hawaii are located within State Natural Area Reserves (NAR) and in a National Park. Both the State NARs and the National Park prohibit the collection of the species and the disturbance of the pools. However, enforcement of collection and disturbance prohibitions is difficult, and the negative effects from the introduction of fish are extensive and happen quickly. On Oahu, one pool is located in a National Wildlife Refuge, and is protected from collection and disturbance to the pool. However, on State-owned land where the species occurs, there is no protection from collection or disturbance of the pools. Therefore, threats to this species could have a significant adverse effect on the survival of the species, leading to a relatively high likelihood of extinction,

and are of a high magnitude. However, the primary threats of predation from fish and loss of habitat due to degradation are nonimminent overall, because on the islands of Maui and Hawaii no fish were observed in any of the pools where this species occurs and there has been no documented trash dumping in these pools. Only one site on Oahu had a trash dumping instance, and in that case the trash was cleaned up immediately and the species subsequently observed. No additional dumping events are known to have occurred. Therefore, we assigned this species an LPN of 5.

Anchialine pool shrimp (*Palaemonella burnsi*)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. *Palaemonella burnsi* is an anchialine pool-inhabiting species of shrimp belonging to the family Palaemonidae. This species is endemic to the Hawaiian Islands and is currently known from 3 pools on the island of Maui and 22 pools on the island of Hawaii. The primary threats to this species are predation by fish (which do not naturally occur in the pools inhabited by this species) and habitat loss due to degradation (primarily from illegal trash dumping). The pools where this species occurs on Maui are located within a State Natural Area Reserve (NAR). Hawaii's State statutes prohibit the collection of the species and the disturbance of the pools in State NARs. On the island of Hawaii, the species occurs within a State NAR and a National Park, and collection and disturbance are also prohibited. However, enforcement of these prohibitions is difficult, and the negative effects from the introduction of fish are extensive and happen quickly. Therefore, threats to this species could have a significant adverse effect on the survival of the species, leading to a relatively high likelihood of extinction, and are of a high magnitude. However, the threats are nonimminent, because surveys in 2004 and 2007 did not find fish in the pools where these shrimp occur on Maui or the island of Hawaii. Also, there was no evidence of recent habitat degradation at those pools. We assigned this species an LPN of 5.

Anchialine pool shrimp (*Procaris hawaiana*)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. *Procaris hawaiana* is an anchialine pool-inhabiting species of shrimp belonging to the family Procarididae. This species is endemic to the Hawaiian Islands, and is currently known from 2 pools on the island of Maui and 13 pools on the island of Hawaii. The primary threats to this species are predation from fish (which do not naturally occur in the pools inhabited by this species) and habitat loss due to degradation (primarily from illegal trash dumping). The pools where this species occurs on Maui are located within a State Natural Area Reserve (NAR). Twelve of the pools on the island of Hawaii are located within a State NAR. Hawaii's State statutes prohibit the collection of the species and the disturbance of the pools in State NARs. However, enforcement of these prohibitions is difficult, and the negative effects from the introduction of fish are extensive and happen quickly. In addition, there are no prohibitions for either removal of the species or disturbance to the pool for the one pool located outside a NAR on the island of Hawaii. Therefore, threats to this species could have a significant adverse effect on the survival of the species, leading to a relatively high likelihood of extinction, and thus remain at a high magnitude. However, the threats to the species are nonimminent because, during 2004 and 2007 surveys, no fish were observed in the pools where these shrimp occur on Maui, and no fish were observed in the one pool on the island of Hawaii during a site visit in 2005. In addition, there were no signs of trash dumping or fill in any of the pools where the species occurs. Therefore, we assigned this species an LPN of 5.

Anchialine pool shrimp (*Vetericaris chaceorum*)—We continue to find that listing this species is warranted, but precluded as of the date of publication of this notice. However, we are working on a proposed listing rule that we expect to publish prior to making the next annual resubmitted 12-month petition finding.

Flowering Plants

Abronia alpina (Ramshaw Meadows sand-verbena)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. *Abronia alpina* is a small perennial herb, 2.5 to 15.2 centimeters (1 to 6 inches) across, forming compact mats with lavender-pink, trumpet-shaped, and generally fragrant flowers. *Abronia alpina* is known from one main population center at Ramshaw Meadow and a smaller population at the adjacent Templeton Meadow. The meadows are located on the Kern River Plateau in the Sierra Nevada, on lands administered by the Inyo National Forest, in Tulare County, California. The total estimated area occupied is approximately 6 hectares (15 acres). The population fluctuates from year to year without any clear trends. Population estimates for the years from 1985 through 2009, ranged from a high of approximately 130,000 plants in 1997, to a low of approximately 40,000 plants in 2003. In 2009, when the population was last monitored, the estimated total population increased again to just over 120,000 plants.

The factors currently threatening *Abronia alpina* include natural and human habitat alteration, lowering of the water table due to erosion within the meadow system, and recreational use within meadow habitats. Lodgepole pines are encroaching upon meadow habitat with trees germinating within *A. alpina* habitat, occupying up to 20 percent of two *A. alpina* subpopulations. Lodgepole pine encroachment may alter soil characteristics by increasing organic matter levels, decreasing porosity, and moderating diurnal temperature fluctuations, thus reducing the competitive ability of *A. alpina* to persist in an environment more hospitable to other plant species.

The habitat occupied by *Abronia alpina* directly borders the meadow system, which is supported by the South Fork of the Kern River. The river flows through the meadow, at times coming within 15 m (50 ft) of *Abronia alpina* habitat, particularly in the vicinity of five subpopulations. Livestock trampling, along with the removal of bank stabilizing vegetation by grazing livestock, has contributed to downcutting of the river channel through the meadow, leaving the meadow subject to potential alteration by lowering of the water table. In 2001, the U.S. Forest Service began resting the grazing allotment for 10 years, eliminating cattle use up through the present time. The U.S. Forest Service is currently assessing the data collected on the rested allotment and, if the data indicate that sufficient watershed recovery has occurred, may conduct an environmental analysis to consider resumption of grazing.

Established hiker, packstock, and cattle trails pass through *A. alpina* subpopulations. Two main hiker trails pass through Ramshaw Meadow, but in 1988 and 1997, they were rerouted out of *A. alpina* subpopulations where feasible. Occasional incidental use by horses and hikers sometimes occurs on the remnants of cattle trails that pass through subpopulations in several places. The Service has funded studies to determine appropriate conservation measures for the species, and is working

with the U.S. Forest Service on developing a conservation strategy for the species. The threats are of a low magnitude and nonimminent because of the conservation actions already implemented. The LPN for *A. alpina* remains an 11, with nonimminent threats of moderate to low magnitude.

Arabis georgiana (Georgia rockcress)—The following summary is based on information in our files. No new information was provided in the petition we received on May 11, 2004. The Georgia rockcress grows in a variety of dry situations, including shallow soil accumulations on rocky bluffs, ecotones of gently sloping rock outcrops, and sandy loam along eroding river banks. It is occasionally found in adjacent mesic woods, but it will not persist in heavily shaded conditions. Currently, 16 natural populations are known from the Gulf Coastal Plain, Piedmont, and Ridge and Valley physiographic provinces of Alabama and Georgia. Populations of this species typically have a limited number of individuals over a small area.

Habitat degradation, more than outright habitat destruction, is the most serious threat to the continued existence of this species. Disturbance, associated with timber harvesting, road building, and grazing, has created favorable conditions for the invasion of exotic weeds, especially Japanese honeysuckle (*Lonicera japonica*), in this species' habitat. A large number of the populations are currently or potentially threatened by the presence of exotics. The heritage programs in Alabama and Georgia have initiated plans for exotic control at several populations. The magnitude of threats to this species is moderate to low due to the number of populations (16) across multiple counties in two States and due to the fact that several sites are protected. However, as a number of the populations are currently being affected by nonnative plants, the threat is imminent. Thus, we assigned an LPN of 8 to this species.

Argythamnia blodgettii (Blodgett's silverbush)—The following summary is based on information in our files. No new information was provided in the petition we received on May 11, 2004. Blodgett's silverbush occurs in Florida and is found in open, sunny areas in pine rockland, edges of rockland hammock, edges of coastal berm, and sometimes disturbed areas at the edges of natural areas. Plants can be found growing from crevices on limestone, or on sand. The pine-rockland habitat where the species occurs in Miami-Dade County and the Florida Keys requires periodic fires to maintain habitat with a minimum amount of hardwoods. There are approximately 22 extant occurrences, 12 in Monroe County and 10 in Miami-Dade County; many occurrences are on conservation lands. However, 4 to 5 sites are recently thought to be extirpated. The estimated population size of Blodgett's silverbush in the Florida Keys, excluding Big Pine Key, is roughly 11,000; the estimated population in Miami-Dade County is 375 to 13,650 plants.

Blodgett's silverbush is threatened by habitat loss, which is exacerbated by habitat degradation due to fire suppression, the difficulty of applying prescribed fire to pine rocklands, and threats from exotic plants. Remaining habitats are fragmented. Threats such as road maintenance and enhancement, infrastructure, and illegal dumping threaten some occurrences. Blodgett's silverbush is vulnerable to natural disturbances, such as hurricanes, tropical storms, and storm surges. Climatic changes, including sea-level rise, are long-term threats that are expected to continue to affect pine rocklands and ultimately substantially reduce the extent of available habitat, especially in the Keys. Overall, the magnitude of threats is moderate because not all of the occurrences are affected by the threats. In addition, land managers are aware of the threats from exotic plants and lack of fire, and are, to some extent, working to reduce these threats where possible. While a number of threats are occurring in some areas, the threat from development is nonimminent as most occurrences are on public land, and sea level rise is not currently affecting this species. Overall, the threats are nonimminent. Thus, we assigned an LPN of 11 to this species.

Artemisia borealis var. *wormskioldii* (Northern wormwood)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. Historically known from eight sites, northern wormwood is currently known from two populations in Klickitat and Grant Counties, Washington. This plant is restricted to exposed basalt, cobbly-sandy terraces, and sand habitat along the shore and on islands in the Columbia River. The two populations are separated by 200 miles (322 kilometers) of the Columbia River and three large hydroelectric dams. The Klickitat County population is declining; the status is unclear for the Grant County population; however, both are vulnerable to environmental variability. Numerous surveys have not detected additional plants.

Threats to northern wormwood include direct loss of habitat through regulation of water levels in the Columbia River and placement of riprap along the river bank; human trampling of plants from recreation; competition with nonnative, invasive species; burial by wind- and water-borne sediments; small population sizes; susceptibility to genetic drift and inbreeding; and the potential for hybridization with two other species of *Artemisia.* Ongoing conservation actions have reduced trampling, but have not eliminated or reduced the other threats at the Grant County site. Active conservation measures are not currently in place at the Miller Island site. The magnitude of threat is high for this subspecies because, although the two remaining populations are widely separated and distributed, one or both populations could be eliminated by a single disturbance. The threats are imminent because recreational use is ongoing; invasive nonnative species occur at both sites; windblown erosion and deposition of the substrate is ongoing at the Klickitat County site; and high water flows may occur unpredictably in any year. Therefore, we have retained an LPN of 3 for this subspecies.

Astragalus anserinus (Goose Creek milkvetch)—The following summary is based on information in our files and in the petition received on February 3, 2004. The majority (over 80 percent) of *Astragalus anserinus* sites in Idaho, Utah, and Nevada occur on Federal lands managed by the Bureau of Land Management. The rest of the sites occur as small populations on private and State lands in Utah and on private land in Idaho and Nevada. *A. anserinus* occurs in a variety of habitats, but is typically associated with dry, tuffaceous (made up of rock consisting of smaller kinds of volcanic detritus) soils from the Salt Lake Formation. The species grows on steep or flat sites, with soil textures ranging from silty to sandy to somewhat gravelly. The species tolerates some level of disturbance, based on its occurrence on steep slopes where downhill movement of soil is common.

The primary threats to remaining *A. anserinus* individuals consist of habitat degradation and modifications to the ecosystem in which it occurs resulting from an altered wildfire regime, and associated activities to control wildfires and rehabilitate burned-over areas. Other factors that also appear to threaten *A. anserinus* include livestock use, invasive nonnative species, and the inadequacy of regulatory mechanisms. Climate change effects to Goose Creek drainage habitats are possible, but we are unable to predict the specific impacts of this change to *A. anserinus* at this time. Threats are high in

magnitude, as these threats have the potential to destroy whole populations. The threats are nonimminent because they are not currently ongoing. Thus, we have assigned *A. anserinus* an LPN of 5.

Astragalus microcymbus (Skiff milkvetch)—The following summary is based on information contained in our files and in the petition we received on July 30, 2007. *Astragalus microcymbus* is a perennial forb that dies back to the ground every year. It has a very limited range and a spotty distribution within Gunnison and Saguache Counties in Colorado, where it is found in open, park-like landscapes in the sagebrush steppe ecosystem on rocky or cobbly, moderate to steep slopes of hills and draws. The most significant threats to *A. microcymbus* are recreation, roads, trails, the overall inadequacy of existing regulatory mechanisms, and habitat fragmentation and degradation. Recreational impacts are likely to increase given the close proximity of *A. microcymbus* to the town of Gunnison and the increasing popularity of mountain biking, motorcycling, and all-terrain vehicles. Furthermore, the Hartman Rocks Recreation Area draws users and contains over 40 percent of the *A. microcymbus* units. Other threats to the species include residential and urban development; livestock, deer, and elk use; climate change; and increasing periodic drought, nonnative invasive cheatgrass, and wildfire. We consider the threats to *A. microcymbus* to be moderate in magnitude because while serious and occurring rangewide, they do not collectively result in having a greater likelihood of bringing about extinction on a short time scale. The threats are imminent because the species is currently facing them in many portions of its range. Therefore we have assigned *A. microcymbus* an LPN of 8.

Astragalus schmolliae (Schmoll milkvetch)—The following summary is based on information contained in our files and in the petition we received on July 30, 2007. *Astragalus schmolliae* is a narrow endemic perennial plant that grows in the mature pinyon-juniper woodland of mesa tops in the Mesa Verde National Park area and in the Ute Mountain Ute Tribal Park in Colorado. The most significant threats to the species are degradation of habitat by fire, followed by invasion by nonnative cheatgrass and subsequent increase in fire frequency. These threats currently affect about 40 percent of the species' entire known range, and cheatgrass is likely to increase given its rapid spread and persistence in habitat disturbed by wildfires, fire and fuels management and development of infrastructure, and the inability of land managers to control it on a landscape scale. Other threats to *A. schmolliae* include fires, fire break clearings, drought, and inadequate regulatory mechanisms. The threats to the species overall are imminent and moderate in magnitude, because the species is currently facing them in many portions of its range, but the threats do not collectively result in having a greater likelihood of bringing about extinction on a short time scale. Therefore we have assigned *A. schmolliae* an LPN of 8.

Astragalus tortipes (Sleeping Ute milkvetch)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. *Astragalus tortipes* is a perennial plant that grows only on the Smokey Hills layer of the Mancos Shale Formation on the Ute Mountain Ute Indian Reservation in Montezuma County, Colorado. In 2000, 3,744 plants were recorded at 24 locations covering 500 acres within an overall range of 6,400 acres. Available information from 2000 indicates that the species remains stable.

Previous and ongoing threats from borrow pit excavation, off-highway vehicles, irrigation canal construction, and a prairie dog colony have had minor impacts that reduced the range and number of plants by small amounts. Off-highway vehicle use of the habitat has reportedly been controlled by fencing. Oil and gas development is active in the general area, but the Service has received no information to indicate that there is development within plant habitat. The Tribe reported that the status of the species remains unchanged, the population is healthy, and a management plan for the species is currently in draft form. Despite these positive indications, we have no documentation concerning the current status of the plants, condition of habitat, and terms of the species management plan being drafted by the Tribe. Thus, at this time, we cannot accurately assess whether populations are being adequately protected from previously existing threats. The threats are moderate in magnitude, because they have had minor impacts. Based on information we have, the population appears to be stable. Until the management plan is completed and made available, there are no regulatory mechanisms in place to protect the species. Overall, we conclude threats are nonimminent. Therefore, we assigned an LPN of 11 to this species.

Bidens campylotheca ssp. *pentamera* (Kookoolau)—We continue to find that listing this species is warranted, but precluded as of the date of publication of this notice. However, we are working on a proposed listing rule that we expect to publish prior to making the next annual resubmitted 12-month petition finding.

Bidens campylotheca ssp. *waihoiensis* (Kookoolau)—We continue to find that listing this species is warranted, but precluded as of the date of publication of this notice. However, we are working on a proposed listing rule that we expect to publish prior to making the next annual resubmitted 12-month petition finding.

Bidens conjuncta (Kookoolau)—We continue to find that listing this species is warranted, but precluded as of the date of publication of this notice. However, we are working on a proposed listing rule that we expect to publish prior to making the next annual resubmitted 12-month petition finding.

Bidens micrantha ssp. *ctenophylla* (Kookoolau)—We continue to find that listing this species is warranted, but precluded as of the date of publication of this notice. However, we are working on a proposed listing rule that we expect to publish prior to making the next annual resubmitted petition 12-month finding.

Brickellia mosieri (Florida brickell-bush)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. This species is restricted to pine rocklands of Miami-Dade County, Florida. This habitat requires periodic prescribed fires to maintain the low understory and prevent encroachment by native tropical hardwoods and exotic plants, such as Brazilian pepper. Only one large occurrence is known to exist; 15 other occurrences contain less than 100 individuals. Eleven occurrences are on conservation lands, while the rest of the extant populations are on private land and are currently vulnerable to habitat loss and degradation.

Climatic changes, including sea-level rise, are long-term threats that will reduce the extent of habitat. This species is threatened by habitat loss, which is exacerbated by habitat degradation due to fire suppression, the difficulty of applying prescribed fire to pine rocklands, and threats from exotic plants. Remaining habitats are fragmented. The species is vulnerable to natural disturbances, such as hurricanes, tropical storms, and storm surges. Due to its restricted range and the small sizes of most isolated occurrences, this species is vulnerable to environmental (catastrophic hurricanes), demographic (potential episodes of poor reproduction), and genetic (potential inbreeding

depression) threats. Ongoing conservation efforts include projects aimed at facilitating restoration and management of public and private lands in Miami-Dade County and projects to reintroduce and establish new populations at suitable sites within the species' historical range. The Service is also pursuing additional habitat restoration projects, which could help further improve the status of the species. Because of these efforts, the overall magnitude of threats is moderate. The threats are ongoing and thus imminent. We assigned this species an LPN of 8.

Calamagrostis expansa (Maui reedgrass)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. *Calamagrostis expansa* is a perennial grass found in wet forest and bogs, and in bog margins, on the islands of Maui and Hawaii, Hawaii. This species is known from 13 populations totaling fewer than 750 individuals.

Calamagrostis expansa is threatened by habitat degradation and loss by feral pigs, and by competition with nonnative plants. Predation by feral pigs is a potential threat to this species. All of the known populations of *C. expansa* on Maui occur in managed areas. Pig exclusion fences have been constructed and control of nonnative plants is ongoing within the exclosures. On the island of Hawaii, fencing is planned for the population in the Upper Waiakea Forest Reserve. This species is represented in an ex situ collection. Predation is a nonimminent threat. However, threats to this species from feral pigs and nonnative plants are ongoing, or imminent, and of high magnitude because they significantly affect the species throughout its range, leading to a relatively high likelihood of extinction. Therefore, we retained an LPN of 2 for this species.

Calamagrostis hillebrandii (Hillebrand's reedgrass)—We continue to find that listing this species is warranted, but precluded as of the date of publication of this notice. However, we are working on a proposed listing rule that we expect to publish prior to making the next annual resubmitted 12-month petition finding.

Calochortus persistens (Siskiyou mariposa lily)—The following summary is based on information contained in our files and the petition we received on September 10, 2001. The Siskiyou mariposa lily is a narrow endemic that is restricted to three disjunct ridge tops in the Klamath-Siskiyou Range on the California-Oregon border. The southernmost occurrence of this species is composed of nine separate sites on approximately 10 hectares (ha) (24.7 acres (ac)) of Klamath National Forest and privately owned lands that stretch for 6 kilometers (km) (3.7 miles (mi)) along the Gunsight-Humbug Ridge, Siskiyou County, California. In 2007, a new occurrence was confirmed in the locality of Cottonwood Peak and Little Cottonwood Peak, Siskiyou County, where several populations are distributed over 164 ha (405 ac) on three individual mountain peaks in the Klamath National Forest and on private lands. The northernmost occurrence consists of not more than five Siskiyou mariposa lily plants that were discovered in 1998, on Bald Mountain, west of Ashland, Jackson County, Oregon.

Major threats include competition and shading by native and nonnative species fostered by suppression of wildfire; increased fuel loading and subsequent risk of wildfire; fragmentation by roads, fire breaks, tree plantations, and radio-tower facilities; maintenance and construction around radio towers and telephone relay stations located on Gunsight Peak and Mahogany Point; and soil disturbance, direct damage, and exotic weed and grass species introduction as a result of heavy recreational use and construction of fire breaks. Dyer's woad (*Isatis tinctoria*), an invasive, nonnative plant that may prevent germination of Siskiyou mariposa lily seedlings, is now found throughout the southernmost California occurrence, affecting 75 percent of the known lily habitat on Gunsight-Humbug Ridge. Forest Service staff and the Klamath-Siskiyou Wildlands Center cite competition with dyer's woad as a significant and chronic threat to the survival of Siskiyou mariposa lily.

The combination of restricted range, extremely low numbers (five plants) in one of three disjunct populations, poor competitive ability, short seed dispersal distance, slow growth rates, low seed production, apparently poor survival rates in some years, herbivory, habitat disturbance, and competition from exotic plants threaten the continued existence of this species. These threats are of high magnitude because of their potential to affect the overall survival of the species negatively. Because the threats of competition from exotic plants are being addressed, they are not anticipated to overwhelm a large portion of the species' range in the immediate future; in additions the threats from low seed production and survival are longer-term threats. Thus, overall the threats are nonimminent. As such, we assigned an LPN of 5 to this species.

Canavalia pubescens (Awikiwiki)—We continue to find that listing this species is warranted, but precluded as of the date of publication of this notice. However, we are working on a proposed listing rule that we expect to publish prior to making the next annual resubmitted 12-month petition finding.

Castilleja christii (Christ's paintbrush)—The following summary is based on information contained in our files and the petition we received on January 2, 2001. *Castilleja christii* is found in one population covering approximately 85 ha (220 ac) on the summit of Mount Harrison in Cassia County, Idaho. This endemic species is considered a hemiparasite (dependent on the health of their surrounding native plant community), and it grows in association with subalpine-meadow and sagebrush habitats. The population may be large (greater than 10,000 individual plants); however, the species is considered to be subject to large variations in annual abundance and an accurate current population estimate is not available. Monitoring indicates that reproductive stems per plant and plant density declined between 1995 and 2007. Fluctuations have occurred since 2007, with slight increases in reproductive output and density in 2008 and decreases in 2009. Population monitoring did not occur in 2010.

The primary threat to the species is the nonnative, invasive plant smooth brome (*Bromus inermis*). Despite cooperative Forest Service and Service efforts to control smooth brome in 2007, 2008, 2009, and 2010, it still persists in *C. christii* habitats. Other threats to *C. christii* from recreational use and livestock trespass appear to be mostly seasonal and affect only a small portion of the population, and may not occur every year. The magnitude of the threats to this species is moderate at this time because, although the smooth brome control efforts have not eliminated the invasive plant, the Service and Forest Service are continuing their efforts in order to conserve this species. The threat from smooth brome is imminent because the threat still persists at a level that affects the native plant communities that provide habitat for *C. christii*. Thus, we assign an LPN of 8 to this species.

Chamaecrista lineata var. *keyensis* (Big Pine partridge pea)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. This pea is endemic to the lower Florida Keys, and restricted to pine rocklands, hardwood hammock edges, and roadsides and firebreaks within these

ecosystems. Historically, it was known from Big Pine, Cudjoe, No Name, Ramrod, and Little Pine Keys (Monroe County, Florida). In 2005, a small population was detected on lower Sugarloaf Key, but this population was not located after Hurricane Wilma; plants were likely killed by the tidal surge from this storm. It presently occurs on Big Pine Key, with a very small population on Cudjoe Key. It is fairly well distributed in Big Pine Key pine rocklands, which encompass approximately 580 hectares (1,433 acres), approximately 360 hectares (890 acres) of which are within the Service's National Key Deer Refuge (NKDR). Over 80 percent of the population probably exists on NKDR, with the remainder distributed among State, County, and private properties. Hurricane Wilma (October 2005) resulted in a storm surge that covered most of Big Pine Key with sea water. The surge reduced the population by as much as 95 percent in some areas.

Pine rockland communities are maintained by relatively frequent fires. In the absence of fire, shrubs and trees encroach on pine rockland, and this subspecies is eventually shaded out. NKDR has a prescribed fire program, although with many constraints on implementation. Habitat loss due to development was historically the greatest threat to the pea. Much of the remaining habitat is now protected on public lands. Absence of fire now appears to be the greatest of the deterministic threats. Given the recent increase in hurricane activity, storm surges are the greatest of the stochastic threats. The small range and patchy distribution of the subspecies increase risk from stochastic events. Climatic changes, including sea-level rise, are serious long-term threats. Models indicate that even under the best of circumstances, a significant proportion of upland habitat will be lost on Big Pine Key by 2100. Additional threats include restricted range, invasive exotic plants, roadside dumping, loss of pollinators, seed predators, and development.

We maintain the previous assessment that hurricanes, storm surges, lack of fire, and limited distribution result in a moderate magnitude of threat because a large part of the range is on conservation lands where threats are being addressed, although fire management is at much slower rate than is required. The immediacy of hurricane threats is difficult to characterize, but imminence is considered high given that hurricanes (and storm surges) of various magnitudes are frequent and recurrent events in the area. Sea-level rise remains uncontrolled but, overall, is nonimminent. Overall, the threats from limited distribution and inadequate fire management are imminent because they are ongoing. In addition, the most consequential threats (hurricanes, storm surges) are frequent, recurrent, and imminent. Therefore, we retained an LPN of 9 for Big Pine partridge pea.

Chamaesyce deltoidea ssp. *pinetorum* (Pineland sandmat)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. The pineland sandmat is only known from Miami-Dade County, Florida. The largest occurrence, estimated at more than 10,000 plants, is located on Long Pine Key within Everglades National Park. All other occurrences are smaller and are in isolated pine rockland fragments in heavily urbanized Miami-Dade County.

Occurrences on private (non-conservation) lands and on one County-owned parcel are at risk from development and habitat degradation and fragmentation. Conditions related to climate change, particularly sea-level rise, will be a factor over the long term. All occurrences of the species are threatened by habitat loss and degradation due to fire suppression, the difficulty of applying prescribed fire, and exotic plants. These threats are severe within small and unmanaged fragments in urban areas. However, the threats of fire suppression and exotics are reduced on lands managed by the National Park Service. Hydrologic changes are considered to be another threat. Hydrology has been altered within Long Pine Key due to artificial drainage, which lowered ground water, and by the construction of roads, which either impounded or diverted water. Regional water management intended to restore the Everglades could negatively affect the pinelands of Long Pine Key in the future. At this time, we do not know whether the proposed restoration and associated hydrological modifications will have a positive or negative effect on pineland sandmat. This narrow endemic may be vulnerable to catastrophic events and natural disturbances, such as hurricanes. Overall, the magnitude of threats to this species is moderate; by applying regular prescribed fire, the National Park Service has kept Long Pine Key's pineland vegetation intact and relatively free of exotic plants, and partnerships are in place to help address the continuing threat of exotics on other pine rockland fragments. Overall, the threats are nonimminent because fire management at the largest occurrence is regularly conducted and sea-level rise and hurricanes are more long-term threats. Therefore, we assigned an LPN of 12 to this subspecies. We will continue to monitor any changes in hydrological management that may affect the magnitude of threats to the species.

Chamaesyce deltoidea ssp. *serpyllum* (Wedge spurge)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. Systematic surveys of publicly owned pine rockland throughout this plant's range were conducted during 2005–2006 and 2007–2008 to determine population size and distribution. Wedge spurge is a small prostrate herb. It was historically, and remains, restricted to pine rocklands on Big Pine Key in Monroe County, Florida. Pine rocklands encompass approximately 580 hectares (1,433 acres) on Big Pine Key, approximately 360 hectares (890 acres) of which are within the Service's National Key Deer Refuge (NKDR). Most of the species' range falls within the NKDR, with the remainder on State, County, and private properties. It is not widely dispersed within the limited range. Occurrences are sparser in the southern portion of Big Pine Key, which contains smaller areas of NKDR lands than does the northern portion. Wedge spurge inhabits sites with low woody cover (e.g., low palm and hardwood densities) and usually with exposed rock or gravel.

Pine rockland communities are maintained by relatively frequent fires. In the absence of fire, shrubs and trees encroach on pine rockland, and the subspecies is eventually shaded out. NKDR has a prescribed fire program, although with many constraints on implementation. Habitat loss due to development was historically the greatest threat to the wedge spurge. Much of the remaining habitat is now protected on public lands. Absence of fire now appears to be the greatest of the deterministic threats. Given the recent increase in hurricane activity, storm surges are the greatest of the stochastic threats. The small range and patchy distribution of the subspecies increases risk from stochastic events. Climatic changes, including sea-level rise, are serious long-term threats. Models indicate that even under the best of circumstances, a significant proportion of upland habitat will be lost on Big Pine Key by 2100. Additional threats include restricted range, invasive exotic plants, roadside dumping, loss of pollinators, seed predators, and development.

We maintain the previous assessment that low fire-return intervals plus hurricane-related storm surges, in combination with a limited, fragmented distribution and threats from sea-level rise, result in a moderate magnitude of threat, in part, because a large part of the range is on conservation lands, where some threats can be substantially controlled. The immediacy of hurricane threats is difficult to categorize, but in this case threats are imminent given that hurricanes (and storm surges) of various magnitudes are frequent and recurrent events in the area. Sea-level rise remains uncontrolled, but over much of the range is nonimminent compared to other prominent threats. Threats resulting from limited fire occurrences are imminent. As some of the major threats are ongoing, overall, the threats are imminent. Therefore, we retained an LPN of 9 for this subspecies.

Chorizanthe parryi var. *fernandina* (San Fernando Valley spineflower)—The following summary is based on information contained in our files and the petition we received on December 14, 1999. *Chorizanthe parryi* var. *fernandina* is a low-growing herbaceous, annual plant in the buckwheat family. Germination occurs following the onset of late-fall and winter rains and typically represents different cohorts from the seed bank. Flowering occurs in the spring, generally between April and June. *Chorizanthe parryi* var. *fernandina* grows up to 30 centimeters in height and 5 to 40 centimeters across. The plant currently is known from two disjunct localities: the first is in the southeastern portion of Ventura County on a site within the Upper Las Virgenes Canyon Open Space Preserve, formerly known as Ahmanson Ranch, and the second is in an area of southwestern Los Angeles County known as Newhall Ranch. Investigations of historical locations and seemingly suitable habitat within the range of the species have not revealed any other occurrences.

The threats currently facing *Chorizanthe parryi* var. *fernandina* include threatened destruction, modification, or curtailment of its habitat or range, inadequacy of existing regulatory mechanisms, and other natural or manmade factors. The threats to *Chorizanthe parryi* var. *fernandina* from habitat destruction or modification are slightly less than they were 7 years ago. One of the two populations (Upper Las Virgenes Canyon Open Space Preserve) is in permanent, public ownership and is being managed by an agency that is working to conserve the plant; however, the use of adjacent habitat for Hollywood film productions was brought to our attention 2 years ago, and the potential impacts to *Chorizanthe parryi* var. *fernandina* have not yet been evaluated. We will be working with the landowners to manage the site for the benefit of *Chorizanthe parryi* var. *fernandina*. The other population (Newhall Ranch) is under the threat of development; however, a candidate conservation agreement (CCA) is being developed with the landowner, and it is possible that the remaining plants can also be conserved. Until such an agreement is finalized, the threat of development and the potential damage to the Newhall Ranch population still exists, as shown by the destruction of some plants during installation of an agave farm. Furthermore, cattle grazing on Newhall Ranch may be a threat. Cattle grazing may harm *Chorizanthe parryi* var. *fernandina* by trampling and soil compaction. Grazing activity could also alter the nutrient (e.g., elevated organic material levels) content of the soils for *Chorizanthe parryi* var. *fernandina* habitat through fecal inputs, which in turn may favor the growth of other plant species that would otherwise not grow so readily on the mineral-based soils. Over time, changes in species composition may render the sites less favorable for the persistence of *Chorizanthe parryi* var. *fernandina*. *Chorizanthe parryi* var. *fernandina* may be threatened by invasive, nonnative plants, including grasses, which could potentially displace it from available habitat; compete for light, water, and nutrients; and reduce survival and establishment.

Chorizanthe parryi var. *fernandina* is particularly vulnerable to extinction due to its concentration in two isolated areas. The existence of only two areas of occurrence, and a relatively small range, makes the variety highly susceptible to extinction or extirpation from a significant portion of its range due to random events such as fire, drought, and erosion. We retained an LPN of 6 for *Chorizanthe parryi* var. *fernandina* due to high-magnitude, nonimminent threats.

Chromolaena frustrata (Cape Sable thoroughwort)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. This species is found most commonly in open sun to partial shade at the edges of rockland tropical hammock and in coastal rock barrens. There are nine extant occurrences located on five islands in the Florida Keys and one small area in Everglades National Park (ENP). In the Keys, the plant has been extirpated from half of the islands where it occurred. Prior to Hurricane Wilma in 2005, the population was estimated at roughly 5,000 individuals, with all but 500 occurring on one privately owned island. An estimated 1,500 plants occur on the mainland within ENP.

This species is threatened by habitat loss and modification, even on public lands, and habitat loss and degradation due to threats from exotic plants at almost all sites. The species is vulnerable to natural disturbances, such as hurricanes, tropical storms, and storm surges. While these factors may also work to maintain coastal rock barren habitat in the long term, Hurricane Wilma affected occurrences and habitat, at least in the short term. Occurrences probably initially declined due to inundation of its coastal barren and rockland hammock habitats; long-term effects on this species are unknown. Cape Sable thoroughwort appears to be vulnerable to cold temperatures. It is not known to what extent cold temperatures in January and December 2010 affected the species at most locations, or what, if any, long-term effect this may have on the population. Sea-level rise is considered a major threat over the long term. Potential effects from other changes in freshwater deliveries and the construction of the Buttonwood Canal are unknown. Problems associated with small population size and isolation are likely major factors, as occurrences may not be large enough to be viable; this narrowly endemic plant has uncertain viability at most locations. Thus, these factors constitute a high magnitude of threat. The threats of small population size, isolation, and uncertain viability are imminent because they are ongoing. As a result, we assigned an LPN of 2 to this species.

Consolea corallicola (Florida semaphore cactus)—The following summary is based on information in our files. No new information was provided in the petition we received on May 11, 2004. The Florida semaphore cactus is endemic to the Florida Keys, and was discovered on Big Pine Key in 1919, but that population was extirpated as a result of road building and poaching. This cactus grows close to salt water on bare rock with a minimum of humus soil cover in or along the edges of hammocks near sea level. The species is known to occur naturally only in two areas, Swan Key within Biscayne National Park and Little Torch Key. Outplantings have been attempted in several locations in the upper and lower Keys; however, success has been low. Few plants remain in the population at The Nature Conservancy's Torchwood

Hammock Preserve on Little Torch Key. During monitoring work conducted in 2005, a total of 655 plants were documented at the Swan Key population. In 2008–2010, the population was estimated by Biscayne National Park staff to consist of approximately 600 individuals. Asexual reproduction is the main life-history strategy of this species. Recent genetic studies have shown no variation within populations and very limited variation between populations. Findings support the conclusion that the Swan Key (upper Keys) and Little Torch Key (lower Keys) populations and an individual plant from Big Pine Key (single plant in *ex situ* collection; lower Keys) are clonally derived. Studies examining the reproductive biology of the species indicate that all extant wild and cultivated plants are male.

The causes for the population decline of this species include destruction or modification of habitat, predation from nonnative *Cactoblastis cactorum* moths and disease, poaching and vandalism, hurricanes, and climatic changes, including sea-level rise. Sea-level rise is considered a serious threat to the species and its habitat; all extant populations are located in low-lying areas. All remaining populations are under threat of predation from the exotic moth, and are susceptible to root-rot disease. Competition from invasive exotic plants is a threat at Swan Key; however, efforts by Biscayne National Park are underway to address this threat. This species is inherently vulnerable to stochastic losses, especially at its smaller populations. A lack of variation and limited sexual reproduction makes the remaining small population even more susceptible to natural or manmade factors. Overall, the magnitude of threats is high. The numerous threats are ongoing and, therefore, are imminent. Thus, we assigned this species an LPN of 2.

Cordia rupicola (no common name)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. *Cordia rupicola* is a small shrub that has been described from southwestern Puerto Rico, Vieques Island, and Anegada Island (British Virgin Islands). All these sites lay within the subtropical dry forest life zone overlying a limestone substrate. *Cordia rupicola* has a restricted distribution. Currently, approximately 227 individuals are known from 4 locations: Peñuelas, Yauco, Guánica Commonwealth Forests, and Vieques National Wildlife Refuge. Additionally, the species is reported as common in Anegada.

This species is threatened by maintenance of trails and power line rights-of-way in the Guánica Commonwealth Forest, and residential and commercial development in Peñuelas, Yauco, and Anegada Island. *Cordia rupicola* is also vulnerable to natural (*e.g.,* hurricanes) or manmade (*e.g.,* human-induced fires) threats. Furthermore, the population on Anegada Island, which is considered the healthiest population, is expected to be affected sea-level rise as most of the suitable habitat for the species is below 3 meters above sea level. For these reasons, we believe that the magnitude of the current threats should be considered high. About 60 percent of known adult plants are located in protected lands managed for conservation by the Puerto Rico Department of Natural and Environmental Resources or the Service. For these reasons, threats to *Cordia rupicola* on the whole are high magnitude and nonimminent, and therefore we have assigned a listing priority number of 5. However, the threats faced by the species are expected to increase in the future, and therefore may become imminent, if conservation measures are not implemented and long-term impacts are not averted.

Cyanea asplenifolia (Haha)—We continue to find that listing this species is warranted, but precluded as of the date of publication of this notice. However, we are working on a proposed listing rule that we expect to publish prior to making the next annual resubmitted 12-month petition finding.

Cyanea kunthiana (Haha)—We continue to find that listing this species is warranted, but precluded as of the date of publication of this notice. However, we are working on a proposed listing rule that we expect to publish prior to making the next annual resubmitted 12-month petition finding.

Cyanea obtusa (Haha)—We continue to find that listing this species is warranted but precluded as of the date of publication of this notice. However, we are working on a proposed listing rule that we expect to publish prior to making the next annual resubmitted 12-month petition finding.

Cyanea tritomantha (‘Aku)—We continue to find that listing this species is warranted, but precluded as of the date of publication of this notice. However, we are working on a proposed listing rule that we expect to publish prior to making the next annual resubmitted 12-month petition finding.

Cyrtandra filipes (Haiwale)—We continue to find that listing this species is warranted, but precluded as of the date of publication of this notice. However, we are working on a proposed listing rule that we expect to publish prior to making the next annual resubmitted 12-month petition finding.

Cyrtandra oxybapha (Haiwale)—We continue to find that listing this species is warranted, but precluded as of the date of publication of this notice. However, we are working on a proposed listing rule that we expect to publish prior to making the next annual resubmitted 12-month petition finding.

Dalea carthagenensis ssp. *floridana* (Florida prairie-clover)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. *Dalea carthagenensis* var. *floridana* occurs in Big Cypress National Preserve (BCNP) in Monroe and Collier Counties and at six locations within Miami-Dade County, Florida, albeit mostly in limited numbers. There are a total of nine extant occurrences, seven of which are on conservation lands. In addition, plants were reintroduced to a park in Miami-Dade County in 2006, but only four remained after 8 months.

Existing occurrences are extremely small and may not be viable, especially some of the occurrences in Miami-Dade County. Remaining habitats are fragmented. Climatic changes, including sea-level rise, are long-term threats that are expected to reduce the extent of habitat. This plant is threatened by habitat loss and degradation due to fire suppression, the difficulty of applying prescribed fire to pine rocklands, and competition from exotic plants. Damage to plants by off-road vehicles is a serious threat within the BCNP; damage attributed to illegal mountain biking at the R. Hardy Matheson Preserve has been reduced. One location within BCNP is threatened by changes in mowing practices; this threat is low in magnitude. This species is being parasitized by the introduced insect lobate lac scale (*Paratachardina pseudolobata*) at some localities (*e.g.,* R. Hardy Matheson Preserve), but we do not know the extent of this threat. This plant is vulnerable to natural disturbances, such as hurricanes, tropical storms, and storm surges. Due to its restricted range and the small sizes of most isolated occurrences, this species is vulnerable to environmental (catastrophic hurricanes), demographic (potential episodes of poor reproduction), and genetic (potential inbreeding depression) threats. The magnitude of threats is high because of the limited number of occurrences and the small number of individual plants at each occurrence. The threats are imminent; even though many sites are

on conservation lands, these plants still face significant ongoing threats. Therefore, we have assigned an LPN of 3 to Florida prairie-clover.

Dichanthelium hirstii (Hirst Brothers' panic grass)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. *Dichanthelium hirstii* is a perennial grass that produces erect, leafy, flowering stems from May to October. *Dichanthelium hirstii* occurs in coastal plain intermittent ponds, usually in wet savanna or pine barren habitats, and is found at only two sites in New Jersey, one site in Delaware, and one site in North Carolina. While all four extant *D. hirstii* populations are located on public land or privately owned conservation lands, natural threats to the species from encroaching vegetation and fluctuations in climatic conditions remain of concern, and may be exacerbated by anthropogenic factors occurring adjacent to the species' wetland habitat. Given the low number of plants found at each site, even minor changes in the species' habitat could result in local extirpation. Loss of any known sites could result in a serious contraction of the species' range. However, the most immediate and severe threats to this species (*i.e.,* ditching of the Labounsky Pond site and encroachment of aggressive vegetative competitors) have been curtailed or are being actively managed by The Nature Conservancy at one New Jersey site and by the Delaware Division of Fish and Wildlife and Delaware Natural Heritage Program at the Assawoman Pond, Delaware site. Based on nonimminent threats of a high magnitude, we retain an LPN of 5 for this species.

Digitaria pauciflora (Florida pineland crabgrass)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. Pine rocklands in Miami-Dade County have largely been destroyed by residential, commercial, and urban development and by agriculture. With most remaining habitat having been negatively altered, this species has been extirpated from much of its historical range, including extirpation from all areas outside of National Parks. Two large occurrences remain within Everglades National Park and Big Cypress National Preserve; plants on Federal lands are protected from the threat of habitat loss due to development. However, any unknown plants, indefinite occurrences, and suitable habitat remaining on private or non-conservation land are threatened by development. Continued development of suitable habitat diminishes the potential for reintroduction into its historical range. Extant occurrences are in low-lying areas and will be affected by climate change and rising sea level.

Fire suppression, the difficulty of applying prescribed fire to pine rocklands, and threats from exotic plants are ongoing threats. As the only known remaining occurrences are on lands managed by the National Park Service, the threats of fire suppression and exotics are somewhat reduced. The presence of the exotic Old World climbing fern is of particular concern due to its ability to spread rapidly. In Big Cypress National Preserve, plants are threatened by off-road vehicle use. Changes to hydrology are a potential threat. Hydrology has been altered within Long Pine Key due to artificial drainage, which lowered ground water, and construction of roads, which either impounded or diverted water. Regional water management intended to restore the Everglades has the potential to affect the pinelands of Long Pine Key, where a large population occurs. At this time, it is not known whether Everglades restoration will have a positive or negative effect. This narrow endemic may be vulnerable to catastrophic events and natural disturbances, such as hurricanes. Overall, the magnitude of threats is high. Only two known occurrences remain and the likelihood of establishing a sizable population on other lands is diminished due to continuing habitat loss. Impacts from climate change and sea-level rise are currently low, but expected to be severe in the future. The majority of threats are nonimminent, as they are long-term in nature (water management, hurricanes, and sea-level rise). Therefore, we assigned an LPN of 5 for this species.

Echinomastus erectocentrus var. *acunensis* (Acuna cactus)—We continue to find that listing this species is warranted, but precluded as of the date of publication of this notice. However, we are working on a proposed listing rule that we expect to publish prior to making the next annual resubmitted petition 12-month finding.

Erigeron lemmonii (Lemmon fleabane)—We continue to find that listing this species is warranted, but precluded as of the date of publication of this notice. However, we are working on a proposed listing rule that we expect to publish prior to making the next annual resubmitted petition 12-month finding.

Eriogonum codium (Umtanum Desert buckwheat)—We continue to find that listing this species is warranted, but precluded as of the date of publication of this notice. However, we are working on a proposed listing rule that we expect to publish prior to making the next annual resubmitted petition 12-month finding.

Eriogonum corymbosum var. *nilesii* (Las Vegas buckwheat)—The following summary is based on information contained in our files and the petition we received on April 23, 2008. *Eriogonum corymbosum* var. *nilesii* is a woody perennial shrub up to 4 feet high with a mounding shape. The flowers of this plant are numerous, small, and yellow with small, bract-like leaves at the base of each flower. *Eriogonum corymbosum* var. *nilesii* is very conspicuous when flowering in late September and early October. It is restricted to sparsely vegetated, gypsum soil outcroppings and is found historically only in Clark County, Nevada. In 2004, morphometrics were used to classify this plant as the unique variety *nilesii,* and its unique taxonomy was verified using molecular genetic analyses in 2007. Recent surveys have expanded *E. corymbosum* var. *nilesii'*s range to Lincoln County, Nevada, and Washington County, Utah.

Eriogonum corymbosum var. *nilesii* was added to the candidate list in December 2007 due to continued loss of habitat from development of over 95 percent of its core historical range and potential habitat. In addition, off-highway vehicle activity and other public land uses (casual public use, mining, and illegal dumping) directly threaten over 95 percent of the remaining habitat. It was petitioned for listing in April 2008 and a warranted-but-precluded determination was made in December 2008 (73 FR 75176; December 10, 2008). To date, regulatory mechanisms to protect *E. corymbosum* var. *nilesii* are inadequate. Its designation as a Bureau of Land Management (BLM) special status species has not provided adequate protection on lands managed by BLM. *Eriogonum corymbosum* var. *nilesii* is not protected by the State of Nevada or Utah or by any other regulatory mechanisms on other Federal lands. We have determined that candidate status is warranted for this variety as a result of threats to the remaining habitat and inadequate regulatory mechanisms.

Conservation measures are being developed that could reduce the risks to occupied habitat, but these measures are not sufficiently complete as to remove these threats. The magnitude of threats is high because the more significant threats (urban development and surface mining) would result in direct mortality of the plants in over half of the known habitat. While both development and mining are very likely to occur in the

future, they are not expected to happen in the immediate future due to economic decline, and thus, the threats are nonimminent. Accordingly, we assigned *E. corymbosum* var. *nilesii* an LPN of 6.

Eriogonum kelloggii (Red Mountain buckwheat)—The following summary is based on information contained in our files and information provided by the California Department of Fish and Game. No new information was provided in the petition we received on May 11, 2004. Red Mountain buckwheat is a perennial herb endemic to serpentine habitat of lower montane forests found between 1,900 and 4,100 feet. Its distribution is limited to the Red Mountain and Little Red Mountain areas of Mendocino County, California, where it occupies in excess of 81 acres, and 900 square feet, respectively. The known species distribution by ownership is described as follows: Federal (Bureau of Land Management), 83 percent; private, 17 percent; State of California, less than 1 percent. Occupied habitat at Red Mountain is scattered over 4 square miles. Total population size has not been determined, but a preliminary estimate suggests the population may be in excess of 63,000 plants, occupying more than 44 discrete habitat polygons. Intensive monitoring of permanent plots on three study sites in Red Mountain suggests considerable annual variation in plant density and reproduction, but no discernable population trend was evident in two of three study sites. One study site showed a 65 percent decline in plant density over 11 years.

The primary threat to this species is the potential for surface mining for chromium and nickel. Virtually the entire distribution of Red Mountain buckwheat is either owned by mining interests, or is covered by existing mining claims, none of which are currently active. Surface mining would destroy habitat suitability for this species. The species is also believed threatened by tree and shrub encroachment into its habitat, in absence of fire. Some 42 percent of its known distribution occurred within the boundary of the Red Mountain Fire of June 2008. However, the extent and manner in which *Eriogonum kelloggii* and its habitat were affected by that fire is not yet known. The single population located at Little Red Mountain appears to have been affected, and perhaps eliminated by fire-control efforts. Given the magnitude (high) and immediacy (nonimminent) of the threat to the small, scattered populations, and given its taxonomy (species), we assigned an LPN of 5 to this species.

Festuca hawaiiensis (no common name)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. This species is a cespitose (growing in dense, low tufts) annual found in dry forest on the island of Hawaii, Hawaii. *Festuca hawaiiensis* is known from 4 populations totaling approximately 1,000 individuals in and around the Pohakuloa Training Area. Historically, this species was also found on Hualalai and Puu Huluhulu, but it no longer occurs at these sites. *Festuca hawaiiensis* possibly occurred on Maui.

This species is threatened by pigs, goats, mouflon, and sheep that degrade and destroy habitat; fire; military training activities; and nonnative plants that outcompete and displace it. Feral pigs, goats, mouflon, and sheep have been fenced out of a portion of the populations of *F. hawaiiensis,* and nonnative plants have been reduced in the fenced area, but the majority of the populations are still affected by threats from ungulates. The threats are imminent because they are not controlled and are ongoing in the remaining, unfenced populations. Firebreaks have been established at two populations, but fire is an imminent threat to the remaining populations that have no firebreaks. The threats are of a high magnitude because they could adversely affect the majority of *F. hawaiiensis* populations resulting in direct mortality or reduced reproductive capacity. Therefore, we retained an LPN of 2 for this species.

Festuca ligulata (Guadalupe fescue)—The following summary is based on information obtained from the original species petition, received in 1975, and from our files, on-line herbarium databases, and scientific publications. Six small populations of Guadalupe fescue, a member of the Poaceae (grass family), have been documented in mountains of the Chihuahuan desert in Texas and in Coahuila, Mexico. Only two extant populations have been confirmed in the last 5 years, in the Chisos Mountains, Big Bend National Park, Texas, and in the privately owned Area de Protección de Flora y Fauna (Protected Area for Flora and Fauna—APFF) Maderas del Carmen in northern Coahuila. Despite intensive searches, a population known from Guadalupe Mountains National Park, Texas, has not been found since 1952 and is presumed extirpated. In 2009, Mexican botanists confirmed Guadalupe fescue at one site in APFF Maderas del Carmen, but could not find the species at the original site, known as Sierra El Jardín, which was first reported in 1973. Two additional Mexican populations, near Fraile in southern Coahuila, and the Sierra de la Madera in central Coahuila, have not been monitored since 1941 and 1977, respectively. A great amount of potentially suitable habitat in Coahuila has never been surveyed.

The potential threats to Guadalupe fescue include changes in the wildfire cycle and vegetation structure, trampling from humans and pack animals, grazing, trail runoff, fungal infection of seeds, small sizes and isolation of populations, and limited genetic diversity. The Service and the National Park Service established a candidate conservation agreement (CCA) in 2008 to provide additional protection for the Chisos Mountains population, and to promote cooperative conservation efforts with U.S. and Mexican partners. The threats to Guadalupe fescue are of moderate magnitude, and are nonimminent, due to the provisions of the CCA and other conservation efforts, as well as the likelihood that other populations exist in mountains of Coahuila that have not been surveyed. Thus, we maintained the LPN of 11 for this species.

Gardenia remyi (Nanu)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. *Gardenia remyi* is a tree found in mesic to wet forest on the islands of Kauai, Molokai, Maui, and Hawaii, Hawaii. *Gardenia remyi* is known from 19 populations totaling between 85 and 87 individuals.

This species is threatened by pigs, goats, and deer that degrade and destroy habitat and possibly prey upon the species, and by nonnative plants that outcompete and displace it. *Gardenia remyi* is also threatened by landslides and reduced reproductive vigor on the island of Hawaii. This species is represented in ex situ collections. On Kauai, *G. remyi* individuals have been outplanted within ungulate-proof exclosures in two locations. Feral pigs have been fenced out of the west Maui populations of *G. remyi,* and nonnative plants have been reduced in those areas. However, these threats are not controlled and are ongoing in the remaining, unfenced populations, and are, therefore, imminent. In addition, the threat from goats and deer is ongoing and imminent throughout the range of the species, because no goat or deer control measures have been undertaken for any of the populations of *G. remyi.* All of the threats are of a high magnitude because habitat destruction, predation, and landslides could significantly affect the entire species,

resulting in direct mortality or reduced reproductive capacity, leading to a relatively high likelihood of extinction. Therefore, we retained an LPN of 2 for this species.

Geranium hanaense (Nohoanu)—We continue to find that listing this species is warranted, but precluded as of the date of publication of this notice. However, we are working on a proposed listing rule that we expect to publish prior to making the next annual resubmitted 12-month petition finding.

Geranium hillebrandii (Nohoanu)—We continue to find that listing this species is warranted, but precluded as of the date of publication of this notice. However, we are working on a proposed listing rule that we expect to publish prior to making the next annual resubmitted 12-month petition finding.

Gonocalyx concolor (no common name)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. *Gonocalyx concolor* is a small, evergreen, epiphytic or terrestrial shrub. This species is currently known from two populations: one at Cerro La Santa and the other at Charco Azul, both in the Carite Commonwealth Forest. This forest is located in the Sierra de Cayey and extends through the municipalities of Guayama, Cayey, Caguas, San Lorenzo, and Patillas in southeastern Puerto Rico. The population previously reported in the Caribbean National Forest apparently no longer exists. In 1996, approximately 172 plants were reported at Cerro La Santa. However, in 2006, only 25 individuals were reported at this site, and four were located in Charco Azul. At Cerro La Santa, the species is found growing on trees located close to communication towers, roads, plantations, and trails.

The *Gonocalyx concolor* population found at Cerro La Santa is threatened by habitat destruction and modification caused by vegetation clearing around telecommunication towers. Although the species is located within a Commonwealth forest, which is protected by Law No. 133 (''Ley de Bosques de Puerto Rico'' or The Puerto Rico Forest Law), unauthorized maintenance of existing communication facilities continue to result in loss of individuals. *Gonocalyx concolor* is not currently listed in the Commonwealth Regulation No. 6766 (''Reglamento para Regir las Especies Vulnerables y en Peligro de Extinción en el Estado Libre Asociado de Puerto Rico''), which provides protection for endangered and threatened species. However, the Natural Heritage Program of the Puerto Rico Department of Natural and Environmental Resources recognizes *Gonocalyx concolor* as a critical element. In addition, the Carite Commonwealth Forest is designated as a Critical Wildlife Area by the Commonwealth of Puerto Rico. Despite these conservation efforts, damages to the species still occur due to its restricted distribution and location near telecommunication facilities, which renders the species vulnerable to both natural (e.g., hurricanes, landslides) and manmade impacts. Thus, we consider that existing laws and regulations have not been effectively enforced to protect these populations. Moreover, we believe that inadequacy of regulatory mechanisms is a current threat to the species. Overall, we consider current threats to *Gonocalyx concolor* to be high in magnitude but nonimminent, as there are no known projects within the Commonwealth protected area. Habitat modification of this species has been only observed in one site at Cerro La Santa area. Therefore, we have assigned an LPN of 5 to *Gonocalyx concolor.*

Hazardia orcuttii (Orcutt's hazardia)—The following summary is based on information contained in our files and the petition we received on March 8, 2001. *Hazardia orcuttii* is an evergreen shrubby species in the Asteraceae (sunflower) family. The erect shrubs are 50 to 100 centimeters (20 to 40 inches) high. The only known extant native occurrence of this species in the United States occupies 2 ha (5 ac) in the Manchester Conservation Area in northwestern San Diego County, California. This site is managed by Center for Natural Lands Management (CNLM). Using material derived from the native population, the CNLM facilitated the establishment of test populations at four additional sites in northwest San Diego County, California, including a second site in the Manchester Conservation Area, Kelly Ranch Habitat Conservation Area, Rancho La Costa Habitat Conservation Area, and San Elijo Lagoon. *Hazardia orcuttii* also occurs at a few coastal sites in Mexico, where it recently became listed as endangered under Mexican environmental law. The total number of plants at the only native site in the United States is approximately 669 adults, and it is unknown if reproduction is occurring. The five additional test populations collectively support approximately 483 adults, 17 juveniles, and 322 seedlings, and reproduction is occurring in three test populations. The population in Mexico is estimated to be 1,100 plants. The occurrences in Mexico are threatened by coastal development from Tijuana to Ensenada.

The native population in the United States is within an area that receives public use; however, management at this site has minimized impacts associated with habitat degradation. This species has a very low reproductive output, although the causes are as yet unknown. Competition from invasive, nonnative plants may pose a threat to the reproductive potential of this species. In one study, 95 percent of the flowers examined were damaged by insects or fungal agents or aborted prematurely, and insects or fungal agents damaged 50 percent of the seeds produced. All of the populations in the United States are small and one test population is declining. Small populations are considered subject to random events and reductions in fitness due to low genetic variability. Threats associated with small population size are further exacerbated by the limited range and low reproductive output of this species. However, if low seed production is because of ecosystem disruptions, such as loss of effective pollinators, there could be additional threats that need to be addressed. Due to low abundance and a very small area of occupancy, any regional fire would be a rangewide threat. Furthermore, because the soil seed bank is poor and seed viability is low, recovery from a fire may be especially challenging. The response mechanism of this species to fire is unknown. Overall, the threats to *H. orcuttii* are of a high magnitude because they have the potential to significantly reduce the reproductive potential of this species. The threats are nonimminent overall because the most significant threats (invasive, nonnative plants and low reproductive output) are long-term in nature. This species faces high-magnitude nonimminent threats; therefore, we assigned this species an LPN of 5.

Hedyotis fluviatilis (Kamapuaa)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. *Hedyotis fluviatilis* is a scandent shrub found in mixed shrubland to wet lowland forest on the islands of Oahu and Kauai, Hawaii. This species is known from 11 populations totaling between 400 and 900 individuals. *Hedyotis fluviatilis* is threatened by pigs and goats that degrade and destroy habitat, and by nonnative plants that outcompete and displace it. Landslides and hurricanes are a potential threat to populations on Kauai. Predation by pigs and goats is a likely threat. This species is represented in an ex situ collection;

however, there are no other conservation actions implemented for this species. We retained an LPN of 2 because the severity of the threats to the species is high and the threats are ongoing and, therefore, imminent.

Helianthus verticillatus (Whorled sunflower)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. The whorled sunflower is found in moist, prairie-like openings in woodlands and along adjacent creeks. Despite extensive surveys throughout its range, only five populations are known for this species; two populations in Cherokee County, Alabama; one population in Floyd County, Georgia; and one population each in Madison and McNairy Counties, Tennessee. This species appears to have restricted ecological requirements and is dependent upon the maintenance of prairie-like openings for its survival. Active management of habitat is needed to keep competition and shading under control. Much of its habitat has been degraded or destroyed for agricultural, silvicultural, and residential purposes. Populations near roadsides or powerlines are threatened by herbicide usage in association with right-of-way maintenance. The majority of the Georgia population is protected due to its location within a conservation easement; however, only 15 to 20 plants are estimated to occur at this site. The remaining four sites are not formally protected, but efforts have been taken to abate threats associated with highway right-of-way maintenance at one Alabama population. In addition, despite past concerns about threats from timber removal degrading *H. verticillatus* habitat, the other Alabama population has responded favorably to canopy removal that took place circa 2001. Therefore, threats are of moderate magnitude, although imminent because they are ongoing. Thus, we assigned this species an LPN of 8.

Hibiscus dasycalyx (Neches River rose-mallow)—We continue to find that listing this species is warranted but precluded as of the date of publication of this notice. However, we are working on a proposed listing rule that we expect to publish prior to making the next annual resubmitted petition 12-month finding.

Ivesia webberi (Webber ivesia)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. *Ivesia webberi* is a low, spreading, perennial herb with grayish-green foliage; dark red, wiry stems; and yellow flowers arranged in capitate cymes. *Ivesia webberi* occurs very infrequently in Lassen, Plumas, and Sierra Counties in California, and in Douglas and Washoe Counties, Nevada. The species is restricted to sites with sparse vegetation and shallow, rocky soils composed of volcanic ash or derived from andesitic rock. Occupied sites generally occur on mid-elevation flats, benches, or terraces on mountain slopes above large valleys along the transition zone between the eastern edge of the northern Sierra Nevada and the northwestern edge of the Great Basin. Currently, the global population is estimated at approximately 5 million individuals at 16 known sites. The Nevada sites support nearly 98 percent of the total number of individuals (4.9 million) on about 25 acres (10 hectares) of occupied habitat. The California sites are larger in area, totaling about 157 acres (63 hectares), but support fewer individuals (approximately 120,000).

The primary threats to *I. webberi* include urban and commercial development, authorized and unauthorized roads, off-highway vehicle (OHV) activities, livestock grazing and trampling, wildfire and fire suppression activities, and displacement by invasive species. Despite the high numbers of individuals, direct and indirect impacts to the species and its habitat, specifically from urban development and OHV activity, remain high and are likely to increase. In addition, these threats have a significant likelihood of bringing about extinction on a relative short time scale, and we therefore conclude that the threats are of high magnitude. However, the U.S. Forest Service has developed a conservation strategy that commits to management, monitoring, and research to protect this species on National Forest lands where most populations are found, and the State of Nevada has listed the species as critically endangered, which provides a mechanism to track future impacts on private lands. In addition, both the U.S. Forest Service and State of Nevada have agreed to coordinate closely with the Fish and Wildlife Service on all activities that may affect this species. For these reasons, we have determined that the threats to *I. webberi* are nonimminent and we are maintaining an LPN of 5.

Joinvillea ascendens ssp. *ascendens* (Ohe)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. *Joinvillea ascendens* ssp. *ascendens* is an erect herb found in wet to mesic *Metrosideros polymorpha-Acacia koa* (ohia-koa) lowland and montane forest on the islands of Kauai, Oahu, Molokai, Maui, and Hawaii, Hawaii. This subspecies is known from 44 widely scattered populations totaling approximately 200 individuals. Plants are typically found as only one or two individuals, with miles between populations.

This subspecies is threatened by destruction or modification of habitat by pigs, goats, and deer, and by nonnative plants that outcompete and displace native plants. Predation by pigs, goats, deer, and rats is a likely threat to this species. Landslides are a potential threat to populations on Kauai and Molokai. Seedlings have rarely been observed in the wild. Seeds germinate in cultivation, but most die soon thereafter. It is uncertain if this rarity of reproduction is typical of this subspecies, or if it is related to habitat disturbance. Feral pigs have been fenced out of a few of the populations of this subspecies, and nonnative plants have been reduced in those populations that are fenced. However, these threats are not controlled and are ongoing in the remaining, unfenced populations. This species is represented in ex situ collections. The threats are of high magnitude because habitat degradation, nonnative plants, and predation result in mortality or severely affect the reproductive capacity of the majority of populations of this species, leading to a relatively high probability of extinction. The threats are ongoing, and thus are imminent. Therefore, we retained an LPN of 3 for this subspecies.

Leavenworthia crassa (Gladecress)—The following information is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. This species of gladecress is a component of glade flora, occurring in association with limestone outcroppings. *Leavenworthia crassa* is endemic to a 13-mile radius area in north central Alabama in Lawrence and Morgan Counties, where only six populations of this species are documented. Glade habitats today have been reduced to remnants fragmented by agriculture and development. Populations of this species are now located in glade-like areas exhibiting various degrees of disturbance including pastureland, roadside rights-of-way, and cultivated or plowed fields. The most vigorous populations of this species are located in areas which receive full, or near full, sunlight with limited herbaceous competition. The magnitude of threat is high for this species, because with the limited number of populations, the threats could result in direct mortality or reduced reproductive

capacity of the species. This species appears to be able to adjust to periodic disturbances and the potential impacts to populations from competition, exotics, and herbicide use are nonimminent. Thus, we assigned an LPN of 5 to this species.

Leavenworthia texana (Texas golden gladecress)—We continue to find that listing this species is warranted, but precluded as of the date of publication of this notice. However, we are working on a proposed listing rule that we expect to publish prior to making the next annual resubmitted petition 12-month finding.

Linum arenicola (Sand flax)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. Sand flax is found in pine rockland and marl prairie habitats which require periodic wildfires in order to maintain an open, shrub free subcanopy and reduce leaf litter levels. Based upon available data, there are 11 extant occurrences of sand flax; 11 others have been extirpated or destroyed. For the most part, only small and isolated occurrences remain in low-lying areas in a restricted range of southern Florida and the Florida Keys.

Habitat loss and degradation due to development is a major threat and most of the remaining occurrences are on private land or non-conservation public land. However, a survey conducted in 2009 showed approximately 74,000 plants on a non-conservation, public site in Miami-Dade County; this is far more plants than was previously known. Although a portion of the plants will be affected by development, approximately 60,000 are anticipated to be protected and managed through a conservation easement. Consequently, the majority of the largest occurrence in Miami-Dade County is expected to be conserved and managed. In addition, much of the pine rockland on Big Pine Key, the location of the largest occurrence in the Keys, is protected from development. Climatic changes and sea-level rise are long-term threats that are expected to affect the species and ultimately substantially reduce the extent of available habitat. Nearly all remaining populations are threatened by fire suppression, difficulty in applying prescribed fire, road maintenance activities, exotic species, or illegal dumping. However, some efforts are underway to use prescribed fire to control exotics on conservation lands where this species occurs. In general, viability is uncertain for 9 of 11 occurrences. Sand flax is vulnerable to natural disturbances, such as hurricanes, tropical storms, and storm surges. Hurricane Wilma inundated most of its habitat on Big Pine Key in 2005, and plants were not found 8 to 9 weeks post-storm; the density of sand flax declined to zero in all management units at The Nature Conservancy's preserve in 2006. In a 2007 post-hurricane assessment, sand flax was found in northern plots, but not in any of the southern plots on Big Pine Key. More current data are not available. Due to the small and fragmented nature of the current population, stochastic events, disease, or genetic bottlenecks may strongly affect this species in the Florida Keys. Reduced pollinator activity and suppression of pollinator populations from pesticides used in mosquito control and decreased seed production due to increased seed predation in a fragmented wildland urban interface may also affect sand flax; however, not enough information is known on this species' reproductive biology or life history to assess these potential threats.

Overall, the magnitude of threats is high. Because development is not immediate for the majority of the largest population in Miami-Dade County, the threat of habitat loss at this location is nonimminent. In addition, the finding of a larger population than previously known, combined with its location on the mainland, tempers the immediacy of threats of hurricanes and other natural disturbances and catastrophic events. The new sizable, presumably viable population on the mainland provides some assurance that the species could withstand such threats due to the number of individuals and presence at a different geographic location (i.e., mainland versus Keys). Therefore, based on threats that are overall nonimminent but high in magnitude, we assigned this species an LPN of 5.

Linum carteri var. *carteri* (Carter's small-flowered flax)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. This plant occupies open and disturbed sites in pinelands of Miami-Dade County, Florida. Currently, there are nine known occurrences. Occurrences with fewer than 100 individuals are located on three county-owned preserves. A site with more than 100 plants is owned by the U.S. Department of Agriculture, but the site is not managed for conservation.

Climatic changes, including sea-level rise, are long-term threats that will likely reduce the extent of habitat. The nine existing occurrences are small and vulnerable to habitat loss, which is exacerbated by habitat degradation due to fire suppression, the difficulty of applying prescribed fire to pine rocklands, and threats from exotic plants. Remaining habitats are fragmented. Non-compatible management practices are also a threat at most protected sites; several sites are mowed during the flowering and fruiting season. In the absence of fire, periodic mowing can, in some cases, help maintain open, shrub-free understory and provide benefits to this plant. However, mowing can also eliminate reproduction entirely in very young plants, delay reproductive maturation, and kill adult plants. With flexibility in timing and proper management, threats from mowing practices can be reduced or negated. Carter's small-flowered flax is vulnerable to natural disturbances, such as hurricanes, tropical storms, and storm surges. This species exists in such small numbers at so few sites, that it may be difficult to develop and maintain viable occurrences on the available conservation lands. Although no population viability analysis has been conducted for this plant, indications are that existing occurrences are at best marginal, and it is possible that none are truly viable. As a result, the magnitude of threats is high. The threats are ongoing, and thus are imminent. Therefore, we assigned an LPN of 3 to this plant variety.

Myrsine fosbergii (Kolea)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. *Myrsine fosbergii* is a branched shrub or small tree found in lowland mesic and wet forest, on watercourses or stream banks, on the islands of Kauai and Oahu, Hawaii. This species is currently known from 14 populations totaling a little more than 100 individuals. *Myrsine fosbergii* is threatened by feral pigs and goats that degrade and destroy habitat and may prey upon the plant, and by nonnative plants that compete for light and nutrients. This species is represented in an ex situ collection. Although there are plans to fence and remove ungulates from the Helemano area of Oahu, which may benefit this species, no conservation measures have been taken to date to alleviate these threats for this species. Feral pigs and goats are found throughout the known range of *M. fosbergii,* as are nonnative plants. The threats from feral pigs, goats, and nonnative plants are of a high magnitude because they pose a severe threat throughout the limited range of this species, and they are ongoing and

therefore imminent. We retained an LPN of 2 for this species.

Myrsine vaccinioides (Kolea)—We continue to find that listing this species is warranted but precluded as of the date of publication of this notice. However, we are working on a proposed listing rule that we expect to publish prior to making the next annual resubmitted 12-month petition finding.

Narthecium americanum (Bog asphodel)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. Bog asphodel is a perennial herb that is found in savanna areas, usually with water moving through the substrate, as well as in sandy bogs along streams and rivers. The historical range of bog asphodel included New Jersey, Delaware, North Carolina, and South Carolina, although the taxonomic identity of the historic North Carolina specimens is now in question. Previous reports of bog asphodel from New York are now believed erroneous. Extant populations of bog asphodel are now found only within the Pine Barrens region of New Jersey.

Bog asphodel has experienced a clear and apparently ongoing curtailment of its geographic range, which leaves it vulnerable to localized and population-level threats. The Pine Barrens savannas that support bog asphodel provide a scarce, specialized habitat that has declined from several thousand acres around 1900 to only a thousand acres in recent decades. This species has been lost from at least 2 States, and now occurs on less than 80 acres of land confined to an area only about 30 miles in diameter. Eight of 26 delineated bog asphodel Element Occurrences in New Jersey are extirpated. The extirpated occurrences are distributed around the periphery of the range, representing a contraction. Many of the remaining occurrences around the periphery of the range are very small and subject to identified threats, making the species vulnerable to further range contractions.

Significant threats include unauthorized use of off-road vehicles, deer, beaver, natural succession, and the risk of lowered water tables. Lesser threats include localized indirect effects of upland development, impacts from non-motorized recreational activities, collection, and herbivores other than deer. Because the range of bog asphodel is currently limited to New Jersey's Pinelands Area and Coastal Zone, regulatory protections are generally adequate. More than 95 percent of bog asphodel occurs on protected lands, although enforcement of illegal activity can be lacking, and little active habitat management is taking place. Outright habitat destruction from wetland filling, draining, flooding, and conversion to commercial cranberry bogs likely contributed to the curtailment of this species' range, but these are generally historic not current threats to bog asphodel.

Current threats to bog asphodel are low to moderate in magnitude because regulatory protections appear to be adequate so that the threats are not expected to bring about extinction on a relatively short time scale. Several threats are imminent because they are ongoing and expected to continue. Overall, based on these imminent, moderate threats, we retain an LPN of 8 for this species.

Nothocestrum latifolium ('Aiea)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. *Nothocestrum latifolium* is a small tree found in dry to mesic forest on the islands of Kauai, Oahu, Maui, Molokai, and Lanai, Hawaii. *Nothocestrum latifolium* is known from 17 steadily declining populations totaling fewer than 1,200 individuals.

This species is threatened by feral pigs, goats, and axis deer that degrade and destroy habitat and may prey upon it; by nonnative plants that compete for light and nutrients; and by the loss of pollinators that negatively affect the reproductive viability of the species. This species is represented in an ex situ collection. Ungulates have been fenced out of four areas where *N. latifolium* currently occurs, hundreds of *N. latifolium* individuals have been outplanted in fenced areas, and nonnative plants have been reduced in some populations that are fenced. However, these ongoing conservation efforts for this species benefit only a few of the known populations. The threats are not controlled and are ongoing in the remaining unfenced populations. In addition, little regeneration is observed in this species. The threats are of a high magnitude, because they are severe enough to affect the continued existence of the species, leading to a relatively high likelihood of extinction. The threats are imminent, as they are ongoing. Therefore, we retained an LPN of 2 for this species.

Ochrosia haleakalae (Holei)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. *Ochrosia haleakalae* is a tree found in dry to mesic forest, often on lava, on the islands of Hawaii and Maui, Hawaii. This species is currently known from 8 populations totaling between 64 and 76 individuals.

Ochrosia haleakalae is threatened by fire; by feral pigs, goats, and cattle that degrade and destroy habitat and may directly prey upon it; and by nonnative plants that compete for light and nutrients. This species is represented in ex situ collections. Feral pigs, goats, and cattle have been fenced out of one wild and one outplanted population on private lands on the island of Maui and out of one outplanted population in Hawaii Volcanoes National Park on the island of Hawaii. Nonnative plants have been reduced in the fenced areas. The threat from fire is of a high magnitude and imminent because no control measures have been undertaken to address this threat that could adversely affect *O. haleakalae* as a whole. The threats from feral pigs, goats, and cattle are ongoing to the unfenced populations of *O. haleakalae.* The threat from nonnative plants is ongoing and imminent and of a high magnitude to the wild populations on both islands as this threat adversely affects the survival and reproductive capacity of the majority of the species, leading to a relatively high likelihood of extinction. Therefore, we retained an LPN of 2 for this species.

Pediocactus peeblesianus var. *fickeiseniae* (Fickeisen plains cactus)—We continue to find that listing this species is warranted, but precluded as of the date of publication of this notice. However, we are working on a proposed listing rule that we expect to publish prior to making the next annual resubmitted petition 12-month finding.

Penstemon scariosus var. *albifluvis* (White River beardtongue)—The following summary is based on information contained in our files and the petition we received on October 27, 1983. This species is restricted to calcareous soils derived from oil shale barrens of the Green River Formation in the Uinta Basin of northeastern Utah and adjacent Colorado. There are 20 occurrences known in Utah and 1 in Colorado. Most of the occupied habitat of the White River beardtongue is within developed and expanding oil and gas fields. The location of the species' habitat exposes it to destruction from road, pipeline, and well site construction in connection with oil and gas development. Grazing by wildlife and livestock is an additional threat. A future threat (and potentially the greatest threat) to the species is oil shale development. Traditional oil and gas energy development is currently occurring and expected to increase within habitat areas for this species, and therefore the threat is imminent.

However, the BLM has adopted a Special Status Species policy and has included in its current Resource Management Plan commitments to protect this species. These protections lessen the extent of traditional oil and gas development impacts to this species, so that although oil and gas development will continue to increase within this species' range, the threat is of moderate magnitude. The threats are ongoing and therefore imminent. Thus, we assigned an LPN of 9 to this plant variety.

Peperomia subpetiolata ('Ala 'ala wai nui)—We continue to find that listing this species is warranted, but precluded as of the date of publication of this notice. However, we are working on a proposed listing rule that we expect to publish prior to making the next annual resubmitted 12-month petition finding.

Phyllostegia bracteata (no common name)—We continue to find that listing this species is warranted, but precluded as of the date of publication of this notice. However, we are working on a proposed listing rule that we expect to publish prior to making the next annual resubmitted 12-month petition finding.

Phyllostegia floribunda (no common name)—We continue to find that listing this species is warranted, but precluded as of the date of publication of this notice. However, we are working on a proposed listing rule that we expect to publish prior to making the next annual resubmitted 12-month petition finding.

Physaria douglasii ssp. *tuplashensis* (White Bluffs bladder-pod)—We continue to find that listing this species is warranted, but precluded as of the date of publication of this notice. However, we are working on a proposed listing rule that we expect to publish prior to making the next annual resubmitted petition 12-month finding.

Physaria globosa (Desvaux) O'Kane & Al-Shehbaz (Short's bladderpod)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. With this publication of this document, we recognize the proposed reunion of the genus *Lesquerella* with *Physaria* (O'Kane and Al-Shehbaz 2002 entire) and now refer to Short's bladderpod by the scientific name *Physaria globosa.* Short's bladderpod is a perennial member of the mustard family that occurs in Indiana (1 location), Kentucky (6 locations), and Tennessee (22 locations). It grows on steep, rocky, wooded slopes; on talus areas; along cliff tops and bases; and on cliff ledges. It is usually associated with south-to west-facing calcareous outcrops adjacent to rivers or streams.

Road construction and road maintenance have played a significant role in the decline of *P. globosa.* Specific activities that have affected the species in the past and may continue to threaten it include bank stabilization, herbicide use, mowing during the growing season, grading of road shoulders, and road widening or repaving. Sediment deposition during road maintenance or from other activities also potentially threatens the species. Because the natural processes that maintained habitat suitability and competition from invasive, nonnative vegetation have been interrupted at many locations, active habitat management is necessary at those sites. While threats associated with roadside maintenance activities and habitat alterations by invasive plant encroachment are imminent because they are ongoing, these threats are of moderate magnitude as they are not affecting all locations of this species at this time. Therefore, we assigned an LPN of 8 to this species.

Platanthera integrilabia (Correll) Leur (White fringeless orchid)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. *Platanthera integrilabia* is a perennial herb that grows in partially, but not fully, shaded, wet, boggy areas at the head of streams and on seepage slopes in Alabama, Georgia, Kentucky, Mississippi, South Carolina, and Tennessee. Historically, there were at least 90 populations of *P. integrilabia.* It is presumed extirpated from North Carolina and Virginia. Currently there are about 60 extant sites supporting the species.

Several populations have been destroyed due to road, residential, and commercial construction, and to projects that altered soil and site hydrology such that suitability for the species was reduced. Several of the known populations are in or adjacent to powerline rights-of-way. Mechanical clearing of these areas may benefit the species by maintaining adequate light levels, but can promote development of dense, shrubby vegetation due to extensive suckering of woody species; however, the indiscriminant use of herbicides in these areas could pose a significant threat to the species. All-terrain vehicles have damaged several sites and pose a threat at most sites. Some of the known sites for the species occur in areas that are managed specifically for timber production. Timber management is not necessarily incompatible with the protection and management of the species, but care must be taken during timber management to ensure the hydrology of bogs supporting the species is not altered. Natural succession can result in decreased light levels. Because of the species dependence upon moderate-to-high light levels, some type of active management to prevent complete canopy closure is required at most locations. Collecting for commercial and other purposes is a potential threat. Herbivory (primarily deer) threatens the species at several sites. Due to the alteration of habitat and changes in natural conditions, protection and recovery of this species is dependent upon active management rather than just preservation of habitat. Invasive, nonnative plants such as Japanese honeysuckle and kudzu also threaten several sites. The threats are widespread; however, the impact of those threats on the survival of the species is moderate in magnitude. Several of the sites are protected to some degree from the threats by being within State parks, national forests, wildlife management areas, or other protected land. The threats are, however, imminent because they are ongoing, and we have therefore assigned an LPN of 8 to this species.

Platydesma remyi (no common name)—We continue to find that listing this species is warranted, but precluded as of the date of publication of this notice. However, we are working on a proposed listing rule that we expect to publish prior to making the next annual resubmitted 12-month petition finding.

Potentilla basaltica (Soldier Meadow cinquefoil or basalt cinquefoil)—The following summary is based on information contained in our files; the petition we received on May 11, 2004, provided no additional information on the species. *Potentilla basaltica* is a low-growing, rhizomatous, herbaceous perennial that forms a basal rosette and has bright yellow flowers. *Potentilla basaltica* is associated with alkali meadows, seeps, and occasionally marsh habitats bordering perennial thermal springs, outflows, and meadow depressions. In Nevada, the species is known only from Soldier Meadow in Humboldt County. In northeastern California, a single population occurs in Lassen County. At Soldier Meadow, there are 11 discrete known occurrences (10 on public and 1 on private land) within an area of about 24 acres (9.6 hectares) that support about 130,000 individuals. The California population occurs on private and public land and supports fewer than 1,000 plants. The public land in both California and Nevada has been designated as an Area

of Critical Environmental Concern by the Bureau of Land Management (BLM).

The species and its habitat are threatened by recreational use in the areas where it occurs as well as the ongoing impacts of past water diversions, livestock grazing, and off-road vehicle (OHV) travel. Conservation measures implemented recently by the BLM in Nevada include the installation of fencing to exclude livestock, wild horses, and other large mammals; the closure of access roads to spring, riparian, and wetland areas and the restriction of vehicles to designated routes; the establishment of a designated campground away from the habitats of sensitive species; the installation of educational signage; and, an increased staff presence, including law enforcement, a volunteer site steward during the 6-month period of peak visitor use, and noxious weed control. In California, BLM management actions include a proposed long-term monitoring plot, limiting OHV travel to designated routes, and excluding livestock grazing by fencing. These conservation measures have reduced the magnitude of threat to the species to moderate; all remaining threats are nonimminent and involve long-term changes to the habitat for the species resulting from past impacts. Until we can put in place a monitoring program that allows us to assess the long-term trend of the species, we have assigned an LPN of 11.

Pseudognaphalium (*Gnaphalium*) *sandwicensium* var. *molokaiense* (Enaena)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. *Pseudognaphalium sandwicensium* var. *molokaiense* is a perennial herb found in strand vegetation in dry consolidated dunes on the islands of Molokai and Maui, Hawaii. Historically, this variety was also found on Oahu and Lanai. This variety is known from 5 populations totaling approximately 200 to 20,000 individuals (depending upon rainfall) in the Moomomi area on the island of Molokai, and from 2 populations of a few individuals at Waiehu dunes and at Puu Kahulianapa on west Maui.

Pseudognaphalium sandwicensium var. *molokaiense* is threatened by feral goats and axis deer that degrade and destroy habitat and possibly prey upon it, and by nonnative plants that compete for light and nutrients. Potential threats also include collection for lei-making, and off-road vehicles that directly damage plants and degrade habitat. Weed control protects one population on Molokai; however, no conservation efforts have been initiated to date for the other populations on Molokai or for the individuals on Maui. This species is represented in an ex situ collection. The ongoing (and therefore imminent) threats from feral goats, axis deer, nonnative plants, collection, and off-road vehicles are of a high magnitude because no control measures have been undertaken for the Maui population or for the Molokai populations, and the threats result in direct mortality or significantly reduce reproductive capacity for the majority of the populations, leading to a relatively high likelihood of extinction. Therefore, we retained an LPN of 3 for this plant variety.

Ranunculus hawaiensis (Makou)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. *Ranunculus hawaiensis* is an erect or ascending perennial herb found in mesic to wet forest dominated by *Metrosideros polymorpha* (ohia) and *Acacia koa* (koa) with scree substrate (loose stones or rocky debris on a slope) on the islands of Maui and Hawaii, Hawaii. This species is currently known from 14 individuals in 6 populations on the island of Hawaii. One population on Maui (Kukui planeze) was not relocated on a survey conducted in 2006. In addition, one wild population at Waikamoi (also on Maui) has not been observed since 1995. *Ranunculus hawaiensis* is threatened by direct predation by slugs, feral pigs, goats, cattle, mouflon, and sheep; by pigs, goats, cattle, mouflon, and sheep that degrade and destroy habitat; and by nonnative plants that compete for light and nutrients. Three populations have been outplanted into protected exclosures; however, feral ungulates and nonnative plants are not controlled in the remaining, unfenced populations. In addition, the threat from introduced slugs is of a high magnitude because slugs occur throughout the limited range of this species and no effective measures have been undertaken to control them or prevent them from causing significant adverse impacts to this species. Overall, the threats from pigs, goats, cattle, mouflon, sheep, slugs, and nonnative plants are of a high magnitude, and ongoing (imminent) for *R. hawaiensis.* We retained an LPN of 2 for this species.

Ranunculus mauiensis (Makou)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. *Ranunculus mauiensis* is an erect to weakly ascending perennial herb found in open sites in mesic to wet forest and along streams on the islands of Maui, Kauai, and Molokai, Hawaii. This species is currently known from 14 populations totaling 198 individuals. *Ranunculus mauiensis* is threatened by feral pigs, goats, mule deer, axis deer, and slugs that consume it; by habitat degradation and destruction by feral pigs, goats, and deer; and by nonnative plants that compete for light and nutrients. This species is represented in ex situ collections. Feral pigs have been fenced out of one Maui population of *R. mauiensis,* and nonnative plants have been reduced in the fenced area. One individual occurs in the Kamakou Preserve on Molokai, managed by The Nature Conservancy. However, ongoing conservation efforts benefit only two populations. As a result, the threats have the potential of bringing about extinction in a relatively short time scale, and are therefore are of high magnitude. They are also imminent because they are ongoing in the Kauai and the majority of the Maui populations. Therefore, we retained an LPN of 2 for this species.

Rorippa subumbellata (Tahoe yellow cress)—The following summary is based on information contained in our files and the petition we received on December 27, 2000. *Rorippa subumbellata* is a small, branching, perennial herb with umbel-like inflorescences and yellow flowers. *Rorippa subumbellata* is known only from the shores of Lake Tahoe in California and Nevada. Data collected over the last 25 years generally indicate that occurrence of the species fluctuates yearly as a function of both lake level and the amount of exposed habitat. Records kept since 1900 show a preponderance of years with high lake levels that would isolate and reduce *R. subumbellata* occurrences at higher beach elevations. From the standpoint of the species, less favorable peak years have occurred almost twice as often as more favorable low-level years. Annual surveys are conducted to determine population numbers, site occupancy, and general disturbance regime. During the 2003 and 2004 annual survey periods, the lake level was approximately 6,224 feet (ft) (1,897.08 meters (m)); 2004 was the fourth consecutive year of low water. *Rorippa subumbellata* was present at 46 of the 60 sites surveyed, up from 31 occupied sites in 2001 when the lake level was higher at 6,225 ft (1,897.38 m). Approximately 25,200 stems were present in 2003, whereas during the 2001 annual survey, the estimated number of stems was 6,136. Lake levels rose again in 2006, and less habitat was

available. Lake levels dropped again in 2008 through 2010, leading to an increase in both occupied sites and estimated stem counts. During very low lake levels in 2009, an estimated 27,522 stems were observed at 46 sites, equal to the highest number of occupied sites previously recorded.

Many *Rorippa subumbellata* sites are intensively used for commercial and public purposes and are subject to various activities such as erosion control, marina developments, pier construction, and recreation. The U.S. Forest Service, California Tahoe Conservancy, and California Department of Parks and Recreation have management programs for *R. subumbellata* which include monitoring, fenced enclosures, and transplanting efforts when funds and staff are available. Public agencies (including the Service), private landowners, and environmental groups collaborated to develop a conservation strategy coupled with a memorandum of understanding-conservation agreement. The conservation strategy, completed in 2003, contains goals and objectives for recovery and survival, a research and monitoring agenda, and serves as the foundation for an adaptive management program. Because of the continued commitments to conservation demonstrated by regulatory and land management agencies participating in the conservation strategy, we have determined the threats to *R. subumbellata* from various land uses have been reduced to a moderate magnitude. In high lake-level years such as 2005, however, recreational use is concentrated within *R. subumbellata* habitat, and we consider this threat in particular to be ongoing and imminent. Therefore, we are maintaining an LPN of 8 for this species.

Schiedea pubescens (Maolioli)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. *Schiedea pubescens* is a reclining or weakly climbing vine found in diverse mesic to wet forest on the islands of Maui, Molokai, and Hawaii, Hawaii. It is presumed extirpated from Lanai. Currently, this species is known from 8 populations totaling between 30 and 32 individuals on Maui, from 4 populations totaling between 21 and 22 individuals on Molokai, and from 1 population of 4 to 6 individuals on the island of Hawaii.

Schiedea pubescens is threatened by feral pigs and goats that consume it and degrade and destroy habitat, and by nonnative plants that compete for light and nutrients. Feral ungulates have been fenced out of the population of *S. pubescens* on the island of Hawaii. Feral goats have been fenced out of a few of the west Maui populations of *S. pubescens.* Nonnative plants have been reduced in the populations that are fenced on Maui. However, the threats are not controlled and are ongoing in the remaining unfenced populations on Maui and the four populations on Molokai. Additional fenced areas are planned at Pohakuloa Training Area on the island of Hawaii. Nonnative feral ungulates and nonnative plants will be controlled within these fenced areas. Fire is a potential threat to the Hawaii Island population. In light of the extremely low number of individuals of this species, the threats from goats and nonnative plants are of a high magnitude because they result in mortality and reduced reproductive capacity for the majority of the populations, leading to a relatively high likelihood of extinction. The threats are imminent because they are ongoing with respect to most of the populations. Therefore, we retained an LPN of 2 for this species.

Schiedea salicaria (no common name)—We continue to find that listing this species is warranted, but precluded as of the date of publication of this notice. However, we are working on a proposed listing rule that we expect to publish prior to making the next annual resubmitted 12-month petition finding.

Sedum eastwoodiae (Red Mountain stonecrop)—The following summary is based on information contained in our files and information provided by the California Department of Fish and Game. The petition we received on May 11, 2004, provided no new information on the species. Red Mountain stonecrop is a perennial succulent which occupies relatively barren, rocky openings and cliffs in lower montane coniferous forests, between 1,900 and 4,000 feet elevation. Its distribution is limited to Red Mountain, Mendocino County, California, where it occupies in excess of 54 acres scattered over 4 square miles. The species' distribution by ownership is described as follows: Federal (Bureau of Land Management), 95 percent; private, 5 percent. Total population size has not been determined, but a preliminary estimate suggests the population may be in excess of 29,000 plants, occupying more than 27 discrete habitat polygons. Intensive monitoring suggests considerable annual variation in plant seedling success and inflorescence production. The primary threat to the species is the potential for surface mining for chromium and nickel. The entire distribution of Red Mountain stonecrop is either owned by mining interests, or is covered by mining claims, none of which are currently active. Surface mining would destroy habitat suitability for this species. The species is also believed threatened by tree and shrub encroachment into its habitat, in absence of fire. Approximately 25 percent of its known distribution occurred within the boundary of the Red Mountain Fire of June 2008. However, the extent and manner in which Red Mountain stonecrop and its habitat were affected by that fire is not yet known. Given the magnitude (high) and immediacy (nonimminent) of the threat to the small, scattered populations, and its taxonomy (species), we assigned an LPN of 5 to this species.

Sicyos macrophyllus ('Anunu)—We continue to find that listing this species is warranted, but precluded as of the date of publication of this notice. However, we are working on a proposed listing rule that we expect to publish prior to making the next annual resubmitted 12-month petition finding.

Solanum conocarpum (marron bacora)—The following summary is based on information in our files and in the petition we received on November 21, 1996. *Solanum conocarpum* is a dry-forest shrub in the island of St. John, U.S. Virgin Islands. Its current distribution includes eight localities in the island of St. John, each ranging from 1 to 144 individuals. The species has been reported to occur on dry, poor soils. It can be locally abundant in exposed topography on sites disturbed by erosion, areas that have received moderate grazing, and around ridgelines as an understory component in diverse woodland communities. A habitat suitability model suggests that the vast majority of *Solanum conocarpum* habitat is found in the lower elevation coastal scrub forest. Efforts have been conducted to propagate the species to enhance natural populations, and planting of seedlings has been conducted in the island of St. John.

Solanum conocarpum is threatened by the lack of natural recruitment, absence of dispersers, fragmented distribution, lack of genetic variation, climate change, and habitat destruction or modification by exotic mammal species. These threats are evidenced by the reduced number of individuals, low number of populations, and lack of connectivity between populations. Overall, we determined the magnitude of the threats to be high as shown by the poor quality of the populations. The majority of threats are ongoing and, therefore, imminent. We assigned an LPN of 2 to this species.

Solanum nelsonii (popolo)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. *Solanum nelsonii* is a sprawling or trailing shrub found in coral rubble or sand in coastal sites. This species is known from populations on Molokai (approximately 300 plants), the island of Hawaii (5 plants), and the northwestern Hawaiian Islands (NWHI), Hawaii. The current populations in the NWHI are found on Kure (unknown number of individuals), Midway (approximately 260 plants), Laysan (approximately 490 plants), Pearl and Hermes (unknown number of individuals), and Nihoa (8,000 to 15,000 adult plants). On Molokai, *S. nelsonii* is moderately threatened by ungulates that degrade and destroy habitat, and may eat *S. nelsonii.* On Molokai and the NWHI, this species is threatened by nonnative plants that outcompete and displace it. *Solanum nelsonii* is threatened by predation by a nonnative grasshopper in the NWHI. On Kure, Midway, Laysan, and Pearl and Hermes in the NWHI, tsunamis are also a potential threat to *S. nelsonii.* This species is represented in ex situ collections. Ungulate exclusion fences, routine fence monitoring and maintenance, and weed control protect the population of *S. nelsonii* on Molokai. Limited weed control is conducted in the NWHI. These threats are of moderate magnitude because of the relatively large number of plants, and the fact that this species is found on more than one island. The threats are imminent for the majority of the populations because they are ongoing and are not being controlled. We therefore retained an LPN of 8 for this species.

Solidago plumosa (Yadkin River goldenrod)—The following information is based on information in our files. No new information was provided in the petition we received on April 20, 2010. The global distribution of *Solidago plumosa* consists of a single population that occurs in two discrete locations along a 2.5-mile stretch of the Yadkin River in North Carolina. The availability of suitable habitat and the fate of the single known population of this species are primarily determined by the manner in which two hydroelectric projects (the Yadkin River and Yadkin-Pee Dee River Hydroelectric Projects) are operated. Any detrimental effects to *S. plumosa* resulting from the construction of these reservoirs occurred decades ago when these projects were built (during the years of 1917 to 1928), and the Service is not aware of any plans to construct additional reservoirs within the current range of this species. However, *S. plumosa* continues to be subject to threats from the continued operation of these reservoirs (which has reduced the frequency and severity of scouring floods that help to prevent the establishment of other species within the species' limited habitat) and the encroachment of nonnative, invasive species. Because the species' global distribution consists of a single population, its entire range is affected by these threats. However, because scouring floods (prior to reservoir construction) likely only occurred episodically, and in light of the relatively slow progression of nonnative species into areas of occupied habitat, the magnitude of these threats is moderate to low. However, because these threats (especially those presented by nonnative, invasive plant species) are currently occurring, they are imminent. Thus, we assigned this species an LPN of 8.

Sphaeralcea gierischii (Gierisch mallow)—We continue to find that listing this species is warranted, but precluded as of the date of publication of this notice. However, we are working on a proposed listing rule that we expect to publish prior to making the next annual resubmitted petition 12-month finding.

Stenogyne cranwelliae (no common name)—We continue to find that listing this species is warranted, but precluded as of the date of publication of this notice. However, we are working on a proposed listing rule that we expect to publish prior to making the next annual resubmitted 12-month petition finding.

Symphyotrichum georgianum (Georgia aster)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. Georgia aster is a relict species of post oak savanna/prairie communities that existed in the Southeast prior to widespread fire suppression and extirpation of large native grazing animals. Georgia aster currently occurs in the States of Alabama, Georgia, North Carolina, and South Carolina. The species is presumed extant in 8 counties in Alabama, 22 counties in Georgia, 9 counties in North Carolina, and 15 counties in South Carolina. The species appears to have been eliminated from Florida.

Most remaining populations survive adjacent to roads, utility rights-of-way, and other openings where current land management mimics natural disturbance regimes. Most populations are small (10 to 100 stems), and because the species' main mode of reproduction is vegetative, each isolated population may represent only a few genotypes. Many populations are currently threatened by one or more of the following factors: woody succession due to fire suppression, development, highway expansion or improvement, and herbicide application. However, the species is still relatively widely distributed, and recent information indicates the species is more abundant than when we initially identified it as a candidate for listing. Taking into account its distribution and abundance, the magnitude of threats is moderate. The threats are currently occurring and therefore are imminent. Thus we assigned an LPN of 8 for this species.

Ferns and Allies

Cyclosorus boydiae (no common name)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. This species is a small- to medium-sized fern found in mesic to wet forest along stream banks on the islands of Oahu and Maui, Hawaii. Historically, this species was also found on the island of Hawaii, but it has been extirpated there. Currently, this species is known from 7 populations totaling approximately 400 individuals. This species is threatened by feral pigs that degrade and destroy habitat and may eat this plant, and by nonnative plants that compete for light and nutrients. Feral pigs have been fenced out of the largest population on Maui, and nonnative plants have been reduced in the fenced area. No conservation efforts are under way to alleviate threats to the other two populations on Maui, or for the two populations on Oahu. This species is represented in an ex situ collection. The magnitude of the threats acting upon the currently extant populations is moderate because the largest population is protected from pigs, and nonnative plants have been reduced in this area. The threats are ongoing and therefore imminent. Therefore, we retained an LPN of 8 for this species.

Huperzia stemmermanniae (Waewaeiole)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. This species is an epiphytic pendant clubmoss found in mesic-to-wet *Metrosideros polymorpha-Acacia koa* (ohia-koa) forests on the islands of Maui and Hawaii, Hawaii. Only 3 populations are known, on Maui and Hawaii, totaling approximately 30 individuals. The Maui population has not been relocated since 1995. *Huperzia*

stemmermanniae is threatened by feral pigs, goats, cattle, and axis deer that degrade and destroy habitat, and by nonnative plants that compete for light, space, and nutrients. *Huperzia stemmermanniae* is also threatened by randomly occurring natural events due to its small population size. One individual at Waikamoi Preserve may benefit from fencing for axis deer and pigs. This species is represented in ex situ collections. The threats from pigs, goats, cattle, axis deer, and nonnative plants are of a high magnitude because they are sufficiently severe to adversely affect the species throughout its limited range, resulting in direct mortality or significantly reducing reproductive capacity, leading to a relatively high likelihood of extinction. The threats are imminent because they are ongoing. Therefore, we retained an LPN of 2 for this species.

