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WHEN: Tuesday, October 5, 2010
9 a.m.–12:30 p.m.

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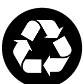

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 161

[Docket No. APHIS-2006-0093]

RIN 0579-AC04

National Veterinary Accreditation Program; Currently Accredited Veterinarians Performing Accredited Duties and Electing to Participate

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule; extension of period for election to participate.

SUMMARY: We are announcing to the public that veterinarians who are currently accredited in the National Veterinary Accreditation Program (NVAP) may continue to perform accredited duties and to elect to continue to participate in the NVAP until further notice. The regulations indicate that currently accredited veterinarians must elect to continue their participation in the NVAP in order to maintain their accredited status, after which we will confirm their continued participation and notify them of their first renewal date. Various logistical obstacles have prevented us from processing in a timely manner the elections to participate that we have received. Allowing currently accredited veterinarians to continue to perform accredited duties and to elect to participate will ensure that we obtain an accurate and complete record of accredited veterinarian participation while continuing to allow veterinarians to provide accredited services to the public.

EFFECTIVE DATE: September 28, 2010.

FOR FURTHER INFORMATION CONTACT: Dr. Todd Behre, National Veterinary Accreditation Program, VS, APHIS, 4700 River Road Unit 200, Riverdale, MD 20737; (301) 851-3401.

SUPPLEMENTARY INFORMATION: The regulations in 9 CFR chapter I, subchapter J (parts 160 through 162, referred to below as the regulations), govern the accreditation of veterinarians and the suspension and revocation of such accreditation. These regulations are the foundation for the National Veterinary Accreditation Program (NVAP). Accredited veterinarians are approved by the Administrator of the Animal and Plant Health Inspection Service (APHIS), U.S. Department of Agriculture, to perform certain regulatory tasks to control and prevent the spread of animal diseases throughout the United States and internationally.

On December 9, 2009 (74 FR 64998-65013, Docket No. APHIS-2006-0093), we published a final rule in the **Federal Register** that amended the regulations to establish two accreditation categories in place of the former single category, to add requirements for supplemental training and renewal of accreditation, and to offer program certifications. The final rule was effective February 1, 2010, a date intended to give us time to prepare to implement the new regulations, which affect about 71,000 veterinarians who are currently accredited.

Section 161.3 of the final rule contained the requirements for supplemental training and renewal of accreditation. Because accredited veterinarians have not previously been required to renew their accreditation or complete supplemental training, we established in paragraph (d) of § 161.3 a process allowing currently accredited veterinarians to determine whether they wished to continue to participate in the NVAP.

Paragraph (d) of § 161.3 states that veterinarians who are accredited as of February 1, 2010, may continue to perform accredited duties between February 1, 2010, and the date of their first renewal. In accordance with paragraph (d), APHIS provided notice for 3 months to accredited veterinarians who were accredited as of February 1, 2010, to notify them that they must elect to participate in the NVAP as a Category I or Category II veterinarian. Paragraph (d) requires veterinarians to elect to continue to participate within 3 months of the end of the notification period, or their accredited status will expire.

Paragraph (d) of § 161.3 goes on to state that when APHIS receives notice from an accredited veterinarian that he or she elects to participate, APHIS will notify the accredited veterinarian of his or her date for first renewal. The accredited veterinarian must then complete all the training requirements for renewal, as described in § 161.3, by his or her first renewal date. The notification of the first renewal date was thus intended to be the means by which APHIS notifies an accredited veterinarian that we have received notice that he or she has elected to participate and can thus continue performing accredited duties.

To date, approximately 50,000 veterinarians have elected to continue to participate, and another 10,000 are expected to do so. Processing these elections to continue to participate involves many steps to verify, clarify, and proofread the information provided. At times, we have needed to contact State boards, area offices of the Veterinary Services program, and the accredited veterinarians themselves. As much as possible, we want to clear up any omissions or potential errors so that we have correct information for all accredited veterinarians in our database. Accredited veterinarians provide valuable regulatory services to their communities, allowing agricultural commerce to continue and ensuring that travelers can meet regulatory requirements for pets. It is important that those services continue to be provided.

As a result, we have not yet been able to review all of the forms submitted by accredited veterinarians to elect to continue to participate, ensure that the forms accurately reflect the veterinarians' intent and situation, and provide notice to the veterinarians of their first renewal date. This process is expected to take several more months, during which we will continue to need veterinarians to perform accredited duties.

In addition, we stated in the Background section of the final rule that we will notify veterinarians who routinely perform accredited veterinarian duties and have not yet elected to continue participating as accredited veterinarians, to ensure that such veterinarians do not inadvertently

let their accreditation lapse. We have discovered that we need additional time to reach out to such veterinarians to ensure that they are aware of the new requirements. We have also found that some veterinarians who received notification did not understand what the notification meant, and we plan to work to clarify the new requirements for currently accredited veterinarians in the coming months.

Therefore, this document announces that currently accredited veterinarians may continue to perform accredited duties until further notice, even if they have not received a date for their first accreditation renewal from APHIS. We will also allow currently accredited veterinarians to continue to elect to participate in the NVAP.

We currently expect to be able to process all the elections to participate we have received by March 2011. When we are closer to reaching this goal, we will publish another document in the **Federal Register** that will amend § 161.3(d) to indicate the date by which veterinarians must elect to continue to participate in the NVAP.

Done in Washington, DC, this 17th day of September 2010.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2010–24294 Filed 9–27–10; 8:45 am]

BILLING CODE 3410–34–S

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0941; Directorate Identifier 2010–CE–051–AD; Amendment 39–16453; AD 2010–20–18]

RIN 2120–AA64

Airworthiness Directives; Pacific Aerospace Limited Models FU24–954 and FU24A–954 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

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

> Investigation of a recent accident has indicated it is possible to exceed the aircraft aft C of G limits during parachute operations. It is the responsibility of the pilot in command to ensure that the aircraft is loaded within the approved weight and balance limitations and these limitations are not exceeded throughout the flight.

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

DATES: This AD becomes effective October 18, 2010.

We must receive comments on this AD by November 12, 2010.

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

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

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4146; fax: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Discussion

The Civil Aviation Authority (CAA), which is the aviation authority for New Zealand, has issued AD DCA/FU24/179, dated September 10, 2010 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

> Investigation of a recent accident has indicated it is possible to exceed the aircraft aft C of G limits during parachute operations. It is the responsibility of the pilot in command to ensure that the aircraft is loaded within the approved weight and balance limitations and these limitations are not exceeded throughout the flight.

The MCAI requires amending the airplane flight manual (AFM) to restrict maximum occupancy of the cabin aft of F.S 118.84 to 6 persons and requires doing a weight and balance calculation for any parachuting operation to ensure the aircraft center of gravity (C of G) will remain within AFM limits for the duration of the flight. You may obtain further information by examining the MCAI in the AD docket.

FAA's Determination and Requirements of the 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 this State of Design Authority, they have notified us of the unsafe condition described in the MCAI and service information referenced above. We are issuing this AD because we evaluated all information provided by the State of Design Authority and determined the 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

We have reviewed the MCAI and, in general, agree with its 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.

We might have also required different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are described in a separate paragraph of the AD. These requirements take precedence over those copied from the MCAI.

FAA's Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because a recent accident indicates it is possible to exceed the aircraft aft C of G limits during parachute-drop operations. Exceeding C of G limits could result in loss of control of the aircraft. Therefore, we determined that notice and opportunity for public comment before issuing this AD are impracticable and that good cause exists

for making this amendment effective in fewer than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and opportunity for public comment. We invite you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2010–0941; Directorate Identifier 2010–CE–051–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify that this AD:

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2010–20–18 Pacific Aerospace Limited: Amendment 39–16453; Docket No. FAA–2010–0941; Directorate Identifier 2010–CE–051–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective October 18, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Pacific Aerospace Limited Models FU24–954 and FU24A–954 airplanes, all serial numbers, that are:

(1) Certificated in any category; and

(2) Modified to conduct parachute operations.

Subject

(d) Air Transport Association of America (ATA) Code 8: Leveling and Weighing.

Reason

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

Investigation of a recent accident has indicated it is possible to exceed the aircraft aft C of G limits during parachute operations. It is the responsibility of the pilot in command to ensure that the aircraft is loaded within the approved weight and balance limitations and these limitations are not exceeded throughout the flight.

The MCAI requires amending the airplane flight manual (AFM) to restrict maximum occupancy of the cabin aft of F.S 118.84 to 6 persons and requires doing a weight and balance calculation for any parachuting operation to ensure the aircraft center of gravity (C of G) will remain within AFM limits for the duration of the flight.

Actions and Compliance

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

(1) Before further parachute-drop operations as of October 18, 2010 (the effective date of this AD) do the following:

(i) Amend the airplane flight manual (AFM) to restrict maximum occupancy of the cabin aft of F.S 118.84 to 6 persons. This may be done by inserting a copy of this AD into the AFM adjacent to the applicable supplement for parachuting operations; and

(ii) Fabricate a placard at least 2 by 4 inches (using at least ⅛ inch letters) and install the placard in 2 places, one on each side of the aft cabin, nominally in view of all occupants as they enter and occupy the cabin which states the following: Maximum occupancy of this cabin limited to 6 persons for parachuting operations. Weight and Balance must be confirmed for each flight.

(2) Before any parachute-drop operation as of October 18, 2010 (the effective date of this AD) the weight and balance calculation must comply with the following limitations and establish that the aircraft C of G will remain within AFM limits for the duration of the flight:

(i) Use actual weights for all occupants and their equipment to do the calculation;

(ii) Account for the positions of all occupants in the calculation. Do the calculation with the occupants' (parachuting group) positions at the most aft positions that result from the rearmost members of the group sitting against the aft cabin wall and subsequent occupants located immediately forward of them, unless a means of restraint is provided to prevent the occupants moving rearwards from their normal position; and

(iii) Keep a record of the C of G determination for each parachuting operation.

FAA AD Differences

Note: This AD differs from the MCAI as follows: No differences.

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4146; fax: (816) 329–4090. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

to assure the product is airworthy before it is returned to service.

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

Related Information

(h) Refer to MCAI Civil Aviation Authority of New Zealand AD DCA/FU24/179, dated September 10, 2010, for related information.

Issued in Kansas City, Missouri, on September 21, 2010.

Patrick R. Mullen,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–24117 Filed 9–27–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2010–0428; Airspace Docket No. 10–AEA–13]

Amendment of Class D and E Airspace; Establishment of Class E Airspace; Patuxent River, MD

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class D and E Airspace at Patuxent River Naval Air Station (NAS), Patuxent River, MD, to reflect the part-time operating status of the control tower, and establishes Class E airspace designated as surface areas to accommodate Standard Instrument Approach Procedures (SIAPs) developed for the NAS. This action also corrects the geographical coordinates of the NAS and combines two airspace descriptions. This action will enhance the safety and management of IFR operations at Patuxent River NAS (Trapnell Field).

DATES: Effective 0901 UTC, January 13, 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: Melinda Giddens, Operations Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5610.

SUPPLEMENTARY INFORMATION:

History

On August 9, 2010, the FAA published in the **Federal Register** a notice of proposed rulemaking to amend Class D and E airspace, and establish Class E surface airspace at Patuxent River NAS (Trapnell Field), Patuxent River, MD (75 FR 47736) Docket No. FAA–2010–0428. Subsequent to publication the FAA received a request from the National Aeronautical Navigation Services to correct the geographic coordinates of the airfield, and for charting purposes, combine two closely located descriptions in both Class E airspace areas at Patuxent River NAS, Patuxent River, MD. This action makes these corrections. With the exception of editorial changes, and the changes described above this rule is the same as that proposed in the NPRM.

Interested persons were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Class D and E airspace designations are published in paragraph 5000, 6002, and 6004 of FAA Order 7400.9U dated August 18, 2010, and effective September 15, 2010, which is incorporated by reference in 14 CFR 71.1. The Class D and E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 amends Class D airspace and Class E airspace designated as an extension to Class D surface area at Patuxent River NAS (Trapnell Field), Patuxent River, MD, to reflect the part-time operations of the airport control tower, establishing in advance the dates and times by a Notice to Airmen, and establishes Class E surface area airspace to provide controlled airspace required to support the SIAPs developed for Patuxent River NAS. The geographic coordinates of Patuxent River NAS (Trapnell Field) will be corrected to coincide with the FAA's National Aeronautical Navigation Services. The Class E surface area airspace and Class E airspace designated as extensions to Class D surface area 233° and the 235° radials will be combined to coincide with aeronautical charting.

Class D airspace designations, Class E surface airspace designations and Class E airspace designations as extensions to a Class D surface area are published in Paragraph 5000, 6002, and 6004 respectively, of FAA Order 7400.9U, dated August 18, 2010, and effective September 15, 2010, which is incorporated by reference in 14 CFR 71.1. The Class D and Class E airspace designations listed in this document will be published subsequently in the Order.

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, is non-controversial and unlikely to result in adverse or negative comments. 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. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, 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 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.

This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart I, section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends Class D and existing Class E airspace and establishes Class E airspace designated as surface areas at Patuxent River NAS (Trapnell Field), Patuxent River, MD.

Lists 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 CLASS E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 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 7400.9U, Airspace Designations and Reporting Points, dated August 18, 2010, effective September 15, 2010, is amended as follows:

Paragraph 5000 Class D Airspace.

* * * * *

AEA MD D Patuxent River, MD [AMENDED]

Patuxent River NAS (Trapnell Field), MD
(Lat. 38°17′10″ N., long. 76°24′42″ W.)
Chesapeake Ranch Airpark, MD
(Lat. 38°21′40″ N., long. 76°24′19″ W.)

That airspace extending upward from the surface to and including 2,500 feet MSL within a 4.5-mile radius of Patuxent River NAS (Trapnell Field) and within a .5-mile radius of Chesapeake Ranch Airpark excluding that airspace within Restricted Areas R–4005 and R–4007 when active. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport Facility Directory.

* * * * *

Paragraph 6002 Class E Airspace Designated as Surface Areas.

* * * * *

AEA MD E2 Patuxent River, MD [NEW]

Patuxent River NAS (Trapnell Field), MD
(Lat. 38°17′10″N., long. 76°24′42″ W.)
Patuxent VORTAC
(Lat. 38°17′16″ N., long. 76°24′01″ W.)
Patuxent River NDB
(Lat. 38°17′09″ N., long. 76°24′11″ W.)
Chesapeake Ranch Airpark, MD
(Lat. 38°21′40″ N., long. 76°24′19″ W.)

That airspace extending upward from the surface within a 4.5-mile radius of Patuxent River NAS (Trapnell Field) and within 1.8 miles each side of the Patuxent VORTAC 045° radial extending from the 4.5-mile radius of Patuxent River NAS to 6.1 miles northeast of the VORTAC; and within 1.8 miles north of and 2.0 miles south of the Patuxent VORTAC 235° radial extending from the 4.5-mile radius to 6.6 miles southwest of the VORTAC; and within 1.8 miles each side of the Patuxent VORTAC 140° radial extending from the 4.5-mile radius to 10.5 miles southeast of the VORTAC; and within a .5-mile radius of Chesapeake Ranch Airpark, excluding that airspace within Restricted Areas R–4005 and R–4007 when active. This Class E airspace area is effective during those times when the Class D airspace is not in effect.

* * * * *

Paragraph 6004 Class E Airspace Areas Designated as an Extension to a Class D Surface Area.

* * * * *

AEA MD E4 Patuxent River, MD [AMENDED]

Patuxent River NAS (Trapnell Field), MD
(Lat. 38°17′10″ N., long. 76°24′42″ W.)
Patuxent VORTAC
(Lat. 38°17′16″ N., long. 76°24′01″ W.)
Patuxent River NDB
(Lat. 38°17′09″ N., long. 76°24′11″ W.)

That airspace extending upward from the surface within 1.8 miles each side of the Patuxent VORTAC 045° radial extending from the 4.5-mile radius of Patuxent River NAS (Trapnell Field) to 6.1 miles northeast of the VORTAC; and within 1.8 miles north of and 2.0 miles south of the Patuxent VORTAC 235° radial extending from the 4.5-mile radius to 6.6 miles southwest of the VORTAC; and within 1.8 miles each side of the Patuxent VORTAC 140° radial extending from the 4.5-mile radius to 10.5 miles southeast of the VORTAC, excluding that airspace within Restricted Areas R–4005 and R–4007 when active. This Class E airspace area is effective during specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport Facility Directory.

Issued in College Park, Georgia, on September 17, 2010.

Myron A. Jenkins,

Acting Manager, Operations Support Group, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2010–24110 Filed 9–27–10; 8:45 am]

BILLING CODE 4910–13–P

FEDERAL TRADE COMMISSION

16 CFR Part 307

[RIN 3084-AB23]

Rescission of Regulations Under the Comprehensive Smokeless Tobacco Health Education Act of 1986

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: The Federal Trade Commission (“FTC” or “Commission”) is rescinding its smokeless tobacco regulations. Recent legislation transferred the FTC’s authority for those regulations to the Secretary of the Department of Health and Human Services (“DHHS”). DHHS will now review and approve rotational warning plans for these products.

EFFECTIVE DATE: September 28, 2010.

ADDRESSES: Copies of this document are available from: Public Reference Branch, Room 130, Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Washington, DC 20580. Copies of this document are also available on the Internet at the Commission’s website: (*http://www.ftc.gov*).

FOR FURTHER INFORMATION CONTACT: Shira Modell, (202) 326-3116, Attorney, Division of Advertising Practices, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Washington, D.C., 20580.

SUPPLEMENTARY INFORMATION:

I. Background

The Comprehensive Smokeless Tobacco Health Education Act of 1986 (“Smokeless Tobacco Act”), Pub. L. 99-252, 100 Stat. 30 (1986), required manufacturers, importers, and packagers of smokeless tobacco products to display on a rotating basis one of three statutory health warnings on product packages and in most advertising (other than billboards). The Smokeless Tobacco Act also directed the FTC to issue implementing regulations governing the format and display of the health warnings, and to review and approve (if appropriate) plans specifying how smokeless tobacco companies planned to comply with the rotational warning requirements specified in the Smokeless Tobacco Act and the implementing regulations. 15 U.S.C. 4402 (1986) (amended 2009). The Commission issued its smokeless tobacco regulations, 16 CFR Part 307, on November 4, 1986.[1] 51 FR 40015.

II. Basis for Removal of Regulations

On June 22, 2009, President Obama signed into law the Family Smoking Prevention and Tobacco Control Act, Pub. L. No. 111-31, 123 Stat. 1776 (2009) (“Family Smoking Prevention Act”). The Family Smoking Prevention Act, among other things, amended the Smokeless Tobacco Act to change the language of the existing three statutory health warnings and add a fourth warning, and to require new size, format, and display requirements for the statutory health warnings. Family Smoking Prevention Act, § 204. The Family Smoking Prevention Act also gave the Secretary of DHHS authority to change the warning statements and the size, format, and display requirements of those warnings, and transferred authority over the review and approval of rotational warning plans from the Commission to the Secretary. Family Smoking Prevention Act, § 205. These amendments to the Smokeless Tobacco Act became effective on June 22, 2010.

Earlier this year, the Commission terminated its regulatory review of the smokeless tobacco regulations, citing the enactment of the Family Smoking Prevention Act. 75 FR 3665 (Jan. 22,

[1] The regulations were amended in 1991 to include provisions for the rotation and display of the statutory warnings on utilitarian items. 56 FR 11654 (Mar. 20, 1991).

2010). The regulations themselves, however, remain in place.

The Commission has now concluded that, in light of the amendments to the Smokeless Tobacco Act, the regulations in 16 CFR Part 307 no longer serve any purpose and actually conflict with the new statutory provisions. As noted above, the Family Smoking Prevention Act revised the language of the smokeless tobacco health warning statements and adopted new requirements for the format, size, and location of those statements on smokeless tobacco packaging and in ads for smokeless tobacco products. These requirements supersede those adopted by the Commission pursuant to the 1986 statute. Accordingly, the Commission concludes that its regulations implementing the Smokeless Tobacco Act should be removed. Indeed, retention of these regulations could generate confusion if some smokeless tobacco manufacturers and importers mistakenly believe that they reflect current legal requirements.

Under 5 U.S.C. 553(b)(B), an agency may promulgate a rule without prior notice and an opportunity for public comment if the agency finds for good cause that this procedure is unnecessary. *Nat'l Customs Brokers & Forwarders Ass'n v. United States*, 59 F.3d 1219, 1223-1224 (Fed. Cir. 1995). In rescinding 16 CFR Part 307, the Commission finds that public comment is unnecessary because the FTC is rescinding its regulations in response to the transfer of its underlying regulatory authority to the Secretary of DHHS. Since the FTC has no discretion in that matter, there is no reason or need for public comment on this regulatory action. The Family Smoking Prevention Act amended 15 U.S.C. 4402 by repealing the Commission's authority to promulgate rules implementing the smokeless tobacco labels and related rotational plans. That Act provides the Secretary of DHHS the authority to promulgate rules regarding the smokeless tobacco labels and the authority to approve related rotational plans. Therefore, as of June 22, 2010, the effective date of Congress's amendments, the Commission's rules under 16 CFR Part 307 were no longer authorized by statute. Although 15 U.S.C. 4404(b) continues to refer to "[r]egulations issued by the Federal Trade Commission under [15 U.S.C. 4402]," it is clear from the amendments to 15 U.S.C. 4402 that the Commission no longer has the authority to promulgate such regulations. Moreover, the Commission's rules under 16 CFR Part 307, if left intact, would conflict with the unambiguously expressed intent of Congress to provide the Secretary with the authority to promulgate such regulations and to approve the related rotational plans. Therefore, immediate rescission of the outdated rules will help avoid confusion as to which agency has proper authority to promulgate these rules and to approve related rotational plans.[2] For all of these reasons, the Commission finds that public notice and comment are not necessary in rescinding 16 CFR Part 307.

In addition, the Commission finds that, under 5 U.S.C. 553(d)(1), the rescission may take effect immediately upon publication of this notice in the Federal Register. The removal of the regulations is exempt from the usual 30-day notice requirement as it merely "relieves a restriction" from FTC requirements. 5 U.S.C. 553(d)(1); *see also Indep. U.S. Tanker Owners Comm. v. Skinner*, 884 F.2d 587, 591 (D.C. Cir. 1989). The 30-day notice requirement does not apply under these circumstances, in which the Family Smoking Prevention Act has required the submission of rotational warning plans to DHHS since June 22, 2010. Therefore, affected companies do not need time to prepare for or take any action with regard to the rescission. *See Daniel Int'l Corp. v. Occupational Safety & Health Review Com.*, 656 F.2d 925, 931 (4th Cir. 1981) ("The purpose of the 30-day notice requirement in § 553(d) is to 'afford persons affected a reasonable time to prepare for the effective date of a rule or rules or to take any other action which the issuance of rules may prompt.' Administrative Procedure Act Legislative History, 79th Cong., 2d Sess. 201 (1946)").

III. Paperwork Reduction Act

The Commission's regulations implementing the Smokeless Tobacco Act impose reporting requirements that constitute a "collection of information" under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Accordingly, removal of these regulations will eliminate any burden on the public previously imposed by those requirements.

IV. Regulatory Flexibility Act

Because the Commission has determined that it may remove these regulations without public comment, the Commission is also not required to publish any initial or final regulatory flexibility analysis under the Regulatory Flexibility Act as part of such action. *See* 5 U.S.C. 603(a), 604(b).

[2] Although the Commission no longer has the authority to promulgate regulations implementing the smokeless tobacco labels or to approve related rotational plans, the Commission continues to have authority to bring enforcement actions with respect to violations of 15 U.S.C. 4402 under 15 U.S.C. 4404(a).

List of Subjects in 16 CFR Part 307

Advertising, Labeling Smokeless Tobacco, Tobacco, Trade Practices.

■ Accordingly, for the reasons set forth above, and under the authority of 15 U.S.C. 4402 and 5 U.S.C. 553(d)(1), the Commission amends Title 16, Code of Federal Regulations, by removing and reserving part 307.