Microlepia strigosa var. *mauiensis* (Palapalai)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. *Microlepia strigosa* var. *mauiensis* is a terrestrial fern found in mesic-to-wet forests. It is currently found in Hawaii on the islands of Maui, Oahu, and Hawaii, from at least 9 populations totaling at least 50 individuals. There is a possibility that the range of this plant variety could be larger and include the other main Hawaiian Islands. *Microlepia strigosa* var. *mauiensis* is threatened by feral pigs that degrade and destroy habitat, and by nonnative plants that compete for light and nutrients. Pigs have been fenced out of some areas on east and west Maui, Oahu, and on Hawaii, where *M. strigosa* var. *mauiensis* currently occurs, and nonnative plants have been reduced in the fenced areas. However, the threats are not controlled and are ongoing in the remaining unfenced populations on Maui, Oahu, and Hawaii. Therefore, the threats from feral pigs and nonnative plants are imminent. The threats are of a high magnitude because they are sufficiently severe to adversely affect the species throughout its range, resulting in direct mortality or significantly reducing reproductive capacity, leading to a relatively high likelihood of extinction. We therefore retained an LPN of 3 for *M. strigosa* var. *mauiensis.*

Petitions To Reclassify Species Already Listed or To Add to the Listed Range

We previously made warranted-but-precluded findings on five petitions seeking to reclassify threatened species to endangered status. The taxa involved in the reclassification petitions are three populations of the grizzly bear (*Ursus arctos horribilis*), delta smelt (*Hypomesus transpacificus*), and *Sclerocactus brevispinus* (Pariette cactus). Because these species are already listed under the ESA, they are not candidates for listing and are not included in Table 1. However, this notice and associated species assessment forms or 5-year review documents also constitute the resubmitted petition findings for these species. For delta smelt, we have not updated the information included in the 12-month finding (published April 7, 2010, at 75 FR 17667), which serves as our assessment; we are currently conducting a 5-year review, which will provide updated information when we complete it later this year. For the three grizzly bear populations, our recently completed 5-year review serves as our assessment. For *Sclerocactus brevispinus,* our updated assessment is provided below. We find that reclassification to endangered status for the three grizzly bear populations, delta smelt, and *Sclerocactus brevispinus* are all currently warranted but precluded by work identified above (see ''Petition Findings for Candidate Species''). One of the primary reasons that the work identified above is considered higher priority is that the grizzly bear populations, delta smelt, and *Sclerocactus brevispinus* are currently listed as threatened, and therefore already receive certain protections under the ESA. We promulgated regulations extending take prohibitions for wildlife and plants under section 9 to threatened species (50 CFR 17.31 and 50 CFR 17.71, respectively). Prohibited actions under section 9 for wildlife include, but are not limited to, take (i.e., to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in such activity). For plants, prohibited actions under section 9 include removing or reducing to possession any listed plant from an area under Federal jurisdiction (50 CFR 17.61). Other protections include those under section 7(a)(2) of the ESA whereby Federal agencies must insure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of any endangered or threatened species.

Grizzly bear (*Ursus arctos horribilis*) North Cascades ecosystem, Cabinet-Yaak, and Selkirk populations (Region 6)—Between 1986 and 2007, we have received and reviewed 10 petitions requesting a change in status for individual grizzly bear populations (51 FR 16363, May 2, 1986; 55 FR 32103, August 7, 1990; 56 FR 33892, July 24, 1991; 57 FR 14372, April 20, 1992; 58 FR 8250, February 12, 1993; 58 FR 38552, July 19, 1993; 58 FR 43856, August 18, 1993; 58 FR 43857, August 18, 1993; 59 FR 46611, September 9, 1994; 64 FR 26725, May 17, 1999; 72 FR 14866, March 29, 2007). Through this process, we determined the Cabinet-Yaak, Selkirk, and North Cascade ecosystems warrant endangered status. On April 18, 2007, the Service initiated a 5-year review to evaluate the current status of grizzly bears in the lower 48 States (72 FR 19549–19551). This status review, completed on August 29, 2011, and available online at: *http://ecos.fws.gov/speciesProfile/profile/speciesProfile.action?spcode=A001,* recommended that the Cabinet-Yaak, Selkirk, and North Cascades Ecosystems remain warranted but precluded for endangered status.

Delta smelt (*Hypomesus transpacificus*) (Region 8) (see 75 FR 17667; April 7, 2010, for additional information on why reclassification to endangered is warranted but precluded)—In March 2004, we completed a 5-year review for delta smelt in which we determined a change in status from threatened to endangered was not recommended. While none of the threats, other than apparent abundance, show significant differences from 2004, we now have strong evidence, not available at the time of our 5-year review, that at least some of those factors are endangering the species. The primary evidence is the continuing downward trend in delta smelt abundance indices since a significant decline that occurred in 2002. The most recent fall midwater trawl abundance index is the lowest ever recorded—less than one-tenth the level it was in 2003. In addition, a 2005 population viability analysis calculated a 50-percent likelihood that the species could reach effective extinction (8,000 individuals) within 20 years.

There are many primary threats to the species including: Direct entrainments by State and Federal water export facilities; summer and fall increases in salinity and water clarity; and effects from introduced species. Additional threats are predation by striped and largemouth bass and inland silversides, entrainment into power plants, contaminants, and small population size. Existing regulatory mechanisms have not proven adequate to halt the decline of delta smelt since the time of listing as a threatened species.

As a result of our analysis of the best available scientific and commercial information, we have assigned uplisting the delta smelt an LPN of 2, based on high-magnitude, imminent threats. The

magnitude of the threats is high, because they occur rangewide and result in mortality or significantly reduce the reproductive capacity of the species, leading to a relatively high likelihood of extinction. They are imminent because these threats are ongoing and, in some cases (e.g., nonnative species), considered irreversible.

Sclerocactus brevispinus (Pariette cactus) (Region 6) (see 72 FR 53211, September 18, 2007, and the species assessment form (see **ADDRESSES**) for additional information on why reclassification to endangered is warranted but precluded)—*Sclerocactus brevispinus* is restricted to clay badlands of the Wagon Hound member of the Uinta Formation in the Uinta Basin of northeastern Utah. The species is restricted to one population with an overall range of approximately 10 miles by 5 miles in extent. The species' entire population is within a developed and expanding oil and gas field. The location of the species' habitat exposes it to destruction from road, pipeline, and well-site construction in connection with oil and gas development. The species may be collected as a specimen plant for horticultural use. Recreational off-road vehicle use and livestock trampling are additional potential threats. The species is currently federally listed as threatened by its previous inclusion within the species *Sclerocactus glaucus.* Based on current information, we are recommending an LPN of 2 for reclassifying this species as endangered, to reflect that: (1) The threats are of a high magnitude because any one of the threats has the potential to severely affect this species, a narrow endemic with a highly limited range and distribution; and (2) threats are ongoing and, therefore, are imminent.

Current Notice of Review

We gather data on plants and animals native to the United States that appear to merit consideration for addition to the Lists of Endangered and Threatened Wildlife and Plants (Lists). This notice identifies those species that we currently regard as candidates for addition to the Lists. These candidates include species and subspecies of fish, wildlife, or plants and DPSes of vertebrate animals. This compilation relies on information from status surveys conducted for candidate assessment and on information from State Natural Heritage Programs, other State and Federal agencies, knowledgeable scientists, public and private natural resource interests, and comments received in response to previous notices of review.

Tables 1 and 2 list animals arranged alphabetically by common names under the major group headings, and list plants alphabetically by names of genera, species, and relevant subspecies and varieties. Animals are grouped by class or order. Plants are subdivided into two groups: (1) Flowering plants and (2) ferns and their allies. Useful synonyms and subgeneric scientific names appear in parentheses with the synonyms preceded by an ''equals'' sign. Several species that have not yet been formally described in the scientific literature are included; such species are identified by a generic or specific name (in italics), followed by ''sp.'' or ''ssp.'' We incorporate standardized common names in these notices as they become available. We sort plants by scientific name due to the inconsistencies in common names, the inclusion of vernacular and composite subspecific names, and the fact that many plants still lack a standardized common name.

Table 1 lists all candidate species, plus species currently proposed for listing under the ESA. We emphasize that in this notice we are not proposing to list any of the candidate species; rather, we will develop and publish proposed listing rules for these species in the future. We encourage State agencies, other Federal agencies, and other parties to give consideration to these species in environmental planning.

In Table 1, the ''category'' column on the left side of the table identifies the status of each species according to the following codes:

PE—Species proposed for listing as endangered. Proposed species are those species for which we have published a proposed rule to list as endangered or threatened in the **Federal Register**. This category does not include species for which we have withdrawn or finalized the proposed rule.

PT—Species proposed for listing as threatened.

PSAT—Species proposed for listing as threatened due to similarity of appearance.

C—Candidates: Species for which we have on file sufficient information on biological vulnerability and threats to support proposals to list them as endangered or threatened. Issuance of proposed rules for these species is precluded at present by other higher priority listing actions. This category includes species for which we made a 12-month warranted-but-precluded finding on a petition to list. We made new findings on all petitions for which we previously made ''warranted-but-precluded'' findings. We identify the species for which we made a continued warranted-but-precluded finding on a resubmitted petition by the code ''C*'' in the category column (see ''*Findings for Petitioned Candidate Species''* section for additional information).

The ''Priority'' column indicates the LPN for each candidate species, which we use to determine the most appropriate use of our available resources. The lowest numbers have the highest priority. We assign LPNs based on the immediacy and magnitude of threats, as well as on taxonomic status. We published a complete description of our listing priority system in the **Federal Register** (48 FR 43098, September 21, 1983).

The third column, ''Lead Region,'' identifies the Regional Office to which you should direct information, comments, or questions (see addresses under Request for Information at the end of the **SUPPLEMENTARY INFORMATION** section).

Following the scientific name (fourth column) and the family designation (fifth column) is the common name (sixth column). The seventh column provides the known historical range for the species or vertebrate population (for vertebrate populations, this is the historical range for the entire species or subspecies and not just the historical range for the distinct population segment), indicated by postal code abbreviations for States and U.S. territories. Many species no longer occur in all of the areas listed.

Species in Table 2 of this notice are those we included either as proposed species or as candidates in the previous CNOR (published November 10, 2010 at 75 FR 69222) that are no longer proposed species or candidates for listing. Since November 10, 2010, we listed nine species, emergency listed one species, withdrew a proposed rule for one species, and removed three species from candidate status for the reason indicated by the code. Also included in this table are three species that were not previously candidates or proposed species but we emergency listed due to similarity in appearance. The first column indicates the present status of each species, using the following codes (not all of these codes may have been used in this CNOR):

E—Species we listed as endangered.

T—Species we listed as threatened.

Rc—Species we removed from the candidate list because currently available information does not support a proposed listing.

Rp—Species we removed from because we have withdrawn the proposed listing.

The second column indicates why we no longer regard the species as a

candidate or proposed species using the following codes (not all of these codes may have been used in this CNOR):

A—Species that are more abundant or widespread than previously believed and species that are not subject to the degree of threats sufficient to warrant continuing candidate status, or issuing a proposed or final listing.

F—Species whose range no longer includes a U.S. territory.

I—Species for which we have insufficient information on biological vulnerability and threats to support issuance of a proposed rule to list.

L—Species we added to the Lists of Endangered and Threatened Wildlife and Plants.

M—Species we mistakenly included as candidates or proposed species in the last notice of review.

N—Species that are not listable entities based on the ESA's definition of ''species'' and current taxonomic understanding.

U—Species that are not subject to the degree of threats sufficient to warrant issuance of a proposed listing or continuance of candidate status due, in part or totally, to conservation efforts that remove or reduce the threats to the species.

X—Species we believe to be extinct.

The columns describing lead region, scientific name, family, common name, and historical range include information as previously described for Table 1.

Request for Information

We request you submit any further information on the species named in this notice as soon as possible or whenever it becomes available. We are particularly interested in any information:

(1) Indicating that we should add a species to the list of candidate species;

(2) Indicating that we should remove a species from candidate status;

(3) Recommending areas that we should designate as critical habitat for a species, or indicating that designation of critical habitat would not be prudent for a species;

(4) Documenting threats to any of the included species;

(5) Describing the immediacy or magnitude of threats facing candidate species;

(6) Pointing out taxonomic or nomenclature changes for any of the species;

(7) Suggesting appropriate common names; and

(8) Noting any mistakes, such as errors in the indicated historical ranges.

Submit information, materials, or comments regarding a particular species to the Regional Director of the Region identified as having the lead responsibility for that species. The regional addresses follow:

Region 1. Hawaii, Idaho, Oregon, Washington, American Samoa, Guam, and Commonwealth of the Northern Mariana Islands. Regional Director (TE), U.S. Fish and Wildlife Service, Eastside Federal Complex, 911 N.E. 11th Avenue, Portland, OR 97232–4181 (503/231–6158).

Region 2. Arizona, New Mexico, Oklahoma, and Texas. Regional Director (TE), U.S. Fish and Wildlife Service, 500 Gold Avenue SW., Room 4012, Albuquerque, NM 87102 (505/248–6920).

Region 3. Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio, and Wisconsin. Regional Director (TE), U.S. Fish and Wildlife Service, 5600 American Blvd. West, Suite 990, Bloomington, MN 55437–1458 (612/713–5334).

Region 4. Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, Puerto Rico, and the U.S. Virgin Islands. Regional Director (TE), U.S. Fish and Wildlife Service, 1875 Century Boulevard, Suite 200, Atlanta, GA 30345 (404/679–4156).

Region 5. Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, and West Virginia. Regional Director (TE), U.S. Fish and Wildlife Service, 300 Westgate Center Drive, Hadley, MA 01035–9589 (413/253–8615).

Region 6. Colorado, Kansas, Montana, Nebraska, North Dakota, South Dakota, Utah, and Wyoming. Regional Director (TE), U.S. Fish and Wildlife Service, P.O. Box 25486, Denver Federal Center, Denver, CO 80225–0486 (303/236–7400).

Region 7. Alaska. Regional Director (TE), U.S. Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, AK 99503–6199 (907/786–3505).

Region 8. California and Nevada. Regional Director (TE), U.S. Fish and Wildlife Service, 2800 Cottage Way, Suite W2606, Sacramento, CA 95825 (916/414–6464).

We will provide information received in response to the previous CNOR to the Region having lead responsibility for each candidate species mentioned in the submission. We will likewise consider all information provided in response to this CNOR in deciding whether to propose species for listing and when to undertake necessary listing actions (including whether emergency listing under section 4(b)(7) of the ESA is appropriate). Information and comments we receive will become part of the administrative record for the species, which we maintain at the appropriate Regional Office.

Before including your address, phone number, e-mail address, or other personal identifying information in your submission, be advised that your entire submission—including your personal identifying information—may be made publicly available at any time. Although you can ask us in your submission to withhold from public review your personal indentifying information, we cannot guarantee that we will be able to do so.

Authority

This notice is published under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.).

Dated: October 7, 2011.

Signed:

Gregory E. Siekaniec,

Deputy Director, Fish and Wildlife Service.

TABLE 1—CANDIDATE NOTICE OF REVIEW (ANIMALS AND PLANTS)

[Note: See end of **SUPPLEMENTARY INFORMATION** for an explanation of symbols used in this table]

Status		Lead region	Scientific name	Family	Common name	Historical range
Category	Priority					
MAMMALS						
C*	2	R4	*Eumops floridanus*	Molossidae	Bat, Florida bonneted	U.S.A. (FL).
C*	3	R1	*Emballonura semicaudata rotensis*.	Emballonuridae	Bat, Pacific sheath-tailed (Mariana Islands subspecies).	U.S.A. (GU, CNMI).

TABLE 1—CANDIDATE NOTICE OF REVIEW (ANIMALS AND PLANTS)—Continued

[Note: See end of **SUPPLEMENTARY INFORMATION** for an explanation of symbols used in this table]

Status		Lead region	Scientific name	Family	Common name	Historical range
Category	Priority					
C*	3	R1	*Emballonura semicaudata semicaudata.*	Emballonuridae	Bat, Pacific sheath-tailed (American Samoa DPS).	U.S.A. (AS), Fiji, Independent Samoa, Tonga, Vanuatu.
C*	2	R5	*Sylvilagus transitionalis*	Leporidae	Cottontail, New England	U.S.A. (CT, MA, ME, NH, NY, RI, VT).
C*	6	R8	*Martes pennanti*	Mustelidae	Fisher (west coast DPS)	U.S.A. (CA, CT, IA, ID, IL, IN, KY, MA, MD, ME, MI, MN, MT, ND, NH, NJ, NY, OH, OR, PA, RI, TN, UT, VA, VT, WA, WI, WV, WY), Canada.
C*	3	R2	*Zapus hudsonius luteus*	Zapodidae	Mouse, New Mexico meadow jumping.	U.S.A. (AZ, CO, NM).
C*	3	R1	*Thomomys mazama couchi.*	Geomyidae	Pocket gopher, Shelton	U.S.A. (WA).
C*	3	R1	*Thomomys mazama douglasii.*	Geomyidae	Pocket gopher, Brush Prairie.	U.S.A. (WA).
C*	3	R1	*Thomomys mazama glacialis.*	Geomyidae	Pocket gopher, Roy Prairie.	U.S.A. (WA).
C*	3	R1	*Thomomys mazama louiei.*	Geomyidae	Pocket gopher, Cathlamet.	U.S.A. (WA).
C*	3	R1	*Thomomys mazama melanops.*	Geomyidae	Pocket gopher, Olympic	U.S.A. (WA).
C*	3	R1	*Thomomys mazama pugetensis.*	Geomyidae	Pocket gopher, Olympia	U.S.A. (WA).
C*	3	R1	*Thomomys mazama tacomensis.*	Geomyidae	Pocket gopher, Tacoma	U.S.A. (WA).
C*	3	R1	*Thomomys mazama tumuli.*	Geomyidae	Pocket gopher, Tenino	U.S.A. (WA).
C*	3	R1	*Thomomys mazama yelmensis.*	Geomyidae	Pocket gopher, Yelm	U.S.A. (WA).
C*	3	R6	*Cynomys gunnisoni*	Sciuridae	Prairie dog, Gunnison's (populations in central and south-central Colorado, north-central New Mexico).	U.S.A. (CO, NM).
C*	9	R1	*Spermophilus brunneus endemicus.*	Sciuridae	Squirrel, Southern Idaho ground.	U.S.A. (ID).
C*	5	R1	*Spermophilus washingtoni.*	Sciuridae	Squirrel, Washington ground.	U.S.A. (WA, OR).
C*	9	R7	*Odobenus rosmarus divergens.*	Odobenidae	Walrus, Pacific	U.S.A. (AK), Canada, Russia.
C*	6	R6	*Gulo gulo luscus*	Mustelidae	Wolverine, North American (Contiguous U.S. DPS).	U.S.A. (CA, CO, ID, MT, OR, UT, WA, WY).
			BIRDS			
C*	3	R1	*Porzana tabuensis*	Rallidae	Crake, spotless (American Samoa DPS).	U.S.A. (AS), Australia, Fiji, Independent Samoa, Marquesas, Philippines, Society Islands, Tonga.
C*	3	R8	*Coccyzus americanus*	Cuculidae	Cuckoo, yellow-billed (Western U.S. DPS).	U.S.A. (Lower 48 States), Canada, Mexico, Central and South America.
C*	9	R1	*Gallicolumba stairi*	Columbidae	Ground-dove, friendly (American Samoa DPS).	U.S.A. (AS), Independent Samoa.
C*	3	R1	*Eremophila alpestris strigata.*	Alaudidae	Horned lark, streaked	U.S.A. (OR, WA), Canada (BC).
C*	3	R5	*Calidris canutus rufa*	Scolopacidae	Knot, red	U.S.A. (Atlantic coast), Canada, South America.

TABLE 1—CANDIDATE NOTICE OF REVIEW (ANIMALS AND PLANTS)—Continued

[Note: See end of **SUPPLEMENTARY INFORMATION** for an explanation of symbols used in this table]

Status		Lead region	Scientific name	Family	Common name	Historical range
Category	Priority					
C*	8	R7	*Gavia adamsii*	Gaviidae	Loon, yellow-billed	U.S.A. (AK), Canada, Norway, Russia, coastal waters of southern Pacific and North Sea.
C*	8	R7	*Brachyramphus brevirostris*.	Alcidae	Murrelet, Kittlitz's	U.S.A. (AK), Russia.
C*	5	R8	*Synthliboramphus hypoleucus*.	Alcidae	Murrelet, Xantus's	U.S.A. (CA), Mexico.
C*	8	R6	*Anthus spragueii*	Motacillidae	Pipit, Sprauge's	U.S.A. (AL, AR, AZ, CA, GA, LA, MA, MI, MN, MS, MT, ND, OH, OK, SC, SD, TX), Canada, Mexico.
C*	2	R2	*Tympanuchus pallidicinctus*.	Phasianidae	Prairie-chicken, lesser	U.S.A. (CO, KA, NM, OK, TX).
C*	8	R6	*Centrocercus urophasianus*.	Phasianidae	Sage-grouse, greater	U.S.A. (AZ, CA, CO, ID, MT, ND, NE, NV, OR, SD, UT, WA, WY), Canada (AB, BC, SK).
C*	3	R8	*Centrocercus urophasianus*.	Phasianidae	Sage-grouse, greater (Bi-State DPS).	U.S.A. (AZ, CA, CO, ID, MT, ND, NE, NV, OR, SD, UT, WA, WY), Canada (AB, BC, SK).
C*	6	R1	*Centrocercus urophasianus*.	Phasianidae	Sage-grouse, greater (Columbia Basin DPS).	U.S.A. (AZ, CA, CO, ID, MT, ND, NE, NV, OR, SD, UT, WA, WY), Canada (AB, BC, SK).
C*	2	R6	*Centrocercus minimus*	Phasianidae	Sage-grouse, Gunnison	U.S.A. (AZ, CO, NM, UT).
C*	3	R1	*Oceanodroma castro*	Hydrobatidae	Storm-petrel, band-rumped (Hawaii DPS).	U.S.A. (HI), Atlantic Ocean, Ecuador (Galapagos Islands), Japan.
C*	11	R4	*Dendroica angelae*	Emberizidae	Warbler, elfin-woods	U.S.A. (PR).
			REPTILES			
C*	3	R2	*Thamnophis eques megalops*.	Colubridae	Gartersnake, northern Mexican.	U.S.A. (AZ, NM, NV), Mexico.
PE	2	R2	*Sceloporus arenicolus*	Iguanidae	Lizard, sand dune	U.S.A. (TX, NM).
C*	8	R3	*Sistrurus catenatus*	Viperidae	Massasauga (= rattlesnake), eastern.	U.S.A. (IA, IL, IN, MI, MN, MO, NY, OH, PA, WI), Canada.
C*	3	R4	*Pituophis melanoleucus lodingi*.	Colubridae	Snake, black pine	U.S.A. (AL, LA, MS).
C*	5	R4	*Pituophis ruthveni*	Colubridae	Snake, Louisiana pine	U.S.A. (LA, TX).
C*	3	R2	*Chionactis occipitalis klauberi*.	Colubridae	Snake, Tucson shovel-nosed.	U.S.A. (AZ).
C*	6	R2	*Gopherus agassizii*	Testudinidae	Tortoise, desert (Sonoran DPS).	U.S.A. (AZ, CA, NV, UT).
C*	8	R4	*Gopherus polyphemus*	Testudinidae	Tortoise, gopher (eastern population).	U.S.A. (AL, FL, GA, LA, MS, SC).
C*	3	R2	*Kinosternon sonoriense longifemorale*.	Kinosternidae	Turtle, Sonoyta mud	U.S.A. (AZ), Mexico.
			AMPHIBIANS			
C*	9	R8	*Rana luteiventris*	Ranidae	Frog, Columbia spotted (Great Basin DPS).	U.S.A. (AK, ID, MT, NV, OR, UT, WA, WY), Canada (BC).
C*	3	R8	*Rana muscosa*	Ranidae	Frog, mountain yellow-legged (Sierra Nevada DPS).	U.S.A (CA, NV).
C*	2	R1	*Rana pretiosa*	Ranidae	Frog, Oregon spotted	U.S.A. (CA, OR, WA), Canada (BC).
C*	8	R8	*Lithobates onca*	Ranidae	Frog, relict leopard	U.S.A. (AZ, NV, UT).
PE	3	R3	*Cryptobranchus alleganiensis bishopi*.	Crytobranchidae	Hellbender, Ozark	U.S.A. (AR, MO).

TABLE 1—CANDIDATE NOTICE OF REVIEW (ANIMALS AND PLANTS)—Continued

[Note: See end of **SUPPLEMENTARY INFORMATION** for an explanation of symbols used in this table]

Status		Lead region	Scientific name	Family	Common name	Historical range
Category	Priority					
C*	8	R4	*Notophthalmus perstriatus.*	Salamandridae	Newt, striped	U.S.A. (FL, GA).
C*	2	R2	*Eurycea waterlooensis*	Plethodontidae	Salamander, Austin blind	U.S.A. (TX).
C*	8	R4	*Gyrinophilus gulolineatus*	Plethodontidae	Salamander, Berry Cave	U.S.A. (TN).
C*	8	R2	*Eurycea naufragia*	Plethodontidae	Salamander, Georgetown.	U.S.A. (TX).
C*	2	R2	*Plethodon neomexicanus*	Plethodontidae	Salamander, Jemez Mountains.	U.S. A. (NM).
C*	8	R2	*Eurycea tonkawae*	Plethodontidae	Salamander, Jollyville Plateau.	U.S.A. (TX).
C*	2	R2	*Eurycea chisholmensis*	Plethodontidae	Salamander, Salado	U.S.A. (TX).
C*	11	R8	*Anaxyrus canorus*	Bufonidae	Toad, Yosemite	U.S.A. (CA).
C	3	R2	*Hyla wrightorum*	Hylidae	Treefrog, Arizona (Huachuca/Canelo DPS).	U.S.A. (AZ), Mexico (Sonora).
C*	8	R4	*Necturus alabamensis*	Proteidae	Waterdog, black warrior (=Sipsey Fork).	U.S.A. (AL).
			FISHES			
C*	8	R2	*Gila nigra*	Cyprinidae	Chub, headwater	U.S.A. (AZ, NM).
C*	7	R6	*Iotichthys phlegethontis*	Cyprinidae	Chub, least	U.S.A. (UT).
C*	9	R2	*Gila robusta*	Cyprinidae	Chub, roundtail (Lower Colorado River Basin DPS).	U.S.A. (AZ, CO, NM, UT, WY).
C*	11	R6	*Etheostoma cragini*	Percidae	Darter, Arkansas	U.S.A. (AR, CO, KS, MO, OK).
C	2	R5	*Crystallaria cincotta*	Percidae	Darter, diamond	U.S.A. (KY, OH, TN, WV).
C	3	R4	*Etheostoma sagitta spilotum.*	Percidae	Darter, Kentucky arrow	U.S.A. (KY).
C*	8	R4	*Percina aurora*	Percidae	Darter, Pearl	U.S.A. (LA, MS).
C*	3	R6	*Thymallus arcticus*	Salmonidae	Grayling, Arctic (upper Missouri River DPS).	U.S.A. (AK, MI, MT, WY), Canada, northern Asia, northern Europe.
C*	5	R4	*Moxostoma sp.*	Catostomidae	Redhorse, sicklefin	U.S.A. (GA, NC, TN).
C*	2	R3	*Cottus sp.*	Cottidae	Sculpin, grotto	U.S.A. (MO).
C*	5	R2	*Notropis oxyrhynchus*	Cyprinidae	Shiner, sharpnose	U.S.A. (TX).
C*	5	R2	*Notropis buccula*	Cyprinidae	Shiner, smalleye	U.S.A. (TX).
C*	3	R2	*Catostomus discobolus yarrowi.*	Catostomidae	Sucker, Zuni bluehead	U.S.A. (AZ, NM).
PSAT	N/A	R1	*Salvelinus malma*	Salmonidae	Trout, Dolly Varden	U.S.A. (AK, WA), Canada, East Asia.
C*	9	R2	*Oncorhynchus clarki virginalis.*	Salmonidae	Trout, Rio Grande cutthroat.	U.S.A. (CO, NM).
			CLAMS			
PE	5	R4	*Villosa choctawensis*	Unionidae	Bean, Choctaw	U.S.A. (AL, FL).
PE	2	R3	*Villosa fabalis*	Unionidae	Bean, rayed	U.S.A. (IL, IN, KY, MI, NY, OH, TN, PA, VA, WV), Canada (ON).
PE	2	R4	*Fusconaia rotulata*	Unionidae	Ebonyshell, round	U.S.A. (AL, FL).
C*	8	R2	*Popenaias popei*	Unionidae	Hornshell, Texas	U.S.A. (NM, TX), Mexico.
C*	2	R4	*Ptychobranchus subtentum.*	Unionidae	Kidneyshell, fluted	U.S.A. (AL, KY, TN, VA).
PE	2	R4	*Ptychobranchus jonesi*	Unionidae	Kidneyshell, southern	U.S.A. (AL, FL).
C*	2	R4	*Lampsilis rafinesqueana*	Unionidae	Mucket, Neosho	U.S.A. (AR, KS, MO, OK).
PE	2	R3	*Plethobasus cyphyus*	Unionidae	Mussel, sheepnose	U.S.A. (AL, IA, IL, IN, KY, MN, MO, MS, OH, PA, TN, VA, WI, WV).
PE	2	R4	*Margaritifera marrianae*	Margaritiferidae	Pearlshell, Alabama	U.S.A. (AL).
C*	2	R4	*Lexingtonia dolabelloides*	Unionidae	Pearlymussel, slabside	U.S.A. (AL, KY, TN, VA).
PT	5	R4	*Pleurobema strodeanum*	Unionidae	Pigtoe, fuzzy	U.S.A. (AL, FL).
PT	5	R4	*Fusconaia escambia*	Unionidae	Pigtoe, narrow	U.S.A. (AL, FL).

TABLE 1—CANDIDATE NOTICE OF REVIEW (ANIMALS AND PLANTS)—Continued

[Note: See end of **SUPPLEMENTARY INFORMATION** for an explanation of symbols used in this table]

Status		Lead region	Scientific name	Family	Common name	Historical range
Category	Priority					
PT	11	R4	*Fusconaia (=Quincuncina) burkei.*	Unionidae	Pigtoe, tapered	U.S.A. (AL, FL).
C*	9	R4	*Quadrula cylindrica cylindrica.*	Unionidae	Rabbitsfoot	U.S.A. (AL, AR, GA, IN, IL, KS, KY, LA, MS, MO, OK, OH, PA, TN, WV).
PE	5	R4	*Hamiota (=Lampsilis) australis.*	Unionidae	Sandshell, southern	U.S.A. (AL, FL).
PE		R3	*Epioblasma triquetra*	Unionidae	Snuffbox	U.S.A. (IN, MI, NY, OH, PA, WV), Canada (ON).
PE	4	R3	*Cumberlandia monodonta.*	Margaritiferidae	Spectaclecase	U.S.A. (AL, AR, IA, IN, IL, KS, KY, MO, MN, NE, OH, TN, VA, WI, WV).
PE	2	R4	*Elliptio spinosa*	Unionidae	Spinymussel, Altamaha	U.S.A. (GA).
			SNAILS			
C*	8	R4	*Elimia melanoides*	Pleuroceridae	Mudalia, black	U.S.A. (AL).
C*	2	R4	*Planorbella magnifica*	Planorbidae	Ramshorn, magnificent	U.S.A. (NC).
C*	2	R1	*Ostodes strigatus*	Potaridae	Sisi snail	U.S.A. (AS).
C*	2	R2	*Pseudotryonia adamantina.*	Hydrobiidae	Snail, Diamond Y Spring	U.S.A. (TX).
C*	2	R1	*Samoana fragilis*	Partulidae	Snail, fragile tree	U.S.A. (GU, MP).
C*	2	R1	*Partula radiolata*	Partulidae	Snail, Guam tree	U.S.A. (GU).
C*	2	R1	*Partula gibba*	Partulidae	Snail, Humped tree	U.S.A. (GU, MP).
C*	2	R1	*Partulina semicarinata*	Achatinellidae	Snail, Lanai tree	U.S.A. (HI).
C*	2	R1	*Partulina variabilis*	Achatinellidae	Snail, Lanai tree	U.S.A. (HI).
C*	2	R1	*Partula langfordi*	Partulidae	Snail, Langford's tree	U.S.A. (MP).
C*	2	R2	*Cochliopa texana*	Hydrobiidae	Snail, Phantom cave	U.S.A. (TX).
C*	2	R1	*Newcombia cumingi*	Achatinellidae	Snail, Newcomb's tree	U.S.A. (HI).
C*	2	R1	*Eua zebrina*	Partulidae	Snail, Tutuila tree	U.S.A. (AS).
PE	2	R2	*Pyrgulopsis chupaderae*	Hydrobiidae	Springsnail, Chupadera	U.S.A. (NM).
C*	11	R8	*Pyrgulopsis notidicola*	Hydrobiidae	Springsnail, elongate mud meadows.	U.S.A. (NV).
C*	2	R2	*Tryonia circumstriata (=stocktonensis).*	Hydrobiidae	Springsnail, Gonzales	U.S.A. (TX).
C*	11	R2	*Pyrgulopsis thompsoni*	Hydrobiidae	Springsnail, Huachuca	U.S.A. (AZ), Mexico.
C*	8	R2	*Pyrgulopsis morrisoni*	Hydrobiidae	Springsnail, Page	U.S.A. (AZ).
C*	2	R2	*Tryonia cheatumi*	Hydrobiidae	Springsnail (=Tryonia), Phantom.	U.S.A. (TX).
PE	2	R2	*Pyrgulopsis bernardina*	Hydrobiidae	Springsnail, San Bernardino.	U.S.A. (AZ), Mexico (Sonora).
PE	2	R2	*Pyrgulopsis trivialis*	Hydrobiidae	Springsnail, Three Forks	U.S.A. (AZ).
C*	5	R2	*Sonorella rosemontensis*	Helminthoglyptidae	Talussnail, Rosemont	U.S.A. (AZ).
			INSECTS			
C*	2	R1	*Hylaeus anthracinus*	Colletidae	Bee, Hawaiian yellow-faced.	U.S.A. (HI).
C*	2	R1	*Hylaeus assimulans*	Colletidae	Bee, Hawaiian yellow-faced.	U.S.A. (HI).
C*	2	R1	*Hylaeus facilis*	Colletidae	Bee, Hawaiian yellow-faced.	U.S.A. (HI).
C*	2	R1	*Hylaeus hilaris*	Colletidae	Bee, Hawaiian yellow-faced.	U.S.A. (HI).
C*	2	R1	*Hylaeus kuakea*	Colletidae	Bee, Hawaiian yellow-faced.	U.S.A. (HI).
C*	2	R1	*Hylaeus longiceps*	Colletidae	Bee, Hawaiian yellow-faced.	U.S.A. (HI).
C*	2	R1	*Hylaeus mana*	Colletidae	Bee, Hawaiian yellow-faced.	U.S.A. (HI).
C*	3	R8	*Plebejus shasta charlestonensis.*	Lycaenidae	Blue, Mt. Charleston	U.S.A. (NV).
C	3	R4	*Strymon acis bartrami*	Lycaenidae	Butterfly, Bartram's hairstreak.	U.S.A. (FL).

TABLE 1—CANDIDATE NOTICE OF REVIEW (ANIMALS AND PLANTS)—Continued

[Note: See end of **SUPPLEMENTARY INFORMATION** for an explanation of symbols used in this table]

Status		Lead region	Scientific name	Family	Common name	Historical range
Category	Priority					
PSAT		R4	*Leptotes cassius theonus*.	Lycaenidae	Butterfly, cassius blue	U.S.A. (FL), Bahamas, Greater Antilles, Cayman Islands.
PSAT		R4	*Hemiargus ceraunus antibubastus*.	Lycaenidae	Butterfly, ceraunus blue	U.S.A. (FL), Bahamas.
C	3	R4	*Anaea troglodyta floridalis*.	Nymphalidae	Butterfly, Florida leafwing.	U.S.A. (FL).
C*	3	R1	*Hypolimnas octucula mariannensis*.	Nymphalidae	Butterfly, Mariana eight-spot.	U.S.A. (GU, MP).
C*	2	R1	*Vagrans egistina*	Nymphalidae	Butterfly, Mariana wandering.	U.S.A. (GU, MP).
PE	3	R4	*Cyclargus thomasi bethunebakeri*.	Lycaenidae	Butterfly, Miami blue	U.S.A. (FL), Bahamas.
PSAT		R4	*Cyclargus ammon*	Lycaenidae	Butterfly, Nickerbean blue.	U.S.A. (FL), Bahamas, Cuba.
C*	2	R4	*Atlantea tulita*	Nymphalidae	Butterfly, Puerto Rican harlequin.	U.S.A. (PR).
C*	5	R4	*Glyphopsyche sequatchie*.	Limnephilidae	Caddisfly, Sequatchie	U.S.A. (TN).
C	5	R4	*Pseudanophthalmus insularis*.	Carabidae	Cave beetle, Baker Station (=insular).	U.S.A. (TN).
C*	5	R4	*Pseudanophthalmus caecus*.	Carabidae	Cave beetle, Clifton	U.S.A. (KY).
C*	11	R4	*Pseudanophthalmus colemanensis*.	Carabidae	Cave beetle, Coleman	U.S.A. (TN).
C	5	R4	*Pseudanophthalmus fowlerae*.	Carabidae	Cave beetle, Fowler's	U.S.A. (TN).
C*	5	R4	*Pseudanophthalmus frigidus*.	Carabidae	Cave beetle, icebox	U.S.A. (KY).
C	5	R4	*Pseudanophthalmus tiresias*.	Carabidae	Cave beetle, Indian Grave Point (=Soothsayer).	U.S.A. (TN).
C*	5	R4	*Pseudanophthalmus inquisitor*.	Carabidae	Cave beetle, inquirer	U.S.A. (TN).
C*	5	R4	*Pseudanophthalmus troglodytes*.	Carabidae	Cave beetle, Louisville	U.S.A. (KY).
C	5	R4	*Pseudanophthalmus paulus*.	Carabidae	Cave beetle, Noblett's	U.S.A. (TN).
C*	5	R4	*Pseudanophthalmus parvus*.	Carabidae	Cave beetle, Tatum	U.S.A. (KY).
C*	3	R1	*Euphydryas editha taylori*.	Nymphalidae	Checkerspot butterfly, Taylor's (=Whulge).	U.S.A. (OR, WA), Canada (BC).
C*	5	R8	*Hermelycaena [Lycaena] hermes*.	Lycaenidae	Copper, Hermes	U.S.A. (CA).
PE	9	R1	*Megalagrion nigrohamatum nigrolineatum*.	Coenagrionidae	Damselfly, blackline Hawaiian.	U.S.A. (HI).
PE	2	R1	*Megalagrion leptodemas*	Coenagrionidae	Damselfly, crimson Hawaiian.	U.S.A. (HI).
PE	2	R1	*Megalagrion oceanicum*	Coenagrionidae	Damselfly, oceanic Hawaiian.	U.S.A. (HI).
C*	8	R1	*Megalagrion xanthomelas*.	Coenagrionidae	Damselfly, orangeblack Hawaiian.	U.S.A. (HI).
C	5	R8	*Ambrysus funebris*	Naucoridae	Naucorid bug (=Furnace Creek), Nevares Spring.	U.S.A. (CA).
C*	2	R1	*Drosophila digressa*	Drosophilidae	fly, Hawaiian Picture-wing.	U.S.A. (HI).
C*	8	R2	*Heterelmis stephani*	Elmidae	Riffle beetle, Stephan's	U.S.A. (AZ).
C*	8	R3	*Hesperia dacotae*	Hesperiidae	Skipper, Dakota	U.S.A. (MN, IA, SD, ND, IL), Canada.
C*	8	R1	*Polites mardon*	Hesperiidae	Skipper, Mardon	U.S.A. (CA, OR, WA).
C	2	R3	*Oarisma poweshiek*	Hesperiidae	Skipperling, Poweshiek	U.S.A. (IA, IL, IN, MI, MN, ND, SD, WI), Canada (MB).
C*	5	R6	*Lednia tumana*	Nemouridae	Stonefly, melwater lednian.	U.S.A. (MT).
C*	2	R6	*Cicindela albissima*	Cicindelidae	Tiger beetle, Coral Pink Sand Dunes.	U.S.A. (UT).

TABLE 1—CANDIDATE NOTICE OF REVIEW (ANIMALS AND PLANTS)—Continued

[Note: See end of **SUPPLEMENTARY INFORMATION** for an explanation of symbols used in this table]

Status		Lead region	Scientific name	Family	Common name	Historical range
Category	Priority					
C*	5	R4	*Cicindela highlandensis*	Cicindelidae	Tiger beetle, highlands	U.S.A. (FL).
ARACHNIDS						
C*	8	R2	*Cicurina wartoni*	Dictynidae	Meshweaver, Warton's cave.	U.S.A. (TX).
CRUSTACEANS						
C	2	R2	*Gammarus hyalleloides*	Gammaridae	Amphipod, diminutive	U.S.A. (TX).
C	8	R5	*Stygobromus kenki*	Crangonyctidae	Amphipod, Kenk's	U.S.A. (DC).
C*	5	R1	*Metabetaeus lohena*	Alpheidae	Shrimp, anchialine pool	U.S.A. (HI).
C*	5	R1	*Palaemonella burnsi*	Palaemonidae	Shrimp, anchialine pool	U.S.A. (HI).
C*	5	R1	*Procaris hawaiana*	Procarididae	Shrimp, anchialine pool	U.S.A. (HI).
C*	4	R1	*Vetericaris chaceorum*	Procaridae	Shrimp, anchialine pool	U.S.A. (HI).
FLOWERING PLANTS						
C*	11	R8	*Abronia alpina*	Nyctaginaceae	Sand-verbena, Ramshaw Meadows.	U.S.A. (CA).
C*	8	R4	*Agave eggersiana*	Agavaceae	No common name	U.S.A. (VI).
C*	8	R4	*Arabis georgiana*	Brassicaceae	Rockcress, Georgia	U.S.A. (AL, GA).
PE		R8	*Arctostaphylos franciscana.*	Ericaceae	Manzanita, Franciscan	U.S.A. (CA).
C*	11	R4	*Argythamnia blodgettii*	Euphorbiaceae	Silverbush, Blodgett's	U.S.A. (FL).
C*	3	R1	*Artemisia borealis var. wormskioldii.*	Asteraceae	Wormwood, northern	U.S.A. (OR, WA).
C*	5	R1	*Astragalus anserinus*	Fabaceae	Milkvetch, Goose Creek	U.S.A. (ID, NV, UT).
C	3	R1	*Astragalus cusickii var. packardiae.*	Fabaceae	Milkvetch, Packard's	U.S.A. (ID).
C*	8	R6	*Astragalus microcymbus*	Fabaceae	Milkvetch, skiff	U.S.A. (CO).
C*	8	R6	*Astragalus schmolliae*	Fabaceae	Milkvetch, Schmoll	U.S.A. (CO).
C*	11	R6	*Astragalus tortipes*	Fabaceae	Milkvetch, Sleeping Ute	U.S.A. (CO).
PE	2	R1	*Bidens amplectens*	Asteraceae	Ko'oko'olau	U.S.A. (HI).
C*	3	R1	*Bidens campylotheca pentamera.*	Asteraceae	Ko'oko'olau	U.S.A. (HI).
C*	3	R1	*Bidens campylotheca waihoiensis.*	Asteraceae	Ko'oko'olau	U.S.A. (HI).
C*	8	R1	*Bidens conjuncta*	Asteraceae	Ko'oko'olau	U.S.A. (HI).
C*	3	R1	*Bidens micrantha ctenophylla.*	Asteraceae	Ko'oko'olau	U.S.A. (HI).
C*	8	R6	*Boechera (Arabis) pusilla*	Brassicaceae	Rockcress, Fremont County or small.	U.S.A. (WY).
C*	8	R4	*Brickellia mosieri*	Asteraceae	Brickell-bush, Florida	U.S.A. (FL).
C*	2	R1	*Calamagrostis expansa*	Poaceae	Reedgrass, Maui	U.S.A. (HI).
C*	2	R1	*Calamagrostis hillebrandii.*	Poaceae	Reedgrass, Hillebrand's	U.S.A. (HI).
C*	5	R8	*Calochortus persistens*	Liliaceae	Mariposa lily, Siskiyou	U.S.A. (CA, OR).
C*	2	R1	*Canavalia pubescens*	Fabaceae	'Awikiwiki	U.S.A. (HI).
C*	8	R1	*Castilleja christii*	Scrophulariaceae	Paintbrush, Christ's	U.S.A. (ID).
C*	9	R4	*Chamaecrista lineata var. keyensis.*	Fabaceae	Pea, Big Pine partridge	U.S.A. (FL).
C*	12	R4	*Chamaesyce deltoidea pinetorum.*	Euphorbiaceae	Sandmat, pineland	U.S.A. (FL).
C*	9	R4	*Chamaesyce deltoidea serpyllum.*	Euphorbiaceae	Spurge, wedge	U.S.A. (FL).
C*	6	R8	*Chorizanthe parryi var. fernandina.*	Polygonaceae	Spineflower, San Fernando Valley.	U.S.A. (CA).
C*	2	R4	*Chromolaena frustrata*	Asteraceae	Thoroughwort, Cape Sable.	U.S.A. (FL).
C*	8	R2	*Cirsium wrightii*	Asteraceae	Thistle, Wright's	U.S.A. (AZ, NM), Mexico.
C*	2	R4	*Consolea corallicola*	Cactaceae	Cactus, Florida semaphore.	U.S.A. (FL).
C*	5	R4	*Cordia rupicola*	Boraginaceae	No common name	U.S.A. (PR), Anegada.
C*	2	R1	*Cyanea asplenifolia*	Campanulaceae	Haha	U.S.A. (HI).
PE	2	R1	*Cyanea calycina*	Campanulaceae	Haha	U.S.A. (HI).
C*	2	R1	*Cyanea kunthiana*	Campanulaceae	Haha	U.S.A. (HI).
PE	2	R1	*Cyanea lanceolata*	Campanulaceae	Haha	U.S.A. (HI).

TABLE 1—CANDIDATE NOTICE OF REVIEW (ANIMALS AND PLANTS)—Continued

[Note: See end of **SUPPLEMENTARY INFORMATION** for an explanation of symbols used in this table]

Status		Lead region	Scientific name	Family	Common name	Historical range
Category	Priority					
C*	2	R1	*Cyanea obtusa*	Campanulaceae	Haha	U.S.A. (HI).
PE		R1	*Cyanea purpurellifolia*	Campanulaceae	Haha	U.S.A. (HI).
C*	2	R1	*Cyanea tritomantha*	Campanulaceae	ʻAku	U.S.A. (HI).
C*	2	R1	*Cyrtandra filipes*	Gesneriaceae	Haʻiwale	U.S.A. (HI).
PE		R1	*Cyrtandra gracilis*	Gesneriaceae	Haʻiwale	U.S.A. (HI).
PE	2	R1	*Cyrtandra kaulantha*	Gesneriaceae	Haʻiwale	U.S.A. (HI).
C*	2	R1	*Cyrtandra oxybapha*	Gesneriaceae	Haʻiwale	U.S.A. (HI).
PE	2	R1	*Cyrtandra sessilis*	Gesneriaceae	Haʻiwale	U.S.A. (HI).
PE		R1	*Cyrtandra waiolani*	Gesneriaceae	Haʻiwale	U.S.A. (HI).
C*	3	R4	*Dalea carthagenensis var. floridana.*	Fabaceae	Prairie-clover, Florida	U.S.A. (FL).
C*	5	R5	*Dichanthelium hirstii*	Poaceae	Panic grass, Hirst Brothers'.	U.S.A. (DE, GA, NC, NJ).
C*	5	R4	*Digitaria pauciflora*	Poaceae	Crabgrass, Florida pineland.	U.S.A. (FL).
C*	3	R2	*Echinomastus erectocentrus var. acunensis.*	Cactaceae	Cactus, Acuna	U.S.A. (AZ), Mexico.
C*	8	R2	*Erigeron lemmonii*	Asteraceae	Fleabane, Lemmon	U.S.A. (AZ).
C*	2	R1	*Eriogonum codium*	Polygonaceae	Buckwheat, Umtanum Desert.	U.S.A. (WA).
C*	6	R8	*Eriogonum corymbosum var. nilesii.*	Polygonaceae	Buckwheat, Las Vegas	U.S.A. (NV).
C	5	R8	*Eriogonum diatomaceum*	Polygonaceae	Buckwheat, Churchill Narrows.	U.S.A (NV).
C*	5	R8	*Eriogonum kelloggii*	Polygonaceae	Buckwheat, Red Mountain.	U.S.A. (CA).
C*	8	R6	*Eriogonum soredium*	Polygonaceae	Buckwheat, Frisco	U.S.A. (UT).
C*	2	R1	*Festuca hawaiiensis*	Poaceae	No common name	U.S.A. (HI).
C*	11	R2	*Festuca ligulata*	Poaceae	Fescue, Guadalupe	U.S.A. (TX), Mexico.
C*	2	R1	*Gardenia remyi*	Rubiaceae	Nanu	U.S.A. (HI).
C*	8	R1	*Geranium hanaense*	Geraniaceae	Nohoanu	U.S.A. (HI).
C*	8	R1	*Geranium hillebrandii*	Geraniaceae	Nohoanu	U.S.A. (HI).
C*	5	R4	*Gonocalyx concolor*	Ericaceae	No common name	U.S.A. (PR).
C	2	R4	*Harrisia aboriginum*	Cactaceae	Pricklyapple, aboriginal (shellmound applecactus).	U.S.A. (FL).
C*	5	R8	*Hazardia orcuttii*	Asteraceae	Orcutt's hazardia	U.S.A. (CA), Mexico.
C*	2	R1	*Hedyotis fluviatilis*	Rubiaceae	Kampuaʻa	U.S.A. (HI).
C*	8	R4	*Helianthus verticillatus*	Asteraceae	Sunflower, whorled	U.S.A. (AL, GA, TN).
C*	2	R2	*Hibiscus dasycalyx*	Malvaceae	Rose-mallow, Neches River.	U.S.A. (TX).
C*	5	R8	*Ivesia webberi*	Rosaceae	Ivesia, Webber	U.S.A. (CA, NV).
C*	3	R1	*Joinvillea ascendens ascendens.*	Joinvilleaceae	ʻOhe	U.S.A. (HI).
PE	2	R1	*Korthalsella degeneri*	Viscaceae	Hulumoa	U.S.A. (HI).
C*	5	R4	*Leavenworthia crassa*	Brassicaceae	Gladecress, unnamed	U.S.A. (AL).
C	3	R4	*Leavenworthia exigua var. laciniata.*	Brassicaceae	Gladecress, Kentucky	U.S.A. (KY).
C*	2	R2	*Leavenworthia texana*	Brassicaceae	Gladecress, Texas golden.	U.S.A. (TX).
C*	8	R6	*Lepidium ostleri*	Brassicaceae	Peppergrass, Ostler's	U.S.A. (UT).
C*	5	R4	*Linum arenicola*	Linaceae	Flax, sand	U.S.A. (FL).
C*	3	R4	*Linum carteri var. carteri*	Linaceae	Flax, Carter's small-flowered.	U.S.A. (FL).
PE	2	R1	*Melicope christophersenii.*	Rutaceae	Alani	U.S.A. (HI).
PE	2	R1	*Melicope hiiakae*	Rutaceae	Alani	U.S.A. (HI).
PE	2	R1	*Melicope makahae*	Rutaceae	Alani	U.S.A. (HI).
C	3	R8	*Mimulus fremontii var. vandenbergensis.*	Phrymaceae	Monkeyflower, Vandenberg.	U.S.A. (CA).
C*	2	R1	*Myrsine fosbergii*	Myrsinaceae	Kolea	U.S.A. (HI).
C*	2	R1	*Myrsine vaccinioides*	Myrsinaceae	Kolea	U.S.A. (HI).
C*	8	R5	*Narthecium americanum*	Liliaceae	Asphodel, bog	U.S.A. (DE, NC, NJ, NY, SC).
C*	2	R1	*Nothocestrum latifolium*	Solanaceae	ʻAiea	U.S.A. (HI).
C*	2	R1	*Ochrosia haleakalae*	Apocynaceae	Holei	U.S.A. (HI).

TABLE 1—CANDIDATE NOTICE OF REVIEW (ANIMALS AND PLANTS)—Continued

[Note: See end of **SUPPLEMENTARY INFORMATION** for an explanation of symbols used in this table]

Status		Lead region	Scientific name	Family	Common name	Historical range
Category	Priority					
C*	3	R2	*Pediocactus peeblesianus var. fickeiseniae.*	Cactaceae	Cactus, Fickeisen plains	U.S.A. (AZ).
PT	2	R6	*Penstemon grahamii*	Scrophulariaceae	Beardtongue, Graham's	U.S.A. (CO, UT).
C*	9	R6	*Penstemon scariosus var. albifluvis.*	Scrophulariaceae	Beardtongue, White River.	U.S.A. (CO, UT).
C*	2	R1	*Peperomia subpetiolata*	Piperaceae	'Ala 'ala wai nui	U.S.A. (HI).
C	5	R8	*Phacelia stellaris*	Hydrophyllaceae	Phacelia, Brand's	U.S.A. (CA), Mexico.
C*	2	R1	*Phyllostegia bracteata*	Lamiaceae	No common name	U.S.A. (HI).
C*	8	R1	*Phyllostegia floribunda*	Lamiaceae	No common name	U.S.A. (HI).
C*	9	R1	*Physaria douglasii tuplashensis.*	Brassicaceae	Bladderpod, White Bluffs	U.S.A. (WA).
C*	8	R4	*Physaria globosa*	Brassicaceae	Bladderpod, Short's	U.S.A. (IN, KY, TN).
C*	2	R6	*Pinus albicaulis*	Pinaceae	Pine, whitebark	U.S.A. (CA, ID, MT, NV, OR, WA, WY), Canada (AB, BC).
C*	8	R4	*Platanthera integrilabia*	Orchidaceae	Orchid, white fringeless	U.S.A. (AL, GA, KY, MS, NC, SC, TN, VA).
PE	3	R1	*Platydesma cornuta var. cornuta.*	Rutaceae	No common name	U.S.A. (HI).
PE	3	R1	*Platydesma cornuta var. decurrens.*	Rutaceae	No common name	U.S.A. (HI).
C*	2	R1	*Platydesma remyi*	Rutaceae	No common name	U.S.A. (HI).
C	2	R1	*Pleomele fernaldii*	Agavaceae	Hala pepe	U.S.A. (HI).
PE	2	R1	*Pleomele forbesii*	Agavaceae	Hala pepe	U.S.A. (HI).
C*	11	R8	*Potentilla basaltica*	Rosaceae	Cinquefoil, Soldier Meadow.	U.S.A. (NV).
C*	3	R1	*Pseudognaphalium (=Gnaphalium) sandwicensium var. molokaiense.*	Asteraceae	'Ena'ena	U.S.A. (HI).
PE	3	R1	*Psychotria hexandra oahuensis.*	Rubiaceae	Kopiko	U.S.A. (HI).
PE	2	R1	*Pteralyxia macrocarpa*	Apocynaceae	Kaulu	U.S.A. (HI).
C*	2	R1	*Ranunculus hawaiensis*	Ranunculaceae	Makou	U.S.A. (HI).
C*	2	R1	*Ranunculus mauiensis*	Ranunculaceae	Makou	U.S.A. (HI).
C*	8	R8	*Rorippa subumbellata*	Brassicaceae	Cress, Tahoe yellow	U.S.A. (CA, NV).
C*	2	R1	*Schiedea pubescens*	Caryophyllaceae	Ma'oli'oli	U.S.A. (HI).
C*	2	R1	*Schiedea salicaria*	Caryophyllaceae	No common name	U.S.A. (HI).
C*	5	R8	*Sedum eastwoodiae*	Crassulaceae	Stonecrop, Red Mountain.	U.S.A. (CA).
C*	2	R1	*Sicyos macrophyllus*	Cucurbitaceae	'Anunu	U.S.A. (HI).
C	12	R4	*Sideroxylon reclinatum austrofloridense.*	Sapotaceae	Bully, Everglades	U.S.A. (FL).
C*	2	R4	*Solanum conocarpum*	Solanaceae	Bacora, marron	U.S.A. (PR).
C*	8	R1	*Solanum nelsonii*	Solanaceae	Popolo	U.S.A. (HI).
C*	8	R4	*Solidago plumosa*	Asteraceae	Goldenrod, Yadkin River	U.S.A. (NC).
C*	2	R2	*Sphaeralcea gierischii*	Malvaceae	Mallow, Gierisch	U.S.A. (AZ, UT).
C*	2	R1	*Stenogyne cranwelliae*	Lamiaceae	No common name	U.S.A. (HI).
C	8	R2	*Streptanthus bracteatus*	Brassicaceae	Twistflower, bracted	U.S.A. (TX).
C*	8	R4	*Symphyotrichum georgianum.*	Asteraceae	Aster, Georgia	U.S.A. (AL, FL, GA, NC, SC).
PE		R1	*Tetraplasandra lydgatei*	Araliaceae	No common name	U.S.A. (HI).
C*	8	R6	*Trifolium friscanum*	Fabaceae	Clover, Frisco	U.S.A. (UT).
PE	2	R1	*Zanthoxylum oahuense*	Rutaceae	A'e	U.S.A. (HI).
FERNS AND ALLIES						
C*	8	R1	*Cyclosorus boydiae*	Thelypteridaceae	No common name	U.S.A. (HI).
PE	2	R1	*Doryopteris takeuchii*	Pteridaceae	No common name	U.S.A. (HI).
C*	2	R1	*Huperzia (= Phlegmariurus) stemmermanniae.*	Lycopodiaceae	Wawae'iole	U.S.A. (HI).
C*	3	R1	*Microlepia strigosa var. mauiensis (= Microlepia mauiensis).*	Dennstaedtiaceae	Palapalai	U.S.A. (HI).
C	3	R4	*Trichomanes punctatum floridanum.*	Hymenophyllaceae	Florida bristle fern	U.S.A. (FL)

TABLE 2—ANIMALS AND PLANTS FORMERLY CANDIDATES OR FORMERLY PROPOSED FOR LISTING

[Note: See end of **SUPPLEMENTARY INFORMATION** for an explanation of symbols used in this table]

Status		Lead region	Scientific name	Family	Common name	Historical range
Code	Expl.					
BIRDS						
Rp	A	R6	*Charadrius montanus*	Charadriidae	Plover, mountain	U.S.A. (AZ, CA, CO, KS, MT, ND, NE, NM, NV, OK, SD, TX, UT, WY), Canada (AB, SK), Mexico.
FISH						
E	L	R4	*Phoxinus saylori*	Cyprinidae	Dace, laurel	U.S.A. (TN).
E	L	R4	*Etheostoma susanae*	Percidae	Darter, Cumberland	U.S.A. (KY, TN).
E	L	R4	*Etheostoma phytophilum*	Percidae	Darter, rush	U.S.A. (AL).
E	L	R4	*Etheostoma moorei*	Percidae	Darter, yellowcheek	U.S.A (AR).
E	L	R4	*Noturus crypticus*	Ictaluridae	Madtom, chucky	U.S.A. (TN).
SNAILS						
Rc	A	R2	*Pyrgulopsis gilae*	Hydrobiidae	Springsnail, Gila	U.S.A. (NM).
Rc	A	R2	*Pyrgulopsis thermalis*	Hydrobiidae	Springsnail, New Mexico	U.S.A. (NM).
INSECTS						
T(S/A)	L	R4	*Leptotes cassius theonus*.	Lycaenidae	Butterfly, cassius blue	U.S.A. (FL), Bahamas, Greater Antilles, Cayman Islands.
T(S/A)	L	R4	*Hemiargus ceraunus antibubastus*.	Lycaenidae	Butterfly, ceraunus blue	U.S.A. (FL), Bahamas.
E	L[1]	R4	*Cyclargus thomasi bethunebakeri*.	Lycaenidae	Butterfly, Miami blue	U.S.A. (FL), Bahamas.
T(S/A)	L	R4	*Cyclargus ammon*	Lycaenidae	Butterfly, Nickerbean blue.	U.S.A. (FL), Bahamas, Cuba.
Rc	A	R1	*Nysius wekiuicola*	Lygaeidae	Bug, Wekiu	U.S.A. (HI).
E	L	R8	*Dinacoma caseyi*	Scarabidae	June beetle, Casey's	U.S.A. (CA).
FLOWERING PLANTS						
E	L	R6	*Ipomopsis polyantha*	Polemoniaceae	Skyrocket, Pagosa	U.S.A. (CO)
T	L	R6	*Penstemon debilis*	Scrophulariaceae	Beardtongue, Parachute	U.S.A. (CO)
T	L	R6	*Phacelia submutica*	Hydrophyllaceae	Phacelia, DeBeque	U.S.A. (CO)

[1] Emergency.

[FR Doc. 2011–27122 Filed 10–25–11; 8:45 am]

BILLING CODE P



FEDERAL REGISTER

Vol. 76 Wednesday,
No. 207 October 26, 2011

Part III

Department of Labor

Office of Labor-Management Standards

29 CFR 404

Labor Organization Officer and Employee Reports; Final Rule

DEPARTMENT OF LABOR

Office of Labor-Management Standards

29 CFR Part 404

RIN 1215–AB74
RIN 1245–AA01

Labor Organization Officer and Employee Reports

AGENCY: Office of Labor-Management Standards, Department of Labor.

ACTION: Final rule.

SUMMARY: The Office of Labor-Management Standards of the Department of Labor (Department) is revising the Form LM–30 Labor Organization Officer and Employee Report and its instructions upon review of the comments received in response to its August 10, 2010 Notice of Proposed Rulemaking (NRPM). The Form LM–30 implements section 202 of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA or Act), the purpose of which is to require officers and employees of labor organizations (unions) to publicly disclose possible conflicts between their personal financial interests and their duty to the labor union and its members. The rule revises the Form LM–30 and its instructions, based on an examination of the policy and legal justifications for, and utility of, changes enacted in the Form LM–30 Final Rule (2007 rule), published on July 2, 2007. The principal revisions are: Union leave and no docking payments are not required to be reported on the Form LM–30; union stewards and others representing the union in similar positions are not covered by the Form LM–30 reporting requirements; the requirement to report certain bona fide loans is limited, as is reporting of payments from certain trusts, unions, and employers in competition with employers whose employees are represented by an official's union; and the scope of reporting required of officers and employees of international, national, and intermediate body unions is revised. This rule also establishes a new form and instructions, as well as regulatory text concerning certain reporting obligations. This rule largely implements the Department's proposal in the NPRM, with modifications of several minor aspects of the layout of the form and instructions.

DATES: This rule is effective on November 25, 2011, and it is applicable to Form LM–30 filers with fiscal years beginning on or after January 1, 2012. For filers with fiscal years beginning prior to January 1, 2012, the Department will accept either the Revised Form LM–30 published with this rule, the pre-2007 Form LM–30, or the 2007 Form LM–30.

FOR FURTHER INFORMATION CONTACT: Andrew R. Davis, Chief of the Division of Interpretations and Standards, Office of Labor-Management Standards, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–5609, Washington, DC 20210, *olms-public@dol.gov,* (202) 693–0123 (this is not a toll-free number), (800) 877–8339 (TTY/TDD).

SUPPLEMENTARY INFORMATION: The Regulatory Information Number (RIN) identified for this rulemaking changed with publication of the Spring 2010 Regulatory Agenda due to an organizational restructuring. The old RIN (1215–AB74) was assigned to the Employment Standards Administration, which no longer exists; a new RIN (1245–AA01) has been assigned to the Office of Labor-Management Standards.

I. Background

A. Introduction

This final rule, which revises the Form LM–30 and its instructions, is part of the Department's ongoing effort to effectively administer the reporting requirements of the LMRDA. The Form LM–30 Labor Organization Officer and Employee Report is designed to provide for the disclosure of payments to, and interests held by, union officers and employees, when such payments and interests pose an actual or potential conflict of interest. In developing the proposed rule and considering and responding to the comments submitted on the proposal, the Department has kept in mind that a fair and transparent reporting system for union officers and employees must consider the interests of unions, their members, and the public, and must balance the benefits served by disclosure with the burden placed on reporting individuals and labor organizations.

The Form LM–30 implements section 202 of the LMRDA, 29 U.S.C. 432. Under section 202,[1] union officers and employees (collectively, union officials) are required to file reports if they, or their spouses or minor children, engage in certain transactions or have financial holdings that may constitute a conflict of interest with their union responsibilities. The Act requires public disclosure of certain financial interests held, transactions engaged in, and income received. Subject to certain exclusions, these interests, transactions, and incomes include:

1. Payments or benefits with monetary value from, or interests in, an employer whose employees the filer's union represents or is actively seeking to represent;

2. Transactions involving any stock, bond, security, or loan to or from, or other interest in, an employer whose employees the filer's union represents or is actively seeking to represent;

3. Income or any other benefit with monetary value from, or other interest in, a business a substantial part of which consists of buying from, selling or leasing to, or otherwise dealing with an employer whose employees the filer's union represents or is actively seeking to represent;

4. Income or any other benefit with monetary value from, or other interest in, a business any part of which consists of buying from, or selling or leasing directly or indirectly to, or otherwise dealing with the filer's union or a trust in which the filer's union is interested; [2]

5. Business transactions or arrangements with an employer whose employees the filer's union represents or is actively seeking to represent; and

6. Payment of money or any other thing of value from any employer not covered under the above categories, or payment of money or other thing of value from a person who acts as a labor relations consultant to an employer.

The Form LM–30 had remained essentially unchanged from 1963 until 2007. In 2005, the Department published a Notice of Proposed Rulemaking that proposed far-reaching changes to the form. 70 FR 51165 (Aug. 29, 2005). After a notice and comment period, the Department issued the 2007 final rule. 72 FR 36105 (July 2, 2007). The 2007 rule brought significant changes to the LM–30 and its instructions and represented, in some instances, a sharp departure from the Department's previous interpretations of section 202. The rule completely revised the layout and overall structure of the Form LM–30, lengthening the form from two to nine pages with the creation of

[1] Unless otherwise stated all references to statutory provisions, *e.g.,* ''section 202,'' are to provisions in the LMRDA. 29 U.S.C. 401–531.

[2] These trusts are defined by section 3(l) of the Act as:

a trust or other fund or organization (1) Which was created or established by a labor organization, or one or more of the trustees or one or more members of the governing body of which is selected or appointed by a labor organization, and (2) a primary purpose of which is to provide benefits for the members of such labor organization or their beneficiaries.

Unless otherwise specified, references to ''trust'' in this preamble are to these statutorily defined trusts, which are sometimes referred to as ''section 3(l) trusts.''

five schedules, continuation pages, and various sections consisting of instructions and examples. (The 2007 form and instructions are available at *http://www.dol.gov/olms*.)

Upon review of the 2007 rule, and input from the regulated community, the Department issued its proposed revisions to that rule on August 10, 2010, stating its view that many of the objectives sought to be met by the 2007 rule—including simplification of the reporting requirements and adherence to the reporting scheme intended by Congress—had not been accomplished. See 75 FR 48416. The Department, at 75 FR 48417, explained that the 2007 rule left unresolved fundamental questions about the reporting obligations of union officials and raised policy and legal issues warranting reexamination by the Department. These fundamental questions regarding the Form LM–30 reporting requirements included—the coverage of stewards and other union representatives serving in similar positions; the reporting of certain loans and union leave and no docking payments; the reporting of payments from certain trusts and unions; the reporting of payments from businesses that compete with an employer whose employees are represented by an official's union or whose employees the union is actively seeking to represent; and reporting by higher level union officials about relationships with businesses and employers that pose conflicts concerning subordinate affiliates of their union. In addition, the Department identified questions concerning the layout of the 2007 Form LM–30 and instructions and whether they provided useful and adequate assistance to filers.

Prompted by these uncertainties about the 2007 rule, the Department, on March 19, 2009, issued a non-enforcement policy regarding the 2007 Form LM–30 reporting requirements, allowing filers to use either the pre-2007 or 2007 Form LM–30 report.[3] Further, the Department held a stakeholder meeting on July 21, 2009 to solicit comments regarding the 2007 rule and potential revisions to the Form LM–30. In the NPRM, the Department invited comment on the proposed changes with respect to their benefits, the ease or difficulty with which union officers and employees would be able to comply with these changes, and whether the changes would better implement the LMRDA. The Department invited general and specific comments on any aspect of this proposal; it also invited comment on specific points, as noted throughout the text of the notice.

B. History of the LMRDA's Reporting Requirements

In enacting the LMRDA in 1959, a bipartisan Congress expressed the conclusion that in the labor and management fields ''there have been a number of instances of breach of trust, corruption, disregard of the rights of individual employees, and other failures to observe high standards of responsibility and ethical conduct which require further and supplementary legislation that will afford necessary protection of the rights and interests of employees and the public generally as they relate to the activities of labor organizations, employers, labor relations consultants, and their officers and representatives.'' Section 2(b), 29 U.S.C. 401(b).

The LMRDA was the direct outgrowth of a Congressional investigation conducted by the Select Committee on Improper Activities in the Labor or Management Field, commonly known as the McClellan Committee. The LMRDA addressed various ills through a set of integrated provisions aimed at labor-management relations governance and management. These provisions include financial reporting and disclosure requirements for labor organizations, their officers and employees, employers, labor relations consultants, and surety companies. See 29 U.S.C. 431–36, 441.

To highlight the potential conflicts of interest to which union officers and employees could be susceptible, the Senate Committee Report explained:

> [This section] requires a union officer or employee to disclose any securities or other interest which he has in a business whose employees his labor union represents or ''seeks to represent'' in collective bargaining. When a prominent union official has an interest in the business with which the union is bargaining, he sits on both sides of the table. He is under temptation to negotiate a soft contract or to refrain from enforcing working rules so as to increase the company's profits. This is unfair to both union members and competing businesses.

Senate Report No. 187 (1959) (Senate Report) at 15, reprinted in NLRB Legislative History of the Labor-Management Reporting and Disclosure Act of 1959 (2 volumes) (Leg. History), 1 Leg. History, at 411.

The Senate Report presented ''three reasons for relying upon the milder sanction of reporting and disclosure [relative to establishing criminal penalties] to eliminate improper conflicts of interest,'' which can be summarized as follows:

> Disclosure discourages questionable practices. ''The searchlight of publicity is a strong deterrent.'' Disclosure rules should be tried before more severe methods are employed.
>
> Disclosure aids union governance. Reporting and publication will enable unions ''to better regulate their own affairs. The members may vote out of office any individual whose personal financial interests conflict with his duties to the members,'' and reporting and disclosure would facilitate legal action by members against ''officers who violate their duty of loyalty to the members.''
>
> Disclosure creates a record. The reports will furnish a ''sound factual basis for further action in the event that other legislation is required.''

Senate Report, at 16, reprinted in 1 Leg. History, at 412.

The Report further stated:

> The committee bill attacks the problem [of conflicts of interest] by requiring union officers and employees to file reports with the Secretary of Labor disclosing to union members and the general public any investments or transactions in which their personal financial interests may conflict with their duties to the members. The bill requires only the disclosure of conflicts of interest as defined therein. The other investments of union officials and their other sources of income are left private because they are not matters of public concern. No union officer or employee is obliged to file a report unless he holds a questionable interest in or has engaged in a questionable transaction. The bill is drawn broadly enough, however, to require disclosure of any personal gain which an officer or employee may be securing at the expense of the union members.

Senate Report, at 14–15, reprinted in 1 Leg. History, at 410–11.

Both the Senate and House Reports recognized that a reportable interest was not necessarily an illegal practice. As the House Report stated:

> In some instances matters to be reported are not illegal and may not be improper but may serve to disclose conflicts of interest. Even in such instances disclosure will enable the persons whose rights are affected, the public, and the Government, to determine whether the arrangements or activities are justifiable, ethical, and legal.

House Report No. 741 (House Report), at 4, reprinted in 1 Leg. History, at 762. See Senate Report, at 38, reprinted in 1 Leg. History, at 434 (''By requiring reports * * *, the committee is not to be construed as necessarily condemning the matters to be reported if they are not specifically declared to be improper or

[3] The Department modifies this non-enforcement policy with the publication of today's rule. For filers with reportable payments or interests in fiscal years beginning prior to January 1, 2012, the Department will accept either the Revised Form LM–30 published with this rule, the 2007 Form LM–30, or the pre-2007 Form LM–30. For filers with reportable payments or interests in fiscal years beginning on or after January 1, 2012, the Department will accept only the Revised Form LM–30.

made illegal under other provisions of the bill or other laws'').

Conflict-of-interest standards, including disclosure obligations of individuals and entities occupying positions of trust, are firmly established in U.S. law. As stated in the House Report, repeating almost verbatim the same point in the Senate Report:

> For centuries the law of fiduciaries has forbidden any person in a position of trust subject to such law to hold interests or enter into transactions in which self-interest may conflict with complete loyalty to those whom he serves. * * * The same principle * * * should be equally applicable to union officers and employees [quoting the AFL–CIO's ethical practices code]: ''[A] basic ethical principle in the conduct of union affairs is that no responsible trade union official should have a personal financial interest which conflicts with the full performance of his fiduciary duties as a worker's representative.''

House Report, at 10–11, reprinted at 1 Leg. History, at 768–69. Senate Report, at 14, reprinted in 1 Leg. History, at 410. See generally Restatement (Second) of Trusts (1959) §§ 170, 173; Restatement (Second) of Agency (1958) §§ 381, 387–98.

The reporting provisions of the Act represent, in part, an effort to codify various requirements contained in an extensive code of ethics voluntarily adopted by the AFL–CIO in 1957 and applied to its affiliated unions and officials. See Senate Report, at 12–16, reprinted in 1 Leg. History, at 408–12; House Report, at 9–12, reprinted in 1 Leg. History, at 767–70. See also Archibald Cox, Internal Affairs of Labor Unions Under the Labor Reform Act of 1959, 58 Mich. L. Rev. 819, 824–29 (1960). The following excerpts from this code demonstrate the similarities between a union official's fiduciary duty and the disclosure requirements of section 202.

> [A] basic ethical principle in the conduct of union affairs is that no responsible trade union official should have a personal financial interest which conflicts with the full performance of his fiduciary duties as a workers' representative.
>
> [U]nion officers and agents should not be prohibited from investing their personal funds in their own way in the American free enterprise system so long as they are scrupulously careful to avoid any actual or potential conflict of interest.
>
> In a sense, a trade union official holds a position comparable to that of a public servant. Like a public servant, he has a high fiduciary duty not only to serve the members of his union honestly and faithfully, but also to avoid personal economic interest which may conflict or appear to conflict with the full performance of his responsibility to those whom he serves.
>
> There is nothing in the essential ethical principles of the trade union movement which should prevent a trade union official, at any level, from investing personal funds in the publicly traded securities of corporate enterprises unrelated to the industry or area in which the official has a particular trade union responsibility.
>
> [These principles] apply not only where the investments are made by union officials, but also where third persons are used as blinds or covers to conceal the financial interests of union officials.

Ethical Practices Code IV: Investments and Business Interests of Union, 105 Cong. Rec.*16379 (daily ed. Sept. 3, 1959), reprinted in 2 Leg. History, at 1407–08. See also Ethical Practices Code II: Health and Welfare Funds, *Id.,* 2 Leg. History, at 1406–07.

The Act was crafted with particular regard for the unique function and status of labor unions. Then Senator John F. Kennedy, who was the chief sponsor of the Senate bill, S. 505, which served as the foundation for the LMRDA, stated that the legislation was ''designed to permit responsible unionism to operate without being undermined by either racketeering tactics or bureaucratic controls. It is designed to strike a balance between the dangers of to [sic] much and too little legislation in this field.'' 105 Cong. Rec. S816 (daily ed. Jan. 20, 1959), reprinted in 1 Leg. History, at 969.

As noted by Senator Kennedy, a balance of these interests was central to the enactment of the LMRDA. Congress sought to address legitimate concerns about illegal and undemocratic behaviors without permitting that concern to be used as an excuse for undermining organized labor. Further, Congress sought to address the importance of balancing necessary disclosure and regulation with undue intrusion on union operations and the protection of union officers' privacy interests. As stated in the Senate Report, ''[t]he committee recognized the desirability of minimum interference by Government in the internal affairs of any private organization * * * in establishing and enforcing statutory standards great care should be taken not to undermine union self-government or weaken unions in their role as collective-bargaining agents.'' Senate Report, at p. 7, reprinted in 2 Leg. History, at 403.

Professor Archibald Cox played a pivotal role in drafting the legislation that ultimately became the LMRDA. His testimony before the Senate subcommittee that was considering this legislation presaged the language in the Senate Report, describing the reporting obligation as a limited one. He testified: ''The bill is narrowly drawn to meet a specific evil. It requires only the disclosure of conflicts of interest. The other investments of union officials and their other sources of income are left private because they are not matters of public concern.'' Hearings on S. 505 before the Subcommittee on Labor of the Senate Committee on Labor and Public Welfare (1959) (Senate Hearings), at 123; see Senate Report, at 15, reprinted in 1 Leg. History, at 411. Professor Cox additionally noted that because the reporting requirements were based, in part, upon the Ethical Practices Code formulated by the AFL–CIO, union officials who adhered to this code would have ''virtually nothing to disclose in his report to the public.'' Senate Hearings, at 123.

C. Statutory Language

Section 202 provides in its entirety:

SEC. 202. (a) Every officer of a labor organization and every employee of a labor organization (other than an employee performing exclusively clerical or custodial services) shall file with the Secretary a signed report listing and describing for his preceding fiscal year—

> (1) Any stock, bond, security, or other interest, legal or equitable, which he or his spouse or minor child directly or indirectly held in, and any income or any other benefit with monetary value (including reimbursed expenses) which he or his spouse or minor child derived directly or indirectly from, an employer whose employees such labor organization represents or is actively seeking to represent, except payments and other benefits received as a bona fide employee of such employer;
>
> (2) Any transaction in which he or his spouse or minor child engaged, directly or indirectly, involving any stock, bond, security, or loan to or from, or other legal or equitable interest in the business of an employer whose employees such labor organization represents or is actively seeking to represent;
>
> (3) Any stock, bond, security, or other interest, legal or equitable, which he or his spouse or minor child directly or indirectly held in, and any income or any other benefit with monetary value (including reimbursed expenses) which he or his spouse or minor child directly or indirectly derived from, any business a substantial part of which consists of buying from, selling or leasing to, or otherwise dealing with, the business of an employer whose employees such labor organization represents or is actively seeking to represent;
>
> (4) Any stock, bond, security, or other interest, legal or equitable, which he or his spouse or minor child directly or indirectly held in, and any income or any other benefit with monetary value (including reimbursed expenses) which he or his spouse or minor child directly or indirectly derived from, a business any part of which consists of buying from, or selling or leasing directly or indirectly to, or otherwise dealing with such labor organization;

(5) Any direct or indirect business transaction or arrangement between him or his spouse or minor child and any employer whose employees his organization represents or is actively seeking to represent, except work performed and payments and benefits received as a bona fide employee of such employer and except purchases and sales of goods or services in the regular course of business at prices generally available to any employee of such employer; and

(6) Any payment of money or other thing of value (including reimbursed expenses) which he or his spouse or minor child received directly or indirectly from any employer or any person who acts as a labor relations consultant to an employer, except payments of the kinds referred to in section 302(c) of the Labor Management Relations Act, 1947, as amended.

(b) The provisions of paragraphs (1), (2), (3), (4), and (5) of subsection (a) shall not be construed to require any such officer or employee to report his bona fide investments in securities traded on a securities exchange registered as a national securities exchange under the Securities Exchange Act of 1934, in shares in an investment company registered under the Investment Company Act or in securities of a public utility holding company registered under the Public Utility Holding Company Act of 1935, or to report any income derived therefrom.

(c) Nothing contained in this section shall be construed to require any officer or employee of a labor organization to file a report under subsection (a) unless he or his spouse or minor child holds or has held an interest, has received income or any other benefit with monetary value or a loan, or has engaged in a transaction described therein. 29 U.S.C. 432.

D. Rationale for Rulemaking on Form LM–30

The Department is modifying the Form LM–30 for the following reasons, which the Department identified in the NPRM as the bases for its proposed changes:

(1) The 2007 Form LM–30 rule created uncertainty for the regulated community, presented unresolved questions regarding the rule's reporting requirements, engendered strong objections to key aspects of the rule, such as the reporting of certain loans, including mortgages and student loans; the reporting of union leave and no docking payments; and the extension of the Form LM–30 reporting requirement to individuals serving as union stewards or in similar positions representing the union.

(2) The revisions adopted in this rule better balance the disclosure of information and the burden imposed on union officials.

(3) The revisions in this rule better clarify the form and instructions and organize the information in a useful format.

As explained in the NPRM, the Department fully recognizes the importance of union officer and employee reporting and the disclosure of pertinent financial information to union members and the public. This rule effectuates these purposes and reflects a proper balancing of transparency with the need to maintain union autonomy and to avoid overburdening unions and their officials with unnecessary reporting requirements. Because the 2007 rule did not adequately consider this balance, it did not succeed in properly implementing the LMRDA. The Department has carefully considered the comments received from the regulated community and the public about the 2007 rule and the changes proposed by the Department. Generally, the Department has included in the final rule the changes proposed. Unless otherwise stated herein, the Department has made these changes for the reasons stated in the NPRM. Rather than restate in full the reasons set out at length in the NPRM, the Department has attempted to limit repetition to those instances where a more detailed discussion is needed to provide context to comments received on the proposed rule and the Department's response to those comments.

E. Review of General Comments Received in Response to NPRM

The Department received 62 unique comments to the NPRM, from 286 commenters.[4] Of the 62 unique comments received, 39 expressed opposition to the Department's proposal to revise Form LM–30, 22 supported the proposal, and an additional comment, from a labor organization, expressed neither support nor opposition to the proposal, but requested an industry-specific exemption to the LM–30 reporting requirement.[5]

Comments that expressed, in whole or in part, general support or opposition to the NPRM will be discussed in this section of the rule. Comments on specific changes and revisions to Form LM–30 will be addressed in subsequent sections, which are organized by topic.

Review of General Comments in Support of NPRM

Comments submitted by 17 national/international unions, two federations of labor organizations, one local union, one law firm (on behalf of various clients, including unions, insurance companies, and service providers to unions and benefit plans), and one public policy organization generally expressed strong support for the Department's proposed revisions to Form LM–30.

Multiple union commenters, a public policy organization, and a law firm generally supported the Department's NPRM, but expressed concerns about certain aspects of the proposal or suggested certain modifications. These issues and proposed modifications will be discussed later in this rule, in the relevant sections to which each topic applies.

Review of General Comments in Opposition to NPRM

The comments submitted in opposition to the NPRM include the above-referenced form letter, 36 additional comments submitted by individuals, and two comments submitted by public policy organizations. A third public policy organization opposed some aspects of the proposal.

Most of the opposing comments, apart from those submitted by the public policy organizations, were general in nature and did not directly, if at all, address the Form LM–30 or the Department's proposed revisions. The above-referenced form letter stated that the proposed Form LM–30 regulations should be rejected because they would undermine efforts regarding recent changes made to unions' reporting and disclosure requirements, which were designed to increase transparency. The letter also stated that union members have relied on the LMRDA to ''discourage and expose'' corruption.

Two individuals that identified themselves as union members asserted that conflict-of-interest reporting requirements should not be lessened, and voiced their support of transparency. While some private citizens limited their comments to expressing general dissatisfaction with the current political administration, other commenters expressed general anti-union sentiment, and did not refer to the proposed revisions to Form LM–

[4] One of the unique comments was a form letter submitted by 225 individuals. Additionally, one commenter submitted two versions of the same comment.

[5] The labor organization suggested that the Form LM –30 reporting obligation should not apply to union officials who receive free admission to performances for union-related purposes, or for purposes of voting for industry awards. The union offered clarifying language that would exempt these examples of free admission from Form LM–30 reporting. The issue will be addressed in section III.E. of the preamble.

30 or any aspect of LMRDA reporting requirements. Additional commenters made general statements that unions should be held accountable for potential conflicts of interest, and generally should not be exempt from reporting requirements. Apparently misunderstanding the Department's proposal, multiple commenters erroneously characterized the NPRM as an effort to eliminate conflict-of-interest reporting altogether.

In response to these comments, the Department notes that its proposal and this final rule have been drafted with the purpose of best effectuating the disclosure requirements of the LMRDA. The goal has been to revise the 2007 rule in a way that achieves that purpose. Contrary to the suggestions by several commenters, the Department's proposals are not designed to achieve arbitrary goals or political objectives. Indeed, many commenters appear to have overlooked that most aspects of the 2007 rule were left unchanged by the Department's proposal and this final rule. As a matter of policy and statutory interpretation, the Department believes that the approach adopted in this rule reflects an improvement over those aspects of the 2007 rule that have been revised.

One public policy organization disputed the Department's statement that the 2007 rule raised ''significant policy and law questions.'' Rather, in the commenter's view, the objections to the 2007 rule are ''political'' in nature, deriving from the ''regulated community.'' The commenter stated that the NPRM should be immediately withdrawn ''due to the Department's inconsistent application of the term ''employer'' to different parts of the LMRDA'' (discussed below in section III, part D, of this preamble). The commenter explained its view that the 2007 changes were necessary additions to ensure needed transparency, and urged the Department to enforce the 2007 rule. The Department disagrees with these general comments. In the Department's view, it is evident from a cursory review of the 2007 rule, the compliance issues it presented, the history surrounding the Form LM–30 and its enforcement, and the comments received at the July 21, 2009 stakeholder meeting, that the 2007 rule presented fundamental policy and legal questions deserving of the Department's scrutiny. As a result of its review of the 2007 rule, the Department has developed an approach that more effectively targets actual or potential conflict-of-interest payments and balances the need for transparency with the legitimate interests of union officials and transparent labor-management relations.

Another public policy organization voiced strong opposition to the NPRM, and stated that the NPRM ''provides no evidence that is consistent with LMRDA language'' to justify its proposed revisions to Form LM–30. The commenter stated that ''[s]ince 1959, the Department has essentially ignored Form LM–30 reporting and disclosures.'' The commenter argued that the NPRM proposes to ''hide [union-employer] collusions,'' and ''essentially abandons individual workers in its analysis.'' For the reasons mentioned above in response to a similar comment, the Department disagrees with the assertions. The interest of workers, union members, and the public in labor-management transparency is a significant goal of the statute, and has been a primary consideration in this rulemaking. The importance of balancing the benefits of disclosure against the burdens that recordkeeping and reporting imposed on the legitimate activities of unions and their officials likewise undergirds the proposal and the final rule. The Department fully explains in the sections that follow in this preamble the rationale for the changes made by this final rule and how they comport with the LMRDA's disclosure provisions.

One public policy organization challenged the Secretary's authority to make the proposed revisions under section 208 of the LMRDA, and suggested that the proposed rule, therefore, is inval *Id.* Section 208 of the LMRDA, 29 U.S.C. 438, authorizes the Secretary of Labor to issue, amend, and rescind rules and regulations to implement the LMRDA's reporting provisions. The commenter reads section 208 as a ''one-way ratcheting mechanism'' that only permits the Secretary to add additional reporting requirements, not revise existing requirements. In its view, the changes proposed by the Department could be effectuated only if Congress amends the Act.

The Department disagrees with the commenter's distinctive view of section 208. Section 208 grants the Secretary authority ''to issue, amend, and rescind rules and regulations prescribing the form and publication of reports required to be filed under Title II of the Act.'' The verbs ''amend'' and ''rescind'' do not constrain this authority; they allow the Secretary to make changes, but do not compel any particular modification. Further, the words themselves do not connote that amendments and rescissions must add to (rather than subtract from) the reporting requirements. The verb ''rescind,'' for example, suggests removal or abrogation in general, and is equally applicable to both reporting requirements and reporting exemptions.

The Department fully understands that its ''rules and regulations prescribing the form and publication of reports required to be filed'' must conform to the statute. As explained throughout this preamble, the proposed changes, as adopted in this final rule, are entirely consistent with the language and purpose of the LMRDA. By revising the Form LM–30 to feature a simplified format and more concise, clear instructions, the final rule will facilitate filers' compliance with Form LM–30 reporting requirements and increase the form's utility to the public.

The same commenter suggests that the Department has disregarded the intent of Congress and conferred upon itself the authority to create administrative exemptions in derogation of the statutory requirements. The Department disagrees, noting, as discussed throughout this preamble, that the changes are based upon the Department's reasoned interpretation of the Act. The Department additionally notes that while the term ''administrative exemption'' has long been used to describe certain exceptions from a general reporting obligation (as the term was also used in the 2007 rule), they have always been based on a reasonable interpretation of the statute. The commenter overlooks that the Department retains discretion under the statute in crafting rules, and that how this discretion is exercised is appropriately based on policy considerations.

The commenter added that the Secretary may limit disclosure by utilizing de minimis thresholds, but argued that union officials must still adhere to record retention requirements in LMRDA section 206. While the intent of the comment is not clear, such recordkeeping requirements apply to records needed to verify required reports and the detail required to be included on the reports. They do not apply to information not required to be reported.

Finally, the commenter suggested that a statement used in the 2010 NPRM demonstrates the Department's intention to undermine congressional intent. The NPRM, at 75 FR 48416, states that the LMRDA reporting provisions ''are designed to empower labor organizations, their members, and the public.'' The commenter reads the statement as proof that ''DOL embraces a view that part of the LMRDA's purpose is to 'empower labor unions'

when, in fact, its purpose is to shield union members and the public from corrupt union officials.'' In response, the Department in no way intended to intimate that the LMRDA was designed to ''empower labor organizations,'' as distinct from their membership. As the commenter also recognizes, the LMRDA's disclosure provisions provide information that empowers union members and the public by promoting union self-governance and financial integrity. At the same time, and as recognized in the NPRM, the Department cannot disregard the burden that reporting places on unions and union officials. As stated in the 1959 Senate Committee Report and repeated in the NPRM: ''The committee recognized the desirability of minimum interference by Government in the internal affairs of any private organization * * * in establishing and enforcing statutory standards great care should be taken not to undermine union self-government or weaken unions in their role as collective-bargaining agents.'' Senate Report No. 187, at p. 7, reprinted in 2 Leg. History, at 403, quoted at 75 FR 48418. Thus, in regard to its impact upon unions, the intent of the LMRDA is not to intrude on the legitimate role of unions in labor-management relations, but, rather, to advance the interests of employees by furthering union and workplace democracy and reducing or eliminating labor-management financial corruption.

Comments on Reporting Burden Created by 2007 Rule

Most union commenters asserted that the 2007 changes to the Form LM–30 reporting requirements are not justified in light of the burden they impose, and voiced support for the rescission of some of these requirements, which one commenter described as ''extremely burdensome to filers, and confusing and misleading to the public.'' Another international union commented that the 2007 revisions to Form LM–30 ''impose[d] a severe burden on union filers with no corresponding benefit to union members or the public and raised fundamental legal and policy questions with which OLMS is still struggling.''

A federation of labor organizations stated that in challenging the 2007 rule it had argued that the 2007 ''changes in the universe of potential Form LM–30 filers and in the scope of interests and receipts subject to reporting exceeded the Department's statutory authority.'' The commenter concurs with the NPRM that the 2007 changes to the Form LM–30, had they gone into effect, would have been unduly burdensome and could have deterred people from running for union office. One commenter concurred with the comments submitted by the federation, and stated that ''the prior regulatory scheme * * * was unduly burdensome and far beyond the original intent of the law.'' Another commenter stated that the 2007 LM–30 reporting requirements ''create a trap for even the most scrupulous and detail-oriented union official,'' adding that [''b]y setting [a]standard that in some respects is impossible to meet, the current rules discourage involvement in union activities.''

Echoing the burden theme, one international union commenter stated that the Form LM–30 reporting requirements outlined in the 2007 rule require ''unnecessary reporting of many financial transactions and arrangements that pose no threat of a conflict of interest,'' and create a ''crushing burden on [its] officers and employees.'' It added that these new requirements ''discourage[ ] involvement in union activities to the detriment of both the union and its employer partners.'' Yet another commenter supported the Department's proposal, as it targeted the ''unnecessary over-complication, confusion, and burden caused by its 2007 rule.''

One union commenter challenged the 2007 rule as claiming to enhance ''transparency,'' but rather imposed ''expensive and time-consuming'' requirements, to the detriment of the members. Noting the increased volume of information required to be reported on the 2007 Form LM–30, another international union questioned whether such additional information would effectively reveal actual or potential conflicts of interest.

Comment on 2007 Rule's Impact on Compliance Assistance Efforts

One local union commenter cited the intensive, multi-faceted training and compliance assistance efforts undertaken by the commenter's union when the 2007 rule was adopted, and supports the proposed changes, as they would reduce the ''complication associated with compliance.'' The commenter stated that its union ''would much rather devote these human resources to matters that have more widespread and direct benefits for our members,'' such as negotiating contracts, processing grievances, and organizing unrepresented workers to protect the wages and fringe benefits of its membership.

Comments on Striking a Fair Balance Between the Conflict-of-Interest Disclosure Requirement and Union Officials' Legitimate Privacy Interests

Numerous commenters supported the Department's proposal in its effort to balance the legitimate needs and interests of unions and their officials with the need for conflict-of-interest reporting that advances labor-management relations, union democracy, and union financial integrity. For example, one commenter stated, ''The goal of the proposed Rule, to restore a fair balance between the interests of unions, their members and the public, is appropriate and necessary.'' Following this theme, another commenter stated that the Department's proposal better balances union officials' privacy interests with the need for members to have information concerning conflicts of interest that could undermine the union's ability to represent the employees. Another commenter, a federation of labor organizations, stated that it supported the Department's proposal ''because, in the main, the proposal accomplishes the Department's statutory purpose of striking the proper 'balance' between 'the interests of labor organizations, their members, and the public, including the benefits served by disclosure, the burden placed on reporting entities, and preserving the independence of unions and their officials from unnecessary government regulation.'' 75 FR at 48416. An international union commenter offered support for the proposed changes, stating that they are well grounded, consistent with congressional purpose in drafting the Act, and successful in striking an appropriate balance between the goals of greater conflict-of-interest transparency while not establishing unnecessary burden for union officials.

II. Authority

A. Legal Authority

The legal authority for this rule is set forth in sections 202 and 208 of the LMRDA, 29 U.S.C. 432, 438. Section 208 of the LMRDA provides that the Secretary of Labor shall have authority to issue, amend, and rescind rules and regulations prescribing the form and publication of reports required to be filed under Title II of the Act and such other reasonable rules and regulations as she may find necessary to prevent the circumvention or evasion of the reporting requirements. 29 U.S.C. 438.

B. Departmental Authorization

Secretary's Order 08–2009, issued November 6, 2009, contains the

delegation of authority and assignment of responsibility for the Secretary's functions under the LMRDA to the Director of the Office of Labor-Management Standards and permits re-delegation of such authority. See 74 FR 58835 (Nov. 13, 2009).

III. Revisions to the 2007 Form LM–30 Reporting Requirements

This rule implements five changes to the Form LM–30 reporting requirements, as proposed in the NPRM: (1) The elimination of reporting of union leave and no docking payments, and, more broadly, a revised interpretation of the bona fide employee exception; (2) the removal from coverage of individuals serving as union stewards or in similar positions representing the union, such as a member of a safety committee or a bargaining committee; (3) the elimination of reporting for certain bona fide loans and other financial transactions on Parts A and B of the form; (4) the limitation on reporting of payments from employers competitive to the represented employer, certain trusts, and unions; and (5) a revision of the reporting required of national, international, and intermediate union officers and employees.

First, this rule returns to the historical practice whereby union officers and employees were not required to report compensation they received under union leave and no docking policies established under collective bargaining agreements or pursuant to a custom and practice under such collective bargaining agreements. These payments are made by a represented employer to its employees who are serving on behalf of the union on labor-management relations matters. Under a union leave policy, the employer continues the pay and benefits of an individual who often works full time on such matters. Under a no docking policy, the employer permits individuals to devote portions of their work day or work week to labor-management relations business, such as processing grievances, with no loss of pay. The requirement in the 2007 rule that union officials must report union leave and no docking payments has been strongly criticized as unduly burdensome. The Department agrees that this reporting requirement imposes undue burden and may impede individuals from running for union office and otherwise serving in important union roles. The 2007 rule was based on the premise that such payments are for work performed on the union's behalf, rather than the employer's, and are thus not payments made under the ''bona fide employee'' exception of section 202 of the LMRDA. Upon reconsideration, the Department has determined that the term ''bona fide employee,'' as used in that section, is most naturally read to distinguish between, on the one hand, payments that are made to a union official by virtue of his or her employment by the company making the payment, and, on the other hand, payments that are made to union officials without regard to such employment. This interpretation better accords with the purposes of the statute than the interpretation embodied in the 2007 rule that focuses on whether the union or the employer making the payment exercises primary control over an individual's discrete, temporal activities as a union official.

Second, this rule returns to the historical practice of excluding union stewards and similar union representatives from Form LM–30 reporting. The Department believes that this practice comports with the language of section 202 and better effectuates labor-management relations than the interpretation embodied in the 2007 rule.

Third, this rule establishes administrative exemptions for Parts A and B of the form, whereby union officials generally need only report loans from bona fide credit institutions if such loans are on terms more favorable than those available to the public. The 2007 rule required more extensive reporting and made confusing and complex distinctions among various relationships and credit institutions. This rule also incorporates the clarification, as set forth in 2007 Form LM–30 Frequently Asked Question (FAQ) 70, that union officials as a general rule are not required to report on savings accounts, certificates of deposit (CD), credit cards, etc. where such instruments contain the same terms offered to other customers without regard to an individual's status as a union official.[6]

Fourth, this rule limits the reporting obligation with respect to interests in and payments from employers that compete with employers represented by the official's union or that the union actively seeks to represent. Disclosure of such payments is important, but only where an official is involved with the organizing, collective bargaining, or contract administration activities related to a particular represented employer, or possesses significant authority or influence over such activities. Establishing such limitation on disclosure ensures that meaningful information will be provided to union members without imposing undue burden on officials who do not occupy positions of influence over the union's organizing, collective bargaining, or contract administration activities related to the represented employer. Similarly, this rule modifies the scope of reporting insofar as payments from certain trusts and unions are concerned. The Department returns to its historical practice of not requiring officials to report on payments they receive from trusts or, as a general rule, from unions. Officials of a staff union are, however, still required to report on Part A any payments they receive from the union-employer whose employees the staff union represents.

Finally, this rule revises and clarifies the scope of ''top-down'' reporting for officials of international, national, and intermediate unions. This rule effectuates the Department's proposal in the NPRM that officers and certain employees of these higher level unions must look at payments they receive from employers and businesses with relationships with lower levels of their unions (*e.g.,* a local or other subordinate body), as well as with their own level of the union, when applying the Form LM–30 reporting requirements. However, based on a review of the comments, the Department has determined to adopt a modification of its proposed expansion of the scope of top-down reporting for union employees of national, international, and intermediate body labor organizations. All higher-level union employees that have significant authority or influence with respect to affiliates will also need to report these matters in relation to subordinate affiliates. Higher-level union employees without such significant authority or influence over affiliates or officials of affiliates will not be subject to these top-down reporting obligations.

The 2007 rule also established confusing exceptions to the ''top-down'' reporting obligations. Payments from businesses that dealt with represented employers were exempt, while the instructions did not specify the reportability of payments from businesses that dealt with lower level unions. Further, these officials were not required to report any payments or other financial benefits received by their spouses and minor children from employers and businesses involved with a lower level union. This rule effectuates the Department's proposal to remove these exceptions.

In developing this rule, the Department has reviewed the reporting

[6] See the 2007 Form LM–30 FAQs at *http://www.dol.gov/olms/regs/compliance/RevisedLM30__FAQ.htm.*

examples utilized in the 2007 rule and the substantial guidance issued after the rule's publication as answers to FAQs in order to identify the extent to which, if at all, reporting will be changed under this rule. This rule supersedes any inconsistent interpretation or other guidance. The Department identifies in the margin those instances where the rule does not change the reporting obligations under the examples and FAQs.[7] As discussed later in the text, examples will generally not be included in the revised instructions.

A. The Bona Fide Employee Reporting Exception Under Section 202

This rule effectuates the Department's proposal to return to its historical position that union officials should not report union leave and no docking payments. 75 FR 48421. As discussed above, these payments are made by a represented employer to its employees who are serving on behalf of the union on labor-management relations matters in accordance with the parties' collective bargaining agreement. First, the historical interpretation under which such compensation was not reported—to which this rule returns—comports more readily with the language in section 202, than the interpretation underlying the Department's 2007 interpretation. Second, such reporting imposes a substantial burden on union officials on matters unlikely to pose conflicts of interest and removing this burden ensures that there will be no undue interference with the internal workings of labor unions and labor-management relations. Third, there is no persuasive reason, as a matter of policy, why union officials must report such payments, while employers making such payments are under no similar obligation. See 75 FR 48421–48423.

[7] Most of the examples in the 2007 instructions continue to accurately reflect reporting requirements as articulated in this rule. Thus, the following continue to accurately reflect reporting requirements: Examples 2–15, at pp. 3–4 of the instructions; examples 1–2, 4–5, at p. 6 of the instructions; examples 1 and 2, at p. 7 of the instructions; and examples 1, 3–15, and 17, at pp. 8–9 of the instructions. Note that the NPRM had incorrectly stated that example 3, at p. 6 of the instructions would continue to accurately reflect reporting under this rule. Several of the FAQs are based on requirements that the Department changes with this rule.The following FAQs, however, continue to accurately reflect reporting requirements: 2–10, 12–26, 28, 30–37, 39, 44, 47, 49–50, 54, 56–59, 72–76, and 79–88. It should be noted however, that some of the comments and FAQs, such as FAQs 49 and 73, while remaining accurate, were intended to illustrate issues that are less likely to arise under the revised rule. Others, such as FAQs 1 and 77, while largely accurate, contain some statements that are based on or refer to interpretations that are superseded by this rule.

Sections 202(a)(1) and (5) of the LMRDA require a labor organization officer or employee to report payments that the official, his or her spouse, or minor children receive from an employer whose employees the labor organization represents or is actively seeking to represent, ''*except payments and other benefits received as a bona fide employee of such employer.*'' 29 U.S.C. 432(a)(1) & (5) (emphasis added).

Until the 2007 rule, the Department's policy had been to exclude from reporting payments and other benefits received for activities undertaken on behalf of the union, as well as for any other ''activities other than productive work,'' but paid for by the employer. Thus, the instructions for the 1963 Form LM–30 stated that the following payments and benefits were exempt from Form LM–30 reporting:

> [p]ayments and benefits received as a bona fide employee of the employer for past or present services, including wages, payments or benefits received under a bona fide health, welfare, pension, vacation, training or other benefit plan; and payments for periods in which such employee engaged in activities other than productive work, if the payments for such period of time are: (a) Required by law or a bona fide collective bargaining agreement, or (b) made pursuant to a custom or practice under such a collective bargaining agreement, or (c) made pursuant to a policy, custom, or practice with respect to employment in the establishment which the employer has adopted without regard to any holding by such employee of a position with a labor organization.

Pre-2007 Form LM–30 Instructions, Part A (Items 6 and 7) at (iv). See 28 FR 14384 (Dec. 27, 1963).

The 2007 rule narrowed the exemption in the Form LM–30 instructions, as quoted above, by limiting it to situations where such payments were made pursuant to a bona fide collective bargaining agreement and totaled 250 or fewer hours during the filer's fiscal year.

1. Review of Comments Received

The Department received 17 substantive comments on the issue of the union leave and no docking payments. Of these 17 comments, 14 supported the removal of reporting for such payments: 12 unions, one law firm, and one public policy organization. Additionally, three comments opposed the change, including two public policy groups, and 225 individuals who sent in form letters.

a. Comments in Support of NPRM

The Department received 13 comments that provided general support for removing union leave and no docking payments from the Form LM–30 reporting requirements, with about one-half providing specific comments in support of the changes. One international union commenter concurred with the view that the ''legitimacy'' of such payments is established when they are included in a collective bargaining agreement or employment practice, and that they do not pose conflict-of-interest problems like ''no show work, featherbedding, or similar practices.'' The commenter further stated that requiring reporting for such payments for union officials, and not employers, imposes an ''unnecessary burden'' on the officials and deters employees from serving as representatives. A national union concurred with the Department's view, as expressed in the NPRM, that such payments do not pose a conflict of interest, and also noted that employers are not required to report such payments on the Form LM–10.

Another international union maintained that such reporting would be burdensome, unrelated to the purpose and intent of the statute, and ''disruptive of many well-established labor-management relationships.'' The commenter also stated that such arrangements are known to the employees, who benefit along with the employer from this practice, and it presented evidence of the burdensome nature of reporting such payments. It explained that union officials would be required to keep track of all hours worked under union leave or no docking arrangements and calculate benefits as well as wages earned, adding that such information would not easily be obtained from the employer, who may not desire to release it. Such reporting, the commenter contended, may discourage employee participation in the union, and would not disclose conflicts of interest in that no docking arrangements are already known to employees in a bargaining unit either by being required by a collective bargaining agreement or being made pursuant to a custom under a collective bargaining agreement. Further, the commenter stated that members know that when stewards or other union representatives ''administer the contract, process grievances, or represent members in disciplinary actions,'' they are receiving payment from the employer.

A national union discussed the burden and disincentive that reporting union leave and no docking payments would have on employees' willingness to serve the union. Another national union emphasized that such payments, received pursuant to a collective bargaining agreement, are made with full knowledge of the employees and

thus reporting is not needed to provide transparency. The union explained that the burden that such reporting would impose would discourage members from representing their fellow employees in ''grievances, serving on safety and health committees, and participating in collective bargaining.'' An international union stressed that such payments do not pose conflicts of interests, as they ''primarily serve'' the employers by promoting ''prompt and fair resolution of grievances and other workplace issues so that work continues and morale remains high.''

Further, a national union stated that in determining whether or not a payment is received ''as a bona fide employee,'' a distinction must be made between payments made ''by virtue'' of a union official's employment with the employer and payments made without regard to such relationship. In this union's experience, employees volunteer to serve, on their own personal time, on joint labor-management, safety and health, and other committees, with the collective bargaining agreement only ensuring that they do not lose any compensation or benefits.

Finally, a law firm supported the Department's proposed return to its historical position that union leave and no docking payments are not reportable. It urged the Department to clarify that employers are not required to report such payments under section 203 of the Act. The firm asserted that such payments should be considered to be made as ''compensation for, or by reason of, [an employee's] service as an employee for such employer.'' [8] It stated that without such clarification an employer may feel obligated to report such payments, even though union officials are not required to report their receipt of such payments. As the Department discusses in later sections of the preamble, this rulemaking solely addresses reporting under section 202 of the Act and that interpreting section 203 requirements would be beyond its scope.

b. Comments in Opposition to NPRM

The three comments opposing this aspect of the Department's proposal offered arguments in support of the 2007 rule's premise that union leave and no docking payments presented a conflict of interest for union officials and must be reported to ensure appropriate transparency. Two of the commenters argued that the Department's proposal was based on an impermissible reading of the statute.

A public policy organization offered some specific observations regarding the effect of allowing union leave and no docking to go unreported. It claimed that the Department lacked authority under the Act to excuse union officials from reporting such payments, suggesting that the proposed rule was based simply on the new Administration's dissatisfaction with the reporting requirement rather than a considered view of the statute's requirements. The comment argued that payments for work done for the union cannot be received as a ''bona fide employee.''

Additionally, the public policy organization claimed that by eliminating reporting, ''de facto no-show jobs'' and ''featherbedding'' would be concealed and substantial payments to union officials would go unreported. Such payments, in its view, constitute an improper ''subsidy'' for union activity. Another commenter, a public policy organization, argued that the Department's proposal would conceal instances of ''no-show jobs,'' and other fraudulent arrangements. This public policy organization also asserted that, in proposing to remove union leave and no docking payments from Form LM–30 reporting, the Department was ignoring the structure of the statute and establishing an ''administrative exemption.''

The individuals who commented by form letter also addressed this issue and stated that no docking reporting should not be removed because most stewards receive no extra compensation for their duties, which could make them susceptible to ''other forms of rewards.''

The two public policy organizations stated that the burden associated with the 2007 rule is significantly overstated. One organization stated that the Department's proposal overlooked how the 2007 rule mitigated burden by establishing a 250-hour reporting threshold. One of the organizations argued, albeit without further support, that most union officials would not have to report their union leave or no docking payments, because these payments would not meet the 250-hour threshold.

The organization also argued that the Department's burden estimates in the 2010 NPRM demonstrated the absence of any significant burden associated with reporting union leave and no docking payment, noting that the Department estimated that the proposed changes would only reduce recordkeeping time by five minutes (15 minutes in the proposed rule as opposed to 20 minutes in the 2007 rule) and the overall reporting by 30 minutes (90 minutes in the proposed rule as opposed to 120 minutes in the 2007 rule).

A public policy organization also objected to the Department's assessment of the burden associated with the 2007 rule, as discussed in the NPRM. It stated, on one hand, that any burden is not the result of the 2007 rule but has existed since the enactment of the statute (even if the Department, in the commenter's opinion, did not always enforce the Form LM–30 requirements), and, on the other hand, that the 2007 rule created no additional burden because only ''atypical financial arrangements that benefit some union officials'' were reportable under the rule.

Taking issue with the view that union leave and no docking payments pose no conflict of interest where required by a collective bargaining agreement or made pursuant to a custom under a collective bargaining agreement, another public policy organization argued that these payments create ''the definite possibility of becoming a conflict of interest.'' In this regard, it cited a dissenting opinion in *Caterpillar* v. *UAW,* 107 F.3d 1052, 1060 (3d· Cir. 1997)(Alito, J. dissenting), where the dissenting judge stated such payments create a conflict, because ''union negotiators * * * may agree to reduced benefits for employees in exchange for financial support for the union.''

One public policy organization acknowledged that the courts have determined that union leave and no docking are not unlawful under LMRA Section 302, but it nevertheless contends that the courts have ''misconstrued'' such provision, and that such payments, as well as the granting of ''super-seniority'' to union officials, do create a conflict of interest for the union officials, as the officials could exchange benefits for the bargaining unit as a whole for benefits for themselves. The comment asserted that ''any special benefit'' creates a conflict of interest, and it cites *United States* v. *Phillips,* 19 F.3d 1565, 1566–69 (11th Cir. 1994), to illustrate this point. It also contended that disclosure furthers the public's and government's ability ''to determine the validity of the financial transaction.'' Additionally, the commenter rejected the idea that union leave and no docking provided value to the employer, insisting, for example, that the payments did not increase the speed of handling grievances, and that, in any event, such considerations have no relevance to the statute.

[8] The Department of Justice, not this Department, is responsible for interpreting and enforcing section 302 of the Taft-Hartley Act. The language quoted is from section 302(c) of the statue.

The public policy organization also contended that any conflict of interest should be disclosed so members can ''exercise their democratic rights'' when choosing representatives, and that the Department will hamper members' ability to exercise such rights by establishing a Form LM–30 that will provide ''less information on the financial activities of their representatives.'' Another public policy organization similarly argued that the Department is proposing to reduce the ''amount of information'' made available to members, the government, and the public regarding payments to union officials.

Additionally, the public policy organization argued that the effect of the union leave and no docking payments is to shift costs of union officer, employee, and steward training to the employer and to defray costs involved in the union's political activities. Thus, the commenter contended that reporting is needed for the public to be made aware of these effects. Furthermore, the commenter insisted that the effect of the NPRM's ''new definition of 'bona fide employee''' will require the filing of other LMRDA reports, including ''persuader reports'' under section 203 of the Act.

Finally, both public policy organization commenters disagreed with the Department's position that, as a matter of policy, there was no persuasive reason why union officials should report union leave and no docking payments while employers are not required to do so pursuant to the Form LM–10, Employer Report, and section 203 of the statute.

2. Response to Comments

In response to the comments received, and for the reasons stated in the NPRM and discussed herein, this rule effectuates the Department's proposal to rescind the requirement in the 2007 rule that union officials report compensation and benefits they receive under employer union leave and no docking policies. In the NPRM, as noted above, the Department advanced three reasons for its proposal: (1) The historical interpretation under which such compensation was not reported comports more readily with the language in section 202 than the interpretation in the 2007 rule; (2) the 2007 rule imposes a substantial burden on union officials to report on matters unlikely to pose conflicts of interest and this burden could unduly interfere with the internal workings of labor unions and labor-management relations; and (3) the absence of any persuasive policy reason why union officials must report receiving such payments while employers making such payments are under no similar obligation.

With regard to the language of section 202, the Department believes it is best read to require reporting of payments only when a union official is not a bona fide employee of the employer making the payment. This reading departs from the 2007 rule's approach, which sought to equate payments to ''bona fide employees'' with payments made to union officials for ''productive work'' on the employer's behalf. In the 2010 NPRM, the Department made the additional points, discussed below, in rejecting the position taken in the 2007 rule. An individual's status as an employee is based on the various factors articulated in the common law. See *Nationwide Mutual Ins.* v. *Darden,* 503 U.S. 318 (1992). ''Bona fide'' is synonymous with ''good faith'' or ''genuine,'' *i.e.,* without fraud or deceit.[9] Thus, section 202(a)(1) is most naturally read to except from reporting union leave and no docking payments to a current or former employee of the company making the payment unless made under the guise of employment, such as where payment is for a no-show job with the company, in an amount that unreasonably exceeds the value or amount of the work performed, or the payment is made on terms inconsistent with the parties' negotiated agreement or the workplace custom and practice under the agreement. In contrast, where a payment made to an individual working on behalf of the union by his current or past employer is sanctioned by a collective bargaining agreement or by custom or practice of the workplace pursuant to the collective bargaining agreement, the legitimacy or ''bona fides'' of the payment, received as a result of a genuine employment relationship, is established.

In response to the comments received, the Department notes that payments received as bona fide employees may include wages and other benefits received as compensation for service as an employee of the employer, *and* other compensation, such as jury duty leave, military leave, and maternity and paternity leave. It is not relevant whether or not the payments made to employees are for work or other activities engaged in under the control or direction of the employer, as employers routinely provide payments to employees as bona fide employees in such circumstances, which the 2007 rule also recognized. See the definition of ''bona fide employee,'' in the 2007 Form LM–30 Instructions, which exempts, in part, payments or benefits received for ''leave for jury duty.'' Further, the Department does not recognize any difference between union leave and no docking payments from other types of leave payments that are not for ''productive work,'' assuming that they are all bona fide, or good faith, payments.

The Department disagrees with the commenters' conclusions that unless union leave and no docking payments to union representatives are reported there will be no disclosure of de facto ''no-show jobs,'' ''featherbedding,'' or similar abuses of the employment relationship.[10] Contrary to this commenter's view, such payments are reportable on the pre-2007 Form LM–30, the 2007 Form LM–30, *and* the revised Form LM–30, as they are payments that are not received as a *bona fide, i.e.,* good faith, employee. See IM entry 248.200; see also the NPRM at 75 FR 48422.[11] Nothing in the Department's proposal suggested otherwise. Regardless of the label the commenter might attach, *e.g.,* de facto ''no-show job,'' what is relevant is whether or not the payment was received as a bona fide employee. Further, as mentioned, the legitimacy of the payment is established when it is made pursuant to the terms of a collective bargaining agreement. Thus, the determination of whether or not such payments are made pursuant to a collective bargaining agreement, or a custom or practice made pursuant to a

[9] *See Black's Law Dictionary* (8th ed. 2004), which defines the term as: ''1. Made in good faith; without fraud or deceit. 2. sincere; genuine''; *The Random House Dictionary of the English Language, Unabridged* (2d ed. 1987), which defines the term as: ''1. made, presented, etc. in good faith; without deception or fraud * * *. 2. genuine.—syn. 1. honest, sincere, lawful, legal. 2. genuine.—ant. spurious, deceitful, false.'' *See also Black's* ''bona fide operation,'' defined as ''[a] real, ongoing business''; and ''bona fides,'' defined as ''1. Good faith. 2. *Roman law.* The standard of conduct expected of a reasonable person, esp. in making contracts ands similar actions; acting without fraudulent intent or malice.'' See 75 FR 48422.

[10] The Department disagrees with the assertion that a union official remaining on an employer's rolls under a grant of ''super-seniority'' would have had an obligation, simply upon that status, under the Act to report all payments received from an employer. Like any union official, an official with this status would have been required to report union leave or no docking payments under the 2007 rule. However, payments made to an official for his regular production work have never been reportable under the Act. Payments received for production work are not reportable because they are received as a bona fide employee of the employer making the payment. An employee's super-seniority status does not change this analysis. See 72 FR 36127–28.

[11] The Department states that, as a general matter, union leave and no docking payments are received by union officials as bona fide employees, but it will evaluate the factual circumstance concerning any type of payment to a union official, on a case-by-case basis, if there is any question whether or not the bona fide nature of the arrangement has been established.

collective bargaining agreement, is not only relevant but statutorily necessary. ''Bona fide'' means ''genuine'' or in ''good faith,'' the application of which, in a unionized workplace, must be made in part by analyzing the collective bargaining agreement.[12]

Further, the Department disagrees with a commenter's suggestion that no docking and union leave payments are a type of ''featherbedding'' or ''no show jobs'' and as such are unlawful or at least subject to disapproval on public policy grounds.[13] Indeed, as just discussed, ''no-show jobs,'' ''featherbedding,'' and similar improper payments are distinct from those payments that an employee of the employer receives as a *bona fide* employee of such employer. Moreover, it is longstanding Departmental policy that the bona fide employee exemption can only be applied to union officials if they are current or former employees of the employer. See IM entry 243.200 (based on an opinion rendered on August 17, 1962). As stated, the bona fide nature of the payments is established by virtue of the collective bargaining agreement or by custom and practice under the collective bargaining agreement, or by policy, custom, or practice without regard to an employee's position within a labor organization. The Department emphasizes that it did not propose to exempt *any* payment from an employer to a union official pursuant to a collective bargaining agreement, nor did it propose to exempt any payment from an employer to a union official simply because the official is also a current or former employee of such employer. Rather, the Department proposed and here adopts the position that payments and other benefits from an employer to a union official are exempt if such payments and other benefits are ''received *as* a bona fide employee of such employer'' (emphasis added). See section 202(a)(1).

Additionally, as stated in the NPRM and noted in the 2007 rule, union leave and no docking payments were common at the time the LMRDA was enacted. 72 FR at 36126. As set out in the NPRM, these payments were not an issue of concern in the hearings before the McClellan Committee or in any of the legislative materials relating to the LMRDA, unlike payments such as for no-show work or featherbedding. 75 FR at 48422. As noted in the 2007 rule, the legislative history does not shed light on whether Congress had a specific intention to require or not the reporting of such payments by union officials. See 72 FR at 36126. While, as noted in the 2007 rule, legislative silence is not generally a conclusive guide to interpreting statutory text, it is notable, as explained in the 2010 NPRM, at 75 FR 48422, that Congress did not identify union leave or no docking payments as requiring disclosure to union members and the public as a matter of course. See 72 FR at 36126. Equally significant, such payments were not in any way proscribed by the AFL–CIO codes of ethics that strongly influenced the reporting provisions of the LMRDA. See 72 FR at 36112–13. See Senate Hearings, at 123 (statement by Professor Cox that union officials who followed the AFL–CIO Ethical Practices would have ''virtually nothing to disclose in his report to the public'').

With regard to the second reason advanced in the NPRM for removing union leave and no docking from the Form LM–30 reporting requirements, the Department continues to believe, as explained below, that such reporting imposes a substantial burden for union officials on matters unlikely to pose conflicts of interest, and thus unduly interferes with the internal workings of labor unions and labor-management relations. In response to those commenters who argued that the Department is downplaying the importance of section 202 reporting, the Department has acknowledged repeatedly in the various LM–30 rulemakings that section 202 is intended to capture payments that, although not necessarily illegal, are ''atypical financial arrangements'' that should nevertheless be disclosed to union members and the public if they present a potential conflict of interest. Such disclosure aids union democratic self-governance and assists government agencies and the public to identify potential corruption. The Department has also acknowledged that a ''special benefit'' received by a union official from a represented employer should be disclosed if it would likely constitute an actual or potential conflict of interest. At the same time, however, the Department is mindful that section 202 does not require general reporting of union officials' financial information.

In the Department's view, union leave and no docking payments, like other payments received by a bona fide employee, reflect ordinary arrangements, mutually agreed upon by the employer, the union, and the employees, that do not present such a danger of a conflict of interest or corruption. As articulated in the NPRM, the Department does not view union leave and no docking payments as presenting the type of danger that Congress intended to highlight through reporting. Such payments, where established by virtue of the collective bargaining agreement, or by custom and practice under the collective bargaining agreement, or by policy, custom, or practice without regard to an individual's position within a labor organization, do not present the sort of conflicts of interest presented by other payments to union officers and employees. Rather, they serve the mutual goals of employers and unions. They help ensure that individuals with first-hand knowledge of an employer's workplace will be able to take a position with the union, a benefit not only to the union and employer but also the represented employees. Such payments are voluntary; without the assent of both management and labor, the payments

[12] See *Caterpillar, Inc.* v. *UAW,* 107 F.3d 1052 (3d Cir. 1997) (employer's payments of salary and benefits to union grievance chairpersons did not violate section 302 of the LMRA). The majority stated that the collective bargaining agreement ''does not immunize otherwise unlawful subjects but, by defining the basis for the payments, speaks directly to the question posed by the statute as to whether the payments are ''compensation for, or by reason of * * * service as an employee.'' *Id.* at 1057.

[13] The commenter may have its own distinctive notion of how these terms may be used, but its suggestion that union officials receiving compensation or union leave benefits for the work they perform on labor-management matters is somehow improper or tainted is misplaced. Simply put, the terms ''featherbedding'' and ''no show jobs'' cannot be fairly applied to the work undertaken by union officials in representing the union and its members in administering the contract between the union and the employer. The term ''featherbedding,'' is usually associated with practices to keep workers on a company's payroll, even though the jobs are no longer needed because of changes in production methods. See Robert's Dictionary of Industrial Relations. As there defined, the term refers to ''make work for [a union's] members through the limitation of production, the amount of work to be performed, or other make-work arrangements.'' *Id.,* 251. See also 29 U.S.C. 158(b)(6) (making it an unfair labor practice for a union ''to cause or attempt to cause an employer to pay or deliver or agree to pay or deliver any money or other thing of value, in the nature of an exaction, for services which are not performed or not to be performed''). ''No-show jobs'' is a term more commonly associated with extortion or shakedown by criminal elements, rather than as a means of preserving a worker's livelihood in the face of technological change or a payment with the object of promoting constructive labor-management relations. Unlike ''no-show jobs'' where an individual receives pay for no work, union officials are performing the work for which they are being compensated, work deemed to be in the mutual interest of the union and the employer. Clearly, ''featherbedding'' and ''no-show jobs,'' as these terms are commonly understood, cannot fairly be applied to union leave and no docking arrangements in which union officials engaged in activities that advance the collective interests of a company's workers represented by the union. While featherbedding and no-show jobs are reportable on the revised Form LM–30, union leave and no docking payments are not.

cannot be made. They are not kept secret from employees.[14]

Moreover, the Department is persuaded that an employer's agreement to pay its employees to work for or serve the union does not, in and of itself, have an influence on the duties or loyalties of the union official, since union leave and no docking payments are on the same terms as the payments the bona fide employee would otherwise receive if he or she continued work performed for and under the control of the employer. Indeed, the members themselves are paid by the same employer. Furthermore, when the union official or representative no longer serves in such a labor-management capacity he or she could return to regular full-time production work for the employer receiving the same payments and benefits received while working as a union official or representative.[15]

The Department disagrees with the view of a public policy organization that any ''special benefit'' received by a union official must be reported, or that any ''special benefit'' nurtures an environment in which self interest takes priority over the interests of a bargaining unit. Relying on *United States* v. *Phillips,* 19 F.3d 1565 (11th Cir. 1994), the commenter suggested that union leave, no docking payments, and ''special benefits'' create not only a hypothetical conflict of interest, but reflect ''in fact, how labor unions operate.'' As an initial matter, the Department strongly disagrees with the notion that financial self-interest on the part of union officials animates how unions represent the interests of their members. Additionally, the commenter's reliance on *Phillips* is misplaced.

The *Phillips* decision does not concern union leave and no docking arrangements. In that case, an employer and union officials were convicted, in part, for violating the LMRA by ignoring a collective bargaining agreement and granting *retroactive* leaves of absences, and thus pension benefits, to the officials. The Department believes the court reached the right result in that case. Further, the opinion in that case cannot be read to suggest that the improper conduct there involved was at all symptomatic of how union officers conduct their activities on behalf of their members, nor does it affect the reporting of union leave and no docking arrangements. Moreover, the result in that case lends support to the Department's proposal. In *Phillips,* the payments received were by union officials who were no longer employees of the employer at the time the benefits were arranged, and the retroactive leave was not provided for in the collective bargaining agreement. Because the benefits there at issue were not received pursuant to union leave or no docking arrangements or otherwise received by union officials as *bona fide* employees of the employer, the benefits would have to be reported under both the Department's proposal and the 2007 rule. Moreover, the commenter's reliance on *Phillips* is further undercut by that court's recognition, citing *BASF Wyandotte Corporation* v. *Local 227,* 791 F.2d 1046, 1049 (3d Cir. 1986), that no docking payments are not unlawful under the LMRA. See *Phillips,* 19 F.3d at 1575.

The Department finds instructive the discussion concerning union leave and no docking payments in *Caterpillar, Inc.* v. *UAW,* 107 F.3d 1052,1056 (3d Cir. 1997), where the court recognized that such payments, while not compensation ''for hours worked in the past, certainly were 'by reason of' that service.'' The court also noted that the union leave and no docking are arrangements in which ''every employee implicitly gave up a small amount in current wages and benefits in exchange for a promise that, if he or she should someday be elected grievance chairperson,'' the employer would continue to pay his or her salary. *Id.* Thus, such payments only benefit those union officials who are members of the bargaining unit, and all members of the bargaining unit have the potential of receiving such payments if they become union officials. Further, all represented employees benefit from the work of their fellow employees who represent them.

In response to the commenter who asserted that union leave and no docking payments constitute an improper ''subsidy'' to the union, the Department disagrees. These payments are provided by mutual agreement of the union and the employer to facilitate labor-management relations. The payments are made to current or former employees who have been selected by the union to perform this service to the bargaining unit, a practice that provides benefits to both labor and management. These payments are similar to other benefits provided to employees represented by the union such as payment for jury duty, military service, and other situations as discussed above.

In response to the commenter who questioned the impact of union leave and no docking reporting on labor-management relations, the Department is particularly concerned about the potential consequence of requiring reporting of payments received under union leave or no docking policies (*i.e.,* union members will be discouraged from running for union office and others from serving as stewards). The Department believes that its historical position to except union leave and no docking payments from reporting is consistent with the purposes of the LMRDA and with the Congressional plan that the government avoid unnecessary intrusion into internal union affairs. Cf. *Wirtz* v. *Local 153, Glass Bottle Blowers Assn.,* 389 U.S. 463, 470–71 (1968). Employers have historically agreed to compensate stewards, safety and health committee representatives, and others for such work because they see it as adding value to their organizations. As explained in the 2010 NPRM, a number of states require the establishment of joint labor-management safety and health committees. 75 FR 48424. Having employees serve on employee assistance programs and wellness committees is also seen as a cost-effective business decision by many employers. *Id.* The Department concurs with those commenters who stated that union leave and no docking arrangements increase the speed of grievance adjustments, and otherwise benefit labor-management relations. The Department does not view the section 202 reporting provisions as requiring the reporting of such mutually beneficial arrangements between employers and employees.

Regarding the Department's characterization of the reporting burden as ''substantial,'' the union commenters generally agreed with this assessment. However, some public policy groups disagreed, with one focusing upon the 250-hour threshold.[16] As discussed

[14] These payments are usually made under the terms of a collective bargaining agreement and tied to the same rate of pay that the union official would have received under the agreement for time worked at his or her trade. Indeed, the court in *Caterpillar Inc.* v. *UAW,* stated ''each rank-and-file employee has the opportunity to vote'' on the collective bargaining agreement, which is ratified by the union membership, and which provides the membership a means to hold officials receiving the payments accountable. The court asserted that such payments thus differ from ''bribery, extortion, and other corrupt practices conducted in secret.'' See *Caterpillar* 107 F.3d at 1057. Moreover, under section 104 of the LMRDA, each bargaining unit member may receive and inspect a copy of the collective bargaining agreement.

[15] The Department also notes that a union official or representative who receives union leave or no docking payments from an employer, as a bona fide employee of the employer, does not, thereby, owe any allegiance to such employer in conflict with any duty to the union and its members, as the union appoints or elects its own representatives.

[16] The Department also disagrees with the comments regarding the significance of the 250-hour threshold, as it is not clear why the number

Continued

below, such burden is substantial, even with the 250-hour exemption.

As noted above, one commenter criticized the Department's description of the burden associated with the 2007 rule, noting that the proposed rule reflected only a five-minute recordkeeping savings. This commenter overlooked that the significant number of union officials who would be excluded from filing under the proposed and final rules will be saved the 120-minute burden imposed by the 2007 rule and, for those who do file, the reporting burden has been reduced by 25 minutes. Further, the burden estimate for the 2007 rule only tracks the number of and burden upon *respondents* (*i.e.,* filers) to the 2007 rule. As such, the 2007 rule did not include the number of and burden on union officials, stewards, and other union representatives who, although not reaching the 250-hour union leave threshold, would need to keep track of such hours to determine whether or not filing would be required for their union leave or no docking payments. See 75 FR 48424, n. 9. Moreover, the burden on respondents and non-respondents is heightened because such payments are not likely to generate a conflict of interest and may discourage individuals from serving as representatives for their fellow workers.

Additionally, as articulated by some of the commenters, it may prove difficult for union officials and representatives to obtain information concerning benefit compensation from their employers in order to comply with the union leave and no docking reporting required under the 2007 rule. These practical problems faced by union officials, stewards, and other representatives in maintaining records necessary to meet the reporting burden placed on them were not fully considered in the 2007 rule. Unless the employer has a payroll reporting system that allows the union stewards to clock in and out every time they have to perform union work, the stewards would have to keep their own records. A member's work on behalf of the union is not always performed during a series of discrete intervals where it is easy to determine when union work begins and ends. Sometimes, such representatives will briefly engage in union work when a co-worker comes and speaks to the on-duty steward. Sometimes the conversation occurs when the representative is on the way to the break room or at lunch. Sometimes union work occurs during a work-related conversation with a supervisor or manager and a grievance question comes up. Thus, the amount of time required to perform steward and similar functions may vary significantly from day to day and week to week and is therefore not easy to predict. For example, in the building and construction trades, with its very mobile workforce and short-term employment on construction projects, stewards will change from job to job, not just from week to week.

As the Department explained in the NPRM, there is no persuasive policy reason why union officials must report such union leave and no docking payments, and thus bear the burden of such reporting, while employers making such payments are under no similar obligation or burden. As stated in the NPRM, the Department has reexamined the policy underlying the current requirement and has concluded that the inconsistent application is unreasonable regarding the imposition of these reporting requirements on union officials but not employers. 75 FR 48423. The Department disagrees with the commenters' statement that, in making this determination, the Department was ignoring the structure and language of the statute. To the contrary, the Department's view is entirely consistent with the statute. The specific reference in section 203 excepting from reporting ''payments of the kind referred to in section 302(c) of the [LMRA]'' does not require that section 202 be read to mandate such reporting where such payments are received by an employee.[17] Indeed, there would appear to be no reason why such payments, regularly made by some employers in the ordinary course of conducting labor relations, would require union officials, as the recipients of such payments, to report their receipt but not require employers making the payments to report them. The commenters have provided no persuasive argument to counter this observation. Additionally, the instructions, as drafted, mitigate any concern that such payments are concealed from union members. Under the rule, union leave and no docking payments must be reported unless they are made pursuant to a collective bargaining agreement, or by custom and practice under a collective bargaining agreement, or by policy, custom, or practice without regard to an individual's position within the union.

Finally, the Department notes that a commenter suggested that the proposed change would create other potential consequences affecting election law, labor-management matters unrelated to the LMRDA, persuader activity reports under section 203 of the Act, and other matters involving public policy. The commenter did not fully explain its concerns, but it appears that some of these issues involve statutes over which the Department has no authority and that none of these concerns are material to the changes proposed by this rulemaking. While the discussion of other LMRDA provisions is obviously necessary to address some issues, this rule only addresses the scope of reporting required by union officers and employees pursuant to LMRDA section 202. As discussed below, other commenters have asked the Department to use this rulemaking to resolve issues that may arise under the Act's other reporting provisions. While these comments are helpful to the Department in identifying concerns among the various regulated communities and informing the Department about how it might best direct its compliance resources, the Department cannot resolve those concerns in this rule.

B. Coverage of Stewards and Similar Union Representatives Under Section 202

The Department is effectuating its proposal to return to its longstanding policy that union stewards and similar volunteer union representatives are not as a general rule covered by the Form LM–30 reporting requirements. A union steward is responsible for informing employees of their rights under the collective bargaining agreement and applicable law, investigating grievances filed by union members, representing union members in presenting those grievances to management, and otherwise enforcing the collective bargaining agreement. See generally Herman Erickson, *The Steward's Role in the Union* 29–54 (1971).

As proposed in the NPRM, 75 FR 48423–25, and as articulated below, the Department rescinds the definition of ''labor organization employee'' in the 2007 Form LM–30 that extends Form LM–30 coverage to such union representatives and inserts the following language in the revised Form LM–30

of hours worked pursuant to a union leave or no docking arrangement affects a potential conflict of interest. See *Caterpillar, Inc.* v. *UAW at 1056.,* in which the majority questions why Congress would sanction multiple employees receiving less than eight hours per day of no-docking payments but would criminalize eight hours of union leave payments per day for a single employee.

[17] See LMRDA Interpretative Manual, at section 241.600. This section states that the reporting exceptions in section 203 do not affect the reporting by union officers and employees in section 202, ''*where* the applicable provision of section 202 does not provide a pertinent exception.'' (emphasis added). Section 202, however, contains a pertinent exception: the bona fide employee exception.

Instructions in Section II, Who Must File.[18]

For purposes of the Form LM–30, an individual who serves the union as a union steward or as a similar union representative, such as a member of a safety committee or a bargaining committee, is not considered to be an employee of the union *by virtue of service in such capacity.*

In the final rule, the Department added the last phrase, in italics, for clarity. As explained in the NPRM, individuals serving as stewards or in other volunteer positions would be subject to the same reporting obligations as other officers and employees, if they are officers pursuant to their union's constitution or bylaws—an atypical situation—or otherwise qualify as a union employee. The italicized words better convey this point than the language proposed in the NPRM, which had used the adverb ''exclusively'' to qualify the statement.

In extending the union officer and employee reporting obligation to union stewards in the 2007 rule, the Department determined that a union steward receiving no docking or union leave payments would be considered to be a labor organization employee within the meaning of the Form LM–30. As stated in the preamble to that rule: ''An individual who is paid by an employer to perform union work is an employee of the union if he or she is under the control of the union, while so engaged.'' 72 FR at 36109. Stewards were deemed to be ''labor organization employees'' by virtue of their receiving union leave or no docking payments from an employer.

As stated in the 2010 NPRM and upon further review, the Department believes that the 2007 rulemaking did not satisfactorily address or adequately support the expansion of the Form LM–30 reporting requirements to include stewards. Rather, the rule focused on the ''bona fide employee'' exception of section 202, which, as mentioned, was revised to require the reporting of no docking and union leave payments. (See the discussion above concerning this change to the ''bona fide employee exception.'') The rule also provided, almost in passing, that stewards as well as union officers and employees needed to report such payments, based upon whether or not the official qualified as a bona fide employee of the payer-employer *during the time for which payment was made.* 72 FR 36124. (emphasis added).

Upon review and reconsideration, the Department took the position in the 2010 NPRM that the Form LM–30 reporting requirements should not be expanded to include stewards. As there noted, requiring ''stewards'' to file Form LM–30 reports as ''employees,'' solely on the basis of having received union leave, ''no docking,'' or ''lost time'' payments, raises policy, interpretative, and practical concerns.

First, from a policy perspective, imposing obligations on union stewards and other volunteers (*e.g.,* those who serve on health and safety, productivity improvement, and bargaining committees) intrudes in internal union affairs. Union stewards and other representatives perform valuable tasks and extending reporting requirements to them would significantly hamper union efforts to recruit and retain stewards and other representatives.

Second, an examination of the text of the relevant provisions of Title II of the LMRDA suggests that Congress did not intend that stewards be considered to be union employees. While section 202 requires reporting from ''every officer of a labor organization and every employee of a labor organization (other than an employee performing exclusively clerical or custodial services),'' it does not require reporting from stewards. In contrast, however, Congress expressly required employer payments to stewards to be reportable, pursuant to section 203, subject to certain exceptions. The Department explained in the 2010 NPRM that the absence of similar language in section 202 is a strong indication of Congressional intent to exclude agents, stewards, and similar representatives from the prescribed reporting requirements. Additional support for this position can be gleaned from the LMRDA's legislative history, as explained in the NPRM. Congress, revealingly, did not include the term ''stewards'' in describing the regulated class established by section 202, despite inserting the term in other LMRDA sections, thus indicating that those members who serve as ''shop stewards'' are of a different category than ''labor organization employees.'' When Congress wanted financial payments made to stewards to be reported, it knew how to do so.

1. Review of Comments Received

The Department received 16 comments that specifically addressed this particular issue. Of these 16 comments, 13 supported the return to the historical interpretation that such individuals are not considered union employees for reporting purposes under section 202, 12 unions, and one law firm. Three comments opposed the change, including a public policy group, a legal defense foundation, as well as 225 individuals who sent in a form letter.

a. Comments in Support of NPRM

There were 13 comments in support of the proposal to rescind required reporting by union stewards. A federation of labor unions stated that the 2007 rule significantly increased the universe of potential filers, noting especially the addition of stewards and other ''on-the-job union representatives,'' as employees of the union. In the commenter's view, this imposed Form LM–30 requirements on ''tens of thousands of union members who voluntarily'' perform representation functions for fellow workers during the regular workday.

An international union supported the Department's view that steward reporting is not required based on legislative intent. The commenter stressed the NPRM's analysis of the structure of the LMRDA, which recognized that ''stewards'' are not included in section 202, as well as the legislative history and intent, such as a prior draft of section 202 that specified their inclusion. The commenter characterized the removal of stewards reporting to be ''reasonable'' and consistent with the intent of the Act, and agreed that the inclusion of stewards would hinder members' willingness to volunteer to serve their fellow workers and would be a loss to labor-management relations.

A national union stated that subjecting stewards to the reporting requirements would discourage employees from volunteering to serve in that capacity. Another national union also maintained that the 2007 rule greatly expanded the Form LM–30 reporting requirements, and stated that stewards are members who volunteer to ''play a key role'' in ensuring smooth workplace operations. Thus, they should be ''encouraged'' to serve the union and not ''punished with onerous reporting.''

An international union emphasized that requiring stewards to file the Form LM–30 would discourage members from serving in this important position. Further, according to the commenter, stewards benefit management as well as the employees and the union, and removing them from potential reporting obligations furthers labor-management relations. The commenter expressed its view that the Department should not discourage this involvement. Another international union stressed that this change in steward coverage ''will end considerable confusion'' over the

[18] The definition of ''labor organization employee'' in the NPRM included the word ''exclusively'' prior to ''as a union steward * * *''

reporting requirements, which, combined with the burden associated with the form, has, in the commenter's experience, ''deterred aspirants'' for steward and similar volunteer positions crucial for unions and the workplace.

A national union described stewards and similar positions as ''voluntary, unpaid positions'' that are filled by members who are not officers or employees of the union. Stewards generally handle grievances during breaks or before or after their regular working hours, while they also often receive union leave or no docking payments for union work during the employer's time. Regardless, the commenter contended that imposing coverage on such individuals would ''seriously undermine cooperative labor-management relations and productivity.'' Not only would individuals be discouraged from volunteering to serve, but those that do may be deterred from doing so during work hours, delaying grievance adjustments.

Some union commenters acknowledged that individuals who are union stewards may be required to report ''in the unusual circumstances'' when the steward is a constitutional officer position, is a paid position in the union, or is an employee of the union under circumstances distinct from his or her status as steward.

Further, a law firm also agreed with the Department's view as stated in the NPRM that, if Congress had intended that stewards would be subject to the reporting requirements of section 202, it would have indicated that intention in fashioning the terms of section 202 as it did under section 203. In contrast to section 202, employers are required by the express terms of section 203 to report payments made to stewards.

b. Comments in Opposition to NPRM

In response to the NPRM, OLMS received a form letter signed by 225 individuals in opposition to the Department's proposal. The letter stated that stewards are an ''essential part of union representation,'' elected by coworkers, to ''responsible positions,'' and have the status of a ''union official.'' The letter also noted that because most stewards receive no compensation for performing their duties, they may be more sensitive to other forms of reward, suggesting to these individuals the need for conflict-of-interest reporting by stewards.

A few public policy groups also opposed the Department's proposal to rescind the general reporting requirement for stewards. One public policy organization agreed with the Department insofar as union leave and no-docking payments are concerned, but it argued that the NPRM went too far in exempting stewards and similar representatives from all reporting. This commenter stated that these union representatives should report all income received directly or indirectly from employers that is not related to their representation role, such as payments received for mowing the lawn of a management representative or painting the representative's house.

Finally, a public policy group claimed, without elaborating, that most stewards perform functions of union officers and therefore are ''officers'' within the meaning of the LMRDA required to report pursuant to LMRDA section 202.[19] Moreover, the commenter contended that the Department has no authority to exempt from coverage of the Act as many as 80,000 individuals who, in its view, are covered by the reporting provisions of section 202; this commenter also concurred with the view that stewards are union employees.

2. Response to Comments

The Department concurs with the comments affirming the central and important role that stewards and similar union representatives play in the labor-management context. As stated by many of the commenters, stewards and similar union representatives differ from union officers and employees in that they are union members who volunteer portions of their time to union representation without additional compensation. Additionally, unlike officers, stewards are often appointed; in many construction unions, they are appointed (or removed) by the Business Manager of the local union. Stewards, safety and health, and bargaining committee members are typically created and empowered by the collective bargaining agreement, not by the union's constitution and by-laws. Additionally, the Department concurs with the numerous commenters who confirmed the Department's position in the NPRM that imposing obligations on union stewards and other volunteers may also significantly intrude in internal union affairs and labor-management relations.

The Department also concurs with the unions that stated that the 2007 rule increased burden on stewards, in part, through the confusion surrounding their coverage, thus also significantly intruding in internal union affairs and labor-management relations. Although the 2007 rule denied such a chilling effect would be created, the Department has reconsidered this position. The Department has concluded that the impact on those who would have to file, coupled with the confusion and uncertainty created by extending all of the Form LM–30 reporting obligations to stewards and similar union representatives—even for those that actually had no payments or interests to report—invariably would dissuade some individuals from continuing in, or later volunteering for, those positions. Moreover, independent of the reporting required by the 2007 rule, union stewards and other representatives perform valuable tasks and extending onerous reporting requirements to them would ''chill'' future offers to serve. Imposing reporting burdens on such individuals clearly will temper the willingness of individuals to volunteer to serve in such positions—a loss to the union, the employer, and these individuals' fellow employees, as well as to the effective conduct of labor-management relations.

Section 202 does not refer to stewards as union officers or employees. Because other sections of the LMRDA expressly apply to stewards, the Department views their omission from section 202 as an intention to exclude them from its application. As noted in the NPRM, 75 FR 48424, employers must report payments to stewards pursuant to section 203; and stewards are explicitly covered by the fiduciary responsibilities provision of section 501 and the bonding provisions of section 502. The Department acknowledges the central role that stewards play and responsibilities that they exhibit within labor organizations, as demonstrated by the provisions of the LMRDA that apply to them. However, as stated, the statutory structure indicates that Congress deliberately did not apply the section 202 requirements to stewards, presumably because it did not want to unduly interfere with legitimate labor-management relations.

Furthermore, the statute provides for disclosure of payments to stewards without imposing reporting obligations on the stewards themselves. Section 203 of the statute requires employers to disclose any payment, subject to certain exemptions, to any ''officer, agent, shop steward, or other representative of a labor organization.'' Thus, the concerns

[19] The commenter further argued that if the Department classifies stewards as ''essentially employees of an employer,'' then agency fee payers would have no union fees to pay. The commenter offers no further explanation for its conclusion, which is not self-evident. However, as the Department has noted in a previous rule, the Department does not regulate payments by agency fee payers or reports prepared by unions showing how they compute costs that are allocated to agency fee payers. See 68 FR 58395.

of the commenter that was troubled by the prospect that payments to stewards other than those for no docking or union leave would be undisclosed are unwarranted.

The Department disagrees with the comment that most union stewards necessarily must be considered union officers and, as such, required to file reports pursuant to section 202. The Act defines union officers as ''any constitutional officer * * * and any member of [the union's executive board or similar governing body.'' LMRDA, section 3(n). As noted earlier, a steward generally is responsible for informing employees of their rights under a collective bargaining agreement, investigating and presenting grievances, and otherwise enforcing the collective bargaining agreement. These are not executive responsibilities normally associated with union officer positions, as described in union constitutions and bylaws; rather, they draw their essence from the collective bargaining agreement. In unusual situations, the position of steward is a constitutional office in the union (or is authorized to perform the functions of an officer). In other instances, an individual, although serving as a steward, is an employee of the union under circumstances distinct from his or her status as steward. In those circumstances, such individuals, both historically and under this rule, are subject to the reporting requirements of the Form LM–30, as union officers or union employees. The Department notes that several union commenters concurred with this position as well.

Finally, the Department disagrees with the suggestion that the Secretary's proposal is inconsistent with the Act and that the Department, in effect, lacks discretion to disregard what the commenter views as the clear command that stewards are employees of the union when they act on the union's behalf. Until the 2007 rule, stewards had not been required to file reports under section 202, and the 2007 rule was based on an interpretation of the ambiguous statutory term ''labor organization employee.'' 72 FR 36144. The rule did not claim that coverage of stewards was required by the terms of the statute, and indeed it did not place coverage of stewards in the category of revoked ''administrative exceptions.'' 72 FR 36156.

The structure of section 202, itself, demonstrates that Congress did not intend that stewards be considered to be union employees by virtue of service in such capacity. Again, the position of 'steward' is not enumerated in section 202 as it is in other provisions of the statute. No commenter challenged this view of the statutory language, and several comments supported it. Rather, under section 202, only union employees and officers are required to submit reports. In sum, for the reasons stated in the NPRM and earlier in this preamble, stewards and other volunteers, as a general rule, are neither officers nor employees of a union. The commenters offer no persuasive argument that the Department has departed from the Act's reporting mandates.

C. Reporting of Loans and Other Transactions With Credit Institutions

This rule effectuates the Department's proposal to amend the Form LM–30 to exempt from reporting marketplace transactions with bona fide credit institutions, including loans, interest, dividends, and payments and credit extended through credit card transactions, provided that they are arm's length transactions in accordance with usual business practice. In so doing, the Department establishes the appropriate balance between privacy and disclosure intended under the LMRDA—to disclose only a union official's actual or potential conflicts of interests, while keeping private bona fide investments ''because they are not matters of public concern.'' Senate Report, at 15, reprinted in 1 Leg. History, at 411. See 75 FR 48425.

The 2007 rule established the general requirement that union officials report the details of any loan received from any business that deals with the official's union, the union's trust, or represented employer (in substantial part). 72 FR at 36133–38. This aspect of the rule engendered strong protests from union officials and some segments of the financial services industry as intrusive and unduly complex. Thus, shortly after the rule's publication, the Department issued guidance to reduce the complexity in the rule and the confusion about its requirements. The Department issued this guidance through a series of Form LM–30 Frequently Asked Questions (FAQs), posted on the Department's Web site,[20] which identified several kinds of payments from credit institutions that did not require reporting so long as they were arm's length transactions in accordance with usual business practice. These payments included interest and dividends involving savings and checking accounts and certificates of deposit and credit card arrangements.

In the 2010 NPRM, the Department explained that the 2007 rule reflected a policy choice in favor of the disclosure of information, even without a showing of a likely conflict of interest, and even with the risks concerning burden upon and intrusion into the private affairs of union officials. 75 FR 48425. In the 2010 NPRM, the Department further explained that it may not have given sufficient weight in fashioning the 2007 rule to Congress's concern that the LMRDA should not unnecessarily regulate unions and their officials, and that the burden of reporting such routine transactions would outweigh the value of any additional information disclosed. *Id.*

The Department explained that loans and other transactions made on market terms are usual, regular transactions, unrelated to the officials' status in the union, and are therefore unlikely to pose a conflict of interest with the officials' duties to the union. 75 FR 48426. In contrast to these loans and transactions, a loan, gift, or other benefit obtained from a transaction other than at arm's length provides the union official with a net monetary gain, and consequently a potential motive to deal with a business in a way contrary to the interests of the union. Thus, the Department concluded that the better policy is to require the reporting of loans and other bona fide financial transactions from a credit institution only where the transaction is on other than market terms. *Id.*

Furthermore, as discussed in the NPRM, the proposed bona fide financial transaction reporting exemption under sections 202(a)(3) and (4) would prevent the submission of superfluous reports that would overwhelm the public with unnecessary information, thus impeding the discovery of true conflict-of-interest payments. 75 FR 48425. The proposal also would prevent unnecessary burdens on union officers and employees and avoid interference with the privacy of such officials. *Id.*

[20] *http://www.dol.gov/olms/regs/compliance/RevisedLM30_FAQ.htm.* FAQs 70–73 deal with issues surrounding payments from credit institutions. FAQ 70 stated, in part, that union officials do not need to report ''credit card transactions (including unpaid balances) and interest and dividends paid on savings accounts, checking accounts or certificates of deposit if the payments and transactions are based upon the credit institution's own criteria and are made on terms unrelated to the official's status in the labor organization.'' FAQs 71 and 72 outlined the obligations of union officials regarding home loans, which clarified that such loans must be reported if received from a trust in which the official's union is interested, a business that deals with the official's union or a trust in which the union has an interest, or a business a substantial part of which deals with an employer the official's union represents or is actively seeking to represent. Finally, FAQ 73 affirmed that the de minimis exemption applies to transactions, interests, and dividends from a financial institution, even if it had dealings with the official's union.

Additionally, the Department there explained, at 75 FR 48426, that in the 2007 rule the Department excepted from reporting under section 202(a)(6) such bona fide financial transactions with a credit institution because of the burden associated with reporting what ''are among the most common financial transactions undertaken by individuals.'' 72 FR 36118. The NPRM stated the Department's belief that this reasoning also must apply to the reporting of marketplace loan transactions under sections 202(a)(3) and (4). 75 FR 48426.

The NPRM explained that the proposed revision was limited to bona fide loans from legitimate credit institutions. 75 FR 48426. The Department has not changed other longstanding interpretations of section 202 that require union officers and employees to report other payments from vendors, service providers, credit institutions, and other businesses that deal in substantial part with the represented employer or in any part with either the official's union or any trust in which the official's union is interested or loans received from employers or businesses that are not credit institutions.[21] *Id.* As explained below, the Department has determined to adopt, without change, the position set forth in the NPRM regarding bona fide financial transactions with credit institutions on Part B of the revised Form LM–30:

Bona fide loans. Do not report bona fide loans, including mortgages, received from national or state banks, credit unions, savings or loan associations, insurance companies, or other bona fide credit institutions, if the loans are based upon the credit institution's own criteria and made on terms unrelated to the official's status in the labor organization. Additionally, do not report other marketplace transactions with such bona fide credit institutions, such as credit card transactions (including unpaid balances) and interest and dividends paid on savings accounts, checking accounts or certificates of deposit if the payments and transactions are based upon the credit institution's own criteria and are made on terms unrelated to the official's status in the labor organization.

1. Review of Comments Submitted Concerning the Proposed Changes to the Reporting of Loans Under LMRDA Sections 202(a)(3) and (4)

The Department received 14 comments about the proposed exemption regarding the reporting of loans. Of these 14 comments, two were from public policy organizations, 11 were from national/international unions, and one comment was from a federation of international labor unions.

a. Comments in Support of the Proposed Exemption Regarding Reporting of Loans

Comments submitted by all eleven national/international unions and the federation of international labor unions supported the Department's proposal to exempt the reporting of bona fide market rate loans from credit institutions. There comments expressed many common themes, including union officials' right to privacy in personal, routine financial matters unrelated to their union role, the undue burden associated with reporting bona fide arm's length transactions, and the absence of any link between these transactions and conflict-of-interest concerns.

Three commenters agreed that the Department's proposal achieves a correct balance between the privacy of union officers and employees and the Act's goal of disclosing actual or potential conflicts of interest. Another commenter stated that the requirements established by the 2007 rule (apparently as distinct from the interpretation in the FAQs) ''intru[des] into [union officials'] private affairs, and would produce information which is irrelevant to their union duties and the purposes of the LMRDA.'' As expressed by another commenter, the 2007 rule's ''broad requirement does not comport with the Act's intent to require only the disclosure of transactions in which there is actual or potential conflict of interest with an official's duties to his/her union and delves into personal matters that are of absolutely no public concern.''

Another commenter noted a parallel between the Department's proposal and the approach used in other ''ethics regimes,'' such as the financial disclosure rules established by each body of Congress. It explained that Congress does not require its members to report on loans that are made on terms generally available to the public, and that it made sense to treat similarly loans made to union officials on such terms.

b. Comments Opposing the Proposed Section 202(a)(3) and (4) Exemption Regarding Reporting of Loans From Bona Fide Credit Institutions

The two public policy organizations disagreed with the Department's proposal, arguing that such loans should be disclosed by union officials on the Form LM–30. One of these organizations stated that ''the fear that seemingly private mortgage information will somehow become public due to the reporting requirements of the Form LM–30 is misplaced,'' in that mortgages are public documents that can be obtained from a state recorder's office or, in some cases, accessed online. The same commenter addressed the Department's statement in its proposal, 75 FR 48425, that its revised interpretation ''would prevent the submission of superfluous reports that would overwhelm the public with unnecessary information,'' expressing its view that this concern is misplaced due to the technological developments of the 21st century. It characterized the Department's view as meaning that ''more information actually means less useful information.'' The commenter added that OLMS computer systems could easily handle all Form LM–30 reports, and allow cross-checking other forms, and stated that the public can view Form LM–30 data on *http://www.unionreports.gov* to ''find whatever information they seek.''

Another public policy organization commented that the Department's proposed administrative exemption for bona fide loans with terms no more favorable than those available to the public ''misses the point of disclosure and the need for it.'' The commenter added that, while the loan terms may not be more favorable than those available to the public, there is no ''guarantee that the loan was given to a qualified individual union official (*e.g.,* the union official may have a very low credit score or income insufficient to make the payments).'' The commenter also stated that ''union officers have been known to have their loans completely forgiven or paid off by another source,'' and added, ''* * * if there is no disclosure of the loan, then no one will know that a loan should perhaps not have been given or even that a possibly questionable loan exists.'' Additionally, this commenter referenced a media report concerning a public official's ''special loan'' arrangements with a particular mortgage company, asserting that just as voters benefit from such disclosure, union

[21] As stated in the 2010 NPRM:

The proposed modification does not relax the obligation to report on loans or other financial transactions (including credit card arrangements and interest-bearing accounts) where a union official receives terms more favorable than the market allows, where for example a union official receives a loan because of the official's status despite a credit history that would normally prevent an individual from receiving credit, or payments on the loan are extended or forgiven because of preferential treatment as a union official.

75 FR 48426, n. 11.

members would benefit from the disclosure of such loans.

c. Other Comments

Although the Department did not propose to eliminate the requirement that a union official must report loans from a represented employer that is a credit institution, such as a bank whose employees are represented by the official's union, some commenters submitted comments requesting the elimination of this requirement. Such a request is beyond the scope of this rule, but the Department, for completeness, discusses these comments below.

A federation of international labor unions urged the Department to create a reporting exemption, under section 202(a)(5) of the LMRDA, for bona fide loans and other bona fide financial transactions between a union official and a credit institution employer whose employees the official's union represents or is actively seeking to represent. An international union concurred with this request. These unions argued that by not applying the same arm's length exemption, as proposed generally in the 2010 NPRM,[22] to transactions involving credit institutions whose employees are represented by an official's union, the Department would be ignoring the regular course of business exemption in section 202(a)(5), which they assert relieves any reporting on any ''regular course of business'' transactions.[23]

The commenter asserted that the section 202(a)(5) marketplace transactions exemption should be applied to bona fide financial transactions with credit institutions. The commenter argued that the Department should give effect to what it sees as the same statutory interests involving routine transactions that would otherwise be reportable under other provisions of section 202. The commenter relied, in part, on its general reading of the Act's legislative history, which it reads to express an intention by Congress to not discourage any arm's length business transactions, which are not ''questionable in nature,'' illegal, or pose actual or potential conflicts of interests. This, according to the commenter, would also impose a significant burden on union officials whose unions represent or seek to represent employees of credit institutions. The commenter also stated that bona fide loans and other bona fide financial transactions between a credit institution employer and a union official are not reportable by the credit institution employer under section 203, citing the LMRA section 302(c)(3) exemption, 29 U.S.C. 186(c)(3). The commenter argues that, since credit institution employers are not required to report such loans and transactions on the Form LM–10 (Employer Report), then union officials should not be required to report such loans and transactions on Form LM–30.

1. Response to Comments

Upon consideration of the comments received on this issue, the Department has determined to revise the reporting obligation for union officials by adopting an exemption to the reporting of bona fide loans and other financial transactions made on market terms with credit institutions. In the Department's view, loans made on market terms are of little or no interest to union members, yet they disclose to members and the general public matters about which union officials, no less than other individuals, have a legitimate expectation of privacy.[24] But for the Department's guidance and the position adopted in today's rule, a union official would have to report each mortgage or other bank loan received from any credit institution that deals with his union, a section 3(l) trust, or, in substantial part, with the represented employer. In the Department's view, the burden associated with such requirement would far outweigh the value of any information disclosed. In the 2007 rule, the Department excepted from reporting under section 202(a)(6) arm's length loans, interest, and dividends earned during the regular course of business with a credit institution, because of the burden associated with reporting what ''are among the most common financial transactions undertaken by individuals.'' 72 FR 36118. The Department believes that this reasoning also must apply to the reporting of marketplace loan transactions under sections 202(a)(3) and (4).

The Department notes that union commenters agreed with the approach proposed in the 2010 NPRM, as well as the supporting rationale the Department offered. These commenters agreed that any benefit associated with disclosing arm's length transactions was heavily outweighed by the burden, loss of privacy, and limited utility that such disclosure would entail.

Only two policy organizations submitted comments in opposition to the proposal. One asserted that the Department had overstated the impact that the rule would have on an official's privacy. In this regard, it asserted that some of the same personal financial data that would be reported under the terms of the 2007 rule, such as mortgage information, may already be accessible to the public. However, the Department notes in response to this comment that such information is not made public in a reporting regime intended to disclose actual or potential conflicts of interest, as would be the case with the Form LM–30. That some mortgage information may be available publicly by people with easy access to that data does not excuse the intrusion that results from making public what most people still consider to be private financial information. Requiring a union official to collect and, in effect, publish all such information in the Form LM–30 certainly magnifies the intrusion. Further, that certain financial information can already be accessed by the public does not justify requiring that such information be reported on Form LM–30. Moreover, as discussed, the reporting of routine bona fide loans and similar transactions does not advance the disclosure purposes served by section 202 and therefore the burden associated with such reporting is not warranted.

One commenter stated that the Department was mistaken in its view that requiring bona fide loan-type information to be reported on the Form LM–30 could impede the utility of the form to union members and the public. The commenter pointed out that the Department's Form LM–30 Web site employs technology allowing data to be effectively managed and searched. The Department does not disagree with this

[22] Union officials must report, pursuant to section 202(a)(5), ''any direct or indirect business transaction or arrangement between him or his spouse or minor child and any employer whose employees his organization represents or is actively seeking to represent, except work performed and payments and benefits received as a bona fide employee of such employer and except purchases and sales of goods or services in the regular course of business at prices generally available to any employee of such employer.''

[23] The commenter notes correctly that the Department did not address its section 202(a)(5) argument in the 2010 NPRM. The Department there noted that any loans from an employer represented by the official's union (or whose employees it actively seeks to represent) must be reported pursuant to section 202(a)(2) of the LMRDA—including bona fide loans from a credit institution employer. See 75 FR 48426., n. 11.

[24] As discussed in the text, the proposed modification does not relax the obligation to report on loans or other financial transactions (including credit card arrangements and interest-bearing accounts) where a union official receives terms more favorable than the market allows, where for example a union official receives a loan because of the official's status despite a credit history that would normally prevent an individual from receiving credit, or payments on the loan are extended or forgiven because of preferential treatment as a union official. Moreover, loans received from employers or businesses that are not financial institutions will have to be reported as will any loans on other than market terms from employers or businesses that have a relationship with the official's union.

characterization of the efficiency of the OLMS Web site, but this observation is not relevant to the issue presented in the NPRM, as the Form LM–30 does not require general financial disclosure. Rather, its purpose is to highlight actual or potential conflicts of interest involving union officials. Thus, collecting large amounts of information with little or no utility can obscure other information concerning possible or actual conflicts of interest, as each report submitted must be searched separately in order to find information relevant to actual or potential conflicts of interest. Intermixing meaningful reports with thousands of innocuous reports impedes easy review of the reports that disclose actual or potential conflicts. Eliminating superfluous information removes an unnecessary burden on union officials and promotes the objective of section 202 to disclose actual and potential conflicts of interests.

The commenters expressed understandable concern that any loans or other transactions with terms preferential to union officials be reported. The Department's proposal, however, ensures that any such loans will be disclosed. Only loans and other transactions that reflect market rates are excepted from reporting. These transactions do not carry with them any indicia of a conflict, actual or apparent, between the union official and his or her duty to the union. As discussed in the 2010 NPRM and expressly stated in the Form LM–30 instructions, transactions not ''based upon the credit institution's own criteria,'' according to ''usual business practice,'' or ''made on terms related to the official's status in the labor organization'' must be reported on the revised Form LM–30. For example, if a loan is given to a union official with a low credit score, if a loan is extended or forgiven, if the loan does not reflect market terms, including usual fees, or if it otherwise evinces preferential treatment based upon the officials' union status, it must be reported. Any relaxation of the loan's terms, repayment requirements, or forgiveness must also be reported if based on preferential treatment because of the official's union status. Furthermore, loans received from employers or businesses that are not credit institutions must be reported. The same considerations apply to other transactions with credit institutions, including credit cards and interest-bearing accounts.

Finally, as noted, two commenters requested the Department to exempt from reporting loans and related transactions from credit institutions that are represented employers. Because the Department did not propose to eliminate this requirement, no extensive discussion is required. As noted in the NPRM, the Department acknowledged that it was not changing this aspect of the 2007 rule. Further, the Department notes that, historically, the Department has held that any loan to an official from an employer whose employees are represented by the official's union are reportable pursuant to 202(a)(2), without any statutory or other exceptions (other than the de minimis threshold). See IM sections 244.100 and 244.120; see also the pre-2007 Form LM–30 Instructions, Part A, exemption (iii).[25] The 2007 rule upheld this principle, and the Department stated in the preamble to the 2010 NPRM that a union official would need to report any loans from an employer represented by the official's union (or whose employees it actively seeks to represent).'' See 75 FR at 48426 n. 11. Additionally, the Department notes that the appearance of a conflict of interest and any temptation to curry favor by offering what appears to be an arm's length loan or related transaction on favored terms is much greater where the official's union represents (or seeks to represent) the institution's employees than where a loan is made by an institution that has a more attenuated relationship with the official's union.

D. Scope of Reporting Requirements Under Section 202(a)(6)

In the NPRM, the Department proposed to narrow the scope of reporting required under section 202(a)(6) with respect to (1) Payments from business competitors to the employer whose employees the union official's union represents or actively seeks to represent; (2) payments received from trusts; and (3) payments from unions. In this final rule, the Department has adopted its proposals on these points.

As explained in the NPRM, sections 202(a)(1)–(5) of the LMRDA establish conflict-of-interest reporting requirements concerning payments received by union officers and employees from two sets of entities: (1) Employers that a union represents or is actively seeking to represent; and (2) businesses, such as vendors and service providers, that buy or sell to the represented and potentially represented employers, the union official's union, or trusts in which the official's union is interested. In each case, the reporting obligation is triggered by the particular relationship between an official's union and the entity from which the official receives a payment or in which the official holds an interest.

By contrast, section 202(a)(6) does not specify any relationship between an entity and an official's union, nor does it express when payments must be reported. Rather, it more broadly requires union officials to report any payment of money or other thing of value from ''any employer or any person who acts as a labor relations consultant to an employer'' (except payments of the kinds referred to in section 302(c) of the Labor Management Relations Act of 1947, as amended (LMRA)). As noted in the NPRM and discussed in the 2007 rule, the Department has long interpreted section 202(a)(6) as a ''catch-all'' that captures conflict-of-interest payments from employers not otherwise reportable in the previous five subsections of 202. Thus, LMRDA Interpretative Manual section 248.005 states, in part: ''[Section] 202(a)(6) is designed for those situations which pose conflict-of-interest problems which are not covered in the previous five sections of 202.'' 72 FR at 36129. Further, the 2007 rule made clear that section 202(a)(6) can be read to encompass disclosure of any employer payment that could present a financial conflict of interest for the union official. *Id.* The Department did not propose to change this requirement.

After a review of the comments received, the Department retains the general requirement, as earlier proposed, that officials report payments from employers and labor relations consultants from whom a payment would create an actual or potential conflict between the filer's personal financial interests and the interests of the filer's labor organization (or the filer's duties to the labor organization). As proposed, the Department included a non-exhaustive list in the instructions for the revised Form LM–30 of examples of such actual or potential conflicts of interest. These examples included payments from business competitors of the employer whose employees the union official's union represents or whose employees the union is actively seeking to represent. Further, to ensure that only actual or potential conflict-of-interest payments are reported, the Department has qualified this requirement so that a union official, as a general rule, must report such financial interests only if the official is

[25] The exemption (iii) of Part A of the pre-2007 Form LM–30 Instructions exempts transactions ''involving purchases and sales of goods and services in the regular course of business at prices generally available to any employee of the employer. This does not apply to transactions involving stocks, bonds, securities, or loans, for example.''

involved with the union's organizing, collective bargaining, or contract administration activities or possesses significant authority or influence over such activities. As explained in the NPRM, an official will be required to report such payments where he or she possesses such authority or influence by virtue of his or her position, even if such authority has not been exercised. This rule also effectuates the proposal to retain the requirement that union officials must report payments received from an employer that is a not-for-profit organization that receives or is actively and directly soliciting (other than by mass mail, telephone bank, or mass media) money, donations, or contributions, from the official's labor organization.

The Department is revising, as proposed, the reporting requirements insofar as payments from certain trusts and labor unions pursuant to section 202(a)(6) are concerned. In contrast to the 2007 rule, which required payments from trusts to be reported, the Department proposed to return to its historical position that such payments are not reportable because they do not pose an apparent or actual conflict of interest between the official's personal financial interests and his duty to the union and its members. As explained in the 2010 NPRM and based upon the considered analysis in the Department's 1967 opinion on this issue, the Department believed that these payments pose ''no conflict with which Congress was concerned.'' 75 FR 48428. Further, the Department believes, as stated in the NPRM, that the better reading of section 202(a)(6) of the LMRDA is that labor unions and trusts are not within the universe of ''employers'' from which union officials should report payments, as both entities are treated separately from other ''employers'' under the Act. In drafting the LMRDA reporting and disclosure requirements, Congress delineated separate requirements for these discrete statutory actors (unions and trusts), and reporting of labor organization disbursements is set forth in section 201 of the statute, not section 202. Moreover, the Department maintains that this reading of the statute better implements the labor union and labor-management reporting requirements of the LMRDA.

Finally, the Department also retains, as proposed, the requirement that union officials must report five types of payments received from an employer, regardless of the relationship the employer has with the filer's union. These reportable payments to a union official (or the official's spouse or minor child) from any employer or labor relations consultant to an employer are payments for the following purposes: (1) Not to organize employees; (2) to influence employees in any way with respect to their rights to organize; (3) to take any action with respect to the status of employees or others as members of a labor organization; (4) to take any action with respect to bargaining or dealing with employers whose employees the filer's union represents or whose employees the union is actively seeking to represent; and (5) to influence the outcome of an internal union election. 72 FR at 36128, 36173. These payments, per se, create an actual or potential conflict between the filer's financial interests and his or her duties to the labor organization.

The Department received 15 comments on the scope of section 202(a)(6), with 12 supporting all of the changes,[26] one supporting the changes in part and opposing in part, and two comments opposing all of the proposed modifications to this aspect of the NPRM. The comments on specific aspects of the rule are addressed below.[27] As a preliminary matter, however, the Department believes it important to address the view expressed by two commenters that none of the proposed changes to reporting under section 202(a)(6) are justified.

In essence, these commenters read section 202(a)(6) as a mandate to require a union official to report on his or her financial interests with virtually all employers. The Department disagrees. It remains of the view that its interpretation is sound as a matter of law and policy. Granted, the terms of section 202(a)(6) are expansive, requiring a union official to report ''any payment of money or other thing of value * * * which he or his spouse or minor child received directly or indirectly from any employer.'' In contrast to the breadth of section 202(a)(6), however, each of the other paragraphs of section 202(a) addresses payments by particular employers or businesses that have dealings with the official's labor organization (202(a)(4)) or an employer whose employees are represented by the official's union or the union actively seeks to represent, (202(a)(1), (2), (3), (5)). The actual or potential conflict of interest for payments from and interests in such entities is evident.

The literal language of section 202(a)(6), if applied as the commenters advocate, would render superfluous the limiting language in the other subsections, as it would potentially require reporting from any entity that is an employer, regardless of whether or not the entity had any connection with the union and its represented employers. Given the absurdity of such construction, the Department, mindful of the statute's language and legislative history, has interpreted section 202(a)(6) as a ''catch-all'' provision, intended by Congress to capture various payments that would pose apparent conflicts of interest, even though outside the literal terms of subsections (a)(1)–(5). The Department has never interpreted this section in the way these two commenters apparently would prefer—as a mandate to require a union official to report on his or her financial interests from virtually all employers. The 2007 rule outlines this longstanding approach by the Department, 72 FR at 36128–30, and the Department has continued the same basic approach in this rulemaking, see 75 FR48426–29, 48434–35. As recognized in the 2007 rule and the 2010 NPRM, the Secretary must interpret the statute to clarify the intended reach of section 202(a)(6). 72 FR 36139–41; 75 FR 48429–30. Here, in contrast to the 2007 rule, the Secretary, in exercising her discretion to interpret that section, has concluded that it does not require union officials to report on certain payments received from employers that compete with represented employers, section 3(l) trusts, and labor organizations.

1. Obligation To Report Payments From Business Competitors of the Employer Whose Employees the Union Official's Union Represents or Whose Employees the Union Is Actively Seeking to Represent

As explained in the 2010 NPRM and reiterated here, the Department has historically viewed subsection 202(a)(6) differently than the other subsections of section 202(a). The relationships addressed in 202(a)(6), such as that between a union official and a competitor employer to a represented employer, are further removed from the

[26] Seven of these commenters supported the proposed changes to the 2007 rule but also opposed other portions and thus suggested additional modifications to the form.

[27] Two commenters suggested that the Department should further revise the section 202(a)(6) requirements to limit reportable interests solely to those payments made by employers that would impact the labor-management relationship between a union and a represented employer. Thus, for example, they would exempt from reporting payments to a union official from a charity to which the official's union contributes. Because the Department did not propose such change, the comments are outside the scope of the rule. The Department briefly notes, however, that the suggestion is at odds with the general ''catch-all'' purpose of section 202(a)(6), would leave undisclosed conflicts of interest, and is not compelled by the language of section 202(a)(6) or the Act's structure.

activities of the union than those involving the represented employer and the other business relationships addressed in the first five subsections of section 202. In particular, the competitor employer does not have a current and ongoing relationship with the union; indeed, neither is actively seeking such a relationship (if it did, sections 202(a)(1), (2), and (5) would likely apply). Further, any payment made by a competitor or other employer to not organize or otherwise affect the union official's responsibilities with the union is per se reportable under Part C of the instructions. Moreover, the Department believes that in the outside chance that there could be a conflict concerning a union official and a competitor employer, the Department's ''significant authority or influence'' test, as shown in italics and discussed below, would ensure its reporting.

The instructions to the Form LM–30, as revised in this rule, provide:

> Complete Part C if you, your spouse, or your minor child received, directly or indirectly, any payment of money or other thing of value (including reimbursed expenses) from any employer (other than a Represented Employer under Part A or Business covered under Part B above) from whom a payment would create an actual or potential conflict between these [28] financial interests and the interest of your labor organization or your duties to your labor organization. Such employers include, but are not limited to, an employer in competition with an employer whose employees your labor organization represents or whose employees your union is actively seeking to represent, *if you are involved with the organizing, collective bargaining, or contract administration activities or possess significant authority or influence over such activities. You are deemed to have such authority and influence if you possess authority by virtue of your position, even if you did not become involved in these activities.*

An example illustrates the difference between the 2007 Form LM–30 and the narrower reporting requirement implemented here. First, assume that an individual employed by a union to handle computer problems also works for a technology company that is a competitor of a company whose employees are represented by the union. Under the 2007 rule, the individual would have to file a Form LM–30 to report gifts, gratuities, or other non-exempt payments he or she receives from the technology company.[29] Under this rule, the individual would not have to report these payments. In contrast, assume that an individual employed by a union as an organizer also works for a technology company that is a competitor of a company whose employees are represented by the union. Under both this rule and the 2007 rule, the individual would have to file a Form LM–30 to report gifts, gratuities, or other non-exempt payments he or she receives from the technology company.

Multiple commenters offered support for the proposal. One national/international union supports the change as it reduces burden on officials and focuses reporting on actual or potential conflict-of-interest scenarios. With respect to burden, the commenter stressed the ''layers'' of subsidiaries and affiliates that must be researched to identify the represented employer's competitors in order to determine if reporting is required. Moreover, the commenter contended that this information may not be publicly available.[30]

One international union supported the change, but also suggested that it should be narrowed further to require reporting of a ''gift'' only when an official has ''actual knowledge'' of an employer being a competitor to a represented employer. It explained that such a change would reduce a filer's burden because it would be unnecessary to ''research potentially complex chains of business ownerships through webs of subsidiaries and affiliates.'' The Department does not concur with this suggestion, as determining if an official had actual knowledge would hinge reporting on a subjective assessment. Rather, a reporting obligation is triggered by objective circumstances that create an actual or potential conflict, or an appearance of one, and then, upon its disclosure, allows members and the public to assess the implications. As discussed in section V.C. of the preamble, the asserted burden associated with this aspect of the rule is overstated. As the Department explains in that section, the rule allows most filers to compile the necessary information through a relatively easy three-step process.

Two public interest organizations opposed the change. The first stated that restricting reporting to officials involved in organizing, collective bargaining, or contract administration is contrary to the statutory text and the views Congress expressed in the legislative history. The commenter maintained that this change would remove a ''significant amount of disclosure by employers and union officials'' who do not engage in these activities. Another public interest organization similarly questioned why the Department would limit reporting to situations ''where an official is involved with organizing, collective bargaining,'' or so forth, as proposed. The commenter argued that this limitation would run counter to the purposes of the Form LM–30, which is to disclose conflicts of interest, and it does not accurately reflect the administration of most unions, in which any payments to any official, regardless of the formal title, could ''easily'' influence all the others. The commenter stated that, ''any representative in any capacity should be required to report relevant payments from any employer.''

The Department disagrees with the contention that this change to section 202(a)(6) reporting is not based in the statute or is contrary to the legislative history. To the contrary, the Department has consistently held that section 202(a)(6) is a ''catch-all'' for conflicts of interests not otherwise captured in the previous subsections of section 202. The Department's interpretation is consistent with section 202(a)(6), its legislative history, and the purposes served by the Act's disclosure requirements. The Department's proposal, as adopted in the final rule, provides clear examples to the public as to what circumstances trigger reporting, without overburdening union officers and employees. It triggers reporting on the core, essential functions of a labor organization: organizing, collective bargaining, and contract administration. In this regard, the Department notes, contrary to the commenters' apparent suggestion, that the Congressional goal in enacting section 202 was not to require wholesale ''disclosure by

[28] The NPRM stated, ''between *your* financial interests * * *'' The Department modified this phrase to read ''between *these* financial interests,'' so filers are aware that they must look at the payments and interests of their spouse and minor children as well as their own.

[29] It should be noted that such employee would not be required to report his regular wages from the employer. LMRDA, section 202(a)(6), which exempts payments of the kinds referred to in LMRA section 302(c)(1), excepts these payments from reporting. A public policy organization, which offered general opposition to the proposed changes to the reporting of payments from competitor employers, noted that the NPRM indicated that the wages paid by the technology company would be reportable under the 2007 rule, and that this mistake cast doubt on the entire NPRM. The text has been clarified to make plain that regular wage payments are not to be reported.

[30] The concerns of the commenters pertaining to the level of ''research'' that must be conducted in order to determine what payments are reportable are unsubstantiated and exaggerated. As discussed in greater detail in the top-down reporting section of this preamble, III.E., the scope of the official's inquiry is limited to considering non-exempt, atypical payments received from an employer and only *then* must the official look at the relationship that the employer has with the official's union. Nevertheless, by limiting this aspect of reporting to officials that possess actual authority or influence over subordinate affiliates, the rule should ameliorate concerns among some filers.

employers and union officials,'' but, rather, *conflict-of-interest* disclosure; the revisions contained in this rule effectuate this purpose.

The restriction of reporting to those with influence over organizing and similar areas applies only to the broad ''catch-all'' provision of section 202(a)(6), and not to the other provisions of section 202. Indeed, pursuant to these other provisions, the Department will continue to require reporting by union officers and non-exempt employees of payments from represented employers and the enumerated businesses with close relationships with the officials' union.[31] However, the Department does not interpret section 202(a)(6) in the same manner, as a competitor employer is further removed in relationship to the union. The Department notes, though, that Part C of Form LM–30 still requires the reporting of *any* payment to *any* covered union officer or employee, *if* the payment constitutes a per se reportable activity, pursuant to the Revised Form LM–30 Instructions, Part C: Other Employer or Labor Relations Consultant (reportable per se activities). This position is consistent with the Department's longstanding approach treating the broad section 202(a)(6) language as a ''catch-all'' to capture *likely* conflict-of-interest payments not otherwise captured by sections 202(a)(1)–(5).

The Department also notes that a national union objected to the Department's general ''catch-all'' requirement, retained in the NPRM, that a union official must report any payment from an employer that creates an actual or potential conflict of interest. The commenter described the requirement as confusing and too broad. The commenter objected that the Department's proposal would require reporting of transactions that will have no effect on labor relations or union administration. In response to this comment, the Department cannot delineate every conceivable conflict-of-interest scenario, nor could Congress, which is why it established section 202(a)(6). Generally, entities from which payments are reportable are described in the instructions, and the Department will provide compliance assistance to filers with questions about specific circumstances.

2. Obligation To Report Payments Received From Trusts

In the 2010 NPRM, the Department proposed to return to its longstanding interpretation that union officials are not required to report payments received from trusts in which their unions have an interest. These trusts are defined by section 3(l) of the LMRDA as a ''trust or other fund or organization (1) That was created or established by a labor organization, or one or more of the trustees or one or more members of the governing body of which is selected or appointed by a labor organization, and (2) a primary purpose of which is to provide benefits for the members of such labor organization or their beneficiaries.'' See Form LM–30 Instructions, p. 13.

As explained in the NPRM, this interpretation is reflected in a 1967 opinion signed by the head of OLMS's predecessor agency and the Department's Solicitor. As there stated:

> Congress was concerned with arrangements with the primary employer, that is, the one whose employees the union represents or seeks to represent, which might impair the union officer's loyalty as a representative of that organization [vis-à-vis] the employer. Even assuming that a trust fund could successfully be characterized as a primary employer, which we doubt, we fail to perceive the existence of a conflict where a union official received payments from a trust fund for which he also works, even if this arrangement is approved by employer representatives on the trust. The employer representatives are acting in their role as trustees and thus no conflict-of-interest situation with which Congress was concerned arises.

Id., p. 4–5. As the letter notes, payments from trusts to union officers and employees—wages to employees or reimbursed expenses—are payments reported elsewhere and, more importantly, pose ''no conflict with which Congress was concerned.'' Kleiler-Donahue Ltr., p. 5.

A federation of unions, eight national/international unions, and one law firm offered support for the Department's proposal regarding payments from trusts and its stated rationale in the NPRM. In particular, these commenters stressed that payments from section 3(l) trusts to union officials do not pose an actual or potential conflict of interest. One international union emphasized that such trusts are created to benefit the members and their beneficiaries, so a payment from the trust would not pose a conflict of interest for a union official. Another international union added that Congress did not intend union trusts to be treated as employers and other businesses under section 202(a)(6). An international union commented that reporting of expense reimbursements for serving as a trustee of a union benefit fund had never been required, expressing support for the Department's proposal to return to the former practice.

Further, one international union stated that the removal of such reporting would eliminate an inconsistency between what union trustees would report and management trustees were not required to report. An international union stressed that reimbursements to union trustees should not be reportable. Another international union offered two technical corrections to the revised Form LM–30 Instructions, in Part C, to make explicit that payments from trusts are not reportable. The Department will address these suggestions later in the preamble section on the revised form and instructions. See Part IV.

Two commenters opposed the Department's proposal to eliminate the reporting of payments made by section 3(l) trusts to union officials.[32] A public interest organization asserted that the Department offered ''no good reason'' for the return to its ''historical position''; that the Department had ''found no problem that will be solved'' by the modification; and that the proposal was ''primarily based on a very old internal'' opinion. This commenter, however, provided no basis for rejecting the Department's rationale, nor did it offer any rationale as support for the position taken in the 2007 rule. In the 2010 NPRM, the Department cited the Kleiler-Donahue letter to emphasize the longstanding nature of the position, as well as to explain the letter's reasoning. 75 FR 48428. To reiterate the point made in the NPRM, the preamble to the 2007 rule merely cited the letter without refuting it, and the Department now returns to the position and rationale stated in the letter. 72 FR 36154. Payments received from a section 3(l) trust do not establish a conflict of interest, as the interests of the trust and union, or an official's duties to the union, do not diverge. Indeed, a section 3(l) trust must exist for the primary

[31] The Department notes that, in interpreting the scope of ''top-down'' reporting, the Department is only requiring reporting by employees of intermediate and national/international unions of payments from and interests in entities with requisite relationships with lower-level unions, when such employees have significant authority or influence over such lower-level unions. See Part III.E. herein. The Department's approach here with respect to reporting interests in and payments from a competitor of a company whose employees are represented by the union is similar.

[32] These organizations also asserted that the Department's proposal as it applies to the reportability of payments to trusts and unions is inconsistent with the Act's language, its structure, and relevant case law. One of the commenters also asserted that the proposal was contrary to the position that the Department has taken in enforcement litigation under section 203 of the Act. Because these assertions are focused primarily on the Department's proposal to revise the reportability of certain payments from unions, these arguments are discussed in the section that follows in the text.

purpose of providing benefits to the union members and their beneficiaries. Moreover, requiring Form LM–30 reporting in situations that do not pose a conflict of interest would be inconsistent with the balanced reporting regimen intended by Congress.

Another public interest organization opposed the proposed change contending that a conflict of interest arises and public disclosure is required when an entity spends lavishly on union officials. The comment cited examples of payments from several entities to union officials, including two from filed LM–30 reports that, it asserted, would not be disclosed under the Department's proposal.

In response to this comment, the Department again emphasizes that section 202, and the Act as a whole, do not provide for general reporting of any payment by an employer, business, or trust to a union official that may have an undefined, arguable, or even subjective ''disclosure value.'' To be reportable, a payment must create a divergence between the financial interest of the official and the interests of the official's labor organization. See Revised Form LM–30 Instructions, Part C. Such circumstances do not generally arise regarding a section 3(l) trust, as the union and the trust have a common interest in ensuring that the trust operated for the benefit of their common beneficiaries, the union's members. With regard to the commenter's characterization of certain payments, this rulemaking is not the appropriate place for issuing determinations regarding disclosure in specific factual situations. However, as discussed below, there are reporting requirements that apply in situations such as those described by the commenter.[33]

First, full disclosure is required concerning the financial operations of certain entities previously considered to be section 3(l) trusts that are wholly owned, controlled, and financed by a single labor organization. These are ''subsidiary organizations'' of a labor organization, and the financial transactions of such subsidiaries would generally need to be reported on the labor organization's annual financial disclosure report, thus providing disclosure. See the Labor Organization Annual Report Form LM–2 Instructions, Section X[34] and the Labor Organization Annual Report Form LM–3 Instructions, Section X. Second, although not covered by LMRDA section 202, many section 3(l) trusts, such as pension and welfare plans, including many Taft-Hartley plans, are covered by the Employee Retirement Income Security Act (ERISA), which provides reporting and disclosure requirements as well as other financial safeguards for employee benefit funds. Third, pursuant to a longstanding interpretation retained in the 2007 rule and this rule, while payments from a trust are not reportable by a union official on the revised Form LM–30, payments from and interests in any business that deals with the official's section 3(l) trust are reportable.

3. Obligation To Report Payments From Unions

In the 2010 NPRM, the Department proposed to modify specific aspects of the general requirement that union officials report payments they received from labor organizations. 75 FR 48428. In support of the proposal, the Department relied on its statutory analysis of the Act's reporting provisions, concluding that section 202(a)(6) is better read as limited to payments by employers—distinct from labor unions—notwithstanding the acknowledgment, in discussing the reporting obligations of an official of a staff union, that a union may be an employer. 75 FR 48428–29. Further, as explained in the NPRM, the Department's proposal would not affect a staff union official's obligation to report payments he or she receives from a union-employer whose employees the official's union represents or actively seeks to represent.

The Department, in reconsidering the position taken on this question in the 2007 rule, has concluded that a better reading of the LMRDA is that a ''labor organization'' is distinct from an ''employer,'' as that term is used in section 202(a)(6). As stated in the NPRM:

In drafting the LMRDA reporting and disclosure requirements, Congress mandated separate requirements for the discrete statutory actors: ''labor organizations,'' ''labor organization officers'' and ''labor organization employees,'' ''employers,'' ''labor relations consultants,'' and ''trusts in which a labor organization is interested.'' (While there are no reporting requirements for section 3(l) trusts, section 208 authorizes the Secretary to establish such requirements for labor organizations concerning such entities.) Further, the statute separately defined five of these six terms. See sections 3(e), 3(i), 3(l), 3(m), and 3(n) of the LMRDA.

In the Department's view, section 201 requires ''labor organizations'' to disclose, among other financial transactions and information, disbursements to many individuals and entities, including employers, businesses, their own officers and employees and, potentially, those of other labor organizations. Section 203, on the other hand, requires ''employers'' to file certain reports. As applied to section 202, ''labor organization'' officers and employees must report payments from ''employers'' and ''businesses'' that have established certain relationships with the official's ''labor organization.'' The statute's reporting provisions thus establish ''employers'' and ''labor organizations'' as distinct and separate entities. There is nothing in the statute that indicates that Congress intended, for reporting purposes, that the category of employers also would include labor organizations, or that Congress meant for officers and employees to report transactions with labor organizations acting as such. If Congress had intended that result, it seems apparent that in drafting section 202 it would have explicitly identified payments from labor organizations as reportable.[35]

The Department holds the view that this reading of the statute better implements the labor union and labor-management reporting requirements of the LMRDA. First, as stated above, conflict-of-interest payments from labor organization-employers represented by staff unions are reportable under sections 202(a)(1), (2), and (5). Second, the various reports required under section 201—Form LM–2, LM–3, and LM–4 Labor Organization Annual

[33] Although the commenter has identified information that may be of interest to union members, it has provided no information that indicates that those payments, in fact, pose a real or apparent conflict with the official's duty to his union. The information that the union reported just as readily evinces the symbiotic relationship that exists between the official's union and the trust and a unity of interest, rather than divided loyalty. Furthermore, the commenter provides no information to indicate that the reported information would be unavailable to members of the public through public documents required of the trust by other regulatory authorities such as the IRS or banking authorities. Moreover, compliance assistance, not this rulemaking, is the appropriate mechanism to address specific factual circumstances.

[34] The Department notes that reporting for subsidiary organizations on the Form LM–2, the annual financial disclosure form for the largest labor unions, was removed from the reporting requirements for that form as a result of revisions made in 2003. See 68 FR 58374 (Oct. 9, 2003). Subsequently, in 2010, the Department returned subsidiary reporting to the Form LM–2 reporting requirements for fiscal years beginning on or after January 1, 2011. See 75 FR 74936 (Dec. 1, 2010).

[35] This reasoning is consistent with LMRDA Interpretative Manual section 260.005. This section provides that no report is required for activities performed by an attorney on behalf of a union (distinct from activities performed for an employer), even though the attorney meets the definition of ''labor relations consultants'' under section 3(m), because the only section of the Act which requires reports from labor relations consultants is section 203(b), which provides for reports from every person who has an agreement with an *employer* for certain purposes.

Reports—require all covered labor organizations to disclose any disbursements, including those to officers and employees of other unions. Such disbursements include those addressed in Part B, Schedule 3, Employer's Relationship 5(b)–(e), of the 2007 Form LM–30 that required filers to report payments from certain unions. See 72 FR 36163. All of these disbursements constitute payments from labor organizations in their capacity as the representative of employees, not as an employer of employees. A union member or a member of the public would naturally look to the labor organization's annual financial disclosure report, and not the Form LM–30 reports, to view disbursements from a particular union. Further, pursuant to section 201(c), union members can view the underlying records of their union's reports to ascertain further information related to the payments to third-party union officials.

Multiple commenters offered support for the proposal regarding payments from unions and the stated rationale in the NPRM. In particular, multiple national/international union commenters stated that the statute does not allow the reading of ''employers'' to include ''labor organizations,'' outside of the staff union context. One international union stressed that section 201 provides for reporting from unions, and that a ''plain reading'' of the Act clearly distinguishes between ''labor organizations'' and ''employers'' for purposes of financial reporting and, with the exception of payments to staff union officials, does not require union officials to report payments received from a union. This union points out that payments by a union are captured on the union's own reports, as prescribed by section 201 of the Act. Two unions emphasized the Act's legislative history as well as the statutory language. One international union also offered support for IM section 260.005. None of these commenters disagreed with the Department's analysis that union-employer payments to staff union officials should be reportable.

One commenter based its opposition to the Department's proposal on the LMRDA's definitions of ''employer'' and ''employee.'' The commenter contends that these ''clearly defined terms'' apply to the whole of the Act, and they must include labor organizations and labor organization employees, as one cannot be an ''employee'' under the Act unless one works for an ''employer.'' According to the commenter, the 2007 Form LM–30 defined these terms pursuant to the statutory definitions without removing a ''subset'' of employers from the definition, namely ''labor organizations'' and section 3(l) trusts. The commenter also asserted that the Department's interpretation in the NPRM causes ''structural'' problems, as the Department ''ignored'' that unions are ''employers'' in areas other than section 202. The commenter cited rules of statutory construction and case law articulating these rules to argue that terms within a statute must be applied consistently throughout the statute. To do otherwise, it asserted would create a ''Pandora's Box'' of problems, as unions must report payments to their ''employees'' pursuant to section 201 and union ''employees'' must comply with the section 202 reporting requirements.

Further, the commenter stated that Congress would have excluded ''labor organizations'' from the definition of ''employer'' in the LMRDA if it intended for unions to not be covered by section 202(a)(6). The commenter also contended that the Department's ''discrete statutory actors'' argument was inconsistent with the Department's litigation position in *Warshauer* v. *Solis,* 577 F.3d 1330 (11th Cir. 2009) and the court's holding in that case.[36] In the commenter's view, the Department there argued that ''employer'' is not just the represented employer, but any private sector employer. The commenter concluded that the Department cannot have it ''both ways,'' that ''employers,'' ''labor organizations,'' and ''labor relations consultants'' cannot be discrete actors under the Department's theory in *Warshauer.* The commenter also states its view that under the Department's analysis a union-employer and its consultants could be required to file reports under the persuader activity language of section 203.

Another public interest organization criticized the position taken by the Department in the NPRM, stating that there is ''little basis'' for excluding unions from the ''employers'' of section 202(a)(6). The commenter rejected the idea that ''employers'' and ''labor organizations'' are discrete statutory actors, arguing instead that the definition of ''employer'' is ''broad and inclusive'' and does not exclude labor organizations. The commenter also rejected the notion that Congress would have included the term ''labor organization'' in section 202 if it intended for payments from them to be reported by union officials. In its view, such intention is negated because the Act ''neither narrowly defines'' when a union is an employer, nor ''specifically excludes'' unions from the definition of the term, thus indicating that the ''plain reading'' of the statute is that labor organizations can be employers. Further, the commenter cites the National Labor Relations Act (NLRA) definition of employer, which excludes labor organizations (except when acting as an employer). The commenter also asserts that the Department ''argues against'' itself by asserting that labor organizations can be employers in the context of staff unions. Finally, the commenter referred to the removal of unions and trusts from the scope of ''employer'' under section 202, as an effort to eliminate ''unions and labor union-controlled trusts'' from the section LMRDA section 203 reporting requirements concerning employer and labor relations consultants.

With regard to the particular contentions by the two commenters, the Department concurs with the observation that ''labor organizations'' and ''employers'' are not mutually exclusive. Indeed, labor organizations often act in a dual capacity, as both labor organizations and as employers. Further, the statute does not define ''employer'' in a manner that excludes ''labor organizations'' from its definition, which facilitates coverage of staff unions under the Act and labor organization ''employees'' in various parts of the statute, several of which the commenters cited, including section 202. The Department also acknowledges that the LMRDA defines the term ''labor organization'' differently than does the NLRA.

The Department disagrees with the assertion that it utilizes ''employer'' inconsistently throughout the Act. As stated in the NPRM, the Department considers that the better application of section 202(a)(6) is to exclude payments from ''labor organizations,'' as the LMRDA establishes separate reporting requirements for ''labor organizations'' and ''employers,'' a statutory construction that reduces redundancy in the reporting requirements and burden on unions and their officials. Indeed, payments from labor organizations are reportable pursuant to section 201, while union officials must report conflicts of interest pursuant to section 202, and employers and labor relations consultants must report under certain circumstances pursuant to section 203. Thus, the ''plain reading'' of the term ''employer'' within section 202 does not include labor organizations acting as labor organizations. If Congress

[36] In that case, the court held that an attorney who was designated legal counsel (DLC) (designated by the union to provide legal services to its members for claims relating to workplace injuries) is subject to the LMRDA's section 203 reporting requirements as an ''employer'' if it has employees and makes reportable payments to unions or union officials.

intended for payments from labor organizations to be reported pursuant to sections 202(a)(6) or 203(a)(1), then it would have included the term ''labor organization'' along with ''employer.''

Contrary to the commenters' view, the Department's position is consistent with the structure of the Act. For example, section 201 establishes initial and annual reporting requirements for entities that meet the statutory definition of ''labor organization,'' and when section 201 refers to an ''employee'' of a labor organization, then it clearly is referring to the subset of labor organizations that also qualify as an ''employer,'' as this is the only reading of the statute in which labor organizations can have employees. Further, in section 504(a), the statute uses the terms ''employer'' and ''labor organization'' separately and explicitly, to enumerate each situation in which a person is barred from serving a union or employer, or as a labor relations consultant for either entity. In section 504(a)(3), the statute bars an individual from serving as a labor relations consultant or adviser to a ''person engaged in an industry or activity affecting commerce,'' a term that is broader than both ''employer'' and ''labor organization.'' See LMRDA section 3(d). Thus, the approach articulated in this rule does not establish any ''structural'' problems identified by the commenters, nor does it open any ''Pandora's Box,'' as one commenter suggested.