PART 307—REMOVED AND RESERVED

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 2010–24220 Filed 9–27–10; 8:45 am]

BILLING CODE 6750–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 522

[Docket No. FDA–2010–N–0002]

Implantation and Injectable Dosage Form New Animal Drugs; Firocoxib

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an original new animal drug application (NADA) filed by Merial Ltd. The NADA provides for the veterinary prescription use of firocoxib injectable solution in horses for the control of pain and inflammation associated with osteoarthritis.

DATES: This rule is effective September 28, 2010.

FOR FURTHER INFORMATION CONTACT: Melanie R. Berson, Center for Veterinary Medicine (HFV–110), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 240–276–8337, email: *melanie.berson@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: Merial Ltd., 3239 Satellite Blvd., Bldg. 500, Duluth, GA 30096–4640 filed NADA 141–313 that provides for veterinary prescription use of EQUIOXX (firocoxib) Injection in horses for the control of pain and inflammation associated with osteoarthritis. The NADA is approved as of August 20, 2010, and the regulations are amended in 21 CFR part 522 by

adding new § 522.930 to reflect the approval.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33 that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Under section 512(c)(2)(F)(ii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(ii)), this approval qualifies for 3 years of marketing exclusivity beginning on the date of approval.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 522

Animal drugs.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 522 is amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: 21 U.S.C. 360b.

■ 2. Add § 522.930 to read as follows:

§ 522.930 Firocoxib.

(a) *Specifications*. Each milliliter of solution contains 20 milligrams (mg) firocoxib.

(b) *Sponsors*. See No. 050604 in § 510.600(c) of this chapter.

(c) *Conditions of use in horses*—(1) *Amount*. Administer 0.04 mg/pound (lb) (0.09 mg/kilogram (kg)) of body weight (BW) intravenously, once daily, for up to 5 days. If further treatment is needed, firocoxib oral paste can be administered at a dosage of 0.045 mg/lb (0.1 mg/kg) of BW for up to an additional 9 days of treatment.

(2) *Indications for use*. For the control of pain and inflammation associated with osteoarthritis.

(3) *Limitations*. Do not use in horses intended for human consumption. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

Dated: September 21, 2010.

Bernadette Dunham,

Director, Center for Veterinary Medicine.

[FR Doc. 2010–24254 Filed 9–27–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 866

[Docket No. FDA–2009–N–0344]

Microbiology Devices; Reclassification of Herpes Simplex Virus Types 1 and 2 Serological Assays; Confirmation of Effective Date

AGENCY: Food and Drug Administration, HHS.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: The Food and Drug Administration (FDA) is confirming the effective date of December 7, 2009, for the direct final rule that appeared in the **Federal Register** of August 25, 2009 (74 FR 42773). The direct final rule corrects the regulation classifying herpes simplex virus (HSV) serological assays by removing the reference to HSV serological assays other than type 1 and type 2. This document confirms the effective date of the direct final rule.

DATES: Effective date confirmed: December 7, 2009.

FOR FURTHER INFORMATION CONTACT: Scott McFarland, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, rm. 5543, Silver Spring, MD 20993–0002, 301–796–6217.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 25, 2009 (74 FR 42773), FDA solicited comments concerning the direct final rule for a 44-day period ending October 8, 2009. FDA stated that the effective date of the direct final rule would be on December 7, 2009, 60 days after the end of the comment period, unless any significant adverse comment was submitted to FDA during the comment period. FDA did not receive any significant adverse comments.

■ Authority: Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 866 is amended. Accordingly, the amendments issued thereby are effective.

Dated: September 16, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–23638 Filed 9–27–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 560

Iranian Transactions Regulations

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Final rule.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control ("OFAC") is amending the Iranian Transactions Regulations in the Code of Federal Regulations to remove general licenses authorizing the importation into the United States of, and dealings in, certain foodstuffs and carpets of Iranian origin and related services, and to implement the import and export prohibitions in section 103 of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010.

DATES: *Effective Date:* September 29, 2010.

FOR FURTHER INFORMATION CONTACT: Assistant Director for Compliance, Outreach & Implementation, tel.: 202/622–2490, Assistant Director for Licensing, tel.: 202/622–2480, Assistant Director for Policy, tel.: 202/622–4855, Office of Foreign Assets Control, or Chief Counsel (Foreign Assets Control), tel.: 202/622–2410, Office of the General Counsel, Department of the Treasury (not toll free numbers).

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site (*http://www.treas.gov/ofac*). Certain general information pertaining to OFAC's sanctions programs also is available via facsimile through a 24-hour fax-on-demand service, tel.: 202/622–0077.

Background

On July 1, 2010, the President signed into law the Comprehensive Iran Sanctions, Accountability, and

Divestment Act of 2010 (Pub. L. 111–195) ("CISADA"). Subsection 103(a) of CISADA provides that, in addition to any other sanction in effect, the economic sanctions described in subsection 103(b) of CISADA shall apply with respect to Iran beginning 90 days after the date of CISADA's enactment. The economic sanctions described in subsections 103(b)(1) and (b)(2) include prohibitions on the importation of goods or services of Iranian origin directly or indirectly into the United States and on the exportation of U.S.-origin goods, services, or technology from the United States or by a United States person, wherever located, to Iran. OFAC will implement these prohibitions through an amendment to the Iranian Transactions Regulations, 31 CFR Part 560 (the "ITR"), which already implement, pursuant to, *inter alia,* the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) ("IEEPA"), prohibitions similar to those set forth in subsections 103(b)(1) and (b)(2) of CISADA. Consequently, OFAC is amending the ITR by adding CISADA to the ITR's authority citations.

Notwithstanding the ITR's prohibitions of imports and exports, OFAC authorizes certain otherwise prohibited transactions through general licenses set forth in the ITR and specific licenses issued pursuant to the ITR. In addition, the ITR contain certain exemptions from its prohibitions of imports and exports. Similarly, subsections 103(b)(1) and (b)(2) of CISADA include a number of exceptions to CISADA's prohibitions of imports and exports, respectively. The exceptions to CISADA's prohibitions differ in some cases from the exemptions and authorizations contained in or issued pursuant to the ITR.

To the extent that the ITR exemptions and licenses authorize import and export transactions beyond CISADA's exceptions, subsection 103(d)(1) of CISADA provides the authority to resolve these differences. That subsection authorizes the President to prescribe regulations to carry out section 103 and specifically states that these regulations may include regulatory exceptions to the sanctions described in subsection 103(b). Therefore, except with respect to sections 560.534 and 560.535 of the ITR, which are being removed (*see below*), OFAC is relying on the authority of subsection 103(d)(1) of CISADA to maintain in effect the general and specific licenses set forth in or issued pursuant to the ITR, and to treat those licenses as regulatory exceptions to the import and export prohibitions in subsection 103(b) of CISADA. This extends to general and specific licenses authorizing transactions that are beyond those specified in the exceptions set forth in subsections 103(b)(1) and (b)(2) of CISADA and that otherwise would be prohibited by CISADA.

Conversely, to the extent that the transactions described in CISADA's exceptions are neither exempt from nor authorized in or pursuant to the ITR, those transactions will remain prohibited pursuant to the ITR and, *inter alia,* IEEPA. In an explanatory statement, the Committee of Conference on CISADA stated that notwithstanding the exceptions in CISADA, any requirement under IEEPA to seek a license for the transactions described in those exceptions remains in effect. CISADA states in subsection 103(a) that the sanctions imposed by subsection 103(b) are "in addition to any other sanction in effect." Accordingly, a specific license from OFAC is required to engage in transactions described in CISADA's exceptions if such transactions are neither exempt from nor authorized in or pursuant to the ITR.

Subsection 103(d)(2) of CISADA strengthens the current trade embargo against Iran by providing that no exception to the import prohibition in subsection 103(b)(1) of CISADA may be made for the commercial importation of an Iranian-origin good described in section 560.534(a) of the ITR, *i.e.,* foodstuffs intended for human consumption that are classified under chapters 2–23 of the Harmonized Tariff Schedule of the United States and carpets and other textile floor coverings and carpets used as wall hangings that are classified under chapter 57 or heading 9706.00.0060 of the Harmonized Tariff Schedule of the United States. Accordingly, as of September 29, 2010 (*i.e.,* the date that is 90 days after the date of CISADA's enactment), sections 560.534 and 560.535 of the ITR will be revoked, and OFAC will no longer authorize, by general or specific license, the commercial importation into the United States of these foodstuffs and carpets of Iranian-origin. Any such goods imported into the United States pursuant to sections 560.534 and 560.535 of the ITR must be entered for consumption prior to that date.

In addition, section 560.306 of the ITR defines the terms *goods of Iranian origin* and *Iranian-origin goods* to include: (1) Goods grown, produced, manufactured, extracted, or processed in Iran and (2) goods which have entered into Iranian commerce. Based on this definition, foodstuffs and carpets of third-country origin that are transshipped through Iran become goods of Iranian-origin. Therefore, the revocation of the general licenses in sections 560.534 and 560.535 of the ITR also will affect the specified foodstuffs and carpets of third-country origin that are transshipped through Iran for importation into the United States.

Section 560.534 of the ITR authorized both the commercial and noncommercial importation into the United States of certain foodstuffs and carpets of Iranian origin. As a result of the revocation of sections 560.534 and 560.535 of the ITR, the noncommercial importation of certain foodstuffs and carpets of Iranian origin into the United States and related services would also be prohibited by section 560.201 of the ITR, unless otherwise authorized or exempt. One such authorization is the general license for the importation of Iranian-origin household goods and personal effects set forth in section 560.524(b) of the ITR. That general license continues in effect. OFAC notes that U.S. Customs and Border Protection (CBP) Form 3299, "Declaration for Free Entry of Unaccompanied Articles," is used to enter Iranian-origin household and personal effects into the United States.

Public Participation

Because the Regulations involve a foreign affairs function, the provisions of Executive Order 12866 and the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act (5 U.S.C. 601–612) does not apply.

Paperwork Reduction Act

The collections of information related to the Regulations are contained in 31 CFR part 501 (the "Reporting, Procedures and Penalties Regulations"). Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), those collections of information have been approved by the Office of Management and Budget under control number 1505–0164. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

List of Subjects in 31 CFR Part 560

Administrative practice and procedure, Banks, Banking, Brokers, Foreign trade, Investments, Loans, Securities, Iran.

■ For the reasons set forth in the preamble, the Department of the Treasury's Office of Foreign Assets Control amends 31 CFR part 560 as follows:

PART 560—IRANIAN TRANSACTIONS REGULATIONS

■ 1. Revise the authority citation to part 560 to read as follows:

Authority: 3 U.S.C. 301; 18 U.S.C. 2339B, 2332d; 22 U.S.C. 2349aa–9; 22 U.S.C. 7201–7211; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); Pub. L. 110–96, 121 Stat. 1011 (50 U.S.C. 1705 note); Pub. L. 111–195, 124 Stat. 1312 (22 U.S.C. 8501–8551); E.O. 12613, 52 FR 41940, 3 CFR, 1987 Comp., p. 256; E.O. 12957, 60 FR 14615, 3 CFR, 1995 Comp., p. 332; E.O. 12959, 60 FR 24757, 3 CFR, 1995 Comp., p. 356; E.O. 13059, 62 FR 44531, 3 CFR, 1997 Comp., p. 217.

Subpart E—License, Authorizations, and Statements of Licensing Policy

§§ 560.534 and 560.535 [Removed and reserved]

■ 2. Remove and reserve §§ 560.534 and 560.535.

Dated: September 22, 2010.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. 2010–24211 Filed 9–27–10; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF DEFENSE

Department of the Air Force

32 CFR Part 865

[Docket No. USAF–2008–0002]

RIN 0701–AA74

Personnel Review Boards

AGENCY: Department of the Air Force, DoD.

ACTION: Final rule.

SUMMARY: The Department of the Air Force is amending its regulations concerning the Air Force Board for Correction of Military Records. The regulations being revised establish procedures for the consideration of applications for the correction of military records and provides guidance to applicants and others interested in the process. This revision incorporates format changes and clarifies various minor provisions of the subpart.

DATES: *Effective Date:* This rule is effective October 28, 2010.

FOR FURTHER INFORMATION CONTACT: Mr Algie Walker Jr. at (240) 857–5380, *al.walker@afncr.af.mil.*

SUPPLEMENTARY INFORMATION: The proposed rule was published in the **Federal Register** on July 15, 2009 (74 FR 34279–34283). No comments were received.

Executive Order 12866, "Regulatory Planning and Review"

It has been determined that 32 CFR part 865 is not a significant regulatory action. This rule does not:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of the recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Unfunded Mandates Reform Act (Sec. 202, Pub. L. 104–4)

It has been certified the 32 CFR part 865 does not contain a Federal Mandate that may result in the expenditure by State, local and tribal governments, in aggregate, or by the private sector, of $100 million or more in any one year.

Public Law 96–354, "Regulatory Flexibility Act" (5 U.S.C. 601)

It has been determined that this rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities.

Public Law 95–511, "Paperwork Reduction Act" (44 U.S.C. Chapter 35)

It has been certified that 32 CFR part 865 does not impose any additional reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). Existing reporting and recordkeeping requirements approved under OMB Control Number 0704–0003, Application for Correction of Military Record Under the Provisions of Title 10, U.S. Code, Section 1552, will be used.

Federalism (Executive Order 13132)

It has been certified that 32 CFR part 865 does not have federalism implications, as set forth in Executive Order 13132. This rule does not have substantial direct effects on:

(1) The States;

(2) The relationship between the National Government and the States; or

(3) The distribution of power and responsibilities among the various levels of government.

List of Subjects in 32 CFR Part 865

Administrative practices and procedures, Military personnel, Records.

■ Accordingly, 32 CFR part 865 is amended as follows:

PART 865—PERSONNEL REVIEW BOARDS

■ 1. The authority citation for 32 CFR part 865 continues to read as follows:

Authority: 10 U.S.C. 1034, 1552.2.

■ 2. Revise Subpart A to read as follows:

Subpart A—Air Force Board for Correction of Military Records

Sec.

865.0 Purpose.
865.1 Setup of the Board.
865.2 Board responsibilities.
865.3 Application procedures.
865.4 Board actions.
865.5 Decision of the Secretary of the Air Force.
865.6 Reconsideration of applications.
856.7 Action after final decision.
865.8 Miscellaneous provisions.

Subpart A—Air Force Board for Correction of Military Records

§ 865.0 Purpose.

This subpart sets up procedures for correction of military records to remedy error or injustice. It tells how to apply for correction of military records and how the Air Force Board for Correction of Military Records (AFBCMR, or the Board) considers applications. It defines the Board's authority to act on applications. It directs collecting and maintaining information subject to the Privacy Act of 1974 authorized by 10 U.S.C. 1034 and 1552. System of Records notice F035 SAFCB A, Military Records Processed by the Air Force Correction Board, applies.

§ 865.1 Setup of the Board.

The AFBCMR operates within the Office of the Secretary of the Air Force according to 10 U.S.C. 1552. The Board consists of civilians in the executive part of the Department of the Air Force who are appointed and serve at the pleasure of the Secretary of the Air Force. Three members constitute a quorum of the Board.

§ 865.2 Board responsibilities.

(a) *Considering applications.* The Board considers all individual

applications properly brought before it. In appropriate cases, it directs correction of military records to remove an error or injustice, or recommends such correction.

(b) *Recommending action.* When an applicant alleges reprisal under the Military Whistleblowers Protection Act, 10 U.S.C. 1034, the Board may recommend to the Secretary of the Air Force that disciplinary or administrative action be taken against those responsible for the reprisal.

(c) *Deciding cases.* The Board normally decides cases on the evidence of the record. It is not an investigative body. However, the Board may, in its discretion, hold a hearing or call for additional evidence or opinions in any case.

§ 865.3 Application procedures.

(a) Who may apply:

(1) In most cases, the applicant is a member or former member of the Air Force, since the request is personal to the applicant and relates to his or her military records.

(2) An applicant with a proper interest may request correction of another person's military records when that person is incapable of acting on his or her own behalf, is missing, or is deceased. Depending on the circumstances, a child, spouse, civilian employee or former civilian employee, former spouse, parent or other close relative, an heir, or a legal representative (such as a guardian or executor) of the member or former member may be able to show a proper interest. Applicants will send proof of proper interest with the application when requesting correction of another person's military records. An application may be returned when proper interest has not been shown.

(3) A member, former member, employee or former employee, dependent, and current or former spouse may apply to correct a document or other record of any other military matter that affects them (This does not include records pertaining to civilian employment matters). Applicants will send proof of the effect of the document or record upon them with the application when requesting a correction under this provision.

(b) *Getting forms.* Applicants may get a DD Form 149, "Application for Correction of Military Record Under the Provisions of Title 10 U.S.C. 1552," and Air Force Pamphlet 36–2607, "*Applicants' Guide to the Air Force Board for Correction of Military Records (AFBCMR),*" from:

(1) Any Air Force Military Personnel Flight (MPF) or publications distribution office.

(2) Most veterans' service organizations.

(3) The Air Force Review Boards Office, SAF/MRBR, 550 C Street West, Suite 40, Randolph AFB TX 78150–4742.

(4) The AFBCMR, 1535 Command Drive, EE Wing 3rd Floor, Andrews AFB MD 20762–7002.

(5) Thru the Internet at *http://www.dtic.mil/whs/directives/infomgt/forms/eforms/dd0149.pdf* (DD Form 149) and *http://www.e-publishing.af.mil/shared/media/epubs/AFPAM36–2607.pdf* (Air Force Pamphlet 36–2607).

(c) *Preparation.* Before applying, applicants should:

(1) Review Air Force Pamphlet 36–2607.

(2) Discuss their concerns with MPF, finance office, or other appropriate officials. Errors can often be corrected administratively without resort to the Board.

(3) Exhaust other available administrative remedies (otherwise the Board may return the request without considering it).

(d) *Submitting the application.* Applicants should complete all applicable sections of the DD Form 149, including at least:

(1) The name under which the member served.

(2) The member's social security number or Air Force service number.

(3) The applicant's current mailing address.

(4) The specific records correction being requested.

(5) Proof of proper interest if requesting correction of another person's records.

(6) The applicant's original signature.

(e) Applicants should mail the original signed DD Form 149 and any supporting documents to the Air Force address on the back of the form.

(f) *Meeting time limits.* Ordinarily, applicants must file an application within 3 years after the error or injustice was discovered, or, with due diligence, should have been discovered. In accordance with federal law, time on active duty is not included in the 3 year period. An application filed later is untimely and may be denied by the Board on that basis.

(1) The Board may excuse untimely filing in the interest of justice.

(2) If the application is filed late, applicants should explain why it would be in the interest of justice for the Board to waive the time limits.

(g) *Stay of other proceedings.* Applying to the AFBCMR does not stay other proceedings.

(h) *Counsel representation.* Applicants may be represented by counsel, at their own expense.

(1) The term "counsel" includes members in good standing of the bar of any state, accredited representatives of veterans' organizations recognized under by the Secretary of Veterans Affairs pursuant to 38 U.S.C. 5902(a)(1), and other persons determined by the Executive Director of the Board to be competent to represent the interests of the applicant.

(2) See DoDD 7050.06, *Military Whistleblower Protection*[1] *and* AFI 90–301, *Inspector General Complaints Resolution,* for special provisions for counsel in cases processed under 10 U.S.C. 1034.

(i) *Page limitations on briefs.* Briefs in support of applications:

(1) May not exceed 25 double-spaced typewritten pages.

(2) Must be typed on one side of a page only with not more than 12 characters per inch.

(3) Must be assembled in a manner that permits easy reproduction.

(4) Responses to advisory opinions must not exceed 10 double-spaced typewritten pages and meet the other requirements for briefs.

(5) These limitations do not apply to supporting documentary evidence.

(6) In complex cases and upon request, the Executive Director of the Board may waive these limitations.

(j) *Withdrawing applications.* Applicants may withdraw an application at any time before the Board's decision. Withdrawal does not stay the 3-year time limit.

(k) *Authority to reject applications.* The Executive Director may return an application without action, if, after consultation with legal counsel, he or she determines that the application is clearly frivolous, or the remedy that is requested is beyond the authority of the Board. This authority may not be delegated.

§ 865.4 Board actions.

(a) *Board information sources.* The applicant has the burden of providing sufficient evidence of material error or injustice. However, the Board:

(1) May get additional information and advisory opinions on an application from any Air Force organization or official.

(2) May ask the applicant to furnish additional information regarding matters before the Board.

(b) Applicants will be given an opportunity to review and comment on

[1] Available via the Internet at *http://www.dtic.mil/whs/directives/corres/pdf/705006p.pdf.*

advisory opinions and additional information obtained by the Board. They will also be provided with a copy of correspondence to or from the Air Force Review Boards Agency with an entity outside the Air Force Review Boards Agency in accordance with the provisions of 10 U.S.C. 1556.

(c) *Consideration by the Board.* A panel consisting of at least three board members considers each application. One panel member serves as its chair. The panel's actions and decisions constitute the actions and decisions of the Board.

(d) The panel may decide the case in executive session or authorize a hearing. When a hearing is authorized, the procedures in § 865.4(f), of this part, apply.

(e) *Board deliberations.* Normally only members of the Board and Board staff will be present during deliberations. The panel chair may permit observers for training purposes or otherwise in furtherance of the functions of the Board.

(f) *Board hearings.* The Board in its sole discretion determines whether to grant a hearing. Applicants do not have a right to a hearing before the Board.

(1) The Executive Director will notify the applicant or counsel, if any, of the time and place of the hearing. Written notice will be mailed 30 days in advance of the hearing unless the notice period is waived by the applicant. The applicant will respond not later than 15 days before the hearing date, accepting or declining the offer of a hearing and, if accepting, provide information pertaining to counsel and witnesses. The Board will decide the case in executive session if the applicant declines the hearing or fails to appear.

(2) When granted a hearing, the applicant may appear before the Board with or without counsel and may present witnesses. It is the applicant's responsibility to notify witnesses, arrange for their attendance at the hearing, and pay any associated costs.

(3) The panel chair conducts the hearing, maintains order, and ensures the applicant receives a full and fair opportunity to be heard. Formal rules of evidence do not apply, but the panel observes reasonable bounds of competency, relevancy, and materiality. Witnesses other than the applicant will not be present except when testifying. Witnesses will testify under oath or affirmation. A recorder will record the proceedings verbatim. The chair will normally limit hearings to 2 hours but may allow more time if necessary to ensure a full and fair hearing.

(4) Additional provisions apply to cases processed under 10 U.S.C. 1034. See DoDD 7050.06, *Military Whistleblower Protection* [2], and AFI 90–301, *Inspector General Complaints Resolution.*

(g) The Board will not deny or recommend denial of an application on the sole ground that the issue already has been decided by the Secretary of the Air Force or the President of the United States in another proceeding.

(h) *Board decisions.* The panel's majority vote constitutes the action of the Board. The Board will make determinations on the following issues in writing:

(1) Whether the provisions of the Military Whistleblowers Protection Act apply to the application. This determination is needed only when the applicant invokes the protection of the Act, or when the question of its applicability is otherwise raised by the evidence.

(2) Whether the application was timely filed and, if not, whether the applicant has demonstrated that it would be in the interest of justice to excuse the untimely filing. When the Board determines that an application is not timely, and does not excuse its untimeliness, the application will be denied on that basis.

(3) Whether the applicant has exhausted all available and effective administrative remedies. If the applicant has not, the application will be denied on that basis.

(4) Whether the applicant has demonstrated the existence of a material error or injustice that can be remedied effectively through correction of the applicant's military record and, if so, what corrections are needed to provide full and effective relief.

(5) In Military Whistleblowers Protection Act cases only, whether to recommend to the Secretary of the Air Force that disciplinary or administrative action be taken against any Air Force official whom the Board finds to have committed an act of reprisal against the applicant. Any determination on this issue will not be made a part of the Board's record of proceedings and will not be given to the applicant, but will be provided directly to the Secretary of the Air Force under separate cover (Sec 865.2b, of this part).

(i) *Record of proceedings.* The Board staff will prepare a record of proceedings following deliberations which will include:

(1) The name and vote of each Board member.

(2) The application.

(3) Briefs and written arguments.

(4) Documentary evidence.

(5) A hearing transcript if a hearing was held.

(6) Advisory opinions and the applicant's related comments.

(7) The findings, conclusions, and recommendations of the Board.

(8) Minority reports, if any.

(9) Other information necessary to show a true and complete history of the proceedings.

(j) *Minority reports.* A dissenting panel member may prepare a minority report which may address any aspect of the case.

(k) *Separate communications.* The Board may send comments or recommendations to the Secretary of the Air Force as to administrative or disciplinary action against individuals found to have committed acts of reprisal prohibited by the Military Whistleblowers Protection Act and on other matters arising from an application not directly related to the requested correction of military records. Such comments and recommendations will be separately communicated and will not be included in the record of proceedings or given to the applicant or counsel.

(l) *Final action by the Board.* The Board acts for the Secretary of the Air Force and its decision is final when it:

(1) Denies any application (except under 10 U.S.C. 1034).

(2) Grants any application in whole or part when the relief was recommended by the official preparing the advisory opinion, was unanimously agreed to by the panel, and does not affect an appointment or promotion requiring confirmation by the Senate, and does not affect a matter for which the Secretary of the Air Force or his or her delegee has withheld decision authority or required notification before final decision.

(3) The Board sends the record of proceedings on all other applications to the Secretary of the Air Force or his or her designee for final decision.

(m) The Board may identify DoD or Air Force policies, instructions, guidance or practices that are leading to, or likely to lead to unsound business decisions, unfair results, waste of government funds or public criticism. The Board will forward such observations directly to the appropriate offices of the Secretariat and/or Air Staff for review and evaluation. Such observations will not be included in the record of proceedings.

§ 865.5 Decision of the Secretary of the Air Force.

(a) The Secretary may direct such action as he or she deems appropriate

[2] Copies may be obtained via the Internet at *http://www.dtic.mil/whs/directives/corres/pdf/705006p.pdf.*

on each case, including returning the case to the Board for further consideration. Cases returned to the Board for further reconsideration will be accompanied by a brief statement of the reasons for such action. If the Secretary does not accept the Board's recommendation, the Secretary's decision will be in writing and will include a brief statement of the grounds for his/her final decision.

(b) *Decisions in cases under the Military Whistleblowers Protection Act.* The Secretary will issue decisions on such cases within 180 days after receipt of the case and will, unless the full relief requested is granted, inform applicants of their right to request review of the decision by the Secretary of Defense (SecDef). Applicants will also be informed:

(1) Of the name and address of the official to whom the request for review must be submitted.

(2) That the request for review must be submitted within 90 days after receipt of the decision by the Secretary of the Air Force.

(3) That the request for review must be in writing and include the applicant's name, address, and telephone number; a copy of the application to the AFBCMR and the final decision of the Secretary of the Air Force; and a statement of the specific reasons the applicant is not satisfied with the decision of the Secretary of the Air Force.

(4) That the request must be based on the Board record; requests for review based on factual allegations or evidence not previously presented to the Board will not be considered under this paragraph but may be the basis for reconsideration by the Board under § 865.6.

(c) In cases under § 865.5(b) of this part which involve additional issues not cognizable under that paragraph, the additional issues may be considered separately by the Board under § 865.3 and § 865.4 of this part. The special time limit in § 865.5 (b) does not apply to the decision concerning these additional issues.

(d) *Decisions in high profile or sensitive cases.* Prior to taking final action on a BCMR application that has generated, or is likely to generate, significant public or Congressional interest, the Secretarial designee will provide the case record of proceedings through Secretarial channels to OSAF so that the Secretary can determine whether to decide the case personally or take other action the Secretary deems appropriate.

§ 865.6 Reconsideration of applications.

(a) The Board may reconsider an application if the applicant submits newly discovered relevant evidence that was not reasonably available when the application was previously considered. The Executive Director or Team Chiefs will screen each request for reconsideration to determine whether it contains new evidence. New arguments about, or analysis of, evidence already considered, and additional statements which are cumulative to those already in the record of proceedings will not be considered new evidence.

(b) If the request contains new evidence, the Executive Director or his/her designee will refer it to a panel of the Board for a decision. The Board will decide the relevance and weight of any new evidence, whether it was reasonably available to the applicant when the application was previously considered, and whether it was submitted in a timely manner. The Board may deny reconsideration if the request does not meet the criteria for reconsideration. Otherwise the Board will reconsider the application and decide the case either on timeliness or merit as appropriate.

(c) If the request does not contain new evidence, the Executive Director or his/her designee will return it to the applicant without referral to the Board.

§ 856.7 Action after final decision.

(a) *Action by the Executive Director.* The Executive Director or his/her designee will inform the applicant or counsel, if any, of the final decision on the application. If any requested relief was denied, the Executive Director will advise the applicant of reconsideration procedures and, for cases processed under the Military Whistleblowers Protection Act, review by the SecDef. The Executive Director will send decisions requiring corrective action to the Chief of Staff, U.S. Air Force, for necessary action.

(b) *Settlement of claims.* The Air Force is authorized, under 10 U.S.C. 1552, to pay claims for amounts due to applicants as a result of correction of military records.

(1) The Executive Director will furnish the Defense Finance and Accounting Service (DFAS) with AFBCMR decisions potentially affecting monetary entitlement or benefits. DFAS will treat such decisions as claims for payment by or on behalf of the applicant.

(2) DFAS settles claims on the basis of the corrected military record. Computation of the amount due, if any, is a function of DFAS. Applicants may be required to furnish additional information to DFAS to establish their status as proper parties to the claim and to aid in deciding amounts due.

(3) Earnings received from civilian employment during any period for which active duty pay and allowances are payable will be deducted from the settlement. Amounts found due will be offset by the amount of any existing indebtedness to the government in compliance with the Debt Collection Act of 1982 or successor statutes.

(c) *Public access to decisions.* After deletion of personal information, AFBCMR decisions will be made available for review and copying at an electronic public reading room.

§ 865.8 Miscellaneous provisions.

(a) At the request of the Board, all Air Force activities and officials will furnish the Board with:

(1) All available military records pertinent to an application.

(2) An advisory opinion concerning an application. The advisory opinion will include an analysis of the facts of the case and of the applicant's contentions, a statement of whether or not the requested relief can be done administratively, and a recommendation on the timeliness and merit of the request. Regardless of the recommendation, the advisory opinion will include instructions on specific corrective action to be taken if the Board grants the application.

(b) *Access to records.* Applicants will have access to all records considered by the Board, except those classified or privileged. To the extent practicable, applicants will be provided unclassified or nonprivileged summaries or extracts of such records considered by the Board.

(c) *Payment of expenses.* The Air Force has no authority to pay expenses of any kind incurred by or on behalf of an applicant in connection with a correction of military records under 10 U.S.C. 1034 or 1552.

(d) *Form adopted:* DD Form 149.

Bao-Anh Trinh,

Air Force Federal Register Liaison Officer.

[FR Doc. 2010–24118 Filed 9–27–10; 8:45 am]

BILLING CODE 5001–10–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Parts 104, 105, and 160

[Docket No. USCG–2004–19963]

RIN 1625–AA93

Notification of Arrival in U.S. Ports; Certain Dangerous Cargoes

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is adopting, with changes, an interim rule published December 16, 2005, regarding certain dangerous cargo (CDC) and notice of arrival requirements. The interim rule defined certain dangerous cargo residue (CDC residue) as limited to certain dry cargo and made other changes to regulations in 33 CFR parts 104, 105, and 160. After reviewing comments on the interim rule, the Coast Guard issued a notice of proposed rulemaking in 2009 that proposed to change the CDC residue definition to include certain bulk liquids and liquefied gases in residue quantities, revise the definition of CDC to reflect the proposed change in the CDC residue definition, and adopt other changes introduced by the 2005 interim rule. This final rule will relieve an unnecessary burden on industry by including more lower-risk cargoes in the CDC residue category and thereby reducing the number of notice of arrival submissions required based on the cargo a vessel is carrying.

DATES: This final rule is effective October 28, 2010.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are a part of docket USCG–2004–19963 and are 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. You may also find this docket on the Internet by going to *http://www.regulations.gov,* inserting USCG–2004–19963 in the "Keyword" box, and then clicking "Search."

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Lieutenant Sharmine Jones, Office of Vessel Activities, Coast Guard; telephone 202–372–1234, e-mail *Sharmine.N.Jones@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

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I. Abbreviations

CDC Certain dangerous cargo
CDC residue Certain dangerous cargo residue
CFR Code of Federal Regulations
CTAC Chemical Transportation Advisory Committee
DHS Department of Homeland Security
FR **Federal Register**
NOA Notice of arrival
NPRM Notice of proposed rulemaking
OMB Office of Management and Budget
TSAC Towing Safety Advisory Committee
U.S.C. United States Code

II. Regulatory History

The Coast Guard published an interim rule on December 16, 2005, titled "Notification of Arrival in U.S. Ports; Certain Dangerous Cargoes; Electronic Submission" (70 FR 74663). That interim rule adopted the definition of certain dangerous cargo (CDC), which a 2004 temporary final rule (69 FR 51176, August 18, 2004) introduced. By revising § 104.105 in Title 33 of the Code of Federal Regulations (33 CFR), the interim rule also made permanent the application of vessel security requirements in 33 CFR part 104 to barges carrying CDC. The interim rule, however, removed the remainder of the temporary changes made to 33 CFR parts 104 and 105 because they involved past submission and compliance deadlines and were no longer necessary. The interim rule also introduced changes that were not included in the 2004 temporary final rule, including—

- Adding another optional method, via Microsoft InfoPath, for electronic submission of notices of arrival (NOAs).
- Clarifying that Coast Guard NOA regulations in 33 CFR part 160, subpart C, do not apply to U.S. recreational vessels.
- Adding a definition of "CDC residue" that identified certain dry cargo in bulk that, at or below specified quantities, did not trigger NOA requirements. The 2005 definition of CDC residue only included residue quantities of bulk ammonium nitrate or ammonium nitrate fertilizer that remained onboard after the vessel discharges all saleable cargo; no other cargo residues fell within the interim rule definition of CDC residue.

In response to the 2005 interim rule, the Coast Guard received a comment from the Chemical Transportation Advisory Committee (CTAC) suggesting that the Coast Guard revise the definition of CDC residue to include some bulk liquids and liquefied gases. The Coast Guard requested CTAC's Hazardous Cargoes Transportation Security Subcommittee to assist in our rulemaking. They reviewed the current requirement that a CDC vessel remain a CDC vessel until the removal of all bulk liquid and liquefied gas CDC cargoes, including residue quantities of such cargoes, from the vessel. The Committee completed its recommendation on August 24, 2006, and submitted it to the Coast Guard for review and consideration. (*See* the CTAC Recommendations Related to Residues of CDC Cargoes, August 24, 2006, which is available in the docket for this rulemaking.) The Coast Guard concurred with CTAC's recommendations to—

- Keep cargoes of Anhydrous Ammonia, Chlorine, Ethane, Ethylene Oxide, Methane (LNG), Methyl Bromide, Sulfur Dioxide, and Vinyl Chloride as CDC at all times, even when only residue quantities remain onboard.
- Allow other cargoes that would be considered CDC in larger quantities to be defined as CDC residue if the amount that remains onboard in a cargo system after discharge is not accessible through normal transfer procedures.

The Coast Guard took steps to implement these recommendations. On December 23, 2009, we published a notice of proposed rulemaking (NPRM) titled "Notification of Arrival in U.S. Ports; Certain Dangerous Cargoes" (74 FR 68208). In it, the Coast Guard proposed to amend the definitions of CDC and CDC residue in accordance with CTAC's recommendation. With the exception of the revision of these two definitions, the NPRM proposed to adopt the current regulations introduced by the interim rule in 2005 as final.

We received two comments on the proposed rule. No public meeting was requested and none was held.

III. Basis and Purpose

Under authority of the Ports and Waterways Safety Act (see, specifically, 33 U.S.C. 1223 and 1231) and the Maritime Transportation Security Act (46 U.S.C. Chapter 701), as delegated by Department of Homeland Security Delegation No. 0170.1, the Coast Guard is adopting, with changes, the interim rule published on December 16, 2005 (70 FR 74663) regarding CDC and NOA requirements. This final rule reflects the adoptions and changes as proposed in the Coast Guard's 2009 NPRM (74 FR 68208). This rule will also relieve an unnecessary burden on industry by including more lower-risk cargoes in the CDC residue category and reducing the number of NOA submissions required based on the cargo a vessel is carrying. Additionally, it will complete this rulemaking, which has already introduced existing requirements into 33 CFR parts 104, 105, and 160.

IV. Background

NOA regulations require the submission of information about certain vessels and their voyages, including cargoes, crews, and other persons onboard to the Coast Guard's National Vessel Movement Center before those vessels arrive at a port or place in the United States. The Coast Guard uses the information contained in the NOA to implement appropriate safety and security measures, including security screening and escorts into port.

In 2003, the Coast Guard became concerned about the potential security hazards of bulk ammonium nitrate and propylene oxide cargoes transported on U.S. waters. After consultation with CTAC and the Towing Safety Advisory Committee (TSAC), (*see, e.g.,* TSAC Report on Task 03–03, Recommendation 124, which is available in the docket for this rulemaking), the Coast Guard determined that these substances should be considered CDC (69 FR 51176, 51177, August 18, 2004) and, as noted, published a temporary final rule in 2004 (69 FR 51176), followed by an interim rule in 2005 (70 FR 74663). The Coast Guard's definition of CDC appears in 33 CFR 160.204. CDC includes substances or materials that have been determined to pose an unreasonable risk to health, safety, and property if improperly handled. Existing regulations require most vessels carrying CDC to submit NOAs.

V. Discussion of Comments and Changes

The Coast Guard received one letter containing two comments on the proposal to change the definition of CDC so that residue quantities of some chemicals are not classified as CDC. This commenter commended the Coast Guard for working with CTAC to develop "this more sophisticated and nuanced approach to security requirements for CDCs in residue form."

First, the commenter concurred with the Coast Guard's proposal that eight CDCs—anhydrous ammonia, chlorine, ethane, ethylene oxide, methane (LNG), methyl bromide, sulfur dioxide, and vinyl chloride—should maintain their CDC classification when in residue form. Regardless of how small the quantities of these eight substances that remain onboard in a cargo system after discharge are, they will still be defined as CDC. Second, as manifested in our revised definition of CDC residue, the commenter also believed that in the case of all other CDCs, industry practices are sufficiently effective in diluting CDC residues, that it is prudent for the Coast Guard to develop a different set of security requirements for vessels with these types of residues onboard.

The Coast Guard agrees with the assessment to change the definition of CDC residue and to exclude certain CDCs from that definition. Because of this change, fewer vessels carrying only lower-risk cargoes will trigger NOA or other security requirements that apply to vessels carrying CDC.

This commenter also noted that while standing by her recommendation, she does not want her "endorsement of the revised definition of CDC residue [to] be seen as an endorsement of the current process for submitting NOAs generally." The commenter encourages the Coast Guard to use these two parallel rulemakings "to seriously evaluate the impractical process requiring operators to submit NOAs to * * * the National Vessel Movement Center and the Inland River Vessel Movement Center[], depending on a vessel's position on the inland river system."

The NOA CDC NPRM focused on changing the definition of CDC residue. Revising where vessels should report based on requirements in both 33 CFR parts 160 and 165 is beyond the scope of this rulemaking. The Coast Guard will address this comment about the National Vessel Movement Center and the Inland River Vessel Movement Center in its broader, "Vessel Requirements for Notices of Arrival and Departure, and Automatic Identification System" (RIN 1625–AA99) rulemaking.

The Coast Guard did not make any changes from the NOA CDC proposed rule based on these comments. This final rule remains the same as proposed in the NPRM.

VI. Regulatory Analyses

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

A. Regulatory Planning and Review

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

In the NPRM, published on December 23, 2009 (74 FR 68208, 68212), we estimated that there are on average 2,800 vessels currently carrying CDCs that make approximately 25,000 port arrivals a year. With this rule, some of these vessels will no longer be required to submit NOAs when transporting residue quantities of certain CDCs. As detailed in the NPRM, we estimate a 5 percent annual reduction in the number of NOAs submitted as a result of this final rule, which is equivalent to a $22,000 decrease in cost burden for vessel operators that transport certain CDCs in residue status.

We received no public comments or additional information that would alter our assessment of the impacts presented in the NPRM.

B. Small Entities

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

In the NPRM, we certified that under 5 U.S.C. 605(b) the proposed rule would not have a significant economic impact on a substantial number of small entities. We received no public comments or additional information that would alter our certification of the rule.

This rule will not increase the NOA reporting costs to vessel operators shipping CDC. We estimate that this rule will reduce the burden to vessel operators shipping residue quantities of certain CDCs. Therefore, the Coast Guard certifies that under 5 U.S.C. 605(b) this final rule will not have a significant economic impact on a substantial number of small entities.

C. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

D. Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). In our NPRM, however, we noted it would modify an existing collection under OMB Control Number 1625–0100, Advance Notice of Vessel Arrival, by reducing the number of responses. We received no public comments or additional information that would alter our estimates in the NPRM of the burden imposed by this rule through the ANOA collection of information.

As required by 44 U.S.C. 3507(d), we submitted a copy of the proposed rule to the Office of Management and Budget (OMB) for its review of the collection of information. We received no comments from either OMB or the public on the collection of information portion of our NPRM, and we have made no changes to the final rule from what we proposed in the NPRM.

On January 29, 2010, OMB approved collection 1625–0100 until January 31, 2012, without change. You are not required to respond to a collection of information unless it displays a currently valid OMB control number.

E. Federalism

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

F. Unfunded Mandates Reform Act

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

G. Taking of Private Property

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

H. Civil Justice Reform

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

I. Protection of Children

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

J. Indian Tribal Governments

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

K. Energy Effects

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

L. Technical Standards

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

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

M. Environment

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

List of Subjects

33 CFR Part 104

Maritime security, Reporting and recordkeeping requirements, Security measures, Vessels.

33 CFR Part 105

Maritime security, Reporting and recordkeeping requirements, Security measures.

33 CFR Part 160

Administrative practice and procedure, Harbors, Hazardous materials transportation, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Vessels, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard adopts the

amendments to 33 CFR parts 104, 105, and 160 introduced by the interim rule published at 70 FR 74669 on December 16, 2005, as final with the following changes:

PART 160—PORTS AND WATERWAYS SAFETY—GENERAL

■ 1. The authority citation for part 160 continues to read as follows:

Authority: 33 U.S.C. 1223, 1231; 46 U.S.C. Chapter 701; Department of Homeland Security Delegation No. 0170.1. Subpart C is also issued under the authority of 33 U.S.C. 1225 and 46 U.S.C. 3715.

■ 2. In § 160.204, revise paragraphs (7) through (9) of the definition for "Certain dangerous cargo (CDC)" and the entire definition of "Certain dangerous cargo residue (CDC residue)" to read as follows:

§ 160.204 Definitions.

* * * * *

Certain dangerous cargo (CDC) * * *

* * * * *

(7) All bulk liquefied gas cargo carried under 46 CFR 151.50–31 or listed in 46 CFR 154.7 that is flammable and/or toxic and that is not carried as certain dangerous cargo residue (CDC residue).

(8) The following bulk liquids except when carried as CDC residue:

(i) Acetone cyanohydrin;
(ii) Allyl alcohol;
(iii) Chlorosulfonic acid;
(iv) Crotonaldehyde;
(v) Ethylene chlorohydrin;
(vi) Ethylene dibromide;
(vii) Methacrylonitrile;
(viii) Oleum (fuming sulfuric acid); and
(ix) Propylene oxide, alone or mixed with ethylene oxide.

(9) The following bulk solids:

(i) Ammonium nitrate listed as a Division 5.1 (oxidizing) material in 49 CFR 172.101 except when carried as CDC residue; and

(ii) Ammonium nitrate based fertilizer listed as a Division 5.1 (oxidizing) material in 49 CFR 172.101 except when carried as CDC residue.

Certain dangerous cargo residue (CDC residue) includes any of the following:

(1) Ammonium nitrate in bulk or ammonium nitrate based fertilizer in bulk remaining after all saleable cargo is discharged, not exceeding 1,000 pounds in total and not individually accumulated in quantities exceeding two cubic feet.

(2) For bulk liquids and liquefied gases, the cargo that remains onboard in a cargo system after discharge that is not accessible through normal transfer procedures, with the exception of the following bulk liquefied gas cargoes carried under 46 CFR 151.50–31 or listed in 46 CFR 154.7:

(i) Ammonia, anhydrous;
(ii) Chlorine;
(iii) Ethane;
(iv) Ethylene oxide;
(v) Methane (LNG);
(vi) Methyl bromide;
(vii) Sulfur dioxide; and
(viii) Vinyl chloride.

* * * * *

Dated: September 20, 2010.

Kevin S. Cook,

Rear Admiral, U.S. Coast Guard, Director of Prevention Policy.

[FR Doc. 2010–24221 Filed 9–27–10; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2010–0872]

RIN 1625–AA00

Natchez Fireworks Safety Zone; Lower Mississippi River, Mile Marker 365.5 to Mile Marker 363, Natchez, MS

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for all waters of the Lower Mississippi River from mile marker 365.5 to 363 extending the entire width of the river. This safety zone is needed to protect persons and vessels from the potential safety hazards associated with a fireworks display. Entry into this zone is prohibited to all vessels, mariners, and persons unless specifically authorized by the Captain of the Port (COTP) Lower Mississippi River or a designated representative. The COTP Lower Mississippi River or a designated representative must authorize vessels that desire to operate in this zone.

DATES: This rule is effective from 8 p.m. through 8:30 p.m. on September 28, 2010.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2010–0872 and are available online by going to *http://www.regulations.gov,* inserting USCG–2010–0872 in the "Keyword" box, and then clicking "Search." They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or e-mail Lieutenant Junior Grade Jason Erickson, Coast Guard; telephone 901–521–4753, e-mail *Jason.A.Erickson@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because immediate action is needed to protect the participants in the fireworks display, spectators, and mariners from the safety hazards associated with a fireworks display taking place on a confined waterway.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. This is because immediate action is needed to protect the participants in the fireworks display, spectators, and mariners from the safety hazards associated with a fireworks display taking place on a confined waterway.

Basis and Purpose

On September 13, 2010, the Coast Guard received an Application for Approval of Marine Event for a fireworks display on the Lower Mississippi River. This safety zone is needed to protect participants, spectators, and other mariners from the possible hazards associated with a fireworks show taking place on the Lower Mississippi River. The fallout zone extends into the navigable channel of the river.

Discussion of Rule

The Coast Guard is establishing a temporary safety zone for all waters of the Lower Mississippi from mile marker 365.5 to 363 extending the entire width

of the river. Entry into this zone is prohibited to all vessels, mariners, and persons unless specifically authorized by the COTP Lower Mississippi River or a designated representative.

The COTP may be contacted by telephone at (901) 521–4822. The COTP Lower Mississippi River or a designated representative will inform the public through broadcast notice to mariners of changes in the effective period for the safety zone. This rule is effective from 8 p.m. to 8:30 p.m., local time, on September 28, 2010.

Regulatory Analyses

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

Regulatory Planning and Review

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

This rule will only be in effect for a short period of time and notifications to the marine community will be made through broadcast notice to mariners. The impacts on routine navigation are expected to be minimal.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit the Lower Mississippi River between mile marker 363 and mile marker 365.5, effective from 8 p.m. to 8:30 p.m., local time, on September 28, 2010.

This safety zone will not have a significant economic impact on a substantial number of small entities because this rule will only be in effect for one hour on the day the event is occurring. In addition, the common vessel traffic in this area is limited almost entirely to recreational vessels and commercial towing vessels.

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 offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process.

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

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

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction. This rule involves the establishment of a safety zone.

An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. A new temporary § 165.T08–0872 is added to read as follows:

§ 165.T08–0872 Natchez Fireworks Safety Zone; Lower Mississippi River, Mile Marker 365.5 to Mile Marker 363, Natchez, MS

(a) *Location.* The following area is a safety zone: those waters of the Lower Mississippi River, beginning at mile marker 363 and ending at mile marker 365.5, extending the entire width of the river.