The commenter is mistaken in its understanding of the Department's position in *Warshauer* v. *Solis.* In that case, the court held that the Department did not act arbitrarily and capriciously in determining that the term ''employer'' in section 203(a)(1) included employers who did not participate in persuader or other labor relations activities. In *Warshauer,* the plaintiff, an attorney providing legal services to members of a union, conceded that he was an ''employer'' but argued that only employers who persuade employees about their right to organize and bargain collectively must file reports, and that he did not engage in this activity. The pertinent statute, section 203, contained five reporting provisions, four of which were triggered by persuader activity. The remaining provision was not so limited, requiring reporting based solely on certain financial payments, and the Department contended that its plain language required the plaintiff to file a report without regard to whether he engaged in persuader activity. In *Warshauer,* like here, the Department interpreted the language in light of the other requirements imposed on filers by the statute (there on ''employers,'' here on labor union officials), the Department's longstanding interpretation, and, secondarily, on the Act's legislative history. See Brief for Appellee, 2008 WL 526954, Argument at I.A.1. & 2., B. 3.a. & b., C. 1. (brief is without pagination on Westlaw); 577 F.3d 1330, 1335–36 (upholding Secretary's interpretation after considering the language of section 203(a)(1) and its context among the five subsections of section 203).

In *Warshauer,* the Department did not assert that the term ''employer'' must be read in a way that would require a labor union with employees to be treated as an employer for all purposes under the Act. Both the Department's brief and the court's opinion focus on the particular language of section 203((a)(1)), there at issue. While the Department argued in that case that section 3(e) of the Act ''defines the universe of employers'' encompassed by section 203(a)(1)'s employer reporting requirements, neither the Department's brief nor the court's opinion is in any way inconsistent with the Department's interpretation of section 202(a)(6). Further, while the Department argued that ''employer'' encompassed the universe of employers encompassed in section 3(e) of the Act, it did not assert that every *payment* from all such employers was reportable. Rather, in additional guidance, the Department delineated the kinds of relationships that employers must have with unions to trigger reporting for payments to such unions and their officials. See Form LM–10 FAQ 10. The Department's position here is consistent with *Warshauer.* The court did not address the issue whether the term ''employer'' included ''labor organizations,'' either in section 202 or 203, but instead recognized that Congress specifically limited the ''employers'' in other subsections of 203, but chose not to in section 203(a)(1). See *Warshauer* v. *Solis,* 577 F.3d at 1335. While *Warshauer* stands for the principle that ''employer'' in section 203(a)(1) is broader than merely employers who participate in persuader or other labor relations activities, it does not address the different question as to whether ''labor organizations'' acting as such are included within this term, given that the statute delineates separate reporting provisions for ''labor organizations'' and ''employers.'' The reasoning in *Warshauer* supports the Department's determination here that if Congress intended to include payments from ''labor organizations'' acting as such in section 202(a)(6), then it would have included the term ''labor organization'' alongside ''employer.''

Further, the Department's analysis on this point is also consistent with the one case that addressed the scope of the section 202 reporting requirements. In *U.S. v. McCarthy,* 300 F. Supp. 716, 720–21 (S.D.N.Y. 1969), the court held that a union officer must report a salary received from a labor relations consultant to an employer, pursuant to section 202(a)(6). The union officer argued that such payments were exempt under LMRA section 302(c)(1) (the section 302 exemptions are relevant because section 202(a)(6) refers to section 302(c)), but the court held that a ''labor relations consultant'' is not a statutory ''employer'' under the LMRDA. Otherwise, the court recognized, the intent of section 202, to disclose conflict-of-interest payments, would be circumvented. Hence, the court held that the provision exempting regular wage payments from an employer was not applicable to regular wage payments from the labor relations consultant.

There is no merit to the contention that the Department's proposal unreasonably distinguishes between staff unions and other unions that also have employees. The distinction is based on the fact that the payments (such as gratuities) must be reported under sections 202(a)(1)(2), and (5)—as payments by a represented employer to a union official—while in the other circumstances enumerated in the 2007 rule, the union is not making the payments as an employer. This treatment ensures that the Form LM–30 reporting requirements apply to staff union officials as they would to officials of other LMRDA-covered unions.

Regarding the commenter's concern that the changes proposed would deny union members any information about payments made by a union to union officials, the Department reiterates the point made in the NPRM that any such payments would be included in the payor-union's annual financial disclosure report, either in the aggregate or, in specified circumstances, itemized when they reach $5,000. See 75 FR 48428–29. If payments in question are exclusively benefits, then they would be included in Schedule 20 of the Form LM–2. Members of the local could also examine the underlying documents related to the reporting, for just cause, pursuant to section 201(c). As stated, the reporting and disclosure of labor organization expenditures are pursuant to LMRDA section 201, not section 202.

As to the comment that alleged the Department lacks understanding of the Act, the Department first reiterates that

''labor organizations'' can be employers when acting as employers. Thus, payments from a union-employer to a staff union official are reportable on the Form LM–30 pursuant to section 202(a)(1). The result is the same, even if the union-employer is a non-LMRDA covered union, evidencing the consistency in the Department's approach. Moreover, the commenter's argument does not flow logically, as, under the 2007 rule, not all non-exempt payments from LMRDA covered ''labor organizations'' to union officials were reportable pursuant to section 202(a)(6); just those from ''labor organizations'' with employees were reportable.

Finally, regarding the contention that the Department's interpretation will affect reporting under the persuader activity provisions of section 203, this area is outside the scope of this rule. The Department notes that the suggested problems are not self-evident. See LMRDA Interpretative Manual section 260.005 (discussed earlier in this section) for guidance on the application of section 203 in this respect.

4. Obligation To Report Payments From Charities and Other Not-for-Profit Organizations

In the NPRM, the Department proposed no changes concerning the reporting of payments received by union officials from not-for-profit organizations. Nonetheless, the Department received four comments from unions, asserting that such payments should not be reportable because they do not arise out of labor-management relations. The commenters contend, in essence, that section 202(a)(6), should not be applied to payments that do not take place within this context. Such a request is beyond the scope of this rule, but the Department, for completeness, discusses these comments below.

One federation of unions praised the Department's narrowing of reporting on payments received by union officials from trusts and unions. It agreed with the Department's assessment that each entity is a discrete actor not named in section 202. It also contended, however, that the text and legislative history and purpose of section 202 require that ''employer'' in section 202(a)(6) be read to include only labor relations conflicts of interest not covered in sections 202(a)(1), (2), and (5). The federation asserted that the ''employer'' in section 202(a)(6) included employers in the same ''labor market'' or ''likely organizing targets.'' The comment presented three arguments supporting this view: section 202(a)(6) uses the term ''an employer,'' like sections 202(a)(1) and (5); the section also uses ''labor relations consultant'' to an employer, rather than more broadly ''any person who acts as a labor relations consultant to an employer''; and the subsection cites the LMRA section 302(c) exceptions, which apply in a labor-management context. An international union stated that extensive reporting concerning charities and other not-for-profit organizations exists elsewhere, citing the Form 990 filed with the IRS and the reporting of payments to such entities from unions on the Form LM–2. Thus, Form LM–30 reporting of payments from such entities to unions, in its view, would be redundant, burdensome, and without a statutory basis.

The Department addresses these concerns only briefly. As noted, the Department proposed only limited changes to reporting under section 202(a)(6). Similar arguments directed at restricting the reach of that section were considered and rejected by the Department in the 2007 rule. 72 FR 36130. The Department has not reconsidered this position, but notes that the interpretation suggested by the commenters is not compelled by the language of section 202(a)(6) or the legislative history relied upon by the commenters. Furthermore, the Department notes that payments from a charitable organization to a union official, including director's fees and reimbursed expenses, are potential conflicts of interest, as the union official could be influencing the union to donate to the charity in order to maintain the position and income associated with his or her position on the charity's board, and not based upon the union's best interests. The commenters have offered no persuasive reason why union members should be denied information that allows them to make a determination about a potential conflict of interest. Additionally, while some reporting may be duplicated by other reporting frameworks, the Form LM–30 enables members and the public to view potential conflict-of-interest payments to union officials in one location, which justifies any marginal, additional burden on the union official.

Another commenter, a law firm, offered recommendations on reporting regarding payments from charities and other not-for-profit organizations. The commenter argued that requiring reporting of reimbursed expenses would discourage union officials from providing volunteer services to such organizations. The Department considers that any payment, including a payment for expenses incurred in voluntary service, must be reported to serve the conflict-of-interest reporting obligation intended in the Form LM–30 rule. The requirement to report does not apply universally to payments from all charities and non-profits, but only to payments from a charity or other non-profit that ''receives or is actively and directly soliciting (other than by mass mailing, telephone bank, or mass media) money, donations, or contributions from the official's labor organization.'' In such circumstances, the need for conflict-of-interest reporting is apparent.

The commenter also urged the Department to state that a non-profit organization is not actively seeking contributions from a union in receiving a membership dues payment from the union or a payment for advertising in the non-profit's publication. The effect of such a construction would be to exempt union officials from reporting payments from a non-profit under these circumstances, thereby defeating the intended conflict-of-interest disclosure purposes. It should be noted that the issue of what constitutes solicitation of donations is not relevant in the situation posed by the commenter. As presented by the commenter, the non-profit organization actually receives money or contributions from the union. The Form LM–30 rule provides that a union official must report payments received from a charity or non-profit organization if that organization receives money or contributions from the official's union or is actively and directly soliciting donations. Thus, the issue of what constitutes solicitation of donations for purposes of applying the Form LM–30 rule is not relevant. Further, it is beyond the scope of this rulemaking to make a determination concerning what activity constitutes solicitation of donations of union funds.

E. Scope of ''Top-Down'' Form LM–30 Reporting by National, International, and Intermediate Body Labor Organization Officers and Employees

In the NPRM, the Department proposed to extend the top-down reporting requirements, expressly established for *officers* of international, national, and intermediate unions by the 2007 rule, to *employees* of such organizations, who had been excepted from reporting under the 2007 rule. Under the proposal, employees of parent and intermediate unions, like the officers of such unions, would be required to report on financial interests in, and payments from, companies that have dealings with their union's subordinate affiliates and their trusts, as well as certain companies doing business with a represented employer. The NPRM also proposed to eliminate

two limited exceptions established by the 2007 rule (sometimes referred to as ''carve-outs'') whereby union officers, when applying the top-down reporting requirements, were not required to report on: (1) Payments received by the officer's spouse or minor children as bona fide employees; and (2) financial interests held in companies that did business with an employer whose employees were represented by subordinate affiliates. 72 FR 36122. Apart from eliminating these exemptions, the Department proposed no changes to top-down reporting by officers of parent and intermediate unions.

Based on a review of the comments, the Department has modified its proposal insofar as it affects reporting by employees of parent and intermediate unions. In the final rule, the Department requires these employees to report on ''top-down'' financial interests and payments where they hold positions of significant authority or influence over the subordinate affiliates. The ''significant authority or influence'' trigger is similar but not identical to the Department's proposal in the 2010 NPRM to reduce the burden associated with the reporting of payments from companies that are in competition with a represented employer.[37] Comments on the NPRM suggested that a similar approach would eliminate some of the uncertainty and burden surrounding top-down reporting. As discussed in greater detail below, the Department concurs with the suggested approach. It ensures that employees of parent and intermediate unions generally will report any financial interests that could pose a conflict of interest, while eliminating the uncertainty regarding reporting on matters that pose little or no risk of a conflict of interest.

Additionally, the Department has adopted the proposed elimination of the carve-outs. The Department has accordingly modified the scope of top-down reporting for union officers and employees to read:

> When applying the Form LM–30 reporting requirements, you are required to look at employers and businesses that have specified relationships with the level of the union in which you serve as an officer or employee. However, if you are an officer of a national, international, or intermediate union, you must also look at employers and businesses that have specified relationships with subordinate affiliates (*e.g.,* a local union or other subordinate body), as well as your own level of the union. These relationships are identified below in the instructions for completing Parts A, B, and C of the form. If you are an employee of a national, international, or intermediate union and possess significant authority or influence (whether or not exercised) over a subordinate affiliate's activities (*e.g.,* its organizing, collective bargaining, contract enforcement, spending or investment decisions, or union administration), you are also required to look at employers and businesses that have specified relationships with such affiliate, as well as your own level of the union. See instructions below.

1. Background

Many labor organizations consist of a three-tier hierarchy: local labor organizations, intermediate bodies, and a ''parent'' national or international labor organization. This section of the rule concerns the obligation of a union officer or employee of a higher-level union (intermediate or national/international) to report his or her interests in and payments (and those of the filer's spouse and minor children) from employers and businesses that have a relationship with subordinate affiliates of the employee's union.

Under sections 202, union officers and employees must report payments from, holdings in, or transactions with:

- An employer whose employees the filer's labor organization represents or is actively seeking to represent;
- A business a substantial part of which consists of dealing with an employer whose employees the filer's labor organization represents or is actively seeking to represent; or
- A business that deals with the filer's labor organization or, as interpreted by the Department, a trust in which the filer's labor organization is interested.

The scope of the reporting obligation thus depends on which organizations constitute the filer's ''labor organization.'' The issue here is the disclosure obligation of potential conflicts of interests that arise between a union official and his or her responsibility to his or her immediate organization as well to any subordinate labor organization(s) within the union's structure.

In the rulemaking that culminated in the 2007 final rule, the Department interpreted the language of section 202 to require top-down reporting. In reaching this conclusion, the Department relied on the structure of the statute, the findings by the McClellan Committee concerning conflicts of interest between higher-level officers and subordinate unions, the stated purpose of the LMRDA to redress the problems identified in the McClellan hearings, and the Department's longstanding interpretation in the LMRDA Interpretative Manual that certain top-down reporting was required. 72 FR 36121–24.

Although the instructions to the Form LM–30 had historically been silent on this point, there has been longstanding administrative precedent applying the section 202 requirements to higher-level union officials. For example, in Section 241.100 of the LMRDA Interpretative Manual, the Department addressed the reporting standards for international union officers, as follows:

> Section 202(a)(3) of the Act requires reports from ''every officer of a labor organization'' of income derived from ''any business a substantial part of which consists of buying from, selling or leasing to, or otherwise dealing with, the business of an employer whose employees such labor organization represents or is actively seeking to represent.'' An international union officer must report his income from such a business even though he is not an officer of the local which represents the employees of the business, and even though his duties as an international officer do not include representation activities.

2. Overview of Comments Received and Department's Response

Twelve comments, all from unions, including one federation of unions, specifically discussed the top-down reporting requirement. An additional three union commenters expressed overall support for comments submitted by the federation of unions, which included recommendations on top-down reporting. One international union supported the Department's proposed top-down reporting requirement as articulated in the NPRM. All others expressed opposition, asserting that the Department's proposed top-down approach creates undue burden, and represents a considerable expansion of the scope of top-down reporting requirements set forth in the 2007 rule.

Comments To Eliminate the Top-Down Reporting Requirement and Department's Response

Six of the commenters who opposed the proposed top-down reporting requirement asserted that this reporting requirement should be eliminated altogether in light of the burden that it imposes. One international union asserted that it not only opposed the

[37] In the NPRM, the Department proposed to limit reporting interests in, and payments from, competitors to represented employers. Under the proposal, officers and employees—without regard to their place in the overall hierarchy of their unions—would only have to report on interests and payments from such employers if they hold a position with significant authority or influence over organizing, collective bargaining, or contract administration activities. The Department has adopted this proposal in the final rule. This issue is more fully discussed above in section III. D.1.

NPRM's proposed expansion to the top-down reporting requirement, but also believes that the 2007 rule's top-down reporting requirement is unnecessary and ''of little value in disclosing real conflicts of interest.'' Another commenter asserted that both labor organization officers and employees should have to report only in relation to matters involving the level of the union hierarchy that they serve and not any subordinate affiliate.

The Department disagrees with this view and does not support the elimination of a top-down reporting obligation. As explained below, the reporting burden associated with top-down reporting has been overstated and is insufficiently supported by the commenters. Further, such a restricted rule on top-down reporting would eliminate all disclosure of any potential conflicts of interests of higher-level union officers and employees concerning subordinate organizations, a position never previously taken by the Department. For example, similar to the situation presented in IM section 241.100, international union officers and employees may encourage subordinate unions to purchase goods or services from a business in which they have an interest, or a business from which they received a gratuity, such as a printing company or travel agency. The subordinate affiliate, fearing repercussions if it does not do business with this vendor, may engage its services, even though other vendors may offer better rates, services, or products.

As a further example, a national union officer or employee whose spouse is an employee of a service provider may influence lower-level unions to do business with this provider. Top-down reporting, as well as the other aspects of section 202 of the LMRDA, is intended to obtain disclosure of this kind of conflict-of-interest situation, and such reporting is of value to members and the public. Several commenters acknowledged that higher-level union officers and employees may engage in conduct raising actual or potential conflicts of interest with lower levels of their unions. Eliminating the top-down reporting obligation in its entirety would circumvent the intent of the LMRDA to provide disclosure of actual or potential conflicts of interest.

Comments To Limit Top-Down Reporting to Trusteeship Situations and Department's Response

Two international unions commented that they favored the elimination of the top-down reporting requirement, but suggested alternatively that the requirement should be limited to situations in which a parent union has placed a subordinate union under trusteeship. They argued that a trusteeship represents the only situation in which parent body officers and employees have financial and managerial control over subordinate affiliates. The Department disagrees with this approach because it would be unduly restrictive in its exclusion of other scenarios—beyond trusteeships—that could present a conflict between union officials' personal financial interests and their duty to the labor union and its members.

Comments on Burden and Department's Response

Several commenters stated that top-down reporting requires union officers and employees to conduct research, often extensive, to identify employers or businesses with which lower-level affiliates bargain or otherwise deal. One commenter described the proposed top-down reporting requirement as ''unreasonable and overly burdensome'' and expressed concern that inadvertent failure to file Form LM–30 reports could represent a possible Federal law violation. Another commenter expressed concern about the inability of international union officers and employees to obtain information necessary to comply with the reporting obligation, and predicted that, by being overly inclusive, ''the result will likely be widespread, though unwitting and unintentional, noncompliance, with no useful information for the public.''

Additionally, some commenters stated that the expansion of top-down reporting imposes a far greater burden than the reductions otherwise associated with the proposed rule. Although acknowledging the possibility of potential conflicts of interest between higher-level union officers and employees and business conducted with subordinate affiliates, another commenter stated that such potential conflict does not justify the reporting burden, especially in the absence of a central repository of businesses whose relationships with subordinates could trigger reporting. This commenter noted that compiling and updating such a list would be costly and burdensome.

Seven international unions opposed the Department's proposal to eliminate certain top-down reporting exclusions that were established in the 2007 rule. One commenter asserted that ''while 'top-down' reporting by officers is unnecessary and overly burdensome, expanding such reporting to now include employees is even further removed from capturing the types of conflict-of-interest payments envisioned by the LMRDA.'' The commenter added that the requirement places LM–30 filers in a ''severely compromising and legally tenuous position,'' and expressed concern about the additional reporting and recordkeeping burden associated with the elimination of the ''carve-outs'' from the 2007 rule.

Another commenter expressed concern that the proposal expands the top-down reporting obligation beyond even what the 2007 rule deemed feasible and necessary,'' and disagrees with the proposed elimination of the 2007 rule's ''three critical narrowing principles'' associated with top-down reporting. With respect to the proposal to eliminate the reporting exemption in the 2007 rule for bona fide employee payments to spouses and minor children an international union stated, ''It is unreasonable to require that all such things of value, legitimately received by the spouse in the course of his or her own employment, be subject to scrutiny and reporting solely because of some inadvertent common connection to a separate local union or related trust fund, at least where the international officer or employee in question has no authority or ability to influence the local union or trust fund decision-making process.'' [38]

The Department disagrees with these commenters that the burden imposed by full top-down reporting is not justified by the actual or potential conflicts of interest that will be reported. Initially, the Department emphasizes, as articulated above, that top-down reporting is necessary to disclose certain actual or potential conflict-of-interest situations. Further, to illustrate the

[38] Three international unions stated that the burden associated with the top-down reporting requirements was greatly compounded by the Department's decision to retain the 2007 definitions of ''substantial part'' and ''actively seeking to represent,'' by requiring greater research by union officers and employees to determine how the definitions of the terms would apply to lower levels of the officer or employee's union.

Section 202(a)(3) requires a union official to report income and benefits from and interests in businesses that deal in ''substantial part'' with an employer whose employees the official represents or is ''actively seeking'' to represent. Sections 202(a)(1), (2), and (5) require the reporting of payments from, interests in, and transactions with employers whose employees the official's union represents or is ''actively seeking to represent.''

The 2007 rule defines ''substantial part'' as 10% of the entity's business, and provides that the labor union must take concrete steps that demonstrate that it is ''actively seeking'' to represent employees of an employer. This rule does not substantively alter these definitions, which affect numerous aspects of reporting pursuant to sections 202(a)(1)–(5), independent of the top-down reporting issue. These issues are also discussed above at section III.F.1. (''substantial part'') and III.F.2 (''actively seeking to represent'').

Department's contention that the commenters' view of top-down burden is overstated, it is helpful to look at the methodology involved in determining whether a top-down report is owed. The first step is for a union officer or employee to look at the types of interests in, income and benefits received, and transactions engaged in during his or her fiscal year. The second step is to eliminate from this list those that are exempted by the general exclusions, if applicable, such as publicly held stock, income received by the union officer or employee as a bona fide employee of a represented employer, and the de minimis threshold. This step likely will reduce the number of potential reportable transactions. The third step is to then determine whether any of the remaining financial transactions were derived from represented employers, as well as service providers and vendors of the represented employer, the union, and the union's trusts.[39] The commenters appear to be suggesting that the inquiry would skip the first two steps and go directly to the third.

Indeed, officers and employees of parent and intermediate unions will not be required to look at every relationship that lower-level entities have, but, rather, only those that relate to the few, if any, employers and businesses identified in step three of the process. The Form LM–30 report is to be completed by union officers and employees only when reportable transactions occur during a reporting period, usually a calendar year. Reporting is self-initiated. Reportable transactions are generally not the norm. In determining whether a report is owed, an officer or employee of a parent or intermediate union would consider the nature of a transaction or interest of which he or she has knowledge, rather than consider information about the operations of every subordinate affiliate. Moreover, with regard to an officer or employee's dealings with vendors and service providers, not all transactions with such entities must be reported. Instead, only those matters involving financial situations in which one has an interest or derives income or other benefits with monetary value, as required by sections 202(a)(3) and (4), must be reported. Reportable benefits would include gratuities, such as complimentary hotel rooms, but not regular business or commercial transactions in which no such gratuity is conferred. See IM section 246.400. Thus, an officer or employee would not be required to report the value of the hotel room for which he or she paid market value on terms available to the public.

Union officers and employees, like most individuals, do not generally receive large gifts and gratuities in connection with their business dealings, and therefore are unlikely to have any reporting obligations. Further, those who do receive such gifts and gratuities are likely to have received them as a result of a vendor or service provider's intent to influence the union officer or employee. In any event, if gifts or other benefits are conveyed or received, a union officer or employee would be in position to seek further information concerning the entity providing the gift or other benefit, and, if the requisite relationships exist, the reporting requirements dictate disclosure so members and the public can determine whether or not a potential conflict of interest exists. Additionally, a union officer or employee with a significant interest in a business, like any similar individual with such an interest, is likely in a position to know the entities with which the business deals. The same risk of conflict exists where a spouse or minor child of an officer or employee with significant authority or influence over a subordinate affiliate works for a company that has business dealings with those affiliates or business with or involving an employer whose employees are represented by the affiliates. Under the 2007 rule, an international officer whose spouse works on commission for a business supply/printing company that sells personal computers, office furniture, and printing services throughout the country to locals affiliated with the international union would not report the spouse's income, even though the potential conflict of interest that such a relationship poses is apparent. Under the revised rule, such income is reportable.

Thus, potential filers are not required to engage in extensive research or create a ''central repository'' to determine the applicability of the Form LM–30 reporting requirements in top-down situations. In instances where the union officer or employee or his or her spouse or minor child is an employee of a vendor or service provider, receives an occasional payment, such as a gift or gratuity or a discount on a purchase, or otherwise has difficulty determining the applicability of the top-down or other reporting requirements, the Department is available to provide compliance assistance. In this regard, the Department advises that any officer or employee who encounters such difficulty should request necessary information in writing from the union, vendor, service provider, or employer. If the entity refuses to provide the information, the officer or employee should contact the Department for assistance in obtaining the information. In the meantime, the union officer or employee should make a good faith determination, based on the information reasonably available, whether reporting is required for the matter involved. If the union officer or employee determines that no report is required, the officer or employee should retain the written request for information that he or she presented to the business, employer, or union and any related documentation.

If an investigation is conducted, there is no risk of prosecution absent unusual circumstances calling into doubt the legitimacy of the good faith determination. See 72 FR at 36133. The Department emphasizes that criminal liability only results from a willful action or from knowingly making a false statement or representation of a material fact or knowingly failing to disclose a material fact. See LMRDA Section 209, 29 U.S.C. 439.

The Department disagrees with the concern expressed by some commenters that top-down reporting, as prescribed in the 2007 rule, would result in ''widespread * * * non-compliance.'' The Department expects that union officers and employees will undertake the task responsibly and without undue burden, as the rule reasonably achieves conflict-of-interest reporting without undue burden on filers. In particular, the Department anticipates that the ''significant authority or influence'' modification it has adopted in the rule will reduce the general level of concern that the proposal may have created among employees of parent and intermediate unions. The Department expects that only a small fraction of such individuals will have any top-down reporting obligations.

[39] A fourth step could involve the ''catch-all'' Part C of the revised Form LM–30, pursuant to section 202(a)(6), which would require reporting of any payments from any other employer (other than one already identified in sections 202(a)(1)–(5)) from whom the receipt of the payment by an official would create an actual or potential conflict of interest. But OLMS proposed restricting the reporting of payments from employers in competition with represented employers to union officers and employees with significant influence over organizing, collective bargaining, or contract administration activities related to a particular represented employer, see 75 FR 48427, and this rule adopts that limitation for employees. See discussion above in section III.D.1. This eliminates the top-down issue for most employees of parent and intermediate unions. For those that must report, it is only because they possess the significant authority or influence out of which a conflict may arise.

Comments To Narrow the Scope of Top-Down Reporting to Individuals Having ''Significant Authority or Influence'' and Department's Response

A federation of national and international labor unions proposed narrowing the scope of top-down reporting by limiting reporting to situations in which the filer has ''significant authority or influence'' over the subordinate labor union. The commenter noted that the Department had proposed under Part C of the instructions to limit reporting payments from employers in competition with represented employers to situations in which an employee possessed significant authority or influence over certain union functions, such as negotiations, contract administration, or organizing. The federation noted that the Department justified this Part C limitation by stating that it relieves ''the undue burden'' of requiring the filer ''to undertake research in order to discover'' who are ''competitors to their union's represented employers.'' 75 FR 48427.[40] The commenter asserted that requiring all national or international union officers and employees to conduct research to identify employers or businesses with which lower-level affiliates bargain or otherwise deal would impose a similar ''undue burden.''

Three national/international unions specifically concurred with the federation's proposal to narrow top-down reporting to those officers and employees with ''significant authority or influence.'' Advocating for limiting the top-down requirement to a ''more rational level,'' one commenter stated that narrowing the requirement by the ''significant authority or influence'' variable would ''help to lessen the considerable burden of requiring officers or staff to know all the business relationships involving * * * more than a hundred subsidiary entities.'' Another commenter stated that a vast majority of its international union officers and employees have no responsibilities or authority with respect to the union's numerous local unions and intermediate bodies, and described the idea of limiting reporting to officers and employees with ''significant authority or influence'' as ''far more practicable, yet still burdensome, and more in tune with the Act's ultimate objective of limiting reporting to areas where there exists an actual or potential conflict of interest.''[41]

Upon consideration of these comments and a further consideration of how best to achieve the Act's intended disclosure without imposing unreasonable burden, the Department has concluded that the federation's suggestion is a better approach than the approaches taken in the 2007 rule and the 2010 NPRM. While the Department disagrees with the view of certain commenters that top-down reporting is not justified—however limited—because of the burden associated with it, the Department concurs that most union employees do not have significant authority or influence over matters related to lower-level unions and therefore would not present the kind of conflict between their personal interests and their responsibilities to the union that the LMRDA intended to disclose. The Department also acknowledges that such employees are likely to be less familiar with the Form LM–30 requirements than officers and employees with significant authority or influence over these affiliates.[42]

Additionally, those employees who exercise significant authority or influence over subordinates, unlike most employees, are positioned to affect relationships involving subordinate affiliates and to be influenced by a represented employer or a potential or current vendor or service provider of a lower-level union. Thus, the Department is interpreting section 202 in a manner that targets Form LM–30 top-down reporting to those employees with significant authority or influence over lower-level unions, as a reasonable way to capture conflict-of-interest situations while avoiding possible confusion for those employees who are unlikely to have conflicts of interest involving lower-level bodies. This approach ensures that the Form LM–30 reporting requirements do not unnecessarily intrude upon the legitimate internal operations of unions, and thus better implements the Congressional purpose behind section 202. In the Department's view, this approach effectuates the statute's disclosure purpose while limiting unnecessary intrusion on unions and their employees. Further, because of other aspects of this final rule that exempt from reporting such transactions as mortgages, car loans, and similar transactions—so long as they are based on market rates and prices—the burden associated with top-down reporting, as have all aspects of Form LM–30 reporting, has been substantially reduced from the requirements established in the 2007 rule.

By requiring employees who exercise authority or influence over subordinate affiliates to report on interests and payments in companies that do business with these affiliates or with represented employers, the Department brings top-down reporting into greater congruence with the language of section 202, which requires conflict-of-interest reporting by both officers and employees. Although there is an inferential basis for the distinction made in the 2007 rule between union officers and union employees, *i.e.,* that only relatively few employees (compared to union officers) wield the influence that would give rise to potential conflicts of interest, neither the statute nor the 2007 rule distinguishes between the two categories in any other respect for reporting purposes. Moreover, there is little basis for a blanket exclusion of higher-level union employees, because such individuals (*e.g.,* union organizers) could exercise significant authority or influence over matters relating to subordinate affiliates.

Furthermore, regarding the other 2007 carve-outs to top-down reporting

[40] The commenter is referring to the following statement (implementing section 202(a)(6) of the Act):

[An officer or employee must report a payment received from certain employers, including] an employer in competition with an employer whose employees your organization represents or whose employees your labor organization is actively seeking to represent, if you are involved with the organizing, collective bargaining, or contract administration activities or possess significant authority or influence over such activities. You are deemed to have such authority and influence of you possess authority by virtue of your position, even if you did not become involved in these activities.

75 FR 48450. See 75 FR 48420, 48427, 48434 (discussing this part of the instructions). The 2007 rule required that officers and employees report such payments even if they had no involvement with the activities identified above or possessed no significant authority or influence over such activities.

[41] This commenter proposed using criteria set forth under the Fair Labor Standards Act (FLSA) to determine, on a case-by-case basis, if an individual has ''significant authority or influence'' over the subordinate entity. The commenter, apparently, is referring to the test used for the FLSA's administrative exemption. See 29 CFR 541.201–.203. The Department disagrees with this suggestion regarding the application of the FLSA factors, as these factors will not easily correspond to the activities of union officers and employees and the purpose of the determination regarding such significant authority or influence.

[42] The Department recognizes that some might see a unified approach for officers and employees as preferable to the approach adopted in the final rule. The Department notes, however, that it did not propose any change to the basic approach established for officers in the 2007 rule and supplanting this approach now could be perceived as unfair to commenters. Furthermore, on a practical level, the Department believes that disclosure is equally well served by the approach adopted in the final rule. Generally, an officer of a parent or intermediate union, by virtue of his or her office, exercises significant authority or influence over subordinate affiliates. While the same is not true of most employees of parent and intermediate unions, in those instances where an employee possesses such authority, he or she has the same reporting obligation as an officer.

(payments received by the officer's spouse or minor children as bona fide employees and financial interests held in companies that did business with an employer whose employees are represented by a subordinate affiliate), the statute also does not distinguish between, on one hand, financial interests held by officers and employees, and, on the other hand, financial interests held by their spouses and minor children. Additionally, there is little basis for excluding interests in and income and benefits derived from a business that deals with the employer but not the union and its trusts, and the 2007 rule did not explain any perceived distinction. In the Department's view, this exclusion creates confusion regarding the scope of top-down reporting, as indicated in the comments to the NPRM, which reflected a misunderstanding by the commenters about this aspect of the 2007 rule. It also illustrated potential under-inclusiveness of the ''bona fide employee'' exception to top-down reporting in the 2007 rule, such as the example of the higher-level union officer who influences affiliates to do business with the company that employs the spouse of the officer or employee. Finally, section 241.100 of the LMRDA Interpretative Manual, upon which reporting by higher level officers was based, involved a conflict-of-interest scenario that would not have been reported under the rule.[43] Reporting will now be required for that scenario.

The Department is also not applying the identical standard utilized in Part C of the revised instructions for payments received under section 202(a)(6), regarding payments received from an employer in competition with a represented employer. There, an officer or employee must report a payment from such a competitor employer, if the individual is involved with the organizing, collective bargaining, or contract administration activities or possesses significant authority or influence over such activities. This standard is appropriate under such circumstances, as section 202(a)(6) employers (and particularly the competitor employer example) are further removed from the union than the closer relationships described in section 202(a)(1)–(5).

In the top-down reporting scenario, the potential conflicts of interest of union officers and employees with significant authority or influence extend to *any* area of union activity engaged in by subordinate affiliates.[44] These higher-level union employees may exercise control over the actions and decisions of lower-level unions in any area of union activities, including not only organizing, collective bargaining, and contract enforcement, but also including spending or investment decisions and union administration. Further, such higher-level employees may have substantial communication or interaction with officers and employees of subordinate bodies whereby they ''significantly influence'' the actions by such lower-level bodies. Moreover, union officers of a higher-level body possess significant authority and influence by virtue of their position, and they are covered under this rule's top-down reporting requirements without exception. Such higher-level officers are elected directly by members at lower levels of the union, or indirectly through representatives chosen by such lower-level unions, and thus are accountable to those members and can influence the officers and employees of the lower-level unions.

Finally, the Department does not adopt a limitation of the ''significant authority or influence'' requirement to ''a matter potentially implicated by the transaction in question,'' as recommended by one commenter, because the potential conflict of interest for an officer (or an employee with significant authority or influence over a subordinate affiliate) is clearly implicated without any further clarification.

[43] In short, this section, which had been issued in 1962, provided that an international union officer must report interests that the officer and his spouse had in a company that dealt in substantial part with a represented employer of a subordinate body, despite the officer's lack of specific authority for representation activities. While the interpretation was specific to income received for an entity that had dealings with a subordinate affiliate, neither the interpretation nor the language of the statute supports an argument that limits reporting to these specific factors. The IM section is also consistent with the purpose of the statute, which requires officers and employees to publicly disclose possible conflicts between their personal financial interests and their duty to the labor union and its members.

[44] Section 202 assumes that all union officers and employees (other than exclusively clerical or custodial employees) possess sufficient authority and influence, at their level of the union, without reference to specific duties and responsibilities, to warrant conflict of interest reporting if the official receives a payment from or has an interest in the statutorily-enumerated entities. However, the statute is not explicit, in the case of higher-level union officials, as to whether reporting is required with respect to potential conflicts of interest in relation to subordinate affiliates within the union's hierarchy. Nevertheless, it is the Department's view that top-down reporting is necessary to ensure that conflict of interest payments are captured, as illustrated above. Some union commenters, as identified above, explicitly acknowledged that conflict of interest scenarios are possible with transactions involving lower levels of the union.

F. Other Issues Concerning the Form LM–30 Reporting Requirements

While the Department proposed changes to only five substantive areas of the 2007 rule's reporting requirements, the comments to the NPRM addressed other areas related to Form LM–30 reporting. These issues include: the definitions of ''substantial part'' and ''actively seeking to represent'' in LMRDA section 202 (a)(3); the definition of ''labor organization officer'' in section 202; the reporting of director's fees; the de minimis reporting exemptions; value range reporting; and alternative statutory constructions of section 202. For completeness, the comments on these areas are addressed below. While these comments are helpful to the Department in identifying concerns among the various regulated communities and directing compliance resources, the comments address matters that are beyond the scope of this rule.

1. The Definition of ''Substantial Part'' in Section 202(a)(3)

LMRDA section 202(a)(3) requires union officials to report any interests in and payments from, ''any business a *substantial part* of which consists of buying from, selling or leasing to, or otherwise dealing with, the business of an employer whose employees such labor organization represents or is actively seeking to represent'' (emphasis added). In the 2007 rule, the Department determined that 10% or more of a business's annual receipts will be considered ''a substantial part'' of its business. See Definition 15, ''substantial part,'' in the 2007 Form LM–30 Instructions; 72 FR 36133. In the 2010 NPRM, the Department stated it was retaining the 2007 definition of ''substantial part.'' See 75 FR 48434.

Three national/international union commenters asserted that the definition of ''substantial part'' in the 2007 rule unnecessarily complicates compliance with the Form LM–30. One commenter, noting the difficulty it poses for top-down reporting by officials of parent and intermediate unions, stated that it unfairly requires a union official to ''take affirmative steps to investigate.'' Another national/international union commenter argued that defining ''substantial part'' as 10% or more creates too low a threshold for reporting. The commenter instead suggested that a larger percentage (it did not suggest a particular percentage) would be a more appropriate threshold, citing to section 245.200 in the LMRDA Interpretative Manual, which addresses whether a company's dealings with an employer

that amounted to some 80% of its business was ''substantial'' within the meaning of section 202(a)(3).[45] In the commenter's view, setting the threshold at 10% requires reporting about payments received from companies only doing a modest amount of business with a covered employer, requiring, in its view, ''an inordinate amount of time to survey and evaluate every single business,'' which an official, his or her spouse, or minor child have transactions with or holdings in during the fiscal year. The commenter cited the unfairness in not limiting reporting to situations in which the filer has ''actual knowledge.'' The commenter added that the filer is at the ''mercy of the business'' where the information is not publicly available, and that businesses do not have a legal obligation to provide the data and may even be legally obligated to not disclose such information. The two other commenters generally agreed with this commenter's observations.[46]

The Department does not agree that the definition of ''substantial'' adds any additional burden, or requires an ''inordinate'' amount of time to apply, separately from the top-down reporting obligation. The statute establishes reporting in certain enumerated situations involving interests or income or benefits from vendors or service providers, such as where the vendors or service providers deal in substantial part with a represented employer. The purposes served by section 202(a)(3) require a reporting threshold that balances the burden associated with reporting insubstantial matters and the benefit served by the disclosure of any potential conflicts, no matter how small. In this regard, a quantitative approach is appropriate in analyzing the level of business engaged in for a vendor or service provider, and it is relatively easy for a filer to apply, thus reducing burden.

A filer does not need to investigate the relationship of every vendor or service provider to each represented employer of his or her union; the filer only needs to look at those in which he or she has an interest or from which he or she has received income or other benefit. Further, the commenter presented no evidence that the 10% threshold constitutes only a ''modest'' rather than ''substantial'' percentage of business for most entities, and is therefore unlikely to target likely conflict-of-interest scenarios.

As discussed in the preamble to the 2007 rule, 72 FR 36133–34, section 245.200 of the LMRDA Interpretative Manual (set forth in the margin), does not define a reporting threshold. It does not specify or imply that reports would not be required of union officials if the corporation derived less than 80% of its business from the employer. The example's inclusion of the 80% figure illustrates only one ''substantial business'' relationship that would require a report—not a threshold to use in determining whether a reporting obligation is triggered. Furthermore, no commenter suggested an alternative percentage threshold to 10%.

There is no merit to the suggestion that a reporting obligation attaches only where a union official possesses actual knowledge that the vendor's volume of business with a relevant employer was greater than the reporting threshold. This approach would provide an incentive for a union official to remain willfully ignorant of the business relationship between a vendor in which he or she holds an interest or from which he or she receives a payment and a represented employer. A subjective standard in which actual knowledge of the amount of business triggers reporting would also be difficult to implement.

The Department recognizes that some union officials may encounter difficulty in learning the amount of business a vendor conducts with the represented employer. The Department, however, believes that the likelihood of such difficulty is overstated, and the filer is not at the ''mercy'' of a business to determine whether or not the substantiality threshold has been met. This is especially true where the union official holds an ownership or operating interest in the vendor. In those instances, there should be little trouble in obtaining the needed information.

There may be some instances where the union official encounters some difficulty in obtaining information, such as where the official is an employee of the vendor or receives a gift or gratuity from, or a discount on a purchase provided by, the vendor. In such instances, the union official should request information in writing from the vendor. If the vendor refuses to provide the information, the official should contact the Department for assistance in obtaining the information. In the meantime, the union official should make a good faith estimate, based on the information reasonably available, of whether the 10% threshold has been met. If such estimate exceeds the 10% threshold, then the union official should file the report and explain that the vendor failed to provide requested information. If the estimate yields a figure less than 10%, no report is required, but the union official should retain the written request for information he or she presented to the vendor and any work sheet used to arrive at the less than 10% figure. See 72 FR at 36133.

With regard to the concerns expressed about potential criminal liability from a filer's failure to identify all companies that have conducted substantive business with a represented employer, the Department emphasizes that criminal liability only results from a willful action or from knowingly making a false statement or representation of a material fact or knowingly failing to disclose a material fact. See LMRDA Section 209, 29 U.S.C. 439. Thus, a filer who makes a good faith, conscientious effort to comply with the reporting requirements should have no concern about criminal liability.

2. Definition of ''Actively Seeking To Represent'' in Section 202

LMRDA sections 202(a)(1), (2), and (5) require union officials to report certain payments, interests, transactions, and arrangements from an employer whose employees its union represents or is *actively seeking to represent.* Additionally, LMRDA section 202(a)(3) requires union officials to report any interests in, and payments from, ''any business a substantial part of which consists of buying from, selling or leasing to, or otherwise dealing with, the business of an employer whose employees such labor organization represents or is *actively seeking to represent''* (emphasis added). The 2007 rule created a definition for ''actively seeking to represent,'' a term not previously defined in the Form LM–30 and its instructions as follows:

''Actively seeking to represent'' means that a labor organization has taken steps during the filer's fiscal year to become the bargaining representative of the employees of an employer, including but not limited to:

[45] 245.200 Substantiality of Dealing Union Officers *A* and *B* of a local union are co-owners of a building corporation. The corporation, through intermediaries who are regular meat wholesalers, sold meat to employers who bargain with the local union. In 1962, some 80% of the corporation's business of approximately $100,000 was with such employers. Both *A* and *B* owe reports for the year 1962 with regard to their interest in and their income from the building corporation pursuant to section 202(a)(3), since both the interest and the income are ''derived from, any business a *substantial* part of which consists of buying from, selling or leasing to, or otherwise dealing with, the business of an employer whose employees such labor organization represents or is actively seeking to represent.''

[46] The same theme is repeated in the comments submitted on the Form LM–30 definition of ''actively seeking to represent,'' as discussed in the next section of the text.

• Sending organizers to an employer's facility;
• Placing an individual in a position as an employee of an employer that is the subject of an organizing drive and paying that individual subsidies to assist in the union's organizing activities;
• Circulating a petition for representation among employees;
• Soliciting employees to sign membership cards;
• Handing out leaflets;
• Picketing; or
• Demanding recognition or bargaining rights or obtaining or requesting an employer to enter into a neutrality agreement (whereby the employer agrees not to take a position for or against union representation of its employees), or otherwise committing labor or financial resources to seek representation of employees working for the employer. Where a filer's union has taken any of the foregoing steps, the filer is required to report a payment or interest received, or transaction conducted, during that reporting period.

Note: Leafleting or picketing, such as purely ''informational'' or ''area standards'' picketing, that is wholly without the object of organizing the employees of a targeted employer will not alone trigger a reporting obligation. For example, if a union pickets a sporting goods retailer solely for the purpose of alerting the public that the retailer is selling goods that are made by children working in oppressive conditions in violation of accepted international standards, the picketing would not meet the ''actively seeking to represent'' standard.

The 2007 Form LM–30 Instructions, Definition 1. In the 2010 NPRM, the Department stated that it was leaving unchanged the 2007 definition of ''actively seeking to represent.'' See 75 FR 48434.

The Department received five comments on the Department's 2007 definition of ''actively seeking to represent.'' One public policy organization supported the definition. Three national/international labor unions criticized the definition, and a federation of international labor unions offered a clarification of the definition.

Three national/international union commenters urged the Department to reevaluate the ''actively seeking to represent'' definition, arguing that the proposed rule's expanded top-down reporting obligation, coupled with this definition, significantly adds to the overall burden on filers. One of these commenters called the 2007 rule's definition ''absurdly broad.''

One commenter argued that ''[i]t is unfair to subject union officers and employees to prosecution for failing to track vaguely-defined activities at every subordinate level of their union.'' The commenter urged the Department to adopt a revised definition that is ''narrower'' and ''more objective,'' and that is ''limited to discrete and enumerated activities that clearly constitute organizing employees, such as a labor organization demanding recognition from an employer or filing an NLRB petition during the reporting period.'' Another commenter echoed the concern about the definition's ''vague triggers,'' and ''urge[d] the [Department] to remember that the LMRDA and the LM–30 reporting obligation are subject to criminal penalties.'' This commenter suggested that revising the definition to include ''unequivocal conduct, such as filing a petition with the NLRB or demanding representation or bargaining rights'' would avoid creating a chilling effect for ''workers seeking to associate to protect and advance their economic interests.'' Further, the commenter noted that the absence of a ''durational limit on conduct'' will make it even more difficult to determine the reporting obligation, and suggested that ''any conduct that constitutes actively seeking to represent should be limited to actions undertaken during the reporting period about which a union official is filing and not extend to conduct completed in prior reporting years.''

The Department disagrees with these commenters' criticism of the definition of ''actively seeking to represent.'' First, the matters related to top-down reporting have been addressed in the previous section on that topic, and the Department reiterates that the limiting of such reporting to union officials with significant authority or influence over lower level unions (all officers and those employees with such influence or authority) will alleviate much of the commenters' concern. Second, the criticism of the definition as overbroad, with ''vague triggers,'' and without ''objective'' criteria, is unpersuasive. The definition is narrowly tailored to acts that constitute concrete steps towards organizing, as opposed to merely having an interest in organizing. See the 2007 rule at 72 FR 36131. The enumerated acts are objective in nature, as they are activities that unions as a whole generally take to seek recognition, and they illustrate ''concrete steps'' toward acquiring exclusive bargaining representative status. Pursuant to the terms of the definition, the activities, as well as the payments to be reported, must occur during the particular fiscal year in question. Limiting ''actively seeking to represent'' to ''demanding recognition or filing an NLRB petition'' does not constitute the entire universe of ''concrete steps'' that a union can take to *actively* seek representation. Thus, creating such a limitation would unduly limit reporting.

Moreover, while the activities listed are specific, the ''otherwise committing labor or financial resources to seek representation of employees working for the employer'' language is necessary, as the Department cannot enumerate every conceivable scenario that constitutes a situation in which a union is ''actively seeking to represent'' employees. In this regard, the term ''actively seeking to represent'' derives from the statute, and the definition is a reasonable attempt to give meaning to the term. The definition of ''actively seeking to represent'' will aid filers in complying with the reporting requirements, and, as with the definition of ''substantial part,'' a filer can request assistance from the Department if he or she is having difficulty determining if reporting is required. Again, pursuant to the statute, criminal liability is triggered only upon a showing of willfulness.

A federation of international labor unions urged the Department to make two changes to the definition of ''actively seeking to represent.'' First, the commenter suggested that the word ''concrete'' be added before the word ''steps,'' so that the first sentence of the definition would begin,

''*Actively Seeking to Represent*—means that a labor organization has taken *Concrete* steps during your fiscal year to become the bargaining representative of the employees of an employer, including but not limited to * * *'' (emphasis added).

The commenter noted that adding the word ''concrete'' would make the definition consistent with the Department's rationale for the definition as stated in the 2007 rule,[47] and would ''advance both the public interest in clarifying the Department's intent and the legitimate interests of union officials subject to the rule.''

Second, the commenter stated that two examples of union ''steps'' that would constitute ''actively seeking to represent'' are in conflict with the Department's stated rationale for the definition in the 2007 rule. The commenter urged the Department to revise the examples as follows (note that the commenter's suggested additions are

[47] In the 2007 rule, the Department explained ''that the term 'actively seeking to represent' is intended to distinguish between situations where a union has taken *concrete steps to organize* and those where the union *merely has an interest in organizing* employees of the employer in question.'' 72 FR 36131 (emphasis added).

in italics): (1) Sending organizers to an employer's facility *to solicit employee support for the union;* and (2) Handing out leaflets *seeking or urging employee support for the union.''*

The Department believes that the federation's first suggestion, to insert the term ''concrete'' into the definition of ''actively seeking to represent,'' would provide filers with additional clarity. The Department considers such addition to be consistent with the stated purpose of the definition, which is to view only *concrete* steps as constituting ''actively'' seeking to represent. The Department does not view this change as a material revision to the current rule and is making the change.

The second suggestion would require the rule to be modified in a substantial way and therefore is beyond the scope of this rule. The Department, however, notes its disagreement with the commenter's suggestions, as there are concrete steps that a union can take in actively seeking to represent employees other than sending organizers to an employer's facility expressly soliciting employee support for the union or handing out leaflets expressly seeking or urging employee support for the union.

3. Definition of ''Labor Organization Officer'' in Section 202

The LMRDA defines ''labor organization officer'' in section 3(n).[48] The 2007 Form LM–30 Instructions further clarifies this definition as set out in the margin.[49]

One national/international union commenter requested that the Department amend the definition of ''labor organization officer'' so that it is limited to ''individuals who are named officers holding positions given policy-making authority pursuant to the union constitution and bylaws.'' The commenter stated that the Department's definition is overbroad and could result in the Form LM–30 reporting requirements extending to a union member who was unaware that he would be subject to Form LM–30 reporting requirements, including the top-down reporting obligation. The commenter views the current definition as reaching individuals the statute did not intend to reach, such as ''unsuspecting rank-and-file members.''

The Department disagrees with the commenter's views on this issue. The rule's definition of ''labor organization officer'' is derived directly from section 3(n) of the statute, and merely provides further clarification of the term and, as an example, states under what circumstances a trustee may be a union officer. The Department does not view the definition as exceeding the scope or intent of section 3(n). Moreover, the Department notes that pursuant to section 3(n) and the ''retained'' Form LM–30 definition, rank-and-file union members and other volunteers, such as stewards, would not ordinarily be covered union officers.

4. Reporting of Director's Fees

The 2007 rule requires that a union official who receives ''director's fees'' from an employer generally must report these payments. The Department did not propose to eliminate this requirement. A law firm opposed the requirement to director's fees to be reported on Form LM–30. The Department rejects the suggestion to remove this requirement, as this was not a change proposed in the NPRM, and, furthermore, a union official's service on a board of directors, and the accompanying fee, may influence the official's duties to the union.

5. De Minimis Exemptions

The 2007 rule adopted several de minimis exemptions, including: A $250 reporting threshold; a $20 recordkeeping threshold; and a ''widely-attended gathering'' standard. The widely-attended gathering provision exempts reporting of payments or gifts received while in attendance at up to two of such gatherings per fiscal year for which an employer or business has spent $125 or less per employee per gathering. See the 2007 Form LM–30 Instructions, page 2. The Department has long had a de minimis exemption for Form LM–30 reporting, which derives from LMRDA Interpretative Manual sections 241.700 and 241.710, although historically the exemption there applied to payments of ''insubstantial value,'' without providing a quantitative threshold.[50] The 2007 rule retained a prior $100 exemption for unregistered securities, which existed in the pre-2007 Form LM–30 Instructions. The Department proposed no change to this exemption or the de minimis thresholds.

Three commenters were pleased that the Department had not proposed to eliminate the de minimis exemption, but suggested that the Department consider revising the dollar thresholds for reporting and linking them to a cost-of-living or other automatic adjustment mechanism. A law firm expressed support for the 2007 rule's de minimis exemptions,[51] but suggested that the de minimis thresholds be revised. The commenter urged the Department to increase the $20 and $250 de minimis thresholds to $50 and $500, respectively, and to increase the widely-attended gathering exclusion from $125 to $150.

Although the suggestions are beyond the scope of this rule, the Department is not persuaded that a $50 recordkeeping threshold, a $500 reporting threshold, and a $150 widely-attended gathering threshold are more appropriate than the current $20, $250, and $125 thresholds, respectively. The Department views the current levels, based on dollar values, as providing a reasonable distinction, applied nationally, between gifts that may create a conflict of interest and those that do not. The commenter did not provide any persuasive justification for why the increased amounts would better distinguish between gifts that may ''conflict'' and those that do not.

[48] ''Officer'' means any constitutional officer, any person authorized to perform the functions of president, vice president, secretary, treasurer, or other executive functions of a labor organization, and any member of its executive board or similar governing body. LMRDA section 3(n).

[49] Labor organization officer means any constitutional officer, any person authorized to perform the functions of president, vice president, secretary, treasurer, or other executive functions of a labor organization, and any member of its executive board or similar governing body. An officer is (1) a person identified as an officer by the constitution and bylaws of the labor organization; (2) any person authorized to perform the functions of president, vice president, secretary, or treasurer; (3) any person who in fact has executive or policy-making authority or responsibility; and (4) a member of a group identified as an executive board or a body which is vested with functions normally performed by an executive board.

Note: Under this definition, an officer includes a trustee appointed by the national or international union to administer a local union in trusteeship. If you are a trustee elected or appointed by the local union to audit and/or hold the assets of the union, you may or may not be a union officer, depending on your union's constitution and other factors. If you serve in your union in any capacity and you are unsure if your position is an officer position, you are likely an officer of a labor organization if any one of the following applies:

- Your union's constitution or bylaws refers to your position as an officer of the union
- Your union's constitution or bylaws states that your position has the authority to make executive decisions for the union or that you are authorized to perform the functions of president, vice president, secretary, treasurer, or other constitutionally designated officer
- Your union's annual Form LM–2 or Form LM–3 lists your position as an officer of the union
- In your position, you serve on your union's executive board or similar governing body

See Definition 12, 2007 Form LM–30 Instructions.

[50] In 2005, a reporting exemption of $25 was established, which the 2007 rule subsequently raised to $250. Additionally, IM section 241.700 requires that the payments of insubstantial value be ''given under circumstances unrelated to the recipient's status in a labor organization.'' Neither the 2007 rule nor the revised rule have this requirement.

[51] This commenter also urged the Department to implement the same de minimis thresholds for Form LM–10 reporting. Since this issue is beyond the scope of this rule, the Department acknowledges this suggestion, but will not address it in this rule.

A national/international union commenter urged the Department to revise the de minimis thresholds, arguing that they are too low given the steep costs of meals and entertainment charged by hotels located in large metropolitan areas. The commenter provided examples of conference rates at hotels where meetings are held, and listed examples of the lowest cost food items available, many of which exceed the $20 de minimis threshold.

The commenter also expressed concern that reporting such conference and meal rates on Form LM–30 ''would very likely mislead union members and provide fodder for anti-union consultants.'' The commenter added, ''To many union members, disclosing such large sums received for meals might well call to mind lavish entertainment and cause concern about possible susceptibility to improper influence * * * However, the reality would [be] quite different—literally nothing more than a few bagels and sandwiches, which the membership would not care about if they knew the true facts. But under current rules, those members would see a formal Government filing, presumably to deal with something significant, and get exactly the wrong impression about their representatives.''

The commenter noted that inflation will decrease the value of all de minimis thresholds contained in the proposed Form LM–30, and cautioned that the de minimis threshold problem will become more significant with time. Finally, the commenter urged the Department to adopt a method for establishing de minimis thresholds that reflect the realities of union officials' circumstances, and cited the per diem rates paid by government agencies as an example.

The Department disagrees with this commenter's suggestion to use different de minimis thresholds, varying by locality or setting them to a level based on the charges assessed for ''meals and entertainment * * * by hotels located in large metropolitan areas.'' In the Department's view, it would be impractical to establish varying rates by locality, and pegging them to the most expensive charges for modest meals and other gratuities would create too high of a dollar threshold, thus potentially excluding from reporting actual or potential conflicts of interest. Moreover, ''steep costs'' and ''large sums'' provided by a represented employer and certain key businesses to union officials are precisely the types of payments that should be reported on the Form LM–30, to enable the members and the public to determine the impact, if any, on the officials' duties.

The members should have information concerning these payments in order to evaluate for themselves the effect on the officials' duties to the union, such as whether or not they constitute ''lavish entertainment'' and create possible ''susceptibility to improper influence.'' An official concerned with the appearance of a particular charge or charges could also provide further information on the Form LM–30 to provide increased context to the payments, which would diminish or eliminate the problem of members being misled or confused by the payments.

The Department does not concur with the suggestions to index the de minimis exemption thresholds with inflation or other quantitative or qualitative mechanisms. The exemption is provided to ensure that individuals are not required to report, and in some cases even track, payments that are of insubstantial value and not likely to constitute an actual or potential conflict of interest. Further, establishing a quantitative assessment for determining de minimis amounts is superior to a qualitative approach, as filers will easily know whether or not a payment is exempt, without asking the Department to apply a set of factors and determine whether or not the exemption is appropriate. Indexing the thresholds and establishing a fluctuating standard would jeopardize the convenience of the quantitative assessment and unnecessarily risk increasing the burden on union officials—with no apparent benefit in terms of transparency.

A law firm suggested that the Department clarify the exemption for attendance at widely-attended gatherings. In its view, the Department should revise the exemption so that ''individuals associated with service providers to multiemployer plans, employers who contribute to such plans, and employer-appointed trustees of plans that are unrelated to the Form LM–30 filer's union may all be considered to be among the 'substantial number of individuals with no relationship to a union or a trust in which a labor organization is interested.' '' The commenter argues that, without such clarification, the widely-attended gathering exception would be overly narrow, and union officials would need to ''identify by sight the service providers to plans and employer-appointed trustees of plans with no relationship to their union or its affiliated plans in order to ascertain whether an event qualifies as a widely attended gathering.'' The Department acknowledges the commenter's concern, but this rulemaking does not lend itself to addressing a particular activity that does not involve a change proposed by the Department. Without expressing a view on this matter, the Department notes that it is available to provide compliance assistance and guidance to filers on a case-by-case basis.

Additionally, a federation of international labor unions suggested that the exclusion of income from unregistered securities (on page 5, exclusion (ii)) be raised from $100 to $250 to achieve consistency with the General Exclusion for payments of $250 or less (page 4) of the instructions. A national/international labor union concurred with this suggestion. The Department disagrees with this proposal. In the Department's view, the $100 exemption for unregistered securities is reasonable and consistent with past exclusions provided by the Department. Further, there is no basis for concluding that the de minimis threshold for unregistered securities must be identical to the threshold for payments, such as gifts and gratuities, received.

6. Value Range Reporting of Financial Arrangements and Interests

A national union commenter suggested that item 7(b) in Part A of the revised form, and item 12(b) in Part B, be modified to include valuation categories (covering different ranges of dollar values, such as between $5,000 and $10,000 or $10,000 to $15,000) that filers would use to disclose the estimated value of financial arrangements and interests. The commenter stated that ''the applicable statutory language in the LMRDA is completely silent regarding whether union officials have to report the exact value of a financial interest, or whether an approximate range is sufficient.'' The commenter stated that, for example, requiring the reporting of a ''value range'' of a particular stock would adjust for possible fluctuation in the stock's value, and noted the difficulty of determining ''a good faith estimate'' due to the potential for significant fluctuation in the value of a financial transaction or asset. The commenter also indicated that Congress and the Office of Government Ethics apply these types of valuation categories to the disclosure requirements concerning presidential appointees' financial interests.

The Department disagrees that this approach to reporting would increase the utility of the form. Introducing a complex requirement actually may increase the reporting burden on filers. Additionally, the commenter presented

no information or analysis as to how this would increase transparency regarding actual or potential conflicts of interest.

7. Alternative Views of Reporting Required by Section 202

An international union representing professional athletes, supported by a federation of unions, provided statutory analysis in support of an argument that an endorsement arrangement is not reportable on Form LM–30. The commenter asserted that sections 202(a)(3) and (4) should be interpreted to apply only to businesses in which the union official has an ownership interest. The commenter's position, at bottom, reduces to a claim that the use by Congress of the word ''derives,'' rather than ''received'' in these sections evinces a plain intention that the interests to be reported are solely ''ownership interests.''

As a general matter, the language of sections 202(a)(3) and (4) does not provide for this limitation. First, a union officer must file ''a signed report listing * * * any * * * interest * * * and any income or other benefit with monetary value (including reimbursed expenses) * * * derived from, *any* business.'' 29 U.S.C. 432(a)(3), (4) (emphasis added). The term ''any business'' cannot easily be read to mean ''any business in which the union officer or employee owns an interest.'' Second, the commenter asserts that in normal usage the word ''derives'' is used ''in lieu of * * * received from'' and indicates that the payment is from a business to an individual who holds an ownership interest. But the statute uses the term ''derived'' to describe a category of income that includes ''payments and other benefits received as a bona fide employee.'' 29 U.S.C. 432(a)(1), (2). As income ''derived'' includes ''payments received,'' Congress was not using ''derived'' in the limited sense suggested by the commenter. Additionally, the Department notes that the crucial distinction between ''derives'' and ''receives'' that the commenter attributes to these terms is not borne out by their common understanding as synonyms. See, *e.g.,* ''Derive'' ''to take, receive, or obtain, esp. from a specified source.'' Merriam-Webster's Collegiate Dictionary (10th ed. 2002); ''Receive'' ''to come into possession of: ACQUIRE < ~ a gift >''. *Id.* There is simply no persuasive argument that the plain language of these sections evinces the ''ownership'' delimited meaning the commenter would attribute to the use of ''derived.''

Further, the interpretation would exclude from reporting payments and gratuities provided by a vendor or service provider to a union official seeking to generate business with the official's union. This plain potential conflict of interest would go unreported, unless the union official held an ownership interest in the business.

The Department has also considered the additional arguments advanced by the commenter, including its assertion that the legislative history supports its narrow view of what must be reported under these sections. Upon review, the legislative history relied upon by the commenter cannot be fairly read to reflect the narrow construction it would force upon these sections. The commenter also suggests that its preferred reading of sections 202(a)(3) and (4) and the legislative history is embodied in the Department's own early interpretation of these provisions. The commenter relies on a general discussion in the Department's 1961 annual report about its then recent filing experience under the Act. In context, however, it is clear that the Department, in making these statements, was not offering an interpretation of sections 202(a)(3) and (4). Instead, the Department was merely reporting on its early experience with reports under sections 202 and 203 of the Act. Further, in any event, these statements do not evince an interpretation that limits an official's reporting obligation under section 202 to ''ownership interests.''

The commenter candidly acknowledges that the meaning it attributes to the ''1961 interpretation'' is at odds with the Department's published interpretation that states: ''Union officers who receive complimentary hotel rooms and other gratuities of substantial value from the hotel at which the union holds its convention are required to report pursuant to section 202(a)(4).'' Interpretative Manual, section 246.400. Although the commenter indicates that this interpretation was issued by the Department sometime after 1984, the interpretation, in fact, was issued in 1964.[52] Thus, the position set forth in the LMRDA Interpretative Manual demonstrates that the position taken by the Department in the 2007 rule was not a new one.

The Department believes that its interpretation that requires union officials to report gifts, gratuities, and other payments received by union officials from companies that do business with the official's union or represented employees is faithful to congressional intent. For the same reasons, the Department rejects the commenter's alternative request that even if the Department disagrees with its statutory arguments, the Department should create an exception for its members due to what it considers an unnecessary and undue burden on its officials.[53] Another commenter representing employees working in the entertainment industry requested that its officials be exempted from reporting certain gratuities, which it claimed were unique to the union and its members' industry. This exemption request is outside of the scope of the rule, would seemingly require a fact-based analysis, and could not in any event be resolved on this limited record.

IV. Revisions to the Regulations, Form, and Instructions[54]

This final rule revises the Form LM–30 in order to simplify its use by filers by reducing the length of the form (from nine pages to two pages) and its instructions (from 22 pages to 13 pages) and eliminating or modifying some reporting requirements. The Department identifies below the various changes effectuated by the final rule to the Department's regulations implementing section 202, 29 CFR 404.4, the Form LM–30, and its accompanying instructions, which are incorporated into the regulations by reference. 29 CFR 404.3.

A. Regulations

Only one change has been made to the regulatory text. 29 CFR 404.1(f). In section 404.1(f), the Department removes the definition of ''labor organization,'' which had been added in the 2007 rule to establish the scope of reporting required of higher-level union officers. Paragraphs (g) through (j) of

[52] The LMRDA was enforced by various offices within the Department prior to 1984, when OLMS was established. The commenter inferred that since the interpretation was contained in a publication issued by OLMS, it could not have predated 1984. The Department's internal files show that the interpretation is dated July 1964.

[53] The commenter states that ''out of an excess of caution'' the union's officials have been reporting these payments because of the difficulty they have in determining whether the companies they receive payments from conduct substantial business (10% or greater) with the league. The Department emphasizes that payments from a company doing business with a represented employer are reportable only if the business is greater than 10% or more of the company's annual receipts. The Department notes that the commenter does not state whether filers have made any inquiries regarding the extent of business conducted between the companies making payments and the league. As stated in the preamble to the 2007 rule, the Department is available to assist filers in obtaining such information if their own efforts are unsuccessful. See 72 FR 36134.

[54] For the convenience of LM–30 filers and the public, this section restates most of the information contained in the comparable section of the NPRM, revised as necessary to reflect differences between the proposed and final rules. See 74 FR 48430–35.

section 404.1 also will be re-designated as (f) through (i), respectively. The term ''labor organization'' is separately defined in the LMRDA, and language regarding the scope of reporting for national, international, and intermediate union officers and employees has been added to the revised instructions.

B. Revised Form

The revised Form LM–30 utilizes a simplified format that will better facilitate filers' compliance with Form LM–30 reporting requirements and increase the form's utility to the public. Unless otherwise noted, the revised form and instructions adopted by this rule are the same as those proposed in the NPRM. Further, the Department will address below comments received on the layout of the form and instructions.

With respect to layout, the revised form more closely resembles the pre-2007 form than the lengthier 2007 form. The revised form, which is two pages in length, contains four sections: a section that contains basic identifying information on the filer and his or her labor organization, and Parts A through C. Part A is designed to capture reportable transactions between union officials and represented employers. Part B captures reportable transactions with businesses that deal with the official's union or a trust in which the union has an interest, or that have substantial dealings with a represented employer. Part C covers transactions with other employers or labor relations consultants. The form has been simplified by removing numerous schedules, checklists, and examples. While the inclusion of this information in the 2007 form was intended to assist filers, it is the Department's present view that these additions made the form more confusing and difficult to complete.

The revised form does not contain the summary schedule that was on the first page (item 5) of the 2007 form. The Department does not believe that requiring a summary schedule to report ''total reported income or other payments'' and ''total reported assets'' is useful information, by itself, and may be misleading. Without knowing the context of the reportable transaction or transactions, a viewer does not have a basis to assess the actual or potential conflict of interest and the impact such a conflict would have on the official's duties to the labor organization. For a filer with multiple payments, a summed total on the front page of the form is misleading, even if the totals are separated by assets and other payments, since a viewer of the form can only judge a conflict of interest by looking at the monetary value of the payment or interest along with its source and other pertinent information. A sum of money or other payment or asset, in and of itself, has no meaning, and can lead to confusion for the viewer and reflect unfairly on the filer. Further, presenting a figure for ''total reported income or other payments'' gives the impression that this total represents payments received by the filer, when in fact, this figure might also include items such as interest in personal or real property, insurance, or share holdings.

The revised form does not contain sections on Employer and Business Relationships (items 6 and 7, respectively, on the 2007 form). The Department does not believe that this general information adds to the usefulness of the form, because this information is reported on each schedule. A bulleted checklist listing various reportable relationships has also been eliminated.

The revised form's contact information sections in Parts A, B, and C generally collect the same information requested in Schedule 1 of the 2007 form, except that the revised form does not ask whether the filer, filer's spouse, or minor child had a relationship with the employer, business, or labor relations consultant *at the end of the reporting period.* The Department received no comments on this proposed change. The revised form also eliminates the requirement that a filer provide the Web site address of the employer, business, or labor relations consultant in which the filer holds an interest or receives a payment. The Department does not believe that the Web site address is necessary, since viewers of the form can independently locate this information.

In place of the separate Additional Information Schedule, which was included in the 2007 form, the revised instructions simply provide guidance on how to provide additional information. Filers who choose to complete the Form LM–30 in paper format are instructed to attach a separate letter-size page, with identifying information. Filers who complete the Form LM–30 electronically will be able to add additional information as needed.

In response to the NPRM, ten labor organizations—one federation of labor organizations and nine international unions—submitted comments on the content and layout of the LM–30 form and instructions. All ten commenters expressed support of the Department's proposed revisions and endorsed the decision to adopt a form similar to the pre-2007 form. Multiple commenters described this earlier form as ''simpler'' and ''more straight-forward'' than the 2007 form. The commenters that generally opposed any changes to the 2007 rule did not comment on the content and layout of the form and instructions.

The federation of labor organizations expressed support for the Department's proposed revisions to the form and instructions, with noted exceptions. The commenter stated that its experience providing training to union officials on their reporting obligations ''indicates that the vastly more complicated form and instructions adopted by the 2007 rule would have been very difficult for union officials to understand and complete,'' and would likely have resulted in a lower level of compliance than under a simpler report. This commenter also suggested several changes to the proposed form and instructions. These suggested modifications will be discussed below, in the specific form/instructions sections to which they pertain. Two international union commenters concurred with the comments submitted by the federation of labor organizations, including suggested changes to the form and instructions.

Three international union commenters expressed support for the Department's proposal, but suggested some additional modifications to the form and instructions. These suggestions will be discussed in the relevant form/instructions sections below.

Multiple commenters asserted that the 2007 Form LM–30 reporting requirements were overly burdensome, confusing, and complicated, and questioned the purpose of the increased disclosure obligation. An international union commenter stated that ''[t]he 2007 form was extremely burdensome to filers, and confusing and misleading to the public.'' Another international union commenter described the 2007 form as ''virtually indecipherable.'' Another international union commenter stated that the trainings for union officers and employees would have been ''unnecessarily complicated—to no useful purpose—had the Department determined to use the new form and instructions proposed in 2007.''

An additional international union stated that ''[t]he Department's proposal correctly recognizes the unnecessary over-complication, confusion, and burden caused by its 2007 rule. The new form and instructions strike the correct balance between the Act's twin goals of requiring disclosure of conflict transactions and not creating unnecessary reporting burdens for union officials.''

Another international union commenter stated that ''the changes to the form[ ] and instructions improve clarity, eliminate redundancy, and reduce the amount of unnecessary information currently required to be filed.'' The commenter added that the changes ''permit the DOL to more effectively fulfill the goals of the LMRDA reporting requirements in disclosing conflicts of interest.'' This commenter also stated its view that the changes will help filers comply with the LM–30 reporting obligation more ''efficiently'' and ''cost effectively'' than under the 2007 rule.

Section-by-Section Discussion of Revised Form

A section-by-section discussion of the revised form follows:

First Section—Basic Identifying Information (Items 1–5)

The first section of the revised form gathers basic information about the filer and his or her labor organization. Item 1 requests the Form LM–30 file number, and item 2 calls for the fiscal year covered in the report. Item 3 provides a box to identify whether the form is being filed as an amended report. The filer must provide his or her contact information in item 4, which includes lines for his or her name and street address (both required), and an email address (optional). In item 5, the filer provides identifying information about his or her labor organization, indicates whether he or she is an officer or employee, and notes his or her officer position or job title. If the filer serves as an officer or employee in more than one labor organization, this information is captured on an item 5 Continuation Page.

Below the first section, the revised form states, ''Complete Part A, B, or C if, during the past fiscal year, you or your spouse or minor child directly or indirectly had a reportable interest in, transaction or arrangement with, or received income, payment, or benefit from the entities described below.''

Part A—Represented Employer (Items 6 and 7)

In the revised form, ''Represented Employer'' is defined as ''an employer whose employees your labor organization represents or it is actively seeking to represent.'' If the filer had a reportable interest, transaction, benefit, arrangement, income, or loan from his/her ''Represented Employer,'' he or she must provide in item 6 the employer's contact information, including the name and telephone number of a contact person. In item 7a, the filer provides the nature of the interest, transaction, benefit, arrangement, income, or loan; in item 7b, the filer enters its amount or value. As stated above, the Department has removed the requirement that filers report the Web site address for the employer.

As will be explained in the Revised Instructions section below, the filer must complete a separate Part A for each transaction reported. A Continuation Button is located below Part A if the filer needs to complete one or more additional Part As.

Part B—Business (Items 8–12)

The revised form requires the filer to complete Part B if he or she had a reportable interest in, transaction or arrangement with, or received income, payment, or benefit from ''[a] business, such as a vendor or service provider, (1) A substantial part of which consists of buying from, selling or leasing to, or otherwise dealing with the business of a Represented Employer described in Part A or (2) any part of which consists of buying from or selling or leasing directly or indirectly to, or otherwise dealing with your labor organization or with a trust in which your labor organization is interested.''

If the filer has reportable activity with such a business, he or she must provide in item 8 the contact information for the business, including the name and telephone number of a contact person. In item 9, the filer must indicate the entity the business deals with by checking the box for (a) Labor organization, (b) trust, or (c) employer. If the filer checks the box for trust or employer, he or she must provide the trust or employer's name and contact information in item 10. The filer must describe the nature of the dealings in item 11a, and report the value of the dealings in item 11b. Additionally, the filer must describe in item 12a the nature of the interest, benefit, arrangement, or income and report in item 12b the amount or value of the interest, benefit, arrangement, or income. As stated above, the Department has removed the requirement that filers report the Web site address for the business. As will be explained in the Revised Instructions section below, the filer must complete a separate Part B for each transaction reported. A Continuation Button is located below Part B if the filer needs to complete one or more additional Part Bs.

Part C—Other Employer or Labor Relations Consultant (Items 13 and 14)

The revised form requires the filer to complete Part C if he or she had a reportable interest in, transaction or arrangement with, or received income, payment, or benefit from ''an employer (other than a Represented Employer or Business covered under Parts A and B above) from whom a payment would create an actual or potential conflict between your personal financial interests and the interests of your labor organization (or your duties to your labor organization); or a labor relations consultant to such an employer or to the Represented Employer listed in Part A.''

If the filer has reportable activity with such an employer or labor relations consultant, he or she must provide in item 13a the contact information for the employer or labor relations consultant. In item 13b, the filer must indicate whether the entity is an employer or consultant. The filer must describe the nature of the payment in item 14a, and report the amount or value of the payment in item 14b. As stated above, the Department has removed the requirement that filers report the Web site address for the employer or labor relations consultant.

As will be explained in the Revised Instructions section below, the filer must complete a separate Part C for each transaction. A Continuation Button is located below Part C if the filer needs to complete one or more additional Part Cs.

In its comments submitted in response to the NPRM, a federation of labor organizations suggested that ''Contact name'' and ''Telephone'' be removed from Part A (item 6), Part B (items 8 and 10), and Part C (item 13a). The commenter stated that filers are not in the position to designate a contact person for employers and businesses. The commenter added that ''inviting inquiries to the employer or business from members of the general public seems inadvisable,'' especially since the Department could make such inquiries. The Department disagrees. In its view, filers should be able to easily ascertain the contact information for an employer or business from which they have received income, a gift, or another benefit, or in which the filer has an interest, or otherwise has engaged in a business transaction or arrangement. Further, the reporting of this contact information will assist union members and the public to cross-check information reported on Forms LM–10 and Forms LM–30, and assist the Department in determining reporting compliance.

Signature and Verification (Item 15)

The filer must provide his or her signature, date, and telephone number in item 15, which is located on the

bottom of the first page. As explained in the instructions, filers are instructed to view the OLMS Web site for further information on how to electronically sign and submit the Form LM–30. The signature line on the revised form is identical to that on the 2007 form, except that the revised form assigns the heading ''Signature and Verification'' to item 15. The signature line on the 2007 form did not include a heading.

C. Revised Form LM–30 Instructions

1. General

The revised instructions reflect significant changes in both layout and content from the 2007 form. The content has been changed to reflect the specific changes adopted by this rule, as discussed earlier in this preamble. Other changes have been made to add clarity and eliminate unnecessary repetition. The discussion immediately below highlights significant changes between the revised and 2007 instructions.

As noted above, the revised form and instructions reinstate the general ''Parts A, B, and C'' format featured in the pre-2007 form and instructions, replacing the multiple-schedule format introduced by the 2007 rule. The revised format is clearer and more streamlined and will make the form much easier for filers to understand and complete, without affecting the usefulness of the information disclosed.

The revised instructions do not include a separate ''Definitions'' section, which was included in the 2007 instructions. The revised instructions instead present definitions and clarifications of key terms in the context of the sections in which they first appear in the document. When a definition follows a section of the instructions, the term to be defined is italicized. Further, if a defined term is used in multiple places, the later references refer back to the section in which the term is first used and defined. This approach will help filers understand key terms as they read through the instructions, and will eliminate the need for filers to frequently refer to a separate ''Definitions'' section to determine what must be reported and how it must be reported.

The Department has removed the examples that are dispersed throughout the 2007 instructions. These examples, many of which involved situations confronted by a very small number of filers, made the form unnecessarily complex and difficult to complete, without meeting the intended goal of providing helpful guidance. Following the publication of a revised Form LM–30, the Department intends to provide compliance assistance support to Form LM–30 filers.

Additionally, the Department has substantively modified the definitions of some key terms that are found in the 2007 Form LM–30 Instructions. First, the Department has removed the definition of ''bona fide employee'' as used in the 2007 rule and added the bona fide employee exemption found in the instructions for the pre-2007 form, with minor edits for clarity, as explained below. The language that was added reads:

> Payments and benefits received *as a bona fide employee* of the employer for past or present services, including wages, payments or benefits received under a bona fide health, welfare, pension, vacation, training or other benefit plan; and payments for periods in which such employee engaged in activities other than productive work, if the payments for such period of time are: (a) Required by law or a bona-fide collective bargaining agreement, or (b) made pursuant to a custom or practice under such collective bargaining agreement, or (c) made pursuant to a policy, custom or practice with respect to employment in the establishment which the employer has adopted without regard to such employee's position with a labor organization.[55] (emphasis added).

Second, the Department has modified the definition of ''labor organization employee.'' As a result, the Department has inserted the following language into the revised Form LM–30 Instructions in Section II, Who Must File: ''For purposes of the Form LM–30, an individual who serves the union as a union steward or as a similar union representative, such as a member of a safety committee or a bargaining committee, is not considered to be an employee of the union, *by virtue of service in such capacity*.'' (emphasis added). Note that the definition has been slightly modified from the NPRM for clarity purposes, as explained in Part III, Section B, with the addition in italics and removal of the word ''exclusively'' before the phrase ''as a union steward.''

Third, the Department has removed the definition of ''labor organization'' (Part III, D10), which had been added to the 2007 rule in order to describe the top-down reporting obligation of national, international, and intermediate body officers under section 202 of the LMRDA. As explained earlier in this preamble, the term ''labor organization'' is separately defined in the LMRDA.

Fourth, the instructions have been revised to reflect that, under this rule, employees of parent and intermediate unions have top-down reporting obligations if they have significant authority or influence over subordinate affiliates. Two exemptions for top-down reporting, established by the 2007 rule, have been eliminated. The Department had proposed that the top-down reporting obligation would apply to all employees of parent and intermediate unions, as had been established for all officers of such unions by the 2007 rule. In response to comments submitted on the proposal, the final rule has modified this requirement. Under the rule, only employees who possess significant authority or influence over subordinate affiliates must report on financial interests in, and payments from, companies that deal with the subordinate affiliates or companies that deal with or involve employers whose employees are represented by the affiliates.

The reasons for these changes are discussed in detail in section III of this rule.

2. Particular Sections and Parts

Section I, Why File: This section presents general information about the reporting requirements of section 202. This information is identical to that presented in the 2007 instructions, except that it has been simplified to refer to the individual completing the form as ''you,'' instead of ''filer.''

Section II, Who Must File: The 2007 instructions presented a lengthy *Section II, Who Must File and What Must Be Reported* (located on pages 1–9). The revised instructions have divided this into two separate, concise sections, *Section II, Who Must File* and *Section III, What Must Be Reported.* The Department believes that this change will enable filers to more easily understand this basic information. This section states that ''*(a)ny officer or employee of a labor organization* (other than an employee performing clerical or custodial services exclusively), as defined by the LMRDA, must file Form LM–30 *if,* during the past fiscal year, the officer or employee, or spouse, or minor child, either directly or indirectly, held any legal or equitable interest, received any payments, or engaged in transactions or arrangements (including loans) of the types described in these instructions.'' ''Labor organization employee'' is defined as ''any individual (other than an individual performing exclusively clerical or custodial services) employed by a labor

[55] The final part of the instructions read, in the pre-2007 Form LM–30 Instructions and in the NPRM, as: ''or (c) made pursuant to a policy, custom or practice which the employer has adopted without regard to any holding by such employee of a position with a labor organization.'' The Department made changes in the final rule to this language to ensure clarity.

organization within the meaning of any law of the United States relating to the employment of employees.'' It also provides: ''For purposes of the Form LM–30, an individual who serves the union as a union steward or as a similar union representative, such as a member of a safety committee or a bargaining committee, is not considered to be an employee of the union by virtue of service in such capacity.'' The term ''minor child'' is also defined as someone younger than 21 years of age.

The reporting exceptions for insubstantial payments and gifts, including attendance at widely attended gatherings, are unchanged from the 2007 instructions, but their discussion has been moved to *Section X, Completing Form LM–30.*

Section III, What Must Be Reported: This revised section simply refers filers to Parts A, B, and C of the instructions for information about financial transactions and interests that must be reported.

Section IV, Who Must Sign the Report: This section specifies that the labor organization officer or employee is required to sign the completed Form LM–30.

Section V, When to File: The information in this section is substantively identical to the information in *Section IV, When to File* in the 2007 instructions.

Section VI, How to File: The revised Form LM–30 may be submitted in paper format or electronically. Filers will be able to choose between the two options. Section VI provides information regarding these filing options, including how to obtain the form and instructions on submitting it from the OLMS Web site.

The Department has significantly improved the electronic process for submitting the various LMRDA-required reports, including the Form LM–30, which simplifies the electronic signature procedure and eliminates the associated costs to filers. Specifically, the Department has implemented a simplified electronic signature that only requires the filer to acquire a Personal Identification Number (PIN) and password, which the Department provides at no cost to the filer. The Department believes that electronic reporting generally is easier for filers, and that it will enable the Department to better incorporate submitted forms into its Electronic Labor Organization Reporting System (e.LORS), ensuring easy access to information for the public.

Section VII, Public Disclosure: With the exception of a slight change in wording, this section is unchanged from the *Public Disclosure* section in the 2007 instructions.

Section VIII, Officer and Employee Responsibilities and Penalties: With the exception of a slight change in wording in the first sentence (changed ''required to file'' to ''required to sign''), this section of the revised instructions is identical to the information in the *Section VII, Officer or Employee Responsibilities and Penalties* in the 2007 instructions.

Section IX, Recordkeeping: This section contains information identical to that in the *Recordkeeping* section of the 2007 instructions.

Section X, Completing Form LM–30: This section presents detailed instructions on completing all of the information items in the Form LM–30. The Department believes that the placement of this section on page 3 of the revised instructions represents a significant improvement over the 2007 instructions, which did not provide this information until page 14.

This section begins by providing information on electronically completing the form and explains that the Department will provide compliance assistance support for both paper format and electronic filing. The 2007 instructions did not provide this information. This section also provides information on completing Information Items 1 through 5, which gather basic identifying information about the filer and his or her labor organization. With the exception of minor changes in wording, these ''basic identifying'' information items are the same as in the 2007 instructions.

Next, the revised instructions feature the heading, ''Information Items—Parts A, B, and C.'' The revised form features the simpler ''Parts A through C'' approach, as opposed to the multiple-schedule format introduced in the 2007 form.

First, the subsection ''General Instructions for Reportable Transactions and Interests'' begins with: ''You must report if, during the past fiscal year you or your spouse or minor child, *directly or indirectly:* (1) Held an interest; (2) engaged in a transaction or arrangement (including loans); or (3) received income, payment or other benefit with monetary value covered by the Act.''

Next, the instructions provide information on the scope of filing for national, international, and intermediate union officers and employees, which (as explained above in section III, part E, of this notice) requires some union employees (where they have significant authority or influence over subordinate affiliates) to report the same top-down information now required of union officers. This change is discussed in greater detail in section III, part E, of this notice.

The definition of ''directly or indirectly'' is presented immediately after this introductory language. This definition, including its two examples, is unchanged from the 2007 rule.

The revised subsection, General Exclusions, describes the general reporting exemptions, ''insubstantial payments and gifts'' and ''widely-attended gatherings,'' both of which are unchanged from the 2007 rule. In response to a suggestion submitted by a federation of labor organizations, the Department has moved the definition of ''trust in which a labor organization is interested'' from the General Instructions section (page 4) to the definition section in Part B (page 7) because the trust definition is relevant only to Part B. An international labor union also commented that the placement of the 3(l) trust definition in the General Exclusions section is confusing. The Department has made this change to eliminate any possible confusion about this point. This commenter also suggested that the instructions would benefit from adding a general exclusion to page 4 to indicate that filers do not have to report benefits received from a trust in which their labor organization is interested. The Department has also made this change, in order to clarify the removal of reporting of payments from trusts pursuant to section 202(a)(6).

A federation of labor organizations also suggested that the sentence referring to ''director's fees, including reimbursed expenses'' should be removed as ''redundant and confusing'' from the General Exclusions section of the General Instructions section on page 4, because it also appears in the instructions for Parts A and B. The Department disagrees because the instruction on reporting ''director's fees'' is a general requirement that applies to all three sections of the revised form. An international union commenter also stated that the sentence about ''director's fees, including reimbursed expenses'' that immediately follows the section 3(l) trust definition in the proposed instructions gives the erroneous impression that reporting such benefits from such trusts is required. The Department disagrees, noting that any such concern has been alleviated by moving the section 3(l) trust definition to the instructions for Part B.

Filers are also instructed to complete a separate Part A, B, and/or C if they are reporting more than one entity or transaction. The instructions explain

that additional Parts A, B, and C are available by clicking the Continuation Button on the electronic form or attaching a separate Part A, B, or C, if the filer is using a paper format.

A federation of labor organizations suggested that this section, beginning with ''Complete a separate Part A, B, and/or C'' (page 4, left column), should be placed immediately before the ''General Exclusions'' instruction (page 4, left column). The commenter stated that the typeface and position of the headings make the ''Complete a separate Part A, B, and/or C'' section erroneously appear to be an exclusion. The Department agrees that this change would add clarity, and it has thus moved the ''Complete a separate Part A, B, and/or C'' title and instructions to before the ''General Exclusions'' section.

The commenter suggested that the ''loan'' example be removed from the instruction regarding completing separate Parts A, B or C (page 4, right column), because its inclusion here may cause confusion for filers because of the final rule's general exclusion for reporting bona fide loans. Instead, the commenter suggested using another reportable receipt, such as a ''gift,'' in the example. The Department has made this change in order to improve clarity.

PART A (ITEMS 6 AND 7): REPRESENTED EMPLOYER

The revised instructions for Part A present information on how to complete items 6 and 7, which pertain to the Represented Employer. Specifically, the instructions state: ''Complete Part A if you (1) Held an interest in, (2) engaged in transactions or arrangements (including loans) with, or (3) derived income or other economic benefit of monetary value from, an employer whose employees your labor organization represents or is actively seeking to represent.'' The instructions state that payments received as ''director's fees'' must be reported. This requirement was contained in the 2007 instructions.

Next, the definition for ''actively seeking to represent'' is provided. This definition has been slightly revised in response to a comment by a federation of labor unions. As explained earlier in this preamble, the change adds clarity to the definition, which requires concrete steps towards organizing. The Department has not made any substantive changes to the definition as some commenters had suggested.

The subsection, Part A Exclusions, lists items that do not need to be reported in Part A. The first three exclusions—(i), (ii), and (iii)—are substantively unchanged from the 2007 instructions. These relate, respectively, to holdings, transactions, and income from bona fide investments in securities traded on a national securities exchange; holdings, transactions, and income from other designated securities—of $1,000 or less; and transactions involving the purchases and sale of goods and services in the regular course of business at prices generally available to any employee of the employer (excluding loans or transactions involving interests in the employer).[56] The fourth exclusion, ''Payments and benefits received as a *bona fide employee''* (emphasis added), has been modified to incorporate the historical interpretation given payments received by union officials under union leave and no docking policies established by collective bargaining agreements, practice under such agreements, or policy, custom, or practice adopted by an employer without regard to an employee's position with a union.

Since the first Part A Exclusion refers to ''bona fide investments,'' this term is defined in this section. The definition for ''bona fide investment'' is unchanged from the 2007 rule. The instructions here advise that filers should not include bank account numbers, policy numbers, social security numbers, or similar identifying information in completing the form.

In the revised instructions, the following definitions are presented in connection with Information item 7: ''arrangement,'' ''benefit with monetary value,'' ''income,'' and ''legal or equitable interest.'' All of these definitions are unchanged from the 2007 rule. A clarifying note relating to the definition of ''arrangement'' has been revised to eliminate an example that is irrelevant to the definition.

A commenter suggested that the definition of ''income'' in the Part A, item 7 instruction (page 6) be modified to reference the exclusion of payments and benefits received as a ''bona fide employee'' (page 5). The commenter explained its view that defining ''income'' as ''all income from whatever source derived, including but not limited to, compensation for services'' could be confusing for filers as it appears to contradict the ''bona fide employee'' exclusion. The Department disagrees. Because the exclusions, including those paid to filers as bona fide employees, are first discussed in the instructions, it will be clear to filers that such payments are not reportable. Additionally, specific instructions are provided on how to complete items 6 and 7, which are described in the above subsection, Section-by Section Discussion of Revised Form.

This commenter suggested that the two examples preceding the ''Other transactions or arrangements'' heading in Part A (pages 6–7) be moved to Part B since they concern businesses that deal with the labor organization, not employers. The Department disagrees with the comment, as the examples, which derive from the 2007 instructions, are provided as part of the definition, and are intended to illustrate the application of the term ''legal or equitable interest.'' Moving the examples could create confusion because the term first appears in Part A of the form. While they contain examples of Part B businesses, the term ''legal or equitable interest'' appears also in Part A, and the Department believes that definitions should be placed in the part of the instructions where the term first appears.

PART B (ITEMS 8–12): BUSINESS

In the revised instructions, the filer is instructed:

> Complete Part B if you held an interest in or derived income or other benefit with monetary value, including reimbursed expenses, from a business (1) A substantial part of which consists of buying from, selling or leasing to, or otherwise dealing with the business of an employer whose employees your labor organization represents or is actively seeking to represent, or (2) any part of which consists of buying from or selling or leasing directly or indirectly to, or otherwise dealing with your labor organization or with a trust in which your labor organization is interested. Report payments received as director's fees, including reimbursed expenses.

Definitions for ''substantial part'' and ''dealing'' are provided. These definitions are unchanged from the 2007 rule.

The subsection, Part B Exclusions, lists items that do not need to be reported in Part B. Two of the Part B exclusions are retained from the 2007 rule (relating to holdings, transactions and income from bona fide investments in securities traded on a national securities exchange and other designated securities; and holdings or income of $1,000 or less from bona fide investments in other securities). These two Part B exclusions are the same as the exclusions set forth in (i) and (ii) in Part A. However, this rule excepts from reporting marketplace transactions from

[56] The exclusions, as published in the instructions to the 2010 NPRM are identical to those in the instant rule. See 75 FR 48450. The description of the exclusions in the preamble to the NPRM, however, did not accurately summarize the instructions. See 75 FR 48434.

bona fide credit institutions, as explained in greater detail in section III, part C, of this notice. Specifically, the revised instructions read:

Bona fide loans. Do not report bona fide loans, including mortgages, received from national or state banks, credit unions, savings or loan associations, insurance companies, or other bona fide credit institutions, if the loans are based upon the credit institution's own criteria and made on terms unrelated to your status in the labor organization. Additionally, do not report other marketplace transactions with such bona fide credit institutions, such as credit card transactions (including unpaid balances) and interest and dividends paid on savings accounts, checking accounts or certificates of deposit if the payments and transactions are based upon the credit institution's own criteria and are made on terms unrelated to your status in the labor organization.

Additionally, specific instructions are provided on how to complete items 8 through 12, which are described in the above subsection, Revised Form.

PART C (ITEMS 13 AND 14): OTHER EMPLOYER OR LABOR RELATIONS CONSULTANT

In the revised instructions, the filer is instructed:

Complete Part C if you, your spouse, or your minor child received, directly or indirectly, any payment of money or other thing of value (including reimbursed expenses) from any employer (other than a Represented Employer under Part A or Business covered under Part B above) from whom a payment would create an actual or potential conflict between these financial interests and the interest of your labor organization or your duties to your labor organization. Such employers include, but are not limited to, an employer in competition with an employer whose employees your labor organization represents or whose employees your union is actively seeking to represent, *if you are involved with the organizing, collective bargaining, or contract administration activities or possess significant authority or influence over such activities. You are deemed to have such authority and influence if you possess authority by virtue of your position, even if you did not become involved in these activities.* Additionally, complete Part C if you received a payment of money or other thing of value from a labor relations consultant to a Represented Employer or Part C employer.[57]

The italicized language represents a change from the 2007 instructions, as explained in section III, part D, of this rule.[58] The Department removed ''labor organizations'' and ''trusts in which your labor organization is interested'' from the scope of Part C, as explained in section III, part D, of this preamble.

The subsection, Part C Exclusions, lists items that do not need to be reported in Part C. The first administrative exemption in Part C—relating to payments of the kind referred to in LMRA section 302(c)—remains substantially the same as that in the 2007 instructions; the only change is that LMRA section 302(c) is not quoted in the instructions (instead, the reader is directed to a later part of the instructions where this section is set forth in full).

The second administrative exemption in Part C—relating to bona fide loans, interests, or dividends from a bona fide credit institution—is modified slightly from the 2007 rule; specifically, the following sentence, present in the 2007 instructions, is not included in the revised instructions: ''This exception does not apply to national or state banks, credit unions, savings or loan associations, insurance companies, or other bona fide credit institutions that constitute a 'trust in which your labor organization is interested.' '' Accordingly, this rule excepts from reporting under Part C:

(ii) Bona fide loans (including mortgages), interest or dividends from national or state banks, credit unions, savings or loan associations, insurance companies, or other bona fide credit institutions, if such loans, interest or dividends are based upon the credit institution's own criteria and made on terms unrelated to your status in a labor organization. Additionally, do not report other marketplace transactions with such bona fide credit institutions, such as credit card transactions (including unpaid balances) and interest and dividends paid on savings accounts, checking accounts or certificates of deposit if the payments and transactions are based upon the credit institution's own criteria and are made on terms unrelated to your status in the labor organization.

The third administrative exemption in Part C returns to the Department's historical interpretation, exempting:

(iii) Interest on bonds or dividends on stock, provided such interest or dividends are received, and such bonds or stock have been acquired, under circumstances and terms unrelated to your status in a labor organization and the issuer of such securities is not an enterprise in competition with the employer whose employees your labor organization represents or actively seeks to represent.

The Department believes that the 2007 rule did not adequately justify the removal of this exemption. Further, interest on bonds or dividends on stock are routine business transactions which do not ordinarily raise conflict-of-interest questions. Their inclusion would increase the burden on union officials, without any apparent benefit to the public. Indeed, the reporting of non conflict-of-interest payments could hide from scrutiny those payments that are in need of transparency. Finally, in order to ensure that actual or potential conflict-of-interest payments are reported, the Department has provided two qualifications on this exemption: the payments must be received under circumstances and terms unrelated to the recipient's status in a labor organization and the issuer of such securities is not an enterprise in competition with the represented employer.

A federation of unions suggested that ''payments from trusts or other labor organizations'' should be included as a fourth express exclusion from Part C, and argued that including this express exclusion will eliminate confusion created by the Department's 2007 Frequently Asked Questions (FAQs 45, 46, 48, 51–53 and 55), which indicated that such payments may be reportable. The Department is persuaded by this suggestion, as it adds clarity to the potential filer on this issue. Thus, the Department has added a fourth exclusion to Part C, specifying that payments received from a section 3(l) trust or labor organization are not reportable. Also, in response to the comment, the Department clarifies that this rule rescinds any example in the 2007 instructions or FAQs that indicated that payments from trusts are reportable.[59]

Additionally, specific instructions are provided on how to complete items 13 and 14, which are described in the above subsection, Revised Form.

The instructions retain the following requirements that an official report:

- Any payment of money or other thing of value from a labor relations consultant to a Part C employer;
- Payments from an employer that is a not-for-profit organization that receives or is actively and directly soliciting (other than by mass mail, telephone bank, or mass media) money,

[57] As stated earlier in the preamble to this rule, the NPRM stated, ''between *your* financial interests * * *.'' The Department has modified this phrase to ''between *these* financial interests,'' so filers are aware that they must look at the payments and interests of their spouse and minor children as well as their own.

[58] The Department notes that this quoted language is identical to the language in the proposed instructions see 75 FR 48450. The language was incorrectly set forth in the discussion of this point in the NPRM. See 75 FR 48434.

[59] See n. 12 herein, which discusses the impact of the final rule on FAQs issues in connection with the 2007 rule and examples in the instructions to the 2007 form.

donations, or contributions from the official's union; and

• Any payments from an employer (not covered by Parts A or B), or from any labor relations consultant to an employer, for the following purposes:

(1) Not to organize employees;

(2) To influence employees in any way with respect to their rights to organize;

(3) To take any action with respect to the status of employees or others as members of a labor organization;

(4) To take any action with respect to bargaining or dealing with employers whose employees your organization represents or seeks to represent; and

(5) To influence the outcome of an internal union election.

See 72 FR 36128, 36130, 36173.

Remainder of Instructions

The instruction for item 15, Signature and Verification, states that the completed Form LM–30 must be signed by the officer or employee and that forms submitted electronically must use electronic signatures. The instructions indicate that the filer must enter the telephone number used by the filer to conduct official business, and note that the filer does not need to report a private, unlisted telephone number.