(b) *Effective dates.* This section is effective from 8 p.m. through 8:30 p.m., local time, on September 28, 2010.

(c) *Regulations.* (1) In accordance with the general regulations of this part, entry into this zone is prohibited unless authorized by the Captain of the Port Lower Mississippi River or a designated representative.

(2) Persons or vessels requiring entry into or passage through the zone must request permission from the Captain of the Port Lower Mississippi River or a designated representative. They may be contacted on VHF–FM channels 16 or by telephone at (901) 521–4822.

(3) All persons and vessels shall comply with the instructions of the Captain of the Port Lower Mississippi River and designated personnel. Designated personnel include commissioned, warrant, and petty officers of the U.S. Coast Guard.

(d) *Informational Broadcasts:* The Captain of the Port, Lower Mississippi River will inform the public when safety zones have been established via Broadcast Notice to Mariners.

Dated: September 16, 2010.

Michael Gardiner,

Captain, U.S. Coast Guard, Captain of the Port, Lower Mississippi River.

[FR Doc. 2010–24237 Filed 9–27–10; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[EPA–HQ–OAR–2010–0133; FRL–9207–1]

RIN 2060–AQ35

Supplemental Determination for Renewable Fuels Produced Under the Final RFS2 Program From Canola Oil

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On March 26, 2010, the Environmental Protection Agency published final changes to the Renewable Fuel Standard (RFS) program as required by the Energy Independence and Security Act (EISA) of 2007. In the preamble to the final rule, EPA indicated that it had not completed the lifecycle greenhouse gas (GHG) emissions impact analysis for several specific biofuel production pathways but that this work would be completed through a supplemental final rulemaking process. This supplemental final rule describes a final GHG analysis for canola oil biodiesel. It also finalizes our regulatory determination that canola oil biodiesel meets the biomass-based diesel and advanced biofuel GHG reduction thresholds of 50% as compared to the baseline petroleum fuel it will replace, petroleum diesel. This final rules will allow producers or importers of canola oil biodiesel fuel to generate biomass-based diesel Renewable Identification Numbers (RINs), providing that the fuel meets other definitional criteria for renewable fuel (e.g., produced from renewable biomass as defined in the RFS2 regulations, and used to reduce or replace petroleum-based transportation fuel, heating oil or jet fuel). In addition, this rule includes a new regulatory provision establishing a temporary and limited means for producers or importers of canola oil biodiesel to generate RINs for qualifying biofuel produced or imported between July 1, 2010, and the effective date of this rule.

DATES: This final rule is effective on September 28, 2010.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2010–0133. All documents in the docket are listed on the *http://www.regulations.gov* web site. Although listed in the index, some information is not publicly available, e.g., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the Air and Radiation Docket and Information Center, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC 20004. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Doris Wu, Office of Transportation and Air Quality, Transportation and Climate Division, Environmental Protection Agency, 2000 Traverwood Drive, Ann Arbor, MI 48105; telephone number: 734–214–4923; fax number: 734–214–4958; e-mail address: *wu.doris@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

Entities potentially affected by this action are those involved with the production, distribution, and sale of transportation fuels, including gasoline and diesel fuel or renewable fuels such as ethanol and biodiesel. Regulated categories include:

Category	NAICS [1] codes	SIC [2] codes	Examples of potentially regulated entities
Industry	324110	2911	Petroleum Refineries.
Industry	325193	2869	Ethyl alcohol manufacturing.
Industry	325199	2869	Other basic organic chemical manufacturing.
Industry	424690	5169	Chemical and allied products merchant wholesalers.
Industry	424710	5171	Petroleum bulk stations and terminals Chemical and allied products merchant wholesalers.
Industry	424720	5172	Petroleum and petroleum products merchant wholesalers.
Industry	454319	5989	Other fuel dealers.

[1] North American Industry Classification System (NAICS).
[2] Standard Industrial Classification (SIC) system code.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by the RFS2 program. This table lists the types of entities that EPA is now aware of that could potentially be regulated under the program. To determine whether your activities would be regulated, you should carefully examine the applicability criteria in 40 CFR part 80, Subpart M. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding section.

Outline of This Preamble

I. Executive Summary
II. Lifecycle Analysis of Greenhouse Gas Emissions for Canola Oil Biodiesel
A. Methodology and Key Assumptions
1. Models
2. Scenarios Modeled
3. Year of Analysis
4. Biodiesel Processing Assumptions
5. Other Assumptions
B. Threshold Determination and Assignment of Pathways
III. Delayed RIN Generation for New Pathways
IV. Public Participation
V. Statutory and Executive Order Reviews
A. Executive Order 12866: Regulatory Planning and Review
B. Paperwork Reduction Act
C. Regulatory Flexibility Act
D. Unfunded Mandates Reform Act
E. Executive Order 13132: Federalism
F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks
H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer and Advancement Act
J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations
K. Congressional Review Act
VI. Statutory Provisions and Legal Authority

I. Executive Summary

On March 26, 2010, the Environmental Protection Agency published final changes to the Renewable Fuel Standard (RFS) program as required by the Energy Independence and Security Act (EISA) of 2007. EISA increased the volume of renewable fuel required to be blended into transportation fuel to 36 billion gallons by 2022. Furthermore, the Act established new eligibility requirements for four categories of renewable fuel, each with their own annual volume mandates. The eligibility requirements include minimum lifecycle greenhouse gas (GHG) reduction thresholds for each category of renewable fuel. EPA conducted lifecycle GHG analyses for a number of biofuel feedstocks and production pathways for the final rule. In the preamble to that final rule, EPA indicated that it had not completed the lifecycle greenhouse gas emissions impact analysis for certain biofuel production pathways but that this work would be completed through a supplemental final rulemaking process. This supplemental final rule describes a final GHG analysis for canola oil biodiesel. It also finalizes our regulatory determination that canola oil biodiesel qualifies as biomass-based biodiesel and advanced biofuel under RFS2 regulatory provisions, providing that the fuel meets other definitional criteria for renewable fuel (e.g., produced from renewable biomass as defined in the RFS2 regulations, and used to reduce or replace petroleum-based transportation fuel, heating oil or jet fuel). EPA currently intends to issue additional supplemental final rules to address other biofuel production pathways, including those involving palm oil, woody biomass and sorghum.

We issued a notice of data availability (NODA) on July 26, 2010 which described the methodology and modeling assumptions, and proposed lifecycle GHG assessment, for canola oil biodiesel. EPA provided a 30-day public comment period on the NODA. In addition, we sought input from several stakeholders during the development of this rule and have worked closely with other Federal agencies, in particular the U.S. Departments of Energy and Agriculture. In general, the public comments received supported our proposed lifecycle analysis, and we are finalizing the proposal without modification.

The agency continues to recognize that lifecycle GHG assessment of biofuels is an evolving discipline. As we noted in the final RFS2 rule, EPA will revisit our lifecycle analyses in the future as new information becomes available. In addition, EPA is moving forward with plans to ask the National Academy of Sciences to make recommendations for these future lifecycle GHG assessments. This current canola analysis and subsequent supplemental analysis being conducted will continue to use the same lifecycle modeling approach as used for the RFS2 final rule and will be revisited along with other fuels as part of any future lifecycle updates as appropriate.

In addition, on July 20, 2010, EPA issued a Notice of Proposed Rulemaking (NPRM) for the 2011 renewable fuel standards.[1] This NPRM included a proposed provision to allow the temporary and limited generation of "delayed RINs" by renewable fuel producers using fuel production pathways approved for RIN generation on or after July 1, 2010 and before January 1, 2011. Under the proposal, delayed RINs could be generated after the effective date of a rule adding a new

[1] 75 FR 42238.

pathway to Table 1 to § 80.1426 for qualifying fuel produced between July 1, 2010 and the effective date of that rule, even if the fuel had been transferred to another party. In addition, the proposed rule included provisions allowing fuel producers who are grandfathered under the provisions of § 80.1403 to exchange higher-value delayed RINs for RINs generated under the grandfathering provisions that have a D code of 6. We are finalizing this provision in today's rule. Since the only pathway we are approving in today's action is biodiesel and renewable diesel produced from canola oil, the delayed RINs provision will only be applicable to this pathway.

Today's rule does not add significant environmental or economic impacts beyond those already addressed in the final RFS2 rule published on March 26, 2010. The new delayed RINs provision provides additional flexibility to certain biofuel producers, and the new canola oil biodiesel pathway provides an additional basis for biofuel producers to generate RINs. Today's actions will not increase overall burdens on any regulatory party and will impose no additional costs.

II. Lifecycle Analysis of Greenhouse Gas Emissions for Canola Oil Biodiesel

A. Methodology and Key Assumptions

EISA establishes specific lifecycle greenhouse gas (GHG) emissions reduction thresholds for each of four categories of renewable fuels (i.e., 60% for cellulosic biofuel, 50% for biomass-based diesel and advanced biofuel, and 20% for other renewable fuels). EPA employed the methodology described in the RFS2 final rule (published March 26, 2010) to analyze the lifecycle GHG emissions of the canola oil biodiesel pathway, as described in the NODA issued on May 26, 2010. This section briefly describes the methodological approach as well as the key assumptions that were used in the lifecycle modeling of canola oil biodiesel.

The public comments received on the canola oil biodiesel NODA generally supported our proposed lifecycle GHG analysis. For instance, several commenters stated that they support the determination that canola oil biodiesel meets or exceeds the 50% biomass-based diesel lifecycle GHG reduction requirement and requested that EPA formally approve canola for RIN generation as expeditiously as possible.[2] Responses to comments that were critical of certain elements of the proposal are included in the following sections. EPA has decided to finalize the proposed lifecycle GHG assessment for canola oil biodiesel without modification.

1. Models

The analysis EPA has prepared for canola oil biodiesel uses the same set of models that was used for the final RFS2 rule, including the Forestry and Agricultural Sector Optimization Model (FASOM) developed by Texas A&M University and others and the Food and Agricultural Policy and Research Institute international models as maintained by the Center for Agricultural and Rural Development (FAPRI–CARD) at Iowa State University. The models require a number of inputs that are specific to the pathway being analyzed, for example, inputs include projected yield of feedstock per acre planted, projected fertilizer use, energy use in feedstock processing and energy use in fuel production. The docket includes detailed information on model inputs, assumptions, calculations, and the results of our modeling for canola oil biodiesel.

2. Volume Scenarios Modeled

The RFS2 final rulemaking established reference and control cases to assess the impacts of an increase in renewable fuel volume from business-as-usual. That is, EPA compared what is likely to have occurred without EISA to the increased volume necessary to meet the EISA mandates. For the canola biodiesel assessment, we determined that an incremental impact of an increase of 200 million gallons of biodiesel from canola per year in 2022 was an appropriate volume to model. This assumed a 2022 reference case of zero canola oil biodiesel volume and a 2022 control case of 200 million gallons canola oil biodiesel volume. For more detail on our rationale for volumes modeled (which were based in part on consultation with USDA experts and industry representatives) please refer to the inputs and assumptions document that is available through the docket. We did not receive any comments on our proposed use of this volume scenario and are therefore using the same volume scenario for our final modeling.

3. Year of Analysis

We received a comment disagreeing with our proposal to use the year 2022 to model and evaluate GHG emissions associated with canola oil biodiesel, as we had done for other biofuels in the RFS2 final rule. The commenter stated that use of 2022 is inappropriate since that is "the year that the RFS ends" and that GHGs are emitted in the present as the feedstock and fuel is produced and combusted. The commenter suggested that EPA instead use a year for its analyses that better reflects the "average performance of the RFS," such as 2012, with a commitment to update the analysis regularly to reflect documented changes in technologies and practices, as well as better information on trends in land use and associated emissions.

In response, EPA first notes that the commenter is incorrect in assuming that the RFS program ends in 2022. That is the year when the full 36 billion gallons specifically required by EISA is to be used, but EPA is directed to set renewable fuel volume requirements, and implement associated percentages standards, indefinitely into the future after 2022. Thus, no single year can reasonably be assumed to reflect an "average performance" of a fuel under the RFS program.

As described in our final RFS2 rule, there were two main reasons for our focus on 2022.[3] The first reason is that it is appropriate to select a single year to analyze. The lifecycle GHG analysis is based on the use of various economic models, both domestic and international. These models estimate economic impacts on relevant sectors over a multi-year time period, and rely on assumptions or projections as to the various biofuel volumes out into the future. The results are dependent in part on the biofuel volumes that are used, and the modeling requires a stable prediction of the specific volumes and types of fuels used from year to year. This reflects the current status of the models available to perform this analysis. If there were changes in volumes in interim years in the modeling, this would have impacts on the later years of the modeling. The lack of a stable projection or assumption in the year to year fuel volumes would make it impossible to accurately model the predicted lifecycle GHG reductions for the different fuels. Analytically it would not be possible to model in advance the GHG impacts and make lifecycle determinations on biofuels for different years over the life of the program.

Thus it would not be possible using our current methodology to use more

[2] *See* comments EPA–HQ–OAR–2010–0133–0079 (Embassy of Canada), EPA–HQ–OAR–2010–0133–0080 (Sustainable Biodiesel Alliance), EPA–HQ–OAR–2010–0133–0082 (Washington State Department of Commerce), EPA–HQ–OAR–2010–0133–0083 (U.S. Canola Association).

[3] *See* Renewable Fuel Standard Program (RFS2) Summary and Analysis of Comments, EPA–420–R–10–003, February 2010, see page 7–18, 7–19 & 7–31. Also, see preamble to final RFS2 rule in Chapter V. Lifecycle Analysis of Greenhouse Gas Emissions.

than one year to determine the life-cycle assessment, as recommended by the commenter. They recommend that we assess biofuel GHG performance early in the RFS2 implementation schedule, using a year such as 2012 as the year, and then make periodic GHG impact reassessments prior to 2022 with threshold determinations on the basis of these reassessments. However, if a biofuel met a certain GHG performance threshold in some years while not in others, this would affect the volumes of different types of fuels produced to meet RFS2 requirements. A change in a threshold determination would lead to changes in investments and in the market, producing a new mix of biofuels that we are not able to predict and use in the lifecycle modeling. This use of more than one year can lead to changes in the interim years' biofuel volumes that we are not in a position to model or project. Based on the inability to determine the impact of these iterative changes in the market resulting from changes in the GHG threshold decision over time, we would be unable to develop a valid year by year projection of biofuel volumes for the subsequent lifecycle modeling. EPA is also concerned that this approach would produce significantly increased uncertainty in the biofuels industry and could affect investment decisions and thus the ability of the industry to produce sufficient complying biofuels to meet the goals of EISA. This increased uncertainty about future decisions is not warranted in a situation where the modeling tools available to the agency could not be used to produce consistent results over multiple years when biofuel volume predictions are not stable due to changing threshold determinations from year to year. As such, EPA's position is that it is more appropriate to rely on modeling centered on a single year.

The second reason to focus on 2022, the final year of ramp up in the required volumes of renewable fuel, is that modeling that uses the year 2022 allows the total fuel volumes specified in EISA to be incorporated into the analysis. Modeling an early year such as 2012 would result in almost all of the volume being made up of traditional biofuels such as ethanol from corn or biodiesel from soy. We note also that much of the 2012 production capacity is already in place and thus allowed to meet the overall renewable fuel standard under its grandfathering provisions (for which no GHG assessment if required). We are more interested in modeling the GHG performance of future production capacity likely to come on board after 2012. Additionally, assessment of the impact of biofuels on land use in an early year such as 2012 would underestimate the full land use impact of the greater biofuel volumes required in later years. Additionally, such an early assessment would not reflect the anticipated technology changes and expanded use of valuable co-products such as DGS. In this way, an early analysis would give a false picture of the anticipated emission reductions from individual biofuels. In contrast, EPA feels that the 2022 analysis represents an appropriate estimate of GHG impacts as it represents the full adoption of statutorily-prescribed biofuel volumes and thus their feedstock demand on land use and otherwise appropriately assesses the GHG impacts of the program when fully implemented. An earlier assessment year would underestimate the full volumes required by EISA and therefore not appropriately account for the full impact of the program. Furthermore, we note that the RFS2 requirements do not end in 2022, rather it would continue in years to follow. Since trends which might impact a 2022 assessment compared to earlier years such as improvements in crop yield or production technology would be expected to continue after 2022, selecting 2022 as a preferred year of assessment represents a more reasonable single year for assessment of the expected GHG performance of a biofuel during the RFS2 program than an assessment early in the program such as 2012. Finally, a 2022 assessment for canola oil biodiesel is consistent with the 2022 assessments for all other biofuel pathways adopted in RFS2. EPA believes that it is best to use similar assessment techniques across all biofuel pathways.

4. Biodiesel Processing Assumptions

We analyzed the lifecycle GHG emission impacts of producing biodiesel using canola oil as a feedstock assuming the same biodiesel production facility designs and conversion efficiencies as modeled for biodiesel produced from soybean oil. Canola oil biodiesel is produced using the same methods as soybean oil biodiesel, therefore plant designs are assumed to not significantly differ between these two feedstocks. As was the case for soybean oil biodiesel, production technology for canola oil biodiesel is mature and we have not projected in our assessment of canola oil biodiesel any significant improvements in plant technology. Unanticipated energy saving improvements would further improve GHG performance of the fuel pathway. Refer to the docket for more details on these model inputs and assumptions. The inputs and assumptions are based on our understanding of the industry, analysis of relevant literature, public comments, and recommendations of experts within the canola and biodiesel industries and those from USDA as well as the experts at Texas A&M and Iowa State Universities who have designed the FASOM and FAPRI models.

The glycerin produced from canola oil biodiesel production is equivalent to the glycerin produced from the existing biodiesel pathways (based on soy oil, etc.) that were analyzed as part of the RFS2 final rule. Therefore the same assumptions and co-product credit was applied to canola oil biodiesel as was used for the biodiesel pathways modeled for the RFS2 final rule. The assumption is that the GHG reductions associated with the replacement of residual oil on an energy equivalent basis represents an appropriate mid-range co-product credit of biodiesel produced glycerin. The U.S. Canola Association supported this approach in its comments, stating that "EPA properly considered glycerin as a co-product, and conservatively assumed that the glycerin would be used as a fuel source in place of residual oil." However, we also received comments that this approach overestimates the GHG reduction benefits of glycerin co-product because the glycerin would actually replace less than an energy equivalent amount of residual oil. The commenter, Clean Air Task Force (CATF), makes the argument that while the glycerin use would lower the demand for residual oil, it would also reduce the price of residual oil fuel, and this lowered price would increase somewhat the demand and use of residual oil above the levels we assumed in our analysis. According to the commenter, this assumed rebound effect should decrease the credit we provide in our analysis for biodiesel-produced glycerin.

EPA feels that the proposed approach, which it is finalizing today, provides an appropriate estimate of credit for the glycerin co-product produced from the canola biodiesel pathway. As part of our RFS2 proposal we assumed the glycerin would have no value and would effectively receive no co-product credits in the soy biodiesel pathway. We received numerous comments, however, as part of the RFS2 final rule stating that the glycerin would have a beneficial use and should generate co-product benefits. Therefore, the biodiesel glycerin co-product determination made as part of the RFS2 final rule took into consideration the possible range of co-product credit results. The actual co-

product benefit will be based on what products are replaced by the glycerin, or what new uses the co-product glycerin is applied to. The total amount of glycerin produced from the biodiesel industry will actually be used across a number of different markets with different GHG impacts. This could include for example, replacing petroleum glycerin, replacing fuel products (residual oil, diesel fuel, natural gas, etc.), or being used in new products that don't have a direct replacement, but may nevertheless have indirect effects on the extent to which existing competing products are used. The more immediate GHG reductions from glycerin co-product use will likely range from fairly high reductions when petroleum glycerin is replaced to lower reduction credits if it is used in new markets that have no direct replacement product, and therefore no replaced emissions. EPA does not have sufficient information (and the commenter supplied none) on which to allocate glycerin use across the range of likely uses. Also, if additional residual oil is used as predicted by the commenter, its use would presumably replace some other product (e.g., perhaps replacing coal in some cases) which would also have a secondary GHG impact which could be in a positive direction (*i.e.,* a lowering of GHG emissions). Again, EPA does not have sufficient information on which to base such market movements and their GHG impact. Therefore, EPA believes that its proposed approach of picking a surrogate use for modeling purposes in the mid-range of likely glycerin uses, and focusing on the more immediate GHG emissions results tied to such use, is reasonable. The replacement of an energy equivalent amount of residual oil is a simplifying assumption determined by EPA to reflect the mid-range of possible glycerin uses in terms of GHG credits, and EPA believes that it is appropriately representative of GHG reduction credit across the possible range without necessarily biasing the results toward high or low GHG impact.

EPA feels that the comments from the CATF do not change the appropriateness of using at this time an assumption of residual oil replaced on an energy equivalent basis (without any adjustment for possible global rebound effect) as a representative biodiesel glycerin co-product credit. Since we are not actually assuming all of the biodiesel glycerin produced replaces residual oil (it will likely replace a mix of products with a range of GHG impacts but residual oil is used as the representative GHG reduction credit), any potential rebound impact in the residual oil market would not occur to the extent described in the CATF comment as they assumed the total amount of glycerin would be used as a residual oil replacement. Furthermore, while including rebound effects and other indirect impacts for residual oil that is replaced by biodiesel co-product glycerin could possibly lower reduction credits, that would not be true for all replacement products. For example, including indirect impacts for glycerin that is used in new markets could tend to increase estimated emission reductions. Without indirect impacts the co-product assessment for glycerin used in new markets would assume that it did not have a replacement value and would therefore generate no credits. If indirect impacts were taken into account it could be that the new products would actually have impacts in other markets that were not direct replacements but generate GHG benefits. Given the varying impacts of including the type of factors CATF mentions in their comments would have across the full range of possible glycerin replacements, and the fundamental difficulty of predicting possible glycerin uses and impacts of those uses many years into the future under different market conditions, EPA believes it is reasonable to finalize its more simplified approach to calculating co-product GHG benefit associated with glycerin production.

5. Other Assumptions

We received comments from the U.S. Canola Association supported by the State of Washington Department of Commerce that the GHG impacts of canola oil biodiesel as proposed in our Notice of Data Availability overestimated the GHG emissions of canola production and therefore canola oil biodiesel has a greater than 50% lifecycle GHG reduction compared to the baseline petroleum diesel fuel baseline. The U.S. Canola Association plans to submit more detailed technical analysis to EPA for consideration in any updated analysis of canola oil biodiesel. Because comments suggesting that EPA overestimated lifecycle GHG emissions from canola oil biodiesel do not impact today's regulatory determination that canola oil biodiesel achieves at least a 50% lifecycle GHG reduction, and because those who submitted such comments have asked that EPA expedite its qualification action for canola oil biodiesel under RFS2, we believe it is most appropriate that EPA consider these comments in detail at such time as we prepare an updated analysis of canola oil biodiesel. We worked closely with the canola industry on the lifecycle analysis performed for this rulemaking and will continue to work with them on any future analysis. The state of Washington specifically referenced a concern with the diesel fuel consumption rate in our analysis. The concern is that the total change in diesel use divided by the total acreage change across the entire U.S. agricultural sector as a result of an increase in canola oil biodiesel production results in a diesel use figure that is higher than the rate of diesel fuel used to produce canola. The commenter indicates that this appears to represent an error in the EPA lifecycle analysis. EPA disagrees that this represents an error in the modeling. As mandated by EISA, and as was done for the other biofuels analyzed as part of the RFS2 final rule, EPA's lifecycle analysis takes into account the full direct as well as significant indirect impacts of canola oil biodiesel production. As described in the RFS2 final rulemaking, this means that for the agricultural sector we consider the full impacts across the entire sector due to canola oil biodiesel production including not only the impacts on canola acres and diesel fuel input, but also the impacts of crop shifting and changes in livestock production with associated impacts on feed crops and other crop production with associated diesel fuel use. Therefore the diesel fuel use figure that the state of Washington cites does not represent just the change from canola acres but shifts in all crop acres across all regions as described in the agricultural sector model results included in the docket to this rulemaking. The shifts of all these different crop acres with associated diesel fuel use results in the correct diesel use figure used by EPA.

The state of Washington also has comments specifically referencing regional data on canola production that is not reflective of the national and international analysis that EPA performed for canola oil biodiesel, as mandated by EISA and as was done for all feedstocks considered as part of the final RFS2 rulemaking. While regional specific data was included in the analysis the full lifecycle impacts of canola oil biodiesel as mentioned above were determined based on comprehensive national and international changes in agriculture and associated GHG impacts and therefore the data described in the State of Washington comments would not impact our determination that canola oil biodiesel qualifies under the 50% GHG threshold for biomass-based diesel and advanced biofuel. Furthermore, the

State of Washington comments encourage EPA to extend this rulemaking to other oilseeds in the family Brassicaceae such as camelina. Today's action is limited to canola, so this comment raises issues beyond the scope of this rulemaking. Parties seeking EPA analysis of additional fuel pathways are urged to follow the petition process specified in 40 CFR 80.1416.

We received comment from the Clean Air Task Force objecting to EPA's assumptions regarding likely improvements in canola yields in the future. According to the commenter, there is "recent evidence [which] significantly undermines any expectation that crop yields will increase in the future." The commenter bases this statement on a study suggesting that "the effects of climate change could decrease agricultural yields" and "further research is needed to identify how crop yields will respond to increased levels of carbon dioxide". However, we note that the authors of the study cited by commenters do not draw definitive conclusions, but phrase their statements cautiously, including, for examples, statements such as yields "*may* have reached their ceiling." In the study, the authors look principally at two crops, wheat and rice, as these crops have had declined gains in yield. However, the study also notes that maize has "maintained the rate of increase of the 1970s and 1980s into the most recent decade." This seems to go against the commenter's point that "recent evidence significantly undermines *any* expectation that crop yields will increase in the future." For crops that are not part of these three most important grains, no comparison has been made in the study. Thus, the study does not directly address canola. Finally, we note that the thrust of the paper is that past approaches to increasing yields may be reaching the ceiling of potential effectiveness, but the author notes many other avenues that the author believes can and should be pursued to increase yield. Thus, even for the crops that have experienced a drop in yield increases, the study does not necessarily suggest that this will remain the case if appropriate research as suggested by the paper is conducted. Given the uncertain nature of scientific advancement and possible future effects related to climate change, EPA believes that its approach of looking at yield trends on a crop by crop basis based on past historical and verifiable data provides the most reasonable approach available at this time to predicting future yields.

EPA bases its crop yields on projecting long-term trends based on historical data for each crop using the same methodology. EPA's approach is consistent with USDA's future projections of crop yield changes over time. On the other end of the spectrum, we note that during the proposal to the final RFS2 rule we received comments that EPA's crop yields were actually too low and that yields will continue to increase due to improvements in seed technology.[4] Those commenters would argue that higher yields than used by EPA should be adopted. We believe that our assumptions are reasonably justifiable and do not differ from past long-term trend yield performance.

The docket includes a useful memorandum which summarizes relevant materials used for the canola biodiesel pathways analysis including detailed information on the assumptions used in our lifecycle modeling. Described in the memorandum, for example, are the input and assumptions document (e.g., crop yield projections, fertilizer use, agricultural energy use, etc.) and detailed results spreadsheets (e.g., foreign agricultural impacts, foreign agricultural energy use, FASOM and FAPRI model results) used to generate the results presented above.

[4] *See* RFS2 Summary and Analysis of Comments, e.g., pg. 7–17, 7–37, 7–149.

B. Threshold Determination and Assignment of Pathways

As part of this final rule, EPA is making a lifecycle GHG threshold determination based on its final lifecycle GHG analysis for canola oil biodiesel. Figure II–1 shows the results of the modeling. It shows the percent difference between lifecycle GHG emissions for 2022 canola oil biodiesel as compared to the 2005 petroleum diesel fuel baseline. In the figure, the zero on the x-axis represents the lifecycle GHG emissions equivalent to the 2005 petroleum diesel fuel baseline. The y-axis on the chart represents the likelihood that possible results would have a specific GHG reduction value shown. The area under the curve represents all the possible results. The results for canola biodiesel are that the midpoint of the range of results is a 50% reduction in GHG emissions compared to the diesel fuel baseline. The 95% confidence interval around that midpoint results in range of a 20% reduction to a 75% reduction compared to the 2005 petroleum diesel fuel baseline. These results justify authorizing the generation of biomass-based diesel RINs for fuel produced by the canola oil biodiesel pathway modeled, assuming that the fuel meets the other definitional criteria for renewable fuel (e.g., produced from renewable biomass, and used to reduce or replace petroleum-based transportation fuel, heating oil or jet fuel) specified in EISA.

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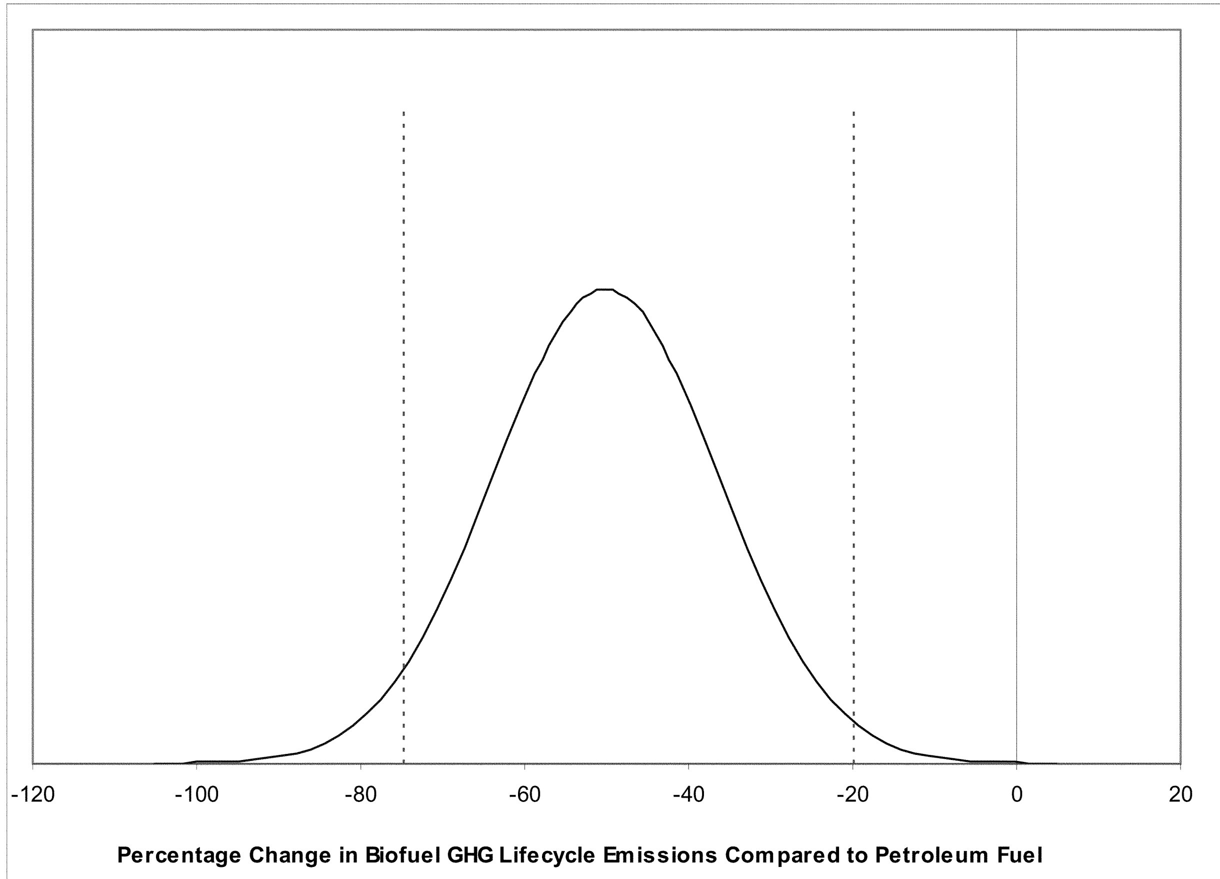
Figure II-1.

Distribution of Results for Canola Oil Biodiesel

Typical 2022 plant; natural gas



BILLING CODE 6560–50–C

Table II–1 breaks down by stage the lifecycle GHG emissions for canola oil biodiesel and the 2005 diesel baseline. The biodiesel production process reflected in this table assumes that natural gas is used for process energy and accounts for co-product glycerin displacing residual oil. This table demonstrates the contribution of each stage and its relative significance.

As a sensitivity case, we also looked at the use of biomass as an energy source and determined that this would further improve the GHG lifecycle emissions profile compared to natural gas use. Thus, the GHG emissions threshold determination would apply to facilities using biomass or natural gas as an energy source. We have clarified in the Table 1 to 80.1426 that canola oil biodiesel facilities seeking to generate biomass-based diesel or advanced biofuel RINs must use either natural gas or biomass. Other process energy sources (such as coal) have not been modeled, but are likely to result in additional GHG emissions that would result in the pathway failing to provide 50% lifecycle GHG emissions as compared to baseline fuel. This is also true for biodiesel pathways using soybean oil and other feedstocks. However, at this time we are not amending Table 1 to § 80.1426 to specify the required process energy source(s) for soybean oil and other biodiesel feedstocks because this rule is focused on canola. We commit to updating Table 1 to § 80.1426 at a future time to include this energy use stipulation for other biodiesel feedstocks.

TABLE II–1—LIFECYCLE GHG EMISSIONS FOR CANOLA OIL BIODIESEL, 2022

[$kgCO_2e$/mmBTU]

Fuel type	Canola oil biodiesel	2005 Diesel baseline
Net Domestic Agriculture (w/o land use change)	8	
Net International Agriculture (w/o land use change)	0	
Domestic Land Use Change	3	
International Land Use Change, Mean *(Low/High)*	31 *(7/61)*	

TABLE II–1—LIFECYCLE GHG EMISSIONS FOR CANOLA OIL BIODIESEL, 2022—Continued
[$kgCO_2e$/mmBTU]

Fuel type	Canola oil biodiesel	2005 Diesel baseline
Fuel Production	3	18
Fuel and Feedstock Transport	2	*
Tailpipe Emissions	1	79
Total Emissions, Mean *(Low/High)*	48 *(25/78)*	97

* Emissions included in fuel production stage.

Based on the above analyses, canola oil biodiesel has been found to comply with the lifecycle GHG reduction thresholds (50%) applicable to the biomass-based diesel and advanced biofuel categories and are therefore eligible for the D-Codes specified in Table II–2.

TABLE II–2—D–CODE DESIGNATIONS

Fuel type	Feedstock	Production process requirements	D-Code
Biodiesel	Canola oil	Trans-Esterification using natural gas or biomass for process energy.	4 (biomass-based diesel).

III. Delayed RIN Generation for New Pathways

In a Notice of Proposed Rulemaking (NPRM) published on July 20, 2010 (75 FR 42238), we proposed a new regulatory provision that would allow RINs to be generated for fuel produced on or after July 1, 2010 representing certain fuel pathways that were not in Table 1 to § 80.1426 as of July 1, 2010, but were added to Table 1 by January 1, 2011. Under the proposal, RINs could be generated only if the pathways were indeed approved as valid RIN-generating pathways, and only for volumes of fuel produced between July 1, 2010 and the effective date of a new pathway added to Table 1 to § 80.1426. In today's rule, we are finalizing regulatory provisions for "delayed RINs" with certain modifications as described below only for biodiesel produced from canola oil since today's action adds only this new RIN-generating pathway to Table 1 to § 80.1426.

For the RFS2 final rule (75 FR 14670), we attempted to evaluate and model as many pathways as possible so that producers and importers could generate RFS2 RINs beginning on July 1, 2010. However, we were not able to complete the evaluation of all pathways that we had planned. In the final RFS2 rulemaking we announced our intention to complete the evaluation of three specific pathways after release of the RFS2 final rule: Grain sorghum ethanol, pulpwood biofuel, and palm oil biodiesel (see Section V.C of the RFS2 final rule, 75 FR 14796). To this list we added biodiesel produced from canola oil as this biofuel was produced under RFS1 and was also expected to participate in the RFS2 program at the program's inception.

Following release of the final RFS2 rule, we determined that the lifecycle assessments for these additional pathways would not be completed by July 1, 2010, the start of the RFS2 program. While some producers of these biofuels could continue to generate RINs under the RFS2 "grandfathering" provisions, they would have no approved means for generating higher-value RINs (i.e. cellulosic biofuel, biomass-based diesel, or advanced biofuel) [5]. Knowing that this circumstance had the potential to adversely impact these producers as well as to reduce the number of RINs available in the market relative to biofuel volume, in the July 20, 2010 NPRM, we proposed a new regulatory provision for delayed RINs that would allow certain renewable fuel producers to generate higher-value RINs for all fuel they produce and sell between July 1, 2010, and the effective date of the new pathway, if applicable pathways are ultimately approved for RIN generation after July 1, 2010 and by December 31,2010. This proposed provision was designed to allow biofuel producers to participate in the RFS2 program as fully as possible as it gets underway even though we were not able to complete the evaluation of a number of pathways prior to July 1. However, we also indicated in the preamble to the proposal that we intended to apply the delayed RINs provision to only the four pathways under consideration prior to July 1, 2010 (grain sorghum ethanol, pulpwood biofuel, palm oil biodiesel, and canola oil biodiesel) if any of these pathways are determined to meet the applicable GHG thresholds prior to January 1, 2011, and the provision would apply only for renewable fuel produced in 2010.

In response to the NPRM, most commenters supported such a provision. However, the American Petroleum Institute and the National Petrochemical Refiners Association opposed the proposal, stating that retroactively applicable actions are inappropriate and that delayed RINs would create more uncertainty for obligated parties. However, we continue to believe that the delayed RINs provision is both appropriate and will actually help obligated parties to comply with the applicable standards. Since the delayed RINs provision will increase the likelihood that higher-value RINs will be generated in 2010, more such RINs may be available to obligated parties for compliance purposes. Delayed RINs can be bought and sold independently of renewable fuel volumes, making them more easily marketable and more directly available to obligated parties than RINs assigned to renewable fuel. In addition, while this provision will allow RINs to be generated after the associated renewable fuel has been produced and sold, it does not constitute an impermissibly retroactive provision. Producers who

[5] Grandfathered facilities could generate renewable fuel RINs with a D code of 6 beginning on July 1, 2010, but many of these producers believed that their biofuel should be qualified for generating RINs with D codes other than 6.

generate delayed RINs will do so voluntarily, and after the effective date of the new pathway. No additional burdens will be placed upon obligated parties and the rule will have no impact on any settled transactions of an obligated party. Moreover, RINs already generated and accepted in EMTS will not be affected. The D code assigned to any given RIN will not change, and RINs owned by any party can be retained by them for compliance purposes or sold as they wish.

Finally, to the extent that the provision could be seen as having retroactive impacts, EPA believes its action is authorized by CAA section 211(o)(2)(A)(iii), providing that "regardless of the date of promulgation, the regulations * * * shall contain compliance provisions applicable to refineries, blenders, distributors, and importers, as appropriate, to ensure that the requirements" of the Act relating to use of specified volumes of renewable fuel are satisfied. The delayed RINs provision is a "compliance provision" because it relates to RINs, and RINs are the currency by which obligated parties demonstrate compliance. The delayed RINs provision relates to ensuring that the volumes of renewable fuel specified in the statute are met, by allowing producers to generate appropriate RINs for canola oil biodiesel that reflects its proper identification as biomass based diesel under the statute.

Two commenters requested that the provision for delayed RINs be made applicable to other pathways as well, such as pathways utilizing camelina and winter barley. Since the only new pathway that we approving for RIN generation in today's action is biodiesel produced from canola oil, we are finalizing the delayed RINs provision only for this pathway in today's action. The application of delayed RINs to other pathways does not need to be addressed in this action, as it does not affect the decision on delayed RINs for biodiesel produced from canola oil.

Several commenters responded to our proposed 30-day deadline for generation of delayed RINs by saying that additional time is necessary to allow grandfathered producers to acquire and retire an appropriate number of general renewable fuel (D code of 6) RINs. We proposed the 30-day limit because we believe that the deadline for the generation of delayed RINs should be set such that they are entering the market as close as possible to the date of production of the renewable fuel that they represent. However, we agree with the commenters that 60-days is a reasonable timeframe consistent with this consideration, and that it is appropriate to allow producers additional time to complete necessary transactions. Therefore, today's final rule provides that all delayed RINs for a given pathway must be generated within 60-days of the effective date of either a qualifying rule adding that pathway to Table 1 to § 80.1426, or of a qualifying action on a petition pursuant to § 80.1416.

As described in the RFS2 final rule, grandfathered producers can generate RINs for their renewable fuel starting on July 1, 2010, but must designate the D code as 6 for such fuel, and they must transfer those RINs with renewable fuel they sell. Under today's rule, such grandfathered producers who qualify for the generation of delayed RINs, and who wish to avail themselves of the opportunity, will be required to acquire and retire RINs from the open market with a D code of 6 prior to the generation of delayed RINs. The number of RINs retired in this fashion must be no greater than the number they generated in 2010 in the time period between July 1, 2010 and the effective date of the new approved pathway for biodiesel made from canola oil. Once those RINs are retired, an equivalent number of delayed RINs with a different D code can be generated and sold. One commenter requested that the regulations allow delayed RINs to be generated and sold before, rather than after, the producer retires an equivalent number of RINs with a D code of 6. The commenter argued that this approach would allow producers to generate and sell delayed RINs as quickly as possible, and would also allow the producer to use the proceeds from the sale of delayed RINs to purchase and retire RINs with a D code of 6. However, despite these advantages to producers, we continue to believe that delayed RINs should only be generated after RINs with a D code of 6 are retired. In order to ensure that the number of RINs in the market accurately reflects biofuel produced or imported to represent those RINs, the number of delayed RINs generated must be equivalent to the number of RINs with a D code of 6 that are retired. If a producer were to generate and sell delayed RINs prior to retiring RINs with a D code of 6, the producer would be forced to estimate the appropriate number of delayed RINs to generate, and there would be no recourse for correcting an overestimation. By requiring RINs with a D code of 6 to be retired first, the producer will know exactly how many delayed RINs he is permitted to generate.

IV. Public Participation

Many interested parties participated in the rulemaking process that culminates with this final rule. The public had an opportunity to submit both written and oral comments on the proposed RFS2 final rule published on May 26, 2009 (74 FR 24904), and has had an opportunity to submit additional comments following publication of the Notice of Data Availability (NODA) for canola oil biodiesel that was published on July 26, 2010 (75 FR 43522). We have considered these comments in developing today's final rule.

One commenter on the canola oil biodiesel NODA objected to "EPA's finalization of a petition process to generate RINs for additional fuels or additional fuel pathways without providing an adequate opportunity for notice and comment." The comment apparently relates to the process established in the RFS2 final rule, in § 80.1416, for parties to petition EPA to evaluate the lifecycle GHG reductions associated with additional biofuel production pathways beyond those already covered in Table 1 to § 80.1426. EPA notes that today's action on canola oil biodiesel was not made pursuant to this petition process, so this comment is not relevant to this proceeding. The commenter also states, more generally, that EPA is required "to conduct a notice and comment rulemaking before approving any biofuel under EISA," and that although the commenter appreciates that EPA has provided through issuance of the NODA an opportunity for public comment with respect to the canola oil biodiesel analysis, that "EPA was required to comply with the full procedural requirements of section 307(d) of the Clean Air Act." EPA responds here only to these comments as they relate to today's final action with respect to canola oil biodiesel. EPA's proposed RFS2 rule would have qualified all "biodiesel made from "soybean oil and other virgin plant oils" through a transesterification process as renewable fuel with a D code of 4. See proposed Table 1 to § 80.1426 (74 FR 25119, May 26, 2009). Canola oil is a virgin plant oil within the scope of this proposal. The public was afforded an opportunity to submit written comments on this proposal, and also an opportunity to present oral comments during a public hearing held on June 9, 2009. In the final RFS2 rule published on March 26, 2010, EPA did not take final action on the component of its proposal that related to "other virgin plant oils" such as canola biodiesel. See final Table 1 to § 80.1426 (75 FR 14872). Instead it has

conducted additional analytical work and provided an additional opportunity for comment on that work as described in the NODA EPA views this final action as a continuation of the rulemaking process initiated in the May 26, 2009 proposal, and believes it has fully complied with all procedural requirements of Section 307(d) of the Clean Air Act.

V. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

This action is not a "significant regulatory action" under the terms of Executive Order (EO)12866 (58 FR 51735, October 4, 1993) because it is not likely to have an annual effect on the economy of $100 million or more, not likely to create a serious inconsistency or otherwise interfere with an action taken or planned by another agency, not likely to materially alter the budgetary impacts of entitlements, grants, user fees, or loan programs, and not likely to raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the EO. Therefore, this rule is not subject to review under the EO.

B. Paperwork Reduction Act

This action does not impose any new information collection burden. Parties who are affected by today's regulation are already covered by the registration, recordkeeping and reporting provisions of the RFS2 regulations. The new canola oil biodiesel pathway provides an additional means for generating RINs, but does not add any new information collection burden. The Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the RFS2 regulations at 40 CFR Part 80, subpart M, under the provisions of the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.* and has assigned the following OMB control numbers 2060–0637 ("Renewable Fuels Standard Program, Petition and Registration") and 2060–0640 ("Renewable Fuels Standard"). The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's rule on small entities, we certify that this proposed action will not have a significant economic impact on a substantial number of small entities. This rule does not impose a new burden but creates a new opportunity to generate RINs. Therefore, there should be no adverse impacts on small businesses. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives "which minimize any significant economic impact of the rule on small entities." 5 U.S.C. 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538, requires Federal agencies, unless otherwise prohibited by law, to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year.

This rule is not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. EPA has determined that this rule imposes no enforceable duty on any State, local or tribal governments. In addition this rule will not result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Thus, Executive Order 13132 does not apply to this rule.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). This rule will be implemented at the Federal level and impose compliance costs only on transportation fuel refiners, blenders, marketers, distributors, importers, and exporters. Tribal governments would be affected only to the extent they purchase and use regulated fuels. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

EPA interprets EO 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the EO has the potential to influence the regulation. This action is not subject to EO 13045 because it does not establish an environmental standard intended to mitigate health or safety risks and because it implements specific provisions established by Congress in statutes.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it only provides new opportunities for RIN generation, and thus is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, we have concluded that this rule is not subject to the EO.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This rulemaking does not adopt or change any technical standards, so the EO is not applicable to this rule.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA lacks the discretionary authority to address environmental justice in this rulemaking since the Agency is implementing specific standards established by Congress in statutes. Although EPA lacks authority to modify today's regulatory action on the basis of environmental justice considerations, EPA nevertheless determined that this rule does not have a disproportionately high and adverse human health or environmental impact on minority or low-income populations.

K. Congressional Review Act

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

VI. Statutory Provisions and Legal Authority

Statutory authority for the rule finalized today can be found in section 211 of the Clean Air Act, 42 U.S.C. 7545. Additional support for the procedural and compliance related aspects of today's rule, including the recordkeeping requirements, come from Sections 114, 208, and 301(a) of the Clean Air Act, 42 U.S.C. 7414, 7542, and 7601(a).

List of Subjects in 40 CFR Part 80

Environmental protection, Administrative practice and procedure, Agriculture, Air pollution control, Confidential business information, Diesel fuel, Energy, Forest and forest products, Fuel additives, Gasoline, Imports, Labeling, Motor vehicle pollution, Penalties, Petroleum, Reporting and recordkeeping requirements.

Dated: September 22, 2010.

Lisa P. Jackson,

Administrator.

■ For the reasons set forth in the preamble, 40 CFR part 80 is amended as follows:

PART 80—REGULATION OF FUELS AND FUEL ADDITIVES

■ 1. The authority citation for part 80 continues to read as follows:

Authority: 42 U.S.C. 7414, 7542, 7545, and 7601(a).