The revised instructions then feature: ''Selected Definitions from the Labor-Management Reporting and Disclosure Act of 1959, as Amended (LMRDA)'' [LMRDA section 3]; ''Related Provisions of the Labor-Management Reporting and Disclosure Act of 1959, as Amended (LMRDA)—Report of Officers and Employees of Labor Organizations'' [LMRDA section 202]; Section 302(c) of the Labor Management Relations Act, 1947, as Amended [Sec. 8(c) of the National Labor Relations Act, as Amended]; and an ''If You Need Assistance'' section, which includes a list of OLMS field offices and explains the information available on the OLMS Web site. This information is only slightly changed from the 2007 instructions.

V. Regulatory Procedures

Executive Orders 12866 and 13563

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

In the Paperwork Reduction Act (PRA) analysis below, the Department estimates that the rule will result in a total reporting and recordkeeping burden on filing labor organization officers and employees of 2,898 hours and a monetary burden on labor organization officers and employees of approximately $138,621, based on the value of a filer's time. This represents a 10,934 hour reduction from the 13,832 hours estimated in the 2007 rule for filing labor organization officers and employees, and a $170,386 reduction in monetary burden from the estimated $309,007 in the 2007 rule. See 72 FR 36157. This analysis is intended to address the analysis requirements of both the PRA and the Executive Orders.

The following is a summary of the need for and objectives of the rule. A more complete discussion of various aspects of the proposal is found elsewhere in the preamble.

The LMRDA was enacted to protect the rights and interests of employees, labor organizations, and the public generally as they relate to the activities of labor organizations, employers, labor relations consultants, and labor organization officers, employees, and representatives. The LMRDA includes financial reporting and disclosure requirements for labor organizations and others as set forth in Title II of the Act. See 29 U.S.C. 431–36, 441. The Department has developed several forms to implement the union annual reporting requirements of the LMRDA. Under section 202 of the Act, 29 U.S.C. 432, union officers and employees are required to file reports if they, or their spouses or minor children, engage in certain transactions or have financial holdings that may constitute a conflict of interest. The Department has developed the Form LM–30, Labor Organization Officer and Employee Report, to implement section 202.

This rule modifies the Form LM–30, as last revised in 2007. See 72 FR 36106 (July 2, 2007). As discussed above, the revised form has been simplified and will no longer have to be filed by certain individuals, notably stewards, and certain interests and transactions, including most bona fide loans, will not have to be reported. The rule is part of the Department's efforts to meet the goals of greater transparency and disclosure, while mitigating burden on labor organization officers and employees by eliminating reporting on matters without demonstrated utility.

The Form LM–30 provides transparency for those financial interests of union officers and employees that may pose conflicts between their own financial interests and their duty to their union and its members. The Act requires the reports to be made available to the public. The reports allow union members to view the information needed by them to monitor their union's affairs and to make informed choices about the leadership of their union and its direction. Accurate disclosure and increased transparency promote the unions' own interests as democratic institutions and the interests of the public and the government. Financial disclosure deters fraud and self-dealing and facilitates the discovery of such misconduct when it does occur.

The revised financial disclosure form will promote increased compliance with the statute by clarifying the form and instructions, organizing the information in a more useful format, and modifying it to better meet the requirements of the LMRDA and the Department's policy judgments consistent with its discretion under the Act.

Published at the end of this rule are the revised Form LM–30 and instructions. The revised Form LM–30 and instructions also will be made available via the Internet. The information collection requirements contained in this rule have been submitted to OMB for approval.

Unfunded Mandates Reform

This rule will not include any Federal mandate that may result in increased expenditures by State, local, and tribal governments, in the aggregate, of $100 million or more, or in increased expenditures by the private sector of $100 million or more.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule 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 the United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 13132 (Federalism)

The Department has reviewed this rule in accordance with Executive Order 13132 regarding federalism and has determined that the rule does not have federalism implications. Because the economic effects under the rule will not be substantial for the reasons noted above and because the rule has no direct effect on States or their relationship to the Federal government, the rule does 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.''

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, requires agencies to prepare regulatory flexibility analyses, and to develop alternatives wherever possible, in drafting regulations that will have a significant impact on a substantial number of small entities, including ''small businesses,'' ''small organizations,'' and ''small governmental jurisdictions.'' This rule revises the reporting obligations of union officers and employees, who, as individuals, do not constitute small business entities. Accordingly, the final rule will not have a significant economic impact on a substantial number of small business entities. Therefore, under the Regulatory Flexibility Act, 5 U.S.C. 605(b), a regulatory flexibility analysis is not required.

Paperwork Reduction Act

This rule establishes a new LM–30 reporting form which constitutes a ''collection of information'' within the meaning of the Paperwork Reduction Act of 1995 (PRA) [44 U.S.C. 3501–3520]. Under the PRA, 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 control number assigned by the Office of Management and Budget (OMB). In accordance with the PRA, the Department submitted an information collection request (ICR) to OMB. On September 29, 2011, OMB approved the ICR through September 30, 2014, and assigned OMB Control Number 1245–0005 to this version of the LM–30 reporting form.

A. Review of the Comments Received in Response to the NPRM Regarding the Burden Estimate

In accordance with the requirements of the PRA, the Department solicited public comments on the information collection included in the NPRM. Since this rule exclusively amends an information collection, all of the comments received by the Department in response to the NPRM addressed the collection. A discussion of the comments that addressed all aspects of the collection other than the Department's burden estimate is provided above. Here the Department provides a discussion of the comments that addressed the Department's burden estimate.

In response to the NPRM, the Department received three comments that addressed the Department's burden analysis in the NPRM. All three comments were limited to the burden associated with top-down reporting. Additionally, as noted in the preamble, several commenters expressed support for the Department's proposals that, if adopted, would reduce the burden of compliance with the Form LM–30 requirements. These proposals included, in part, the return to the historical position that union leave and no docking payments were not reportable and that stewards and other representatives are not covered by the Form LM–30 reporting requirements by virtue of their positions; and the reporting exception for bona fide loans and other credit arrangements with most credit institutions. Further, two commenters who generally are opposed to the Department's proposals expressed the view that the 2007 rule did not impose any undue burden on union officers and employees.

As discussed in the NPRM and in earlier sections of this preamble, top-down reporting concerns conflicts of interest that may arise between the financial interests of officers and employees of parent and intermediate unions and business dealings involving their union's subordinate affiliates or employers whose employees are represented by the affiliates. In the NPRM, the Department proposed to require employees of parent and intermediate unions to report such interests; the 2007 rule excepted them from this requirement.

Two commenters expressed the view that the increased burden associated with top-down reporting exceeded any burden savings associated with the other changes proposed in the NPRM. One national union took issue with the burden estimates in both the NPRM and the 2007 rule, explaining that its own experience with the pre-2007 Form LM–30 revealed that 12 hours were needed to complete that much simpler form. It estimated that it can take one hour per week for ''organizing and categorizing receipts'' and another hour per week to confer with a spouse or minor child about links between their employer or other entities and the union. This tracking alone, the commenter states, would exceed the Department's total burden estimate in the 2007 rule and the 2010 NPRM. The commenter also estimates that top-down reporting itself could require 25 hours per year. Other commenters urged the Department to modify or eliminate top-down reporting, which they identified as the most burdensome aspect of LM–30 reporting. The Department has discussed and responded to these comments at length earlier in the preamble and does not restate them here.

The Department believes that the NPRM reflects the best estimate of the burdens associated with completing the Form LM–30, as revised by this rule. The Department notes that none of the commenters provided a detailed explanation as to how their estimates were derived, and notes that the time estimates provided for the pre-2007 form and the 25-hour estimate for top-down reporting seem very high, even for the most atypical situations and could not reflect the average burden. The Department's estimate is for an average filer.

Further, the Department does not believe that many union officials will be required to file under the top-down reporting framework, and those who do file are already included within the NPRM's estimate for the number of filers. (The Department notes that the estimate for the number of filers does not include a breakdown of the type of transaction being reported, such as a gift or a security or other interest, nor does it indicate whether or not the report is required pursuant to top-down reporting.) Further, none of the commenters challenged the estimated number of filers.

Moreover, the burden hour estimates are averages for those who file. Some filers may take more or less time than the estimated 90 minutes, and the Department considers the officials who file as a result of top-down reporting to be already included within the average burden hour estimate. More specifically, the Department does not believe that many, if any, of those who file will take more than 90 minutes to complete the form as a result of the top-down requirements, nor does the Department consider the top-down reporting requirements as altering the 90-minute average. The commenters did not provide any specific information challenging this conclusion.

The Department believes that the concerns regarding the burden associated with top-down reporting reflect, to a large extent, a

misunderstanding about what types of payments, interests, and transactions must be reported on the Form LM–30, and how a union official would determine reportability. Moreover, as explained earlier in the preamble, many of the concerns about top-down reporting have been alleviated by specifying that top-down reporting is required only of officers and those employees with ''significant authority or influence'' over lower-level unions. As stated in the preamble, it is helpful to look at the steps involved in determining whether a top-down report, or any report, is owed. The first step is for a union officer or employee to look at the types of interests held, income and benefits received, and transactions engaged in during the fiscal year. The second step is to eliminate those that are exempted by the general exclusions, such as publicly held stock, income received by the union official as a bona fide employee, and the de minimis threshold. This step will generally greatly reduce potential reportable transactions. The third step is to determine whether any remaining financial transactions were derived from represented employers, as well as service providers and vendors of the union, their trusts, and represented employers. As a part of this step, officers and certain employees of parent and intermediate unions will also have to consider holdings in and payments from entities that have relationships with subordinate affiliates.[60] Thus, union officials, higher-level or not, have no obligation to research each and every relationship that a union has, at any level, but, rather, only those that relate to the few, if any, employers and businesses identified in step three of the process.

The Department is unpersuaded by the unsubstantiated assertion by one commenter that the top-down burden imposed on union employees exceeds any reduced burden associated with other changes proposed by the NPRM. The Department also disagrees with the assertion that filers are required to track routine financial transactions. Rather, the Form LM–30 only requires tracking and reporting of financial transactions that are actual or potential conflicts of interest, and most union officials will have few, if any, such transactions.

Regarding the comment that suggested that the filers should be required to report only top-down interests or payments for which they have ''actual, subjective'' knowledge, the Department believes that top-down filers (parent and intermediate body union officers and those union employees with significant authority or influence over lower-level unions) will generally have actual, subjective knowledge of the entity's relationship with the union or represented employer, or will be in a position to ascertain this information. Thus, filers will not generally need to contact lower levels of the union to determine reportability, or, if they do need to contact other levels of the union, they will be in position to effectively obtain any needed information.

Regarding the comment that suggested that union officials have an ''affirmative obligation'' to contact subordinate bodies of their union that do not have ''systematic records,'' the Form LM–30 reporting requirements do not generally require union officials to contact lower level entities of the union. Further, all affiliated unions subject to section 206 of the LMRDA must have adequate records to ''provide in sufficient detail'' the ''necessary basic information and data'' from which the annual financial disclosure forms (such as the Form LM–2, Form LM–3, and Form LM–4) submitted to the Department can be verified.

Other commenters expressed concern about the burden that an officer or employee of an international, national, or intermediate union would face in determining whether he or she has received a payment from a business a substantial part of which consists of dealing with an employer whose employees the filer's union represents or is actively seeking to represent. Regarding the application of the ''substantial part'' provision to top-down reporting, the Department notes that this provision actually operates as a general limitation on reporting that applies independently from top-down requirements, as does the ''actively seeking to represent'' condition for reporting interests in and payments from represented employers. Again, union officials are not generally required to engage in research to identify potential conflict-of-interest relationships. Further, as explained earlier in the preamble, filers should request guidance from the Department if they are unable to determine the application of the reporting requirements, such as the ''substantial part'' and ''actively seeking to represent'' provisions.

D. Methodology for the Burden Estimates

The Department first estimated the number of Form LM–30 filers that will submit the revised form. Then, it estimated the number of minutes that each filer will need to meet the reporting and recordkeeping burden imposed by the revised form, as well as the total burden hours. The Department next estimated the cost to each filer for meeting those burden hours, as well as the total cost to filers. The Federal costs associated with the revised rule were also estimated. Please note that some of the burden numbers included in this PRA analysis will not add up due to rounding. Except as noted, the burden analysis in the final rule is substantively identical to that set forth in the NPRM.

1. Number of Revised Form LM–30 Filers

The Department estimates that 1,932 union officers and employees will submit the revised Form LM–30. This figure represents the total pre-2007 and 2007 Form LM–30 reports submitted during Fiscal Year 2009. In that fiscal year, the Department established an enforcement policy that enabled union officers and employees to use either the pre-2007 form or the more complex 2007 version in satisfying their reporting obligation under section 202 of the LMRDA.

2. Hours To Complete and File Revised Form LM–30: Reporting and Recordkeeping

The Department has estimated the number of minutes that each Form LM–30 filer will need for completing and filing the revised form (reporting burden), as well as the minutes needed to track and maintain records necessary to complete the form (recordkeeping burden). The estimates are included in Table 1, which describes the information sought by the revised form and instructions, where the particular information is to be reported, if applicable, and the amount of time estimated for completion of each item of information. The revised reporting regime more closely resembles the pre-2007 Form LM–30, in both form and content, than the 2007 form.

Not all union officers and employees will be required to file the Form LM–30, nor will all of those who file need to complete each Part of the form. However, for purposes of assessing an average burden per filer, the Department

[60] A fourth step could involve review of activities to be reported pursuant to section 202(a)(6) in the ''catch-all'' Part C of the revised Form LM–30, but OLMS has limited the requirement to report in Part C payments from employers in competition with represented employers to only those union officials with significant influence over organizing. This eliminates the top-down issue involving such employers for most union officials. Further, regarding payments from charities pursuant to section 202(a)(6) and Part C of the proposed form, any payments received as a bona fide employee and as regular marketplace transactions would be excluded, pursuant to the statute.

assumes that the average filer serves as an officer or employee for one labor organization, and that the filer receives reportable payments or interests for a single entity on Parts A, B, and C, respectively.

Additionally, the below estimates are for all filers, including first-time filers and subsequent filers. While the Department considered separately estimating burdens for first-time and subsequent filers, the nature of Form LM–30 reporting militates against this approach. Union officers may serve for relatively short periods of time and reportable transactions may not be reported in subsequent years for a variety of reasons. Where the Department has reduced burden estimates for subsequent year filings of LMRDA reports, it generally did so with regard to required annual reports, specifically labor organization annual reports, Forms LM–2, LM–3, and LM–4. In contrast, the Form LM–30 is only required for union officers and employees in years that they engage in reportable transactions. Further, these officials do not have the same familiarity with reporting as other LM filers. See 72 FR 36157, n. 4. As such, the burden estimates assume that the union officer or employee has never before filed a Form LM–30.

Recordkeeping Burden. The recordkeeping estimate of 15 minutes per filer represents a 5-minute change from the 20-minute estimate for the 2007 Form LM–30. 72 FR at 36157. This estimate reflects new exemptions from reporting for union leave and no docking payments, and mortgages and other loans, as well as the decision to eliminate reporting from trusts and unions under section 202(a)(6), which reduce the complexity of the recordkeeping requirements. Additionally, most of the financial books and records needed to complete the form are maintained in the filer's normal course of business, both union and personal. Finally, the 15 minutes accounts for the 5-year retention period required by statute. See section 206, 29 U.S.C. 436.

Reporting Burden. The total reporting burden of 75 minutes per respondent addressed in Table 1 reflects the time required to read the Form LM–30 instructions to discover whether or not a report is owed and determine the correct manner to report the necessary information. Of that total amount, it should be noted the Department estimates that the average filer will need 30 minutes to read the instructions, which is substantially less than the 55 minutes estimated for the 2007 Form LM–30. 72 FR 36157.[61] This reduction is due in part to the reduced scope of required reporting. In particular, the Department has eliminated the requirement to report union leave and no docking payments, bona fide loans, and payments from trusts and unions pursuant to section 202(a)(6). Further, the creation of a more concise and consolidated form and instructions, with definitions and other explanations placed in a more readily accessible format, will enable filers to more quickly ascertain the necessary reporting requirements.

In developing the 75-minute estimate, the Department also believes that the simple data entry required by items 1–3 will only require 30 seconds each. A filer will be able to enter his or her own contact information in only two minutes, in item 4. Generally, filers will only need three minutes to enter contact information, such as for their labor organization, in item 5, as well as the contact information for the trust or employer with which the business deals, in item 10. The Department believes, however, that filers will need five minutes, respectively, to enter the contact information for the represented employer in item 6, the business that deals with a labor organization, trust, or employer in item 8, and the ''other employer'' or labor relations consultant in item 13. Filers will need one minute to complete item 9, which asks filers to indicate whether the business identified deals with a labor organization, trust, or employer.

Additionally, filers will need 3 minutes to enter the financial data required in items 7, 12, and 14, and 3.5 minutes to report the nature and value of the dealings in item 11. The Department also believes each filer will spend an average of 5 minutes to check the answers. Finally, the Department estimates that a filer will utilize five minutes to check responses and review the completed report, and will require two minutes to sign and verify the report in item 15. For Form LM–2 Labor Organization Annual Report filers, the Department last year introduced a cost-free and simple electronic filing and signing protocol. The Department intends to provide this feature to Form LM–30 filers in 2012. For this reason, the burden estimate remains constant whether the form is electronically signed, or signed by hand.

As a result, the Department estimates that a filer of the revised Form LM–30 will incur 90 minutes in reporting and recordkeeping burden to file a complete form. This compares with the 2007 estimate of 120 minutes per filer.

TABLE 1—REPORTING AND RECORDKEEPING BURDEN

[In minutes]

Burden description	Section of proposed form	Recurring burden hours
Maintaining and gathering records	Recordkeeping Burden	15 minutes.
Reading of the instructions to determine applicability of the form and how to complete it.	Report Burden	30 minutes.
Reporting LM–30 file number	Item 1	30 seconds.
Reporting covered fiscal year	Item 2	30 seconds.
Identifying if report is amended	Item 3	30 seconds.
Reporting filer's contact information	Item 4	2 minutes.
Reporting labor organization contact information	Item 5	3 minutes.
Part A: Reporting name and contact information for employer in Part A of form	Item 6	5 minutes.
Part A: Reporting the nature of the interest, transaction, arrangement, benefit, or income, as well as the amount, received from the employer identified in Part A.	Items 7a and 7b	3 minutes.

[61] Additionally, the Department estimates that those union officers and employees who are not required to file will spend ten minutes reading the instructions. This burden is not included in the total reporting burden, since these officials do not file and are thus not respondents.

TABLE 1—REPORTING AND RECORDKEEPING BURDEN—Continued

[In minutes]

Burden description	Section of proposed form	Recurring burden hours
Part B: Reporting contact information for business	Item 8	5 minutes.
Part B: Identifying if the business deals with a labor organization, trust, or employer.	Item 9	1 minutes.
Part B: Reporting the contact information for the trust or employer with which the business deals.	Item 10	3 minutes.
Part B: Reporting the nature and value of the dealings between the business and employer, union, or trust.	Items 11a and 11b	3½ minutes.
Part B: Reporting the nature and amount of interest held or income received from the business.	Items 12a and 12b	3 minutes.
Part C: Reporting the contact information for the employer or labor relations consultant, and identifying the entity as an employer or labor relations consultant.	Items 13a and 13b	5 minutes.
Part C: Reporting the nature and amount of payment from the employer or labor relations consultant.	Items 14a and 14b	3 minutes.
Checking responses	N/A	5 minutes.
Signature and verification	Item 15	2 minutes.
Total Recordkeeping Burden Estimate Per Filer		15 minutes.
Total Reporting Burden Estimate Per Filer		75 minutes.
TOTAL BURDEN HOUR ESTIMATE PER FILER		*90 minutes.*

Total Reporting and Recordkeeping Burden. As stated, the Department estimates that there are 1,932 union officers and employees that will be annually filing the Form LM–30. Thus, the estimated recordkeeping burden for all filers is 28,980 minutes (15 × 1,932 = 28,980 minutes) or 483 hours (28,980/60 = 483). The total estimated reporting burden for all filers is 144,900 minutes (75 × 1,932 = 144,900 minutes) or approximately 2,415 hours (144,900/60 = 2,415 hours). The total estimated burden for all filers is, therefore, 173,880 minutes or approximately 2,898 hours. See Table 2 below.

TABLE 2—TOTAL REPORTING AND RECORDKEEPING BURDEN FOR ALL 1,932 ESTIMATED FILERS

Total Recordkeeping Burden.	483 hours.
Total Reporting Burden	2,415 hours.
Total Burden	2,898 hours.

3. Calculation of Total Monetized Burden Hours Costs for Labor Organization Officers and Employees to Complete the Revised Form LM–30

The Department estimates the dollar cost to filers to complete the Form LM–30 by using fiscal year (FY) 2009 data derived from Form LM–2, Labor Organization Annual Reports, filed with the Department pursuant to section 201 of the LMRDA. The Form LM–2 is the annual financial disclosure report filed by the largest labor organizations, those with $250,000 or more in total annual receipts. The Department notes that many Form LM–30 reports are filed by lower level labor organization officers and employees, whose labor organizations file the less detailed Form LM–3 and Form LM–4 Labor Organization Annual Reports, and who are often part-time officials earning lower salaries than parent body labor organizations that file the more comprehensive Form LM–2. However, because only part-time annual salaries are reported by part-time officers on the Form LM–3 (and individual salaries are not reported on the LM–4), but not the hours upon which those part-time annual salaries are based, it is impractical to calculate an average hourly wage for union officers from the Form LM–3. This contrasts with a Form LM–2 filer, where it can be assumed that the annual salaries for officers are primarily for full-time duties, which makes it possible to determine average hourly wages. Therefore, the Form LM–2 provides the Department with more comprehensive data by which to ascertain a reasonable estimate of union officer and employee salaries.

The Department also assumes, as it did for burden estimates under the pre-2007 Form LM–30, that one-third of the forms will be filed by union presidents, secretary-treasurers, and international representatives (the last designation as a proxy for union employees), respectively. The Department derived the average hourly wage for each of these categories by utilizing data from FY 2009 Form LM–2 reports.

With respect to the international representative analysis, the salary data derived from the Department's Electronic Labor Organization Reporting System (e.LORS) included only international or national unions and only those employee titles and gross salary data from Form LM–2, Schedule 12 of those international/national unions that included words like ''national'' or ''international'' and ''representative.'' The Department then eliminated blank salary entries (either nothing was listed in the Form LM–2 or a zero was listed) because there are a variety of reasons why the salary can be blank or zero and their inclusion in the calculation of the average would skew the average calculation. Finally, the Department calculated the average hourly wage by dividing the average annual salary by 2,080 hours (40 hours per week times 52 weeks per year). Next, the Department increased these figures by 43.00% to account for total compensation.[62]

The methodology and assumptions are somewhat similar for the president and secretary-treasurers averages. Here, the Department had data from FY 2009 for all Form LM–2 filers with $800,000 or more in annual receipts. The $800,000 figure was selected because it represents roughly the average of all Form LM–2 filers, and we hypothesized that these larger than average Form LM–

[62] See Employer Costs for Employee Compensation Summary, from the Bureau of Labor Statistics (BLS), at *http://www.bls.gov/news.release/ecec.nr0.htm.* The Department increased the average hourly wage rate for employees ($20.49 in 2008) by the percentage total of the average hourly compensation figure ($8.90 in 2008) over the average hourly wage.

2 filers are more likely to have presidents and secretary-treasurers who file the Form LM–30.

As a result, the Department estimates that union presidents earn an average hourly wage of $34.65 ($49.55 after adjusting by 43.00% for total compensation); union secretary-treasurers, $31.87 ($45.57 after adjusting by 43.00% for total compensation); and international representatives, $33.83 ($48.38 after adjusting by 43.00% for total compensation). The Department also estimated that each of these categories of union officials accounted for one-third of the Form LM–30 reports submitted and thus one-third of the total burden hours (2,898 hours divided by three equals 966). Therefore, the total cost was $138,621 (966 × $49.55 = $47,865.30; 966 × $45.57 = $44,020.62; and 966 × $48.38 = $46,735.08). The estimated cost per filer is approximately $71.75 ($47,865.30 + $44,020.62 + $46,735.08 = $138,621; $138,621/1932 = $71.75).

4. Other Costs (Start-up, Capital, Maintenance, and Operations)

The Department associates no costs with this information collection, beyond the value of a filer's time.

5. Federal Costs

Finally, in its recent submission for revision of OMB #1245–0003 (formerly OMB #1215–0188), which contains all LMRDA forms (except the pre-2007 Form LM–30, 1245–0002, which was approved under OMB #1215–0205, and the 2011 Form LM–30), the Department estimated that its costs associated with the LMRDA forms are $2,710,726 for the OLMS national office and $3,779,778 for the OLMS field offices, for a total Federal cost of $6,490,504. Federal estimated costs include costs for contractors and operational expenses such as equipment, overhead, and printing as well as salaries and benefits for the OLMS staff in the National Office and field offices who are involved with reporting and disclosure activities. These estimates include time devoted to: (a) Receipt and processing of reports; (b) disclosing reports to the public; (c) obtaining delinquent reports; (d) reviewing reports, (e) obtaining amended reports if reports are determined to be deficient; and (f) providing compliance assistance training on recordkeeping and reporting requirements.

List of Subjects in 29 CFR Part 404

Labor union officers and employees; reporting and recordkeeping requirements.

Text of Rule

Accordingly, the Department amends part 404 of 29 CFR Chapter IV as set forth below:

PART 404—LABOR ORGANIZATION OFFICER AND EMPLOYEE REPORTS

■ 1. The authority citation for part 404 is revised to read as follows:

Authority: Labor-Management Reporting and Disclosure Act Secs. 202, 207, 208, 73 Stat. 525, 529 (29 U.S.C. 432, 437, 438); Secretary's Order No. 08–2009, Nov. 6, 2009, 74 FR 58835 (Nov. 13, 2009).

§ 404.1 [Amended]

■ 2. In § 404.1, paragraph (f) is removed and paragraphs (g) through (j) are redesignated as (f) through (i), respectively.

Signed in Washington, DC, this 6th day of October, 2011.

John Lund,

Director, Office of Labor-Management Standards.

Note: The following appendix will not appear in the Code of Federal Regulations.

Appendix: Revised Form and Instructions

BILLING CODE 4510–CP–P

U.S. Department of Labor
Office of Labor-Management Standards
Washington, DC 20210

FORM LM-30
LABOR ORGANIZATION OFFICER AND EMPLOYEE REPORT

Form Approved
Office of Management and Budget
No. 1245-0005
Expires 09-30-2014

This report is mandatory under P.L. 86-257, as amended. Failure to comply may result in criminal prosecution, fines, or civil penalties as provided by 29 U.S.C. 439 or 440.

For Official Use Only

E

PLEASE READ THE INSTRUCTIONS CAREFULLY BEFORE PREPARING THIS REPORT.

1. LM-30 File Number: **U-** _____

2. Fiscal Year Covered: from _____ (mm/dd/yyyy) through _____ (mm/dd/yyyy)

3. Amended Report – If this is an amended report, check here: ☐

4. Your Contact Information

Name (first, middle, last)
Street address
City State ZIP
Email address (optional)

5. Labor Organization Identifying Information

Name
Street address
City State ZIP
File number
Officer ☐ Employee ☐
Your officer position or job title

[Continuation button]

▶ Complete **PART A, B, or C** if, during the past fiscal year, you or your spouse or minor child directly or indirectly had a reportable interest in, transaction or arrangement with, or received income, payment, or benefit from the entities described below.

PART A – REPRESENTED EMPLOYER. An employer whose employees your labor organization represents or is actively seeking to represent.

6. Name of represented employer _____

Contact name _____ Telephone _____

Street address _____

City _____ State _____ ZIP _____

7.a. Nature of interest, transaction, benefit, arrangement, income, or loan

7.b. Amount or value of interest, transaction, benefit, arrangement, income, or loan

15. Signature and Verification

[Continuation button]

The undersigned declares, under penalty of perjury and other applicable penalties of law, that all of the information submitted in this report (including the information contained in any accompanying documents) has been examined by the signatory and is, to the best of the undersigned's knowledge and belief, true, correct and complete.

Signed _____ On _____ Date (mm/dd/yyyy) Telephone Number _____

File Number **U** - _____

PART B – BUSINESS. A business, such as a vendor or service provider, (1) a substantial part of which consists of buying from, selling or leasing to, or otherwise dealing with the business of an employer described in Part A or (2) any part of which consists of buying from or selling or leasing directly or indirectly to, or otherwise dealing with your labor organization or with a trust in which your labor organization is interested.

8. Name of business _____ Contact name _____Telephone _____ Street address _____ City _____ State _____ ZIP _____	11.a. Nature of dealings
9. Business deals with ☐ a. Labor Organization ☐ b. Trust ☐ c. Employer	11.b. Value of dealings
10. If 9.b. or 9.c. is checked give trust or employer's name _____ _____ Contact name _____Telephone _____ Street address _____ City _____ State _____ ZIP _____	12.a. Nature of interest, benefit, arrangement, or income
	12.b. Amount or value of interest, benefit, arrangement, or income

[Continuation button]

PART C – OTHER EMPLOYER OR LABOR RELATIONS CONSULTANT. An employer (other than an employer or business covered under Parts A and B above) from whom a payment would create an actual or potential conflict between your personal financial interests and the interests of your labor organization (or your duties to your labor organization); or a labor relations consultant to such an employer or to the employer listed in Part A.

13.a. Contact information for employer or labor relations consultant Name of employer or labor relations consultant _____ Contact name _____Telephone _____ Mailing address _____ City _____ State _____ ZIP _____	14.a. Nature of payment
13.b. Type of entity: Is the entity ☐ an employer or ☐ a consultant?	14.b. Amount or value of payment

[Continuation button]

Paperwork Reduction Act Statement. Public reporting burden for this collection of information is estimated to average 90 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Persons are not required to respond to the collection of information unless it displays a currently valid OMB control number (1245-0005, with an expiration date of 09-30-2014). Reporting of this information is mandatory and is required by the Labor-Management Reporting and Disclosure Act of 1959, as amended, for the purpose of public disclosure. As this is public information, there are no assurances of confidentiality. If you have any comments regarding this estimate or any other aspect of this information collection, including suggestions for reducing this burden, please send them to the U.S. Department of Labor, Office of Labor-Management Standards, Division of Interpretations and Standards, Room N-5609, 200 Constitution Avenue, NW, Washington, DC 20210.

DO NOT SEND YOUR COMPLETED FORM LM-30 TO THE ABOVE ADDRESS.

Instructions for Form LM-30
Labor Organization Officer and Employee Report

(10/2011)

General Instructions

I. Why File

The Labor-Management Reporting and Disclosure Act of 1959, as amended (LMRDA or Act), requires public disclosure of certain financial transactions and financial interests of labor organization officers and employees and their spouses and minor children. *See* 29 C.F.R. 404.1-404.9 (reports by officers and employees of labor organizations). The purpose of disclosure, among other things, is to publicly identify an actual or potential conflict between the personal financial interests of a union officer or employee and his or her obligations to the union and its members.

The LMRDA establishes basic rights of union members, including equal voting rights, freedom of speech and assembly, and other essential safeguards for union democracy, among other protections; establishes financial reporting and disclosure requirements for unions, union officers and employees, employers, and labor relations consultants; regulates union trusteeships; details procedural requirements for the conduct of union officer elections; and establishes a fiduciary duty on union officers, employees, and other representatives.

Pursuant to Section 202 of the LMRDA, and subject to certain exceptions, if you are a labor organization officer or employee (other than an employee performing exclusively clerical or custodial services), who has, directly or indirectly, held any legal or equitable interest in, received any payments from, or engaged in any transactions or arrangements (including loans) with certain employers or businesses or labor relations consultants during your fiscal year, you must file a detailed report with the Secretary of Labor (Secretary). *See* Part X of these instructions for a detailed discussion of the types of financial matters that must be reported. You are not required to file a report unless you or your spouse or minor child held a reportable interest, received a reportable payment, or engaged in a reportable transaction or arrangement during the reporting period. As discussed in Part X, you are not required to report insubstantial payments or gifts, as there defined.

The Department's Office of Labor-Management Standards (OLMS) has developed guidance to assist with LMRDA compliance. Guidance to assist with completion of the Form LM-30 is available on the OLMS Web site: **www.olms.dol.gov**. For additional OLMS contact information, see the final page of these instructions.

The reporting requirements of the LMRDA and of the regulations and forms issued under the Act relate only to the public disclosure of specified transactions and interests. The reporting requirements do not address whether such transactions and interests are lawful or unlawful. The fact that a particular transaction or interest is or is not required to be reported is not indicative of whether it is or is not subject to any legal restriction; this must be determined by provisions of law other than those prescribing the reports. Failure to file a required report may subject an individual to civil or criminal penalties, or both. *See* Part VIII of these instructions.

II. Who Must File

Any *officer or employee of a labor organization* (other than an employee performing clerical or custodial services exclusively), as defined by the LMRDA and these instructions, must file Form LM-30 ***if***, during the past fiscal year, the officer or employee, spouse, or minor child, either directly or indirectly, held any legal or equitable interest, received any payments, or engaged in transactions or arrangements (including loans) of the types described in these instructions.

LABOR ORGANIZATION EMPLOYEE – means any individual (other than an individual performing exclusively clerical or custodial services) employed by a labor organization

within the meaning of any law of the United States relating to the employment of employees.

For purposes of the Form LM-30, an individual who serves the union as a union steward or as a similar union representative, such as a member of a safety committee or a bargaining committee, is not considered to be an employee of the union by virtue of service in such capacity.

LABOR ORGANIZATION OFFICER – means (1) a person identified as an officer by the constitution and bylaws of the labor organization; (2) any person authorized to perform the functions of president, vice president, secretary, or treasurer; (3) any person who in fact has executive or policy-making authority or responsibility; and (4) a member of a group identified as an executive board or a body which is vested with functions normally performed by an executive board.

NOTE: Under this definition, an officer includes a trustee appointed by the national or international union to administer a local union in trusteeship. If you are a trustee elected or appointed by the local union to audit and/or hold the assets of the union, you may or may not be a union officer, depending on your union's constitution and these four factors.

MINOR CHILD – means a son, daughter, stepson, or stepdaughter less than 21 years of age.

NOTE: Selected definitions from the LMRDA follow these instructions.

III. What Must Be Reported

The types of financial transactions and interests which must be reported are set forth in Form LM-30 and in Part A, Part B, and Part C of these instructions.

IV. Who Must Sign the Report

You (the labor organization officer or employee) must sign the completed Form LM-30.

V. When to File

A Form LM-30 report must be filed *within 90 days* after the end of your fiscal year. Fiscal year usually means the calendar year, but if you serve as an officer or employee for only a portion of the fiscal year, you may limit this report to that portion of the fiscal year. For more clarification, see instructions for Item 2 (Fiscal Year Covered).

VI. How to File

Form LM-30 is available on the OLMS Web site at **www.olms.dol.gov**. You can complete and submit the form electronically or print a copy and complete it manually. If you do not have access to the Internet, you can obtain a blank form from the nearest OLMS field office listed at the end of these instructions, from the OLMS National Office at 202-693-0124, or by calling the DOL toll-free help desk at 866-487-2365.

If the Form LM-30 report is prepared in paper format, the completed Form LM-30 and any additional pages must be mailed to the following address:

U.S. Department of Labor
Office of Labor-Management Standards
200 Constitution Avenue, NW
Room N-5616
Washington, DC 20210-0001

NOTE: If either the paper filing or the electronic filing is not received in the timeframe specified above, the report will be considered delinquent.

VII. Public Disclosure

The LMRDA requires that the Department make Form LM-30 and other reports required by the LMRDA available for inspection by the public. Reports may be viewed and downloaded from the OLMS Web site at **www.unionreports.gov**. Copies of reports and union constitutions and bylaws can also be ordered on the same Web site. Reports may also be examined and copies may be purchased at the OLMS Public Disclosure Room at the following address:

U.S. Department of Labor
Office of Labor-Management Standards
200 Constitution Avenue, NW
Room N-1519
Washington, DC 20210-0001

VIII. Officer and Employee Responsibilities and Penalties

The labor organization officer or employee required to sign the Form LM-30 is personally responsible for its filing and accuracy. Under the LMRDA, this individual is subject to criminal penalties for willful failure to file a required report and/or for false reporting. False reporting includes making any false statement or misrepresentation of a material fact while knowing it to be false, or for knowingly failing to disclose a material fact in a required report or in the information required to be contained in it or in any information required to be submitted with it.

The reporting labor organization officer or employee required to sign Form LM-30 is also subject to civil prosecution for violations of filing requirements. Section 210 of the LMRDA provides that "whenever it shall appear that any person has violated or is about to violate any of the provisions of this title, the Secretary may bring a civil action for such relief (including injunctions) as may be appropriate."

The officers and employees responsible for filing Form LM-30 are also subject to criminal penalties for false reporting

and perjury under Sections 1001 of Title 18, 1746 of Title 28, and 1621 of Title 18 of the United States Code.

You, your spouse, and minor child and any individuals or entities associated with the reportable interests and transactions may be required to provide additional information to the Department concerning reported or reportable interests.

IX. Recordkeeping

The labor organization officer or employee required to file Form LM-30 is responsible for maintaining records on the matters required to be reported that will provide in sufficient detail the necessary basic information and data from which the Form LM-30 may be verified, explained or clarified, and checked for accuracy and completeness. These records shall include vouchers, worksheets, receipts, financial and investment statements, contracts, correspondence, and applicable resolutions, in their original electronic and paper formats, and any electronic programs by which they are maintained. Records must be kept available for examination for a period of not less than five years after the filing of the Form LM-30.

X. Completing Form LM-30

While OLMS encourages you to complete Form LM-30 electronically, the Form LM-30 is available for use in both paper and electronic formats. If you are using the electronic Form LM-30, you may click on the "Validate Form" button at any time to check for errors. This action will generate an "Errors Page" listing any errors that will need to be corrected before you will be able to sign the form. Clicking on the signature lines will also perform the validation function.

If filing in paper format, submit entries that are typed or clearly printed in black ink. Do not use a pencil or any other color ink.

How to Provide Additional Information. If you are filing in electronic format, the form will permit you to add additional space to each entry.

If you are filing in paper format and need additional space to complete an item, or to attach an additional item, include the additional information on a separate letter-size (8.5 x 11) page, indicating the number of the item to which the information applies. Type or print clearly at the top of each page the following information: (1) your full name, (2) your 5-digit file number as reported in Item 1, if available; and (3) the ending date of the reporting period as reported in Item 2. All attachments must be labeled sequentially 1 of __, 2 of __, etc.

If you need further guidance for completing the Form LM-30, please contact the OLMS National Office at 202-693-0123 or the nearest OLMS field office listed at the end of these instructions.

Information Items 1–5

Select the appropriate box for those questions requiring a "Yes" or "No" answer; do not leave both boxes blank. Enter a single "0" in the boxes for items requiring a number or dollar amount if there is nothing to report.

1. LM-30 FILE NUMBER — Enter the five-digit file number (U-XXXXX) assigned to you by OLMS as a reporting officer or employee. If you have never previously filed the Form LM-30, leave Item 1 blank. OLMS will notify you of your assigned file number, which should be used on all future reports.

2. FISCAL YEAR COVERED — Enter the beginning and ending dates of the fiscal year covered in this report. Your fiscal year will normally be the calendar year. Note that your fiscal year may differ from the fiscal year utilized by your union for filing its annual financial report, Form LM-2, LM-3, or LM-4. This Form LM-30 report must not cover more than a 12-month period. For example, if your 12-month fiscal year begins on January 1 and ends on December 31, do not enter a date beyond the 12-month period, such as January 1 to January 1; this is an invalid date entry. Note that if you served as a union officer or employee for only part of the fiscal year, you may consider that portion of the year as the entire fiscal year for the purposes of completing this report.

3. AMENDED REPORT — Check the box if you are filing an amended report.

4. YOUR CONTACT INFORMATION —Enter your full name and the complete address where mail should be sent and received, including any building and room number. Enter your email address in the space provided. If you do not have an email address or choose not to provide it, leave this space blank.

5. LABOR ORGANIZATION IDENTIFYING INFORMATION – Enter the name of the labor organization (including the local number, if any) of which you are an officer or employee. Enter the complete business address of the labor organization where mail should be sent, including any building and room number. Enter the labor organization's OLMS file number. If you cannot obtain the file number of the labor organization, go to www.unionreports.gov to locate it or contact the nearest OLMS field office listed at the end of these instructions. Specify your status in the labor organization by checking the appropriate box indicating whether you are an officer or an employee. List your official position or title with the labor organization. If you serve as an officer or employee to multiple labor organizations, click on the Continuation Button to attach an additional Item 5 (if you are filing in electronic format). If you are filing in paper format, see the "How to Provide Additional Information" section on page 3.

Officer titles include, but are not limited to, president, vice president, secretary, treasurer. Job titles include, but are not limited to, business agent, organizer, attorney.

Information Items Parts A, B, and C

GENERAL INSTRUCTIONS FOR REPORTABLE TRANSACTIONS AND INTERESTS — You must report ***if***, during the past fiscal year, you or your spouse or minor child, *directly or indirectly*: (1) held an interest; (2) engaged in a transaction or arrangements (including loans); or (3) received income, payment or other benefit with monetary value covered by the Act.

When applying the Form LM-30 reporting requirements, you are required to look at employers and businesses that have specified relationships with the level of the union in which you serve as an officer or employee. However, if you are an officer of a national, international, or intermediate union, you must also look at employers and businesses that have specified relationships with subordinate affiliates (e.g., a local union or other subordinate body), as well as your own level of the union. These relationships are identified below in the instructions for completing Parts A, B, and C of the form. If you are an employee of a national, international, or intermediate union and possess significant authority or influence (whether or not exercised) over a subordinate affiliate's activities (e.g., its organizing, collective bargaining, contract enforcement, spending or investment decisions, or union administration), you are also required to look at employers and businesses that have specified relationships with such affiliate, as well as your own level of the union. See instructions below.

DIRECTLY OR INDIRECTLY – means by any course, avenue, or method. *Directly* encompasses holdings and transactions in which you, your spouse, or minor child receive a payment or other benefit without the intervention or involvement of another party. *Indirectly* includes any payment or benefit which is intended for you, your spouse, or minor child or on whose behalf a transaction or arrangement is undertaken, even though the interest is held by a third party, or was received through a third party.

NOTE: You must disclose any benefits that you have received (or your spouse or minor child has received) from a third party where the third party is acting on behalf, or at the behest, of an employer or business that would have to report the benefit if they provided it directly to you (or your spouse or minor child).

The following are examples of reporting direct and indirect payments or benefits:

- You are employed by XYZ Widgets and also serve as the president of the local union representing XYZ Widgets employees. XYZ Widgets sends you a check for $1,000 with a note saying "Good luck with the new school!" You have received a *direct benefit*.
- You are employed by XYZ Widgets and also serve as the president of the local union representing XYZ Widgets employees. In a recent conversation with the XYZ Widgets human resources manager, you mention that you are placing your 15-year-old daughter in a private school. You receive a letter from your daughter's new school stating that she has received a $1,000 scholarship through a donation from XYZ Widgets. You have received an *indirect benefit*.

Complete a separate Part A, B, and/or C if reporting more than one entity or transaction. For example, if you (or your spouse or minor child) held stock in three (3) businesses that have lease agreements with your labor organization, then you must complete and submit a separate Part B for each business.

Additionally, if, for example, you received both income and a gift from a business that has a lease agreement with your labor organization, then you must submit a separate Part B for each transaction with this report.

Do not submit more than one Form LM-30 report for the same fiscal year. If filing in electronic format, click on the Continuation Button to generate the needed separate Parts A, B, or C. If filing in paper format, attach a separate Part A, B, or C.

General Exclusions

Insubstantial payments and gifts. You do not have to report any payments or gifts totaling $250 or less from any one source, and payments or gifts valued at $20 or less do not need to be included in determining whether the $250 threshold has been met. For example, if you receive from an employer two gifts worth $20 each and two restaurant meals worth $150 each, you need only keep records of the restaurant meals, and report your receipt of this $300 value. However, you may not use the exception to hide the receipt of a series of payments or gifts purposely set at $20 or less to avoid reaching the $250 reporting threshold. For example, you would have to report your receipt of individual tickets worth $20 or less to all of a professional baseball team's home games even if they are provided before each game rather than given as a complete package at the start of the season.

Widely-attended gatherings. You also do not have to report the benefits, such as food and entertainment, that you received while in attendance at one or two widely-attended receptions, meetings or gatherings in a single fiscal year for which an employer or business has spent $125 or less per attendee per gathering. You do not have to include the value of those gatherings in determining whether the $250 threshold has been met for the employer or business providing the meeting or gathering. However,

if you attend three or more such widely-attended gatherings provided by an employer or business, you must count the value of all such events.

A gathering is widely attended if a large number of persons are in attendance and the attendees include union officers and employees and a substantial number of individuals with no relationship to a union or a *trust in which a labor organization is interested.* For a gathering to qualify as widely attended, those individuals with a relationship to a union must be treated the same as others when the employer or business advertises or distributes invitations for the event and must be treated alike at the event.

Report payments received as director's fees, including reimbursed expenses.

PART A (ITEMS 6 and 7) – REPRESENTED EMPLOYER

Complete Part A if you (1) held an interest in, (2) engaged in transactions or arrangements (including loans) with, or (3) derived income or other benefit of monetary value from, an *employer whose employees your labor organization represents or is actively seeking to represent*. Report payments received as director's fees, including reimbursed expenses.

ACTIVELY SEEKING TO REPRESENT – means that a labor organization has taken concrete steps during your fiscal year to become the bargaining representative of the employees of an employer, including but not limited to:

- Sending organizers to an employer's facility;
- Placing an individual in a position as an employee of an employer that is the subject of an organizing drive and paying that individual subsidies to assist in the union's organizing activities;
- Circulating a petition for representation among employees;
- Soliciting employees to sign membership cards;
- Handing out leaflets;
- Picketing; or
- Demanding recognition or bargaining rights or obtaining or requesting an employer to enter into a neutrality agreement (whereby the employer agrees not to take a position for or against union representation of its employees), or otherwise committing labor or financial resources to seek representation of employees working for the employer.

Where your union has taken any of the foregoing steps, you are required to report a payment or interest received, or transaction conducted, during that reporting period.

NOTE: Leafleting or picketing, such as purely "informational" or "area standards" picketing, that is wholly without the object of organizing the employees of a targeted employer will not alone trigger a reporting obligation. For example, if a union pickets a sporting goods retailer solely for the purpose of alerting the public that the retailer is selling goods that are made by children working in oppressive conditions in violation of accepted international standards, the picketing would not meet the "actively seeking to represent" standard.

PART A EXCLUSIONS

Part A excludes reporting with respect to the following:

(i) **Holdings of, transactions in, or income from** *bona fide investments* in (1) securities traded on a securities exchange registered as a national securities exchange under the Securities Exchange Act of 1934 (including the American Stock Exchange, Boston Stock Exchange, Chicago Board Options Exchange, Chicago Stock Exchange, International Securities Exchange, NASDAQ, National Stock Exchange, New York Stock Exchange, Pacific Exchange, and Philadelphia Stock Exchange); (2) shares in an investment company registered under the Investment Company Act of 1940; or (3) securities of a public utility holding company registered under the Public Utility Holding Company Act of 1935.

BONA FIDE INVESTMENT – means personal assets of an individual held to generate profit that were not acquired by improper means or as a gift from any of the following: (1) an employer, (2) a business that deals with your union or a trust in which your union is interested, (3) a business a substantial part of which consists of dealing with an employer whose employees your union represents or is actively seeking to represent, or (4) a labor relations consultant to an employer.

(ii) **Holding of, transactions in, or income from** securities not listed or registered as described in (i) above, provided any such holding, or transaction, or receipt of income is of insubstantial value or amount and occurs under terms unrelated to your status in a labor organization. For purposes of this exclusion, holdings or transactions involving $1,000 or less and receipt of income of $100 or less in any one security shall be considered insubstantial.

(iii) **Transactions** involving purchases and sales of goods and services in the regular course of business at prices generally available to any employee of the employer. This does not apply to loans or to transactions involving interests in the employer.

(iv) **Payments and benefits** received as a *bona fide employee* of the employer for past or present services, including wages, payments or benefits received under a bona fide health, welfare, pension, vacation, training or other benefit plan; and payments for periods in which such employee engaged in activities other than

productive work, if the payments for such period of time are: (a) required by law or a bona fide collective bargaining agreement, or (b) made pursuant to a custom or practice under such a collective bargaining agreement, or (c) made pursuant to a policy, custom, or practice with respect to employment in the establishment which the employer has adopted without regard to such employee's position within a labor organization.

6. CONTACT INFORMATION FOR REPRESENTED EMPLOYER — Enter the name (including trade or commercial name, if applicable, such as a d/b/a or "doing business as" name) and address of the employer whose employees your labor organization represents or is actively seeking to represent, including any building and room number. Also enter the name and telephone number of a contact person at the employer.

7. NATURE AND AMOUNT OF INTEREST, TRANSACTION, BENEFIT, ARRANGEMENT, INCOME, OR LOAN — Provide full information as to the nature and amount of each interest, transaction, arrangement, item of income, benefit, or loan. However, do not include account or social security numbers. Your report will be deficient if you provide unclear or nonspecific descriptions. If you need additional space, see the "How to Provide Additional Information" section on page 3. If an interest in real property is reported, identify the location of the property.

ARRANGEMENT – means any agreement or understanding, tacit or express, or any plan or undertaking, commercial or personal, by which you, your spouse, or minor child will obtain a benefit, directly or indirectly, with an actual or potential monetary value.

NOTE: The term "arrangement" is very broad and covers both personal and business transactions, including an unwritten understanding. For example, if during the reporting period an employer's representative offered you a job with the employer, you must report the offer unless you rejected it. A standing job offer must be reported, because it carries the potential of monetary value.

BENEFIT WITH MONETARY VALUE – means anything of value, tangible or intangible. It includes any interest in personal or real property, gift, insurance, retirement, pension, license, copyright, forbearance, bequest or other form of inheritance, office, options, agreement for employment or property, or property of any kind. You do not need to report pension, health, or other benefit payments from a trust to you, your spouse, or minor child that are provided pursuant to a written specific agreement covering such payments.

INCOME – means all income from whatever source derived, including, but not limited to, compensation for services, fees, commissions, wages, salaries, interest, rents, royalties, copyrights, licenses, dividends, annuities, honoraria, income and interest from insurance and endowment contracts, capital gains, discharge or indebtedness, share of partnership income, bequests or other forms of inheritance, and gifts, prizes or awards.

Enter in Item **7.a.** the nature of the *legal or equitable interest,* transaction, benefit, arrangement, income, or loan, such as the continuing use of an automobile for personal purposes, gift of a computer, payments for services) in the detail set forth below.

Enter in Item **7.b.** the amount or value of each *legal or equitable interest,* transaction, benefit, arrangement, or item of income, or loan, in the detail set forth below, and the date(s) any income or other benefit was received. Report amounts in dollars only; do not enter cents. Round cents to the nearest dollar. Enter a single "0" in the space for reporting dollars if you have nothing to report. Enter the exact value if known or easily obtainable; otherwise, enter a good faith estimate of the fair market value and explain the basis for the estimate (for information on where to provide this explanation, see the "How to Provide Additional Information" section on page 3). The fair market value may be determined by:

- The purchase price
- Recent appraisal
- Assessed value for tax purposes, adjusted to reflect market value if the assessed value is computed at less than 100% of the market value
- The year-end book value of stock that is not publicly traded, the year-end exchange rate of corporate stock, or the face value of corporate bonds or comparable securities
- The net worth of a business partnership or business venture
- The equity value of an individually-owned business or any other recognized indication of value (such as the sale price on the stock exchange at the time of the report or, for transactions, the sale price on the stock exchange at the time of the sale).

If the exact value is not known and cannot be estimated, enter "N/A" and explain the situation. (See the "How to Provide Additional Information" section on page 3.).

For each such interest and transaction, identify the nature of the interest held (for example, common stock, preferred stock, bonds, options, etc.) and give the total number of shares or other units held during the fiscal year. If the interest was acquired during the fiscal year or if this is your first report of the interest, give an approximate date or dates of acquisition, total cost to you, and manner of acquisition (for example, employee stock purchase plan, purchase on market, gift, etc.). If the interest was disposed of during the fiscal year, give an approximate date, total amount received by you and the manner of disposition (for example, sale on market, gift, exchange, etc.). In each case, identify the other party or parties to the transaction.

LEGAL OR EQUITABLE INTEREST – means any property or benefit, tangible or intangible, which has an actual or potential monetary value for you, your spouse, or minor child without regard to whether you, your spouse, or minor child holds possession or title to the interest. (See the definitions of *income* and *benefit with monetary value* above in Item 7.)

For example:

- You are an officer of a union. You and your spouse jointly own an accounting business that provides tax services to a number of clients, including your union. You hold a legal interest in the company providing services to your union.
- You are an officer of a union. You form a tax preparation business with two partners and put your share of the business in your wife's name. The business prepares tax returns and LM reports for your union. You hold an equitable interest in a business that deals with your union.

Other transactions or arrangements involving (1) any loan to or from the employer; (2) any business transaction or arrangement (for example, purchases and sales of goods and services not excluded under Part A Exclusion (iii) above; rentals, credit arrangements, franchises, or contracts, etc.).

For each transaction, identify the nature of the transaction and the property involved (for example, loan of money from employer, rental of loft building, located at X street, Y City, Z State, etc.) and state:

1) the total dollar amount you paid or received during the fiscal year (for example, amount of a loan, rent, sale, etc.);
2) the dollar value of existing obligation, if any, at the end of the fiscal year (for example, unpaid balance of a loan, rentals due pursuant to a lease, amount due under a contract, etc.);
3) the date transaction was entered into and the date it was terminated, if any;
4) the terms and conditions of the transaction (for example, unsecured loan under employer loan plan payable over one year, discount purchases of goods, sale and lease back one year, etc.);
5) names and addresses of intermediate parties involved in any indirect transactions (for example, loans made to you in the name of another, etc.).

For each arrangement, identify its nature and provide sufficient detail to identify the date, persons involved, and information as to conditions, if any, of the arrangement and the anticipated date on which the benefit will be obtained.

PART B (Items 8 - 12) – BUSINESS

(a) Complete Part B if you held an interest in or derived income or other benefit with monetary value, including reimbursed expenses, from a business (1) a *substantial part* of which consists of buying from, selling or leasing to, or otherwise *dealing* with the business of an employer whose employees your labor organization represents or is actively seeking to represent, or (2) any part of which consists of buying from or selling or leasing directly or indirectly to, or otherwise dealing with your labor organization or with a trust in which your labor organization is interested. Report payments received as director's fees, including reimbursed expenses.

SUBSTANTIAL PART – means 10% or more. Where a business's receipts from an employer(s) whose employees your labor organization represents or is actively seeking to represent constitute 10% or more of its annual receipts, a substantial part of the business consists of dealing with this employer(s).

DEALING – means to engage in a transaction (bargain, sell, purchase, agree, contract) or to in any way traffic or trade, including solicitation for business. The term "traffic or trade" includes not only financial transactions that have occurred but also the act of soliciting such business. Thus, for example, potential vendors or service providers attempting to win business with a union will be considered to be "dealing" with the union to the same extent as vendors who are already doing business with the union.

Potential vendors must engage in the active and direct solicitation of business (other than by mass mail, telephone bank, or mass media). A business that passively advertises its services generally and would provide services consumed by, for example, a union would not meet this test. The potential vendor must be actively seeking the commercial relationship. Under certain circumstances, the payment itself will be evidence of the solicitation of business, such as a potential vendor who treats a union official to a golf outing and dinner to discuss the vendor's products.

TRUST IN WHICH A LABOR ORGANIZATION IS INTERESTED – means a trust or other fund or organization (1) which was created or established by a labor organization, or one or more of the trustees or one or more members of the governing body of which is selected or appointed by a labor organization, and (2) a primary purpose of which is to provide benefits for the members of such labor organization or their beneficiaries.

PART B EXCLUSIONS

You do NOT need to report in Part B the items identified in the Part A exclusions set forth in (i) and (ii). (See the "Part A Exclusions" section in the instructions for Part A above.)

Bona Fide Loans. Do not report bona fide loans, including mortgages, received from national or state banks, credit unions, savings or loan associations, insurance companies, or other bona fide credit institutions, if the loans are based upon the credit institution's own criteria and made on terms unrelated to your status in the labor organization. Additionally, do not report other marketplace transactions with such bona fide credit institutions, such as credit card transactions (including unpaid balances) and interest and dividends paid on savings accounts, checking accounts or certificates of deposit if the payments and transactions are based upon the credit institution's own criteria and are made on terms unrelated to your status in the labor organization.

8. CONTACT INFORMATION FOR BUSINESS — Enter the name (including trade or commercial name, if any, such as "d/b/a" or "doing business as" name) and address of the business to which the interest, transaction, or benefit was connected. Also enter the name and telephone number of a contact person at the business.

9. and 10. BUSINESS DEALS WITH —Select the appropriate box describing the type of organization with which the business (referred to in Item 8) dealt. If you select 9.b. (trust) or 9.c. (employer), enter the name and address of each trust or employer in Item 10. Include the name and telephone number of a contact person.

11.a. NATURE OF DEALINGS — Describe in detail the nature of the purchases, sales, leases, or other dealings between the business and the organization specified in Items 9 and 10. For example, if the business and Union A arranged a payroll service in the amount of $45,000 for union members, the dealing could be described as follows: "One payment for payroll services for Union A members." Do not include account or social security numbers. Your report will be deficient if you provide unclear or nonspecific descriptions. If an interest in real property is reported, identify the location of the property.

11.b. VALUE OF DEALINGS — Enter the value of the purchases, sales, leases, or other dealings between the business and the organization specified in Items 9 and 10.

12.a. NATURE OF INTEREST, BENEFIT, ARRANGEMENT, OR INCOME — Enter the nature of each interest, benefit, arrangement, or income covered by Part B, including the applicable information set forth in the instructions to Item 7.

12.b. AMOUNT OR VALUE OF INTEREST, BENEFIT, ARRANGEMENT, OR INCOME — Enter the approximate dollar amount or value of interest, benefit, arrangement, or income covered by Part B, including the applicable information set forth in the instructions to Item 7.

PART C (Items 13 and 14) – OTHER EMPLOYER OR LABOR RELATIONS CONSULTANT

Complete Part C if you, your spouse, or your minor child received, directly or indirectly, any payment of money or other thing of value (including reimbursed expenses) from any employer (other than an employer covered under Part A or a business covered under Part B above) from whom a payment would create an actual or potential conflict between these financial interests and the interest of your labor organization or your duties to your labor organization. Such employers include, but are not limited to, an employer in competition with an employer whose employees your labor organization represents or whose employees your union is actively seeking to represent, if you are involved with the organizing, collective bargaining, or contract administration activities, or possess significant authority or influence over such activities. You are deemed to have such authority and influence if you possess authority by virtue of your position, even if you did not become involved in these activities. Additionally, complete Part C if you received a payment of money or other thing of value from a labor relations consultant to a Part C employer, or from a labor relations consultant to a Part A employer.

Employers under Part C also include, but are not limited to, an employer that is a not-for-profit organization that receives or is actively and directly soliciting (other than by mass mail, telephone bank, or mass media) money, donations, or contributions, from your labor organization. Report payments received as director's fees, including reimbursed expenses.

Information that must also be reported under Part C includes any payments from an employer (not covered by Parts A or B), or from any labor relations consultant to an employer, for the following purposes:

(1) not to organize employees;

(2) to influence employees in any way with respect to their rights to organize;

(3) to take any action with respect to the status of employees or others as members of a labor organization;

(4) to take any action with respect to bargaining or dealing with employers whose employees your organization represents or seeks to represent; and

(5) to influence the outcome of an internal union election.

PART C EXCLUSIONS

The items listed below do *not* need to be reported in Part C. Please note that these exceptions do *not* apply to the five types of payments enumerated above.

i. Payments of the kinds referred to in Section 302(c) of the Labor Management Relations Act (LMRA), as set forth on page 12 below, and payments your spouse or minor children receive as compensation for, or by reason of, their service to their employer.

ii. Bona fide loans (including mortgages), interest or dividends from national or state banks, credit unions, savings or loan associations, insurance companies, or other bona fide credit institutions, if such loans, interest, or dividends are based upon the credit institution's own criteria and made on terms unrelated to your status in a labor organization. Additionally, do not report other marketplace transactions with such bona fide credit institutions, such as credit card transactions (including unpaid balances) and interest and dividends paid on savings accounts, checking accounts, or certificates of deposit if the payments and transactions are based upon the credit institution's own criteria and are made on terms unrelated to your status in the labor organization.

iii. Interest on bonds or dividends on stock, provided such interest or dividends are received, and such bonds or stock have been acquired, under circumstances and terms unrelated to your status in a labor organization and the issuer of such securities is not an enterprise in competition with the employer whose employees your labor organization represents or actively seeks to represent.

iv. Payments from trusts or other labor organizations.

13.a. CONTACT INFORMATION FOR EMPLOYER OR LABOR RELATIONS CONSULTANT — Enter the name, and address of the employer or labor relations consultant (including trade or commercial name, if any, such as d/b/a or "doing business as" name) from whom the payment in Part C was received. Also enter the name and telephone number of a contact person.

13.b. TYPE OF ENTITY — Select the appropriate box to indicate whether the entity that made the payment is an employer or labor relations consultant.

14.a. NATURE OF PAYMENT — For each payment or benefit reportable under Part C, identify the nature of the payment or benefit (for example, continuing use of automobile for personal purposes, gift of refrigerator, gift of a computer, payment for services not excluded above). List the date you received the payment or benefit. For each payment or benefit reported, provide a detailed description of the relationship between the employer or labor relations consultant and your labor organization. For example, if the payment was received from an employer in competition with a represented employer, indicate the name of the employer whose employees your union represents or whose employees it is actively seeking to represent and the industry or activities in which they compete. Do not include account or social security numbers. If an interest in real property is reported, identify the location of the property. Your report will be deficient if you provide unclear or nonspecific descriptions.

14.b. AMOUNT OR VALUE OF PAYMENT — Enter the amount or value of each payment, including the applicable information set forth in the instructions to Item 7.

15. SIGNATURE AND VERIFICATION (Bottom of Page 1) — The completed Form LM-30, which is filed with OLMS, must be signed by you (officer or employee of the labor organization). Enter the telephone number you use to conduct official business. You do not have to report a private unlisted telephone number.

Electronically submitted forms must be signed using a PIN password combination. The date of signature will automatically be entered. Information about the electronic signature process can be obtained on the OLMS website at **www.olms.dol.gov**.

SELECTED DEFINITIONS FROM THE LABOR-MANAGEMENT REPORTING AND DISCLOSURE ACT OF 1959, AS AMENDED (LMRDA)

SEC. 3. For the purposes of titles I, II, III, IV, V (except section 505), and VI of this Act

(a) "Commerce" means trade, traffic, commerce, transportation, transmission, or communication among the several States or between any State and any place outside thereof.

(b) "State" includes any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Canal Zone, and Outer Continental Shelf lands defined in the Outer Continental Shelf Lands Act (43 U.S.C. 1331-1343).

(c) "Industry affecting commerce" means any activity, business, or industry in commerce or in which a labor dispute would hinder or obstruct commerce or the free flow of commerce and includes any activity or industry "affecting commerce" within the meaning of the Labor Management Relations Act, 1947, as amended, or the Railway Labor Act, as amended.

(d) "Persons" includes one or more individuals, labor organizations, partnerships, associations, corporations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in cases under Title 11 of the United States Code, or receivers.

(e) "Employer" means any employer or any group or association of employers engaged in an industry affecting commerce

(1) which is, with respect to employees engaged in an industry affecting commerce, an employer within the meaning of any law of the United States relating to the employment of any employees or

(2) which may deal with any labor organization concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work, and includes any person acting directly or indirectly as an employer or as an agent of an employer in relation to an employee but does not include the United States or any corporation wholly owned by the Government of the United States or any State or political subdivision thereof.

(f) "Employee" means any individual employed by an employer, and includes any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice or because of exclusion or expulsion from a labor organization in any manner or for any reason inconsistent with the requirements of this Act.

(g) "Labor dispute" includes any controversy concerning terms, tenure, or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee.

(h) Not applicable.

(i) "Labor organization" means a labor organization engaged in an industry affecting commerce and includes any organization of any kind, any agency, or employee representation committee, group, association, or plan so engaged in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, or other terms or conditions of employment, and any conference, general committee, joint or system board, or joint council so engaged which is subordinate to a national or international labor organization, other than a State or local central body.

(j) A labor organization shall be deemed to be engaged in an industry affecting commerce if it

(1) is the certified representative of employees under the provisions of the National Labor Relations Act, as amended, or the Railway Labor Act, as amended; or

(2) although not certified, is a national or international labor organization or a local labor organization recognized or acting as the representative of employees or an employer or employers engaged in an industry affecting commerce; or

(3) has chartered a local labor organization or subsidiary body which is representing or actively seeking to represent employees of employers within the meaning of paragraph (1) or (2); or

(4) has been chartered by a labor organization representing or actively seeking to represent employees within the meaning of paragraph (1) or (2) as the local or subordinate body through which such employees may enjoy membership or become affiliated with such labor organization; or

(k) is a conference, general committee, joint or system board, or joint council, subordinate to a national or international labor organization, which includes a labor organization engaged in an industry affecting commerce within the meaning of any of the preceding paragraphs of this subsection, other than a State or local central body.

(l) "Trust in which a labor organization is interested" means a trust or other fund or organization (1) which was created or established by a labor organization, or one or more of the trustees or one or more members of the governing body of which is selected or appointed by a labor organization, and (2) a primary purpose of which is to provide benefits for the members of such labor organization or their beneficiaries.

(m) "Labor relations consultant" means any person who, for compensation, advises or represents an employer, employer organization, or labor organization concerning employee organizing, concerted activities, or collective bargaining activities.

(n) "Officer" means any constitutional officer, any person authorized to perform the functions of president, vice president, secretary, treasurer, or other executive functions of a labor organization, and any member of its executive board or similar governing body.

(o) Not applicable.

(p) Not applicable.

(q) "Officer, agent, shop steward, or other representative," when used with respect to a labor organization, includes elected officials and key administrative personnel, whether elected or appointed (such as business agents, heads of departments or major units, and organizers who exercise substantial independent authority), but does not include salaried non-supervisory professional staff, stenographic, and service personnel.

NATIONAL LABOR RELATIONS ACT, AS AMENDED

Section 8. "(c) The expressing of any views, argument, or opinion or the dissemination thereof, whether in written, printed, graphic, or visual form, shall not constitute or be evidence of an unfair labor practice under any of the provisions of this Act, if such expression contains no threat of reprisal or force or promise of benefit."

RELATED PROVISIONS OF THE LABOR-MANAGEMENT REPORTING AND DISCLOSURE ACT OF 1959, AS AMENDED (LMRDA)

Report of Officers and Employees of Labor Organizations

Sec. 202. (a) Every officer of a labor organization and every employee of a labor organization (other than an employee performing exclusively clerical or custodial services) shall file with the Secretary a signed report listing and describing for his preceding fiscal year-

(1) any stock, bond, security, or other interest, legal or equitable, which he or his spouse or minor child directly or indirectly held in, and any income or any other benefit with monetary value (including reimbursed expenses) which he or his spouse or minor child derived directly or indirectly from, an employer whose employees such labor organization represents or is actively seeking to represent, except payments and other benefits received as a bona fide employee of such employer;

(2) any transaction in which he or his spouse or minor child engaged, directly or indirectly, involving any stock, bond, security, or loan to or from, or other legal or equitable interest in the business of an employer whose employees such labor organization represents or is actively seeking to represent;

(3) any stock, bond, security, or other interest, legal or equitable, which he or his spouse or minor child directly or indirectly held in, and any income or any other benefit with monetary value (including reimbursed expenses) which he or his spouse or minor child directly or indirectly derived from, any business a substantial part of which consists of buying from, selling or leasing to, or otherwise dealing with, the business of an employer whose employees such labor organization represents or is actively seeking to represent;

(4) any stock, bond, security, or other interest, legal or equitable, which he or his spouse or minor child directly or indirectly held in, and any income or any other benefit with monetary value (including reimbursed expenses) which he or his spouse or minor child directly or indirectly derived from, a business any part of which consists of buying from, or selling or leasing directly or indirectly to, or otherwise dealing with such labor organization;

(5) any direct or indirect business transaction or arrangement between him or his spouse or minor child and any employer whose employees his organization represents or is actively seeking to represent, except work performed and payments and benefits received as a bona fide employee of such employer and except purchases and sales of goods or services in the regular course of business at prices generally available to any employee of such employer; and

(6) any payment of money or other thing of value (including reimbursed expenses) which he or his spouse or minor child received directly or indirectly from any employer or any person who acts as a labor relations consultant to an employer, except payments of the kinds referred to in section 302(c) of the Labor Management Relations Act, 1947, as amended.

(b) The provisions of paragraphs (1), (2), (3), (4), and (5) of subsection (a) shall not be construed to require any such officer or employee to report his bona fide investments in securities traded on a securities exchange registered as a national securities exchange under the Securities Exchange Act of 1934, in shares in an investment company registered under the Investment Company Act or in securities of a public utility holding company registered under the Public Utility Holding Company Act of 1935, or to report any income derived therefrom.

(c) Nothing contained in this section shall be construed to require any officer or employee of a labor organization to file a report under subsection (a) unless he or his spouse or minor child holds or has held an interest, has received income or any other benefit with monetary value or a loan, or has engaged in a transaction described therein.

SECTION 302(c) OF THE LABOR MANAGEMENT RELATIONS ACT, 1947, AS AMENDED

"(c) The provisions of this section shall not be applicable (1) in respect to any money or other thing of value payable by an employer to any of his employees whose established duties include acting openly for such employer in matters of labor relations or personnel administration or to any representative of his employees, or to any officer or employee of a labor organization, who is also an employee or former employee of such employer, as compensation for, or by reason of, his service as an employee of such employer; (2) with respect to the payment or delivery of any money or other thing of value in satisfaction of a judgment of any court or a decision or award of an arbitrator or impartial chairman or in compromise, adjustment, settlement, or release of any claim, complaint, grievance, or dispute in the absence of fraud or duress; (3) with respect to the sale or purchase of an article or commodity at the prevailing market price in the regular course of business; (4) with respect to money deducted from the wages of employees in payment of membership dues in a labor organization: Provided, That the employer has received from each employee, on whose account such deductions are made, a written assignment which shall not be irrevocable for a period of more than one year, or beyond the termination date of the applicable collective agreement, which-ever occurs sooner; (5) with respect to money or other thing of value paid to a trust fund established by such representative, for the sole and exclusive benefit of the employees of such employer, and their families and dependents (or of such employees, families, and dependents jointly with the employees of other employers making similar payments, and their families and dependents) Provided, That (A) such payments are held in trust for the purpose of paying, either from principal or income or both, for the benefit of employees, their families and dependents, for medical or hospital care, pensions on retirement or death of employees, compensation for injuries or illness resulting from occupational activity or insurance to provide any of the foregoing, or unemployment benefits or life insurance, disability and sickness insurance, or accident insurance; (B) the detailed basis on which such payments are to be made is specified in a written agreement with the employer, and employees and employers are equally represented in the administration of such fund together with such neutral persons as the representatives of the employers and the representatives of employees may agree upon and in the event of the employer and employee groups deadlock on the administration of such fund and there are no neutral persons empowered to break such dead-lock, such agreement provides that the two groups shall agree on an impartial umpire to decide such dispute, or in event of their failure to agree within a reasonable length of time, an impartial umpire to decide such dispute shall, on petition of either group, be appointed by the district court of the United States for the district where the trust fund has its principal office, and shall also contain provisions for an annual audit of the trust fund, a statement of the results of which shall be available for inspection by interested persons at the principal office of the trust fund and at such other places as may be designated in such written agreement; and (C) such payments as are intended to be used for the purpose of pro-viding pensions or annuities for employees are made to a separate trust which provides that the funds held therein cannot be used for any purpose other than paying such pensions or annuities; or (6) with respect to money or other thing of value paid by any employer to a trust fund established by such a representative for the purpose of pooled vacation, holiday, severance or similar benefits, or defraying costs of apprenticeship or other training programs: Provided, That the requirements of clause (B) of the proviso to clause (5) of this subsection shall apply to such trust funds; (7) with respect to money or other thing of value paid by any employer to a pooled or individual trust fund established by such representative for the purpose of (A) scholarships for the benefit of employees, their families, and dependents for study at educational institutions, or (B) child care centers for preschool and school age dependents of employees: Provided, That no labor organization or employer shall be required to bargain on the establishment of any such trust fund, and refusal to do so shall not constitute an unfair labor practice: Provided further, That the requirements of clause (B) of the proviso to clause (5) of this subsection shall apply to such trust funds; (8) with respect to money or any other thing of value paid by any employer to a trust fund established by such representative for the purpose of defraying the costs of legal services for employees, their families, and dependents for counsel or plan of their choice: Provided, That the requirements of clause (B) of the proviso to clause (5) of this subsection shall apply to such trust funds: Provided further, That no such legal services shall be furnished: (A) to initiate any proceeding directed (i) against any such employer or its officers or agents except in workman's compensation cases, or (ii) against such labor organization, or its parent or subordinate bodies, or their officers or agents, or (iii) against any other employer or labor organization, or their officers or agents, in any matter arising under the National Labor Relations Act, as amended, or this Act; and (B) in any proceeding where a labor organization would be prohibited from defraying the costs of legal services by the provisions of the Labor-Management Reporting and Disclosure Act of 1959; or (9) with respect to money or other things of value paid by an employer to a plant, area or industry-wide labor management committee established for one or more of the purposes set forth in section 5(b) of the Labor Management Cooperation Act of 1978."

If You Need Assistance

The Office of Labor-Management Standards has field offices in the following cities to assist you if you have any questions concerning LMRDA and CSRA reporting requirements.

Atlanta, GA
Birmingham, AL
Boston, MA
Buffalo, NY
Chicago, IL
Cincinnati, OH
Cleveland, OH
Dallas, TX
Denver, CO
Detroit, MI
Grand Rapids, MI
Guaynabo, PR
Honolulu, HI
Houston, TX
Kansas City, MO
Los Angeles, CA
Miami, FL
Milwaukee, WI
Minneapolis, MN
Nashville, TN
New Haven, CT
New Orleans, LA
New York, NY
Newark, NJ
Philadelphia, PA
Phoenix, AZ
Pittsburgh, PA
St. Louis, MO
San Francisco, CA
Seattle, WA
Tampa, FL
Washington, DC

Consult local telephone directory listings under United States Government, Labor Department, Office of Labor-Management Standards, for the address and phone number of your nearest field office.

Information about OLMS, including key personnel and telephone numbers, compliance assistance materials, the text of the LMRDA, and related Federal Register and Code of Federal Regulations (CFR) documents, is available on the OLMS website at **www.olms.dol.gov**.

Copies of labor organization annual financial reports, employer reports, labor relations consultant reports, and union officer and employee reports filed for the year 2000 and after can be viewed and printed at **www.unionreports.gov**. Copies of reports for the year 1999 and earlier can be ordered through the website.

For questions on Form LM-30 and/or the instructions, call the Department of Labor's toll-free number at: 866-4-USA-DOL (866-487-2365) or email **olms-public@dol.gov.**

If you would like to receive via email periodic updates from the Office of Labor-Management Standards, including information about the LM forms, enforcement results, and compliance assistance programs, you may subscribe to the OLMS Mailing List from the OLMS website: **www.olms.dol.gov.**

[FR Doc. 2011–26816 Filed 10–25–11; 8:45 am]
BILLING CODE 4510–CP–C



FEDERAL REGISTER

Vol. 76 Wednesday,
No. 207 October 26, 2011

Part IV

Department of Transportation

Federal Motor Carrier Safety Administration

49 CFR Parts 360, 365, 366, *et al.*
Unified Registration System; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Parts 360, 365, 366, 368, 385, 387, 390 and 392

[Docket No. FMCSA–97–2349]

RIN 2126–AA22

Unified Registration System

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

ACTION: Supplemental Notice of Proposed Rulemaking (SNPRM).

SUMMARY: The FMCSA amends its proposal regarding establishment of the Unified Registration System (URS) required by the ICC Termination Act of 1995 (ICCTA) and originally announced in a May 19, 2005 notice of proposed rulemaking (NPRM). URS is the replacement system for several existing registration and information systems for motor carriers, property brokers, and freight forwarders under FMCSA jurisdiction. This SNPRM responds to comments to the 2005 URS NPRM, incorporates new proposals implementing requirements imposed by final rules published after the 2005 URS NPRM, and includes new proposals to implement certain provisions of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU). The Agency believes the proposed URS would improve the registration process for motor carriers, property brokers, freight forwarders and other entities that register with FMCSA.

DATES: You must submit comments on or before December 27, 2011.

ADDRESSES: You may submit comments identified by Federal Docket Management System (FDMS) Docket ID Number FMCSA–97–2349 by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.
- *Fax:* 202–493–2251.

Instructions: For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Participation heading under the Supplementary Information caption of this document. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below.

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 the US Department of Transportation's DOT Privacy Act System of Records Notice for the DOT Federal Docket Management System published in the **Federal Register** on January 17, 2008 (73 FR 3316), or you may visit *http://edocket.access.gpo.gov/2008/pdf/E8-785.pdf.*

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* or the street address listed above. Follow the online instructions for accessing the dockets.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Clemente, Transportation Specialist, Driver and Carrier Operations Division, (202) 366–2722, or by e-mail at: *Richard.Clemente@dot.gov.* Business hours are from 8 a.m. to 4:30 p.m. ET, Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Public Participation

The Federal eRulemaking Portal (*http://www.regulations.gov*) is available 24 hours each day, 365 days each year. You can get electronic submission and retrieval help and guidelines under the ''How to Use This Site'' menu option.

Comments received after the comment closing date will be included in the docket and we will consider late comments to the extent practicable. The FMCSA may, however, issue a final rule at any time after the close of the comment period.

Preamble Table of Contents

The following is an outline of the preamble.

I. Legal Basis for the Rulemaking
II. Regulatory History
  A. Advance Notice of Proposed Rulemaking
  B. Notice of Proposed Rulemaking
III. Discussion of the Supplemental Notice of Proposed Rulemaking
  A. New Regulatory Drafting Strategy
  B. The Proposal
IV. Regulatory Evaluation of the URS SNPRM: Summary of Benefits and Costs
V. Appendix to the Preamble—Proposed Form MCSA–1 and Instructions
VI. Rulemaking Analyses and Notices

I. Legal Basis for the Rulemaking

This rulemaking is in response to sec. 103 of the ICC Termination Act of 1995 (ICCTA) [Pub. L. 104–88, 109 Stat. 888, December 29, 1995] and title IV of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) [Pub. L. 109–59, 119 Stat. 1714, August 10, 2005]. This rulemaking action is consistent with the requirements of 31 U.S.C. 9701 and 49 U.S.C. 31136(a).

In the ICCTA, Congress enacted 49 U.S.C. 13908 directing the Secretary of Transportation (the Secretary), in cooperation with the States, and after notice and opportunity for public comment, to issue regulations to replace the existing information systems listed below with a single, online, Federal system:

1. The current Department of Transportation (USDOT) identification number system;
2. The single State registration system (SSRS) under [49 U.S.C.] section 14504;
3. The registration system contained in 49 U.S.C. chapter 139; and
4. The financial responsibility information system under section 13906.

Congress also directed the Secretary to consider whether to integrate the requirements of 49 U.S.C. 13304 regarding service of process in court proceedings into the new system. Congress specified that the new URS should serve as a clearinghouse and depository of information on, and identification of, all foreign and domestic motor carriers, property brokers, freight forwarders, and others required to register with the USDOT as well as information on safety fitness and compliance with required levels of financial responsibility. The language of 49 U.S.C. 13908(c) also authorized the Secretary to ''establish, under section 9701 of title 31 [of the U.S. Code], a fee system for registration and filing evidence of financial responsibility under the new system under subsection (a). Fees collected under the fee system shall cover the costs of operating and upgrading the registration system, including all personnel costs associated with the system.''

The Unified Carrier Registration Act of 2005, subtitle C of title IV of SAFETEA–LU, modified the requirements for a unified registration system for motor carriers contained in ICCTA. In particular, SAFETEA–LU changed the scope of the Secretary's responsibility for the development of a registration system to replace the SSRS. It also modified the requirement that

fees collected under the new system cover the costs of operating and upgrading the registration system and placed limitations on certain fees that the Agency could charge. Section 4304 of SAFETEA–LU reiterated the congressional requirement for a single, Federal, online system to replace the four individual systems identified under 49 U.S.C. 13908 and also mandated inclusion of the service of process agent systems under 49 U.S.C. 503 and 13304. SAFETEA–LU refers to the Federal online replacement system as the Unified Carrier Registration System. The Agency considers the URS announced in the May 2005 NPRM to be the Unified Carrier Registration System.[1]

Congress also repealed the statutory provisions of 49 U.S.C. 14504 governing SSRS. (SAFETEA–LU section 4305(a)).[2] The legislative history indicates that the purpose of the UCR Plan and Agreement is both to ''replace the existing outdated system [SSRS]'' for registration of interstate motor carrier entities with the States and to ''ensure that States don't lose current revenues derived from SSRS'' (S. Rep. 109–120, at 2 (2005)).[3]

The statute provided for a 15-member Board of Directors for the UCR Plan and Agreement (Board) appointed by the Secretary of Transportation. The statute specified that the Board should consist of Federal, State and motor carrier industry representatives. The establishment of the board was announced in the **Federal Register** on May 12, 2006 (71 FR 27777). The Board's duties include issuing rules and regulations, recommending fee levels for the system, and designating a revenue depository for the new system. On Friday, August 24, 2007, the Agency published a final rule establishing initial fees for 2007 and a fee bracket structure for the Unified Carrier Registration Agreement in the **Federal Register** (72 FR 48585). The FMCSA subsequently adjusted the UCR Agreement fees and fee bracket structure in a final rule dated April 27, 2010 (74 FR 21993).

SAFETEA–LU also amended several definitions that affect the coverage of the URS, amended certain financial responsibility requirements, and eliminated the Agency's authority to collect certain fees. Today's proposal incorporates new requirements imposed by SAFETEA–LU.

Title 31 U.S.C. 9701 (the so-called ''User Fee Statute'') establishes general authority for agencies to ''charge for a service or thing of value provided by the Agency.'' Accordingly, FMCSA proposes to charge fees under URS that will enable the Agency to recoup costs associated with processing registration applications and administrative filings. Title 49 U.S.C. 13908(d) requires establishment of registration fees that, as nearly as possible, cover the costs of processing the registration, provided the fees do not exceed $300.

Section 206 of the Motor Carrier Safety Act of 1984 [Pub. L. 98–554, title II, 98 Stat. 2832, October 30, 1985, 49 U.S.C. App. 2505, recodified at 49 U.S.C. 31136] requires the Secretary to prescribe regulations on commercial motor vehicle safety. The regulations shall prescribe minimum safety standards for commercial motor vehicles (CMVs). At a minimum, the regulations shall ensure that: (1) CMVs are maintained, equipped, loaded, and operated safely; (2) the responsibilities imposed on operators of CMVs do not impair their ability to operate the vehicles safely; (3) the physical conditions of operators of CMVs is adequate to enable them to operate the vehicles safely; and (4) the operation of CMVs does not have a deleterious effect on the physical condition of the operators (49 U.S.C. 31136(a)).

This SNPRM is intended to streamline the existing registration process and ensure that FMCSA can more efficiently track motor carriers, freight forwarders, brokers, intermodal equipment providers and cargo tank facilities. It implements the mandate under sec. 31136(a)(1) that FMCSA's regulations ensure that CMVs are maintained and operated safely. This proposal imposes no operational responsibilities on drivers. Therefore, this proposed regulation would not impair a driver's ability to operate vehicles safely (sec. 31136(a)(2)), would not impact the physical condition of drivers (sec. 31136(a)(3)), and would not have a deleterious effect on the physical condition of drivers (sec. 31136(a)(4)).

II. Regulatory History

A. Advance Notice of Proposed Rulemaking

In response to the ICCTA mandate to develop a unified registration system, the Federal Highway Administration (FMCSA's predecessor agency) issued an advance notice of proposed rulemaking (ANPRM) announcing plans to develop a single, online, Federal information system (61 FR 43816, August 26, 1996). The ANPRM solicited specific detailed information from the public about each of the systems to be replaced by the URS, the conceptual design of the URS, uses and users of the information to be collected, and potential costs.

B. Notice of Proposed Rulemaking

On May 19, 2005, FMCSA published an NPRM describing a proposal to merge all of the prescribed information systems except SSRS into a unified, online, Federal system (70 FR 28990) as set forth below.

1. Entities To Be Included in the Unified Registration System

The Agency proposed to include the following entities in the Unified Registration system: (1) All for-hire motor carriers (including those exempt from the 49 U.S.C. chapter 139 registration requirements), (2) private motor carriers, (3) property brokers, and (4) freight forwarders.

In the NPRM, the Agency proposed to exclude the following entities from the Unified Registration System: (1) Mexico-domiciled motor carriers applying to engage in long-haul operations, (2) applicants for hazardous materials safety permits to haul certain hazardous materials under 49 CFR part 385, subpart E, and (3) cargo tank facilities required to register with FMCSA pursuant to 49 CFR 107.502 and 49 U.S.C. 5108. The Agency requested comment on whether the unique conditions of these entities warranted retaining separate registration procedures and application forms or whether they also should be included in the Unified Registration System. The Agency also solicited information on how to most effectively integrate the systems under consideration for merger with URS.

2. Proposed User Fees

The Agency proposed user fees as set forth in the Table to § 360.401 below:

[1] The Unified Carrier Registration (UCR) Agreement mandated under section 4305 of SAFETEA–LU (which enacted 49 U.S.C. 14504a) is the replacement for the Single State Registration System authorized by former 49 U.S.C. 14504. Registration and payment of fees under the UCR Agreement are not the responsibility of FMCSA. However, as provided by 49 U.S.C. 13908(b), information about the compliance of entities subject to the UCR Agreement will be available through the URS when that system has been developed.

[2] This repeal became effective on January 1, 2007, in accordance with section 4305(a).

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

TABLE TO § 360.401—UNIFIED REGISTRATION SCHEDULE OF FEES

Registration	You must pay FMCSA
If you:	
(a) Are subject to the registration requirements under § 360.3 and are requesting a new application to operate in interstate commerce.	$200.
Other Services	
If you file a:	
(b) Biennial update of registration	No cost.
(c) Request for change of name, address, or form of business	No cost.
(d) Request for cancellation of registration	No cost.
(e) Request for registration reinstatement	$100.
(f) Designation of process agent	$10.

Additionally, the Agency proposed fees for record searching, reviewing, copying, certifying, and related services under § 360.419(a) through (d) as follows:

Description	Fee
(a) Certificate of the Director, Office of Information Management, as to the authenticity of documents	$12.
(b) Service involved in locating records to be certified and determining their authenticity, including incidental clerical and administrative work.	$21 per hour.
(c) Photocopies of public documents	$.80 per letter- or legal-size page; $5 minimum.
(d) Search and copying services requiring automated data processing services (ADP), as follows:	
(1) Professional staff time to fulfill an ADP request	$50 per hour.
(2) Computer searches	Current rate for computer service as determined by the Office of Information Management (MC–RIS).
(3) Printing	Paper—$.10 per page with a $1 minimum; Electronic media—Agency's cost.

3. Financial Responsibility

Bodily Injury and Property Damage Insurance (BI & PD) Filing Requirement

Existing regulations prescribe minimum levels of financial responsibility for certain motor carrier classifications. However, only for-hire motor carriers, brokers and certain freight forwarders [4] that are subject to the chapter 139 registration requirements must file evidence of financial responsibility with FMCSA as a precondition to receiving and holding chapter 139 operating authority. Evidence of financial responsibility may be in the form of certificates of insurance, surety bonds, proof of qualifications as a self-insurer, endorsements, or trust agreements, as appropriate.

The Agency proposed to retain the financial responsibility filing requirement for these entities and to extend them to for-hire motor carriers exempt from the chapter 139 registration requirements (hereafter referred to as ''exempt for-hire motor carriers'') and to private interstate motor carriers transporting hazardous materials. All such carriers already are required by statute (49 U.S.C. 31138 and 31139) and regulations (49 CFR part 387) to obtain and maintain BI & PD insurance. The NPRM merely proposed to require the filing of evidence of financial responsibility with FMCSA. The Agency believes the proposed filing requirement would provide the public with assurances that all for-hire motor carriers and private carriers transporting hazardous materials in interstate commerce have the financial means to compensate members of the public for injuries or damages caused by negligence. These filings also would increase public accessibility to insurance information and would enable FMCSA to more effectively track insurance cancellations.

The filing requirement would not be extended to motor carriers transporting hazardous materials in intrastate commerce; these carriers would continue to maintain evidence of financial responsibility at their principal place of business.

Web-Based Filings by Insurers, Surety Companies, and Financial Institutions

The Agency proposed to require financial responsibility service providers such as insurers to file evidence of financial responsibility using a Web-based (HTML) format. These filings would include evidence of certificates of insurance, proof of qualification to self-insure, endorsements, surety bonds, trust-fund agreements, household goods (HHG) cargo insurance, and notices of cancellations. The FMCSA believes Web-based filings will promote efficiencies for FMCSA, insurers, sureties, financial institutions, and the public. The NPRM solicited comment on whether the proposed mandatory Web-based filing would be a significant burden on small insurers, surety companies, and financial institutions. Also, the Agency invited comments, ideas and suggestions regarding a potential phase-in approach as opposed to immediate mandatory on-line filing.

Cargo Insurance. The NPRM included a proposal to eliminate the cargo insurance requirement for all entities except HHG motor carriers and HHG

[4] Household goods freight forwarders performing transfer, collection and delivery service.

freight forwarders. Current 49 CFR 387.303(c) and 387.405(a) require non-exempt for-hire motor common carriers of property and freight forwarders, respectively, to maintain cargo insurance in the amount of $5,000 per vehicle, and $10,000 per occurrence, and to file evidence of coverage with FMCSA. Contract carriers are not subject to a requirement to maintain or file evidence of cargo insurance. However, SAFETEA–LU prohibited FMCSA from registering motor carriers as ''common'' or ''contract'' carriers, effective January 1, 2007. The Agency proposed to eliminate the cargo insurance requirement for all entities except HHG carriers and HHG freight forwarders based on the assumption that most for-hire motor carriers and freight forwarders carry cargo insurance well above FMCSA limits because their shipper clients generally require it as a condition of doing business. However the Agency deemed it in the public interest to retain the cargo insurance requirement for household goods motor carriers and household goods freight forwarders.

Self-Insurance Program. The Agency proposed several changes to the self-insurance program, including changes to the fees charged to applicants seeking approval to self-insure and changes to the fees associated with annual and quarterly reporting by entities approved to self-insure. The Agency announced that it would continue its practice of processing and approving each motor carrier self-insurance application on a case-by-case basis.

Insurance Filing Fees. The Agency proposed insurance filing fees as set forth in the Table to § 360.415(b):

TABLE TO § 360.415(B)—INSURANCE FILING FEES

(1) Financial responsibility service provider filing evidence of minimum level of insurance, surety bond, or trust fund agreement	$10
(2) Qualification as a self-insurer for bodily injury, property damage, or environmental restoration	4,200
(3) Qualification as a self-insurer for cargo insurance	420
(4) Quarterly self-insurance monitoring filing	500
(5) Annual self-insurance monitoring filing	(1)

[1] No cost.

4. Process Agent Designations

Current regulations under 49 CFR part 366 require only motor carriers and brokers that are subject to the 49 U.S.C. chapter 139 commercial registration requirements to designate a process agent.[5] Today exempt for-hire motor carriers are not subject to FMCSA commercial regulations and thus are not required to designate a process agent. Heretofore, the Agency has not exercised the authority granted under 49 U.S.C. 503 to require private carriers to designate a process agent. However, in the May 2005 NPRM, the Agency proposed to require new and existing private and exempt for-hire motor carriers and freight forwarders to make process agent designation filings with FMCSA. Additionally, private motor carriers that operate in the United States in the course of transportation between points in a foreign country would need to file process agent designations with the Agency.

The FMCSA concluded that extending the requirement to all URS registrants would enhance the public's ability to serve legal process on responsible individuals when seeking compensation for losses resulting from a crash involving a commercial motor vehicle operated by private or exempt for-hire motor carriers. Moreover, FMCSA would be better able to identify among all of its regulated entities the appropriate individual(s) upon whom to serve notices for enforcement actions.

5. Timeframes for Evidence of Financial Responsibility and Process Agent Designation Filings

The Agency proposed to increase to 90 days the maximum time allowed for an applicant to submit evidence of financial responsibility and to designate a process agent (§§ 360.13(a)(6)[6] and (a)(7)). Failure to make these filings within 90 days of applying for registration would result in dismissal of the application.

Existing regulations already provide up to 80 days for these filings. Today agents must file evidence of financial responsibility on behalf of non-exempt for-hire motor carriers, brokers and freight forwarders within 20 days of the date of publication of the application in the FMCSA Register (published on the Agency Web site at *http://www.fmcsa.dot.gov*). If the filings are not completed within the 20-day period, FMCSA issues a dismissal warning and may grant a one-time 60-day grace period.

The Agency stated that a 90-day filing period for these administrative filings more realistically reflects the actual time necessary to arrange insurance and process agent coverage. The NPRM included a proposal that administrative filings be completed within 90 days after submission of the Form MCSA–1, with no further extensions. If either the insurance or process agent filings were not completed within this 90-day period, the Agency would dismiss the registration request.

In addition, the Agency proposed a 180-day grace period for the newly required administrative filings by existing exempt for-hire and covered private motor carriers.

6. USDOT Number as the Sole Identifier for Entities Registered in URS

At the time of publication of the NPRM, FMCSA registration systems used five identification numbers: (1) The USDOT Number; (2) the MC Number (assigned to non-exempt for-hire motor carriers and brokers registering under 49 U.S.C. chapter 139); (3) the FF Number (assigned to freight forwarders); (4) the MX Number (assigned to Mexico-domiciled motor carriers operating exclusively within municipalities in the United States on the U.S.-Mexico international border and the commercial zones of such municipalities; and (5) cargo tank facility (CT) numbers. The Agency proposed to discontinue issuing MC, MX, and FF Number designations and to phase out the use of current MC, MX, and FF Numbers within 2 years of the compliance date for the URS final rule. Thus, the USDOT Number would become the sole identification number for all entities registered by FMCSA (except for cargo tank facilities). This unique USDOT Number would be

[5] Although part 366 does not require process agent designations by freight forwarders, designation of agents for service of process by freight forwarders in connection with Agency proceedings is required under 49 U.S.C. 13303. Consequently, the Agency has required such designations by freight forwarders notwithstanding the omission of freight forwarders in part 366. The Agency proposed to add freight forwarders to part 366 to fully implement section 13303.

[6] The May 2005 NPRM incorrectly included two paragraphs (a)(6) under § 360.13. This statement cross references the second paragraph (a)(6).

displayed on the side of the vehicle pursuant to the CMV marking requirement in 49 CFR 390.21. The FMCSA would issue a USDOT Number with a distinctive suffix to any Mexico-domiciled motor carrier granted registration.

7. The Application Process

The Agency proposed under subpart A to part 360 a new multi-step application process and procedures for issuance of a USDOT Number under which an applicant would begin the registration process by filing a completed Form MCSA–1 and paying the registration fee. If the Agency accepted the Form MCSA–1 application, it would assign a temporary number to track the application through the registration process and enable registrants to make required administrative filings. The applicant's financial responsibility agent would use the tracking number to file evidence of compliance with FMCSA financial responsibility requirements under 49 CFR part 387; the motor carrier or its agent also would use the temporary tracking number to make a process agent designation filing. An applicant would be prohibited from commencing operations until the Agency issues a USDOT Number and grants registration.

Upon receipt of the USDOT Number, a motor carrier applicant would be considered a ''new entrant'' and placed under the appropriate safety monitoring program. A U.S.- or Canada-domiciled motor carrier would be subject to the FMCSA New Entrant Safety Assurance Program described under 49 CFR part 385, subpart D, which includes a safety audit. The provisional registration is the new entrant registration defined at 49 CFR 385.3. New entrant registration for these motor carriers would become permanent only if the applicant satisfactorily completed the New Entrant Safety Assurance Program. Similarly, to receive permanent registration, a Mexico-domiciled new entrant operating exclusively within the border commercial zones would be required to satisfactorily complete the safety monitoring program and safety audit described under 49 CFR part 385, subpart B. Motor carrier operating authority obtained under the procedures in 49 CFR part 365 would not become permanent until an applicant operating commercial motor vehicles satisfactorily completed the New Entrant Safety Assurance Program.

Special procedures for chapter 139 brokers, freight forwarders or motor carriers

Current registration procedures in 49 U.S.C. 13902 allow anyone to oppose a request for permanent operating authority by non-exempt for-hire motor carriers, property brokers, and freight forwarders, provided the protest is based upon the applicant's willingness and ability to comply with: (1) The registration procedures; (2) applicable DOT regulations, including the Federal Motor Carrier Safety Regulations (FMCSRs), Hazardous Materials Regulations (HMRs) and regulations implementing the Americans with Disabilities Act (ADA); (3) the safety fitness standards; and/or (4) the financial responsibility requirements. The proposed unified registration system would continue to allow protests for applications covered under section 13902, but would not extend the right of protest to applications for registration filed by private motor carriers or exempt for-hire motor carriers.

In accordance with section 13902, FMCSA must notify the public when applications for authority are under consideration and provide an opportunity for protest. Upon acceptance of an application for registration from a chapter 139 entity, FMCSA would publish notice of the application in the FMCSA Register, initiating a 10-day protest period. The Agency would issue the applicant a temporary tracking number for the purpose of completing administrative filings and tracking the application through the registration process. If the Agency denied an application based on a protest, the application would be dismissed, and the registration fee would not be refunded.

If the application of a broker or freight forwarder is not protested or if insufficient grounds exist to deny a protested application, the Agency would issue a USDOT Number and grant permanent registration. Brokers and freight forwarders are not subject to a safety monitoring program.

If the application of a non-exempt motor carrier is not protested, or if insufficient grounds exist to deny a protested application, FMCSA would grant the applicant new entrant registration subject to completion of applicable administrative requirements. New entrant registration would become permanent registration only after satisfactory completion of the New Entrant Safety Assurance Program.