■ 2. Section 80.1426 is amended by revising paragraph (e)(1) and Table 1 to § 80.1426 following paragraph (f)(1), and adding paragraph (g) to read as follows:

§ 80.1426 How are RINs generated and assigned to batches of renewable fuel by renewable fuel producers or importers?

* * * * *

(e) * * *

(1) Except as provided in paragraph (g) of this section for delayed RINs, the producer or importer of renewable fuel must assign all RINs generated to volumes of renewable fuel.

* * * * *

(f) * * *

(1) * * *

TABLE 1 TO § 80.1426—APPLICABLE D CODES FOR EACH FUEL PATHWAY FOR USE IN GENERATING RINS

Fuel type	Feedstock	Production process requirements	D-Code
Ethanol	Corn starch	All of the following: Dry mill process, using natural gas, biomass, or biogas for process energy and at least two advanced technologies from Table 2 to this section.	6
Ethanol	Corn starch	All of the following: Dry mill process, using natural gas, biomass, or biogas for process energy and at least one of the advanced technologies from Table 2 to this section plus drying no more than 65% of the distillers grains with solubles it markets annually.	6
Ethanol	Corn starch	All of the following: Dry mill process, using natural gas, biomass, or biogas for process energy and drying no more than 50% of the distillers grains with solubles it markets annually.	6

TABLE 1 TO § 80.1426—APPLICABLE D CODES FOR EACH FUEL PATHWAY FOR USE IN GENERATING RINS—Continued

Fuel type	Feedstock	Production process requirements	D-Code
Ethanol	Corn starch	Wet mill process using biomass or biogas for process energy.	6
Ethanol	Starches from crop residue and annual covercrops	Fermentation using natural gas, biomass, or biogas for process energy.	6
Biodiesel, and renewable diesel.	Soy bean oil; Oil from annual covercrops; Algal oil; Biogenic waste oils/fats/greases; Non-food grade corn oil	One of the following: Trans-Esterification Hydrotreating Excluding processes that co-process renewable biomass and petroleum	4
Biodiesel	Canola oil	Trans-Esterification using natural gas or biomass for process energy.	4
Biodiesel, and renewable diesel.	Soy bean oil; Oil from annual covercrops; Algal oil; Biogenic waste oils/fats/greases; Non-food grade corn oil	One of the following: Trans-Esterification Hydrotreating Includes only processes that co-process renewable biomass and petroleum	5
Ethanol	Sugarcane	Fermentation	5
Ethanol	Cellulosic Biomass from crop residue, slash, pre-commercial thinnings and tree residue, annual covercrops, switchgrass, and miscanthus; cellulosic components of separated yard waste; cellulosic components of separated food waste; and cellulosic components of separated MSW.	Any	3
Cellulosic Diesel, Jet Fuel and Heating Oil.	Cellulosic Biomass from crop residue, slash, pre-commercial thinnings and tree residue, annual covercrops, switchgrass, and miscanthus; cellulosic components of separated yard waste; cellulosic components of separated food waste; and cellulosic components of separated MSW.	Any	7
Butanol	Corn starch	Fermentation; dry mill using natural gas, biomass, or biogas for process energy.	6
Cellulosic Naphtha	Cellulosic Biomass from crop residue, slash, pre-commercial thinnings and tree residue, annual covercrops, switchgrass, and miscanthus; cellulosic components of separated yard waste; cellulosic components of separated food waste; and cellulosic components of separated MSW.	Fischer-Tropsch process	3
Ethanol, renewable diesel, jet fuel, heating oil, and naphtha.	The non-cellulosic portions of separated food waste.	Any	5
Biogas	Landfills, sewage waste treatment plants, manure digesters.	Any	5

* * * * *

(g) *Delayed RIN generation.* (1) Parties who produce or import renewable fuel may elect to generate delayed RINs to represent renewable fuel volumes that have already been transferred to another party if those renewable fuel volumes meet all of the following criteria.

(i) The renewable fuel is biodiesel that is made from canola oil and described by a pathway in Table 1 to § 80.1426; and

(ii) The fuel was produced or imported between July 1, 2010, and September 28, 2010 inclusive.

(2) Delayed RINs must be generated no later than the following deadline:

(i) For renewable fuel that is biodiesel that is made from canola oil and described by a pathway in Table 1 to § 80.1426, no later than 60 days after September 28, 2010.

(ii) [Reserved]

(3) A party authorized pursuant to paragraph (g)(1) of this section to generate delayed RINs, and electing to do so, who generated RINs pursuant to 80.1426(f)(6) and transferred those RINs with renewable fuel volumes between July 1, 2010 and September 28, 2010 inclusive, must retire a number of gallon-RINs prior to generating delayed RINs.

(i) The number of gallon-RINs retired by a party pursuant to this paragraph must not exceed the number of gallon-RINs originally generated by the party to represent fuel described in paragraph (g)(1)(i) of this section that was produced or imported, and transferred to another party, between July 1, 2010 and September 28, 2010 inclusive.

(ii) Retired RINs must have a D code of 6.

(iii) Retired RINs must have a K code of 2.

(iv) Retired RINs must have been generated in 2010.

(4) For parties that retire RINs pursuant to paragraph (g)(3) of this section, the number of delayed gallon-RINs generated shall be equal to the number of gallon-RINs retired.

(5) A party authorized pursuant to paragraph (g)(1) of this section to generate delayed RINs, and electing to do so, who did not generate RINs pursuant to 80.1426(f)(6) for renewable fuel produced or imported between July 1, 2010 and September 28, 2010 inclusive, may generate a number of delayed gallon-RINs for that renewable fuel in accordance with paragraph (f) of this section.

(i) The standardized volume of fuel (V_s) used by a party to determine the RIN volume (V_{RIN}) under paragraph (f) of this section shall be the standardized volume of the fuel described in paragraph (g)(1)(i) of this section that was produced or imported by the party, and transferred to another party,

between July 1, 2010 and September 28, 2010 inclusive

(ii) [Reserved]

(6) The renewable fuel for which delayed RINs are generated must be described by the new pathway described in paragraph (g)(1) of this section.

(7) All delayed RINs generated by a renewable fuel producer or importer must be generated on the same date.

(8) Delayed RINs shall be generated as assigned RINs in EMTS, and then immediately separated by the RIN generator.

(9) The D code that shall be used in delayed RINs shall be the D code which corresponds to the new pathway.

[FR Doc. 2010–24310 Filed 9–27–10; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket ID FEMA–2010–0003]

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

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

DATES: The date of issuance of the Flood Insurance Rate Map (FIRM) showing BFEs and modified BFEs for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated in the table below.

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

FOR FURTHER INFORMATION CONTACT: Roy E. Wright, Deputy Director, Risk Analysis Division, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3461, or (e-mail) *roy.e.wright@dhs.gov.*

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

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

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

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

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

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

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

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

List of Subjects in 44 CFR Part 67

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

■ Accordingly, 44 CFR part 67 is amended as follows:

PART 67—[AMENDED]

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

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

§ 67.11 [Amended]

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

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) Modified	Communities affected
Napa County, California, and Incorporated Areas Docket No.: FEMA–B–1072			
Napa Creek	At the confluence with the Napa River	+18	City of Napa.
	Approximately 100 feet upstream of Jefferson Street	+34	
Napa River (With Levee)	Approximately 715 feet west of the State Route 121/East Avenue intersection.	+27	City of Napa, Unincorporated Areas of Napa County.
	Approximately 1,530 feet southwest of the intersection of State Route 121 and Woodland Drive.	+29	
Napa River (Without Levee)	Approximately 0.5 mile downstream of Imola Avenue	+12	City of Napa, Unincorporated Areas of Napa County.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) Modified	Communities affected
	Approximately 1,230 feet downstream of the confluence with Soda Creek.	+46	
Napa River Oxbow Overflow	At the confluence with Tulucay Creek	+16	City of Napa, Unincorporated Areas of Napa County.
	Approximately 0.39 mile upstream of Soscol Avenue	+19	
Ponding Areas with elevations determined (AH Zones).	Extensive ponding areas, in roadways south of Salvador Creek (lowest elevation).	+39	City of Napa, Unincorporated Areas of Napa County.
	Extensive ponding areas, in roadways south of Salvador Creek (highest elevation).	+76	
Salvador Creek	At the confluence with the Napa River	+31	City of Napa, Unincorporated Areas of Napa County.
	Approximately 100 feet upstream of State Route 29	+75	
Salvador Creek North Branch ..	At the confluence with Salvador Creek	+75	City of Napa, Unincorporated Areas of Napa County.
	Approximately 0.8 mile upstream of the confluence with Salvador Creek.	+93	
Salvador Creek South Branch ..	At the confluence with Salvador Creek	+75	City of Napa.
	Approximately 1,365 feet upstream of Salvador Creek	+76	
Shallow Flooding (AO Zone)	Approximately 425 feet northeast of the Imola Avenue/ Gasser Drive intersection.	#1	City of Napa.
	Approximately 1,400 feet northeast of the Imola Avenue/ Gasser Drive intersection.	#2	
Tulucay Creek	At the confluence with the Napa River	+15	City of Napa, Unincorporated Areas of Napa County.
	Approximately 560 feet upstream of Shurtleff Avenue	+38	

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

ADDRESSES

City of Napa

Maps are available for inspection at the Public Works Department, 1600 1st Street, Napa, CA 94559.

Unincorporated Areas of Napa County

Maps are available for inspection at the Napa County Public Works Department, 1195 3rd Street, Napa, CA 94559.

Walton County, Florida, and Incorporated Areas
Docket No.: FEMA–B–7792

Flooding source(s)	Location of referenced elevation	Elevation	Communities affected
Bay Branch	At the confluence with Bruce Creek	+106	City of De Funiak Springs, Unincorporated Areas of Walton County.
	Approximately 900 feet upstream of U.S. Route 331	+125	
Black Creek	At County Road 3280	+7	Unincorporated Areas of Walton County.
	Approximately 1,570 feet upstream of County Road 3280	+7	
Bruce Creek	Approximately 1,100 feet downstream of the confluence with Mill Creek.	+72	City of De Funiak Springs, Unincorporated Areas of Walton County.
	Approximately 6,700 feet upstream of the confluence with Bay Branch.	+114	
Camp Creek	At the confluence with Black Creek	+7	Unincorporated Areas of Walton County.
	Approximately 5,400 feet upstream of the confluence with Black Creek.	+7	
Gum Creek	At the confluence with the Shoal River	+150	Unincorporated Areas of Walton County.
	Approximately 12,700 feet upstream of the confluence with the Shoal River.	+156	
Lafayette Creek	At State Road 20	+10	City of Freeport, Unincorporated Areas of Walton County.
	Approximately 4,000 feet upstream of J.W. Hollington Road.	+58	
Mill Creek	At the confluence with Bruce Creek	+73	Unincorporated Areas of Walton County.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) Modified	Communities affected
	Approximately 75 feet upstream of Edgewood Circle	+146	
Mill Creek Unnamed Tributary	At the confluence with Mill Creek	+124	Unincorporated Areas of Walton County.
	Approximately 200 feet upstream of Edgewood Circle	+175	
Pate Branch	At the confluence with Camp Creek	+7	Unincorporated Areas of Walton County.
	Approximately 3,900 feet upstream of the confluence with Camp Creek.	+7	
Shoal River	At the Okaloosa/Walton county boundary	+111	Unincorporated Areas of Walton County.
	At the confluence with Gum Creek	+150	

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

ADDRESSES

City of De Funiak Springs

Maps are available for inspection at City Hall, 71 U.S. Route 90 West, De Funiak Springs, FL 32433.

City of Freeport

Maps are available for inspection at the Planning and Zoning Department, 112 U.S. Route 20 West, Freeport, FL 32439.

Unincorporated Areas of Walton County

Maps are available for inspection at the Walton County Planning and Development Department, South Walton County Courthouse Annex, 31 Coastal Centre Boulevard, Santa Rosa Beach, FL 32459.

McDuffie County, Georgia, and Incorporated Areas
Docket No.: FEMA–B–1072

Flooding source(s)	Location of referenced elevation	Elevation	Communities affected
Boggy Gut Creek	Approximately 2.35 miles upstream of Harlem Wrens Road.	+429	Unincorporated Areas of McDuffie County.
	Approximately 3.13 miles upstream of Harlem Wrens Road.	+483	

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

ADDRESSES

Unincorporated Areas of McDuffie County

Maps are available for inspection at 504 Railroad Street, Thomson, GA 30824.

Murray County, Georgia, and Incorporated Areas
Docket No.: FEMA–B–1072

Flooding source(s)	Location of referenced elevation	Elevation	Communities affected
Holly Creek	Approximately 0.77 mile downstream of CSX Railroad	+717	City of Chatsworth.
	Approximately 0.4 mile upstream of State Route 52/U.S. Route 76.	+730	
Mill Creek	Approximately 2.6 miles downstream of U.S. Route 411	+702	City of Chatsworth, Town of Eton.
	Approximately 1,300 feet upstream of State Route 286/ Old CCC Camp Road.	+733	

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

ADDRESSES

City of Chatsworth

Maps are available for inspection at City Hall, 400 North 3rd Avenue, Chatsworth, GA 30705.

Town of Eton

Maps are available for inspection at the Town Hall, 3464 Highway 411 North, Eton, GA.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) Modified	Communities affected
Cass County, Illinois, and Incorporated Areas Docket No.: FEMA–B–1053			
Illinois River	At the confluence with Camp Creek in Brown County, approximately 2,185 feet upstream of the Morgan County boundary.	+448	City of Beardstown, Unincorporated Areas of Cass County.
	At the downstream end of Elm Island in Schuyler County, approximately 650 feet upstream of the Cass/Mason county boundary.	+452	
Illinois River (backwater on the Sangamon River).	At the confluence with the Illinois River	+451	Unincorporated Areas of Cass County.
	Approximately 12 miles upstream of the confluence with the Illinois River.	+452	
Panther Creek	Approximately 3,220 feet downstream of State Route 78	+458	Unincorporated Areas of Cass County.
	Approximately 3,660 feet upstream of Main Street	+472	
Sangamon River	Approximately 285 feet upstream of Old River Road	+456	City of Beardstown, Unincorporated Areas of Cass County.
	Approximately 1,600 feet upstream of State Route 78	+461	

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

ADDRESSES

City of Beardstown

Maps are available for inspection at City Hall, 105 West 3rd Street, Beardstown, IL 62618.

Unincorporated Areas of Cass County

Maps are available for inspection at the Cass County Courthouse, 100 East Springfield Street, Virginia, IL 62691.

Flooding source(s)	Location of referenced elevation	Elevation	Communities affected
Adams County, Indiana, and Incorporated Areas Docket No.: FEMA–B–7737			
Borum Run	At the confluence with the St. Mary's River	+791	City of Decatur, Unincorporated Areas of Adams County.
	Approximately 5,125 feet upstream of High Street	+791	
Holthouse Ditch	At the confluence with the St. Mary's River	+787	City of Decatur, Unincorporated Areas of Adams County.
	Approximately 4,700 feet upstream of Washington Street	+787	
Kohne Drain No. 1	At the confluence with Holthouse Ditch	+787	City of Decatur, Unincorporated Areas of Adams County.
	Approximately 1,350 feet upstream of Meibers Street	+787	
Koos Ditch	At the confluence with the St. Mary's River	+789	City of Decatur, Unincorporated Areas of Adams County.
	Approximately 1,550 upstream of Piqua Road	+789	
St. Mary's River	Approximately 14,750 feet downstream of County Road 350 West.	+778	City of Decatur, Unincorporated Areas of Adams County.
	Approximately 16,650 feet upstream of State Road 101	+794	
Yellow Creek	At the confluence with the St. Mary's River	+791	Unincorporated Areas of Adams County.
	Approximately 1,750 feet upstream of Norfolk and Western Railway.	+791	

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

ADDRESSES

City of Decatur

Maps are available for inspection at 225 West Monroe Street, Decatur, IN 46733.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) Modified	Communities affected
Unincorporated Areas of Adams County			
Maps are available for inspection at 313 West Jefferson Street, Suite 338, Decatur, IN 46733.			
Calloway County, Kentucky, and Incorporated Areas Docket No.: FEMA–B–1069			
Anderson Creek	From the confluence with Kentucky Lake to approximately 0.7 mile upstream of the confluence with Kentucky Lake (backwater effects from Kentucky Lake).	+375	Unincorporated Areas of Calloway County.
Bailey Hollow	From the confluence with Kentucky Lake to approximately 0.5 mile upstream of the confluence with Kentucky Lake (backwater effects from Kentucky Lake).	+375	Unincorporated Areas of Calloway County.
Bee Creek	Just upstream of the confluence with the Clarks River	+457	City of Murray, Unincorporated Areas of Calloway County.
	Just downstream of railroad	+463	
Beechy Creek	From the confluence with Kentucky Lake to approximately 1.5 mile upstream of the confluence with Kentucky Lake (backwater effects from Kentucky Lake).	+375	Unincorporated Areas of Calloway County.
Blood River	From the confluence with Kentucky Lake to approximately 2.8 miles upstream of the confluence with Kentucky Lake (backwater effects from Kentucky Lake).	+375	Unincorporated Areas of Calloway County.
Blood River Tributary 1	From the confluence with Kentucky Lake to approximately 0.7 mile upstream of the confluence with Kentucky Lake (backwater effects from Kentucky Lake).	+375	Unincorporated Areas of Calloway County.
Blood River Tributary 5	From the confluence with Kentucky Lake to approximately 0.6 mile upstream of the confluence with Kentucky Lake (backwater effects from Kentucky Lake).	+375	Unincorporated Areas of Calloway County.
Brush Creek	From the confluence with Kentucky Lake to approximately 0.4 mile upstream of the confluence with Kentucky Lake (backwater effects from Kentucky Lake).	+375	Unincorporated Areas of Calloway County.
Clarks River	Approximately 0.75 mile upstream of the confluence with Clarks River Tributary 14.	+437	City of Murray, Unincorporated Areas of Calloway County.
	At the confluence with the East and Middle Fork Clarks River.	+479	
Clayton Creek	From the confluence with the Clarks River to approximately 0.7 mile upstream of the confluence with the Clarks River (backwater effects from Clarks River).	+468	Unincorporated Areas of Calloway County.
Dog Creek	From the confluence with the Blood River to approximately 0.8 mile upstream of the confluence with the Blood River (backwater effects from Kentucky Lake).	+375	Unincorporated Areas of Calloway County.
East Fork Clarks River	At the confluence with the Clarks River and Middle Fork Clarks River.	+479	City of Murray, Unincorporated Areas of Calloway County.
	Approximately 0.9 mile upstream of the confluence with the Middle Fork Clarks River.	+482	
Goose Creek	From the confluence with Dog Creek to approximately 0.2 mile upstream of the confluence with Dog Creek (backwater effects from Kentucky Lake).	+375	Unincorporated Areas of Calloway County.
Grindstone Creek	From the confluence with Blood River Tributary 1 to approximately 0.2 mile upstream of the confluence with Blood River Tributary 1 (backwater effects from Kentucky Lake).	+375	Unincorporated Areas of Calloway County.
Jonathan Creek	From the Calloway County boundary to approximately 1 mile upstream of the county boundary (backwater effects from Kentucky Lake).	+375	Unincorporated Areas of Calloway County.
Kentucky Lake	Entire shoreline of Kentucky Lake	+375	Unincorporated Areas of Calloway County.
Ledbetter Creek	From the confluence with Kentucky Lake to approximately 0.6 mile upstream of the confluence with Kentucky Lake (backwater effects from Kentucky Lake).	+375	Unincorporated Areas of Calloway County.
Little Sugar Creek	From the confluence with Kentucky Lake to approximately 0.5 mile upstream of the confluence with Kentucky Lake (backwater effects from Kentucky Lake).	+375	Unincorporated Areas of Calloway County.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) Modified	Communities affected
Middle Fork Clarks River	At the confluence with the Clarks River and East Middle Fork Clarks River.	+479	City of Murray, Unincorporated Areas of Calloway County.
	Approximately 1,000 feet downstream of U.S. Route 641	+481	
Panther Creek	From the confluence with Kentucky Lake to approximately 1.1 mile upstream of the confluence with Kentucky Lake (backwater effects from Kentucky Lake).	+375	Unincorporated Areas of Calloway County.
Shannon Creek	From the confluence with Kentucky Lake to approximately 0.6 mile upstream of the confluence with Kentucky Lake (backwater effects from Kentucky Lake).	+375	Unincorporated Areas of Calloway County.
Snipe Creek	From the confluence with Kentucky Lake to approximately 0.4 mile upstream of the confluence with Kentucky Lake (backwater effects from Kentucky Lake).	+375	Unincorporated Areas of Calloway County.
Sugar Creek	From the confluence with Kentucky Lake to approximately 0.8 mile upstream of the confluence with Kentucky Lake (backwater effects from Kentucky Lake).	+375	Unincorporated Areas of Calloway County.
Sugar Creek Tributary 2	From the confluence with Kentucky Lake to approximately 0.5 mile upstream of the confluence with Kentucky Lake (backwater effects from Kentucky Lake).	+375	Unincorporated Areas of Calloway County.
Tan Branch	From the confluence with Kentucky Lake to approximately 0.7 mile upstream of the confluence with Kentucky Lake (backwater effects from Kentucky Lake).	+375	Unincorporated Areas of Calloway County.
Tennessee River Tributary 75	From the confluence with Kentucky Lake to approximately 0.7 mile upstream of the confluence with Kentucky Lake (backwater effects from Kentucky Lake).	+375	Unincorporated Areas of Calloway County.
Tennessee River Tributary 91	From the confluence with Kentucky Lake to approximately 0.5 mile upstream of the confluence with Kentucky Lake (backwater effects from Kentucky Lake).	+375	Unincorporated Areas of Calloway County.
Tributary 1 to Clarks River	At the confluence with the Clarks River	+470	Unincorporated Areas of Calloway County.
	Approximately 1,800 feet upstream of the confluence with the Clarks River.	+473	
Tributary to Middle Fork Clarks River.	At the confluence with the Middle Fork Clarks River	+479	Unincorporated Areas of Calloway County.
	Approximately 1,700 feet upstream of the confluence with the Middle Fork Clarks River.	+484	
Wildcat Creek	From the confluence with Kentucky Lake to approximately 1.2 mile upstream of the confluence with Kentucky Lake (backwater effects from Kentucky Lake).	+375	Unincorporated Areas of Calloway County.
Yellow Spring Branch	From the confluence with Kentucky Lake to approximately 0.4 mile upstream of the confluence with Kentucky Lake (backwater effects from Kentucky Lake).	+375	Unincorporated Areas of Calloway County.

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

ADDRESSES

City of Murray

Maps are available for inspection at 104 North 5th Street, Murray, KY 42071.

Unincorporated Areas of Calloway County

Maps are available for inspection at 101 South 5th Street, Murray, KY 42071.

Jones County, Mississippi, and Incorporated Areas
Docket No.: FEMA–B–1051

Flooding source(s)	Location of referenced elevation	Elevation	Communities affected
Tallahala Creek	Approximately 800 feet upstream of Luther Hill Road	+219	City of Laurel, Unincorporated Areas of Jones County.
	Approximately 1,000 feet upstream of U.S. Route 84	+228	

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

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

ADDRESSES

City of Laurel

Maps are available for inspection at the City Clerk's Office, 401 North 5th Avenue, Laurel, MS 39440.

Unincorporated Areas of Jones County

Maps are available for inspection at the Jones County Courthouse, 415 North 5th Avenue, Laurel, MS 39440.

Laclede County, Missouri, and Incorporated Areas
Docket No.: FEMA–B–1043

Flooding source(s)	Location of referenced elevation	Elevation	Communities affected
Radio Tower Branch	Approximately 2,300 feet upstream of the confluence with Goodwin Hallow.	+1166	City of Lebanon.
	Approximately 3,150 feet upstream of the confluence with Goodwin Hallow.	+1170	

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

ADDRESSES

City of Lebanon

Maps are available for inspection at 400 South Madison Avenue, Lebanon, MO 65536.