8. The Proposed Application Form (MCSA–1)

The FMCSA proposed to combine the data elements now captured on several different licensing, registration and certification forms into a single, new application form called the Form MCSA–1. For those entities subject to URS, Form MCSA–1 would replace the following forms: (1) Motor Carrier Identification Report (Application for USDOT Number), Form MCS–150; (2) Application for Motor Property Carrier and Broker Authority, Form OP–1; (3) Application for Motor Passenger Carrier Authority, Form OP–1(P); (4) Application for Freight Forwarder Authority, Form OP–1(FF); and (5) Application for Mexican Certificate of Registration for Foreign Motor Carriers and Foreign Motor Private Carriers Under 49 U.S.C. 13902, Form OP–2. The NPRM also invited comments on whether the URS should incorporate the data requirements of three other registration processes: (1) Registration of Mexico-domiciled motor carriers seeking to operate between points in Mexico and points in the United States beyond the border commercial zones, Form OP–1(MX); (2) registration of entities requesting a hazardous materials safety permit, Form MCS–150B; and (3) registration of cargo tank facilities (which is requested in a letter submitted by the applicant to FMCSA).

9. Electronic Filing Requirement With Paper Filing Option

The FMCSA proposed an online electronic application process with a paper filing option. The Agency requested comments on the benefits or hardships applicants might experience from a mandatory online electronic filing requirement. The Agency also asked whether it should immediately require online electronic filing or provide a phase-in period. The FMCSA noted several factors in support of an online filing requirement:

- There is widespread public access to computers and the Internet;
- In 2005 when the Agency published the NPRM, more than 70 percent of U.S. motor carriers had Internet access, with Internet access clearly increasing;
- Automated error-checking would result in more accurate information about the applicant;
- Online filing would allow USDOT Numbers to be issued faster, substantially reducing the current 2- to 4-week paper-based processing time for registration applications; and
- Online filing would be more cost-effective for FMCSA than manually processing applications.

10. Biennial Update Requirement

The FMCSA proposed to require biennial updates using proposed Form MCSA–1 by all motor carriers, brokers and freight forwarders. Passenger and property motor carriers, freight forwarders, and property brokers would have to file regular updates to their registration information every 24 months. At the time the URS NPRM was published (May 19, 2005), existing § 390.19 required only safety registration information filed on Form MCS–150 or Form MCS–150–B to be updated. There was no requirement for non-exempt for-hire motor carriers, property brokers, and freight forwarders to biennially update commercial registration information. In the May 2005 NPRM, the Agency explained that since the Form MCSA–1 would combine safety and commercial registration for most motor carriers, FMCSA had preliminarily concluded it is reasonable to extend the biennial update requirement to all motor carriers subject to FMCSA's commercial and safety jurisdiction. As a result, all motor carriers, property brokers, and freight forwarders would need to file biennial updates. The registration updates would provide valuable motor carrier and fleet information and would be useful in assessing safety performance. A motor carrier that registers its vehicles in a Performance and Registration Information Systems Management (PRISM) Program State would fulfill the biennial update through its annual State re-registration requirement.

11. Transfers of Operating Authority

Existing 49 CFR part 365, subpart D, permits non-exempt for-hire motor carriers, brokers and freight forwarders that register under chapter 139 to merge, transfer or lease their operating authority (indicated by an MC or FF Number), and establishes procedures for Agency approval of these transactions. Currently, these entities are required to file transfer applications with FMCSA and pay a $300 fee.

The Agency determined that in enacting the ICCTA, Congress repealed pre-existing statutory authority to approve transfers of operating authority (former 49 U.S.C. 10926). Accordingly, the Agency proposed to discontinue regulation of transfers of operating authority and to remove 49 CFR part 365, subpart D, governing such transfers from the FMCSRs.[7]

The FMCSA proposed to issue only a USDOT Number as an indicator of operating authority. Issuance of MC, MX, and FF Numbers would be discontinued. Unlike chapter 139 certificates and permits, which have traditionally been considered transferable motor carrier assets, a USDOT Number is a unique identifier used to monitor a carrier's safety performance. As such, the USDOT Number never has been subject to transfer.

Under the proposal, the Agency would permit retention of an existing USDOT Number in a situation where an entity changed its legal name, form of business, or address, provided that there was no change in the ownership, management, or control of the entity. Thus, the USDOT Number could be retained following a change in the legal name of a sole proprietorship, corporation, or partnership; a change in the trade name or assumed name of an entity; and a change in the form of a business, such as the incorporation of a partnership or sole proprietorship. The Agency proposed that all entities requesting a change in legal name, form of business, or address be required to fill out a revised Form MCSA–1 within 20 days of the precipitating change with a certification that there had been no change in the ownership, management, or control of the entity holding the USDOT Number. Such a certification would have addressed whether the change in name, form of business, or address was associated with a transfer of the operating authority.

12. Cancellation, Reinstatement, and Deactivation of USDOT Registration

Under existing procedures, if a motor carrier, broker or freight forwarder whose operations are authorized under 49 U.S.C. chapter 139 wishes to voluntarily cancel its operating authority, it must submit a notarized Form OCE–46, ''Voluntary Revocation Request,'' or electronically file its request. In the May 2005 NPRM, the Agency proposed to replace the voluntary revocation request procedure with the procedure now used by motor carriers requesting to discontinue use of a USDOT Number. Motor carriers would be required to mail or electronically submit to the Agency a cancellation request and certification statement under proposed § 360.701. Use of the Form OCE–46 would be discontinued.

Under proposed § 360.705, FMCSA would deactivate a motor carrier's USDOT Registration if the carrier failed to comply with the financial responsibility and process agent filing requirements.

Under proposed § 360.707, a motor carrier, broker or freight forwarder could reinstate a USDOT Registration that had been deactivated for less than 2 years by making the necessary filings and paying a reinstatement fee. If the USDOT Registration had been deactivated for 2 or more years, the entity would need to request the Agency to activate its USDOT Registration (under the previously-issued USDOT Number) by completing the procedures in proposed subpart A to part 360, including payment of a registration fee. A motor carrier that sought to reinstate its USDOT Registration after 2 years of being deactivated would be classified as a new entrant.

In setting the proposed threshold for reclassification of a carrier as a new entrant at 2 years, the Agency sought to prevent carriers that go in and out of business for very short periods of time from being required to re-enter the New Entrant Safety Assurance Program. The 2-year threshold also would parallel the existing 2-year update requirement for motor carrier information.

13. Requirements for Special Transit Operations (Federal Transit Administration (FTA) Grantees)

The Agency proposed to include under URS passenger carriers that provide service funded, in whole or in part, by a grant from the FTA under 49 U.S.C. 5307, 5310, or 5311. (49 U.S.C. 31138(e)(4)). These motor carriers currently are exempt from Federal financial responsibility requirements but must comply with the highest minimum requirement imposed by any State in which they operate. The Agency proposed to waive all fees for FTA grantees, including the registration fee, insurance filing fee, and any fees related to the self-insurance approval process. It also proposed amending 49 CFR part 387 to reflect the financial responsibility requirements unique to FTA grantees.

III. Discussion of the Supplemental Notice of Proposed Rulemaking

A. New Regulatory Drafting Strategy

The Agency proposes in the SNPRM to use a different regulatory drafting strategy than earlier proposed. The FMCSA would not at this time attempt to combine and redraft within a single CFR part the diverse application and program requirements as proposed in the May 2005 URS NPRM. Instead, the Agency proposes an incremental approach that would establish a general

[7] FMCSA (then part of the Federal Highway Administration) initially proposed removal of the transfer regulations in a February 13, 1998 NPRM (63 FR 7362). On May 16, 2001, FMCSA published a notice in the **Federal Register** (66 FR 27059) announcing the withdrawal of the February 1998 NPRM with the intention of addressing the transfer issue in the URS rulemaking.

requirement under 49 CFR part 390, subpart C, for all entities under FMCSA safety or commercial jurisdiction to obtain USDOT Registration. USDOT Registration encompasses all registration requirements for FMCSA regulated entities, including the identification of motor carriers and intermodal equipment providers for safety oversight, as required under 49 U.S.C. 31144, commercial registration required under 49 U.S.C. chapter 139, hazardous materials safety permitting required under 49 U.S.C. 5109, and cargo tank facility registration required under 49 CFR 107.502 and 49 U.S.C. 5108. Existing 49 CFR part 390, subpart C, which includes in-depth information governing intermodal equipment providers, would be re-designated as subpart D to part 390.

Fee schedules would remain under 49 CFR part 360, and information regarding designation of process agents would remain under 49 CFR part 366.

Conforming amendments would be made to parts 360, 365, 366, 368, and 385 to replace references to obsolete forms in the OP- and MCS-series with references to proposed Form MCSA–1, the Application for USDOT Number/Operating Authority.

The new regulatory strategy is necessary because registration requirements vary widely among those entities regulated by FMCSA. Although Congress directed the Secretary to combine several distinct information systems into a new on-line replacement system, it did not direct that there be uniform requirements for all entities under FMCSA jurisdiction. For example, not all of the entities subject to FMCSA safety oversight are subject to its commercial jurisdiction under 49 U.S.C. chapter 139 and thus required to obtain certificates, permits and licenses granted to motor carriers, brokers and freight forwarders, respectively. For this reason, the Unified Registration System would need to accommodate these distinctions as long as they exist.

B. The Proposal

The comment period for the May 2005 URS NPRM closed on August 17, 2005. The FMCSA received a total of 60 comment submissions to the docket from 58 entities, including State and local government agencies, motor carriers, industry trade associations, enforcement associations, safety advocates, and private citizens. Most comments supported creation of a unified registration system. Because the Agency is soliciting additional comments on modifications made to the NPRM, we will not, at this point in the proceeding, address all comments received. Comments will be discussed if they have resulted in changes to the Agency's original proposal. A more detailed response to comments received to both the NPRM and this SNPRM will be included in the preamble to the final URS rule.

Major proposals carried over from the 2005 NPRM to this SNPRM include the following:

- The URS would combine (1) the USDOT identification number system; (2) the Title 49, chapter 139 commercial registration system; and (3) the 49 U.S.C. 13906 financial responsibility information system into a new single, online system. In accordance with section 4304 of SAFETEA–LU, the Agency also proposes inclusion of the service of process agent designation system in accordance with 49 U.S.C. 503 and 13304.
- All regulated entities would be required to update registration information every 2 years.
- All entities registered under URS would be identified by FMCSA solely by the USDOT Number. Motor carriers could continue to use obsolete MC Numbers for business and advertising reasons, and the Agency would not require a motor carrier to remove the existing MC Number from its vehicles. But the Agency encourages motor carriers to refrain from displaying the MC Number on new or repainted CMVs once the rule becomes final.
- The Agency would no longer accept or review requests for transfers of operating authority.
- All existing private motor carriers that transport hazardous materials in interstate commerce would be required to maintain and file evidence of financial responsibility with the Agency. There would be at least a 3-month moratorium on enforcement of the filing requirement after the effective date of the rule. The moratorium would not apply to new entrants.

1. Single State Registration System (SSRS)

Although numerous commenters addressed SSRS issues, section 4305 of SAFETEA–LU repealed the SSRS and placed responsibility for developing an SSRS replacement system with the Unified Carrier Registration Plan (UCR Plan). Under Section 4305(b) of SAFETEA–LU, the UCR Plan is the organization responsible for developing, implementing, and administering the Unified Carrier Registration Agreement (49 U.S.C. 14504a(a)(9)) (UCR Agreement). The UCR Agreement developed by the UCR Plan is the ''interstate agreement governing the collection and distribution of registration and financial responsibility information provided and fees paid by motor carriers, motor private carriers, brokers, freight forwarders and leasing companies * * *.'' (49 U.S.C. 14504a(a)(8)).

The statute provides for a 15-member Board of Directors for the UCR Plan and Agreement (Board) appointed by the Secretary of Transportation, only one of whom shall be from the Department of Transportation. The remaining Board members represent State agencies and the motor carrier industry. The establishment of the Board was announced in the **Federal Register** on May 12, 2006 (71 FR 27777).

The Board is charged with developing regulations governing the UCR Agreement and recommends the applicable fees to the Secretary of Transportation.[8] The FMCSA is required by SAFETEA–LU to set the fees within 90 days after receiving the Board's recommendation and after notice and opportunity for public comment (49 U.S.C. 14504a(d)(7)(B)).

The FMCSA described the statutory requirements in detail in an NPRM published on May 29, 2007 (72 FR 29472). On Friday, August 24, 2007, the Agency published a final rule establishing initial fees for 2007 and a fee bracket structure for the Unified Carrier Registration Agreement in the **Federal Register** (72 FR 48585). The FMCSA subsequently adjusted the UCR Agreement fees and fee bracket structure in a final rule dated April 27, 2010 (74 FR 21993).

For reasons stated in Section I of this SNPRM, development of the replacement system for the SSRS is no longer addressed under the URS rulemaking.

2. Entities Subject to the URS Registration Requirement

Except as noted below, the Agency proposes to require all entities which are under FMCSA commercial or safety jurisdiction to register under the Unified Registration System using proposed Form MCSA–1. Section 4304 of SAFETEA–LU amended 49 U.S.C. 13908(b) to require the Federal on-line replacement system to ''serve as a clearinghouse and depository of information on, and identification of, all foreign and domestic motor carriers, motor private carriers, brokers, freight forwarders, and others required to register with the Department of Transportation * * *.'' The FMCSA

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

interprets this statute as authorizing the inclusion of all entities regulated by FMCSA in the Unified Registration System.

Accordingly, proposed 49 CFR 390.101 would establish a general requirement for all regulated entities, except Mexico-domiciled motor carriers seeking authority to operate beyond the border commercial zones (Mexico-domiciled long-haul carriers), to obtain USDOT Registration by filing proposed Form MCSA–1 and to provide FMCSA biennial updates of the registration information.

Under proposed § 390.102, a motor carrier that registers its vehicles in a State that participates in the Performance and Registration Information Systems Management program (PRISM) alternatively could satisfy the USDOT registration and biennial update requirements in § 390.101 by electronically filing the required information with the State Driver Licensing Agency (SDLA) according to its policies and procedures, provided the SDLA has integrated the USDOT registration/update capability into its vehicle registration program. If State procedures do not allow a motor carrier to file the MCSA–1 form or to submit updates within the required 24-month window, the motor carrier would need to complete such filings directly with FMCSA.

Proposed § 390.103 would require all for-hire motor carriers and private motor carriers that transport hazardous materials in interstate commerce, as well as brokers and freight forwarders, to file evidence of financial responsibility to receive USDOT Registration.

Although seven comments supported the inclusion of Mexico-domiciled long-haul carriers in the unified system, the Agency does not propose to include such carriers at this time. In September 2007, FMCSA began registering Mexico-domiciled long-haul carriers under a limited-term cross-border demonstration project in which participation by Mexican carriers was voluntary. This program was discontinued in March 2009, following enactment of section 136 of the Transportation, Housing and Urban Development, and Related Agencies Appropriations Act, 2009 [Division I, title I of the Omnibus Appropriations Act, 2009, Public Law 111–8, March 11, 2009], which prohibited the use of funds appropriated in that Act to establish, implement, continue, promote, or in any way permit a cross-border demonstration program. Subsequent to enactment of section 136, Congress has not enacted any language that prohibits funding for a new cross-border demonstration program. Currently, FMCSA and USDOT are working closely with the Government of Mexico to implement a new phased-in long-haul cross border trucking program. FMCSA's experiences in implementing this new program will be important in assessing the need to propose further changes in the unified program at a future date. The applicable procedures governing transportation by Mexico-domiciled motor carriers beyond the municipalities and commercial zones along the United States-Mexico international border remain 49 CFR part 365, subpart E, 49 CFR part 385, subpart B, and 49 CFR 390.19.

Proposed § 390.105 would list, and provide cross-references to, other governing regulations that are applicable to those requesting USDOT Registration. For-hire and private motor carriers, brokers and freight forwarders additionally would be required to designate a process agent as a pre-condition for receiving USDOT Registration and commercial operating authority, when applicable. U.S. and Canada-domiciled motor carriers must satisfactorily complete the new entrant safety assurance program under 49 CFR part 385, subpart D in order for their USDOT Registration and commercial operating authority, if applicable, to become permanent. A Mexico-domiciled motor carrier is subject to the safety monitoring system under 49 CFR part 385, subpart B. A non-North America-domiciled motor carrier is subject to the requirements of 49 CFR part 385, subpart H, and must complete the safety monitoring program under 49 CFR part 385, subpart I. An intermodal equipment provider is subject to the requirements of 49 CFR part 390, subpart D. A person who applies for a hazardous materials safety permit is subject to the requirements of 49 CFR part 385, subpart E. A cargo tank facility is subject to the requirements of 49 CFR part 107, subpart F, 49 CFR part 172, subpart H, and 49 CFR part 180.

Finally, § 390.107 would direct a non-North America-domiciled motor carrier that requests authority to conduct interstate commerce within the United States to § 385.607(a) for detailed information about the requirement to complete a pre-authorization safety audit as a pre-condition for receiving USDOT Registration and commercial operating authority, if applicable.

By placing the unified registration requirement under part 390, FMCSA State partners that participate in the Motor Carrier Safety Assistance Program would be able to enforce the registration requirement consistent with the compatibility requirements under 49 CFR parts 350 and 355.

All entities required to register under URS are listed in the chart below:

ENTITIES REQUIRED TO REGISTER UNDER THE UNIFIED REGISTRATION SYSTEM

Entity	Description
1. A for hire or private motor carrier domiciled in the U.S., Canada, Mexico or a non-North American country:	
a. For-hire carrier	A person engaged in the transportation of goods or passengers for compensation.
i. Exempt	A person engaged in transportation exempt from commercial regulation by the Federal Motor Carrier Safety Administration (FMCSA) under 49 U.S.C. chapter 135. Exempt motor carriers that operate commercial motor vehicles as defined in 49 U.S.C. 31101 are subject to the safety regulations set forth in Part B of Subtitle VI of subchapter B of Title 49 Code of Federal Regulations.
ii. Non-exempt	A person engaged in transportation subject to commercial regulation by the Federal Motor Carrier Safety Administration (FMCSA) under 49 U.S.C. chapter 139, regardless of whether such transportation is subject to the safety regulations.
b. Private carrier	A person who provides transportation of property or passengers, by commercial motor vehicle, and is not a for-hire motor carrier.
2. Broker	A person who, for compensation, arranges, or offers to arrange, the transportation of property by a non-exempt for-hire motor carrier.

ENTITIES REQUIRED TO REGISTER UNDER THE UNIFIED REGISTRATION SYSTEM—Continued

Entity	Description
3. Freight forwarder	A person holding itself out to the general public (other than as an express, pipeline, rail, sleeping car, motor, or water carrier) to provide transportation of property for compensation in interstate commerce, and in the ordinary course of its business: (1) performs or provides for assembling, consolidating, break-bulk, and distribution of shipments; (2) assumes responsibility for transportation from place of receipt to destination; and (3) uses for any part of the transportation a carrier subject to FMCSA commercial jurisdiction.
4. Intermodal equipment provider	A person that interchanges intermodal equipment with a motor carrier pursuant to a written interchange agreement or has a contractual responsibility for the maintenance of the intermodal equipment.
5. Hazardous Materials Safety Permit applicant.	A motor carrier that transports in interstate or intrastate commerce any of the hazardous materials, in the quantity indicated for each, listed under 49 CFR 385.403.
6. Cargo tank facility	A cargo tank and cargo tank motor vehicle manufacturer, assembler, repairer, inspector, tester, and design certifying engineer subject to registration requirements under 49 CFR 107.502 and 49 U.S.C. 5108.

3. Proposed User Fees

The Agency sets forth under § 360.3(f) proposed registration, insurance filing and other services fees as follows.

Type of proceeding		Fee
Part I: Registration:		
(1)	An application for USDOT Registration pursuant to 49 CFR part 390, subpart C.	$300.
(2)	An application for motor carrier temporary authority issued in response to a national emergency or natural disaster and following an emergency declaration under § 390.23 of this subchapter.	$100.
(3)	Biennial update of registration	$0.
(4)	Request for change of name, address, or form of business	$0.
(5)	Request for cancellation of registration	$0.
(6)	Request for registration reinstatement	$10.
(7)	Designation of process agent	$0.
Part II: Insurance:		
(8)	A service fee for insurer, surety, or self-insurer accepted certificate of insurance, surety bond, and other instrument submitted in lieu of a broker surety bond.	$10 per accepted certificate, surety bond or other instrument submitted in lieu of a broker surety bond.
(9)	(i) An application for original qualification as self-insurer for bodily injury and property damage insurance (BI&PD).	[Reserved].
	(ii) An application for original qualification as self-insurer for cargo insurance.	[Reserved].
	(iii) Fee for quarterly self-insurance monitoring filing	[Reserved].
	(iv) Fee for annual self-insurance monitoring filing	[Reserved].

The Agency proposes a $300 registration fee for all registered entities. Please refer to the discussion of the proposed new registration fee under ''IV. Regulatory Evaluation of the URS SNPRM: Summary of Benefits and Costs'' of the preamble for an explanation of the basis for this proposal. The FMCSA proposes to charge a $10 registration reinstatement fee for those seeking to reinstate USDOT registration as a result of failure to maintain required financial responsibility and process agent designation filings with the Agency. The FMCSA also proposes to change the fee currently charged for reinstating commercial operating authority after such authority has been revoked from $80 to $10. After completion of required filings (financial responsibility or process agent designation) and payment of the reinstatement fee, the information system would match up the payment with the filings and automatically issue a reinstatement letter at 5:00 am on the next business day. Section 360.3(f)(7) would eliminate the existing $10 process agent designation filing fee because section 4304 of SAFETEA–LU amended 49 U.S.C. 13908(d)(2) to prohibit the Agency from charging a fee for filing designation of an agent for service of process.

The Agency proposes under § 360.1(e)(1) to exempt any Agency of the Federal Government or a State government or any political subdivision of any such government from paying the fees listed in § 360.3(f) to access or retrieve URS data for its own use. Proposed paragraph (e)(2) would exempt any registered entity within URS from paying fees to access or retrieve its own data.

4. Financial Responsibility

Bodily Injury and Property Damage Insurance

For-hire motor carriers. Existing regulations require only non-exempt for-hire motor carriers to file evidence of financial responsibility with the Agency. The NPRM included a proposal to require both exempt and non-exempt for-hire motor carriers to file evidence of financial responsibility with the Agency as a precondition to receiving registration. Section 4303(b) of SAFETEA–LU amended financial security requirements under 49 U.S.C. 13906 by requiring ''all persons, other than a motor private carrier, registered with the Secretary to provide transportation or service as a motor

carrier under section 13905(b)'' to file evidence of financial responsibility with the Agency by December 10, 2005. The Agency believes amended 49 U.S.C. 13906 mandates financial responsibility filings by all for-hire motor carriers. Therefore, the Agency retains its proposal for such filings to be required as a precondition for registration under proposed §§ 390.103(a)(2)(i) and 387.303

Private motor carriers hauling hazardous materials. The SNPRM retains under § 390.103(a)(2)(ii) the proposal that a private motor carrier hauling hazardous materials in interstate commerce be required to file evidence of financial responsibility with the Agency to receive registration. However, a private motor carrier hauling hazardous materials in bulk in intrastate commerce would continue to be required to meet the financial responsibility requirements under 49 CFR part 387 and maintain evidence of having met the financial responsibility requirements at its principal place of business.[9]

Private motor carriers not hauling hazardous materials. Initially, section 4120(a)(1) of SAFETEA–LU amended 49 U.S.C. 31138(a) and 31139(b)(1) to remove the phrase ''for compensation'' from the statutes governing financial responsibility and filing of evidence of financial responsibility with the Agency, thereby creating a financial responsibility requirement for private motor carriers, which the Agency was required to implement through rulemaking. Section 4120(a)(2) stated the Agency could require a private non-hazardous materials motor carrier to file evidence of financial responsibility with FMCSA. Section 305(a) of the SAFETEA–LU Technical Corrections Act of 2008 [Pub. L. 110–244, 122 Stat. 1619–1620, June 6, 2008] amended section 31138 by limiting the Secretary's authority to establish minimum levels of financial responsibility for private motor carriers of passengers to those carriers transporting passengers for commercial purposes.

The Agency anticipates that a proposal regarding financial responsibility for private non-hazardous materials motor carriers would generate major interest from the private motor carrier community and might cause a significant delay in completing the URS rulemaking. Consequently, FMCSA has decided to address the financial responsibility requirements for private non-hazardous material motor carriers in a separate rulemaking from URS.

Brokers and freight forwarders. Brokers and freight forwarders would be required under proposed § 390.103(a)(2) to file evidence of financial responsibility as a pre-condition to registration. This requirement includes only those freight forwarders that perform transfer, collection and delivery service (*i.e.,* operate a motor vehicle). Under the existing regulations, only HHG freight forwarders performing transfer, collection and delivery service are subject to this requirement. These regulations were transferred without change from the Interstate Commerce Commission following enactment of the ICCTA, which re-regulated general commodities freight forwarders. However, the regulations were not amended to reflect the Agency's broadened jurisdiction. The FMCSA believes there is no basis to limit the requirement to HHG freight forwarders and therefore proposes to extend this requirement to all freight forwarders.

Restoration of Liability Insurance Requirements for Small Freight Vehicles

Section 4120 of SAFETEA–LU removed FMCSA's commercial jurisdiction over for-hire transportation of property in motor vehicles that did not meet the definition of commercial motor vehicle (CMV) under 49 U.S.C. 31132. Consequently, the Agency removed former 49 CFR 387.303(b)(1)(i), which established minimum public liability limits of $300,000 for fleets that consisted only of vehicles with Gross Vehicle Weight Ratings of under 10,000 pounds.[10] The SAFETEA–LU Technical Corrections Act of 2008 restored the Agency's commercial jurisdiction over these vehicles. Accordingly, the Agency proposes to restore former § 387.303(b)(1)(i) with one minor change, revising 10,000 pounds to 10,001 pounds to be consistent with the statutory definition of CMV.

Cargo Insurance. Section 4303(c) of SAFETEA–LU required the Agency to discontinue designating operating authority as common or contract carriage beginning January 1, 2007. The FMCSA concluded that because the cargo insurance requirement is tied to the common/contract distinction, and because we no longer may distinguish between common and contract carriers in the Agency's registration process or base any regulations upon that distinction, it was important to address the cargo insurance issue as quickly as possible. Consequently, the Agency published a separate final rule eliminating the cargo insurance requirement for for-hire motor carriers of property (except household goods motor carriers) and freight forwarders (except household goods freight forwarders), effective March 21, 2011 (75 FR 35318, June 22, 2010). The preamble to that final rule addressed the comments filed in this proceeding regarding the NPRM's cargo insurance proposal.

Web-Based Filing by Insurers, Surety Companies, and Financial Institutions

The Agency would require insurers, surety companies and financial institutions to convert to a Web-based format when electronically filing evidence of financial responsibility. (§ 387.323) These filings would include evidence of surety bonds, certificates of insurance, trust-fund agreements, proof of qualifications to self-insure, and notices of cancellations. The Agency also proposes conforming amendments to miscellaneous sections governing financial responsibility requirements to convey that electronic filing would be mandatory and not optional. (*§§ 360.3(a)(2), 387.313(b), 387.313(d), 387.323, 387.413(b), and 387.419)*

Self-Insurance Program

Commenters generally supported the proposal to modify fees related to the self-insurance program. Currently, the cost of the program exceeds the amounts recovered from fees collected from those entities that self-insure. The Agency believes that because entities that qualify to self-insure receive a valuable benefit, it is reasonable and appropriate for the fees charged to support the costs of administering the program. However, FMCSA has determined that the proposed fees for the self-insurance program published in the 2005 NPRM are inadequate to recover Agency costs to administer the program, including the costs of evaluating and monitoring the financial health of motor carriers requesting approval to participate in the self-insurance program. The Agency seeks to make the self-insurance program self-sustaining more quickly and is therefore developing a separate rulemaking to address this issue.

Editorial Changes

The Agency proposes to remove obsolete effective dates and liability

[9] The statutory authority to require motor private carriers to file evidence of insurance with FMCSA is codified at 49 U.S.C. 31139(c). This authority expressly applies to minimum levels of financial responsibility established by the Secretary under 49 U.S.C. 31139(b). Section 31139(b) only applies to financial responsibility requirements for transportation in interstate commerce. Although the Secretary has other authority, in 49 U.S.C. 31139(d), to establish minimum levels of financial responsibility for intrastate transportation of hazardous materials, section 31139(d) does not authorize the Secretary to require that evidence of such insurance be filed with FMCSA.

[10] See 72 FR 55697, 55702 (October 1, 2007).

information from the schedule of limits on Form MCS–90B, Endorsement for Motor Carrier Policies of Insurance for Public Liability Under Section 18 of the Bus Regulatory Reform Act of 1982 (Illustration I to § 387.39). Also, the Agency would correct an omission in § 387.419 by adding the phrase ''notice of cancellations.'' Although the existing section heading is ''Electronic filing of surety bonds, certificates of insurance and cancellations'' the Agency neglected to include information regarding cancellations.

5. Process Agent Designations

The Agency, by proposing to amend 49 CFR 366.1, retains the NPRM proposal to include private and exempt for-hire motor carriers among those entities that would be required to file process agent designations with FMCSA. Private motor carriers are already mandated by 49 U.S.C. 503 to make such filings, although FMCSA has not yet promulgated a rule requiring them to do so. Inasmuch as non-exempt for-hire motor carriers, brokers, and freight forwarders are required to file process agent designations under 49 U.S.C. 13303 and 13304, approximately 90 percent of the entities subject to this rule are required, by statute, to file such designations. Although there is no statutory requirement that exempt for-hire carriers file process agent designations, FMCSA believes that extending the process agent designation requirement to include such carriers, as well as private carriers, would enhance the public's ability to serve legal process on responsible individuals when seeking compensation for losses resulting from a crash involving a commercial motor vehicle operated by any motor carrier, regardless of the carrier's regulatory status. Moreover, FMCSA would be able to better identify the appropriate individual(s) upon whom to serve notices for enforcement actions. The Agency invites comments on whether the process agent filing process can be made less costly.

The FMCSA also proposes to amend § 366.1 by including freight forwarders among those entities required to file process agent designations with FMCSA. Under 49 U.S.C. 13303(a), a freight forwarder providing service under FMCSA jurisdiction must designate an agent on whom service of notices in Agency proceedings, as well as service of Agency actions, may be made.

The FMCSA proposes to amend § 366.6 to obligate those entities that would be required to file a process agent designation to update FMCSA of any changes to the designated process agent's information, including name, address or contact information. Amended § 366.6 would require the report to be made within 20 days of the change.

6. Timeframes for Filing Evidence of Financial Responsibility and Process Agent Designation

As proposed in the NPRM, the Agency would require new filings of both evidence of financial responsibility and designation of agents for service of process to be completed within 90 days of the date that an application is submitted, or within 90 days of the date that the notice of application is published in the FMCSA Register if a carrier also is seeking commercial operating authority. (§ 365.109) The proposed 90-day time period combines the existing 20-day initial deadline and 60-day extension period and adds 10 more days for Agency processing.

Section 4303(b) of SAFETEA–LU amended 49 U.S.C. 13906(a) to establish December 10, 2005 as the deadline for existing exempt for-hire motor carriers to make insurance filings with FMCSA, making it unnecessary to propose a grace period for financial responsibility filings. Inasmuch as section 13906(a) excluded private motor carriers registered with the Agency under 13905(b) from the expedited financial responsibility filing requirement, and in the interest of treating all applicants who must file evidence of financial responsibility equitably, the Agency will not include in proposed § 390.103 a 180-day grace period for financial responsibility filings by existing exempt for-hire or private motor carriers. Such carriers would have to file by the effective date of the final rule.

The SNPRM includes, in proposed § 366.2(b), a 180-day grace period for all existing private and exempt for-hire motor carriers to file process agent designations. The grace period would be calculated from the final rule compliance date. The FMCSA believes the 180-day time period for existing private and exempt for-hire motor carriers to make process agent designations is necessary for Agency IT systems to accommodate the anticipated one-time surge in the number of filings from this group and to provide them adequate time to comply with the new filing requirements.

7. The Application Process

The Agency proposed in the NPRM a new multi-step application process and procedures for issuance of a USDOT Number under which applicants would initially be assigned temporary numbers to track the application through the registration process and enable applicants and their agents to make required administrative filings using the tracking number. Under this proposal, an applicant would not receive a USDOT Number until all necessary filings were made and would be prohibited from commencing operations until the USDOT Number was issued.

The Owner-Operator Independent Drivers Association, Inc. (OOIDA) and Missouri Department of Transportation (MODOT) supported the proposed multi-phase application process. MODOT further stated that waiting until an application has passed initial screening before issuing a USDOT Number is a valid approach.

The American Trucking Associations, Inc. (ATA) commented that because USDOT Numbers and provisional registrations would no longer be issued at the time of application under the NPRM proposal, new carriers may be delayed entry into the market. ATA urged the Agency to supply applicants with temporary tracking numbers immediately upon receipt of the application and provide the applicant a point of contact at FMCSA. Greyhound stated that temporary tracking numbers would cause tremendous confusion and the Agency should issue a tentative USDOT Number at the beginning of the process, making the number permanent at the conclusion of the process.

The MODOT, the Iowa Department of Transportation (IADOT), the American Association of Motor Vehicle Administrators (AAMVA), ATA, and the National Conference of State Transportation Specialists (NCSTS) filed comments opposing the proposed system. MODOT commented that as a partner in the implementation of the Federal safety fitness program it should be able to continue to issue USDOT Numbers under PRISM. AAMVA echoed the same concern, adding that if States are not able to issue USDOT Numbers, their resulting inability to deliver accurate and timely customer service will cause substantial delay for carriers wishing to enter the market. ATA found it ''very disturbing'' that the process for issuing USDOT Numbers and for updating MCS–150 data may conflict with PRISM requirements in such a way as to delay the vehicle registration of International Registration Plan (IRP) fleets. IADOT commented that under the NPRM the States' inability to issue USDOT Numbers to interstate carriers and registrants would have the following adverse impacts: (1) Increased processing time for first-time motor carriers, especially private carriers; and (2) increased costs for private and exempt carriers to operate.

OOIDA urged FMCSA to ensure that States retain the ability to issue USDOT Numbers to registering owner-operators. OOIDA suggested that a simple separate electronic form should be used when a vehicle is registered, and owner-operator USDOT Numbers could be maintained in the URS system.

After careful consideration of all filed comments and discussions with PRISM States that issue USDOT Numbers to carriers on FMCSA's behalf, the Agency has withdrawn the proposal to issue a temporary tracking number to applicants and issue a USDOT Number only after applicable administrative filings have been completed. Under proposed § 390.101(c)(2), each applicant would be issued an inactive USDOT Number. The inactive USDOT Number would be activated by the Agency only after the applicant has filed applicable administrative filings such as evidence of financial responsibility or a process agent designation. If a carrier also is seeking operating authority, the USDOT Number would remain inactive until all protests filed under 49 CFR part 365 have been resolved and the applicant has filed applicable administrative filings. The Agency also proposes new § 392.9b to prohibit a motor carrier with an inactive USDOT Number from operating a CMV and to establish penalties for violating the prohibition. This change has been made in order to allow PRISM States to continue to offer one-stop services to carriers and to better enable PRISM States to track and monitor carriers' safety performance. PRISM States and insurance companies would have had to alter their IT systems and administrative processes to accommodate the issuance of temporary tracking numbers, which would have been costly and time-consuming. The FMCSA believes its current proposal is the most transparent and efficient model.

The FMCSA plans to collaborate with PRISM States in developing a unified message to notify motor carriers, at the time of registration, that operating with an inactive USDOT Number would result in enforcement at the Federal and State levels. During vehicle registration, PRISM States would inform the motor carrier that its license plates would be suspended if its application for operating authority is denied as a result of the protest process, if appropriate administrative filings are not made within a specified number of days, and/or if its application is rejected during FMCSA review under 49 CFR 365.109.

8. Revisions to Proposed Application Form MCSA–1

The Agency proposed in the NPRM to combine the data elements now captured on several different licensing, registration and certification forms into a single, new application form called the Form MCSA–1. Commenters generally supported the use of a single form but urged that the form be as simple as possible. Although ATA generally supported the scope of the proposed Form MCSA–1, it argued that the benefits the new form could provide may be outweighed by problems caused by an unwieldy, complex, and inconvenient form. ATA urged the Agency to ensure that the form is as simple as possible for use by the majority of the trucking industry, which largely consists of small business entities. In particular, ATA said it is important for the form and its instructions to be clear regarding the transactions for which the form is to be used and the compliance requirements for each transaction type. ATA believes Form MCSA–1 should be concise and devoid of requests for safety- and non-safety-related information that are not required by the current FMCSRs and HMRs. Finally, ATA urged the Agency to review and eliminate all entries on Form MCSA–1 and its appendices that do not contain critical data needed for the registration process (*i.e.,* research data).

The Utah Department of Transportation (UTDOT) and the Utah Trucking Association (UTA) supported combining the filings in one form and using one online central access point for motor carriers, freight forwarders, and property brokers while providing an alternative for ''mom and pop'' companies that do not utilize computers.

The OOIDA supported combining several existing forms into one new form and urged the Agency to make the form available in hard copy to filers who are not ''computer-savvy.'' OOIDA supported the proposed collection of carrier and cargo classification and HHG arbitration information. OOIDA stated that the Bureau of Transportation Statistics (BTS) should continue to collect motor carrier financial information and sought verification that the collection of information on the new form is not intended to replace BTS information collection activities.

Greyhound believed proposed Form MCSA–1 and the instructions for its completion are somewhat confusing and need to be revised to be more user friendly. Greyhound and ABA recommended that the Agency ''require applicants to demonstrate they are in compliance with the Americans with Disabilities Act (ADA) [[Pub. L. 101–336, Title I, § 102, July 26, 1990, 104 Stat. 331] as amended].'' The Community Transportation Association of America (CTAA) applauded the Agency's efforts to unify all registration information into a single form but suggested some minor modifications to the proposed form.

The National Propane Gas Association (NPGA) believed information about gross operating revenue should not be collected. NPGA stated the Form MCSA–1 instructions are unclear regarding whether a hazardous materials shipper is required to file Form MCSA–1 and requested that the Agency modify the instructions to explicitly state that the proposed form would not apply to hazardous materials shippers. The Corporate Transportation Coalition (CTC) stated that there must continue to be a way to distinguish between private and for-hire carriers and recommended that private carriers not be required to submit financial data or other information unrelated to the safe operation of their truck fleets.

The American Moving and Storage Association (AMSA) commented that the more detailed and tougher congressional registration requirements for HHG movers should be incorporated in the URS rule. Advocates for Highway and Auto Safety (Advocates) supported the inclusion of the new entrant provisions in the URS rule.

The FMCSA agrees that proposed Form MCSA–1 should be as simple and easy to use as possible, consistent with the need to collect the necessary information. The FMCSA has reviewed the draft Form MCSA–1 and instructions in light of the various comments and made revisions to clarify the form and instructions and to eliminate extraneous material.

The Agency proposes to revise the MCSA–1 form and instructions to collect registration information from all FMCSA regulated entities, except Mexico-domiciled long-haul carriers. Because hazardous materials shippers are not subject to the FMCSRs, the Agency also proposes to exclude them from the Unified Registration System. Conforming amendments are proposed for Form MCSA–1 and instructions as well. As mentioned previously, the URS rule was impacted by new provisions enacted by SAFETEA–LU and subsequently promulgated final rules, which brought new entities under FMCSA's registration jurisdiction (such as intermodal equipment providers and non-North America-domiciled motor carriers). To accommodate these

changes, the Agency proposes changes to the MCSA–1 form and instructions, including additional questions and new or relocated sections as follows:

MCSA–1 Form—URS NPRM version	MCSA–1 Form—URS SNPRM version
Section A—Business Description	Section A—Business Description
Section B—Motor Carriers	Section B—General Operational Information
Section C—Hazardous Materials (HM)	Section C—Hazardous Materials (HM)
Section D—Transportation of Household Goods	Section D—Hazardous Materials Permitting
Section E—Commercial Zone Operations	Section E—Cargo Tank Facility
Section F—Additional Information	Section F—Transportation of Household Goods
Section G—Safety Certifications	Section G—Transportation of Passengers
Section H—Certifications	Section H—Scope of Authority
Section I—Cancellation	Section I—Commercial Zone Operations
Section J—Filing Fee Information	Section J—Non-North America-Domiciled Carriers
Attachments to Section G (Supplemental information required only from a Mexico-domiciled motor carrier)	
	Section K—Additional Information
	Section L—Safety Certifications (Certifications applicable only to Mexico- or Non-North America-domiciled motor carriers)
	Section M—Compliance Certifications
	Section N—Applicant's Oath
	Section O—Filing Fee Information
	Attachments to Section L—Supplemental Information required only from a Mexico- or Non-North America-domiciled motor carrier

Consistent with provisions under section 4204 of SAFETEA–LU, FMCSA proposes collection of additional registration information from HHG motor carriers as follows: (1) Evidence of participation in an arbitration program and a copy of the notice of the arbitration program as required by section 14708(b)(2); (2) identification of the carrier's tariff and a copy of the notice of availability of the tariff for inspection as required by section 13702(c); (3) evidence that carriers have access to, have read, are familiar with, and will observe all applicable Federal laws relating to consumer protection, estimating, consumers' rights and responsibilities, and options for limitations of liability for loss and damage; and (4) disclosure of any relationships involving common stock, common ownership, common management, or common familial relationships between filing carriers and any other motor carriers, freight forwarders, or property brokers of HHG within 3 years of the proposed date of registration.

The FMCSA also proposes the following improvements to Form MCSA–1 and the instructions:

• Elimination of a requirement for U.S.- and Canada-domiciled motor carriers to submit a ''description of a retraining and educational program for poorly performing drivers.'' The form will continue to require a certification that a motor carrier has in place ''a system and procedures for ensuring the continued qualification of drivers to operate safely, including a safety record for each driver, procedures for verification of proper age and licensing of each driver, and procedures for identifying drivers who are not complying with the safety regulations.'' The revised certification removes a requirement not contained in the FMCSRs and is less burdensome.

• The Agency previously proposed a vehicle certification which read: ''My vehicles were manufactured or have been retrofitted in compliance with the applicable USDOT Federal Motor Vehicle Safety Standards.'' The SNPRM revises the proposed certification to read ''The carrier will ensure, once operations in the United States have begun, that all vehicles it operates in the United States were manufactured or have been retrofitted in compliance with the applicable USDOT Federal Motor Vehicle Safety Standards or Canadian Motor Vehicle Safety Standards in effect at the time of manufacture.'' The Agency believes the new language clarifies the carrier's responsibility to ensure that no vehicle may be operated in the United States unless it complies with the applicable vehicle safety standards.

• The Agency proposes revisions to Form MCSA–1 to collect information regarding ADA compliance. Although the Over-the-Road Bus Accessibility Act of 2007 [Pub. L. 110–291, 122 Stat. 2915, July 30, 2008] requires FMCSA to consider compliance with DOT's ADA regulations at 49 CFR part 37, subpart A, as an element of an over-the-road bus company's fitness for receiving new operating authority, it does not require the inclusion of detailed ADA compliance information in the application form. Nonetheless, to assist in ensuring ADA compliance, FMCSA will take the following actions:

○ Ask the following questions regarding ADA compliance during the new entrant safety audit—

• Does the carrier have the means to provide accessible over-the-road bus (OTRB) service on a 48-hour advance notice basis by its owned or leased OTRBs?

• If the carrier does not have the means then does the carrier have an arrangement with another carrier that operates accessible OTRBs?

○ If noncompliance with DOT's ADA regulations is discovered in the course of a new entrant safety audit or compliance review, FMCSA will either forward the information to the U.S. Department of Justice (DOJ) for appropriate action or conduct its own investigation and attempt to resolve the violations, in accordance with a February 2009 Memorandum of Understanding between DOJ and DOT executed pursuant to Public Law 110–291. (A copy of the Memorandum of Understanding has been placed in the docket for this rulemaking).

○ Refer any non-compliant motor carrier that is also a recipient of DOT financial assistance to FTA for administrative enforcement action, as appropriate. FTA administers a program that provides financial assistance to some over-the-road bus carriers and, consistent with section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), as amended, and DOT rules implementing it (49 CFR part 27), cannot provide such assistance to carriers who are out of compliance with their ADA obligations.

○ When appropriate, initiate action to amend, suspend, or revoke a carrier's registration based on willful noncompliance with DOT's ADA regulations

FMCSA proposes conforming amendments to align 49 CFR 365.105 with certain information on Form MCSA–1. In proposed § 365.105, the Agency replaces references to obsolete OP series forms with ''Form MCSA–1'' and reduces the number of operational categories from six to three so it is clear that the fee for operating authority applies only to the general categories of motor carrier, broker and freight forwarder and not to each individual subgroup of these categories listed in Section A, question 17 of Form MCSA–1. (see Instructions for Form MCSA–1, item number 50)

In proposed § 365.107, the Agency replaces references to OP series forms with ''Form MCSA–1.'' Also, the Agency proposes to remove obsolete references to common and contract carriage as required by 49 U.S.C. 13902(f), as amended by section 4303(c) of SAFETEA–LU.

9. Adoption of an Exclusively Online Electronic Registration System

Several commenters filed comments about the effect of a mandatory online filing requirement, including a possible phase-in period for mandatory online filing. ATA supported the emphasis on online filing and said it should be made mandatory with a 2 to 3 year phase-in period. NCSTS stated that a minimum 5-year phase-in period is needed before electronic filing becomes mandatory and suggested that FMCSA maintain an alternative system to allow paper filings during systems failures and computer outages. The Property Casualty Insurers Association of America (PCIAA) also favored phased-in mandatory electronic filing.

The Petroleum Marketers Association of America (PMAA), the American Insurance Association (AIA), and OOIDA opposed mandatory electronic filing. PMAA stated that some of its members would be unable to access the Internet and urged the Agency to keep the paper filing option available. OOIDA asserted electronic filing is a hardship for some parties, opposed mandatory electronic filing and stated a 5-year phase-in period is absolutely necessary in the event mandatory electronic filing is adopted. OOIDA also stated that FMCSA should provide an alternative back-up system to online filing.

The Agency believes mandatory electronic filing is feasible and would result in substantial cost savings to both filers and FMCSA. Currently, an estimated 88 percent of motor carriers in the United States have Internet access, and this number is steadily growing. Furthermore, the Internet is publicly accessible via libraries and other public facilities. Electronic filing is cost effective and would incorporate automated error checking, reduce processing time, and facilitate faster issuance of USDOT Numbers. A detailed cost/benefit analysis performed by the Agency supporting this position, titled ''Report on Benefits and Costs of Mandatory Electronic Filing of FMCSA's Unified Registration System,'' is included as Appendix A to the regulatory evaluation. The conclusions of this analysis are reported in the URS SNPRM under Section IV, titled ''Regulatory Evaluation of the URS SNPRM: Summary of Benefits and Costs.''

Based on the year-to-year increases in the percentage of electronic filings for the Agency's MCMIS data, the Agency estimated that, even in the absence of a mandatory electronic filing requirement, the percentage of electronic filers would range between 80 and 90 percent. The FMCSA developed projections of the numbers of new registrants expected to enter the industry from 2014 to 2023 and assessed the costs of electronic filing both for new registrants and for existing firms that file biennial updates.

Mandatory electronic filing would only impose a cost on firms that would otherwise have filed by paper due to a lack of computer skills and/or Internet access. The results of FMCSA's analysis showed that costs to these affected firms would be low, ranging from $12.73 to $80.00 for new registrants and from $3.14 to $51.53 for firms with recent activity filing biennial updates. The low end of these cost ranges are for firms that file their registrations at a public library, and the high end is for firms that would hire another entity to complete the forms on their behalf. The FMCSA also prepared estimates of the benefits of mandatory electronic filing, consisting of estimates of the value of time saved by carriers and the value of substantially more rapid receipt of operating authority, as well as benefits to FMCSA from electronic filing. A comparison of the costs and benefits indicated that mandatory electronic filing would result in anticipated benefits of more than $38 million.

The FMCSA confirmed that the Small Business Administration (SBA) would not consider a totally electronic registration system to be a barrier to entry for small businesses, if the cost-benefit analysis supported the proposal. Based on its analysis, FMCSA proposes a mandatory electronic registration system. The system would incorporate electronic signature technology for required signatures. Supplemental documentation required for registration would be accepted electronically as well. The system would include the capability to upload scanned or electronic versions of this information.

The Agency does not propose a phase-in period because it anticipates that most entities should have online access when the URS rule becomes effective. The Agency would provide adequate time to adjust to the electronic filing requirement when setting the compliance date for the final rule, and would adopt procedures to ensure continued operational capability in case of system failure.

10. Transfers of Operating Authority

This SNPRM withdraws the proposal that entities, when submitting a revised Form MCSA–1 due to a change of name, form of business, or address, must also submit a certification that there has been no change in the ownership, management, or control of the entity. While the Agency has determined that the ICCTA removed its statutory authority to review transfers of operating authority, the ICCTA did not prohibit such transfers. Therefore, FMCSA also would eliminate 49 CFR part 365, subpart D, governing transfers of operating authority. A motor carrier would be required, however, to identify any current management official (*e.g.* Owner, President, Vice President, Safety Director, *etc.*) responsible for motor carrier safety in its operation who was hired after the last update when completing the Form MCSA–1 biennial registration update. A motor carrier that changes its name, form of business, or address would retain its existing USDOT Number.

Regarding the comments about the practice of ''churning'' (motor carriers 'reincarnating' by registering for a new USDOT Number in an attempt to conceal a negative safety history), the Agency believes that existing regulations, the proposals contained in this SNPRM and the requirements in 49 CFR part 385, together with procedures adopted and recently implemented by the Agency for review of motor carrier applications for operating authority, will discourage this practice. In this SNPRM, the Agency also proposes to require information on motor carrier ownership on the Form MCSA–1 to be filed with the Agency prior to receipt of a new USDOT Number. This information would assist the Agency in identifying individuals involved in churning and rejecting their applications for new registration when

appropriate. The Agency also believes that the requirement under 49 CFR part 385 for all new entrants (carriers receiving a new USDOT Number) to undergo a safety audit within 18 months of beginning operation will deter carriers from engaging in this practice.

In addition, motor carriers required to obtain operating authority pursuant to 49 CFR parts 390 and 365 may be subject to FMCSA review procedures established under 49 CFR 365.109. Currently, FMCSA utilizes these procedures for review of applications for household goods motor carrier, broker, freight forwarder or passenger carrier authority. However, in the future the Agency anticipates expanding the program to include applications from all motor carriers that require operating authority. Employing procedures established under § 365.109, the Agency reviews applications for completeness and for conformity with the safety fitness standard. Through this process, if the Agency determines that a carrier is not fit, willing and able to comply with applicable statutes and regulations, the motor carrier's application for operating authority will be rejected. In the event an application is rejected, an appeal may be filed with the Agency pursuant to 49 CFR 365.111. In this SNPRM the Agency proposes revising 49 CFR 365.111 and 365.203 to provide the address and appropriate office for appeals of rejections and for protests.

11. Cancellation, Reinstatement, and Deactivation of USDOT Registration

In the NPRM, the Agency proposed that a motor carrier seeking to reinstate its USDOT Registration more than 2 years after its registration was deactivated would be classified as a new entrant. In setting the proposed threshold for reclassification of a carrier as a new entrant at 2 years, the Agency sought to prevent carriers that go in and out of business for very short periods of time from being required to re-enter the New Entrant Safety Assurance Program.

The OOIDA disagreed with the Agency's statement that a carrier that has been inactive for more than 2 years is functionally equivalent to a new entrant. OOIDA explained that many motor carriers, including owner-operators, may operate under another carrier's authority for a period of time for economic reasons. In these cases, OOIDA believes the Agency is not justified in proposing to require the carrier to pay a new registration fee and to undergo a new safety audit as a condition for activating registration.

Advocates supported the proposal that carriers that have been inactive for more than 2 years be treated as new entrants and be required to successfully complete the New Entrant Safety Assurance Program.

Consistent with the new regulatory drafting strategy for the SNPRM, the Agency is not proposing to make changes to its New Entrant Safety Assurance Program. While the New Entrant Safety Assurance Program is triggered by the registration process, it is a separate program whose governing regulations are codified under 49 CFR parts 365 and 385. This SNPRM addresses cancellation, reinstatement and deactivation of USDOT Registration/operating authority only from the standpoint of fees and other administrative requirements. The Agency recently published revisions to its New Entrant Safety Assurance Program, including regulations governing reinstatement. (''New Entrant Safety Assurance Process; Final Rule,'' published on December 16, 2008 at 73 FR 76472).

12. Additional Proposals Regarding Special Transit Operations (Federal Transit Administration (FTA) Grantees)

The non-profit organization CTAA, which represents public and community-based FTA grantees, generally supported the provisions of the NPRM applicable to FTA grantees. However, CTAA suggested that the Agency revise the rule to: (1) Clarify that the requirements would apply to motor carriers of passengers that participate in interlining or through-ticketing arrangements with one or more interstate for-hire motor carriers of passengers; (2) designate an Agency point of contact to assist FTA grantees in completing their applications; and (3) amend proposed Form MCSA–1 to include specific information applicable to FTA grantees, including governmental status, transit areas, certification of compliance with FTA (not FMCSA) drug and alcohol testing regulations, and a statement that FTA grantees need not pay a filing fee. CTAA urged FMCSA to permit risk retention groups and other forms of pooled insurance as ways to satisfy the Agency's financial responsibility requirements. Finally, CTAA stated that the regulations should take into account the effect on FTA programs of the last two comprehensive reauthorization statutes.

Greyhound and ABA supported clarifying the status of transit providers that operate entirely within one State but participate in interline relationships with interstate carriers. They agreed that FMCSA should explicitly state that such transit providers are not subject to the FMCSA insurance requirements but rather must meet the insurance requirements of the States in which they operate.

The Rhode Island Public Transit Authority (RIPTA) asserted that the NPRM offered little relief from what it considers a burdensome and confusing system of compliance with FMCSA, the Federal Highway Administration (FHWA), and FTA requirements. The Ohio Department of Transportation (ODOT) said the Agency must: (1) Clearly define the difference between a ''for-hire'' CMV and a public FTA-funded transit vehicle that travels across State lines beyond a contiguous jurisdiction; (2) address the type of public transportation system that is operated by a designated grantee (whether government or private non-profit); (3) exempt vehicles transporting between 9 and 15 passengers and originating and terminating in the same State but traveling through an adjacent State for operational convenience; and (4) permit financial responsibility requirements to be satisfied through participation in shared risk programs, such as Ohio's County Risk Sharing Authority.

The OOIDA opposed relieving FTA grantees of the requirement to pay filing fees, contending the NPRM provides no rationale for relieving what are essentially private companies with a government contract of their fair share of the cost of the registration program.

In response to these comments, FMCSA proposes under §§ 390.101(b) and 387.33(b) to clarify the specific URS registration and financial responsibility obligations for FTA grantees. Although all FTA grantees would be required to register with FMCSA and would receive a fee waiver, their financial responsibility requirements could differ, depending on the FTA program under which the grantee receives funding. The proposed minimum financial responsibility requirement for a grantee that provides transportation within a transit service area located in more than one State under an agreement with a Federal, State, or local government funded, in whole or in part, with a grant under 49 U.S.C. 5307, 5310 or 5311 is the highest level of financial responsibility required for any of the States in which it operates. An FTA grantee that receives funding under other grant programs (section 5316 and 5317 grantees) would be subject to the general financial responsibility requirements applicable to for-hire passenger carriers that do not receive FTA funding. The different financial responsibility requirements are due to the fact that 49 U.S.C. 31138(e)(4) expressly exempts section 5307, 5310

and 5311 grantees from the Federal general financial responsibility requirements and instead subjects them to applicable State requirements. The exemption does not cover section 5316 and section 5317 grantees; neither the Transportation Equity Act for the 21st Century (TEA–21) [Pub. L. 105–78, 112 Stat. 107, June 9, 1988] nor SAFETEA–LU amended 49 U.S.C. 31138 to expressly exclude them from the Federal financial responsibility requirements.

The Agency proposes to incorporate all but one of CTAA's recommended changes to Form MCSA–1. The FMCSA could not add a cross reference to existing FTA drug and alcohol regulations to the Drug and Alcohol Safety Certification because the Drug and Alcohol Safety Certifications under Section L of Form MCSA–1 apply only to Mexico- or non-North America-domiciled motor carrier applicants—entities that are ineligible to receive FTA grants. (See Section L, question 47, III, 1 on proposed Form MCSA–1).

With respect to ODOT's suggestion to differentiate between for-hire motor carriers and public transit vehicles, and to exempt certain types of vehicles and transportation from the URS requirements, the Agency notes that public transit vehicles are a subset of for-hire CMVs. Accordingly, the Agency declines to distinguish between for-hire motor carriers and public transit vehicles for purposes of registration under proposed part 390, subpart C. Moreover, the Agency is not authorized to grant ODOT's request to exempt from registration requirements those vehicles transporting between 9 and 15 passengers and originating and terminating in the same State but traveling through an adjacent State for operational convenience. The Agency recognizes the limited exemption from the Federal minimum financial responsibility requirements set forth in proposed § 387.33(b) granted to certain public transit operators, pursuant to 49 U.S.C. 31138(e)(4). However, the exemption from the minimum financial responsibility requirements does not include those operators providing service in more than one State from having to file proof of financial responsibility pursuant to the minimum levels set by State law.

The CTAA and ODOT additionally requested that the Agency allow transit operators to satisfy financial responsibility requirements through shared risk programs. CTAA characterizes such shared risk programs as ''risk retention groups and other forms of 'pooled' insurance * * * .'' In responding to these comments, the Agency must first distinguish between risk retention groups and risk pools.

Risk retention groups (RRGs) are established under the Liability Risk Retention Act of 1981 [Pub. L. 97–45, 95 Stat. 949, September 25, 1981] and are defined at 15 U.S.C. 3901(a)(4). According to a 1987 ICC Policy Statement, which authorized the Commission to accept certificates of insurance from RRGs, those entities are required by Congress to:

(1) Be chartered or licensed under the laws of a State as a liability insurance company and authorized by such State's laws to engage in the business of insurance;

(2) [Not] exclude any person from membership solely for the purpose of providing existing members of such group a competitive advantage over the excluded person;

(3) Have as its owners only persons who comprise the membership of the Risk Retention Group and who are provided insurance by the group, or has as its sole owner an organization which has as its members only persons who are members of the Risk Retention Group; and

(4) Be formed by persons who are engaged in businesses or activities similar or related as to the liability to which they are exposed by virtue of related, similar or common business, *etc.*

Implementation of Liability Risk Retention Act of 1986, Ex Parte No. MC–178 (Sub-No. 4), 1987 WL 98199, at *1 (decided Mar. 31, 1987) (''ICC Policy Statement''). The ICC Policy Statement indicated that RRGs ''are unquestionably insurance companies, and can meet the criteria prescribed for insurance * * * companies in 49 CFR 1043.8 * * *.'' *Id.* at *2. Former § 1043.8 is the predecessor to current 49 CFR 387.315. The FMCSA continues to accept RRG filings.

Insurance risk pools are typically private associations operated on a statewide basis for the benefit of their members. The main distinction between risk pools and RRGs is that risk pools do not meet the statutory requirements established for RRGs under the Liability Risk Retention Act of 1981. The public transit risk pools allow the State and municipal transit operators to achieve economies of scale in purchasing insurance resulting in lower premiums and other benefits to the limited membership. Transit risk pools are generally approved by the State and supported by the State Departments of Transportation.

Unlike RRGs, State and local government risk pools generally have not been approved by FMCSA as an acceptable form of insurance pursuant to the section 13906 requirement that the Secretary ''register a motor carrier under section 13902 only if the registrant files with the Secretary a bond, insurance policy or other type of security approved by the Secretary * * *.'' The Agency's position has been that risk pools do not qualify as a bond or insurance policy, and that a motor carrier may meet the financial responsibility requirements through self-insurance only if the insured applies for approval under the Agency's self-insurance program.

This issue is complicated by section 31138(e)(4), which exempts transit operators receiving Federal grants under 49 U.S.C. 5307, 5310, or 5311 from both the amounts and type of financial responsibility that must be provided as evidence of compliance with the financial responsibility requirement. Section 31138(e)(4) further provides, however, that where the transit service area is in more than one State, the minimum level of financial responsibility shall be the highest level required for any of such States. This requirement has been incorporated into proposed § 387.33(b). The above notwithstanding, these exempted transit services operators still are subject to registration under 49 U.S.C. 13902(b)(2) and are required to register and provide proof of insurance pursuant to proposed § 365.109.

Pursuant to 49 U.S.C. 13906(a)(1), the ''Secretary may register a motor carrier under section 13902 only if the registrant files with the Secretary a bond, insurance policy, or other type of security approved by the Secretary, in an amount not less than such amount as the Secretary prescribes pursuant to, or as is required by, sections 31138 and 31139, and the laws of the State or States in which the registrant is operating, to the extent applicable.'' Section 387.301 currently permits motor carriers to satisfy their financial responsibility requirements by filing proof of such ''other securities'' as the Secretary approves.

This proposed rule expressly addresses registration and insurance requirements for certain types of transit operators. It is therefore appropriate to resolve confusion that has arisen in this area. The Agency recognizes that allowing these transit operators to utilize State-approved risk pools would expand the types of security approved by the Secretary for certain transit service operators and harmonize the provisions of sections 31138(e)(4) and 13906(a)(1) by recognizing the State's approved form of financial responsibility for these operators. As a

result, the Agency intends to publish a separate **Federal Register** notice that will describe the Agency's proposed change in policy to allow transit service providers that fall under the provisions of proposed § 387.33 to utilize State-approved risk pools in order to meet the State financial responsibility requirements pursuant to section 31138(e)(4) and proposed § 387.33.

13. Temporary Operating Authority

Former 49 U.S.C. 10928(b) allowed the ICC, which was sunsetted in 1995, to issue temporary authority to provide transportation to a place or in an area having no motor carrier capable of meeting the immediate needs of the place or area. Former section 10928(c) permitted the ICC to issue emergency temporary authority if, due to emergency conditions, there was insufficient time to process an application for temporary authority.

Temporary authority was originally made available because it took several months for the former ICC to process applications for permanent operating authority, particularly if competing carriers protested the application. Following changes in statutory standards which led to greatly reduced application processing time, the ICC limited the issuance of temporary authority to ''exceptional circumstances (*i.e.,* natural disasters or national emergencies) when evidence of immediate service need can be specifically documented * * *.'' [See existing 49 CFR 365.107(g)]. FHWA (and later FMCSA) retained this provision when the ICC operating authority regulations were transferred to USDOT in 1996.

The ICCTA repealed 49 U.S.C. 10928(b) and (c) and did not enact any comparable provisions expressly authorizing the issuance of temporary authority. However, the ICCTA does not prohibit the issuance of temporary authority and 49 U.S.C. 13905(c) provides that any registration issued to motor carriers, freight forwarders, and property brokers under chapter 139 shall remain in effect for such period as the Secretary determines appropriate by regulation. Therefore, there is general statutory authority to continue issuing temporary authority. However, the NPRM did not include a provision permitting motor carriers to obtain temporary registration or operating authority.

Greyhound requested that the Agency grant temporary operating authority to prevent service disruptions which may occur as a result of Greyhound's restructuring its nationwide service. Greyhound believes replacement companies will not be able to obtain operating authority before it abandons certain routes. Greyhound claimed it provides at least 30 days notice before it discontinues a route and cannot provide more notification time ''if the restructuring is to be implemented in a timely manner.'' Greyhound proposed the Agency adopt a process by which emergency temporary authority would become effective immediately upon the filing of a temporary authority application and proof of insurance and would remain in effect until FMCSA processed the permanent application, perhaps 90 days. ABA also supported the Greyhound proposal.

The FMCSA believes that continued issuance of temporary operating authority as limited under § 365.107(g) is warranted. During the Hurricane Katrina relief effort in 2005, FMCSA received numerous applications for emergency temporary authority pursuant to § 365.107(g) and the Agency believes that having a procedure for the issuance of temporary operating authority will enhance future emergency relief efforts. However, except in extraordinary circumstances such as natural disasters, the Agency does not anticipate many requests for such applications. We believe Greyhound overstates the time it takes FMCSA to currently process applications for operating authority and its comments do not provide a convincing rationale for extending the current requirements to prospective ''emergencies'' caused by manageable business decisions. Under proposed § 365.107(e), FMCSA would grant temporary operating authority only in cases of national emergency or natural disaster and following an emergency declaration under 49 CFR 390.23. Entities granted temporary operating authority would need to file evidence of financial responsibility with the Agency.

14. NTSB Recommendation Impacting Cargo Tank Applications and Updates

After investigating a 2009 incident involving the rollover of a truck-tractor and cargo tank semitrailer and the resulting fire, the National Transportation Safety Board (NTSB) made 20 draft recommendations to four DOT modal administrations, including FMCSA, and the American Association of State Highway and Transportation Officials. As part of a recommended rollover prevention program, NTSB recommended that FMCSA revise the MCS–150 form to require hazardous materials carriers to report the number and types of U.S. Department of Transportation specification cargo tanks owned or leased by the carriers and provide other pertinent data displayed on the specification plates of such tanks. NTSB recommended that FMCSA require this information to be updated annually. As FMCSA proposes to replace the MCS–150 form with the new MCSA–1 form through this rulemaking, the Agency believes it would be appropriate to solicit information from the public regarding:

(1) Whether the MCSA–1 form should be revised to incorporate the NTSB recommendation;

(2) Whether the collection of additional information regarding cargo tanks would prove useful in connection with a rollover prevention program;

(3) Whether cargo tank carriers should be required to submit updated data more frequently than biennially. If so, what event should trigger the update requirement;

(4) What would be the burden associated with collecting additional cargo tank information biennially or more frequently;

(5) Whether there are alternatives for collecting this information; and

(6) Whether this information is already being collected by other entities, such as State Departments of Motor Vehicles.

IV. Regulatory Evaluation of the URS SNPRM: Summary of Benefits and Costs

A. Summary

The FMCSA has revised its 2005 NPRM in response to congressional mandates included in SAFETEA–LU and in response to comments to the May 2005 NPRM. In this section of the SNPRM, FMCSA summarizes its calculation of the costs and benefits associated with the changes included in this proposed rulemaking. Although many of the revisions proposed under URS would result in changes to existing fees paid by motor carriers (creation of new fees or elimination of existing fees), these changes would result in a shifting of fees from one group to another and would not result in a net gain (benefit) or loss (cost) from a societal perspective. For example, if FMCSA were to eliminate a fee previously paid by motor carriers, that group would receive a benefit. However, the benefit would be offset by an equal cost to the Agency in the form of lost revenues. The FMCSA classified the costs and benefits calculated in the regulatory evaluation as either changes in fees, resource costs, or benefits. Changes in fees are neutral from a societal perspective, but changes in resource costs and benefits result in either a cost or a benefit to society. The

FMCSA estimated the costs and benefits associated with implementing the following proposed major URS SNPRM provisions:

- A new requirement for private and exempt for-hire motor carriers, cargo tank facilities, and intermodal equipment providers (IEPs) to pay FMCSA registration fees; [11]
- A new requirement for private carriers and exempt for-hire motor carriers to file proof of process agent designations with FMCSA;
- A new requirement for private HM and exempt for-hire motor carriers to file proof of liability insurance with FMCSA;
- A reduction of the current reinstatement fee for non-exempt for-hire motor carriers, brokers and freight forwarders and new reinstatement fees for exempt for-hire and private hazmat motor carriers;
- Elimination of operating authority transfers and filing fees for name changes;
- Introduction of new Form MCSA–1 filing requirements; and
- Mandatory electronic filing of Form MCSA–1.

Table 1 presents the total costs associated with the URS SNPRM. The URS proposal results in an anticipated resource cost to industry of $26,342,699 and a resource cost to FMCSA of $135,158 over the 10-year analysis period (2014–2023). The total societal cost of the SNPRM is thus $26.5 million ($26,342,699 + 135,158). The industry also would experience an increase in fees of $65.3 million, and the Agency would experience a decrease in fee revenues of $6.7 million.

TABLE 1—TOTAL COSTS OF URS PROPOSED RULE

URS Rule provision	Resource costs		Fees paid/lost	
	Industry	Agency	Industry	Agency
Mandatory Electronic Filing	$538,894	$0	$0	$0
Eliminating Transfer/Name Change Requirements	0	0	0	1,854,890
New Registrant Fee	0	0	63,583,722	0
Insurance Filing	676,723	0	1,691,808	0
Process Agent Filing	25,067,012	0	0	0
Cancellations and Reinstatements	60,070	135,158	0	4,808,126
New MCSA–1 Application Form	0	0	0	0
Total Costs	26,342,699	135,158	65,275,530	6,663,017

Note: Numbers may not add due to rounding.

Table 2 presents the total benefits of the URS rule for each provision. For the industry, total benefits amount to $3.3 million and fee savings amount to $6.7 million. For the Agency, total benefits amount to $42.7 million and $65.3 million in fees received. This proposal would improve the ability of FMCSA safety investigators to locate small and medium-sized private and exempt for-hire motor carriers for enforcement action because investigators would be able to work with the newly-designated process agents to locate hard-to-find motor carriers. The Agency believes that a more efficient Compliance, Safety, Accountability (CSA) program would lead to increased safety benefits. However, to present a conservative estimate of the benefits of the URS rule, we only estimate the benefit of time saved by the Agency due to a more efficient CSA program.

TABLE 2—TOTAL BENEFITS OF URS RULE

[10-year present value]

URS rule provision	Benefits		Fees received/saved	
	Industry	Agency	Industry	Agency
Mandatory Electronic Filing	1,964,186	36,190,320	0	0
Eliminating Transfer/Name Change Requirements	0	0	1,854,890	0
New Registrant Fee	0	0	0	63,583,722
Insurance Filing	0	0	0	1,691,808
Process Agent Filing	0	3,130,736	0	0
Cancellations and Reinstatements	0	0	4,808,126	0
New MCSA–1 Application Form	1,354,631	3,391,089	0	0
Total Benefits	3,318,817	42,712,146	6,663,017	65,275,530

Note: Numbers may not add due to rounding.

The FMCSA calculated the net societal benefits of the proposed rule by subtracting the total (industry and Agency) 10-year costs from the total 10-year benefits for each provision. The cost to industry associated with fee changes is offset by an equal gain to FMCSA due to increased revenues from fees. Table 3 presents the net benefits of the proposed rule. Net benefits are estimated to be −$23.0 million for the industry and $42.6 million for FMCSA. This results in total societal net benefits of the URS SNPRM of $19.6 million. The industry would experience a total increase in fees of −$58.6 million (including total fees paid and fees saved). This increase in fees to the

[11] Throughout this section, cargo tank facilities and IEPs are referred to as ''other entities.''

industry is offset by a total $58.6 million increase in fees received by FMCSA (including fees lost and fees received). FMCSA believes the fees and costs of the URS rule would not lead to a reduction in competitiveness.

TABLE 3—NET BENEFITS OF URS PROPOSED RULE

[10-year present value]

URS rule provision	Net benefits		Net fees	
	Industry	Agency	Industry	Agency
Mandatory Electronic Filing	$1,425,292	$36,190,320	$0	$0
Eliminating Transfer/Name Change Requirements	0	0	1,854,890	−1,854,890
New Registrant Fee	0	0	−63,583,722	63,583,722
Insurance Filing	−676,723	0	−1,691,808	1,691,808
Process Agent Filing	−25,067,012	3,130,736	0	0
Cancellations and Reinstatements	−60,070	−135,158	4,808,126	−4,808,126
New MCSA–1 Application Form	1,354,631	3,391,089	0	0
Net Benefits	−23,023,883	42,576,988	−58,612,513	−58,612,513
Societal Net Benefits	19,553,105		0	

Note: Numbers may not add due to rounding.

B. Calculation of Costs and Benefits

This section summarizes the calculation of the costs and benefits for each URS provision. All costs and benefits were calculated over a 10-year period in nominal dollars, restated in real 2010 dollars, and discounted to present value using a rate of seven percent per Office of Management and Budget (OMB) guidelines. A full discussion of the data used, assumptions made, and calculations performed can be found in the regulatory evaluation contained in the public docket for the URS SNPRM.

1. Proposed New Registration Fees Under the URS

Currently, only non-exempt for-hire motor carriers, property brokers, and freight forwarders must pay a one-time registration fee to FMCSA of $300. However, under the URS, FMCSA proposes to require exempt for-hire, private motor carriers and other entities to pay a one-time registration fee as well. Section 4304 of SAFETEA–LU provides that the fee for new registrants shall as nearly as possible cover the costs of processing the registration but shall not exceed $300. The FMCSA determined that it would need to charge all new registrants the maximum allowable fee of $300 because the amount needed to cover the 10-year Agency costs associated with processing the registration filings based on projections of annual new registrants and Agency processing costs exceeds the $300 limit.

The FMCSA forecasted $360,122,795 in upgrading and operating costs of the registration system over the 10-year period from 2014 through 2023. This total includes the costs to operate the new motor carrier licensing and insurance system. The total also includes the cost for FMCSA to vet all new registrant for-hire carriers.[12]

A portion of these licensing, insurance, and vetting costs will be defrayed by fee revenues other than new registrant registration fees. The FMCSA estimated fees collected for various insurance filings to be $6,943,479 over the 10-year period, and subtracted the 10-year present value of other fee revenues ($6,943,479) from the licensing, insurance, and vetting cost estimate to arrive at $353,179,316 in present value costs that the Agency must recover through the registration fee. The FMCSA divided this cost estimate by its projection of dollars collected per dollar of fee ($486,678)[13] to arrive at a fee of $725. Per Section 4304 of SAFETEA–LU, FMCSA proposes to charge the maximum registration fee permitted by law, $300 per new registrant. Though a portion of the fees could cover some of the costs of FMCSA review of applications, the $300 fee will not be sufficient to cover all of these review costs.

The cost to industry associated with the change would be $63,583,722 in discounted dollars over the 10-year period (shown in Table 4). This cost to industry would be offset by an equal benefit to the Agency resulting from the revenues generated through the new registration fees.

TABLE 4—PROPOSED CHANGE IN FMCSA REGISTRATION FEE TO NEW REGISTRANTS BY OPERATION AND CLASSIFICATION

Operation classification	Number (2014–2023)	Fee change	Total (2010 $)	Total (present value)
Exempt For-Hire Carriers	44,449	300	$13,334,700	$10,083,170
Private Carriers and other entities *	235,945	300	70,753,500	53,500,522
Total	280,294		84,088,200	63,583,722

* Cargo tank facilities and IEPs.

[12] The FMCSA has authority to vet all for-hire carriers, but is currently vetting only for-hire household goods and passenger carriers. During the vetting process, FMCSA reviews the application for completeness and determines if the applicant complies with the statutory and regulatory safety fitness requirements. During this review, FMCSA staff compares the applicant's data with existing carrier data in order to identify noncompliant carriers seeking authority under a different name. If an application is incomplete, FMCSA will contact the applicant to obtain missing information. If FMCSA determines that an applicant is an unsafe carrier or the application is materially incomplete, FMCSA will reject the application. The applicant is provided an opportunity to appeal the rejection and submit additional evidence to support its position that the application should be approved.

[13] This number was calculated by multiplying the number of new registrants in each year by $1, discounting to find the present value, and summing over the 10-year period of the analysis.

2. Designation of Process Agents

The FMCSA proposes amending 49 CFR part 366 to require private and exempt for-hire carriers to file process agent designation information with the Agency. Although, per SAFETEA–LU, carriers will not be assessed a fee when filing this information, there is still a cost to industry associated with engaging a process agent. The FMCSA estimated, based on price quotes available from process agents, that the cost to engage a process agent is currently about $35 per carrier. This cost was assumed to cover the minimal filing cost to the process agent. No processing cost was assumed for FMCSA for this electronic filing.

The FMCSA calculated $7,199,122 in discounted costs to industry associated with new-registrant private and exempt for-hire carrier process agent filings for 2014 through 2023.

The FMCSA assumed that no private and exempt for-hire motor carriers with recent activity have designated process agents. The FMCSA calculated one-time compliance costs for affected carriers with recent activity of $910,546,445 based on its estimate of 253,019 private and exempt for-hire carriers with recent activity in 2014.

Finally, FMCSA, based on discussions with the FMCSA Commercial Enforcement Division, estimated that 10 percent of private and exempt for-hire motor carriers with recent activity would change their process agents each year. The FMCSA calculated discounted costs to industry of $7,321,445 associated with re-filing activities over the 10-year analysis period. The FMCSA also calculated the Agency resource cost to process the carrier process agent changes.

Non-exempt for-hire motor carriers, brokers and freight forwarders currently must file designations of process agents via a ''BOC–3'' filing. Under the URS SNPRM, FMCSA proposes to require both private and exempt for-hire carriers to make the same filings.

This proposal would improve the ability of FMCSA safety investigators to locate small and medium-sized private and exempt for-hire motor carriers for enforcement action because investigators would be able to work with the newly-designated process agents to locate hard-to-find motor carriers. If the time saved were used by safety investigators to conduct more Compliance, Safety, Accountability (CSA) program interventions, the Agency believes this would lead to increased safety benefits. However, to present a conservative estimate of the benefits of the URS rule, we only estimate the benefit of time saved by the Agency due to a more efficient CSA program.

The FMCSA investigators sometimes spend 20 hours or more attempting to locate motor carriers for enforcement action, and in some cases are unable to track down the subject carrier. The FMCSA estimated that the availability of process agent information would save field staff an average of 15 hours in cases involving hard-to-locate carriers.

In 2002, States conducted 216 carrier searches per year on average. In 2003, FMCSA Division Offices reported between 10 and 100 cases per State in which field staff had significant trouble locating a motor carrier against whom they wished to take enforcement action, with most Division Offices reporting fewer than 25 such instances.

The FMCSA estimated that 15 enforcement cases per State per year (or roughly two thirds of the ''difficult'' cases) would benefit from dramatically reduced search costs because of the proposed requirement for private and exempt for-hire carriers to designate process agents.

The estimates of 15 saved hours per difficult case and 15 difficult cases per year per division result in 225 (15×15) annual staff hours saved per State, or 11,250 (225×50 States) annual staff hours saved in total. Assuming the Agency would allocate all of the annual saved staff hours to reducing labor costs, FMCSA estimated the value of this annual benefit by multiplying the total annual hours saved (11,250) by the Agency wage rate presented above in Section 2. For example, in 2014, the saved staff hours would benefit the Agency by reducing labor costs by $416,585 ($11,250 \times $37.03).

The FMCSA projected this annual benefit over the 10-year analysis period to arrive at a total benefit of $4.2 million in 2010 dollars. The FMCSA discounted this benefit to present value applying a seven percent discount rate consistent with the other portions of this analysis. The Agency arrived at a total benefit due to reduced labor cost (*i.e.,* increased efficiency) of $3.1 million over the 10-year analysis period.

In total, the regulatory changes requiring exempt for-hire and private carriers to file process agent designations would result in a cost of $25,067,012 to industry and a benefit to the Agency of $3,130,736, and thus a societal net benefit of −$21,936,276. The Agency invites comments on whether the process agent filing process can be made less costly. If there are less costly alternatives, please provide specific recommendations along with supporting data.

3. Financial Responsibility

Under the URS SNPRM, all new registrant exempt for-hire and private HM carriers' insurance representatives would need to file evidence of financial responsibility with FMCSA, and the carriers would be assessed a $10 filing fee.[14] The FMCSA calculated 10-year fee costs of $460,331 to industry using its estimate of new registrant exempt for-hire and private HM carriers. This $460,331 cost to industry is offset by an equal benefit to the Agency resulting from revenues from the new fees.

The $10 fee is a transfer from the industry to the Agency, but the industry will incur resource costs associated with filing. The FMCSA assumed it would take insurance companies a minimal amount of time to file the required proof of insurance for each carrier they insure. Because these filings are handled electronically, FMCSA assigned a cost of only $4 per filing, assuming 10 minutes of time for a clerk. The FMCSA calculated the resource cost to new registrant exempt for-hire and private HM carriers by multiplying its projection of filing costs by its estimate of new registrants over the 10-year period to arrive at a total discounted resource cost to industry of $184,132.

The FMCSA would require existing exempt for-hire and private HM carriers to file proof of insurance. Using the Agency's 2008 Motor Carrier Management Information System (MCMIS) data, FMCSA estimated that in 2014 there will be 48,308 exempt for-hire carriers with recent activity and 25,019 private HM carriers with recent activity. The FMCSA calculated a discounted cost to industry of $693,890 associated with the fees. This cost to industry is offset by an equal benefit to the Agency due to the revenues from the fees.

The FMCSA calculated the resource cost to carriers with recent activity by multiplying its $4 filing cost estimate by the total exempt for-hire and private HM carriers with recent activity to arrive at a discounted resource cost of $733,270.

Currently, all for-hire motor carriers, property brokers, and HHG freight forwarders performing transfer, collection and delivery service must maintain current proof of financial responsibility on file with FMCSA to remain in ''active'' status. If an insurance company or financial institution notifies FMCSA of cancellation of coverage, carriers,

[14] Section 4304 of SAFETEA–LU caps financial responsibility filing fees at $10. The filing fee is paid to FMCSA by the insurance company making the filing on behalf of the carrier and is passed on to the carrier by the insurance company.

property brokers, and freight forwarders must file evidence of replacement coverage before the policy, bond or trust fund termination date. Under this proposed rule, exempt for-hire and private HM carriers would be subject to the same requirements. There is a $10 fee associated with filing proof of replacement financial responsibility.

Based on 2008 MCMIS data, roughly 8.56 percent of non-exempt for-hire carriers with recent activity filed proof of replacement liability insurance coverage with the Agency. The FMCSA assumed the same portion of the exempt for-hire and private HM carriers would file proof of replacement insurance following a policy cancellation. The FMCSA thus calculated the fees associated with evidence of financial responsibility replacement filings resulting from this proposed change by multiplying the $10 filing fee by 8.56 percent of the exempt for-hire and private HM carriers with recent activity each year. This calculation resulted in a discounted cost to industry over the 10-year analysis period of $498,207. This cost to industry would be offset by an equal benefit to the Agency in the form of new fees received.

The FMCSA calculated the resource cost to carriers with recent activity by multiplying its replacement filing cost estimate by 8.56 percent of the population of exempt for-hire and private HM carriers with recent activity. This resulted in a total discounted resource cost to operating carriers over the 10-year analysis period of $199,283. Again, no costs were attributed to the Agency for these filings.

Changes in requirements for financial responsibility filings resulted in a total 10-year cost to industry of $1,691,808. This cost to industry due to changes in requirements, however, is offset by an equal benefit to FMCSA for revenues from fees associated with the increased number of filings. Therefore, the societal costs due to changes in fees are zero. These proposed changes resulted in total 10-year resource costs to industry of $676,723.

4. Cancellation and Reinstatement of USDOT Numbers/Operating Authority

As discussed in the previous section, non-exempt for-hire motor carriers, property brokers, and certain HHG freight forwarders must maintain current proof of financial responsibility (liability insurance, bond, or trust fund information) with FMCSA to retain their commercial operating authority. If an insurance company or financial institution notifies FMCSA of cancellation of coverage, carriers, property brokers, and HHG freight forwarders must file evidence of replacement coverage before the policy, bond or trust fund termination date. The operating authorities of entities that do not file the required updates are revoked and these entities must apply for reinstatement of their operating authority by making the necessary filings. The FMCSA proposes to require exempt for-hire and private HM carriers and all freight forwarders providing transfer, collection and delivery service to file and maintain proof of liability insurance as a condition for obtaining and retaining an active USDOT Number. The FMCSA would deactivate the USDOT Number of noncompliant entities, who would be required to reactivate their USDOT registrations and resume operations subject to FMCSA jurisdiction.

Under the current system, carriers requesting reinstatement of operating authority must file a written request for reinstatement, pay an $80 fee (on-line by credit card, by phone with a credit card, or by mail with a check) and make the applicable financial responsibility filing. Once the payment is received and applicable filings are made, the FMCSA information system matches up the payment with the filings and automatically issues a reinstatement letter at 5 a.m. on the next business day. Under the proposed system, carriers requesting reinstatement would make the request electronically using Form MCSA–1, pay a $10 fee, and complete applicable filings showing that their insurance is back in effect. The Agency aspect of the reinstatement process would remain the same under the proposed system.

The FMCSA discusses these changes below in the following categories: (a) Reinstatement for non-exempt for-hire carriers, brokers and freight forwarders; and

(b) Reinstatement for exempt for-hire and private hazmat carriers.

Reinstatement, Non-Exempt For-Hire Carriers, Brokers and Freight Forwarders

Under the current system, non-exempt for-hire carriers, brokers and freight forwarders pay an $80 fee and file a written request for reinstatement. Under the proposed system, these carriers would request reinstatement using Form MCSA–1, pay a $10 fee and make the applicable insurance filing. The FMCSA assumed that the cost of this requirement is minimal, and is approximately equal to that of filing proof of insurance ($4). The Agency determined that it incurs slightly less than $10 per request to process reinstatement requests. The $10 reinstatement fee would be sufficient to defray Agency processing costs. The FMCSA calculated savings by non-exempt for-hire carriers, brokers and freight forwarders applying for reinstatement by multiplying the $70 reduction in fees for these carriers by the number of affected carriers to arrive at a 10-year discounted saving of $4,958,302. This industry benefit would be offset by an equal cost to the Agency due to the loss of revenues from the fees.

Reinstatement, Exempt For-Hire and Private Hazmat Carriers

Under the current system, exempt for-hire and private hazmat carriers do not file insurance-related reinstatements. Under the proposed system, these carriers would pay a $10 fee and file updated information. Using 2008 MCMIS data, FMCSA calculated that 2.58 percent of exempt for-hire and private hazmat carriers would let their insurance coverage lapse and later file reinstatement requests. The Agency determined that it incurs slightly less than $10 per request to process reinstatement requests. The $10 reinstatement fee would be sufficient to defray Agency processing costs. The FMCSA calculated fees associated with this activity by multiplying the $10 fee by the number of affected carriers to arrive at a 10-year discounted cost of $150,176. This industry cost would be offset by an equal benefit to the Agency due to the gain in revenues from the fees.

There is a resource cost to industry associated with making these reinstatement requests. As above, FMCSA assumed that the costs associated with completing the applicable filings would equal the costs associated with filing proof of insurance and process agent designations ($4). The FMCSA calculated discounted costs to industry of $60,070 associated with filing activities over the 10-year analysis period.

The FMCSA calculated discounted costs to the Agency of $135,158 associated with processing exempt for-hire and private hazmat carrier reinstatements over the 10-year analysis period.

Cumulative Reinstatement Costs and Benefits

Changes in fees for reinstatement of USDOT Numbers and/or commercial operating authority resulted in a total 10-year saving to industry of $4,808,126. This saving to industry, however, is offset by an equal cost to FMCSA in lost revenues from fees associated with reinstatements. The proposed changes

resulted in total 10-year resource costs of $60,070 to industry and $135,158 to FMCSA for a total resource cost to society of $195,229.

5. Transfers and Name Changes

Under the URS, the Agency would no longer require ownership/management/control certification when processing applicant requests for name, address, or form of business changes. Motor carriers will be required to report changes in management when completing their Form MCSA–1 biennial updates, and would retain their existing USDOT Number. No new or replacement USDOT Numbers would be issued. There were 196 requests for transfers of operating authority filed with FMCSA in 2008. Each of the carriers who requested a transfer of operating authority paid a $300 filing fee to FMCSA for this activity. Under the URS SNPRM, FMCSA would not accept or review transfer requests. Based on the 2008 data projected to 2014, FMCSA estimated discounted industry benefits of $509,168 over 10 years from the elimination of the transfer fee. This benefit to industry would be offset by an equal cost to the Agency resulting from the loss of revenues from the transfer request filing fee.

The FMCSA proposes to eliminate the $14 filing fee currently assessed to non-exempt for-hire motor carriers and others that change their business names. This action would result in a cost savings to industry and a matching cost to the Agency. In 2008, the Agency processed 11,141 name change requests. Based on the 2008 data, projected to 2014, FMCSA estimated 10-year discounted benefits to industry of $1,345,722 over the 10-year period. This $1,345,722 benefit to industry would be offset by an equal cost to the Agency resulting from the loss of name change filing fee revenues.

Elimination of transfer and name change filing fees resulted in a total 10-year cost savings to industry of $509,168. The cost savings to industry due to changes in filing fees, however, would be offset by an equal cost to the Agency resulting from reduced revenues from these filing fees. Therefore, the projected societal costs due to elimination of the fees are zero. These proposed changes resulted in no resource costs to either industry or FMCSA. The total reduction in fees for transfers and name changes is the sum of $509,168 and $1,345,722, or $1,854,890; this sum is a gain to industry and an equal loss to FMCSA.

6. The New Application Form—MCSA–1

The new Form MCSA–1 would replace existing FMCSA registration forms. There would be a time cost savings for those who presently file multiple application forms. New registrant non-exempt for-hire motor carriers currently file an OP–1 series form and the MCS–150 form with FMCSA. Property brokers and freight forwarders file an OP–1 series form only. All other carriers file forms in the MCS–150 series.

The FMCSA estimated an average completion time of just over 20 minutes each [15] for the MCS–150 series forms and 2 hours for the OP–1 forms. The FMCSA determined that 56.45 percent of new registrants file OP–1 series forms, and 92.45 percent of new registrants file MCS–150 forms. Based on these percentages, FMCSA calculated the current average new registrant filing completion time as just under 1 hour and 26 minutes.

The FMCSA proposes to require all new registrants except a Mexico-domiciled motor carrier requesting to conduct long-haul operations within the United States to file only Form MCSA–1. Based on field testing, FMCSA estimated that it would take those new registrants who would have used the OP–1 form 2 hours and 10 minutes to complete the new form. The FMCSA assumes that the time required for entities who would have used only the MCS–150 or 150B would not change if they used the MCSA–1 form instead. Multiplying 2 hours and 10 minutes by 56.45 percent (the percent of new registrants that file OP–1 series forms), and adding just over 20 minutes times the difference between 92.45 percent (the percent of new registrants that file MCS–150 forms) and 56.45 percent yields just over 1 hour and 20 minutes. Thus, FMCSA estimated a weighted average time savings of almost 6 minutes for each new registrant (that is, just under 1 hour and 26 minutes minus just over 1 hour and 20 minutes).

Using its adjusted average hourly wage estimate for drivers [16] and its projection of new registrants, FMCSA estimated a 10-year discounted resource cost savings to industry of $1,354,631.

The FMCSA also calculated Agency time saved associated with processing the new MCSA–1 form. Based on the Agency's estimate that, due to reductions in data entry, it would save 20 minutes of processing time from not using the OP–1 series form, and its determination that 56.45 percent of new registrants file the form, FMCSA estimated an 11-minute time savings per applicant. The FMCSA multiplied the adjusted average hourly wage estimate for the Agency by the time saved processing the new MCSA–1 form and the number of annual new registrants to obtain a 10-year discounted resource cost savings of $3,391,089.

The proposed changes would result in total 10-year resource cost savings to industry of $1,354,621 and resource cost savings to FMCSA of $3,391,089. The sum of the resource cost savings to industry and FMCSA equals $4,745,720, which is the total benefit to society.

7. Mandatory Electronic Filing of the MCSA–1

By requiring electronic submissions, FMCSA expects to reduce processing costs. Mandating electronic filing would also offer a benefit to most carriers through a reduction of the time required for them to receive registration and/or operating authority.[17] Electronic submissions have the additional benefit of reducing erroneous data through automated data quality checks and increasing the transparency of the data included in the URS. The Agency believes that the cost savings resulting from reduced labor time and paperwork, and the benefits associated with reducing erroneous data and improving data transparency, would be difficult to achieve without mandating electronic filing. This change, however, could impose a burden on entities that do not have the means to file electronically or that do not wish to file electronically.

To assess this potential burden, and to determine what alternatives would be available to small entities, FMCSA conducted a detailed cost/benefit analysis, ''Report on Benefits and Costs of Mandatory Electronic Filing for FMCSA's Unified Registration System'', which is included as Appendix A to the regulatory evaluation. The Agency calculated costs and benefits associated with electronic filing by using estimates of the amount of time required to file the form and the number of expected filers. The present value of the benefits resulting from mandatory electronic

[15] The MCS–150 form has been estimated to require 20 minutes, and the MCS–150B form a slightly longer 26 minutes. Because only about 2 percent of carriers file the MCS–150B, the average is very close to 20 minutes. There is also an MCS–150C form, but it is much less frequently used.

[16] **Note:** This activity may be performed by someone other than a driver. However, FMCSA assumed the person performing the activity would earn a wage similar to that of a driver and used the driver wage rate as the best indicator of cost for this activity.

[17] Carriers subject to vetting might experience a more prolonged registration process.

filing is $36,190,320 in benefits to FMCSA and $1,964,186 in benefits to industry. The industry also experiences a resource cost of $538,894. Thus, the net present value of the benefits associated with requiring mandatory electronic filing less the costs results in a total net benefit to society of $37,615,613 over a 10-year period.

The Agency realizes that a mandatory electronic filing requirement may involve a change of business practices for a small number of regulated entities under its jurisdiction; and with respect to these entities, we invite comments about the following questions:

(1) What would be the impact (benefits or hardships) on applicants of a mandatory electronic filing requirement?

(2) Would these impacts be different 4 years after the publication date of this notice? If so, how?

(3) If the impacts are expected to be adverse, how can they be mitigated?

(4) Should FMCSA provide a phase-in period for complying with the mandatory electronic filing requirement? If yes, please recommend appropriate phase-in criteria and time periods, stated in terms relative to the publication date of the final rule.

(5) If you believe electronic filing would be burdensome, would the benefits of obtaining operating authority more quickly offset any potential costs associated with electronic filing?

9. Total Net Benefits From the URS SNPRM

The FMCSA calculated the net benefits of the proposed rule by subtracting the total 10-year cost from the total 10-year benefits for each provision. Table 5 presents the net benefits of the proposed rule for each provision presented above. The cost to industry associated with fee changes is offset by an equal gain to FMCSA due to increased revenues from fees. Therefore, the impact to society from the change in fees is zero. Net benefits are estimated to be −$23.0 million for the industry and $42.6 million for FMCSA. This results in total societal net benefits of the URS SNPRM of $19.6 million. The industry would experience a total increase in fees of −$58.6 million (including total fees paid and fees saved). This increase in fees to the industry is offset by a total $58.6 million increase in fees received by FMCSA (including fees lost and fees received).

TABLE 5—NET BENEFITS OF URS PROPOSED RULE

[10-year present value]

URS rule provision	Net benefits		Net fees	
	Industry	Agency	Industry	Agency
Mandatory Electronic Filing	$1,425,292	$36,190,320	$0	$0
Eliminating Transfer/Name Change Requirements	0	0	1,854,890	1,854,890
New Registrant Fee	0	0	−63,583,722	63,583,722
Insurance Filing	−676,723	0	−1,691,808	1,691,808
Process Agent Filing	−25,067,012	3,130,736	0	0
Cancellations and Reinstatements	−60,070	−135,158	4,808,126	4,808,126
New MCSA–1 Application Form	1,354,631	3,391,089	0	0
Net Benefits	−23,023,883	42,576,988	−58,612,513	58,612,513
Societal Net Benefits	19,553,105		0	

Note: Numbers may not add due to rounding.

V. Appendix to the Preamble—Proposed Form MCSA–1 and Instructions

BILLING CODE 4910–EX–P

U.S. Department Of Transportation Federal Motor Carrier Safety Administration	FMCSA REGISTRATION/UPDATE(S) (Application for USDOT Number/Operating Authority) INSTRUCTIONS FORM MCSA-1

NOTE: Mexico-domiciled motor carriers that operate, or seek authority to operate, beyond United States municipalities on the United States-Mexico border and their commercial zones should not complete this form. They must complete Forms OP-1(MX) and MCS-150.

WHO MUST FILE

This form must be filed electronically by all for-hire motor carriers, private motor carriers operating commercial motor vehicles (CMVs), brokers, freight forwarders, cargo tank facilities, and intermodal equipment providers operating in interstate or foreign commerce. All supplemental documents should be scanned and uploaded along with your application. A new applicant must file the Form MCSA-1 before beginning operations. All applicants must update all information using this form.

The following entities must register using this form if they engage in interstate commerce as defined in 49 CFR 390.5:

- For-hire motor carriers of property and passengers domiciled in the United States, Canada, and outside of North America.
- For-hire Mexico-domiciled motor carriers of property and household goods and Mexico-domiciled private motor carriers that seek to operate exclusively within U.S. municipalities on the United States-Mexico Border and their commercial zones. Under North American Free Trade Agreement (NAFTA) Annex I, page I-U-20, a Mexico-domiciled carrier may not provide point-to-point transportation services, including express delivery services, within the United States for goods other than international cargo.
- U.S.-based motor carriers owned or controlled by Mexican nationals transporting passengers and/or international cargo (goods originating or terminating in a foreign country).
- Private motor carriers (except Mexico-domiciled private carriers operating beyond the border commercial zones).
- Property brokers of general freight and/or household goods.
- Freight forwarders of general freight and/or household goods.
- Intermodal equipment providers.
- Cargo Tank Facilities

REASONS TO FILE

1. NEW REGISTRATION –TO REGISTER FOR THE FIRST TIME
2. REINSTATEMENT—TO RETURN A PRIOR REGISTRATION TO GOOD STANDING
3. NEW ENTRANT REAPPLICATION—TO REAPPLY AFTER NEW ENTRANT REGISTRATION HAS BEEN REVOKED (REAPPLY AFTER 30 DAYS)
4. BIENNIAL UPDATE –TO FILE THE UPDATE REQUIRED EVERY 24 MONTHS
5. NAME / ADDRESS CHANGE/FORM OF BUSINESS—TO FILE A CHANGE TO COMPANY'S NAME OR ADDRESS
6. OTHER UPDATE(S)– TO FILE OTHER MISCELLANEOUS CHANGES

FOR EACH REASON FOR FILING, COMPLETE THE APPROPRIATE SECTIONS OF THE FORM MCSA-1 AS SHOWN IN THE TABLE ON PAGE 1 OF THE FORM

HOW TO FILE

An applicant must complete Form MCSA-1 and any attachments or statements in English and submit the completed material to FMCSA by filing online at the FMCSA Web site (www.fmcsa.dot.gov).

COST TO FILE

See Section O titled, "Filing Fee Information," of the Form MCSA-1 application.

TELEPHONE ASSISTANCE

For additional assistance, or to obtain information regarding the status of an application, consult the FMCSA Web site, (www.fmcsa.dot.gov), call FMCSA Support Services at (800) 832-5660, or contact FMCSA Headquarters or State Division offices (See "Contacting Us" on the FMCSA Web site).

APPLICANTS SHOULD CONSULT THESE INSTRUCTIONS AS THEY COMPLETE THE FORM MCSA-1

AN OVERVIEW OF THE SIX REASONS FOR FILING THE FORM MCSA-1

THIS SECTION PROVIDES GENERAL INFORMATION ABOUT THE SIX REASONS FOR FILING FORM MCSA-1. LINE-BY-LINE INSTRUCTIONS BEGIN ON PAGE 5.

1. NEW REGISTRATION

There is a $300 fee for this transaction.
Check the "New Registration" box if registering for the first time.

In addition to completing this form, certain new applicants also must complete the additional requirements described below:

- ***Financial Responsibility*:** New for-hire (both exempt and non-exempt) motor carriers of property and passengers, property brokers, freight forwarders and private carriers of hazardous materials must also demonstrate minimum financial responsibility for bodily injury and property damage (49 CFR part 387). **Applicants may not begin to operate until the required documents have been filed with, and approved by, FMCSA and an active* U.S. DOT Number has been issued.**

- ***Household Goods*:** New for-hire motor carriers of household goods and freight forwarders of household goods must comply with the minimum cargo insurance requirements as provided in 49 CFR part 387. **Operations may not begin until evidence of compliance with the minimum cargo insurance requirements has been filed with, and approved by, FMCSA and an active* U.S. DOT Number has been issued.**

- ***Designation of Agents for Service of Process*:** New applicants must submit a signed and dated Form BOC-3 titled, "Designation of Agents–Motor Carriers, Brokers and Freight Forwarders." It must include the street addresses (**not the post office box number**) of designated agents for service of legal process and administrative notices in connection with the enforcement of applicable Federal statutes or regulations. A person must be designated in each State in which the applicant expects to operate, even if it merely passes through the State. If the applicant chooses to use a Process Agent Service, a letter must be submitted with the completed Form MCSA-1 informing the FMCSA of this decision. Applicants must ensure that the Process Agent Service files the BOC-3 with FMCSA within 90 days of the date the Form MCSA-1 is filed. **An applicant may not operate until the BOC-3 has been filed with, and approved by, FMCSA and an active* U.S. DOT Number has been issued.**

  * A U.S. DOT Number becomes active only after process agent and applicable financial responsibility filings have been completed and approved by FMCSA.

Certifications and Oaths. Applicants must sign electronically the completed certification statements and oaths, as follows:

ENTITY	PARTY WHO MUST SIGN
Sole proprietorship	Owner
Partnership	One partner
Corporation	An officer (President, Vice President, etc.)

2. NEW ENTRANT REAPPLICATION

There is a $300.00 fee for this transaction.
A new entrant whose USDOT registration has been revoked and whose operations have been placed out-of-service (OOS) by the FMCSA may file **to re-apply** for U.S. DOT Registration **no sooner than** 30 days after the date of revocation. If the motor carrier failed to schedule a new entrant safety audit, did not appear for a safety audit, or failed a safety audit and did not submit corrective actions, the motor carrier **must** start the process from the beginning. If the motor carrier failed the safety audit, it **must** also demonstrate that it has corrected the deficiencies that resulted in revocation of its registration.

3. REINSTATEMENT

There is a $10 fee for this transaction.
Check the "Reinstatement" box to re-apply to reinstate the registration of a motor carrier, freight forwarder, broker, cargo tank facility or intermodal equipment provider that has been inactivated. Please be certain that all the requirements for operation have been met, including those pertaining to filing a process agent designation form and filing evidence of financial responsibility, if applicable.

4. BIENNIAL UPDATE

There is no fee for this transaction.
Check the "Biennial Update" box if the applicant has been issued a USDOT number and is filing a biennial update in accordance with 49 CFR 390.19. The Form MCSA-1 is used for biennial updates every 24 months. A motor carrier that registers its vehicles in a State that participates in the Performance and Registration Information Systems Management (PRISM) program is exempt from the requirements of this section, provided it files all the required information with the appropriate State office.

Mexico-domiciled motor carriers holding a *"Certificate of Registration"* from the former Interstate Commerce Commission, the Federal Highway Administration, the former Office of Motor Carrier Safety or the Federal Motor Carrier Safety Administration, that was issued before April 18, 2002, and which designates a territorial scope of operations between points in specified States or between points in the United States, must also file a biennial update in accordance with 49 CFR 390.19.

5. NAME/ADDRESS/FORM OF BUSINESS CHANGE

There is no fee for this transaction.
Check the "Name/Address/Form of Business Change" box to file changes to the legal name, doing business as (DBA) name, form of business, or address, provided that there is no change in the ownership, management or control of the entity. The form must be filed within 20 days of the change.

If there is a change in ownership, management or control, a new registration must be filed with FMCSA.

6. OTHER UPDATES

There is no fee for this transaction.
Check the "Other Update" box to update registration information, such as vehicle information, driver information, etc.

LINE-BY-LINE INSTRUCTIONS

- These instructions will assist applicants in completing the Form MCSA-1 accurately. A Form MCSA-1 that does not include all of the required information or contains incorrect information will be rejected by FMCSA and may result in loss of fees.
- The application must be completed in English.
- Applicants should print and retain a copy of the completed Form MCSA-1 and the instructions for their records.

SECTION A. BUSINESS DESCRIPTION *(TO BE COMPLETED BY ALL)*

Beginning on Page 2:

1. **LEGAL BUSINESS NAME.** Provide applicant's full legal business name – the name of the sole proprietor or partnership, the name of the limited liability company as it appears on the articles of organization, or the complete corporate name as it appears on the incorporation certificate. It is important to spell, punctuate and space accurately the words forming the name of the registered entity. For example, FMCSA regards each of the following as a separate entity: John Jones; Harry L. Jones & John Jones; John Jones Trucking, Inc.

2. **DOING BUSINESS AS NAME (if different from Legal Business Name).** If the applicant uses a trade name that differs from its legal business name as shown in block 1, that name should be entered. Only one trade name, however, is permitted. Example: If the applicant is "John Jones," doing business as "Quick Way Trucking," "John Jones" should be entered as the *Legal Name of Business*, and "Quick Way Trucking" should be entered as the *Doing Business As* name. If the applicant does not have a trade name, leave this item blank.

3. **BUSINESS ADDRESS/PRINCIPAL PLACE OF BUSINESS.** Enter the physical address where the principal place of business is located (not the address of a

terminal). Use the two-letter postal abbreviation for the State or the abbreviation of the Canadian Province/Territory. If the applicant is domiciled in Mexico, enter the "Colonia" or "Barrio" where the principal place of business is located. Post office boxes are **not** acceptable.

4. **MAILING ADDRESS (No P.O. Box).** If the applicant receives mail at an address other than the principal place of business address given, please provide it. This address must include a street name and number and must not be a post office box. If applicant's mailing address is the same as the principal place of business address, check the box and leave the mailing address blank.

NOTE: Applicants must give the Federal Motor Carrier Safety Administration written notice within 20 days of any change in their business or mailing address. They do this by following the directions for "Name/Address/Form of Business Change" and filing the completed Form MCSA-1 with FMCSA. This will ensure that applicants receive notices from FMCSA, and will ensure that documents filed on their behalf are included as part of the applicant's file. **If a sole proprietor owner/operator provides personal information on the Form MCSA-1, this information will be publically available on FMCSA websites. This published information may include, but is not limited to, the sole proprietor owner/operator's home address, telephone number and email address when the contact information serves as the business contact information.**

MEXICO-DOMICILED MOTOR CARRIERS – If an applicant is a Mexico-domiciled motor carrier and also maintains an office in the United States, that information should also be provided in response to Question 39 of Form MCSA-1.

5. **COUNTRY OF DOMICILE OF PRINCIPAL PLACE OF BUSINESS.** The applicant should indicate the country in which its principal place of business is located. Check the appropriate box and include the RFC (Registro Federal de Contribuyentes or Federal Taxpayer Registration) number for a company in Mexico or NSC (National Safety Code) number(s) for a company in Canada, as applicable. If applicants have more than one NSC number, you will need to scan and upload the additional information when you file your application.

6. **PRINCIPAL BUSINESS TELEPHONE NUMBER:** Enter the principal telephone number, including area code, of the principal place of business. Please include the country code if the applicant is not domiciled in the United States.

7. **PRINCIPAL BUSINESS FAX NUMBER (optional).** Enter the principal fax number, including area code, of the principal place of business. Please include the applicant's country code if the applicant is not domiciled in the United States.

8. **PRINCIPAL BUSINESS CELL PHONE NUMBER (optional).** Enter the principal cell phone number, including area code, of the principal place of business. Please include the applicant's country code if the applicant is not domiciled in the United States.

9. **USDOT NUMBER (if updating).** Entities that already have been issued a USDOT Number must provide it. Applicants that have not obtained a USDOT Number will be issued one after completion of the registration process. **Applicants must obtain and activate a USDOT Number before beginning operations.**

10. **MC, MX, and FF NUMBER(S) (if updating).** If the Federal Motor Carrier Safety Administration (FMCSA), the Federal Highway Administration (FHWA), the former Office of Motor Carrier Safety or the Interstate Commerce Commission (ICC) has issued the applicant a Motor Carrier Number (MC-Number), a Mexico-Domiciled Motor Carrier Number (MX-Number), or Freight Forwarder Number (FF-number), please enter all that apply.

11. ***IRS TAX ID NUMBER.** Enter the employer identification number (EIN#) assigned to the applicant by the U.S. Internal Revenue Service, or the Social Security Number (SSN #) used to file the applicant's company's tax return with the IRS.
Sole proprietor owner/operators are strongly encouraged to obtain an (EIN#) rather than using an (SSN#) when completing the Form MCSA-1.

12. **DUN AND BRADSTREET NUMBER.** Enter the business number issued to the applicant by Dun & Bradstreet, if known.

13. **FORM OF BUSINESS.** Check boxes for all that apply indicating the applicant's form of business:

- **Sole Proprietor** – Individuals who operate a business in their own name.
- **Partnership** – Two or more individuals operating as co-owners, for profit.
- **Corporation** – A legal entity created under the laws of a State, owned by shareholders whose liability for corporate debts is limited. Enter State of incorporation.
- **Limited Liability Company** – An entity created under the laws of a State that provides limited liability to its owners, with characteristics of both a corporation and a partnership or sole proprietorship (depending on how many owners there are).
- **Unit of State or Local Government** – An agency, department, commission, bureau, office, or other entity that is in any branch of a State or Local government.

14. **OWNERSHIP and CONTROL.** Applicants must check the appropriate box regarding citizenship of the owner. The term "citizen" includes a sole proprietor, partner, corporation or limited liability company.

15. **NAME(S) OF SOLE PROPRIETOR(S), PARTNERS OR OFFICER(S) AND TITLES.** List the names of the owners of the entity. If the applicant is a sole proprietor, please provide the applicant's full name. If the applicant is organized as a partnership, please provide the full names of the general and limited partners. If the applicant is organized as a corporation, please provide the full names of the officers and their respective titles. If the applicant is organized as a limited liability company, please provide the full names of the officers and their respective titles.

16. REVENUE. Enter applicant's gross annual operating revenue for the last calendar year. Applicants for registration with no revenue in the past year must enter zero (0). If the applicant earned revenue for only a part of the calendar year, please provide the number of months the applicant operated and the amount of revenue earned for that period.

17. OPERATION CLASSIFICATION. Check all the appropriate classifications that apply. If "Other," enter the type of operation in the space provided.

For-Hire Motor Carrier – Transportation by a motor carrier for compensation, including:

- **Property** – Transportation of general freight, hazardous materials or household goods. This category includes transportation exempt from the commercial registration requirements in Title 49 U.S.C. chapter 139. These exemptions can be found in 49 U.S.C. 13506.

- **Passengers:**

  Charter & special operations – Charter service is the transportation of groups, assembled by someone other than the carrier, who collectively contract with the bus operator for the use of certain equipment for the duration of a particular trip or tour. Generally, a flat rate is charged. The passengers must travel together for the entire trip. Special operations include almost any type of service that is neither charter nor ordinary regular-route service. It is call-and-demand in nature. The carrier assembles the group through the sale of individual tickets and generally offers some feature in addition to transportation between two points.

  Regular route – Regularly scheduled service between specific points operated in accordance with a published schedule. Public recipients of governmental financial assistance requesting regular route authority must describe the specific routes over which they intend to provide regularly scheduled service. Public recipients of governmental financial assistance seeking to add new routes after initial registration must file a new application form.

  Limousine/van operations – Operation of a passenger vehicle usually built on a lengthened automobile chassis designed or used to transport 15 or fewer passengers, including the driver.

  FTA grantee – A passenger motor carrier providing transportation service within a transit service area under an agreement with a Federal, State, or local government funded, in whole or part, with a grant under 49 U.S.C. 5307, 5310, 5311, 5316 or 5317. Such carriers seek to register to provide for-hire operations between points in a transit service area located in more than one State.

- **Mexico-owned, U.S.-based enterprise** – A U.S.-based company owned or controlled by persons of Mexico. Transportation of property by such an enterprise is limited to international cargo.

Private Motor Carrier - Transportation by commercial motor vehicle, not for compensation, as defined in 49 CFR part 390.

- *Property (HM)* – transports any amount of hazardous materials.
- *Property (Non-HM)* – does not transport any hazardous materials.
- *Passengers (Business)* – interstate transportation of passengers provided in the furtherance of a commercial enterprise and not available to the public at large.
- *Passengers (Non-Business)* – interstate transportation of passengers that does not otherwise meet the definition of a private motor carrier of passengers (business) (e.g., church buses).
- *Migrant* – interstate transportation of 3 or more migrant workers to or from their employment by any commercial motor vehicle other than a passenger automobile or station wagon.

Property Broker – An entity that arranges for the interstate transportation of cargo belonging to others, using for-hire carriers subject to the commercial registration requirements to provide the actual transportation.

Freight Forwarder – An entity that holds itself out to provide the truck transportation of cargo belonging to others, using for-hire carriers subject to the commercial registration requirements to provide the actual interstate transportation. In the ordinary course of business, freight forwarders: (1) assemble and consolidate shipments, (2) conduct break bulk and distribution operations, and (3) assume responsibility for transportation of property from place of receipt to the place of destination. Freight Forwarders may or may not operate trucks.

Government Entity – A U.S. Federal Government agency, State Government agency, local Government agency or Indian Tribe.

Cargo Tank Facility - An entity that: (1) manufactures, repairs, inspects, tests, qualifies, or maintains a cargo tank to ensure that the cargo tank conforms to 49 CFR part 178, subpart J, and 49 CFR part 180, subpart E; (2) alters the certificate of construction of cargo tank; (3) ensures the continuing qualification of a cargo tank by performing a function prescribed in 49 CFR part 178 or 180; or (4) makes any representation indicating compliance with one or more of the requirements of 49 CFR part 178 or 180.

Intermodal Equipment Provider (IEP) - Any person who interchanges intermodal equipment with a motor carrier pursuant to a written interchange agreement or has a contractual responsibility for the maintenance of the intermodal equipment.

Other – An entity that transports property or passengers by a classification of operation not described above. Please enter other classification description.

18. COMPANY CONTACT PERSON. The person at the applicant's place of business who prepares the Form MCSA-1 or otherwise assists in completing the application. Provide the contact person's name, title, position, address, telephone number, fax number, cell phone number (optional) and email address (optional). This individual may be contacted by FMCSA if there are questions concerning this application.

19. APPLICANT'S REPRESENTATIVE. If someone other than the applicant prepares the Form MCSA-1, or otherwise assists the applicant in completing the application, provide the representative's name, title, position, or relationship to the applicant, address, telephone number, and fax number, cell phone number (optional) and email address (optional). This individual may be contacted by FMCSA if there are questions concerning this application.

20. CERTIFICATION STATEMENT. This certification is applicable to the representations made by the applicant on the Form MCSA-1. Applicants are certifying to the truthfulness of statements in this form under penalty of perjury.

SECTION B. OPERATION CLASSIFICATION *(TO BE COMPLETED BY ALL MOTOR CARRIERS, FREIGHT FORWARDERS WITH VEHICLES, AND INTERMODAL EQUIPMENT PROVIDERS)*

Beginning on page 6

21. TYPE OF OPERATION. Check the appropriate type(s) of operation:

Interstate (Non-HM) – Interstate transportation of persons or non-hazardous property across State lines, including international boundaries, or wholly within one State as part of a through movement that originates or terminates in another State or country.

Interstate (HM) – Interstate transportation of any amount of hazardous material across State lines, including international boundaries, or wholly within one State as part of a through movement that originates or terminates in another State or country.

Intrastate (Non-HM) – Intrastate transportation of persons or property (non-hazardous) wholly within one State that is not part of a through movement that originates or terminates in another State or country.

Intrastate (HM) – Intrastate transportation of any amount of hazardous material wholly within the boundaries of a single State that is not part of a through movement that originates or terminates in another State or country.

22. CARGO. Check each type of cargo that the applicant will transport or handle. If "Other" is checked, enter the name of the commodity in the space provided.

23. MILEAGE. Estimate the miles traveled by applicant's commercial motor vehicles (CMVs) during the last calendar year. It makes no difference if the CMVs were leased by the applicant or owned by the applicant. Please round the miles to the nearest 10,000 miles. If a new applicant, please enter "0".

24. (a) NUMBER OF VEHICLES WITH A GROSS VEHICLE WEIGHT RATING (GVWR), GROSS COMBINATION WEIGHT RATING (GCWR), GROSS VEHICLE WEIGHT (GVW) OR GROSS COMBINATION WEIGHT (GCW) ≥ 10,001 POUNDS THAT WILL BE OPERATING IN THE U.S. Enter the total number of commercial motor vehicles owned, term-leased or trip-leased that is, or are expected to be, operational on the date the Form MCSA-1 is submitted and have a GVWR, GCWR, GVW or GCW of more than 10,001 pounds.

If an Intermodal equipment provider, enter the trailer/chassis-equipment "serviced" and used to interchange with a commercial motor vehicle.

Passenger vehicles are defined as:

- *Motor coach*—a vehicle designed for long distance transportation of passengers, usually equipped with storage racks above the seats and a baggage hold beneath the passenger compartment.
- *School Bus*—a vehicle designed and/or equipped mainly to carry primary and secondary students to and from school, usually built on a medium or large truck chassis.
- *Mini-bus*—a motor vehicle designed or used to transport 16 or more passengers, including the driver, and typically built on a small truck chassis. A mini-bus has a smaller seating capacity than a motor coach.
- *Van*—a small motor vehicle designed or used to transport 15 or fewer passengers, including the driver.

- *Limousine*—a passenger vehicle usually built on a lengthened automobile chassis designed or used to transport 15 or fewer passengers, including the driver.

(b) NUMBER OF VEHICLES WITH A GVWR, GCWR, GVW OR GCW ≥ 10,001 POUNDS THAT WILL BE OPERATING IN CANADA OR MEXICO *(To be completed by US-domiciled motor carriers only).* Enter the number of commercial motor vehicles that will be operating in Canada or Mexico that have a GVWR, GCWR, GVW or GCW of 10,001 or more pounds.

(c) NUMBER OF VEHICLES WITH A GVWR, GCWR, GVE OR GCW> 10,001 POUNDS THAT WILL BE OPERATING IN INTERSTATE COMMERCE. Enter the number of commercial motor vehicles that will be operating interstate that have a GVWR, GCWR, GVW or GCW of 10,001 or more pounds.

25. (a) NUMBER OF COMMERCIAL DRIVERS WHO WILL BE OPERATING IN THE U.S. Enter the number of interstate and intrastate drivers used by the applicant on an average workday in the United States. Part-time, casual, term-leased, trip-leased and company drivers should be included. Enter the total number of drivers who have a commercial driver's license (CDL). Enter the number of drivers operating within 100 air miles of the driver's normal work reporting location in each category and the number of drivers operating beyond 100 air miles of the driver's normal work reporting location in each category.

NOTE*:* Any driver who engages in both interstate and intrastate transportation should be counted as an interstate driver.

Interstate – The driver transports people or property across State lines, including international boundaries, or wholly within one State as part of a through movement that originates or terminates in another State or country.

Intrastate – The driver transports people or property wholly within one State that is not part of a through movement that originates or terminates in another State or country.

(b) NUMBER OF COMMERCIAL DRIVERS WHO WILL BE OPERATING IN CANADA OR MEXICO. *(To be completed by US-domiciled motor carriers only).* Enter the number of interstate drivers used by the applicant on an average workday in Canada or Mexico.

SECTION C. HAZARDOUS MATERIALS (HM) *(TO BE COMPLETED BY HM MOTOR CARRIER/SHIPPERS ONLY)*

Beginning on Page 8

26. HAZARDOUS MATERIALS CARRIED OR SHIPPED. If the applicant is (1) a motor carrier of hazardous materials or (2) a motor carrier and shipper of hazardous materials, complete the appropriate section for each type of hazardous materials (HM) the applicant transports and/or ships. In the columns to the left of the category, circle "C" for motor carrier and/or "S" for a shipper. In the columns to the right of the category, circle "B" if the HM is transported in bulk (over 119 gallons) and "NB" if the HM is not transported in bulk (119 gallons or less).

SECTION D. HAZARDOUS MATERIALS PERMITTING *(TO BE COMPLETED BY HM MOTOR CARRIERS ONLY)*

Beginning on Page 9

27. Check all boxes that apply indicating the type of hazardous materials your company transports.

28. If you checked a box in question 27, answer questions 28 through 32.

33. CERTIFICATION STATEMENT. To be completed by an authorized official. The authorized person must electronically sign, date and provide his/her title.

SECTION E. CARGO TANK FACILITY *(TO BE COMPLETED BY AN APPLICANT REGISTERING CARGO TANK FACILITIES UNDER 49 CFR PART 107, SUBPART F)*

Beginning on Page 11

- A Cargo Tank (CT) Number is required for a company that engages in the manufacture, assembly, inspection, testing, certification (Design Certifying Engineer) or repair of a cargo tank or of a cargo tank motor vehicle.
- FMCSA will assign a single USDOT Number to the registering company and a unique CT Number for each cargo tank facility registered. All assigned CT Numbers will be associated with the USDOT Number assigned to your company.

34. For each cargo tank facility being registered, please provide the following information:

Functions. Check the box corresponding to the description of the specific function to be performed on cargo tanks or cargo tank motor vehicles.
Exemptions/Special Permits. For each function checked, list all corresponding exemptions or special permits issued by the Department of Transportation pursuant to

49 U.S.C. 5117.

Vehicles. For each function checked, check all boxes corresponding to the types of DOT specification and special permit cargo tanks or cargo tank motor vehicles which the registrant intends to manufacture, assemble, repair, inspect, test or certify. For example, if you will perform "External Visual Inspections," check all vehicle types indicated in the corresponding row on which the function will be performed. This information is not required for the "Component Manufacture" function.

Mobile Testing Information. Check the appropriate box indicating whether the facility uses mobile testing/inspection equipment to perform inspections, tests, or repairs at a location other than the address listed in section A of this application.

Process Agent. If the registrant is not a resident of the United States, list the name and address of a permanent resident of the United States designated in accordance with 49 CFR 105.40 to serve as an agent for service of process. A post office box is not a valid address.

Responsible Person (Facility Location). Provide the title, position, first and last name, phone number, fax number and e-mail address for the person at the facility location responsible for compliance with the applicable requirements of chapter 1, title 49 Code of Federal Regulations.

Design Certified Engineers/Registered Inspectors. Provide the name, address, and type for each registered inspector or design certifying engineer employed by the company to conduct certification, inspection or testing functions.

Non-Employee Design Certified Engineers/Registered Inspectors. If the registrant engages non-employees to perform certification, inspection or testing functions, provide the name, address and certification number of each person performing such functions.

Stamp. *For each person who manufactures a cargo tank or cargo tank motor vehicle,* provide the stamp type, certification number, authorization date and expiration date of the manufacturer's current ASME Certificate of Authorization for the use of the ASME "U" Stamp.

For each person who repairs a cargo tank or cargo tank motor vehicle, provide the stamp type, certification number, authorization date and expiration date of the repair facility's current National Board Certificate of Authorization for the use of the "R" stamp or ASME Certificate of Authorization for the use of the ASME "U" Stamp.

Certification Statement. The cargo tank certification statement must be completed by the person responsible for compliance with the applicable requirements of chapter 1, title 49, Code of Federal Regulations. Provide the name, title and e-mail address of the certifying official.

SECTION F. TRANSPORTATION OF HOUSEHOLD GOODS *(TO BE COMPLETED BY HOUSEHOLD GOODS MOTOR CARRIERS, HOUSEHOLD GOODS BROKERS, AND HOUSEHOLD GOODS FREIGHT FORWARDERS)*

Beginning on Page 12

35. CERTIFICATION: ARBITRATION AND TARIFF.

(1) If the applicant is a for-hire household goods motor carrier (as defined in 49 U.S.C. 13102(12)), the applicant must certify that it participates in a program offering arbitration as a means of settling loss and damage claims. This is a condition of registration. Also, if the applicant is registering as a motor carrier,

broker or freight forwarder of household goods, applicant must certify it is fit, willing and able to provide the service and comply with all applicable statutory and regulatory requirements.

(2) Applicants applying for registration as a household goods motor carrier must provide certain information regarding their arbitration program and tariff. They must also certify they are familiar with FMCSA's consumer protection requirements applicable to household goods transportation.

(3) Applicants must disclose all relationships involving common stock, common ownership, common management, or common familial relationships between the applicant and any other motor carrier, freight forwarder, or broker of household goods within 3 years of the date of the filing of this application. The signature should be that of the company official who completes the Applicant's Oath.

SECTION G. PASSENGER CARRIERS – *(TO BE COMPLETED BY PASSENGER CARRIERS)*

Beginning on Page 14

36. GOVERNMENT FUNDING STATUS. Specify the nature of governmental financial assistance you receive, if any, by checking the appropriate box (Check only one box).

Applicants that do not receive any government funding or use equipment acquired with governmental financial assistance should select the "Non-recipient" response.

37. PASSENGER CARRIER COMPLIANCE CERTIFICATION – Applicants transporting passengers must certify that they are fit, willing and able to comply with all applicable statutory and regulatory requirements.

SECTION H. SCOPE OF AUTHORITY – *(TO BE COMPLETED BY PASSENGER CARRIERS)*

Beginning on Page 15

38. All Passenger Carrier applicants must complete this section. Check all boxes that apply.

This section corresponds to the type(s) of Operating Authority selected in "SECTION A- Operation Classification" of this application.

NOTE:

- "Regular Routes" refer only to passenger carriers that provide scheduled service over regular routes and, in the case of public recipients of governmental assistance, operate over named roads or highways between designated points.
- Passenger carriers engaged in charter and special operations do not provide scheduled service over regular routes.

- Public recipients of governmental assistance that request operating authority over regular routes must submit a detailed narrative description of the route(s) and a corresponding map that graphically displays the route(s) that must be scanned and uploaded along with the application.

SECTION I. COMMERCIAL ZONE OPERATIONS *(TO BE COMPLETED BY MEXICO-DOMICILED MOTOR CARRIERS OPERATING EXCLUSIVELY WITHIN COMMERCIAL ZONES)*

Beginning on Page 16

39. SCOPE OF REGISTRATION. If applicant is domiciled in Mexico, please check the appropriate box.

40. UNITED STATES ADDRESS. If applicant maintains an office within the continental United States, please provide the complete address, telephone number and fax number.

SECTION J. NON-NORTH AMERICA-DOMICILED CARRIERS *(TO BE COMPLETED BY MOTOR CARRIERS NOT DOMICILED IN THE UNITED STATES, MEXICO OR CANADA)*

Bottom of page 16

41. SCOPE OF REGISTRATION. If applicant is domiciled in a Non-North American country, please check the appropriate box.

42. PRINCIPAL BORDER CROSSING POINTS. Applicant must indicate the principal border crossing points, including the city and State, that it intends to use.

43. UNITED STATES ADDRESS. If applicant maintains an office within the continental United States, please provide the complete address, telephone number and fax number.

SECTION K. ADDITIONAL INFORMATION *(TO BE COMPLETED BY FOR-HIRE MOTOR CARRIERS AND PRIVATE HAZARDOUS MATERIALS CARRIERS, INCLUDING THOSE DOMICILED IN MEXICO AND OUTSIDE OF NORTH AMERICA, AND BY BROKERS AND FREIGHT FORWARDERS)*

Beginning on Page 18

44. FINANCIAL RESPONSIBILITY. For-hire motor carriers of property and passengers (both exempt and non-exempt), property brokers, freight forwarders and private carriers of hazardous materials must comply with requirements for demonstrating minimum financial responsibility for bodily injury and property

damage (49 CFR part 387) and submit evidence of financial responsibility to FMCSA. Check each box that describes the type of business the applicant will be conducting. Applicant must contact its insurance company and ensure that it submits the required information in a timely manner.

Motor carriers of property and passengers and freight forwarders, in lieu of filing evidence of commercial insurance may also apply for self-insurance authorization on FMCSA prescribed form BMC-40, or have active authority to self-insure its bodily injury and property damage and/or cargo liability in accordance with 49 U.S.C. 13906, 31138 and 31139.

If applicant is domiciled in Mexico and has been issued a Certificate of Registration, the following must be carried on each of applicant's motor vehicles when they cross the border:

- A current Form MCS-90 indicating insurance coverage for 24 hours or longer.
- The Certificate of Registration.
- An insurance identification card, binder, or other document issued by an authorized insurer which specifies both the effective date and the expiration date of the insurance coverage.

FINANCIAL RESPONSIBILITY: MINIMUM COVERAGE

PASSENGER CARRIERS	
Seating Capacity	Amount
Any vehicle with a seating capacity of 16 or more passengers, including the driver	$5,000,000
Any vehicle with a seating capacity of 15 or fewer passengers, including the driver	$1,500,000
Certain FTA Grantees: **NOTE:** The above requirements do not apply to entities providing transportation service within a transit service area under an agreement with a Federal, State, or local government funded, in whole or in part, with a grant under 49 U.S.C. 5307, 5310, or 5311, including transportation designed and carried out to meet the special needs of elderly individuals and individuals with disabilities. In any case in which the transit service area is located in more than one State, the minimum level of financial responsibility for such motor vehicle will be at least the highest level required for any of such States.	

MOTOR PROPERTY CARRIERS AND FREIGHT FORWARDERS OPERATING MOTOR VEHICLES		
Bodily Injury and Property Damage Liability Requirements		
KIND OF EQUIPMENT	COMMODITY	AMOUNT OF COVERAGE REQUIRED
Freight vehicles under 10,001 pounds (4536 kilograms) or GVWR	Property (non-hazardous).	$300,000
Freight vehicles of 10,001 pounds (4536 kilograms) or more GVWR	Property (non-hazardous).	$750,000
Freight vehicles of 10,001 (4536 kilograms) pounds or more GVWR	Hazardous substances, as defined in 49 CFR § 171.8, transported in cargo tanks, portable tanks, or hopper-type vehicles with capacities in excess of 3,500 water gallons, or in bulk Class A or B explosives, poison gas, (Poison A), liquefied compressed gas or compressed gas, or highway route controlled quantity or radioactive materials as defined in 49 CFR 173.455.	$5,000,000
Freight vehicles of 10,001 pounds (4536 kilograms) or more GVWR	Oil listed in § 172.101; hazardous waste, hazardous materials and hazardous substances defined in 49 CFR 171.8 and listed in § 172.101, but not mentioned in (b) above or (d) below.	$1,000,000
Freight vehicles under 10,001 (4536 kilograms) pounds GVWR	Any quantity of Divisions 1.1, 1.2, or 1.3 material; any quantity of Division 2.3, Hazard Zone A, or Division 6.1, Packing Group I, Hazard Zone A material; or highway route controlled quantities of a Class 7 material as defined in 49 CFR 173.403.	$5,000,000
Cargo Insurance Requirements		
Motor carriers and freight forwarders of household goods	$5,000 for loss of or damage to property carried on any one vehicle and $10,000 for the aggregate losses or damages occurring at any one time or place	

PROPERTY BROKERS
A property broker must have a surety bond or trust fund in effect for at least $10,000
SELF INSURED
Approval by FMCSA to self-insure in accordance with 49 U.S.C. 13906, 31138 and 31139 and regulations implementing these statutory provisions.
MOTOR CARRIERS DOMICILED IN MEXICO
These carriers must carry the same amount of insurance coverage as U.S.-based motor carriers; however, they do not need to file evidence of insurance with FMCSA. These carriers must carry in each of their vehicles when crossing into the U.S. a Form MCS-90 and acceptable evidence of required bodily injury and property damage insurance to cover the carrier's operation during the time it is in the United States.

45. AFFILIATIONS. Applicants must disclose certain information concerning relationships and affiliations with other entities registered with FMCSA (or its predecessor agencies). Applicants must indicate whether these entities have ever been disqualified from operating commercial motor vehicles in the United States pursuant to Section 219 of the Motor Carrier Safety Improvement Act of 1999 (MCSIA) (P. L. 106-159, December 9, 1999).

46. DESIGNATION OF AGENTS FOR SERVICE OF PROCESS. All applicants must designate a process agent in each State where operations are conducted. For example, if applicant will operate only in commercial zones along the U.S./Mexico border that are located in California and Arizona, applicants must designate an agent in each of those States; if applicants will operate only in one State, an agent must be designated in that State. **Applicants may not begin operations until the Form BOC-3 has been filed with the FMCSA.**

SECTION L. SAFETY CERTIFICATIONS *(TO BE COMPLETED BY MEXICO-DOMICILED AND NON-NORTH AMERICA-DOMICILED MOTOR CARRIERS)*

Beginning on page 21

47. COMPLETE ALL SAFETY CERTIFICATIONS.

Mexico-domiciled and Non-North America-domiciled carriers must complete all applicable questions and attachments.

SECTION M. COMPLIANCE CERTIFICATIONS *(TO BE COMPLETED BY MOTOR CARRIERS, BROKERS, AND FREIGHT FORWARDERS)*

Beginning on page 24

48. Check the applicable box in response to each of questions 1 through 7. Read the certification statement carefully.

SECTION N. APPLICANT'S OATH *(TO BE COMPLETED BY APPLICANT'S AUTHORIZED OFFICIAL)*

On Page 25

49. All applicants must complete this section. False certifications are subject to the penalties described in the oath. Type or print the name and title of an individual authorized to sign documents on behalf of the applicant. The authorized signer is one of the following:

- In the case of a sole proprietorship, the owner
- In the case of a partnership, an official partner
- In the case of a corporation, an authorized corporate officer
- An individual with power of attorney to act on behalf of the applicant (proof of the power of attorney must be uploaded and submitted with the application)

SECTION O. FILING FEE INFORMATION *(FMCSA DOES NOT REFUND FILING FEES)*

Beginning on Page 26

50. Enter the type of filing. If this is a New Registration, enter all the entity types for which the applicant is registering. If applicants apply to register as more than one of the following classifications (motor carrier, freight forwarder, broker, intermodal equipment provider or cargo tank facility) the applicant must tender $300 for each.

Indicate how the applicant intends to pay. Not all transactions require a fee.

ATTACHMENTS TO SECTION L

Beginning on Page 27

If applicants are motor carriers domiciled in Mexico or outside of North America, they are required to complete Attachments A – D and F. If such applicants transport hazardous materials, they should also complete Attachment E.

OTHER CONSIDERATIONS – Before beginning operation, an applicant may be responsible for complying with other laws, such as State registration requirements and payment of fuel taxes.

UNITED STATES DEPARTMENT
OF TRANSPORTATION
Federal Motor Carrier Safety Administration

For FMCSA Use Only
Date Received: _____
USDOT Number: _____
☐ Inactive _____
☐ Active _____

FMCSA REGISTRATION / UPDATE(S)

(APPLICATION FOR USDOT NUMBER/OPERATING AUTHORITY)

FORM MCSA-1

PLEASE READ THE INSTRUCTIONS FOR THIS FORM CAREFULLY BEFORE PROCEEDING

There are six reasons to file this form: New Registration, Reinstatement, New Entrant Reapplication, Biennial Update, Name / Address / Form of Business Change(s), or Other Update(s). For each reason please complete the appropriate sections of this form as indicated below. Form MCSA-1, attachments, and statements must be completed in English.

PLEASE COMPLETE ALL APPLICABLE SECTIONS **TYPE OF OPERATION**	1 - 2 *NEW REGISTRATION(1). NEW ENTRANT REAPPLICATION (2)* *(Sections and attachments (ATT) to be Completed)*	3 - 5 *BIENNIAL UPDATE (3). NAME / ADDRESS / FORM OF BUSINESS CHANGE(S) (4), OTHER UPDATE(S) (5)* *(Sections to be Completed*	6 *REINSTATEMENT* *(Sections to be Completed)*
MOTOR CARRIER (NOT DOMICILED IN MEXICO) OF:			
HOUSEHOLD GOODS	A,B,F,K,M,N,O	A,B,F,K,N	A,B,F,J,K,M,N,O
HAZARDOUS MATERIALS CARRIER/SHIPPER	A,B,C,D,K,M,N,O	A,B,C,D,K,N	A,B,C,D,K,M,N,O
PROPERTY	A,B,K,M,N,O	A,B,K,N	A,B,K,M,N,O
PASSENGERS	A,B,G,H,K,M,N,O	A,B,G,H,K,N	A,B,G,H,K,M,N,O
MOTOR CARRIER (DOMICILED IN MEXICO) OF:			
HOUSEHOLD GOODS	A,B,F,I,K,L,M,N,O	A,B,F,I,K,N	A,B,F,I,K,L,M,N,O
HAZARDOUS MATERIALS CARRIER/SHIPPER	A,B,C,D,I,K,L,M,N,O	A,B,C,D,I,K,N	A,B,C,D,I,K,L,M,N,O
PROPERTY	A,B,I,K,L,M,N,O	A,B,I,K,N	A,B,I,K,L,M,N,O
PASSENGERS	A,B,G,H,I,K,L,M,N,O	A,B,G,H,I,K,N	A,B,G,H,I,K,L,M,N,O
MOTOR CARRIER (NOT DOMICILED IN NORTH AMERICA) OF:			
HOUSEHOLD GOODS	A,B,F,J,K,L,M,N,O	A,B,F,J,K,N	A,B,F,J,K,L,M,N,O
HAZARDOUS MATERIALS CARRIER/SHIPPER	A,B,C,D,J,K,L,M,N,O	A,B,C,D,J,K,N	A,B,C,D,J,K,L,M,N,O
PROPERTY	A,B,J,K,L,M,N,O	A,B,J,K,N	A,B,J,K,L,M,N,O
PASSENGERS	A,B,G,H,J,K,L,M,N,O	A,B,G,H,J,K,N	A,B,G,H,J,K,L,M,N,O
BROKER OF:			
HOUSEHOLD GOODS	A,B,F,K,M,N,O	A,B,F,K,N	A,B,F,K,M,N,O
PROPERTY	A,B,K,M,N,O	A,B,K,N	A,K,M,N,O
FREIGHT FORWARDER (WITH VEHICLES) OF:			
HOUSEHOLD GOODS	A,B,F,K,M,N,O	A,B,F,K,N	A,B,F,K,M,N,O
PROPERTY	A,B,K,M,N,O	A,B,K,N	A,B,K,M,N,O
FREIGHT FORWARDER, (NO VEHICLES) OF:			
HOUSEHOLD GOODS	A,K,M,N,O	A,K,N	A,K,M,N,O
PROPERTY	A,K,M,N,O	A,K,N	A,K,M,N,O
INTERMODAL EQUIPMENT PROVIDERS	A,B,M,N,O	A,B,N	A,B,M,N,O
CARGO TANK FACILITY	A,E,M,N,O	A,E,N	A,E,M,N,O

UNITED STATES DEPARTMENT OF TRANSPORTATION
Federal Motor Carrier Safety Administration

For FMCSA Use Only
Date Received: _____
USDOT Number: _____
☐ Inactive _____
☐ Active _____

REASONS FOR FILING (*Check only one*)	**FEES**
☐ NEW REGISTRATION	$300
☐ NEW ENTRANT REAPPLICATION	$300
☐ REINSTATEMENT	$10
☐ BIENNIAL UPDATE	**No fee**
☐ NAME / ADDRESS / FORM OF BUSINESS CHANGE(S)	**No fee**
☐ OTHER UPDATE(S)	**No fee**

SECTION A. BUSINESS DESCRIPTION *(TO BE COMPLETED BY ALL)*

1. LEGAL BUSINESS NAME

2. DOING BUSINESS AS NAME (if different from Legal Business Name)

3. BUSINESS ADDRESS/PRINCIPAL PLACE OF BUSINESS

STREET ADDRESS /ROUTE NUMBER	CITY	STATE/PROVINCE	ZIP CODE+4	COLONIA *(Mexico Only)*	FOREIGN COUNTRY

4. MAILING ADDRESS (Must include the physical street name and number; P.O. Box Numbers are not accepted.)

STREET ADDRESS	CITY	STATE/PROVINCE/	ZIP CODE+4	COLONIA *(Mexico Only)*	FOREIGN COUNTRY

5. COUNTRY OF DOMICILE OF PRINCIPAL PLACE OF BUSINESS

☐ United States ☐ Canada ☐ Mexico ☐ Other Country

Canadian NSC Number (National Safety Code) _____

Mexico RFC Number (Federal Taxpayer Registry) _____

6. PRINCIPAL BUSINESS TELEPHONE NUMBER

7. PRINCIPAL BUSINESS FAX NUMBER

8. PRINCIPAL BUSINESS CELL PHONE NUMBER

9. USDOT NUMBER (if updating)

10. MC, MX AND FF NUMBER(S) (if updating)

MOTOR CARRIER (MC)	MEXICO DOMICILED CARRIER (MX)	FREIGHT FORWARDER (FF)

11. *IRS TAX ID NUMBER (See instructions)

EIN NUMBER ☐☐☐☐☐☐☐☐☐
OR
SSN NUMBER ☐☐☐☐☐☐☐☐☐

12. DUN & BRADSTREET NUMBER (if applicable)

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Federal Motor Carrier Safety Administration

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13. *FORM OF BUSINESS* *(Select all that apply)*

☐ *Sole Proprietor* ☐ *Partnership* ☐ *Limited Liability Company* ☐ *Corporation* *State of Incorporation* _____

☐ *Unit of State or Local Government*

14. OWNERSHIP and CONTROL

☐ Owned/controlled by citizen of U.S. ☐ Owned/controlled by citizen of Mexico

☐ Owned/controlled by citizen of Canada ☐ Owned/controlled by citizen of other foreign country _____
Name of Country

15. NAME(S) OF SOLE PROPRIETOR, PARTNERS, OR OFFICERS AND TITLES, (e.g. PRESIDENT, TREASURER, GENERAL PARTNER, LIMITED PARTNER)

NAME _____ TITLE _____

NAME _____ TITLE _____

NAME _____ TITLE _____

16. REVENUE: Enter your gross annual operating revenue for the last calendar year

Year: ☐☐☐☐ Revenue *(U.S. Dollars)*: $ _____ Number of months if partial year _____

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Federal Motor Carrier Safety Administration

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17. OPERATION CLASSIFICATION *(Check all items that apply)*

a. For-Hire Motor Carrier

☐ Property
- ☐ Hazardous Materials
- ☐ Household Goods
- ☐ Exempt Commodities
- ☐ Other Non-Hazardous Freight

☐ Passengers
- ☐ Charter & Special Operations
- ☐ Regular Route
- ☐ Limousine/Van Operations
- ☐ FTA Grantee

☐ Mexico-owned, U.S.-based Enterprise
- ☐ United States-based Enterprise Owned or Controlled by Persons of Mexico Providing Truck Services for the Transportation of International Cargo (except Household Goods)
- ☐ United States-based Enterprise Owned or Controlled by Persons of Mexico Providing Truck Services for the Transportation of International Household Goods Shipments
- ☐ Charter & Special Operations (passengers) – Mexico-owned, U.S.-based Enterprise
- ☐ Regular Route (passengers) – Mexico-owned, U.S.-based Enterprise

b. Private Motor Carrier
- ☐ Property – Hazardous Materials
- ☐ Property – Non-Hazardous Freight
- ☐ Passengers - Business
- ☐ Passengers - Non-business
- ☐ Migrant Workers

c. Property Broker
- ☐ General Freight (except Household Goods)
- ☐ Household Goods

d. Freight Forwarder
- ☐ General Freight (except Household Goods)
- ☐ Household Goods

e. ☐ **Government Entity**

f. ☐ **Cargo Tank Facility**

g. ☐ **Intermodal Equipment Provider**

h. ☐ **Other**_____

18. COMPANY CONTACT PERSON **(Please designate an individual within your company to respond to inquiries)**

_____
Name, title, and position

_____
Street Address

_____ City | _____ State/Province | _____ Country | _____ Zip Code/Postal Code | _____ Colonia – Mexico only

(_____) _____ Telephone Number | (_____) _____ Fax Number (optional) | (_____) _____ Cell Phone (optional) | _____ Internet E-mail Address (optional)

UNITED STATES DEPARTMENT OF TRANSPORTATION
Federal Motor Carrier Safety Administration

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19. APPLICANT'S REPRESENTATIVE (Please designate an individual to respond to inquiries, if applicable)

_____
Name and title, position, and relationship to applicant

_____
Street Address

City	State/Province	Country	Zip Code/Postal Code	Colonia – Mexico only

Telephone Number	Fax Number (optional)	Cell Phone (optional)	Internet E-mail Address (optional)
(_____) _____	(_____) _____	(_____) _____	_____

20. CERTIFICATION STATEMENT (to be completed by the applicant)

I, _____, certify that I am familiar with the Federal Motor Carrier Safety Regulations and, if applicable, the Federal
(Please Print Name)

Hazardous Materials Regulations, and the Federal Motor Carrier Commercial Regulations. Under penalties of perjury, under the laws of the United States of America, I certify that all information supplied on this form or relating to this application is true and correct. Further, I certify that I am qualifed and authorized to file this application. I know that willful misstatements or omissions of material facts constitute Federal criminal violations punishable under 18 U.S.C. § 1001 by imprisonment up to 5 years and fines up to $250,000 for each offense. Additionally, these statements are punishable as perjury under 18 U.S.C. § 1621, which provides for fines up to $250,000 or imprisonment up to 5 years for each offense.

I further certify under penalty of perjury, under the laws of the United States, that I have not been convicted, after September 1, 1989, of any Federal or State offense involving the distribution or possession of a controlled substance, or that if I have been so convicted, I am not ineligible to receive Federal benefits, either by court order or operation of law, pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988, formerly Pub. L. 100-690, Title V, Section 5301, Nov. 18, 1988, 102 Stat.4310, renumbered and amended Pub. L. 101-647, Title X, Section 1002(d), Nov. 29, 1990, 104 Stat. 4827) (21 U.S.C. § 826).

Signature _____ Date _____ Title _____

UNITED STATES DEPARTMENT OF TRANSPORTATION
Federal Motor Carrier Safety Administration

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SECTION B. OPERATION CLASSIFICATION *(TO BE COMPLETED BY ALL MOTOR CARRIERS, FREIGHT FORWARDERS WITH VEHICLES AND INTERMODAL EQUIPMENT PROVIDERS)*

21. TYPE OF OPERATION *Please check all that apply*: (HM= Hazardous Materials)

☐ INTERSTATE (NON-HM) ☐ INTERSTATE (HM) ☐ INTRASTATE (NON-HM) ☐ INTRASTATE (HM)

22. CARGO *Please check all classifications of cargo that applicant transports or handles*:

a.	☐	General Freight	p.	☐	Grain, Feed, Hay
b.	☐	Household Goods	q.	☐	Coal/Coke
c.	☐	Metal: Sheets, Coils, Rolls	r.	☐	Meat
d.	☐	Motor Vehicles	s.	☐	Garbage, Refuse, Trash
e.	☐	Driveaway-Towaway	t.	☐	U.S. Mail
f.	☐	Logs, Poles, Beams, Lumber	u.	☐	Chemicals
g.	☐	Building Materials	v.	☐	Commodities (Dry), in Bulk
h.	☐	Mobile Homes	w.	☐	Refrigerated Food
i.	☐	Machinery, Large Objects	x.	☐	Beverages
j.	☐	Fresh Produce	y.	☐	Paper Products
k.	☐	Liquid/Gases	z.	☐	Utility Service
l.	☐	Intermodal Containers	aa.	☐	Farm Supplies
m.	☐	Passengers	bb.	☐	Construction
n.	☐	Oil Field Equipment	cc.	☐	Water Well
o.	☐	Livestock	dd.	☐	Other *(Please specify)*: _____

23. MILEAGE (to the nearest 10,000 miles for last calendar year)

Please estimate the total number of miles your commercial motor vehicle(s) (leased or owned) traveled in the U.S. during the last calendar year.

Calendar Year: ☐☐☐☐ Mileage: _____

24. (a) NUMBER OF VEHICLES WITH A GROSS VEHICLE WEIGHT RATING (GVWR), GROSS COMBINATION WEIGHT RATING (GCWR), GROSS VEHICLE WEIGHT (GVW) OR GROSS COMBINATION WEIGHT (GCW) ≥ 10,001 POUNDS THAT WILL BE OPERATING IN THE U.S.

	Straight Truck(s)	Truck Tractor(s)	Trailer (s)	IEP Trailer Chassis only	Hazmat Cargo Tank Truck(s)	Hazmat Cargo Tank Trailer(s)	Motor Coaches	School Bus(es)			Mini-bus(es)	Van(s)		Limousine		
								Number of vehicles carrying number of passengers (including the driver) below								
								1-8	9-15	16+	16+	1-8	9-15	1-8	9-15	16+
Owned																
Term Leased																
Trip Leased																
Serviced																

(b) NUMBER OF VEHICLES WITH A GVWR, GCWR, GVW OR GCW ≥ 10,001 POUNDS THAT WILL BE OPERATING IN CANADA OR MEXICO. *(To be completed by US-domiciled motor carriers only)*

CANADA	MEXICO

(c) NUMBER OF VEHICLES WITH A GVWR, GCWR, GVW OR GCW ≥ 10,001 POUNDS THAT OPERATE INTERSTATE.

UNITED STATES DEPARTMENT OF TRANSPORTATION
Federal Motor Carrier Safety Administration

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USDOT Number: _____
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25. (a) NUMBER OF DRIVERS THAT WILL BE OPERATING IN THE U.S.

	INTERSTATE	INTRASTATE	TOTAL DRIVERS	TOTAL COMMERCIAL DRIVER'S LICENSE(CDL) DRIVERS
Within 100 air-mile Radius				
Beyond 100 air- mile Radius				

(b) NUMBER OF DRIVERS THAT WILL BE OPERATING IN CANADA OR MEXICO. *(To be completed by US-domiciled motor carriers only)*

CANADA	MEXICO

UNITED STATES DEPARTMENT OF TRANSPORTATION
Federal Motor Carrier Safety Administration

For FMCSA Use Only
Date Received: _____
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SECTION C. HAZARDOUS MATERIALS (HM)
(TO BE COMPLETED BY HM MOTOR CARRIERS/SHIPPERS)

26. HAZARDOUS MATERIALS CARRIED ***(Please circle all that apply)***
C (Carried) S (Shipped) B (Bulk) – >119 gallons for liquids, 882 pounds (lbs) for solids, 1,000 lbs. water capacity for gases in a single package NB (Non-Bulk) – <119 gallons

C S	**A.**	Div 1.1 Explosives (with mass explosion hazard)	B	NB
C S	**B.**	Div 1.2 Explosives (with projection hazard)	B	NB
C S	**C.**	Div 1.3 Explosives (with predominantly fire hazard)	B	NB
C S	**D.**	Div 1.4 Explosives (with no significant blast hazard)	B	NB
C S	**E.**	Div 1.5 Very insensitive explosives; blasting agents	B	NB
C S	**F.**	Div 1.6 Extremely insensitive detonating substances	B	NB
C S	**G.**	Div 2.1 Flammable gas	B	NB
C S	**H.**	Div 2.1 Liquefied Petroleum Gas (LPG)	B	NB
C S	**I.**	Div 2.1 Methane Gas	B	NB
C S	**J.**	Div 2.2 Non-flammable compressed gas	B	NB
C S	**K.**	Div 2.2 (Anhydrous Ammonia)	B	NB
C S	**L.**	Div 2.3 A (Poison Gas which is Poison Inhalation Hazard (PIH) Zone A	B	NB
C S	**M.**	Div 2.3 B (Poison Gas which in PIH Zone B)	B	NB
C S	**N.**	DIV 2.3 C (Poison Gas which is PIH Zone C)	B	NB
C S	**O.**	DIV 2.3 D (Poison Gas which is PIH Zone D)	B	NB
C S	**P.**	Class 3 Flammable and combustible liquid	B	NB
C S	**Q.**	Class 3 A (Flammable liquid which is a PIH Zone A)	B	NB
C S	**R.**	Class 3 B (Flammable liquid which is a PIH Zone B)	B	NB
C S	**S.**	Combustible Liquid (Refer to 49 CFR § 173.20 (b))	B	NB
C S	**T.**	Div 4.1 Flammable Solid	B	NB
C S	**U.**	Div 4.2 Spontaneously combustible material	B	NB
C S	**V.**	Div 4.3 Dangerous when wet material	B	NB
C S	**W.**	Div 5.1 Oxidizer	B	NB
C S	**X.**	Div 5.2 Organic Peroxide	B	NB
C S	**Y.**	Div 6.2 Infectious substance (Etiologic agent)	B	NB
C S	**Z.**	Div 6.1 A (Poison Liquid which is a PIH Zone A)	B	NB
C S	**AA.**	Div 6.1 B (Poison Liquid which is a PIH Zone B)	B	NB
C S	**BB.**	Div 6.1 Poison (Poisonous liquid with no inhalation hazard)	B	NB
C S	**CC.**	Div 6.1 Solid (Meets the definition of a poisonous solid)	B	NB
C S	**DD.**	Class 7 Radioactive materials.	B	NB
C S	**EE.**	Highway Route Controlled Quantity of Radioactive Material (HRCQ)	B	NB
C S	**FF.**	Class 8 Corrosive material	B	NB
C S	**GG**	Class 8 A (Corrosive liquid which is a PIH Zone A)	B	NB
C S	**HH.**	Class 8 B (Corrosive liquid which is a PIH Zone B)	B	NB
C S	**II.**	Class 9 Miscellaneous hazardous material	B	NB
C S	**JJ.**	Elevated Temperature Material (Meets definition in 49 CFR § 171.8 for an elevated temperature material)	B	NB
C S	**KK.**	Infectious Waste (Meets definition in 49 CFR 171.8 for an infectious waste)	B	NB
C S	**LL.**	Marine Pollutants (Meets Definition in 49 CFR § 171.8 for a marine pollutant)	B	NB
C S	**MM.**	Hazardous Substances (RQ) (Meets definition in 49 CFR § 171.8 of a reportable quantity of a hazardous substance)	B	NB
C S	**NN.**	Hazardous Waste (Meets definition in 49 CFR § 171.8 of a hazardous waste)	B	NB
C S	**OO.**	ORM (Meets definition in 49 CFR § 171.8 of Other Regulated Material)	B	NB

UNITED STATES DEPARTMENT OF TRANSPORTATION
Federal Motor Carrier Safety Administration

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SECTION D. HAZARDOUS MATERIALS PERMITTING *(TO BE COMPLETED BY HM MOTOR CARRIERS)*

27. WHICH OF THE FOLLOWING HAZARDOUS MATERIAL(S) DOES YOUR COMPANY TRANSPORT? CHECK ALL THAT APPLY:

Highway Route Controlled Quantities (HRCQ) of Radioactive materials.

More than 25 kg (55 pounds) of a Division 1.1, 1.2, or 1.3 material or a quantity of Division 1.5 material that requires placarding.

For materials that meet the definition of "material poisonous by inhalation" (TIH) as defined in 49 CFR 171.8: More than 1 liter (L)(1.08 quarts) per package of a material meeting the definition of a Hazard Zone A TIH material, a material meeting the definition of a Hazard Zone B TIH material in a bulk package (capacity greater than 450 liters [119 gallons]), or a material meeting the definition of a Hazard Zone C or D TIH material in a bulk packaging that has a capacity greater than 13,248 L (3,500 gallons).

Shipments of compressed or refrigerated liquid methane or liquefied natural gas with a methane content of at least 85% in a bulk packaging that has a capacity greater than 13,248 L (3,500 gallons)

28. IF YOU CHECKED QUESTION 27, ARE YOU APPLYING FOR OR RENEWING A HAZARDOUS MATERIAL (HM) SAFETY PERMIT? PLEASE CHECK ONE:	Initial Renewal
29. IF YOUR COMPANY DOES NOT HAVE A U.S. DOT NUMBER, HOW MANY ACCIDENTS AS DEFINED IN 49 CFR 390.5 HAS YOUR COMPANY HAD IN THE PAST 12 MONTHS?	
30. DOES YOUR COMPANY CERTIFY IT HAS A SATISFACTORY SECURITY PROGRAM IN PLACE AS REQUIRED IN 49 CFR PART 385, SUBPART E?	Yes No
31. IS YOUR COMPANY REQUIRED BY ANY STATE(S) TO HAVE A PERMIT FOR ANY OF THE HAZARDOUS MATERIALS LISTED IN QUESTION 27?	Yes No

32. IF YOUR ANSWER TO QUESTION 31 IS YES, CHECK THE STATE(S) IN WHICH YOU HAVE THE PERMIT.

AL	AK	AR	AZ	CA	CO	CT	DC	DE	FL	GA
HI	ID	IL	IN	IA	KS	KY	LA	MA	MD	ME
MI	MN	MO	MS	MT	NC	ND	NE	NH	NJ	NM
NV	NY	OH	OK	OR	PA	PR	RI	SC	SD	TN
TX	UT	VT	VA	WA	WV	WI	WY			

NOTE: All motor carriers must comply with all pertinent Federal, State, local and tribal statutory and regulatory requirements when operating within the United States. Such requirements include, but are not limited to, all applicable statutory and regulatory requirements administered by the U.S. Department of Labor, or by a State agency operating a plan pursuant to Section 18 of the Occupational Safety and Health Act of 1970 ("OSHA State plan agency"). Such requirements also include all applicable statutory and regulatory environmental standards and requirements administered by the U.S. Environmental Protection Agency or a State, local or tribal environmental protection agency. Compliance with these statutory and regulatory requirements may require motor carriers and/or individual operators to produce documents for review and inspection for the purpose of determining compliance with such statutes and regulations.

UNITED STATES DEPARTMENT OF TRANSPORTATION
Federal Motor Carrier Safety Administration

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33. CERTIFICATION STATEMENT (TO BE COMPLETED BY AN AUTHORIZED OFFICIAL)
I, _____, certify that I am familiar with the Federal Hazardous Materials Regulations. Under penalties of perjury, I declare that the information entered on this report is, to the best of my knowledge and belief, true, correct, and complete.

Signature _____ Date _____ Title _____

UNITED STATES DEPARTMENT
OF TRANSPORTATION
Federal Motor Carrier Safety Administration

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SECTION E. CARGO TANK FACILITY *(TO BE COMPLETED BY AN APPLICANT REGISTERING CARGO TANK FACILITIES UNDER 49 CFR PART 107, SUBPART F)*

34. Please refer to instructions for Section E to complete the following information for each cargo tank facility being registered.

Functions	Exemptions/Special permits		Vehicles					
☐ External Visual Inspection			☐ MC306 ☐ MC307 ☐ MC312	☐ MC330 ☐ MC331 ☐ MC338	☐ DOT406 ☐ DOT407 ☐ DOT412	☐ MC300 ☐ MC301 ☐ MC302	☐ MC303 ☐ MC304 ☐ MC305	☐ MC310 ☐ MC311
☐ Internal Visual Inspection			☐ MC306 ☐ MC307 ☐ MC312	☐ MC330 ☐ MC331 ☐ MC338	☐ DOT406 ☐ DOT407 ☐ DOT412	☐ MC300 ☐ MC301 ☐ MC302	☐ MC303 ☐ MC304 ☐ MC305	☐ MC310 ☐ MC311
☐ Leakage Test			☐ MC306 ☐ MC307 ☐ MC312	☐ MC330 ☐ MC331 ☐ MC338	☐ DOT406 ☐ DOT407 ☐ DOT412	☐ MC300 ☐ MC301 ☐ MC302	☐ MC303 ☐ MC304 ☐ MC305	☐ MC310 ☐ MC311
☐ Lining Inspection			☐ MC306 ☐ MC307 ☐ MC312	☐ MC330 ☐ MC331 ☐ MC338	☐ DOT406 ☐ DOT407 ☐ DOT412	☐ MC300 ☐ MC301 ☐ MC302	☐ MC303 ☐ MC304 ☐ MC305	☐ MC310 ☐ MC311
☐ Thickness Test			☐ MC306 ☐ MC307 ☐ MC312	☐ MC330 ☐ MC331 ☐ MC338	☐ DOT406 ☐ DOT407 ☐ DOT412	☐ MC300 ☐ MC301 ☐ MC302	☐ MC303 ☐ MC304 ☐ MC305	☐ MC310 ☐ MC311
☐ Pressure Test			☐ MC306 ☐ MC307 ☐ MC312	☐ MC330 ☐ MC331 ☐ MC338	☐ DOT406 ☐ DOT407 ☐ DOT412	☐ MC300 ☐ MC301 ☐ MC302	☐ MC303 ☐ MC304 ☐ MC305	
☐ Manufacture			☐ MC331 ☐ MC338		☐ DOT406 ☐ DOT407 ☐ DOT412			
☐ Assembly			☐ MC306 ☐ MC307 ☐ MC312	☐ MC330 ☐ MC331 ☐ MC338	☐ DOT406 ☐ DOT407 ☐ DOT412	☐ MC300 ☐ MC301 ☐ MC302	☐ MC303 ☐ MC304 ☐ MC305	☐ MC310 ☐ MC311
☐ Repair (Non-ASME)			☐ MC306 ☐ MC307 ☐ MC312	☐ MC330 ☐ MC331 ☐ MC338	☐ DOT406 ☐ DOT407 ☐ DOT412	☐ MC300 ☐ MC301 ☐ MC302	☐ MC303 ☐ MC304 ☐ MC305	☐ MC310 ☐ MC311
☐ Repair (ASME)			☐ MC306 ☐ MC307 ☐ MC312	☐ MC330 ☐ MC331 ☐ MC338	☐ DOT406 ☐ DOT407 ☐ DOT412	☐ MC300 ☐ MC301 ☐ MC302	☐ MC303 ☐ MC304 ☐ MC305	☐ MC310 ☐ MC311
☐ Certification (Design Certified Engineer)			☐ MC306 ☐ MC307 ☐ MC312	☐ MC330 ☐ MC331 ☐ MC338	☐ DOT406 ☐ DOT407 ☐ DOT412	☐ MC300 ☐ MC301 ☐ MC302	☐ MC303 ☐ MC304 ☐ MC305	☐ MC310 ☐ MC311
☐ Component Manufacture								

Mobile Testing Information				
Where do you use testing/ inspection equipment?	○ None	○ Fixed Facility	○ Mobile	○ Both

Processing Agent *(To be completed if the registrant is not a resident of the United States)*	
Name:	
Street:	
City:	
State:	Zip/Postal Code
Responsible Person (Facility Location)	
Title:	Position:
First Name:	Last Name:
Phone:	Fax:
Email:	

UNITED STATES DEPARTMENT OF TRANSPORTATION
Federal Motor Carrier Safety Administration

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Design Certified Engineers/Registered Inspectors	
Name:	**Type:**
Street:	**Type:**

Non-Employee Design Certified Engineers/Registered Inspectors		
Cargo Tank #	**Type**	**Company**

Stamp			
Stamp Type	**Certification #**	**Authorization Date**	**Expiration Date**

I certify that all Registered Inspectors and Design Certifying Engineers used in performance of the prescribed functions meet the minimum qualification requirements set forth in 49 CFR 171.8, that I am the person responsible for ensuring compliance with the applicable requirements of this chapter, and that I have knowledge of the requirements applicable to the functions to be performed.

Under penalties of perjury, I declare that the information entered on this report is, to the best of my knowledge and belief, true, correct and complete.

○ Yes	○ No

Certifying Name:
Certifying Title:
Certifying Email:

SECTION F. TRANSPORTATION OF HOUSEHOLD GOODS *(TO BE COMPLETED BY HOUSEHOLD GOODS MOTOR CARRIERS, HOUSEHOLD GOODS BROKERS, AND HOUSEHOLD GOODS FREIGHT FORWARDERS)*

35. CERTIFICATION: ARBITRATION PROGRAM AND TARIFF

MOTOR CARRIER OF HOUSEHOLD GOODS (including United States-based enterprises transporting international household goods shipments)

I, _____, certify that I am fit, willing, and able to provide the specialized
Print First and Last Name and Title

services necessary to transport household goods. I am familiar with FMCSA regulations for household goods movements, have acquired or am willing to acquire the protective equipment and trained operators necessary to perform household goods movements. I certify that my tariff is available for inspection by shippers upon reasonable request. I further certify that I will offer arbitration as a means of settling loss and damage disputes and disputes regarding carrier charges in addition to those collected at delivery. The following information can be used to contact a representative of the arbitration program in which I will participate.

Contact information for the arbitration program in which I will participate:

Name	Address	Telephone Number

_____
Signature of Motor Carrier Representative

UNITED STATES DEPARTMENT OF TRANSPORTATION
Federal Motor Carrier Safety Administration

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Date Received: _____
USDOT Number: _____
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☐ Active _____

BROKER OF HOUSEHOLD GOODS

I, _____, certify that applicant is fit, willing, and able to provide household
Print Name and Title

goods brokerage operations and to comply with all pertinent statutory and regulatory requirements.

Signature of Company Official	Date	Title

FREIGHT FORWARDER OF HOUSEHOLD GOODS

I, _____, certify that applicant is fit, willing, and able to provide household
Print Name and Title

goods freight-forwarding operations and to comply with all pertinent statutory and regulatory requirements.

Signature of Company Official	Date	Title

HOUSEHOLD GOODS MOTOR CARRIER APPLICANTS MUST :

1. Provide evidence of participation in an arbitration program and a copy of the notice they provide to shippers of the availability of binding arbitration.

2. Identify their tariff and provide a copy of the notice to shippers of the availability of that tariff for inspection, indicating how that notice is provided.

3. Disclose the following:
(a) Do you currently have, or have you had within the last 3 years of the date of filing this application, relationships involving common stock, common ownership, common management, or common familial relationships with any other motor carrier, freight forwarder, or broker of household goods?

YES NO

(b) If yes, please provide the following information for all applicable relationships in 3(a) above (supplemental documents should be scanned and uploaded along with this application)::

- Description of affiliate or relationship
- Name of the company
- MC/FF Number
- USDOT Number
- Latest DOT safety rating

Applicant certifies that it has access to, has read, is familiar with, and will observe all applicable Federal laws relating to consumer protection, estimating, consumers' rights and responsibilities, and options for liability for loss and damage.

Signature of Company Official	Date	Title

UNITED STATES DEPARTMENT OF TRANSPORTATION
Federal Motor Carrier Safety Administration

For FMCSA Use Only
Date Received: _____
USDOT Number: _____
☐ Inactive _____
☐ Active _____

SECTION G. TRANSPORTATION OF PASSENGERS *(TO BE COMPLETED BY PASSENGER CARRIERS)*

36. GOVERNMENT FUNDING STATUS - SPECIFY THE NATURE OF GOVERNMENTAL FINANCIAL ASSISTANCE YOU RECEIVE, IF ANY, BY CHECKING THE APPROPRIATE BOX BELOW (Check only one box)

☐ **Public recipient** - Applicant is any of the following: any State; any municipality or other political subdivision of a State; any public agency or instrumentality of such entities of one or more State(s); an Indian tribe; and any corporation, board or other person owned or controlled by such entities or owned by, controlled by, or under common control with such a corporation, board, or person which is receiving or has ever received governmental financial assistance for the purchase or operation of any bus.

☐ **Private recipient** – Applicant is not a public recipient but is receiving, or has received in the past, governmental financial assistance in the form of a subsidy for the purchase, lease or operation of any bus.

☐ **Non-recipient** – Applicant is not receiving, or using equipment acquired with, governmental financial assistance.

Public Interest Criteria: Regular route public and private recipient applicants may introduce supplemental evidence describing how the proposed service will respond to existing transportation needs or is otherwise consistent with the public interest. Filing this evidence with the application is optional, but it may be needed later, if the application is protested.
Public Recipient Applicants: All public recipient applicants for charter or special transportation must submit evidence to demonstrate either that:

(1) No motor carrier of passengers (other than a motor carrier of passengers that is a public recipient of governmental assistance) is providing, or is willing and able to provide, the transportation to be authorized by the certificate; or
(2) The transportation to be authorized by the certificate is to be provided entirely in the area in which the public recipient provides regularly scheduled mass transportation services.

Supplemental evidence should be scanned and uploaded along with your application.

Fitness Only Criteria: No additional evidence is needed from non-recipient applicants for charter and special transportation.

37. PASSENGER CARRIER COMPLIANCE CERTIFICATION

I, _____, certify that I am fit, willing, and able to comply with all pertinent
Print Name and Title

statutory and regulatory requirements including the U.S. Department of Transportation's Americans with Disabilities Act regulations for over-the-road bus companies located at 49 CFR Part 37, Subpart H, if applicable.

_____ _____ _____
Signature of Company Official Date Title

Private entities that are primarily in the business of transporting people, whose operations affect commerce, and that transport passengers in an over-the-road bus (defined as a bus characterized by an elevated passenger deck over a baggage compartment) are subject to the U.S. Department of Transportation's Americans with Disabilities Act regulations, located at 49 CFR Part 37, Subpart H. Charter and special transportation corresponds to demand responsive service and service over regular routes corresponds to fixed route service under the Americans with Disabilities Act regulations for over-the-road bus companies located at 49 CFR Part 37, Subpart H. For a general overview of these regulations, please refer to the Federal Motor Carrier Safety Administration's website at www.fmcsa.dot.gov.

UNITED STATES DEPARTMENT OF TRANSPORTATION
Federal Motor Carrier Safety Administration

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Date Received: _____
USDOT Number: _____
☐ Inactive _____
☐ Active _____

SECTION H. SCOPE OF AUTHORITY *(TO BE COMPLETED BY PASSENGER CARRIERS)*

38.

(1) ☐ Charter and special transportation, in interstate or foreign commerce, between points in the United States.

(2) ☐ Charter and special transportation, in interstate or foreign commerce, between points in the United States, provided by United States-based enterprises owned or controlled by persons of Mexico.

(3) ☐ Service as a passenger carrier over regular routes. (Regular route passenger carrier authority to perform regularly scheduled service.) Regular route passenger service includes authority to transport newspapers, baggage of passengers, express packages, and mail in the same motor vehicle with passengers, or baggage of passengers in a separate motor vehicle. Public recipient applicants requesting authority to operate over regular routes should scan and upload to the application a description of the specific routes over which you intend to provide regularly scheduled service. You must also furnish a map clearly identifying each regular route involved in your passenger carrier service description(s).

(4) ☐ Service as a passenger carrier over regular routes provided by United States-based enterprises owned or controlled by persons of Mexico. Regular route passenger service includes authority to transport newspapers, baggage of passengers, express packages, and mail in the same motor vehicle with passengers, or baggage of passengers in a separate motor vehicle.

(5) ☐ Intrastate regular route authority
Are you also requesting **intrastate authority** to provide the service described in item 3 or 4?
YES NO

NOTE: The FMCSA has no jurisdiction to grant intrastate authority independently of interstate regular route authority. No carrier may conduct operations under a certificate authorizing intrastate regular route service unless it actually is conducting substantial operations in interstate commerce over the same route(s).

UNITED STATES DEPARTMENT OF TRANSPORTATION
Federal Motor Carrier Safety Administration

For FMCSA Use Only
Date Received: _____
USDOT Number: _____
☐ Inactive _____
☐ Active _____

SECTION I. COMMERCIAL ZONE OPERATIONS *(TO BE COMPLETED BY MEXICO-DOMICILED MOTOR CARRIERS OPERATING EXCLUSIVELY WITHIN COMMERCIAL ZONES)*

"Within Commercial Zones" refers to service between Mexico and the United States entirely within the commercial zone of a municipality that is adjacent to Mexico. A Mexico-domiciled motor carrier may not provide point-to-point transportation services, including express delivery services, within the United States for goods other than international cargo.

39. SCOPE OF REGISTRATION

☐ Service as a for-hire motor carrier of property (except household goods) within the commercial zones

☐ Service as a for-hire motor carrier of household goods within the commercial zones

☐ Service as a private motor carrier of property (handling applicant's own goods) within the commercial zones

☐ Service as a passenger motor carrier within the commercial zones

40. UNITED STATES ADDRESS: (a) Do you currently maintain an office in the United States?

YES NO

(b) If yes, please provide the full street address, telephone number, and fax number.

_____
Street Address

_____ _____ _____ _____
City State Country Zip Code

(_____) _____ (_____) _____
(Telephone Number) (Fax Number)

SECTION J. NON-NORTH AMERICA-DOMICILED CARRIERS *(TO BE COMPLETED BY MOTOR CARRIERS NOT DOMICILED IN THE UNITED STATES, MEXICO OR CANADA)*

"Non-North America-domiciled" refers to an applicant whose principal place of business is located outside of the United States, Mexico, or Canada and is seeking to provide the following transportation service in foreign commerce:

41. SCOPE OF REGISTRATION

☐ Transportation of property by a Non-North America-domiciled motor carrier between points outside of the United States and all points in the United States.

☐ Transportation of passengers by a non-North America-domiciled passenger carrier providing charter and tour bus operations between points outside of the United States and points in the United States.

☐ Transportation of passengers by a non-North America-domiciled private motor carrier of passengers between points outside of the United States and points in the United States.

42. Indicate the principal border crossing points that applicant intends to utilize.

_____
_____
_____

UNITED STATES DEPARTMENT OF TRANSPORTATION
Federal Motor Carrier Safety Administration

For FMCSA Use Only
Date Received: _____
USDOT Number: _____
☐ Inactive _____
☐ Active _____

43. UNITED STATES ADDRESS: (a) Do you currently maintain an office in the United States?

YES NO

(b) If yes, please provide the full street address, telephone number, and fax number.

_____
Street Address

_____ _____ _____ _____
City State Country Zip Code

(_____) _____ (_____) _____
(Telephone Number) (Fax Number)

UNITED STATES DEPARTMENT OF TRANSPORTATION
Federal Motor Carrier Safety Administration

For FMCSA Use Only
Date Received: _____
USDOT Number: _____
☐ Inactive _____
☐ Active _____

SECTION K. ADDITIONAL INFORMATION *(TO BE COMPLETED BY FOR-HIRE MOTOR CARRIERS AND PRIVATE HAZARDOUS MATERIALS CARRIERS, INCLUDING THOSE DOMICILED IN MEXICO AND OUTSIDE OF-NORTH AMERICA, AND BY BROKERS AND FREIGHT FORWARDERS)*

44. FINANCIAL RESPONSIBILITY *(Check all boxes that apply)*

If applicant is a Mexico-domiciled motor carrier of property and operates exclusively within the U.S.-Mexico border commercial zones, please skip to item 44f, under this section.

a. MOTOR PASSENGER CARRIER

For-Hire motor passenger carriers operating in the United States, including Mexico-domiciled motor passenger carriers, must maintain public liability insurance. The minimum amount of coverage is shown in parentheses.

(Please check only one): Applicant

☐ Has one or more vehicles with a seating capacity of 16 passengers or more, including the driver ($5,000,000 U.S.)

☐ Has only motor vehicles with a seating capacity of 15 passengers or fewer, including the driver ($1,500,000 U.S.)

☐ Receives a grant from the Federal Transit Administration (FTA) under 49 U.S.C. §§ 5307, 5310, or 5311. Applicant understands that it is not required to comply with FMCSA's minimum levels of public liability insurance, and that applicant is required to maintain financial responsibility at the highest level required by any State within its transit service area (see 49 U.S.C. § 31138 (e) (4)).

Applicant's transit area lies within the borders of the following State(s): _____

Applicant will maintain financial responsibility in the amount of $ _____

Applicant's insurance company ☐ has filed ☐ will file proof of liability insurance coverage.

Note: Grantees under 49 U.S.C. §§ 5307, 5310, or 5311 that file evidence of State-prescribed financial responsibility limits that are lower than the Federal limits will be registered to provide interstate service within their designated transit service area only.

b. MOTOR PROPERTY CARRIER

☐ Applicant will operate motor vehicles having a gross vehicle weight rating (GVWR) or gross combination weight rating (GCWR) of 10,001 pounds (4,536 kg.) or more to transport:

- ☐ Non-hazardous commodities ($750,000 U.S.)
- ☐ Hazardous materials referenced in the FMCSA regulations at 49 CFR 387.303(b)(2)(c) ($1,000,000 U.S.)
- ☐ Hazardous materials referenced in the FMCSA regulations at 49 CFR 387.303(b)(2)(b) ($5,000,000 U.S.)

☐ Applicant will only operate motor vehicles having a gross vehicle weight under 10,001 pounds (4,536 kg). Applicant will transport:

- ☐ Any quantity of Divisions 1.1, 1.2 or 1.3 explosives, any quantity of poison gas (Division 2.3, Hazard Zone A or Division 6.1, Packing Group 1, Hazard Zone A materials), or highway route-controlled quantity radioactive materials as defined in 49 CFR 173.455 ($5,000,000 U.S.)

☐ Applicant will operate vehicles under 10,001 pounds

- ☐ Commodities other than those listed above ($300,000 U.S.)

c. PROPERTY BROKER

(Please select one): Applicant's surety company/financial institution

☐ Has filed a property broker's surety bond or trust fund agreement in the amount of $10,000

☐ Will file a property broker's surety bond or trust fund agreement in the amount of $10,000

d. SELF-INSURED CARRIERS/FREIGHT FORWARDERS

Applicant has received authorization from FMCSA to self-insure its:

☐ Bodily Injury and Property Damage (BI&PD) liability ☐ Cargo liability ☐ both BI&PD and Cargo liability

and applicant is in full compliance with the conditions of the Agency's decision authorizing it to self-insure.

UNITED STATES DEPARTMENT OF TRANSPORTATION
Federal Motor Carrier Safety Administration

For FMCSA Use Only
Date Received: _____
USDOT Number: _____
☐ Inactive _____
☐ Active _____

e. **FREIGHT FORWARDER**

☐ Applicant will operate as a freight forwarder only and seeks a waiver of BI&PD liability requirements by certifying that in its forwarding operations applicant: (1) will not own or operate any motor vehicles upon highways in the transportation of property; (2) will not perform transfer, collection, or delivery services; and (3) will not have motor vehicles operated under its direction and control in the performance of transfer, collection, or delivery services.

☐ Applicant will operate vehicles having Gross Vehicle Weight Ratings (GVWR) of 10,001 pounds or more to transport:

- ☐ Non-hazardous commodities ($750,000 U.S.).
- ☐ Hazardous materials referenced in the FMCSA's insurance regulations at 49 CFR 387.303(b)(2)(c)($1,000,000 U.S.).
- ☐ Hazardous materials referenced in the FMCSA's insurance regulations at 49 CFR 387.303(b)(2)(b)($5,000,000 U.S.).

☐ Applicant will operate only vehicles having Gross Vehicle Weight Ratings (GVWR) under 10,001 pounds to transport:

- ☐ Any quantity of Classes A or B explosives, any quantity of poison gas (Poison A), or highway route controlled quantity of radioactive materials ($5,000,000 U.S.).
- ☐ Commodities other than those listed above ($300,000 U.S.).

☐ Applicant will maintain cargo insurance (HHG freight forwarders only) ($5,000 U.S. / $10,000 U.S.).

f. **MOTOR CARRIERS DOMICILED IN MEXICO ONLY**

Has applicant operated, or does applicant currently operate, under insurance issued by an insurance or surety company in amounts meeting FMCSA minimum financial responsibility requirements for periods of 24 hours or longer for movements in the U.S. border commercial zones?

☐ Yes ☐ No See 49 CFR 387.303(b)(4)

g. **INSURANCE INFORMATION**

Applicant must maintain insurance coverage for bodily injury and property damage

Please provide the following information:

Insurance Company _____
Address _____
_____
Maximum Insurance Amount _____
Policy Number _____
Date Issued _____
Insurance Effective Date _____ Expiration Date _____

SELF INSURED for _____BI&PD and _____Cargo or self-insured up to _____ for BI&PD and/or _____Cargo.

45. AFFILIATION WITH OTHER FORMER ICC, FHWA, OMCS, OR FMCSA LICENSED ENTITIES

Disclose all relationships applicant now has, or have had in the past 3 years, with other FMCSA-regulated entities. This could be in the form of a percentage of stock ownership, a loan, or a management position. If this requirement applies to applicant, provide the name of the company, MC/MX/FF-Number, USDOT Number, and the company's latest U.S. DOT safety rating. (If applicant requires more space, scan and upload the additional information)

Applicant must indicate whether these entities are currently disqualified from operating commercial motor vehicles anywhere in the United States pursuant to section 219 of the Motor Carrier Safety Improvement Act of 1999 (MCSIA) (Public Law 106-159, 113 Stat. 1748 (Dec. 9, 1999)).

USDOT #	MC/MX/FF No.	Legal Name	DBA Name	Current Safety Rating	Revoked

UNITED STATES DEPARTMENT OF TRANSPORTATION
Federal Motor Carrier Safety Administration

For FMCSA Use Only
Date Received: _____
USDOT Number: _____
☐ Inactive _____
☐ Active _____

46. DESIGNATION OF AGENTS FOR SERVICE OF PROCESS

Form No. BOC-3 ☐ on file with FMCSA. ☐ will be filed electronically.

UNITED STATES DEPARTMENT
OF TRANSPORTATION
Federal Motor Carrier Safety Administration

For FMCSA Use Only
Date Received: _____
USDOT Number: _____
☐ Inactive _____
☐ Active _____

SECTION L. SAFETY CERTIFICATIONS *(TO BE COMPLETED BY MEXICO-DOMICILED and NON-NORTH AMERICA-DOMICILED MOTOR CARRIERS)*

47. SAFETY CERTIFICATIONS FOR MEXICO-DOMICILED AND NON-NORTH AMERICA-DOMICILED CARRIERS

	YES	NO
a. Applicant maintains current copies of all U.S. DOT Federal Motor Carrier Safety Regulations, Federal Motor Vehicle Safety Standards and if applicable the Federal Hazardous Materials Regulations (if a property carrier transporting hazardous materials), and Federal Motor Carrier Commercial Regulations, understands and will comply with such regulations, and has ensured that all company personnel are aware of these requirements.	☐	☐

b. Individual responsible for compliance with applicable regulatory and safety requirements.

Full Name	Complete Address	Position Title

c. Applicant certifies that the following tasks and measures will be fully accomplished and procedures fully implemented before it commences operations in the United States:

I. DRIVER QUALIFICATIONS

	YES	NO
1. The carrier has in place a system and procedures for ensuring the continued qualification of drivers to operate safely, including a safety record for each driver, procedures for verification of proper age and licensing of each driver, and procedures for identifying drivers who are not complying with the U.S. safety regulations, and a description of a retraining and educational program for poorly performing drivers.	☐	☐
2. The carrier has procedures in place to review drivers' employment and driving histories for at least the last 3 years, to determine whether the individual is qualified and competent to drive safely.	☐	☐
3. The carrier has established a program to review the records of each driver at least once every twelve (12) months and will maintain a record of the review.	☐	☐
4. The carrier will ensure, once operations in the United States have begun, that all of its drivers operating in the United States are at least 21 years of age and possess a valid Commercial Driver's License or a valid Licencia Federal de Conductor (LFC) and that the driver's LFC is registered in Mexico's SCT database.	☐	☐

II. HOURS-OF-SERVICE

	YES	NO
1. The carrier has in place a record keeping system and procedures to monitor the hours-of-service performed by drivers, including procedures for continuing review of drivers' log books, and for ensuring compliance with all operations requirements.	☐	☐
2. The carrier has ensured that all drivers to be used in the United States are knowledgeable of the United States' hours-of-service requirements, and has clearly and specifically instructed drivers about the application to them of the 11-hour, 14-hour, and 60- and 70-hour rules, as well as the requirement for preparing daily log entries in their own handwriting for each 24-hour period.	☐	☐
3. The carrier has attached, as Attachment F to this application, statements describing the carrier's monitoring procedures to ensure that its drivers complete logbooks correctly, and describing the carrier's record keeping and driver review procedures.	☐	☐
4. The carrier will ensure, once operations in the United States have begun, that its drivers operate within the hours-of-service rules and are not fatigued while on duty.	☐	☐

UNITED STATES DEPARTMENT OF TRANSPORTATION
Federal Motor Carrier Safety Administration

For FMCSA Use Only
Date Received: _____
USDOT Number: _____
☐ Inactive _____
☐ Active _____

III. DRUG AND ALCOHOL *(To be completed by motor carriers subject to drug and alcohol testing only)*		
1.	The carrier is familiar with the alcohol and controlled substance testing requirements of 49 CFR part 382 and 49 CFR part 40 and has in place a program for systematic testing of drivers.	YES ☐ NO ☐
2.	The carrier has attached, as Attachment A to this application, the name, address, and telephone number of the person(s) responsible for implementing and overseeing alcohol and drug programs and the name, address and telephone number of the drug testing laboratory and alcohol testing services that are used by the company.	YES ☐ NO ☐
IV. VEHICLES		
1.	The carrier has established a system and procedures for inspection, repair and maintenance of its vehicles in a safe condition, and for preparation and maintenance of records of inspection, repair, and maintenance in accordance with the U.S. DOT's Federal Motor Carrier Safety Regulations and, if applicable, the Federal Hazardous Materials Regulations and the Federal Commercial Regulations.	YES ☐ NO ☐
2.	The carrier has inspected all vehicles that will be usd in the United States before the beginning of such operations and has proof of the inspection on board the vehicle as required by 49 CFR 396.17.	YES ☐ NO ☐
3.	The carrier will ensure, once operations in the United States have begun, that all vehicles it operates in the United States were manufactured or have been retrofitted in compliance with the applicable U.S. DOT Federal Motor Vehicle Safety Standards or Canadian Motor Vehicle Safety Standards in effect at the time of manufacture.	YES ☐ NO ☐
4.	The carrier will ensure, once operations in the United States have begun, that all violations and defects noted on inspection reports are corrected before vehicle and drivers are permitted to enter the United States.	YES ☐ NO ☐
5.	The carrier will ensure that all vehicles operated in the United States are inspected at least every 90 days by a certified inspector in accordance with the requirements for a Level1 Inspection under the criteria of the North American Standard Inspection, as defined in 49 CFR 350.105, once operations in the United States begin and until such time as the carrier has held permanent registration from the FMCSA for at least 36 consecutive months. After the 36-month period expires, the carrier will ensure that all vehicles operated in the United States are inspected in accordance with 49 CFR 396.17 at least once every 12 months thereafter. (To be completed by Non-North America-domiciled carriers only)	YES ☐ NO ☐
V. ACCIDENT MONITORING		
1.	The carrier has in place a program for monitoring vehicle accidents and it maintains an accident register in accordance with 49 CFR 390.15.	YES ☐ NO ☐
2.	The carrier has attached, as Attachment B to this application, a copy of its accident register for the previous 12 months, or a description of how the company will maintain this register once it begins operations in the United States.	YES ☐ NO ☐
3.	The carrier has established an accident countermeasures program and driver training program to reduce accidents.	YES ☐ NO ☐
4.	The carrier has attached, as Attachment C to this application, a description and explanation of the accident monitoring program it has implemented for its operations in the United States.	YES ☐ NO ☐

UNITED STATES DEPARTMENT OF TRANSPORTATION
Federal Motor Carrier Safety Administration

For FMCSA Use Only
Date Received: _____
USDOT Number: _____
☐ Inactive _____
☐ Active _____

VI. PRODUCTION OF RECORDS		
1.	The carrier can and will produce records demonstrating compliance with the safety requirements within 48 hours of receipt of a request from a representative of the USDOT/FMCSA or other authorized Federal or State official.	YES ☐ NO ☐
2.	The carrier is including as Attachment D to this application the name, address, and telephone number of the employee to be contacted for requesting records.	YES ☐ NO ☐
VII. HAZARDOUS MATERIALS (To be completed by motor carriers of hazardous materials only)		
1.	The HM carrier has full knowledge of the U.S. DOT Hazardous Materials Regulations, and has established programs for the thorough training of its personnel as required under 49 CFR part 172, Subpart H and 49 CFR 177.816. The HM carrier has attached a statement providing information concerning (1) the names of employees responsible for ensuring compliance with HM regulations, (2) a description of their HM safety functions, and (3) a copy of the information used to provide HM training.	YES ☐ NO ☐
2.	The carrier has established a system and procedures for inspection, repair and maintenance of its reusable hazardous materials packages (cargo tanks, portable tanks, cylinders, intermediate bulk containers, etc.,) in a safe condition, and for preparation and maintenance of records of inspection, repair and maintenance in accordance with the U.S. DOT Hazardous Materials Regulations.	YES ☐ NO ☐
3.	The HM carrier has established a system and procedures for filing and maintaining HM shipping documents.	YES ☐ NO ☐
4.	The HM carrier has a system in place to ensure that all HM trucks are marked and placarded as required by 49 CFR part 172, subparts D and F.	YES ☐ NO ☐
5.	The carrier will register under 49 CFR part 107, subpart G, if transporting any quantity of hazardous materials requiring the vehicle to be placarded.	YES ☐ NO ☐
TO BE COMPLETED BY CARGO TANK (CT) MOTOR CARRIERS OF HAZARDOUS MATERIALS (HM):		
6.	The carrier submitss with this application certficates of compliance for each cargo tank the company utilizes in the U.S., together with the name, qualifications, Cargo Tank Facility (CT) number, and CT Facility number registration statement of the facility it will be utilizing to conduct the test and inspections of such tanks as required by 49 CFR part 180.	YES ☐ NO ☐

UNITED STATES DEPARTMENT OF TRANSPORTATION
Federal Motor Carrier Safety Administration

For FMCSA Use Only
Date Received: _____
USDOT Number: _____
☐ Inactive _____
☐ Active _____

SECTION M. COMPLIANCE CERTIFICATIONS *(TO BE COMPLETED BY MOTOR CARRIERS, BROKERS AND FREIGHT FORWARDERS)*

48. By signing these certifications, the certifying official is on notice that the representations made herein are subject to verification through inspections in the United States and through the request for examination of records and documents. Failure to support the representations contained in this application could form the basis of a proceeding to assess civil penalties and/or lead to the revocation of the authority granted.

1. Applicant is willing and able to provide the proposed operations or service and to comply with all pertinent statutory and regulatory requirements and regulations issued or administered by the U.S. Department of Transportation, including operational regulations, safety fitness requirements, motor vehicle safety standards and minimum financial responsibility and desiognation of process agent requirements.	YES NO
2. Applicant is willing and able to produce for review or inspection documents which are requested for the purpose of determining compliance with applicable statutes and regulations administered by the Department of Transportation, including the Federal Motor Carrier Safety Regulations, Federal Motor Vehicle Safety Standards, Commercial Regulations, Hazardous Materials Regulations, and Americans With Disabilities Act regulations within 48 hours of any written request. Applicant understands that the written request may be served on the contact person identified on Page 4 (Section A, Item No. 18), or the designated process agent.	YES NO ☐ ☐
3. Applicant is not presently disqualified from operating commercial motor vehicles in the United States.	YES ☐
4. Applicant understands that the agent(s) for service of process designated on FMCSA Form BOC-3 will be deemed applicant's official representative(s) in the United States for receipt of filings and notices in administrative proceedings under 49 U.S.C. § 13303, for receipt of filings and notices issued in connection with the enforcement of any Federal statutes or regulations.	YES NO ☐ ☐
5. Applicant is not prohibited from filing this application because FMCSA registration is currently under suspension, or was revoked less than 30 days before the filing of this application.	YES NO ☐ ☐
TO BE COMPLETED ONLY BY A NON-NORTH AMERICA-DOMICILED MOTOR CARRIER 6. Applicant is willing and able to have all vehicles operated in the United States inspected at least every 90 days by a certified inspector and have decals affixed attesting to satisfactory compliance with applicable inspection criteria. This requirement will end after applicant has held permanent registration from FMCSA for three consecutive years.	YES NO ☐ ☐
7. If applicant's registration has been revoked, the deficiencies cited in the revocation proceeding have been corrected. Applicant is providings an explanation of how it has corrected these deficiencies and how it will otherwise ensure that basic safety management controls are maintained.	YES NO N/A ☐ ☐ ☐
TO BE COMPLETED ONLY BY A MEXICO-DOMICILED MOTOR CARRIER 8. Applicant has paid all taxes owed under section 4481 of the U.S. Internal Revenue Service (26 U.S.C. § 4481) for the most recent taxable period as defined under section 4482 (c) of the Internal Revenue Code.	YES NO ☐ ☐

_____
Signature

NOTE: All motor carriers operating within the United States, including foreign-domiciled motor carriers applying for USDOT registration by this form, must comply with all applicable Federal, State, local, and tribal statutory and regulatory requirements when operating within the United States. Such requirements include, but are not limited to, all applicable statutory and regulatory requirements administered by the U.S. Department of Labor, or by an OSHA state plan agency pursuant to section 18 of the Occupational Safety and Health Act of 1970. Such requirements also include all applicable statutory and regulatory environmental standards and requirements administered by the U.S. Environmental Protection Agency or a State, local or tribal environmental protection agency. Compliance with these statutory and regulatory requirements may require motor carriers and/or individual operators to produce documents for review and inspection for the purpose of determining compliance with such statutes and regulations.

UNITED STATES DEPARTMENT OF TRANSPORTATION
Federal Motor Carrier Safety Administration

For FMCSA Use Only
Date Received: _____
USDOT Number: _____
☐ Inactive _____
☐ Active _____

SECTION N. APPLICANT'S OATH

49. This oath applies to all supplemental filings to this application. The signature must be that of an authorized official of the applicant, not the legal representative.

I, _____, verify under penalty of perjury, under the laws of the United States of America,
(PRINT NAME)

that all information supplied on this form or relating to this application is true and correct. Further, I certify that I am qualified and authorized to file this application. I know that willful misstatements or omissions of material facts constitute Federal criminal violations punishable under 18 U.S.C. § 1001 by imprisonment of up to 5 years and fines up to $250,000 for each offense. Additionally these statements are punishable as perjury under 18 U.S.C. § 1621, which provides for fines of up to $250,000 or imprisonment of up to 5 years for each offense.

I further certify under penalty of perjury, under the laws of the United States, that I have not been convicted, after September 1, 1989, of any Federal or State offense involving the distribution of possession of a controlled substance, or that if I have been so convicted, I am not ineligible to receive Federal benefits, either by court order or operation of law, pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988, formerly Pub. L. 100-690, Title V, Section 5301, Nov. 18, 1988, 102 Stat. 4310, renumbered and amended Pub. L. 101-647, Title X, Section 1002 (d), Nov. 29, 1990, 104 Stat. 4827) (21 U.S.C. 862).

Signature _____ Title _____ Date_____

UNITED STATES DEPARTMENT OF TRANSPORTATION
Federal Motor Carrier Safety Administration

For FMCSA Use Only
Date Received: _____
USDOT Number: _____
☐ Inactive _____
☐ Active _____

SECTION O. FILING FEE INFORMATION (*FMCSA does NOT refund filing fees)*

50. TYPE OF FILING: (Check all boxes that apply)

New Registration

For-hire or Motor Private Carrier (except FTA grantees)
Freight Forwarder
Broker
☐ **Intermodal Equipment Provider**
☐ **Cargo Tank Facility**

Total Number of Boxes Checked ____ x $300 = $ _____
Total

Reinstatement	**$10**
FTA Grantee	**No Fee**
All Other	**No Fee**

METHOD OF PAYMENT (Check one):

☐ ELECTRONIC FUNDS TRANSFER (EFT)

BANK NAME: _____

BANK ROUTING NUMBER: ☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

CHECKING ACCOUNT NUMBER: ☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

☐ VISA ☐ MASTERCARD ☐ DISCOVER ☐ AMERICAN EXPRESS

Credit Card Number: ☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐ Credit Card Expiration Date: ____/____/_____
Month Day Year

Print Name of the person who the credit card is issued to: _____

Signature of the person authorizing use of the credit card: _____

Date the application was completed: _____

FEE POLICY

- **FMCSA does not refund filing fees.**
- Your filing fees must be payable to the **Federal Motor Carrier Safety Administration**, by Electronic Funding Transfer, or by an approved credit card.
- Electronic Funding Transfers must be from an account in a bank in the United States.
- Fees are required for each type of registration requested. Applicant may select more than one type of registration on a single Form MCSA-1, and submit a single payment for the total fees due. For example, if applicant wishes to be registered as both a motor carrier and a broker, applicant may file a single Form MCSA-1 and make a single payment of $600.
- FMCSA will not process an applicant's Form MCSA-1until the payment has been deducted from his/her banking or credit card account.

UNITED STATES DEPARTMENT
OF TRANSPORTATION
Federal Motor Carrier Safety Administration

For FMCSA Use Only
Date Received: _____
USDOT Number: _____
☐ Inactive _____
☐ Active _____

ATTACHMENTS TO SECTION L

TO BE COMPLETED ONLY BY A MEXICO-DOMICILED OR NON-NORTH AMERICA-DOMICILED MOTOR CARRIER

ATTACHMENT A
FOR SECTION L, 47
DRUG AND ALCOHOL TESTING
(BOX III 2)

Below applicant has listed:

(1) The name, address and position of the person or persons designated by applicant as responsible for implementing and overseeing its alcohol and drug testing programs.

(2) The name, address, and telephone number of both its drug testing laboratory and its alcohol testing service. If the alcohol testing service information is identical to the information for the drug testing laboratory, applicant should enter "Same" in the space for the alcohol testing service.