Lincoln County, Missouri, and Incorporated Areas
Docket No.: FEMA–B–1057

Flooding source(s)	Location of referenced elevation	Elevation	Communities affected
Cuivre River	At the confluence with the Mississippi River at East Sycamore Road, east of the City of Old Monroe.	+444	City of Old Monroe, Unincorporated Areas of Lincoln County.
McLean Creek	At the confluence with the Mississippi River, just east of the City of Winfield.	+445	City of Winfield, Unincorporated Areas of Lincoln County.
Mississippi River	At the southern Lincoln County boundary, east of the City of Old Monroe.	+444	City of Elsberry, City of Foley, City of Old Monroe, City of Winfield, Unincorporated Areas of Lincoln County.
	At the northern Lincoln County boundary, at Dameron Road.	+450	
Sandy Creek	At the confluence with the Mississippi River, east of the City of Foley.	+446	City of Foley, Unincorporated Areas of Lincoln County.

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

ADDRESSES

City of Elsberry

Maps are available for inspection at 201 Broadway Street, Elsberry, MO 63343.

City of Foley

Maps are available for inspection at 617 Elm Street, Foley, MO 63347.

City of Old Monroe

Maps are available for inspection at 151 Main Street, Old Monroe, MO 63369.

City of Winfield

Maps are available for inspection at 51 Old Troy Highway, Winfield, MO 63389.

Unincorporated Areas of Lincoln County

Maps are available for inspection at 201 Main Street, Troy, MO 63379.

Sequoyah County, Oklahoma, and Incorporated Areas
Docket No.: FEMA–B–1060

Flooding source(s)	Location of referenced elevation	Elevation	Communities affected
Hog Creek	Just upstream of East 1040 Road	+577	Unincorporated Areas of Sequoyah County.
	Approximately 0.85 mile upstream of East 1040 Road	+619	
Sewage Disposal Pond	Approximately 0.47 mile downstream of Union Pacific Railroad.	+481	Town of Gore.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) Modified	Communities affected
	Just downstream of Union Pacific Railroad	+481	

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

ADDRESSES

Town of Gore

Maps are available for inspection at 201 North Main Street, Gore, OK 74435.

Unincorporated Areas of Sequoyah County

Maps are available for inspection at 117 South Oak Street, Salisaw, OK 74955.

Brown County, South Dakota, and Incorporated Areas
Docket No.: FEMA–B–1053

Flooding source(s)	Location of referenced elevation	Elevation	Communities affected
James River	Approximately 3.8 miles downstream of 147th Street	+1275	Unincorporated Areas of Brown County.
	Approximately 6,260 feet upstream of 101st Street	+1296	

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

ADDRESSES

Unincorporated Areas of Brown County

Maps are available for inspection at 25 Market Street, Aberdeen, SD 57401.

Davison County, South Dakota, and Incorporated Areas
Docket No.: FEMA–B–1054

Flooding source(s)	Location of referenced elevation	Elevation	Communities affected
Dry Run Creek	Approximately 1,554 feet downstream of SD Highway 38	+1254	City of Mitchell, Unincorporated Areas of Davison County.
	Approximately 2,578 feet upstream of 407th Avenue	+1303	

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

ADDRESSES

City of Mitchell

Maps are available for inspection at 612 North Main Street, Mitchell, SD 57301.

Unincorporated Areas of Davison County

Maps are available for inspection at 200 East 4th Avenue, Mitchell, SD 57301.

Clay County, Tennessee, and Incorporated Areas
Docket No.: FEMA–B–1074

Flooding source(s)	Location of referenced elevation	Elevation	Communities affected
Cumberland River	Approximately 3.5 miles downstream of State Route 52	+508	City of Celina, Unincorporated Areas of Clay County.
	Approximately 4.8 miles upstream of State Route 52	+518	

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

ADDRESSES

City of Celina

Maps are available for inspection at City Hall, 143 Cordell Hull Drive, Celina, TN 38551.

Unincorporated Areas of Clay County

Maps are available for inspection at the Clay County Public Library, 116 Guffey Street, Celina, TN 38551.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) Modified	Communities affected
Perry County, Tennessee, and Incorporated Areas Docket No.: FEMA–B–1068			
Tennessee River	Approximately 15 miles downstream of U.S. Route 412	+375	Unincorporated Areas of Perry County.
	Approximately 18.2 miles upstream of U.S. Route 412	+386	

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

ADDRESSES

Unincorporated Areas of Perry County

Maps are available for inspection at 121 East Main Street, Linden, TN 37096.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) Modified	Communities affected
Rusk County, Texas, and Incorporated Areas Docket No.: FEMA–B–1043			
Unnamed Stream off of Turkey Creek.	At the confluence with Turkey Creek	+329	City of Henderson.
	Approximately 110 feet downstream of Florence Street	+336	

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

ADDRESSES

City of Henderson

Maps are available for inspection at City Hall, 400 West Main Street, Henderson, TX 75652.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) Modified	Communities affected
Box Elder County, Utah, and Incorporated Areas Docket No.: FEMA–B–1065			
Box Elder Creek	Just upstream of Watery Lane	+4236	City of Brigham City.
	Upstream extent of Mayor's Pond spillway	+4541	

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

ADDRESSES

City of Brigham City

Maps are available for inspection at 20 North Main Street, Brigham City, UT 84302.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) Modified	Communities affected
Bedford County, Virginia, and Incorporated Areas Docket Nos.: FEMA–B–1066 and FEMA–B–7768			
Ivy Creek	Approximately 1,430 feet downstream of Hawkins Mill Road.	+679	Unincorporated Areas of Bedford County.
	Approximately 2,200 feet downstream of Tabernacle Lane	+829	
Johns Creek	At the confluence with the Little Otter River	+732	City of Bedford, Unincorporated Areas of Bedford County.
	Approximately 1,800 feet downstream of Independence Boulevard.	+818	
	Approximately 445 feet downstream of Independence Boulevard.	+828	
	Approximately 740 feet upstream of Independence Boulevard.	+842	
	Approximately 3,400 feet upstream of Independence Boulevard.	+861	
	At East Main Street	+939	
Lick Run	Approximately 5.2 miles above the confluence with the Big Otter River.	+727	Unincorporated Areas of Bedford County.
	Just downstream of U.S. Route 460	+756	

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) Modified	Communities affected
Little Otter River	At Big Island Highway	+792	Unincorporated Areas of Bedford County.
	At Route 43	+839	
Tributary No. 10 to Ivy Creek	At the confluence with Ivy Creek	+700	Unincorporated Areas of Bedford County.
	Approximately 500 feet downstream of Forest Road	+838	
Tributary No. 11 to Ivy Creek	Approximately 850 feet upstream of the confluence with Ivy Creek.	+696	Unincorporated Areas of Bedford County.
	Just downstream of Forest Road	+801	
Tributary No. 14 to Ivy Creek	At the confluence with Ivy Creek	+683	Unincorporated Areas of Bedford County.
	Approximately 1,500 feet upstream of McIntosh Drive	+812	
Tributary No. 15 to Ivy Creek	At the City of Lynchburg/Bedford County boundary	+671	Unincorporated Areas of Bedford County.
	Approximately 1 mile upstream of Hawkins Mill Road	+800	
Tributary No. 8 to Little Otter River.	At the confluence with the Little Otter River	+797	City of Bedford, Unincorporated Areas of Bedford County.
	Approximately 500 feet downstream of Longwood Avenue	+932	
Tributary No. 8A to Little Otter River.	At the confluence with Tributary No. 8 to Little Otter River	+824	City of Bedford, Unincorporated Areas of Bedford County.
	Approximately 0.5 mile upstream of the confluence with Tributary No. 8 to Little Otter River.	+914	
Tributary No. 9 to Little Otter River.	At the confluence with the Little Otter River	+826	City of Bedford, Unincorporated Areas of Bedford County.
	Approximately 2,400 feet upstream of Whitfield Drive	+940	
Tributary No. 10 to Little Otter River.	At the confluence with the Little Otter River	+839	City of Bedford, Unincorporated Areas of Bedford County.
	At Lake Drive	+867	

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

ADDRESSES

City of Bedford

Maps are available for inspection at the Municipal Offices, 215 East Main Street, Bedford, VA 24523.

Unincorporated Areas of Bedford County

Maps are available for inspection at the Office of the Bedford County Administrator, 122 East Main Street, Suite 2002, Bedford, VA 24523.

Dickenson County, Virginia, and Incorporated Areas
Docket No.: FEMA–B–1061

Flooding source(s)	Location of referenced elevation	Elevation	Communities affected
Frying Pan Creek	At the confluence with Russell Fork	+1293	Unincorporated Areas of Dickenson County.
	Approximately 1,400 feet downstream of the intersection with Sandlick Road and Frying Pan Road.	+1316	
Greenbriar Creek	At the confluence with Russell Prater Creek	+1418	Unincorporated Areas of Dickenson County.
	Approximately 1,400 feet downstream of the intersection of Winchester Drive and Greenbrier Road.	+1426	
Lick Creek	At the confluence with Russell Fork	+1289	Unincorporated Areas of Dickenson County.
	Approximately 1,000 feet upstream of the intersection of Aily Road and Ransom Road.	+1559	
McClure Creek	Approximately 1,800 feet upstream of the confluence with Open Fork and the McClure River.	+1520	Unincorporated Areas of Dickenson County.
	Approximately 1,100 feet downstream of the intersection of Wakenva Hollow Road and Dante Mountain Road.	+1598	
McClure River	At the confluence with Russell Fork	+1273	Town of Clinchco, Town of Haysi, Unincorporated Areas of Dickenson County.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) Modified	Communities affected
	Approximately 300 feet downstream of the intersection of Doctor Ralph Stanley Highway and Dante Mountain Road.	+1518	
Mill Creek	At the confluence with the McClure River	+1403	Town of Clinchco, Unincorporated Areas of Dickenson County.
	Approximately 400 feet upstream of Chevy Drive	+1622	
Open Fork	At the confluence with the McClure River	+1518	Unincorporated Areas of Dickenson County.
	Approximately 1,000 feet upstream of the intersection with Neece Creek Road and Brushy Ridge Road.	+1581	
Russell Fork	Approximately 1,300 feet downstream of Bartlick Road	+1190	Town of Haysi, Unincorporated Areas of Dickenson County.
	Approximately 160 feet downstream of Sandlick Road	+1437	
Russell Prater Creek	At the confluence with Russell Fork	+1275	Town of Haysi, Unincorporated Areas of Dickenson County.
	At the confluence with Greenbriar Creek	+1418	
Spring Fork	Just downstream of the railroad crossing	+1557	Unincorporated Areas of Dickenson County.
	Approximately 850 feet upstream of the intersection of Rebel Drive and Doctor Ralph Stanley Highway.	+1577	

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

ADDRESSES

Town of Clinchco

Maps are available for inspection at the Town Office, 156 Main Street, Clinchco, VA 24226.

Town of Haysi

Maps are available for inspection at the Town Administrative Offices, 322 Haysi Main Street, Haysi, VA 24256.

Unincorporated Areas of Dickenson County

Maps are available for inspection at Dickenson County Courthouse, 293 Clintwood Main Street, Clintwood, VA 24228.

Randolph County, West Virginia, and Incorporated Areas
Docket No.: FEMA–B–1066

Flooding source(s)	Location of referenced elevation	Elevation	Communities affected
Backwater flooding from Tygart Valley River.	At the area bounded by Robert E. Lee Avenue, Whisperwood Drive and the railroad.	+1914	City of Elkins.
	At the corporate limits paralleling Sunset Drive	+1914	
Craven Run	At the downstream corporate limits of the City of Elkins	+1913	City of Elkins.
	Approximately 630 feet downstream of Virginia Avenue	+1913	

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

ADDRESSES

City of Elkins

Maps are available for inspection at City Hall, 401 Davis Avenue, 2nd Floor, Elkins, WV 26241.

Upshur County, West Virginia, and Incorporated Areas
Docket No.: FEMA–B–1074

Flooding source(s)	Location of referenced elevation	Elevation	Communities affected
Brushy Fork (backwater effects from Buckhannon River).	At County Route 7/1 (Left Branch of Brushy Fork)	+1415	Unincorporated Areas of Upshur County.
	Approximately 700 feet upstream of County Route 7⁄1 (Left Branch of Brushy Fork).	+1415	
Fink Run (backwater effects from Buckhannon River).	Just upstream of Old Weston Road	+1415	Unincorporated Areas of Upshur County.
	Approximately 2,100 feet upstream of the intersection of Old Weston Road and County Route 5/7 (Mudlick Run).	+1415	

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) Modified	Communities affected
Unnamed Tributary No. 1 to Fink Run (Backwater effects from Buckhannon River).	At the area bounded by U.S. Route 33, Wabash Avenue, and County Route 33/1.	+1415	Unincorporated Areas of Upshur County.

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

ADDRESSES

Unincorporated Areas of Upshur County

Maps are available for inspection at the Upshur County Courthouse Annex, 38 West Main Street, Buckhannon, WV 26201.

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

Dated: September 21, 2010.

Edward L. Connor,

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

[FR Doc. 2010–24326 Filed 9–27–10; 8:45 am]

BILLING CODE 9110–12–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 73 and 76

Radio Broadcast Services and Multichannel Video and Cable Television Service; Clarification Regarding Information Collection Requirements

AGENCY: Federal Communications Commission.

ACTION: Final rule; clarification.

SUMMARY: The Federal Communications Commission has published a number of requirements related to Radio Broadcast Services and Multichannel Video and Cable Television Service, which were determined to contain information collection requirements that were subject to OMB review. After further review, we have found OMB approval is not required. This document intends to provide clarification that these rules are effective and that it has been determined that these provisions are not subject to OMB review.

DATES: Effective September 28, 2010, the following regulations are no longer pending OMB approval for the sections listed:

73.6027—69 FR 69331, November 29, 2004.
76.5(ll)—61 FR 6137, February 16, 1996.
76.913(b)(1)—62 FR 6495, February 12, 1997.
76.924(e)(1)(iii) and (e)(2)(iii)—61 FR 9367, March 8, 1996.
76.925—60 FR 52119, October 5, 1995.
76.942(f)—60 FR 52120, October 5, 1995.
76.944(c)—60 FR 52121, October 5, 1995.
76.957—60 FR 52121, October 5, 1995.
76.1504(e)—61 FR 43176, August 26, 1996.
76.1511—61 FR 43177, August 21, 1996.
76.1512—61 FR 43177, August 21, 1996.
76.1514—61 FR 43176, August 21, 1996.

FOR FURTHER INFORMATION CONTACT: Shirley Suggs, (202) 418–1568, Media Bureau.

SUPPLEMENTARY INFORMATION: The Commission published several documents in the **Federal Register** identifying rules that required OMB approval. After further review, we have found OMB approval is not required. The affected CFR sections are as follows:

Marlene H. Dortch,

Secretary, Federal Communications Commission.

■ For the reasons stated in the preamble, and under the authority at 47 U.S.C. 154, 303, 334, 336 and 339; 47 U.S.C. 151, 152, 153, 154, 301, 302, 302a, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 339, 340, 341, 503, 521, 522, 531, 532, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, and 573 * * *, the Federal Communications Commission has determined that the regulations at §§ 73.6027, 76.5(ll), 76.913(b)(1), 76.924(e)(1)(iii) and (e)(2)(iii), 76.925, 76.942(f), 76.944(c), 76.957, 76.1504(e), 76.1511, 76.1512, and 76.1514 are effective and do not contain information collection requirements that are subject to OMB approval.

[FR Doc. 2010–24203 Filed 9–27–10; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R9–IA–2008–0068; 92210–0–0010–B6]

RIN 1018–AV60

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for the African Penguin

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service, determine endangered status for the African penguin (*Spheniscus demersus*) under the Endangered Species Act of 1973, as amended. This final rule implements the Federal protections provided by the Act for this species.

DATES: This rule becomes effective October 29, 2010.

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

FOR FURTHER INFORMATION CONTACT: Janine Van Norman, Chief, Branch of

Foreign Species, Endangered Species Program, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 420, Arlington, VA 22203; telephone 703–358–2171; facsimile 703–358–1735. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

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

Previous Federal Action

On November 29, 2006, the U.S. Fish and Wildlife Service (Service) received a petition from the Center for Biological Diversity (CBD) to list 12 penguin species under the Act: Emperor penguin (*Aptenodytes forsteri*), southern rockhopper penguin (*Eudyptes chrysocome*), northern rockhopper penguin (*Eudyptes moseleyi*), Fiordland crested penguin (*Eudyptes pachyrhynchus*), snares crested penguin (*Eudyptes robustus*), erect-crested penguin (*Eudyptes sclateri*), macaroni penguin (*Eudyptes chrysolophus*), royal penguin (*Eudyptes schlegeli*), white-flippered penguin (*Eudyptula minor albosignata*), yellow-eyed penguin (*Megadyptes antipodes*), African penguin (*Spheniscus demersus*), and Humboldt penguin (*Spheniscus humboldti*). On July 11, 2007, we published in the **Federal Register** a 90-day finding (72 FR 37695) in which we determined that the petition presented substantial scientific or commercial information indicating that listing 10 of the penguin species as endangered or threatened may be warranted, but determined that the petition did not provide substantial scientific or commercial information indicating that listing the snares crested penguin and the royal penguin as threatened or endangered species may be warranted.

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

On December 3, 2007, the Service received a 60-day Notice of Intent to Sue from CBD. On February 27, 2008, CBD filed a complaint against the Department of the Interior for failure to make a 12-month finding (status determination) on the petition. On September 8, 2008, the Service entered into a settlement agreement with CBD, in which we agreed to submit to the **Federal Register** 12-month findings for the 10 species of penguins, including the African penguin, on or before December 19, 2008.

On December 18, 2008, the Service published in the **Federal Register** a warranted 12-month finding and rule proposing to list the African penguin as an endangered species under the Act (73 FR 77332). We implemented the Service's peer review process and opened a 60-day comment period to solicit scientific and commercial information on the species from all interested parties following publication of the proposed rule.

On March 9, 2010, CBD filed a complaint against the Service for failure to issue a final listing determination for seven penguin species, including African penguin, within 12 months of the proposals to list the species. In a court-approved settlement agreement, the Service agreed to submit a final listing determination for the African penguin to the **Federal Register** by September 30, 2010.

Summary of Comments and Recommendations

We base this finding on a review of the best scientific and commercial information available, including all information received during the public comment period. In the December 18, 2008, proposed rule, we requested that all interested parties submit information that might contribute to development of a final rule. We also contacted appropriate scientific experts and organizations and invited them to comment on the proposed listings. We received 604 comments: 602 from members of the public and 2 from peer reviewers.

We reviewed all comments we received from the public and peer reviewers for substantive issues and new information regarding the proposed listing of this species, and we address those comments below. Overall, the commenters and peer reviewers supported the proposed listing. Four comments from the public included additional information for consideration; all other comments simply supported the proposed listing without providing scientific or commercial data.

Peer Review

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

Peer Reviewer Comments

(1) Comment: One peer reviewer found the proposed rule to be thorough, covered the main threats to the African penguin, and used the best information to accurately describe the biology, habitat, population trends, and distribution of the species. This peer reviewer also provided a few technical corrections.

Our Response: We thank the peer reviewer for providing comments on the proposed rule. Most of the technical corrections that were provided were minor and did not significantly change the information already provided in the proposed rule, but rather provided more accuracy or clarity. Technical and grammatical corrections have been incorporated into this final rule and have been indicated in the citation as a personal communication.

(2) Comment: One peer reviewer noted that relevant key literature was not cited and provided a list of 18 additional references for review and requested that we incorporate the new data and information into this final rule and consider it in making our listing determination.

Our Response: We reviewed all 18 references and have incorporated relevant information and additional citations into this final rule.

(3) Comment: One peer reviewer stated that it would be incorrect to say that half the population of seals starved during the last two documented El Niño events, although it was doubtless many did.

Our Response: This information came from an online science magazine, *Science in Africa* (2004, p. 2), which stated that during the last two documented events, the seal population was almost halved after many adult seals succumbed to starvation, and the entire cohort of pups either died or aborted. The peer reviewer did not include any citations on the impact the El Niño events had on the seal population, therefore, we did not revise this portion of the rule.

(4) Comment: One peer reviewer provided additional information on factors contributing to the failure of sardine stocks to recover; including environmental anomalies and overfishing. In addition, the peer reviewer stated that, although horse mackerel (*Trachurus trachurus*) may have benefitted from the decline in sardine stocks, its increase in abundance does not appear to be detrimental to the sardine and should not be regarded as "replacing" sardine, as we indicated in the proposed rule.

Our Response: We have added additional information regarding the effects of overfishing and environmental anomalies in the Benguela system on sardine stocks to *Factor A. The Present or Threatened Destruction, Modification, or Curtailment of African Penguin's Habitat or Range* below. Although horse mackerel stocks have increased, it is likely due to the decrease in sardine stocks caused by high fishing pressure. Mackerels were able to take advantage of this decrease in a competitor for zooplankton and increased while sardine stocks stabilized at a lower abundance. Therefore, it is competition with the increased horse-mackerel stocks for zooplanton, rather than actual replacement, that is a concern for the sardine as a vital food source for the African penguin. We have revised our statement that horse mackerel has replaced sardines.

(5) Comment: One peer reviewer stated that avian cholera *(Pasteurella multocida*) has been reported to affect African penguins and could have catastrophic consequences for the species.

Our Response: After reviewing pertinent literature, we found that avian cholera has had a minimal effect on African penguins. During an outbreak in 1991 on eight islands off western South Africa, mortality was recorded for small numbers of African penguins on Dassen and Dyer islands (Crawford *et al.* 1992, p. 237). From 2002 to 2006, there were annual outbreaks of avian cholera on Dyer Island. A characteristic of the avian cholera outbreaks was significant mortality in the Cape cormorant (*Phalacrocorax capensis)* with little impact on other species (Waller and Underhill 2007, p. 109). During the 2004–2005 outbreak, which was the largest outbreak, only one African penguin death was recorded (Waller and Underhill 2007, p. 107). However, human presence during the avian cholera outbreaks may disturb African penguins causing them to abandon nests, leaving eggs and chicks vulnerable to predation (Waller and Underhill 2007, p. 109). We have added more information regarding the effects of human presence during avian cholera outbreaks to *Factor E. Other Natural or Manmade Factors Affecting the Continued Existence of the Species.*

Public Comments

(6) Comment: Several commenters provided supporting data and information regarding the biology, ecology, life history, population estimates, threat factors affecting this penguin species, and current conservation efforts.

Our Response: We thank all the commenters for their interest in the conservation of this species and thank those commenters who provided information for our consideration in making this listing determination. Most information submitted was duplicative of the information contained in the proposed rule; however, some comments contained information which provided additional clarity or support to, but did not substantially change, the information already contained in the proposed rule. This information has been incorporated into our finding.

Summary of Changes From Proposed Rule

We fully considered comments from the public and peer reviewers on the proposed rule to develop this final listing of the African penguin. This final rule incorporates changes to our proposed listing based on the comments that we received that are discussed above and newly available scientific and commercial information. Reviewers generally commented that the proposed rule was very thorough and comprehensive. We made some technical corrections based on new, although limited, information. None of the information, however, changed our determination that listing this species as endangered is warranted.

Species Information

The African penguin is known by three other common names: jackass penguin, cape penguin, and black-footed penguin. The ancestry of the genus *Spheniscus* is estimated at 25 million years, following a split between *Spheniscus* and *Eudyptula* from the basal lineage *Aptenodytes* (the "great penguins," emperor and king). Speciation within *Spheniscus* is recent, with the two species pairs originating almost contemporaneously in the Pacific and Atlantic Oceans in approximately the last 4 million years (Baker *et al.* 2006, p. 15).

African penguins are the only nesting penguins found on the African continent. Their breeding range is from Hollamsbird Island, Namibia, to Bird Island, Algoa Bay, South Africa (Whittington *et al.* 2000, p. 8), where penguins form colonies (rookeries) for breeding and molting. Outside the breeding season, African penguins occupy areas throughout the breeding range and farther to the north and east. Vagrants have occurred north to Sette Cama (2 degrees and 32 minutes South (2°32′ S)), Gabon, on Africa's west coast and to Inhaca Island (26°58′ S) and the Limpopo River mouth (24°45′ S), Mozambique, on the east coast of Africa (Shelton *et al.* 1984, p. 219; Hockey *et al.* 2005, p. 632). As a coastal species, they are generally spotted within 7.5 miles (mi) (12 kilometers (km)) of the shore.