NAME	ADDRESS	POSITION

NAME OF DRUG TESTING LABORATORY	ADDRESS	TELEPHONE NUMBER

NAME OF ALCOHOL TESTING SERVICE	ADDRESS	TELEPHONE NUMBER

TO BE COMPLETED ONLY BY A MEXICO-DOMICILED OR NON-NORTH AMERICA-DOMICILED MOTOR CARRIER

ATTACHMENT B
FOR SECTION L, 47
ACCIDENT REGISTER
(BOX V 2)

☐ Applicant is attaching a copy of its accident register for the last 12 months.
☐ Applicant is beginning operations and the following explains how it will maintain its accident register once it begins operations in the U.S.:

UNITED STATES DEPARTMENT OF TRANSPORTATION
Federal Motor Carrier Safety Administration

For FMCSA Use Only
Date Received: _____
USDOT Number: _____
☐ Inactive _____
☐ Active _____

TO BE COMPLETED ONLY BY A MEXICO-DOMICILED OR NON-NORTH AMERICA-DOMICILED MOTOR CARRIER

ATTACHMENT C
FOR SECTION L, 47
ACCIDENT MONITORING PROGRAM
(BOX V 4)

The following fully describes applicant's accident monitoring program for operations in the U.S.:

| TO BE COMPLETED ONLY BY A MEXICO-DOMICILED OR NON-NORTH AMERICA-DOMICILED MOTOR CARRIER |

ATTACHMENT D
FOR SECTION L, 47
PRODUCTION OF RECORDS
(BOX VI 2)

The following individual(s) is directed by applicant to respond to inquiries for records:

NAME	ADDRESS	TELEPHONE NUMBER

UNITED STATES DEPARTMENT
OF TRANSPORTATION
Federal Motor Carrier Safety Administration

For FMCSA Use Only
Date Received: _____
USDOT Number: _____
☐ Inactive _____
☐ Active _____

TO BE COMPLETED ONLY BY A MEXICO-DOMICILED OR NON-NORTH AMERICA-DOMICILED HAZARDOUS MATERIALS MOTOR CARRIER

ATTACHMENT E
FOR SECTION L, 47
HAZARDOUS MATERIALS (HM)
(BOX VII 2)

Applicant is attaching a copy of the materials we employ to provide HM training. Below applicant has listed its employees (other than drivers) who are responsible for ensuring compliance with HM regulations and a description of the HM safety functions of each employee. Applicant has also attached a copy of its training materials.

EMPLOYEE	DESCRIPTION OF HM SAFETY FUNCTION

UNITED STATES DEPARTMENT OF TRANSPORTATION
Federal Motor Carrier Safety Administration

For FMCSA Use Only
Date Received: _____
USDOT Number: _____

☐ Inactive _____

☐ Active _____

TO BE COMPLETED ONLY BY A MEXICO-DOMICILED OR NON-NORTH AMERICA-DOMICILED MOTOR CARRIER
ATTACHMENT F **FOR SECTION L, 47** **HOURS-OF-SERVICE MONITORING PROGRAM** **(BOX II 3)**
Applicant has attached to this application statements describing the monitoring procedures designed to ensure that its drivers complete log books correctly, and also describing its procedures for record keeping and review of drivers. If applicant has drivers operating under the 100 air-mile exception, applicant described the maintenance of these records by means of an attachment to this document.

The collection of this information is authorized under the provisions of 49 CFR parts 390-399.

Public reporting for this collection of information is estimated to be 1 hour, 20 minutes per response, including the time for reviewing instructions and completing and reviewing the collection of information. All responses to this collection of information are mandatory, and will be provided confidentiality to the extent allowed by law. Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The valid OMB Control Number for this information collection is 2126-XXXX. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: Information Collection Clearance Officer, Federal Motor Carrier Safety Administration, MC-MBI, U.S. Department of Transportation, Washington, D.C. 20590.

BILLING CODE 4910–EX–C

VI. Rulemaking Analyses and Notices

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

The FMCSA has preliminarily determined that this proposed rule is a significant regulatory action within the meaning of Executive Order 12866, and is significant within the meaning of Department of Transportation regulatory policies and procedures (DOT Order 2100.5 dated May 22, 1980; 44 FR 11034, February 26, 1979) because it is expected to generate significant public interest. However, it is anticipated that the economic impact of the revisions in this SNPRM would not exceed the annual $100 million threshold for economic significance. The Office of Management and Budget (OMB) has reviewed this proposed rule.

Regulatory Flexibility Act

The Regulatory Flexibility Act [Pub. L. 96–354, 5 U.S.C. 601–612] requires Federal agencies to take small businesses' concerns into account when developing, writing, publicizing, promulgating, and enforcing regulations. To achieve this, the Act requires that agencies detail how they have met these concerns through a Regulatory Flexibility Analysis (RFA). An initial RFA, which accompanies an NPRM, must include six elements. The Agency has listed these elements below and addressed each element with regard to FMCSA's SNPRM.

(1) A description of the reasons why action by the Agency is being considered. The FMCSA is taking this action in response to section 103 of the ICC Termination Act of 1995 (ICCTA), as amended by section 4304 of SAFETEA–LU, which, among other things, requires the Secretary of Transportation (Secretary) to propose regulations to replace four current identification and registration systems with a single, online, Federal system. The purpose of this proposal is to consolidate and simplify current Federal registration processes and to increase public accessibility to data about interstate motor carriers, property brokers, freight forwarders, and other entities. Pursuant to the statutory mandate, FMCSA proposes to charge registration and administrative fees that would enable FMCSA to recoup the costs associated with processing registration applications and administrative filings and maintaining this system.

(2) A succinct statement of the objectives of, and legal basis for, the proposed rule. The ICCTA created a new 49 U.S.C. 13908 directing ''[t]he Secretary, in cooperation with the States, and after notice and opportunity for public comment,'' * * * to ''issue regulations to replace the current Department of Transportation identification number system, the single State registration system under section 14504, the registration system contained in this chapter, and the financial responsibility information system under section 13906 with a single, on-line, Federal system.''

Title 49 U.S.C. 13908(d) authorizes the Secretary to establish, under sections 9701 of title 31, United States Code, a fee system for the Unified Carrier Registration System according to certain guidelines providing for fee limits for registration, filing evidence of financial responsibility and filing information regarding agents for service of process.

These directives specifically require FMCSA to undertake some of the actions in this proposal. The remaining related changes facilitate the smooth operation of a unified Federal on-line registration system.

(3) A description and, where feasible, an estimate of the number of small entities to which the proposed rule would apply. The FMCSA would subject all motor carriers engaging in interstate commerce (private, exempt and non-exempt for-hire) to this proposal.

Not all carriers are required to report their revenue to the Agency; but all carriers are required to provide the Agency with the number of power units they operate when they apply for operating authority and to update this figure biennially. Because FMCSA does not have direct revenue figures, power units serve as a proxy to determine the carrier size that would qualify as a small business given the SBA's revenue threshold. In order to produce this estimate, it is necessary to determine the average revenue generated by a power unit. With regards to truck power units, the Agency determined in the 2003 Hours of Service Rulemaking RIA [18] that a power unit produces about $172,000 in revenue annually (adjusted for inflation).[19] The Small Business Administration (SBA) defines a small entity in the truck transportation sub-sector (North American Industry Classification System [NAICS] 484) as an entity with annual revenue of less than $25.5 million [13 CFR 121.201].[20] This equates to 148 power units ($25,500,000/$172,000). Thus, FMCSA considers motor carriers with 148 power units or less to be a small business for SBA purposes.

With regards to bus power units, the Agency conducted a preliminary analysis to estimate the average number of power units (PUs) for a small entity earning $7 million annually, based on an assumption that a passenger carrying CMV generates annual revenues of $150,000. This estimate compares reasonably to the estimated average annual revenue per power unit for the trucking industry ($172,000). A lower estimate was used because buses generally do not accumulate as many vehicle miles traveled (VMT) per power units as trucks,[21] and it is assumed therefore that they would generate less revenue on average. The analysis concluded that passenger carriers with 47 PUs or fewer ($7,000,000 divided by $150,000/PU = 46.7 PU) would be considered small entities. The Agency then looked at the number and percentage of passenger carriers registered with FMCSA that would fall under that definition (of having 47 PUs or less). The results show that 28,838 [22] (or 99%) of all active registered passenger carriers have 47 PUs or less. Therefore, the overwhelming majority of passenger carriers would be considered small entities.

FMCSA believes that this 150 power unit figure would be applicable to private carriers as well: Because the sizes of the fleets they are able to sustain are indicative of the overall size of their operations, large CMV fleets can generally only be managed by large firms. There is a risk, however, of overstating the number of small businesses because the operations of some large non-truck or bus firms may require only a small number of CMVs.

The FMCSA believes the proposed rule would affect roughly 600,000 small carriers with recent activity annually on an ongoing basis.[23] The Agency expects a larger number of affected entities in the first year of the analysis period when exempt for-hire carriers with

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

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

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

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

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

[23] This population estimate originates from tables 1 and 2, above. FMCSA used the median year estimate to account for the net growth in new entrants and the carriers with recent activity.

recent activity and private carriers with recent activity make administrative filings for the first time. The estimated first-year costs of the URS rule on new entrants would be equal to 0.250 percent of average revenue for a trucking motor carrier and 0.287 percent of average revenue for a passenger motor carrier. The first-year costs of the URS SNPRM on carriers with recent activity would be equal to 0.079 percent of average revenue for a trucking motor carrier and 0.091 percent of average revenue for a passenger motor carrier. The URS rule is thus not expected to have a significant economic impact on small new entrants and carriers with recent activity.

(4) A description of the projected reporting, recordkeeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities that will be subject to the requirements and the type of professional skills necessary for preparation of the report or record. This proposed rule primarily concerns submission of information to FMCSA in support of registration. While this includes recordkeeping and reporting for non-exempt for-hire carriers, there would only be the replacement of one type of reporting with another. Therefore, there would be no increase in reporting or recordkeeping requirements for non-exempt for-hire carriers. Non-exempt for-hire carriers are already required to pay a $300 registration fee, so there would be no change in financial burden for these entities as a result of the Agency's implementation of the proposed rule. Private and exempt for-hire carriers would have the same replacement reporting and recordkeeping requirements as non-exempt for-hire carriers regarding general registration but would also have to designate a process agent for the first time under the proposed rule. Exempt for-hire and private hazmat carriers would have to file proof of insurance for the first time. These requirements would be new but would not impose significant reporting or recordkeeping requirements on the affected entities, as the filings would be made by insurance companies on the carriers' behalf. New entrant exempt for-hire carriers, private carriers, and other entities are not currently required to pay a registration fee but would be required to pay a $300 registration fee under the proposed rule. For nearly all affected entities, this fee would represent a small fraction (well below one percent, even for very small firms that do little more than operate a single truck) of their annual revenues; on an annualized basis the cost would be even smaller. The FMCSA would require property brokers and freight forwarders to register with FMCSA and obtain USDOT Numbers under the proposed rule, which is a new requirement. However, these entities already register with FMCSA and the USDOT Number would simply be a replacement for the MC Numbers or FF Numbers currently issued to brokers and freight forwarders, respectively. Therefore, FMCSA does not believe the new reporting or recordkeeping requirements would impose any significant burden. Like non-exempt for-hire carriers, new entrant brokers and freight forwarders are currently required to pay a $300 registration fee, so there would be no change in financial burden on these entities.

The FMCSA does not expect that any special skills for new registrants would be necessary beyond the ability to access the Internet and respond to questions with information about their organization and operations.

(5) An identification, to the extent practicable, of all relevant Federal rules that may duplicate, overlap, or conflict with the proposed rule. The FMCSA is aware of Federal rules that may duplicate this SNPRM to some extent for hazardous materials motor carriers required to register. Although some basic identification information may be filed with both FMCSA and the Pipeline and Hazardous Materials Safety Administration (PHMSA), another USDOT modal administration, there is no conflict. PHMSA requires shippers and transporters of certain types and quantities of hazardous materials to register in its Hazardous Materials Registration System. Transportation modes required to register with PHMSA include motor carriers, airlines, ship lines, and railroads. The PHMSA Hazardous Materials Registration System cannot be combined with URS because entities other than those under FMCSA jurisdiction must register in PHMSA's system.

(6) A description of any significant alternatives to the proposed rule which minimize any significant impacts on small entities. The Agency did not identify any significant alternatives to the rule that could lessen the burden on small entities without compromising its goals or the Agency's statutory mandate. Because small businesses are such a large part of the demographic the Agency regulates, providing alternatives to small business to permit noncompliance with FMCSA regulations is not feasible and not consistent with sound public policy.

Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 [Pub. L. 104–4; 2 U.S.C. 1532] requires each Agency to assess the effects of its regulatory actions on State, local, and Tribal governments and the private sector. Any Agency promulgating a rule likely to result in a Federal mandate requiring expenditures by a State, local, or Tribal government or by the private sector of $141.3 million or more in any one year must prepare a written statement incorporating various assessments, estimates, and descriptions that are delineated in the Act. The FMCSA has preliminarily determined that the changes proposed in this SNPRM would not have an impact of $141.3 million or more in any one given year.

National Environmental Policy Act

The Agency analyzed this proposed rule for the purpose of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*) and preliminarily determined under our environmental procedures Order 5610.1, issued March 1, 2004 (69 FR 9680), that this action is categorically excluded (CE) under Appendix 2, paragraphs 6.e and 6.h of the Order from further environmental documentation. The CE under Appendix 2, paragraph 6.e relates to establishing regulations and actions taken pursuant to the requirements concerning applications for operating authority and certificates of registration. The CE under Appendix 2, paragraph 6.h relates to establishing regulations and actions taken pursuant to the requirements implementing procedures to collect fees that will be charged for motor carrier registrations and insurance for the following activities: (1) Application filings; (2) records searches; and (3) reviewing, copying, certifying, and related services. In addition, the Agency believes that this proposed action includes no extraordinary circumstances that would have any effect on the quality of the human environment. Thus, the SNPRM does not require an environmental assessment or an environmental impact statement.

The FMCSA also has analyzed this SNPRM under the Clean Air Act, as amended (CAA), sec. 176(c) (42 U.S.C. 7401 *et seq.*), and implementing regulations promulgated by the Environmental Protection Agency. Approval of this proposal is exempt from the CAA's general conformity requirement because it involves policy development and rulemaking activities regarding registration of regulated entities with FMCSA for commercial,

safety and financial responsibility purposes. See 40 CFR 93.153(c)(2)(vi). The proposed changes would not result in any emissions increases nor would they have any potential to result in emissions that are above the general conformity rule's *de minimis* emission threshold levels. Moreover, it is reasonably foreseeable that the proposed changes would not increase total CMV mileage or change the routing of CMVs, how CMVs operate, or the CMV fleet-mix of motor carriers. This SNPRM was mandated under sec. 103 of the ICCTA. It would consolidate and simplify the Federal registration processes and increase public accessibility to data about interstate and foreign motor carriers, property brokers, freight forwarders and other entities.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), a Federal Agency must obtain approval from OMB for each collection of information it conducts, sponsors, or requires through regulations. The FMCSA analyzed this proposal and preliminarily determined that its implementation would streamline the information collection burden on motor carriers and other regulated entities, relative to the baseline, or current paperwork collection processes. This includes streamlining the FMCSA registration, insurance and designation of process agent filing processes and implementing mandatory electronic online filing of these applications, as well as eliminating some outdated filing requirements. The above information collection burden reductions would be partially offset in later years because FMCSA plans to implement new filing requirements upon certain groups of carriers/entities within the industry during the first year. This is primarily due to the assumption that all existing private and exempt for-hire carriers would file proof of process agent designation in the first year and the existing private motor carriers transporting hazardous materials interstate and exempt-for-hire carriers would file evidence of insurance, as a result of the new requirements set forth in this SNPRM. However, once the initial process agent and insurance filing requirements for existing carriers are met, the overall net result would be a more streamlined process in future years for FMCSA registration of motor carrier, broker, freight-forwarder and other applicants the Agency regulates.

This proposal would create a new information collection to cover the requirements set forth in proposed FMCSA Form MCSA–1. There are also five approved information collections that would be affected by this SNPRM as follows: (1) OMB Control No. 2126–0013, titled ''Motor Carrier Identification Report;'' (2) OMB Control No. 2126–0015, titled ''Designation of Agents, Motor Carriers, Brokers and Freight Forwarders;'' (3) OMB Control No. 2126–0016, titled ''Licensing Application for Motor Carrier Operating Authority;'' (4) OMB Control No. 2126–0017, titled ''Financial Responsibility, Trucking, and Freight Forwarding;'' and (5) OMB Control No. 2126–0019, titled ''Application for Certificate of Registration for Foreign Motor Carriers and Foreign Motor Private Carriers.'' The proposed new MCSA–1 Form would replace the forms covered by 2126–0013, 0016, and 0019. The proposed rule would also increase the number of entities that would be required to file information on process agents (2126–0015) and insurance coverage (2126–0017).

The total burden for the five approved information collections noted above is 248,355 hours. The table below captures the current and proposed burden hours associated with the five approved information collections.

CURRENT AND PROPOSED INFORMATION COLLECTION BURDENS

OMB Approval No.	Burden hours currently approved	Burden hours proposed [1]	Change
2126–NEW	0	127,728	127,728
2126–0013	109,005	0	(109,005)
2126–0015	14,835	69,373	54,538
2126–0016	55,095	0	(55,095)
2126–0017	66,960	81,193	(14,233)
2126–0019	2,460	0	(2,460)
Total	248,355	278,293	29,938

[1] The estimates in this column reflect first year information collection burdens. Many of these information collections would significantly decrease in later years.

An explanation of how each of the six information collections shown above would be affected by this proposal is provided below.

OMB Control No. 2126–NEW. Unified Registration System, Form MCSA–1. The new form would replace the forms covered by three existing information collections. The estimated time to complete the form for new entrants, file biennial updates, and request changes is 127,728 burden hours [82,115 hours for new registrants (61,280 new motor carriers, brokers, freight forwarders, and other entities × 1.34 hours per form) + 43,560 hours for biennial updates (261,360 registrants required to file in year one × 10 minutes per form, divided by 60 minutes/hr) + 2,053 hours for name/address change requests (12,317 requests × 0.167 hours)].

OMB Control No. 2126–0013. Motor Carrier Identification Report, Applications for USDOT Number. The Agency anticipates that all of the requirements under this information collection covering the MCS–150, MCS–150B, and MCS–150C forms would be folded into OMB Control No. 2126–NEW (see above) and the forms replaced by the MCSA–1.

OMB Control No. 2126–0015. Designation of Agents, Motor Carriers, Brokers, and Freight Forwarders. This information collection, which requires motor carriers and others to file the name of process agents that can be served with legal papers, is currently approved at 14,835 burden hours. This information collection would increase to 69,373 burden hours [327,226 new filers × 10 minutes per filing/60 minutes/hr]. This increase is due to FMCSA's proposal to extend the designation of process agent filing requirement to include private motor carriers and exempt for-hire motor carriers. The FMCSA assumes that no existing private or exempt for-hire motor carriers currently have process agents on file and that all would

designate agents with FMCSA as a result of the proposed requirements set forth in this SNPRM.

OMB Control No. 2126–0016. Licensing Applications for Motor Carrier Operating Authority. This information collection, which covers for-hire carriers, freight forwarders and property brokers, is currently approved at 55,095 burden hours. Under this proposal, all requirements included in this information collection would be folded into OMB Control No. 2126–NEW (see above) and the forms replaced by the MCSA–1. Basic identification information that registrants complete on these forms and MCS–150 forms will only need to be completed once under the proposed rule.

OMB Control No. 2126–0017. Financial Responsibility—Motor Carriers, Freight Forwarders and Brokers. This information collection, which in almost all cases requires insurers to file a certification of coverage for certain entities, is currently approved at 66,960 burden hours. Changes would be required to this information collection due to FMCSA's proposal to require exempt for-hire motor carriers and private interstate motor carriers of hazardous materials to file proof of liability insurance with FMCSA. As all but a few of these filings are electronic (self-insurance filings will still be done on paper), the time required would be adjusted downward to reflect the efficiencies gained. The revised burden would be 81,193 hours [485,956 filings × 10 minutes/60 plus 5 self-insurance filings × 40 hrs]

OMB Control No. 2126–0019. Application for Certificate of Registration for Foreign Motor Carriers and Foreign Motor Private Carriers. Under this proposal, the requirements included in this approved information collection for the OP–2 form, which covers operating authority for Mexico-domiciled carriers that operate solely in the commercial zones on the border, would be folded into OMB Control No. 2126–NEW (see above), resulting in a net decrease of 2,460 burden hours. The FMCSA will discontinue this information collection after the final rule is approved for this rulemaking.

The proposals contained in this SNPRM, affecting five currently approved information collections and one new information collection, would result in a net increase of 10,787 burden hours in the Agency's information collection budget for the first year.

Additional information collection activity and possibly additional OMB forms may be identified and developed as the rulemaking process proceeds. If so, an analysis of any additional information collection activity would be developed by FMCSA. The Agency also would seek OMB approval for any additional burdens proposed, if not already covered by existing OMB approvals given to the Agency.

Executive Order 12630 (Taking of Private Property)

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

Executive Order 12988 (Civil Justice Reform)

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

Executive Order 13045 (Protection of Children)

Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (April 23, 1997, 62 FR 19885), requires that agencies issuing economically significant rules, which also concern an environmental health or safety risk that an Agency has reason to believe may disproportionately affect children, must include an evaluation of the environmental health and safety effects of the regulation on children. Section 5 of Executive Order 13045 directs an Agency to submit for a covered regulatory action an evaluation of its environmental health or safety effects on children. The FMCSA has preliminarily determined that this proposed rule is not a covered regulatory action as defined under Executive Order 13045. This determination is based upon the fact that this proposed rule is not economically significant under Executive Order 12866, because the changes proposed in this rule would not have an impact of $100 million or more in any one given year. This proposal would not constitute an environmental health risk or safety risk that would disproportionately affect children.

Executive Order 13132 (Federalism)

This proposed rule has been analyzed in accordance with the principles and criteria in Executive Order 13132, dated August 4, 1999 (64 FR 43255, August 10, 1999). The FMCSA consulted with State licensing agencies participating in its PRISM program to discuss anticipated impacts of the May 2005 NPRM upon their operations. The Agency has taken into consideration their comments in its decisionmaking process for this SNPRM. Thus, FMCSA has preliminarily determined that this proposal would not have significant Federalism implications or limit the policymaking discretion of the States.

Executive Order 12372 (Intergovernmental Review)

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

Executive Order 13211 (Energy Supply, Distribution, or Use)

The FMCSA has analyzed this proposed rule under Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.'' This proposal is not a significant energy action within the meaning of section 4(b) of the Executive Order. This proposal is a procedural action, is not economically significant, and would not have a significant adverse effect on the supply, distribution, or use of energy.

Privacy Impact Analysis

The FMCSA conducted a privacy impact assessment of this rule as required by section 522(a)(5) of division H of the FY 2005 Omnibus Appropriations Act, Pub. L. 108–447, 118 Stat. 3268 (Dec. 8, 2004) [set out as a note to 5 U.S.C. 552a]. The assessment considers any impacts of the final rule on the privacy of information in an identifiable form and related matters. The FMCSA has determined that this SNPRM would impact the handling of PII. The FMCSA has also determined the risks and effects the rulemaking might have on collecting, storing, and sharing PII and has examined and evaluated protections and alternative information handling processes in order to mitigate potential privacy risks. The PIA for this proposed rulemaking is available for review in the docket for this rulemaking.

List of Subjects

49 CFR Part 360

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

49 CFR Part 365

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

49 CFR Part 366

Brokers, Motor carriers, Freight forwarders, Process agents.

49 CFR Part 368

Administrative practice and procedure, Insurance, Motor carriers.

49 CFR Part 385

Administrative practices and procedure, Highway safety, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

49 CFR Part 387

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

49 CFR Part 390

Highway safety, Intermodal transportation, Motor carriers, Motor vehicle safety, reporting and recordkeeping requirements.

49 CFR Part 392

Highway safety, Motor carriers.

For reasons set forth in the preamble, FMCSA proposes to amend title 49, Code of Federal Regulations, chapter III, as follows:

1. Revise part 360 to read as follows:

PART 360—FEES FOR MOTOR CARRIER REGISTRATION AND INSURANCE

Sec.

360.1 Fees for registration-related services.
360.3 Filing fees.
360.5 Updating user fees.

Authority: 31 U.S.C. 9701; 49 U.S.C. 13908; and 49 CFR 1.73.

§ 360.1 Fees for registration-related services.

Certifications and copies of public records and documents on file with the Federal Motor Carrier Safety Administration (FMCSA) will be furnished on the following basis, pursuant to USDOT Freedom of Information Act regulations at 49 CFR Part 7:

(a) Certificate of the Director, Office of Management and Information Services, as to the authenticity of documents, $12;

(b) Service involved in locating records to be certified and determining their authenticity, including clerical and administrative work incidental thereto, at the rate of $21 per hour;

(c) Copies of the public documents, at the rate of $.80 per letter size or legal size exposure. A minimum charge of $5 will be made for this service; and

(d) Search and copying services requiring information technology (IT), as follows:

(1) A fee of $50 per hour for professional staff time will be charged when it is required to fulfill a request for electronic data.

(2) The fee for computer searches will be set at the current rate for computer service. Information on those charges can be obtained from the Office of Information Technology (MC–RI).

(3) Printing shall be charged at the rate of $.10 per page of computer-generated output with a minimum charge of $1. There will also be a charge for the media provided (*e.g.,* CD ROMs) based on the Agency's costs for such media.

(e) *Exception.* No fee shall be charged under this section to the following entities:

(1) Any Agency of the Federal Government or a State government or any political subdivision of any such government for access to or retrieval of information and data from the Unified Carrier Registration System for its own use; or

(2) Any representative of a motor carrier, motor private carrier, leasing company, broker, or freight forwarder (as each is defined in 49 U.S.C. 13102) for the access to or retrieval of the individual information related to such entity from the Unified Carrier Registration System for the individual use of such entity.

§ 360.3 Filing fees.

(a) *Manner of payment.* (1) Except for the insurance fees described in the next sentence, all filing fees will be payable at the time the application, petition, or other document is electronically filed. The service fee for insurance, surety or self-insurer accepted certificate of insurance, surety bond or other instrument submitted in lieu of a broker surety bond must be charged to an insurance service account established by FMCSA in accordance with paragraph (a)(2) of this section.

(2) *Billing account procedure.* A request must be submitted to the Office of Enforcement and Compliance, Commercial Enforcement Division (MC–ECC) at *http://www.fmcsa.dot.gov* to establish an insurance service fee account.

(i) Each account will have a specific billing date within each month and a billing cycle. The billing date is the date that the bill is prepared and printed. The billing cycle is the period between the billing date in one month and the billing date in the next month. A bill for each account which has activity or an unpaid balance during the billing cycle will be sent on the billing date each month. Payment will be due 20 days from the billing date. Payments received before the next billing date are applied to the account. Interest will accrue in accordance with 31 CFR 901.9.

(ii) The Federal Claims Collection Standards, including disclosure to consumer reporting agencies and the use of collection agencies, as set forth in 31 CFR part 901 will be utilized to encourage payment where appropriate.

(iii) An account holder who files a petition in bankruptcy or who is the subject of a bankruptcy proceeding must provide the following information to the Office of Enforcement and Compliance, Commercial Enforcement Division (MC–ECC) at *http://www.fmcsa.dot.gov:*

(A) The filing date of the bankruptcy petition;

(B) The court in which the bankruptcy petition was filed;

(C) The type of bankruptcy proceeding;

(D) The name, address, and telephone number of its representative in the bankruptcy proceeding; and

(E) The name, address, and telephone number of the bankruptcy trustee, if one has been appointed.

(3) Fees will be payable through the U.S. Department of the Treasury secure payment system, Pay.gov and are made directly from the payor's bank account or by credit/debit card.

(b) Any filing that is not accompanied by the appropriate filing fee will be rejected.

(c) *Fees not refundable.* Fees will be assessed for every filing listed in the schedule of fees contained in paragraph (f) of this section, subject to the exceptions contained in paragraphs (d) and (e) of this section. After the application, petition, or other document has been accepted for filing by FMCSA, the filing fee will not be refunded, regardless of whether the application, petition, or other document is granted or approved, denied, rejected before docketing, dismissed, or withdrawn.

(d) *Multiple authorities.* (1) A separate filing fee is required for each type of authority sought in each transportation mode, such as broker authority for motor property carriers.

(2) Separate fees will be assessed for the filing of temporary operating authority applications as provided in paragraph (f)(2) of this section, regardless of whether such applications

are related to an application for corresponding permanent operating authority.

(e) *Waiver or reduction of filing fees.* It is the general policy of the Federal Motor Carrier Safety Administration not to waive or reduce filing fees except as follows:

(1) Filing fees are waived for an application which is filed by a Federal government agency, or a State or local government entity. For purposes of this section the phrases ''Federal government agency'' or ''government entity'' do not include a quasi-governmental corporation or government subsidized transportation company.

(2) Filing fees are waived for a motor carrier of passengers that receives a grant from the Federal Transit Administration either directly or through a third-party contract to provide passenger transportation under an agreement with a State or local government pursuant to 49 U.S.C. section 5307, 5310, 5311, 5316 or 5317.

(3) The FMCSA will consider other requests for waivers or fee reductions only in extraordinary situations and in accordance with the following procedure:

(i) *When to request.* At the time that a filing is submitted to FMCSA the applicant may request a waiver or reduction of the fee prescribed in this part. Such request should be addressed to the Director, Office of Information Technology.

(ii) *Basis.* The applicant must show the waiver or reduction of the fee is in the best interest of the public, or that payment of the fee would impose an undue hardship upon the requestor.

(iii) *FMCSA action.* The Director, Office of Information Technology, will notify the applicant of the decision to grant or deny the request for waiver or reduction.

(f) Schedule of filing fees:

Type of proceeding		Fee
Part I: Registration:		
(1)	An application for USDOT Registration pursuant to 49 CFR part 390, subpart C.	$300.
(2)	An application for motor carrier temporary authority to provide emergency relief in response to a national emergency or natural disaster following an emergency declaration under § 390.23 of this subchapter.	$100.
(3)	Biennial update of registration	$0.
(4)	Request for change of name, address, or form of business	$0.
(5)	Request for cancellation of registration	$0.
(6)	Request for registration reinstatemen	$10.
(7)	Designation of process agen	$0.
Part II: Insurance:		
(8)	A service fee for insurer, surety, or self-insurer accepted certificate of insurance, surety bond, and other instrument submitted in lieu of a broker surety bond.	$10 per accepted certificate, surety bond or other instrument submitted in lieu of a broker surety bond.
(9)	(i) An application for original qualification as self-insurer for bodily injury and property damage insurance (BI&PD).	[Reserved].
	(ii) An application for original qualification as self-insurer for cargo insurance.	[Reserved].
	(iii) Fee for quarterly self-insurance monitoring filing	[Reserved].
	(iv) Fee for annual self-insurance monitoring filing	[Reserved].

§ 360.5 Updating user fees.

(a) *Update.* Each fee established in this subpart may be updated, as deemed necessary by FMCSA.

(b) *Publication and effective dates.* Notice of updated fees will be published in the **Federal Register** in a final rule and will become effective 30 days after publication.

(c) *Payment of fees.* Any person submitting a filing for which a filing fee is established must pay the fee applicable on the date of the filing or request for services.

(d) *Method of updating fees.* Each fee shall be updated by updating the cost components comprising the fee. However, fees shall not exceed the maximum amounts established by law. Cost components shall be updated as follows:

(1) Direct labor costs shall be updated by multiplying base level direct labor costs by percentage changes in average wages and salaries of FMCSA employees. Base level direct labor costs are direct labor costs determined by the cost study in *Regulations Governing Fees For Service,* 1 I.C.C. 2d 60 (1984), or subsequent cost studies. The base period for measuring changes shall be April 1984 or the year of the last cost study.

(2) Operations overhead shall be developed on the basis of current relationships existing on a weighted basis, for indirect labor applicable to the first supervisory work centers directly associated with user fee activity. Actual updating of operations overhead will be accomplished by applying the current percentage factor to updated direct labor, including current governmental overhead costs.

(3)(i) Office general and administrative costs shall be developed on the basis of current levels costs, *i.e.,* dividing actual office general and administrative costs for the current fiscal year by total office costs for the office directly associated with user fee activity. Actual updating of office general and administrative costs will be accomplished by applying the current percentage factor to updated direct labor, including current governmental overhead and current operations overhead costs.

(ii) The FMCSA general and administrative costs shall be developed on the basis of current level costs; *i.e.,* dividing actual FMCSA general and administrative costs for the current fiscal year by total Agency expenses for the current fiscal year. Actual updating of FMCSA general and administrative costs will be accomplished by applying the current percentage factor to updated direct labor, including current governmental overhead, operations overhead and office general and administrative costs.

(4) Publication costs shall be adjusted on the basis of known changes in the costs applicable to publication of

material in the **Federal Register** or FMCSA Register.

(e) *Rounding of updated fees.* (1) Updated fees shall be rounded in the following manner:

(i) Fees between $1 and $30 will be rounded to the nearest $1;

(ii) Fees between $30 and $100 will be rounded to the nearest $10;

(iii) Fees between $100 and $999 will be rounded to the nearest $50; and

(iv) Fees above $1,000 will be rounded to the nearest $100.

(2) This rounding procedure excludes copying, printing and search fees.

PART 365—RULES GOVERNING APPLICATIONS FOR OPERATING AUTHORITY

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

Authority: 5 U.S.C. 553 and 559; 49 U.S.C. 13101, 13301, 13901–13906, 13908, 14708, 31138, and 31144; 49 CFR 1.73.

3. Amend § 365.101 by revising paragraphs (a) and (h) to read as follows:

§ 365.101 Applications governed by these rules.

* * * * *

(a) Applications for certificates of motor carrier registration to operate as a motor carrier of property or passengers.

* * * * *

(h) Applications for Mexico-domiciled motor carriers to operate in foreign commerce as for hire or private motor carriers of property (including exempt items) between Mexico and all points in the United States. Under NAFTA Annex 1, page I–U–20, a Mexico-domiciled motor carrier may not provide point-to-point transportation services, including express delivery services, within the United States for goods other than international cargo.

* * * * *

§ 365.103 [Removed and reserved]

4. Remove and reserve § 365.103.

5. Revise § 365.105 to read as follows:

§ 365.105 Starting the application process: Form MCSA–1, FMCSA Registration/Update (USDOT Number—Operating Authority Application)

(a) Each applicant must apply for operating authority by electronically filing Form MCSA–1, FMCSA Registration/Update (USDOT Number—Operating Authority Application), to request authority pursuant to 49 U.S.C. 13902, 13903 or 13904 to operate as described in paragraphs (a)(1) through (a)(3) of this section as a:

(1) Motor carrier of property or passengers,

(2) Broker of general commodities or household goods, or

(3) Freight forwarder of general commodities or household goods.

(b) A separate filing fee in the amount set forth at 49 CFR 360.3(f) is required for each type of authority sought in § 365.105(a).

(c) Form MCSA–1 is an electronic application and is available, including complete instructions, from the FMCSA Web site at *http://www.fmcsa.dot.gov* (Keyword ''MCSA–1'').

6. Amend § 365.107 by revising paragraphs (a)(1) through (3), and paragraphs (b) through (e), to read as follows:

§ 365.107 Types of applications.

(a) * * *

(1) Motor carrier of property (except household goods).

(2) Broker of general commodities or household goods.

(3) Certain types of motor carrier of passenger applications as described in Form MCSA–1.

(b) Motor carrier of passenger ''public interest'' applications as described in Form MCSA–1.

(c) Intrastate motor passenger applications under 49 U.S.C. 13902(b)(3) as described in Form MCSA–1.

(d) Motor carrier of household goods applications, including Mexico- or non-North America-domiciled carrier applicants. In addition to meeting the fitness standard under paragraph (a) of this section, an applicant seeking authority to operate as a motor carrier of household goods must:

(1) Provide evidence of participation in an arbitration program and provide a copy of the notice of the arbitration program as required by 49 U.S.C. 14708(b)(2);

(2) Identify its tariff and provide a copy of the notice of the availability of that tariff for inspection as required by 49 U.S.C. 13702(c);

(3) Provide evidence that it has access to, has read, is familiar with, and will observe all applicable Federal laws relating to consumer protection, estimating, consumers' rights and responsibilities, and options for limitations of liability for loss and damage; and

(4) Disclose any relationship involving common stock, common ownership, common management, or common familial relationships between the applicant and any other motor carrier, freight forwarder, or broker of household goods within 3 years of the proposed date of registration.

(e) *Temporary authority (TA) for motor carriers.* These applications require a finding that there is or soon will be an immediate transportation need that cannot be met by existing carrier service.

(1) Applications for TA will be entertained only when an emergency declaration has been made pursuant to § 390.23 of this subchapter.

(2) Temporary authority must be requested by filing Form MCSA–1 with the Division Office that has jurisdiction over the State in which the applicant's principal place of business is located.

(3) Applications for temporary authority are not subject to protest.

(4) Motor carriers granted temporary authority must comply with financial responsibility requirements under part 387 of this subchapter.

(5) Only a U.S.-domiciled motor carrier is eligible to receive temporary authority.

7. Amend § 365.109 by revising paragraphs (a)(5) and (6) and (b) to read as follows:

§ 365.109 FMCSA review of the application.

(a) * * *

(5) All applicants must file the appropriate evidence of financial responsibility within 90 days from the date notice of the application is published in the FMCSA Register:

(i) *Form BMC–91 or 91X or BMC 82 surety bond*—Bodily injury and property damage (motor property and passenger carriers; and freight forwarders that provide pickup or delivery service directly or by using a local delivery service under their control),

(ii) *Form BMC–84*—Surety bond or *Form BMC–85*—trust fund agreement (property brokers of general commodities and household goods).

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

(6) Applicants also must submit Form BOC–3—Designation of Agents—Motor Carriers, Brokers and Freight Forwarders—within 90 days from the date notice of the application is published in the FMCSA Register.

* * * * *

(b) A summary of the application will be published in the FMCSA Register to give notice to the public in case anyone wishes to oppose the application.

8. Add § 365.110 to read as follows:

§ 365.110 New Entrant Safety Assurance Program.

For motor carriers operating commercial motor vehicles as defined in 49 U.S.C. 31132, operating authority obtained under procedures in this part does not become permanent until the applicant satisfactorily completes the

New Entrant Safety Assurance Program in part 385 of this subchapter.

9. Amend § 365.111 by revising paragraph (a) to read as follows:

§ 365.111 Appeals to rejections of the application.

(a) An applicant has the right to appeal rejection of the application. The appeal must be filed at the FMCSA, Office of the Director of Information Technology, 1200 New Jersey Ave., SE., Washington, DC 20590, within 10 days of the date of the letter of rejection.

* * * * *

10. Revise § 365.119 to read as follows:

§ 365.119 Opposed applications.

If the application is opposed, opposing parties are required to send a copy of their protest to the applicant and to FMCSA. All protests must include statements made under oath (verified statements). There are no personal appearances or formal hearings.

11. Revise § 365.201 to read as follows:

§ 365.201 Definitions.

A person wishing to oppose a request for authority files a *protest.* A person filing a valid protest is known as a *protestant.*

12. Revise § 365.203 to read as follows:

§ 365.203 Time for filing.

A protest shall be filed (received at the FMCSA, Office of the Associate Administrator for Research and Information Technology, 1200 New Jersey Ave., SE., Washington, DC 20590) within 10 days after notice of the application appears in the FMCSA Register. A copy of the protest shall be sent to applicant's representative at the same time. Failure to timely file a protest waives further participation in the proceeding.

§ 365.301 [Removed and reserved]

13. Remove and reserve § 365.301.

14. Revise the heading of subpart D to read as follows:

Subpart D—Changes to an Entity's Name or Business Form

§§ 365.401, 365.403, 365.405, 365.407, 365.409, and 365.411 [Removed and reserved]

15. Remove and reserve §§ 365.401, 365.403, 365.405, 365.407, 365.409, and 365.411.

16. Amend § 365.507 by revising the heading and paragraph (e)(2) to read as follows

§ 365.507 FMCSA action on the application.

* * * * *

(e) * * *

(2) Electronically file Form BOC–3—Designation of Agents—Motor Carriers, Brokers and Freight Forwarders, as required by part 366 of this subchapter; and

* * * * *

17. Amend § 365.509 by revising paragraph (a) to read as follows:

§ 365.509 Requirement to notify FMCSA of change in applicant information.

(a) A motor carrier subject to this subpart must notify FMCSA of any changes or corrections to the information in Section A of Form MCSA–1—FMCSA Registration/Update (USDOT Number—Operating Authority Application), or Form BOC–3—Designation of Agents—Motor Carriers, Brokers and Freight Forwarders, during the application process or after having been granted provisional operating authority. The carrier must notify FMCSA in writing within 20 days of the change or correction.

* * * * *

PART 366—DESIGNATION OF PROCESS AGENT

18. The authority citation for part 366 is revised to read as follows:

Authority: 49 U.S.C. 502, 503, 13303, 13304 and 13908; and 49 CFR 1.73.

19. Revise § 366.1 to read as follows:

§ 366.1 Applicability.

These rules, relating to the filing of designations of persons upon whom court or Agency process may be served, govern for-hire and private motor carriers, brokers, freight forwarders and, as of the moment of succession, their fiduciaries (as defined at 49 CFR 387.319(a)).

20. Revise § 366. 2 to read as follows:

§ 366.2 Form of designation.

(a) Designations shall be made on Form BOC–3—Designation of Agents—Motor Carriers, Brokers and Freight Forwarders. Only one completed current form may be on file. It must include all States for which agent designations are required. One copy must be retained by the carrier, broker or freight forwarder at its principal place of business.

(b) Private motor carriers and for-hire motor carriers engaged in transportation exempt from economic regulation by FMCSA under 49 U.S.C. chapter 135 that are registered with FMCSA as of [insert effective date of the final rule] must file a Form BOC–3 designation by no later than [insert date 180 days from compliance date of final rule]. Failure to file a designation in accordance with this paragraph will result in deactivation of the carrier's USDOT Number.

21. Revise § 366.3 to read as follows:

§ 366.3 Eligible persons.

All persons (as defined at 49 U.S.C. 13102(18)) designated must reside or maintain an office in the State for which they are designated. If a State official is designated, evidence of his or her willingness to accept service of process must be furnished.

22. Amend § 366.4 by revising paragraph (a) and adding a new paragraph (c) to read as follows:

§ 366.4 Required States.

(a) *Motor carriers.* Every motor carrier (of property or passengers, including a private carrier) shall make a designation for each State in which it is authorized to operate and for each State traversed during such operations. Every motor carrier (including a private carrier) operating in the United States in the course of transportation between points in a foreign country shall file a designation for each State traversed.

* * * * *

(c) *Freight forwarders.* Every freight forwarder shall make a designation for each State in which its offices are located or in which contracts will be written.

23. Revise § 366.5 to read as follows:

§ 366.5 Blanket designations.

Where an association or corporation has filed with the FMCSA a list of process agents for each State, motor carriers (including private carriers), brokers and freight forwarders may make the required designations by using the following statement:

Those persons named in the list of process agents on file with the Federal Motor Carrier Safety Administration by

_____

(name of association or corporation) and any subsequently filed revisions thereof, for the States in which this carrier is or may be authorized to operate (or arrange) as an entity of motor vehicle transportation, including States traversed during such operations, except those States for which individual designations are named.

24. Revise § 366.6 to read as follows:

§ 366.6 Cancellation or change.

(a) A designation may be canceled or changed only by a new designation except that, where a motor carrier (including a private carrier), broker or freight forwarder ceases to be subject to

§ 366.4 in whole or in part for 1 year, designation is no longer required and may be canceled without making another designation.

(b) A change to a designation, such as name, address, or contact information, must be reported to FMCSA within 20 days of the change.

PART 368—APPLICATION FOR A CERTIFICATE OF REGISTRATION TO OPERATE IN MUNICIPALITIES IN THE UNITED STATES ON THE UNITED STATES-MEXICO INTERNATIONAL BORDER OR WITHIN THE COMMERCIAL ZONES OF SUCH MUNICIPALITIES

25. The authority citation for part 368 is revised to read as follows:

Authority: 49 U.S.C. 13301, 13902 and 13908; Pub. L. 106–159, 113 Stat. 1748; and 49 CFR 1.73.

26. Amend § 368.3 by revising paragraphs (a), (b), and (f), and removing and reserving paragraph (e), to read as follows:

§ 368.3 Applying for a certificate of registration.

(a) If you wish to obtain a certificate of registration under this part, you must electronically file an application that includes the following:

(1) Form MCSA–1—FMCSA Registration/Update (USDOT Number—(Operating Authority Application).

(2) Form BOC–3—Designation of Agents—Motor Carriers, Brokers and Freight Forwarders or indicate on the application that the applicant will use a process agent service that will submit the Form BOC–3 electronically.

(b) The FMCSA will only process your application for a Certificate of Registration if it meets the following conditions:

(1) The application must be completed in English;

(2) The information supplied must be accurate and complete in accordance with the instructions to Form MCSA–1 and Form BOC–3.

(3) The application must include all the required supporting documents and applicable certifications set forth in the instructions to Form MCSA–1 and Form BOC–3.

* * * * *

(e) [Reserved]

(f) Form MCSA–1 is an electronic application and is available, including complete instructions, from the FMCSA Web site at *http://www.fmcsa.dot.gov* (Keyword ''MCSA–1'').

27. Amend § 368.4 by revising paragraph (a) to read as follows:

§ 368.4 Requirement to notify FMCSA of change in applicant information.

(a) You must notify FMCSA of any changes or corrections to the information in Section A of Form MCSA–1—FMCSA Registration/Update (USDOT Number—Operating Authority Application), or the Form BOC–3, Designation of Agents-Motor Carriers, Brokers and Freight Forwarders, during the application process or while you have a Certificate of Registration. You must notify FMCSA in writing within 20 days of the change or correction.

* * * * *

28. Revise § 368.8 to read as follows:

§ 368.8 Appeals.

An applicant has the right to appeal denial of the application. The appeal must be in writing and specify in detail why the Agency's decision to deny the application was wrong. The appeal must be filed with the FMCSA, Office of the Director of Information Technology within 20 days of the date of the letter denying the application. The decision of the Director will be the final Agency order.

PART 385—SAFETY FITNESS PROCEDURES

29. The authority citation for part 385 is revised to read as follows:

Authority: 49 U.S.C. 113, 504, 521(b), 5105(e), 5109, 5113, 13901–13905, 13908, 31136, 31144, 31148, 31151, and 31502; Sec. 350 of Pub. L. 107–87; and 49 CFR 1.73.

30. Revise § 385.301 to read as follows:

§ 385.301 What is a motor carrier required to do before beginning interstate operations?

(a) Before a motor carrier of property or passengers begins interstate operations, it must register with FMCSA and receive a USDOT Number. In addition, for-hire motor carriers must obtain operating authority from FMCSA, unless providing transportation exempt from the Title 49 U.S.C. chapter 139 commercial registration requirements. Both the USDOT Number and operating authority are obtained by following registration procedures described in 49 CFR part 390, subpart C. Title 49 CFR part 365 provides detailed instructions for obtaining operating authority.

(b) This subpart applies to motor carriers domiciled in the United States and Canada.

(c) The regulations in this subpart do not apply to a Mexico-domiciled motor carrier. A Mexico-domiciled motor carrier of property or passengers must register with FMCSA by following the registration procedures described in 49 CFR parts 365, 368 and 390. Title 49 CFR parts 365 and 368 provide detailed information about how a Mexico-domiciled motor carrier may obtain operating authority.

31. Revise § 385.303 to read as follows:

§ 385.303 How does a motor carrier register with the FMCSA?

A motor carrier registers with FMCSA by completing Form MCSA–1, which is an electronic application that must be completed on-line at the FMCSA Web site at *http://www.fmcsa.dot.gov* (Keyword ''MCSA–1''). Complete instructions for the Form MCSA–1 also are available at the same location.

32. Revise § 385.305 to read as follows:

§ 385.305 What happens after the FMCSA receives a request for new entrant registration?

(a) The applicant for new entrant registration will be directed to the FMCSA Internet Web site (*http://www.fmcsa.dot.gov*) to secure and/or complete the application package online.

(b) The application package will include the following:

(1) Educational and technical assistance material regarding the requirements of the FMCSRs and HMRs, if applicable.

(2) Form MCSA–1—FMCSA Registration/Update (USDOT Number—Operating Authority Application). This form is used to obtain both a USDOT Number and operating authority.

(c) Upon completion of the application form, the new entrant will be issued an inactive USDOT Number. An applicant may not begin operations nor mark a commercial motor vehicle with the USDOT Number until after the date of the Agency's written notice that the USDOT Number has been activated. Violations of this section may be subject to the penalties under § 392.9b(b) of this subchapter.

(d) For-hire motor carriers, unless providing transportation exempt from the Title 49 U.S.C. chapter 139 commercial registration requirements, must obtain operating authority as prescribed under § 390.105(b) and 49 CFR part 365 of this subchapter before operating in interstate commerce.

33. Amend § 385.329 by revising paragraphs (b)(1), (c)(1) and (d) to read as follows:

§ 385.329 May a new entrant that has had its USDOT new entrant registration revoked and its operations placed out of service reapply?

* * * * *

(b) * * *

(1) Submit an updated Form MCSA–1.

* * * * *

(c) * * *

(1) Submit an updated Form MCSA–1.

* * * * *

(d) If the new entrant is a for-hire motor carrier subject to the registration provisions of Title 49 U.S.C. chapter 139 and also has had its operating authority revoked, it must re-apply for operating authority as set forth in § 390.105(b) and 49 CFR part 365 of this chapter.

34. Revise § 385.405 to read as follows:

§ 385.405 How does a motor carrier apply for a safety permit?

(a) *Application form.* (1) To apply for a new safety permit or renewal of the safety permit, a motor carrier must complete and submit Form MCSA–1—FMCSA Registration/Update (USDOT Number—Operating Authority Application) and meet the requirements under 49 CFR part 390, subpart C.

(2) The Form MCSA–1 also will also satisfy the requirements for obtaining and renewing a USDOT Number.

(b) *Where to get forms and instructions.* Form MCSA–1 is an electronic application and is available, including complete instructions, from the FMCSA Web site at *http://www.fmcsa.dot.gov* (Keyword ''MCSA–1'').

(c) *Signature and certification.* An official of the motor carrier must sign and certify that the information is correct on each form the motor carrier submits.

(d) *Updating information.* A motor carrier holding a safety permit must report to FMCSA any change in the information on its Form MCSA–1 within 20 days of the change. The motor carrier must use Form MCSA–1 to report the new information.

35. Amend § 385.409 by revising paragraph (a) to read as follows:

§ 385.409 When may a temporary safety permit be issued to a motor carrier?

(a) *Temporary safety permit.* If a motor carrier does not meet the criteria of § 385.407(a), FMCSA may issue it a temporary safety permit. To obtain a temporary safety permit a motor carrier must certify on Form MCSA–1 that it is operating in full compliance with the HMRs, with the FMCSRs, and/or comparable State regulations, whichever is applicable; and with the minimum financial responsibility requirements in part 387 of this subchapter or in State regulations, whichever is applicable.

* * * * *

36. Revise § 385.419 to read as follows:

§ 385.419 How long is a safety permit effective?

Unless suspended or revoked, a safety permit (other than a temporary safety permit) is effective for two years, except that:

(a) A safety permit will be subject to revocation if a motor carrier fails to submit a renewal application (Form MCSA–1) in accordance with the schedule set forth for filing Form MCSA–1 in part 390 subpart C of this subchapter; and

(b) An existing safety permit will remain in effect pending FMCSA's processing of an application for renewal if a motor carrier submits the required application (Form MCSA–1) in accordance with the schedule set forth in part 390 subpart C of this subchapter.

37. Amend § 385.421 by revising paragraphs (a)(1) and (a)(2) to read as follows:

§ 385.421 Under what circumstances will a safety permit be subject to revocation or suspension by FMCSA?

(a) * * *

(1) A motor carrier fails to submit a renewal application (Form MCSA–1) in accordance with the schedule set forth in part 390 subpart C of this subchapter.

(2) A motor carrier provides any false or misleading information on its application form (Form MCSA–1) or as part of updated information it is providing on Form MCSA–1 (see § 385.405(d)).

* * * * *

38. Revise § 385.603 to read as follows:

§ 385.603 Application.

(a) Each applicant applying under this subpart must submit an application that consists of:

(1) Form MCSA–1, FMCSA Registration/Update (USDOT Number—Operating Authority Application); and

(2) A notification of the means used to designate process agents, either by submission in the application package of Form BOC–3, Designation of Agents—Motor Carriers, Brokers and Freight Forwarders, or a letter stating that the applicant will use a process agent service that will submit the Form BOC–3 electronically.

(b) The FMCSA will process an application only if it meets the following conditions:

(1) The application must be completed in English.

(2) The information supplied must be accurate, complete, and include all required supporting documents and applicable certifications in accordance with the instructions to Form MCSA–1 and Form BOC–3.

(3) The application must include the filing fee payable to the FMCSA in the amount set forth at 49 CFR 360.3(f)(1).

(4) The application must be signed by the applicant.

(c) An applicant must electronically file Form MCSA–1.

(d) Form MCSA–1 is an electronic application and is available, including complete instructions, from the FMCSA Web site at *http://www.fmcsa.dot.gov* (Keyword ''MCSA–1'').

39. Amend § 385.607 by revising paragraph (e)(2) to read as follows:

§ 385.607 FMCSA action on the application.

* * * * *

(e) * * *

(2) File or have its process agent(s) electronically submit, Form BOC–3—Designation of Agents—Motor Carriers, Brokers and Freight Forwarders, as required by part 366 of this subchapter.

* * * * *

40. Amend § 385.609 by revising paragraph (a)(2) and removing paragraph (a)(3) to read as follows:

§ 385.609 Requirement to notify FMCSA of change in applicant information.

(a) * * *

(2) A motor carrier subject to this subpart must notify FMCSA of any changes or corrections to the information in Section A of Form MCSA–1 that occur during the application process or after the motor carrier has been granted new entrant registration. The motor carrier must report the changes or corrections within 20 days of the change. The motor carrier must use Form MCSA–1 to report the new information.

* * * * *

41. Amend § 385.713 by revising paragraphs (b)(1), (c)(1), and (d) to read as follows:

§ 385.713 Reapplying for new entrant registration.

* * * * *

(b) * * *

(1) Submit an updated Form MCSA–1, FMCSA Registration/Update (USDOT Number—Operating Authority Application);

* * * * *

(c) * * *

(1) Submit an updated Form MCSA–1, FMCSA Registration/Update (USDOT Number—Operating Authority Application);

* * * * *

(d) If the new entrant is a for-hire carrier subject to the registration

provisions under 49 U.S.C. 13901 and also has had its operating authority revoked, it must reapply for operating authority as set forth in § 390.105(b) and 49 CFR part 365 of this subchapter.

PART 387—MINIMUM LEVELS OF FINANCIAL RESPONSIBILITY FOR MOTOR CARRIERS

42. The authority citation for part 387 is revised to read as follows:

Authority: 49 U.S.C. 13101, 13301, 13906, 13908, 14701, 31138, and 31139; and 49 CFR 1.73.

43. Add § 387.19 to subpart A to read as follows:

§ 387.19 Electronic filing of surety bonds, trust fund agreements, certificates of insurance and cancellations.

(a) Insurers of exempt motor carriers, as defined in § 390.5 of this subchapter, and private motor carriers that transport hazardous materials in interstate commerce must file certificates of insurance, surety bonds, and other securities and agreements with FMCSA electronically in accordance with the requirements and procedures set forth at § 387.323.

(b) The requirements of this section do not apply to motor carriers excepted under § 387.7(b)(3).

44. Revise § 387.33 to read as follows:

§ 387.33 Financial responsibility, minimum levels.

(a) *General limits.* The minimum levels of financial responsibility referred to in § 387.31 of this subpart are hereby prescribed as follows:

Schedule of Limits

Public Liability

For-hire motor carriers of passengers operating in interstate or foreign commerce.

Vehicle seating capacity	Minimum limits
(1) Any vehicle with a seating capacity of 16 passengers or more, including the driver [1] ...	$5,000,000
(2) Any vehicle with a seating capacity of 15 passengers or less, including the driver [2]	1,500,000

[1] [2] Except as provided in § 387.27(b).

(b) *Limits applicable to transit service providers.* Notwithstanding the provisions of paragraph (a) of this section, the minimum level of financial responsibility for a motor vehicle used to provide transportation services within a transit service area located in more than one State under an agreement with a Federal, State, or local government funded, in whole or in part, with a grant under 49 U.S.C. 5307, 5310 or 5311, including transportation designed and carried out to meet the special needs of elderly individuals and individuals with disabilities, will be the highest level required for any of the States in which it operates. Transit service providers conducting such operations must register as for-hire passenger carriers under part 390, subpart C of this subchapter, identify the States in which they operate under the applicable grants, and certify on their registration documents that they have in effect financial responsibility levels in an amount equal to or greater than the highest level required by any of the States in which they are operating under a qualifying grant.

45. Amend § 387.39 by revising Form MCS–90B to read as follows:

§ 387.39 Forms.

* * * * *

BILLING CODE 4910–EX–P

OMB NO: 2126-0008
Expiration Date:

U. S. Department of Transportation
Federal Motor Carrier
Safety Administration

ENDORSEMENT FOR
MOTOR CARRIER POLICIES OF INSURANCE FOR PUBLIC LIABILITY UNDER SECTION 18 OF THE BUS REGULATIORY REFORM ACT OF 1982

Issued to _____ of _____

Dated at _____ this _____ day of _____, 20_____

Amending Policy No _____ Effective Date _____

Name of Insurance Company _____

Countersigned by _____
Authorized Company Representative

The policy to which this endorsement is attached provides primary or excess insurance, as indicated by "[X]," for the limits shown:

[ ] This insurance is primary and the company shall not be liable for amounts in excess of $_____ for each accident.

[ ] This insurance is excess and the company shall not be liable for amounts in excess of $_____ for each accident in excess of the underlying limit of $ _____for each accident.

Whenever required by the Federal Motor Carrier Safety Administration (FMCSA), the company agrees to furnish the FMCSA a duplicate of said policy and all its endorsements. The company also agrees, upon telephone request by an authorized representative of the FMCSA, to verify that the policy is in force as of a particular date. The telephone number to call is: _____.

Cancellation of this endorsement may be effected by the company or the insured by giving (1) thirty-five (35) days notice in writing to the other party (said 35 days notice to commence from the date the notice is mailed, proof of mailing shall be sufficient proof of notice), and (2) if the insured is subject to the FMCSA's registration requirements, by providing thirty (30) days notice to the FMCSA (said 30 days notice to commence from the date the notice is received by the FMCSA at its office in Washington, D.C.).

DEFINITIONS AS USED IN THIS ENDORSEMENT

Accident includes continuous or repeated exposure to conditions which results in Public Liability which the insured neither expected nor intended.
Bodily Injury means injury to the body, sickness, or disease to any person, including death resulting from any of these.
Motor Vehicle means a for-hire carrier of passengers by motor vehicle.
Property Damage means damage to or loss of use of tangible property.
Public Liability means liability for bodily injury, property damage.

The insurance policy to which this endorsement is attached provides automobile liability insurance and is amended to assure compliance by the insured, within the limits stated herein, as a for-hire motor carrier of passengers with Section 18 of the Bus Regulatory Reform Act of 1982 and the rules and regulations of the Federal Motor Carrier Safety Administration.

In consideration of the premium stated in the policy to which this endorsement is attached, the insurer (the company) agrees to pay, within the limits of liability described herein, any final judgment received against the insured for public liability resulting from negligence in the operation, maintenance or use of motor vehicles subject to the financial responsibility requirements of Sections 18 of the Bus Regulatory Reform Act of 1982 regardless of whether or not each motor vehicle is specifically described in the policy and whether or not such negligence occurs on any route or in any territory authorized to be served by the insured or elsewhere. Such insurance as is afforded, for public liability, does not apply to injury to or death of the insured's employees while engaged in the course of their employment, or property transported by the insured, designated as cargo. It is understood and agreed that no condition, provision, stipulation, or limitation contained in the policy, this endorsement, or any other endorsement thereon, or violation thereof, shall relieve the company from liability or from the payment of any final judgment, within the limits of liability herein described, irrespective of the financial condition, insolvency or bankruptcy of the insured.

However, all terms, conditions, and limitations in the policy to which the endorsement is attached shall remain in full force and effect as binding between the insured and the company. The insured agrees to reimburse the company for any payment made by the company on account of any accident, claim, or suit involving a breach of the terms of the policy, and for any payment that the company would not have been obligated to make under the provisions of the policy except for the agreement contained in this endorsement.

It is further understood and agreed that, upon failure of the company to pay any final judgment recovered again the insured as provided herein, the judgment creditor may maintain an action in any court of competent jurisdiction against the company to compel such payment.

The limits of the company's liability for the amounts prescribed in this endorsement apply separately to each accident and any payment under the policy because of any one accident shall not operate to reduce the liability of the company for the payment of final judgments resulting from any other accident.

The Bus Regulatory Reform Act 1982 requires limits of financial responsibilityaccording to vehicle seating capacity, it is the MOTOR CARRIER'S obligation to obtain the required limits of financial responsibility. THE SCHEDULE OF LIMITS SHOWN OF THE REVERSE SIDE DOES NOT PROVIDE CVERAGE. The limits shown in the schedule are for information purposes only.

SCHEDULE OF LIMITS-PUBLIC LIABILITY

For-hire motor carriers of passengers operating in interstate of foreign commerce

Vehicle Seating capacity	Minimum Limits
(1)Any vehicle with a seating capacity of 16 passenger or more. (2)Any vehicle with a seating capacity of 15 passengers or less.	$5,000.000 $1,500,000

Form MCS-90B

BILLING CODE 4910–EX–C

* * * * *

46. Add § 387.43 to read as follows:

§ 387.43 Electronic filing of surety bonds, trust fund agreements, certificates of insurance and cancellations.

(a) Insurers of for-hire motor carriers of passengers must file certificates of insurance, surety bonds, and other securities and agreements electronically in accordance with the requirements and procedures set forth at § 387.323.

(b) This section does not apply to motor carriers excepted under § 387.31(b)(3).

47. Amend § 387.303 by revising paragraph (b) to read as follows:

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

* * * * *

(b)(1) Motor carriers subject to § 387.303(a)(1) are required to have security for the required minimum limits as follows:

(i) *Small freight vehicles:*

Kind of equipment	Transportation provided	Minimum limits
Fleet including only vehicles under 10,001 pounds (4,536 kilograms) GVWR.	Property (non-hazardous)	$300,000

(ii) *Passenger carriers:*

PASSENGER CARRIERS: KIND OF EQUIPMENT

Vehicle seating capacity	Minimum limits
(A) Any vehicle with a seating capacity of 16 passengers or more (including the driver)	$5,000,000
(B) Any vehicle designed or used to transport 15 passengers or less (including the driver) for compensation	1,500,000

(2) Motor carriers subject to § 387.301(a)(2) are required to have security for the required minimum limits as follows:

Kind of equipment	Commodity transported	Minimum limits
(i) Freight vehicles of 10,001 pounds (4,536 kilograms) or more GVWR.	Property (non-hazardous)	$750,000
(ii) Freight vehicles of 10,001 pounds (4,536 kilograms) or more GVWR.	Hazardous substances, as defined in § 171.8 of this title, transported in cargo tanks, portable tanks, or hopper-type vehicles with capacities in excess of 3,500 water gallons, or in bulk explosives Division 1,1, 1.2 and 1.3 materials. Division 2.3, Hazard Zone A material; in bulk Division 2.1 or 2.2; or highway route controlled quantities of a Class 7 material, as defined in § 173.403 of this title.	5,000,000
(iii) Freight vehicles of 10,001 pounds (4,536 kilograms) or more GVWR.	Oil listed in § 172.101 of this title; hazardous waste, hazardous materials and hazardous substances defined in § 171.8 of this title and listed in § 172.101 of this title, but not mentioned in (b) above or (d) below.	1,000,000
(iv) Freight vehicles under 10,001 pounds (4,536 kilograms) GVWR.	Any quantity of Division 1.1, 1.2, or 1.3 material; any quantity of a Division 2.3, Hazard Zone A, or Division 6.1, Packing Group I, Hazard Zone A material; or highway route controlled quantities of Class 7 material as defined in § 173.455 of this title.	5,000,000

* * * * *

48. Amend § 387.313 by revising paragraphs (b) and (d) to read as follows:

§ 387.313 Forms and procedures.

* * * * *

(b) *Filing and copies.* Certificates of insurance, surety bonds, and notices of cancellation must be filed with the FMCSA.

* * * * *

(d) *Cancellation notice.* Except as provided in paragraph (e) of this section, surety bonds, certificates of insurance and other securities or agreements shall not be cancelled or withdrawn until 30 days after written notice has been submitted to *http://fmcsa.dot.gov* on the prescribed form (Form BMC–35, Notice of Cancellation Motor Carrier Policies of Insurance under 49 U.S.C. 13906, and BMC–36, Notice of Cancellation Motor Carrier and Broker Surety Bonds, as appropriate) by the insurance company, surety or sureties, motor carrier, broker or other party thereto, as the case may be, which period of thirty (30) days shall commence to run from the date such notice on the prescribed form is filed with FMCSA at *http://fmcsa.dot.gov.*

* * * * *

49. Revise § 387.323 to read as follows:

§ 387.323 Electronic filing of surety bonds, trust fund agreements, certificates of insurance and cancellations.

(a) Insurers must electronically file forms BMC 34, BMC 35, BMC 36, BMC 82, BMC 83, BMC 84, BMC 85, BMC 91, and BMC 91X in accordance with the requirements and procedures set forth in paragraphs (b) through (d) of this section.

(b) Each insurer must obtain authorization to file electronically by registering with the FMCSA. An individual account number and

password for computer access will be issued to each registered insurer.

(c) Filings must be transmitted online via the Internet at *http://fmcsa.dot.gov.*

(d) All registered insurers agree to furnish upon request to the FMCSA a copy of any policy (or policies) and all certificates of insurance, endorsements, surety bonds, trust fund agreements, proof of qualification to self-insure or other insurance filings.

50. Revise § 387.403 to read as follows:

§ 387.403 General requirements.

(a) *Cargo.* A household goods freight forwarder may not operate until it has filed with FMCSA an appropriate surety bond, certificate of insurance, qualifications as a self-insurer, or other securities or agreements, in the amounts prescribed at § 387.405, for loss of or damage to household goods.

(b) *Public liability.* A freight forwarder may not perform transfer, collection, and delivery service until it has filed with the FMCSA an appropriate surety bond, certificate of insurance, qualifications as a self-insurer, or other securities or agreements, in the amounts prescribed at § 387.405, conditioned to pay any final judgment recovered against such freight forwarder for bodily injury to or the death of any person, or loss of or damage to property (except cargo) of others, or, in the case of freight vehicles described at 49 CFR 387.303(b)(2), for environmental restoration, resulting from the negligent operation, maintenance, or use of motor vehicles operated by or under its control in performing such service.

51. Amend § 387.413 by revising paragraph (b) to read as follows:

§ 387.413 Forms and procedures.

* * * * *

(b) *Procedure.* Certificates of insurance, surety bonds, and notices of cancellation must be electronically filed with the FMCSA.

* * * * *

52. Revise § 387.419 to read as follows:

§ 387.419 Electronic filing of surety bonds, certificates of insurance and cancellations.

Insurers must electronically file certificates of insurance, surety bonds, and other securities and agreements and notice of cancellation in accordance with the requirements and procedures set forth at § 387.323.

PART 390—FEDERAL MOTOR CARRIER SAFETY REGULATIONS; GENERAL

53. The authority citation for part 390 is revised to read as follows:

Authority: 49 U.S.C. 508, 13301, 13902, 13908, 31132, 31133, 31136, 31502, 31504; sec. 114, Pub. L. 103–311, 108 Stat. 1673, 1677; secs. 217, 229; Pub. L. 106–159, 113 Stat. 1748, 1767, 1773; and 49 CFR 1.73.

54. Revise § 390.3 to read as follows:

§ 390.3 General applicability.

(a) The rules in subchapter B of this chapter are applicable to all employers, employees, and commercial motor vehicles, which transport property or passengers in interstate commerce.

(b) The rules in part 383, Commercial Driver's License Standards; Requirements and Penalties, are applicable to every person who operates a commercial motor vehicle, as defined in § 383.5 of this subchapter, in interstate or intrastate commerce and to all employers of such persons.

(c) The rules in part 387, Minimum Levels of Financial Responsibility for Motor Carriers, are applicable to motor carriers as provided in § 387.3 or § 387.27 of this subchapter.

(d) *Additional requirements.* Nothing in subchapter B of this chapter shall be construed to prohibit an employer from requiring and enforcing more stringent requirements relating to safety of operation and employee safety and health.

(e) *Knowledge of and compliance with the regulations.* (1) Every employer shall be knowledgeable of and comply with all regulations contained in this subchapter which are applicable to that motor carrier's operations.

(2) Every driver and employee shall be instructed regarding, and shall comply with, all applicable regulations contained in this subchapter.

(3) All motor vehicle equipment and accessories required by this subchapter shall be maintained in compliance with all applicable performance and design criteria set forth in this subchapter.

(f) *Exceptions.* Unless otherwise specifically provided, the rules in this subchapter do not apply to—

(1) All school bus operations as defined in § 390.5;

(2) Transportation performed by the Federal government, a State, or any political subdivision of a State, or an agency established under a compact between States that has been approved by the Congress of the United States;

(3) The occasional transportation of personal property by individuals not for compensation and not in the furtherance of a commercial enterprise;

(4) The transportation of human corpses or sick and injured persons;

(5) The operation of fire trucks and rescue vehicles while involved in emergency and related operations;

(6) The operation of commercial motor vehicles designed or used to transport between 9 and 15 passengers (including the driver), not for direct compensation, provided the vehicle does not otherwise meet the definition of a commercial motor vehicle, except that motor carriers operating such vehicles are required to comply with §§ 390.15, 390.21(a) and (b)(2), 390.101 and 390.103.

(7) Either a driver of a commercial motor vehicle used primarily in the transportation of propane winter heating fuel or a driver of a motor vehicle used to respond to a pipeline emergency, if such regulations would prevent the driver from responding to an emergency condition requiring immediate response as defined in § 390.5.

(g) *Motor carriers that transport hazardous materials in intrastate commerce.* The rules in the following provisions of subchapter B of this chapter apply to motor carriers that transport hazardous materials in intrastate commerce and to the motor vehicles that transport hazardous materials in intrastate commerce:

(1) Part 385, subparts A and E, for carriers subject to the requirements of § 385.403 of this subchapter.

(2) Part 386, Rules of Practice for Motor Carrier, Intermodal Equipment Provider, Broker, Freight Forwarder, and Hazardous Materials Proceedings, of this subchapter.

(3) Part 387, Minimum Levels of Financial Responsibility for Motor Carriers, to the extent provided in § 387.3 of this subchapter.

(4) Subpart C of this part, Unified Registration System, and § 390.21, Marking of CMVs, for carriers subject to the requirements of § 385.403 of this subchapter. Intrastate motor carriers operating prior to January 1, 2005, are excepted from § 390.101.

(h) *Intermodal equipment providers.* The rules in the following provisions of subchapter B of this chapter apply to intermodal equipment providers:

(1) Subpart F, Intermodal Equipment Providers, of Part 385, Safety Fitness Procedures.

(2) Part 386, Rules of Practice for Motor Carrier, Intermodal Equipment Provider, Broker, Freight Forwarder, and Hazardous Materials Proceedings.

(3) Part 390, Federal Motor Carrier Safety Regulations; General, except § 390.15(b) concerning accident registers.

(4) Part 393, Parts and Accessories Necessary for Safe Operation.

(5) Part 396, Inspection, Repair, and Maintenance.

(i) *Brokers.* The rules in the following provisions of subchapter B of this chapter apply to brokers that are

required to register with the Agency pursuant to 49 U.S.C. chapter 139.

(1) Part 386, Rules of Practice for Motor Carrier, Intermodal Equipment Provider, Broker, Freight Forwarder, and Hazardous Materials Proceedings.

(2) Part 387, Minimum Levels of Financial Responsibility for Motor Carriers, to the extent provided in subpart C.

(3) Subpart C of this part, Unified Registration System

(j) *Freight forwarders.* The rules in the following provisions of subchapter B of this chapter apply to freight forwarders that are required to register with the Agency pursuant to 49 U.S.C. chapter 139.

(1) Part 386, Rules of Practice for Motor Carrier, Intermodal Equipment Provider, Broker, Freight Forwarder, and Hazardous Materials Proceedings.

(2) Part 387, Minimum Levels of Financial Responsibility for Motor Carriers, to the extent provided in subpart D of this part.

(3) Subchapter C of this part, Unified Registration System.

(k) *Cargo tank facilities.* The rules in Subpart C of this part, Unified Registration System, apply to each cargo tank and cargo tank motor vehicle manufacturer, assembler, repairer, inspector, tester, and design certifying engineer that is subject to registration requirements under 49 CFR 107.502 and 49 U.S.C. 5108.

55. Amend § 390.5 by revising the definition of ''Exempt motor carrier'' to read as follows:

§ 390.5 Definitions.

* * * * *

Exempt motor carrier means a person engaged in transportation exempt from economic regulation by the Federal Motor Carrier Safety Administration (FMCSA) under 49 U.S.C. chapter 135. ''Exempt motor carriers'' are subject to the safety regulations set forth in this subchapter.

* * * * *

56. Revise § 390.19 to read follows.

§ 390.19 Motor carrier identification reports for certain Mexico-domiciled motor carriers.

(a) *Applicability.* A Mexico-domiciled motor carrier requesting authority to provide transportation of property or passengers in interstate commerce between Mexico and points in the United States beyond the municipalities and commercial zones along the United Sates-Mexico international border must file Form MCS–150 with FMCSA as follows:

(b) *Filing schedule.* Each motor carrier must file the appropriate form under paragraph (a) of this section at the following times:

(1) Before it begins operations; and

(2) Every 24 months, according to the following schedule:

USDOT No. ending in . . .	Must file by last day of . . .
1	January.
2	February.
3	March.
4	April.
5	May.
6	June.
7	July.
8	August.
9	September.
0	October.

(3) If the next-to-last digit of its USDOT Number is odd, the motor carrier shall file its update in every odd-numbered calendar year. If the next-to-last digit of the USDOT Number is even, the motor carrier shall file its update in every even-numbered calendar year.

(c) *Availability of forms.* The Form MCS–150 and complete instructions are available from the FMCSA Web site at *http://www.fmcsa.dot.gov* (Keyword ''MCS–150''); from all FMCSA Service Centers and Division offices nationwide; or by calling 1–800–832–5660.

(d) *Where to file.* The Form MCS–150 must be filed with FMCSA Office of Information Management. The form may be filed electronically according to the instructions at the Agency's Web site, or it may be sent to Federal Motor Carrier Safety Administration, Office of Information Management, MC–RIO, 1200 New Jersey Avenue, SE., Washington, DC 20590.

(e) *Special instructions.* A motor carrier should submit the Form MCS–150 along with its application for operating authority (OP–1(MX)), to the appropriate address referenced on that form, or may submit it electronically or by mail separately to the address mentioned in paragraph (d) of this section.

(f) Only the legal name or a single trade name of the motor carrier may be used on the Form MCS–150.

(g) A motor carrier that fails to file the Form MCS–150 or furnishes misleading information or makes false statements upon the form, is subject to the penalties prescribed in 49 U.S.C. 521(b)(2)(B).

(h)(1) Upon receipt and processing of the form described in paragraph (a) of this section, FMCSA will issue the motor carrier or intermodal equipment provider an identification number (USDOT Number).

(2) A Mexico-domiciled motor carrier seeking to provide transportation of property or passengers in interstate commerce between Mexico and points in the United States beyond the municipalities and commercial zones along the United States-Mexico international border must pass the pre-authorization safety audit under § 365.507 of this subchapter. The Agency will not issue a USDOT Number until expiration of the protest period provided in § 365.115 of this subchapter or—if a protest is received—after FMCSA denies or rejects the protest.

(3) The motor carrier must display the number on each self-propelled CMV, as defined in § 390.5, along with the additional information required by § 390.21.

57a. Redesignate subpart C, consisting of §§ 390.40, 390.42, 390.44, and 390.46, as subpart D, consisting of §§ 390.201, 390.203, 390.205, and 390.207.

57b. Add a new subpart C to read as follows:

Subpart C—Unified Registration System

Sec.

390.101 USDOT Registration.
390.102 PRISM State registration/biennial updates.
390.103 Special requirements for registration.
390.105 Other governing regulations.
390.107 Pre-authorization safety audit.

Subpart C—Unified Registration System

§ 390.101 USDOT Registration.

(a) *Purpose.* This section establishes who must register with FMCSA under the Unified Registration System, the filing schedule, and general information pertaining to persons subject to the Unified Registration System registration requirements.

(b) *Applicability.* (1) Except as provided in paragraph (g) of this section, each motor carrier (including a private motor carrier, an exempt for-hire motor carrier, a non-exempt for-hire motor carrier, and a motor carrier of passengers that participates in a through ticketing arrangement with one or more interstate for-hire motor carriers of passengers), intermodal equipment provider, broker and freight forwarder subject to the requirements of 49 CFR chapter III, subchapter B must file Form MCSA–1 with FMCSA in order to:

(i) Identify its operations with the Federal Motor Carrier Safety Administration for safety oversight, as authorized under 49 U.S.C. 31144, as applicable;

(ii) Obtain operating authority required under Title 49 U.S.C. chapter 139, as applicable; and

(iii) Obtain a hazardous materials safety permit as required under 49 U.S.C. 5109, as applicable.

(2) A cargo tank and cargo tank motor vehicle manufacturer, assembler, repairer, inspector, tester, and design certifying engineer that is subject to registration requirements under 49 CFR 107.502 and 49 U.S.C. 5108 must satisfy those requirements by electronically filing Form MCSA–1 with FMCSA.

(c) *General.* (1)(i) A person that fails to file Form MCSA–1 pursuant to paragraph (d)(1) of this section is subject to the penalties prescribed in 49 U.S.C. 521(b)(2)(B) or 49 U.S.C. 14901(a), as appropriate.

(ii) A person that fails to complete biennial updates to the information on Form MCSA–1 pursuant to paragraph (d)(2) of this section is subject to the penalties prescribed in 49 U.S.C. 521(b)(2)(B) or 49 U.S.C. 14901(a), as appropriate, and inactivation of its USDOT Number.

(iii) A person that furnishes misleading information or makes false statements upon Form MCSA–1 is subject to the penalties prescribed in 49 U.S.C. 521(b)(2)(B), 49 U.S.C. 14901(a) or 49 U.S.C. 14907, as appropriate.

(2) Upon receipt and processing of Form MCSA–1, FMCSA will issue the applicant an inactive identification number (USDOT Number). FMCSA will activate the USDOT Number after completion of applicable administrative filings pursuant to § 390.103(a) of this chapter, unless the applicant is subject to § 390.103(b). An applicant may not begin operations nor mark a commercial motor vehicle with the USDOT Number until after the date of the Agency's written notice that the USDOT Number has been activated.

(3) The motor carrier must display a valid USDOT Number on each self-propelled CMV, as defined in § 390.5, along with the additional information required by § 390.21.

(d) *Filing schedule.* Each person listed under paragraph (b) of this section must electronically file Form MCSA–1 at the following times:

(1) Before it begins operations; and

(2) Every 24 months as prescribed in paragraph (d)(3) or (d)(4) of this section, as applicable.

(3) Persons assigned a USDOT Number prior to [Insert final rule compliance date] must file an updated Form MCSA–1 every 24 months, according to the following schedule:

USDOT No. ending in . . .	Must file by last day of . . .
1	January.
2	February.
3	March.
4	April.
5	May.
6	June.
7	July.
8	August.
9	September.
0	October.

If the next-to-last digit of its USDOT Number is odd, the person must file its update in every odd-numbered calendar year. If the next-to-last digit of the USDOT Number is even, the person must file its update in every even-numbered calendar year.

(4) Persons assigned a USDOT Number on or after [Insert final rule compliance date] must file an updated Form MCSA–1 every 24 months, according to the date of Agency's written notice that the USDOT Number has been activated pursuant to § 390.101(c)(2).

(5) *When there is a change in legal name, form of business, or address.* A registered entity must notify the Agency of a change in legal name, form of business, or address within 20 days of the change by filing an updated Form MCSA–1 reflecting the revised information.

(e) *Availability of form.* Form MCSA–1 is an electronic application and is available, including complete instructions, from the FMCSA Web site at *http://www.fmcsa.dot.gov* (Keyword ''MCSA–1'').

(f) *Where to file.* Persons subject to the registration requirements under this subpart must electronically file Form MCSA–1 on the FMCSA Web site at *http://www.fmcsa.dot.gov.*

(g) *Exception.* The rules in this subpart do not govern the application by a Mexico-domiciled motor carrier to provide transportation of property or passengers in interstate commerce between Mexico and points in the United States beyond the municipalities and commercial zones along the United States-Mexico international border. The applicable procedures governing transportation by Mexico-domiciled motor carriers are provided in § 390.19 of this subchapter.

§ 390.102 PRISM State registration/ biennial updates.

(a) A motor carrier that registers its vehicles in a State that participates in the Performance and Registration Information Systems Management (PRISM) program (authorized under section 4004 of the Transportation Equity Act for the 21st Century [Pub. L. 105–178, 112 Stat. 107]) alternatively may satisfy the requirements set forth in § 390.101 by electronically filing all the required USDOT registration and biennial update information with the State Driver Licensing Agency (SDLA) according to its policies and procedures, provided the SDLA has integrated the USDOT registration/update capability into its vehicle registration program.

(b) If the SDLA procedures do not allow a motor carrier to file the Form MCSA–1 or to submit updates within the periods specified in § 390.101(a)(2), a motor carrier must complete such filings directly with FMCSA.

(c) A for-hire motor carrier, unless providing transportation exempt from Title 49 U.S.C. chapter 139 commercial registration requirements, must obtain operating authority as prescribed under § 390.105(b) and 49 CFR part 365 of this chapter before operating in interstate commerce.

§ 390.103 Special requirements for registration.

(a)(1) *General.* A person applying to operate as a motor carrier, broker or freight forwarder under this subpart must make the additional filings described in paragraphs (a)(2) and (a)(3) of this section as a condition for registration under this subpart within 90 days of the date on which the application is filed:

(2) *Evidence of financial responsibility.* (i) A person that registers to conduct operations in interstate commerce as a for-hire motor carrier, a broker or a freight forwarder must file evidence of financial responsibility as required under part 387, subparts C and D of this subchapter.

(ii) A person that registers to transport hazardous materials as defined in § 383.5 of this subchapter in interstate commerce must file evidence of financial responsibility as required under part 387, subpart C of this subchapter.

(3) *Designation of agent for service of process.* All motor carriers (both private and for-hire), brokers and freight forwarders required to register under this subpart must designate an agent for service of process (a person upon whom court or Agency process may be served) following the rules in part 366 of this subchapter:

(b) The Agency will not activate a USDOT Number until expiration of the protest period provided in § 365.115 of this subchapter or—if a protest is received—after FMCSA denies or rejects the protest, as applicable.

§ 390.105 Other governing regulations.

(a) *Motor carriers.* (1) A motor carrier granted registration under this part must successfully complete the applicable New Entrant Safety Assurance Program as described in paragraphs (a)(1)(i)

through (a)(1)(iv) of this section as a condition for permanent registration:

(i) A U.S.- or Canada-domiciled motor carrier is subject to the new entrant safety assurance program under 49 CFR part 385, subpart D.

(ii) A Mexico-domiciled motor carrier is subject to the safety monitoring program under 49 CFR part 385, subpart B.

(iv) A Non-North America-domiciled motor carrier is subject to the safety monitoring program under 49 CFR part 385, subpart I.

(2) [Reserved]

(b) *Brokers, freight forwarders and non-exempt for-hire motor carriers.* (1) A broker or freight forwarder must obtain operating authority pursuant to part 365 of this subchapter as a condition for obtaining USDOT Registration.

(2) A motor carrier registering to engage in transportation that is not exempt from economic regulation by FMCSA must obtain operating authority pursuant to part 365 of this subchapter as a condition for obtaining USDOT Registration.

(c) *Intermodal equipment providers.* An intermodal equipment provider is subject to the requirements of subpart D of this part.

(1) Only the legal name or a single trade name of the motor carrier or intermodal equipment provider may be used on the Form MCSA–1.

(2) The intermodal equipment provider must identify each unit of interchanged intermodal equipment by its assigned USDOT Number.

(d) *Hazardous materials safety permit applicants.* A person who applies for a hazardous materials safety permit is subject to the requirements of part 385, subpart E of this subchapter.

(e) *Cargo tank facilities.* A cargo tank facility is subject to the requirements of 49 CFR part 107, subpart F, 49 CFR part 172, subpart H, and 49 CFR part 180.

§ 390.107 Pre-authorization safety audit.

A non-North America-domiciled motor carrier seeking to provide transportation of property or passengers in interstate commerce within the United States must pass the pre-authorization safety audit under § 385.607(c) of this subchapter as a condition for receiving registration under this part.

58. Amend newly redesignated § 390.201 by revising paragraph (a) to read as follows:

§ 390.201 What responsibilities do intermodal equipment providers have under the Federal Motor Carrier Safety Regulations (49 CFR parts 350–399)?

* * * * *

(a) Identify its operations to the FMCSA by filing the Form MCSA–1 required by § 390.101.

* * * * *

PART 392—DRIVING OF COMMERCIAL MOTOR VEHICLES

59. The authority citation for part 392 is revised to read as follows:

Authority: 49 U.S.C. 521, 13902, 13908, 31136, 31502; and 49 CFR 1.73.

60. Add § 392.9b to read as follows:

§ 392.9b USDOT Registration.

(a) *USDOT Registration required.* A motor vehicle providing transportation must not be operated without a USDOT Registration and an active USDOT Number.

(b) *Penalties.* If it is determined that the motor carrier responsible for the operation of such a vehicle is operating in violation of paragraph (a) of this section, it may be subject to penalties in accordance with 49 U.S.C. 521 and inactivation of its USDOT Number.

Issued on: October 11, 2011.

Anne S. Ferro,

Administrator.

[FR Doc. 2011–26958 Filed 10–25–11; 8:45 am]

BILLING CODE 4910–EX–P



FEDERAL REGISTER

Vol. 76 Wednesday,
No. 207 October 26, 2011

Part V

The President

Notice of October 25, 2011—Continuation of the National Emergency With Respect to the Situation in or in Relation to the Democratic Republic of the Congo

Federal Register
Vol. 76, No. 207
Wednesday, October 26, 2011

Presidential Documents

Title 3—

The President

Notice of October 25, 2011

Continuation of the National Emergency With Respect to the Situation in or in Relation to the Democratic Republic of the Congo

On October 27, 2006, by Executive Order 13413, the President declared a national emergency with respect to the situation in or in relation to the Democratic Republic of the Congo and, pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701–1706), ordered related measures blocking the property of certain persons contributing to the conflict in that country. The President took this action to deal with the unusual and extraordinary threat to the foreign policy of the United States constituted by the situation in or in relation to the Democratic Republic of the Congo, which has been marked by widespread violence and atrocities that continue to threaten regional stability.

Because this situation continues to pose an unusual and extraordinary threat to the foreign policy of the United States, the national emergency declared on October 27, 2006, and the measures adopted on that date to deal with that emergency, must continue in effect beyond October 27, 2011. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency declared in Executive Order 13413.

This notice shall be published in the *Federal Register* and transmitted to the Congress.



THE WHITE HOUSE,
October 25, 2011.

[FR Doc. 2011–27922
Filed 10–25–11; 12:00 pm]
Billing code 3295–F2–P

Reader Aids

Federal Register

Vol. 76, No. 207

Wednesday, October 26, 2011

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FEDERAL REGISTER PAGES AND DATE, OCTOBER

61033–61248 3
61249–61554 4
61555–61932 5
61933–62280 6
62281–62596 7
62597–63148 11
63149–63536 12
63537–63816 13
63817–64000 14
64001–64228 17
64229–64780 18
64781–65094 19
65095–65356 20
65357–65608 21
65609–65926 24
65927–66168 25
66169–66600 26

CFR PARTS AFFECTED DURING OCTOBER

At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
8723 62283
8724 62285
8725 62287
8726 62289
8727 62291
8728 62293
8729 62295
8730 63529
8731 63531
8732 63803
8733 63805
8734 63807
8735 63809
8736 63999
8737 65095
8738 65097
8739 65099

Executive Orders:
13585 62281
13586 63533
13587 63811

Administrative Orders:
Memorandums:
Memorandum of September 28, 2011 61247
Presidential Determination No. 2011–17 of September 30, 2011 62597
Presidential Determination No. 2011–18 of September 30, 2011 62599
Presidential Determination No. 2012–01 of October 4, 2011 65927
Notices:
Notice of October 19, 2011 65355
Notice of October 25, 2011 66599

5 CFR

1201 63537

Proposed Rules:
Ch. XXXVI 63206

6 CFR

Proposed Rules:
31 62311

7 CFR

6 63538
52 64001
319 ..... 63149, 65933
906 61249
930 65357
953 65360
985 61933
Ch. XXV 66169

Proposed Rules:
319 ..... 65976, 65985, 65988
331 ..... 61228, 62312
810 61287
999 65411
1435 64839
1700 63846

8 CFR

Proposed Rules:
100 61622
216 61288
245 61288

9 CFR

56 65935
77 ..... 61251, 61253
78 65935

Proposed Rules:
71 ..... 62313, 63210
77 ..... 62313, 63210
78 ..... 62313, 63210
90 ..... 62313, 63210
121 ..... 61228, 62312

10 CFR

50 63541
52 63541
429 65362
431 65362
1021 63764

Proposed Rules:
26 61625
50 63565
430 ..... 61999, 62644, 63211, 65616, 65631, 65633
431 ..... 61288, 63566
810 65634

11 CFR

104 61254
109 61254

Proposed Rules:
110 63567
111 63570

12 CFR

309 63817
310 63817

Proposed Rules:
204 64250
210 64259
1310 64264

13 CFR

108 63542
120 ..... 63151, 63542
123 63542

125.....63542
Proposed Rules:
121 .....61626, 62313, 63216, 63510
124.....62313
125.....61626, 62313
126.....62313
127.....62313

14 CFR

21.....64229
23.....65101
25 .....62603, 63818, 63822, 63823, 65103, 65105
39 .....61033, 61036, 61255, 61555, 61558, 61559, 61561, 62605, 63156, 63159, 63161, 63163, 63167, 63169, 63172, 63177, 64001, 64003, 64781, 64785, 64788, 64791, 64793 64795, 64798, 64801, 65936, 65938, 65941
61.....63183
71 .....61257, 61258, 64233, 64234, 64235, 64236, 65106, 65944, 65945, 66178
73.....64003
97 .....61038, 61040, 64005, 64006, 65951, 66179
Proposed Rules:
21.....61999
25.....63851
39 .....61633, 61638, 61641, 61643, 61645, 62321, 62649, 62653, 62656, 62658, 62661, 62663, 62667, 62669, 62671, 62673, 63229, 63571, 64038, 64283, 64285, 64287, 64289, 64291, 64293, 64844, 64847, 64849, 64851, 64854, 64857, 65136, 65419, 65421, 65991, 65995, 65997, 66198, 66200, 66203, 66205, 66207, 66209
43.....64859
71 .....63235, 64041, 64295

15 CFR

744.....63184
774.....66181
922.....63824
Proposed Rules:
922.....65566

16 CFR

2.....63833
1450.....62605
Proposed Rules:
Ch. II.....62678, 64865
1700.....64042

17 CFR

12.....63187
Proposed Rules:
Ch. 1 65999
229.....63573
240.....65784
249.....63573, 65784

18 CFR

Proposed Rules:
35.....66211
40.....66220, 66229

19 CFR

10.....65365
24.....65365
162.....65365, 65953
163.....65365, 65953
178.....65365
201.....61937
206.....61937
207.....61937
210.....61937, 64803
351.....61042
Proposed Rules:
Ch. II.....66004

20 CFR

404.....65107, 65366
408.....65107
416.....65107, 65366
422.....65107
Proposed Rules:
404.....66006

21 CFR

Ch. I 61565
165.....64810
558.....65109
1300.....64813
1301.....61563
1304.....64813
1306.....64813
1308.....65371
1309.....61563
1311.....64813
Proposed Rules:
201.....66235
316.....64868
610.....66235
870.....64224
1308.....65424

25 CFR

Proposed Rules:
514.....62684
523.....63236
571.....63237

26 CFR

1 .....61946, 64816, 65110
301.....62607, 66181
602.....61946, 61947
Proposed Rules:
1 .....62327, 62684, 63574, 64879, 65138, 65634, 66011, 66012, 66239

27 CFR

Proposed Rules:
9.....63852

28 CFR

104.....65112
Proposed Rules:
524.....65428

29 CFR

104.....63188
404.....66442
500–899.....64237
1952.....63188, 63190
2550.....66136
4022.....63836
Proposed Rules:
570.....61289
579.....61289

30 CFR

Ch. II 64432
Ch. V.....64432
Proposed Rules:
75.....63238
915.....64043
926.....64045, 64047
938.....64048

31 CFR

1.....62297
31.....61046
538.....63191, 63197
560.....63191, 63197
1060.....62607
Proposed Rules:
1010.....64049

32 CFR

211.....65112
1902.....62630
1909.....64237

33 CFR

100.....62298, 63837
117 .....63839, 63840, 64009, 65118, 65120, 65375, 66183, 66184
165 .....61259, 61261, 61263, 61947, 61950, 62301, 63199, 63200, 63202, 63547, 63841, 64818, 64820, 65376, 65378, 65380, 65609, 65963
334.....62631
Proposed Rules:
100.....63239
117.....63858
165.....66239
334.....62692

34 CFR

Proposed Rules:
Ch. VI.....66248

36 CFR

7.....61266
230.....65121
1258.....62632
Proposed Rules:
212.....62694
214.....62694
215.....62694
218.....62694
222.....62694
228.....62694
241.....62694
251.....62694
254.....62694
292.....62694

38 CFR

1.....65133

39 CFR

122.....61052
241.....66184
Proposed Rules:
20.....65639
111.....62000, 65640

40 CFR

2.....64010
9.....61566
52 .....61054, 61057, 62635, 62640, 63549, 64015, 64017, 64020, 64237, 64240, 64823, 64825
80.....65382
81.....64825
82.....61269
93.....63554
112.....64245
180 .....61587, 61592, 66187
271.....62303
372.....64022
721.....61566
799.....65385
Proposed Rules:
2.....64055
9.....65431
51.....64059
52 .....61062, 61069, 61291, 62002, 62004, 63251, 63574, 63859, 63860, 64065, 64186, 64880, 64881, 65458, 66013
60 .....63878, 65138, 65653
63.....65138
81.....65458
82.....65139
93.....63575
97.....63251, 63860
98.....61293
112.....64296
122.....65431
174.....61647
180.....61647
257.....63252
261.....63252
264.....63252
265.....63252
268.....63252
271.....63252
302.....63252
721.....65580
799.....65580

41 CFR

301–11.....63844

42 CFR

110.....62306
416.....65886
Proposed Rules:
5.....61294
71.....63891
Ch. IV.....65909
73.....61206
417.....63018
422.....63018
423.....63018
482.....65891
483.....63018
485.....65891

44 CFR

64.....61954
67.....61279
Proposed Rules:
67 .....61070, 61295, 61649, 62006, 62329
206.....61070

46 CFR

108.....62962
117.....62962
133.....62962
160.....62962
164.....62962
180.....62962
199.....62962
Proposed Rules:
160.....62714

530.....63581
531.....63581

47 CFR

Ch. I.....62309
1.....65965
20.....63561
32.....61279
52.....61279
61.....61279, 61956
64 .....61279, 61956, 63561, 65965
69.....61279
73.....62642
101.....65970

Proposed Rules:

1 .....61295, 63257, 65472
15.....61655
25.....65472
54.....64882
73.....62330, 66250

48 CFR

212.....61279
247.....61279
252.....61279, 61282

Proposed Rules:

24.....63896
52.....63896
211.....64885
215.....61296, 64297
225.....61296, 64297
252 .....61296, 64297, 64885
9903.....61660

49 CFR

18.....61597
19.....61597
523.....65971
535.....65971
541.....65610

Proposed Rules:

236.....63849
360.....66506
365.....66506
366.....66506
368.....66506
385.....66506
387.....66506
390.....66506
392.....66506
580.....65485
Ch. X.....63276
1241.....63582

50 CFR

17 .....61599, 61956, 62722
23.....61978
226.....65324
600.....61985
622 .....61284, 61285, 62309, 63563, 64248
648 .....61059, 61060, 61061, 61995, 62642, 65971, 66192
679 .....61996, 63204, 63564, 65972, 65973, 65975, 66195, 66196

Proposed Rules:

17 .....61298, 61307, 61321, 61330, 61482, 61532, 61782, 61826, 61856, 61896, 62016, 62165, 62213, 62259, 62504, 62740, 62900, 62928, 63094, 63360, 63420, 63444, 63480, 63720, 64996, 66018, 66250, 66255, 66370
622 .....65324, 65662, 66021
635.....62331, 65673
648.....61661, 66260
660.....65155, 65673

LIST OF PUBLIC LAWS

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H.R. 2832/P.L. 112–40

To extend the Generalized System of Preferences, and for other purposes. (Oct. 21, 2011; 125 Stat. 401)

H.R. 3080/P.L. 112–41

United States-Korea Free Trade Agreement Implementation Act (Oct. 21, 2011; 125 Stat. 428)

H.R. 3078/P.L. 112–42

United States-Colombia Trade Promotion Agreement Implementation Act (Oct. 21, 2011; 125 Stat. 462)

H.R. 3079/P.L. 112–43

United States-Panama Trade Promotion Agreement Implementation Act (Oct. 21, 2011; 125 Stat. 497)

H.R. 2944/P.L. 112–44

United States Parole Commission Extension Act of 2011 (Oct. 21, 2011; 125 Stat. 532)

Last List October 17, 2011

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