There has been abandonment of breeding colonies and establishment of new colonies within the range of the species. Within the Western Cape region in southwestern South Africa, for example, penguin numbers at the two easternmost colonies (on Dyer and Geyser Islands) and three northernmost colonies (on Lambert's Bay and Malgas and Marcus Islands) decreased, while the population more than doubled over the 1992–2003 period at five other colonies, including the two largest colonies at Dassen and Robben Islands (du Toit *et al.* 2003, p. 1). The most significant development between 1978 and the 1990s was the establishment of three colonies that did not exist earlier in the 20th century—Stony Point, Boulder's Beach in False Bay, and Robben Island, which now supports the third largest colony for the species (du Toit *et al.* 2003, p. 1; Kemper *et al.* 2007c, p. 326).

Although African penguins are generally colonial breeders, many also

breed solitarily or in small, loose groups (Kemper 2009, pers. comm.*;* Kemper *et al.* 2007a, p. 89). They breed mainly on rocky offshore islands, either nesting in burrows they excavate themselves or under boulders or bushes, manmade structures, or large items of jetsam (Kemper *et al.* 2007a, p. 89), sometimes in depressions under these structures (Crawford 2009, pers. comm.). Historically, they dug nests in the layers of sun-hardened guano (bird excrement) that existed on most islands. However, in the 19th century, European and North American traders exploited guano as a source of nitrogen, denuding islands of their layers of guano (Hockey *et al.* 2005, p. 633; du Toit *et al.* 2003, p. 3). Large-scale removal of guano from the Namibian islands has resulted in a majority of the penguins having to now breed on the surface (Kemper 2009, pers. comm.; Kemper *et al.* 2007b, p. 101; Kemper *et al.* 2007a, p. 89; Shannon and Crawford 1999, pg. 119).

African penguins have an extended breeding season; colonies are observed to breed year-round on offshore islands (Brown *et al.* 1982, p. 77). Broad regional differences do exist, though. The peak of the breeding season in Namibia generally occurs between October and February, with a secondary peak between June and October (Kemper 2009, unpaginated), but variations occur between locations: On Mercury Island, peaks occur between October and January; on Ichaboe Island, peaks occur between October and December; on Halifax Island, breeding peaks between July and August and early December; and on Possession Island, breeding peaks between November and January (Kemper *et al.* 2007a, pp. 89 and 91). In South Africa, breeding peaks differ from those in Namibia: Peak breeding on Dassen and Robben islands occurs between April and August; on Malgas and Marcus islands and Stony Point, peak breeding occurs between February and August; and on St. Croix Island, peak breeding occurs during January with secondary peaks in March through June (Kemper *et al.* 2007a, p. 95).

The timing of breeding is thought to coincide with availability of local food sources (Kemper 2009, unpaginated; Kemper *et al.* 2007a, p. 95; Randall 1989, p. 247). Breeding pairs are considered monogamous; about 80 to 90 percent of pairs remain together in consecutive breeding seasons. The same pair will generally return to the same colony, and often the same nest site each year. The average age at first breeding is between 3 and 6 years old (Kemper *et al.* 2008, p. 810; Whittington *et al.* 2005, p. 227; Randall 1989, p. 252). The male carries out nest site selection, while nest building is by both sexes. Penguins lay a two-egg clutch (Kemper 2009, unpaginated; Randall 1989, p. 247).

Although population statistics vary from year to year, studies at a number of breeding islands revealed mean reported adult survival values per year of 0.81 (Crawford *et al.* 2006, p. 121). African penguins have an average lifespan of 10–11 years in the wild. The highest recorded age in the wild is greater than 27 years (Whittington *et al.* 2000, p. 81); however, several individual birds have lived to be up to 40 years of age in captivity.

Feeding habitats of the African penguin are dictated by the unique marine ecosystem of the coast of South Africa and Namibia. The Benguela ecosystem, encompassing one of the four major coastal upwelling ecosystems in the world, is situated along the coast of southwestern Africa. It stretches from east of the Cape of Good Hope in the south to the Angola Front to the north, where the Angola Front separates the warm water of the Angola current from the cold Benguela water (Fennel 1999, p. 177). The Benguela ecosystem is an important center of marine biodiversity and marine food production, and is one of the most productive ocean areas in the world, with a mean annual primary productivity about six times higher than that of the North Sea ecosystem. The rise of cold, nutrient-rich waters from the ocean depths to the warmer, sunlit zone at the surface in the Benguela produces rich feeding grounds for a variety of marine and avian species. The Benguela ecosystem historically supports a globally significant biomass of zooplankton, fish, sea birds, and marine mammals, including the African penguin's main diet of anchovy (*Engraulis encrasicolus*) and Pacific sardine (*Sardinops sagax*) (Berruti *et al.* 1989, pp. 273–335).

The principal upwelling center in the Benguela ecosystem is situated in southern Namibia, and is the most concentrated and intense found in any upwelling regime. It is unique in that it is bounded at both northern and southern ends by warm water systems, in the eastern Atlantic and the Indian Ocean's Agulhas current, respectively. Sharp horizontal gradients (fronts) exist at these boundaries with adjacent ocean systems (Berruti *et al.* 1989, p. 276).

African penguins, in general, feed on small fish, cephalopods, and to a lesser extent, squid (Crawford 2007, p. 229; Ludynia 2007, p. 27; Crawford *et al.* 2006, p. 120; Petersen *et al.* 2006, pp. 14, 18; Randall 1989, p. 251; Crawford *et al.* 1985, p. 215). In South Africa, anchovy became the dominate prey of African penguins following the collapse of the sardine stock in the 1960s (Kemper 2009, pers. comm.; Randall 1989, p. 251). Studies conducted between 1953 and 1992 showed that anchovies and sardines contributed 50 to 90 percent by mass of the African penguin's diet (Crawford *et al.* 2006, p. 120) and 83 to 85 percent by number of prey items in studies conducted between 1977 and 1985 (Crawford *et al.* 2006, p. 120). In Namibia, pilchard (*Sardinops ocellata*) were the dominate prey species of African penguins until the collapse of the sardine stock in the late 1960s to early 1970s (Kemper *et al.* 2001, p. 432; Crawford *et al.* 1985, pp. 225–226). Following the collapse, pilchard were replaced as dominate prey by pelagic goby (*Sufflogobius bibarbatus*) at Mercury and Ichaboe islands and by cephalopods at Halifax and Possession islands (Kemper 2009, pers. comm.*;* Ludynia 2007, pp. 27–28; Kemper *et al.* 2001, p. 432; Crawford *et al.* 1985, pp. 225–226). Trends in regional populations of the African penguin have been shown to be related to long-term changes in the abundance and distribution of these sardines and anchovies (Crawford 1998, p. 355; Crawford *et al.* 2006, p. 122).

Most spawning by anchovy and sardine takes place on the Agulhas Bank, which is to the southeast of Robben Island, from August to February (Hampton 1987, p. 908). Young-of-the-year migrate southward along the west coast of South Africa from March until September, past Robben Island to join shoals of mature fish over the Agulhas Bank (Crawford 1980, p. 651). The southern Benguela upwelling system off the west coast of South Africa is characterized by strong seasonal patterns in prevailing wind direction, which result in seasonal changes in upwelling intensity. To produce adequate survival of their young, fish reproductive strategies are generally well-tuned to the seasonal variability of their environment (Lehodey *et al.* 2006, p. 5011). In the southern Benguela, intense wind-mixing transport of surface waters creates an unfavorable environment for fish to breed. As a result, both anchovy and sardine populations have developed a novel reproductive strategy that is tightly linked to the seasonal dynamics of major local environmental processes—spatial separation between spawning and nursery grounds. For both species, eggs spawned over the western Agulhas Bank (WAB) are transported to the productive west coast nursery grounds via a coastal jet, which acts like a

"conveyor belt" to transport early life stages from the WAB spawning area to the nursery grounds (Lehodey *et al.* 2006, p. 5011).

The distance that African penguins have to travel to find food varies both temporally and spatially according to the season. Off western South Africa, the mean foraging range of penguins that are feeding chicks has been recorded to be 5.7 to 12.7 mi (9 to 20 km) (Petersen *et al.* 2006, p. 14), mostly within 1.9 mi (3 km) off the coast (Berruti *et al.* 1989, p. 307). Foraging duration during chick provisioning may last anywhere from 8 hours to 3 days, the average duration being around 10–13 hours (Petersen *et al.* 2006, p. 14). A recent study revealed greater foraging ranges between 8.8 and 19.8 mi (14 and 32 km) for African penguins on Mercury Island and an average trip duration of 13 hours (Ludynia 2007, pp. 17–18). Ludynia (2007, pp. 28, 30) also reported foraging ranges between 3.9 and 7.1 mi (6 and 11 km) for three African penguins on Possession Island and foraging ranges between 3.3 and 8.2 mi (5 and 13 km) for two African penguins on Halifax Island; trip duration ranges between 8–27.5 hours and 3.5–12 hours, respectively. Travel distance from the breeding colony is more limited when feeding young. Outside the breeding season, adults generally remain within 248 mi (400 km) of their breeding locality, while juveniles regularly move in excess of 621 mi (1,000 km) from their natal island (Randall 1989, p. 250). During the non-breeding season, some African penguins forage on the Agulhas Bank (Crawford 2009, pers. comm.).

Underhill *et al.* (2007, p. 65) suggested that the molt period of African penguins is closely tied to the spawning period of sardine and anchovy at the Agulhas Bank. Pre-molt birds travel long distances to the bank to fatten up during this time of the most predictable food supply of the year. This reliable food source, and the need to gain energy prior to molting, is hypothesized to be the most important factor dictating the annual cycle of penguins. In fact, adult birds have been observed to abandon large chicks in order to move into this critical pre-molt foraging mode; this is known to occur regularly and often at a large scale at Dyer Island (Kemper 2009, pers. comm.). The South African National Foundation for the Conservation of Coastal Birds (SANCCOB) rescue facility took in over 700 orphaned penguin chicks from Dyer Island in 2005–2006. Parents abandoned chicks as they began to molt (SANCCOB 2006, p. 1; SANCCOB 2007a, p. 1). The increasing observation of abandonment in South Africa is perhaps related to a slight trend toward earlier molting seasons (Underhill *et al.* 2007, p. 65).

There has been a severe historical decline in African penguin numbers in both the South African and Namibian populations. This decline is accelerating at the present time. The species declined from millions of birds in the early 1900s (1.4 million adult birds at Dassen Island alone in 1910) (Ellis *et al.* 1998, p. 116) to 141,000 pairs in 1956–1957 to 69,000 pairs in 1979–1980 to 57,000 pairs in 2004–2005, and to about 36,188 pairs in 2006 (Kemper *et al.* 2007c, pp. 327). Crawford (2007, *in litt.*) reported that from 2006–2007, the overall population declined by 12 percent to 31,000 to 32,000 pairs. The 2009 global population was estimated at 25,262 pairs; equating to a decline of 60.5 percent over 28 years (three generations) (BirdLife International 2010, unpaginated).

The species is distributed in about 32 colonies in three major clusters. In South Africa in 2006, there were 11,000 pairs in the first cluster at the Eastern Cape, and about 21,000 in the second cluster at the Western Cape colonies, with 13,283 of these pairs at Dassen Island and 3,697 at Robben Island. South African totals were down from 32,786 pairs in 2006 to 28,000 pairs in 2007. There were about 3,402 pairs in the third major cluster in Namibia. The Namibian population has declined by more than 75 percent since the mid-20th century (from 42,000 pairs in 1956–57) and has been decreasing 2.5 percent per year between 1990 (when there were 7,000 to 8,000 pairs) and 2005 (Kemper *et al.* 2007c, p. 327; Underhill *et al.* 2007, p. 65; Roux *et al.* 2007a, p. 55).

On the 2007 International Union for Conservation of Nature (IUCN) Red List, the African penguin was listed as "Vulnerable" on the basis of steep population declines (Birdlife International 2007, p. 1). Given the decline observed over 3 generations, a 2007 revision of the conservation status of the species discussed changing that Red List status to "Endangered" if the declines continued (Kemper *et al.* 2007c, p. 327). That same assessment, based on 2006 data, concluded that the Namibian population should already be regarded as Red List "Endangered" by IUCN criteria with the probability of extinction of the African penguin from this northern cluster during the 21st century rated as high (Kemper *et al.* 2007c, p. 327). In June of 2010, the African penguin was uplisted from "Vulnerable" to "Endangered" on the 2010 IUCN Red List. The change in status was based on recent data revealing a continuing rapid population decline, most likely due to commercial fisheries and shifts in prey populations, with no signs of reversing (BirldLife International 2010, unpaginated).

Breeding no longer occurs at seven localities where it formerly occurred or has been suspected to occur—Seal, North Long, North Reef, and Albatross Islands in Namibia, and Jacobs Reef, Quoin, and Seal (Mossel Bay) Islands in South Africa (Kemper 2009, pers. comm.; Kemper *et al.* 2007c, p. 326; Crawford *et al.* 1995a, p. 269). In the 1980s, breeding started at two mainland sites in South Africa (Boulder's Beach and Stony Point) for which no earlier records of breeding exist. There is no breeding along the coast of South Africa's Northern Cape Province, which lies between Namibia and Western Cape Province (Ellis *et al.* 1998, p. 115).

Summary of Factors Affecting the 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 species to the Federal Lists of Endangered and Threatened Wildlife and Plants. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1) of the Act. The five factors are: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; and (E) other natural or manmade factors affecting its continued existence. These factors and their application to the African penguin are discussed below.

Factor A. The Present or Threatened Destruction, Modification, or Curtailment of African Penguin's Habitat or Range

The habitat of the African penguin consists of terrestrial breeding and molting sites and the marine environment, which serves as a foraging range both during and outside of the breeding season.

Modification of their terrestrial habitat is a continuing threat to African penguins. This began in the mid-1880s with the mining of seabird guano at islands colonized by the African penguin and other seabirds in both South Africa and Namibia. Harvesting of the guano cap began in 1845 (du Toit *et al.* 2003, p. 3; Griffin 2005, p. 16) and continued over decades, denuding the islands of guano. Deprived of their primary nest-building material, the

penguins were forced to nest on the surface in the open, where their eggs and chicks are more vulnerable to predators such as kelp gulls (*Larus dominicanus*), disturbance, heat stress, and flooding (Kemper *et al.* 2007b, p. 101; Griffin 2005, p. 16; Shannon and Crawford 1999, p. 119).

Without cover provided by burrows excavated in the guano, birds are more likely to flee from aerial predators or disturbance caused by humans, leaving the nests exposed (Kemper *et al.* 2007b, p. 104). Additionally, instead of being able to burrow into the guano, where temperature extremes are ameliorated, penguins nesting in the open are subjected to heat stress (Kemper *et al.* 2007b, p. 101; Shannon and Crawford 1999, p. 119). Kemper *et al.* (2007b, p. 101) noted an event in which the air temperature rose to 98.6 degrees Fahrenheit (°F) (37 degrees Celsius (°C)), resulting in the death of 68 chicks constituting 37 percent of the surface-nesting chicks. Adapted for life in cold temperate waters, penguins have insulating fatty deposits to prevent hypothermia and black-and-white coloring that provides camouflage from predators at sea. These adaptations cause problems of overheating while they are on land incubating eggs and brooding chicks during the breeding season. Furthermore, rainstorms are uncommon, however, they can be severe and flooding of nests may occur (Kemper *et al.* 2007b, p. 101).

Although guano harvesting is now prohibited in penguin colonies, it continues sporadically at Ichaboe Island (Kemper 2009, unpaginated), and many penguins continue to suffer from the lack of protection and heat stress due to the loss of this optimal breeding habitat substrate. We have not identified information on how quickly guano deposits may build up again to depths which provide suitable burrowing substrate; however, since guano scraping ceased, the accumulation of penguin guano has been minimal because the population is small (Waller and Underhill 2007, p. 109), and the more the population decreases, the slower the guano will build (Kemper 2009, pers. comm.). Because penguins are now forced to nest on the surface and natural features available for cover (*e.g.,* bushes and rock overhangs) are limited, penguins may also use abandoned buildings for protection. However, these sites provide poor lighting and damp conditions often with flea and tick infestations, and chicks appear in poor condition at these locations (Kemper *et al.* 2007b, p. 105). Kemper *et al.* (2007b, p. 104) noted that, excluding nests in buildings, nests with cover had better overall breeding success than exposed nests.

In Namibia, low-lying African penguin breeding habitat is being lost due to flooding from increased coastal rainfall and sea level rise of 0.07 inches (1.8 millimeters) a year over the past 30 years (Roux *et al.* 2007b, p. 6). Almost 11 percent of the nests on the four major breeding islands (which contain 96 percent of the Namibian population) are experiencing a moderate to high risk of flooding (Roux *et al.* 2007b, p. 6). Continued increases in coastal flooding from rising sea levels predicted by global and regional climate change models (Bindoff *et al.* 2007, p. 409, 412) are predicted to increase the number and proportion of breeding sites at risk and lead to continued trends of decreased survival and decreased breeding success (Roux *et al.* 2007b, p. 6).

Competition for breeding habitat with Cape fur seals (*Arctocephalus pusillus pusillus*) has been cited as a reason for abandonment of breeding at five former breeding colonies in Namibia and South Africa, and expanding seal herds have displaced substantial numbers of breeding penguins at other colonies (Ellis *et al.* 1998, p. 120; Crawford *et al.* 1995a, p. 271).

Changes to the marine habitat present a significant threat to populations of African penguins. African penguins have a long history of shifting colonies and fluctuations in numbers at individual colonies in the face of shifting food supplies (Crawford 1998, p. 362). These shifts are related to the dynamics between prey species and to ecosystem changes, such as reduced or enhanced upwelling (sometimes associated with El Niño events), changes in sea surface temperature, or movement of system boundaries. In addition to such continuing cyclical events, the marine habitats of the Western Cape and Namibian populations of African penguins are currently experiencing directional ecosystem changes attributable to global climate change; overall sea surface temperature increases occurred during the 1900s and, as detailed above, sea level has been rising steadily in the region over the past 30 years (Bindoff *et al.* 2007, p. 391; Fidel and O'Toole 2007, p. 22, 27; Roux *et al.* 2007a, p. 55).

At the Western Cape of South Africa, a shift in sardine distribution to an area outside the current breeding range of the African penguin led to a 45 percent decrease, between 2004 and 2006, in the number of penguins breeding in the Western Cape and increased adult mortality as the availability of sardine decreased for the major portion of the African penguin population located in that region (Crawford *et al.* 2007a, p. 8). From 1997 to the present, the distribution of sardine concentrations off South Africa has steadily shifted to the south and east, from its long-term location off colonies at Robben Island to east of Cape Infanta on the southern coast of South Africa east of Cape Agulhas, 248 mi (400 km) from the former center of abundance (Crawford *et al.* 2007a, p. 1).

This shift is having severe consequences for penguin populations. Off western South Africa, the foraging range of penguins that are feeding chicks is estimated to be 5.7 to 12.7 mi (9 to 20 km) (Petersen *et al.* 2006, p. 14), and while foraging they generally stay within 1.9 mi (3 km) of the coast (Berruti *et al.* 1989, p. 307). The southeasternmost Western Cape Colonies occur at Dyer Island, which is southeast of Cape Town and about 47 mi (75 km) northwest of Cape Agulhas. Therefore, the current sardine concentrations are out of the foraging range of breeding adults at the Western Cape breeding colonies (Crawford *et al.* 2007a, p. 8), which between 2004 and 2006 made up between 79 and 68 percent of the rapidly declining South African population (Crawford *et al.* 2007a, p. 7).

Further, as described in Crawford (1998, p. 360), penguin abundances at these Western Cape colonies have historically shifted north and south according to sardine and anchovy abundance and accessibility from breeding colonies, but the current prey shift is to a new center of abundance outside the historic breeding range of this penguin species. Although one new colony has appeared east of existing Western Cape colonies, more significantly, there has been a significant decrease in annual survival rate for adult penguins from 0.82 to 0.72 (Crawford *et al.* 2008, p. 181) in addition to the 45 percent decrease in breeding pairs in the Western Cape Province. Exacerbating the problem of shifting prey, the authors reported that the fishing industry, which is tied to local processing capacity in the Western Cape, is competing with the penguins for the fish that remain in the west, rather than following the larger sardine concentrations to the east (*See* Factor E) (Crawford *et al.* 2007a, pp. 9–10).

Changes in the northern Benguela ecosystem are also affecting the less numerous Namibian population of the African penguin. Over the past 3 decades, sea surface temperatures have steadily increased and upwelling intensity has decreased in the northern Benguela region. These long-term

changes have been linked to declines in penguin recruitment at the four main breeding islands from 1993–2004 (Roux *et al.* 2007a, p. 55). Weakened upwelling conditions have a particular impact on post-fledge young penguins during their first year at sea, explaining 65 percent of the variance in recruitment during that period (Roux *et al.* 2007b, p. 9). These young penguins are particularly impacted by increasingly scarce or hard-to-find prey. Even after heavy fishing pressure was eased in this region in the 1990s, sardine stocks in Namibia have failed to recover, causing economic shifts for humans and foraging difficulties for penguins. Remaining sardine stocks in Namibia have contracted to the north out of reach of breeding penguins tied to the vicinity of their breeding locations (Kemper 2009, pers. comm.; Kemper *et al.* 2001, p. 432). This failure to recover has been attributed to oxygen-poor conditions (Sakko 1998, p. 428); El Niños, which have resulted in failed recruitment of sardines and mass mortality of sardines and other pelagic fish (Kemper 2009, pers. comm.; Roux *et al.* 2007b p. 12; Sakko 1998, p. 428); years of poor recruitment exacerbated by continued fishing pressure (Kemper 2009, pers. comm.; Boyer *et al.* 2001, pp. 67, 81–83); competition with horse mackerel (*Trachurus trachurus*) (Kemper 2009, pers. comm.; Shannon *et al.* 2000, p. 721); and the continuing warming trend (Benguela Current Large Marine Ecosystem (BCLME) 2007, pp. 2–3).

El Niño events also impact the Benguela marine ecosystem on a decadal frequency (Benguela Niño). These occur when warm seawater from the equator moves along the southwest coast of Africa towards the pole and penetrates the cold up-welled Benguela current. During the 1995 event, for example, the entire coast from Angola's Cabinda province to central Namibia was covered by abnormally warm water—in places up to 14.4 °F (8 °C) above average—to a distance up to 186 mi (300 km) offshore (Science in Africa 2004, p. 2). During the last two documented events, there have been mass mortalities of penguin prey species, prey species recruitment failures, and mass mortalities of predator populations, including starvation of over half of the seal population. The penguin data sets are not adequate to estimate the effects of Benguela Niño events at present, but based on previous observations of impact on the entire food web of the northern Benguela, they are most likely to be negative (Roux *et al.* 2007b, p. 12). With increasing temperatures associated with climate change in the northern Benguela ecosystem, the frequency and intensity of Benguela Niño events and their concomitant effects on the habitat of the African penguin are predicted to increase in the immediate upcoming years as new Benguela Niño events emerge (Roux *et al.* 2007b, p. 5).

A third factor in the marine habitat of the Namibian populations is the extent of sulfide eruptions during different oceanographic conditions. Hydrogen sulfide accumulates in bottom sediments and erupts to create hypoxic (a reduced concentration of dissolved oxygen in a water body leading to stress and death in aquatic organisms) or even anoxic (lacking oxygen) conditions over large volumes of the water column (Ludynia *et al.* 2007, p. 43; Fidel and O'Toole 2007 p. 9). Penguins, whose foraging range is restricted by the central place of their breeding colony location (Petersen *et al.* 2006, p. 24), are forced to forage in these areas, but their preferred prey of sardines and anchovies is unable to survive in these conditions. African penguins foraging in areas of sulfide eruptions expend greater amounts of energy through benthic dives in pursuit of available food tolerant of low-oxygen conditions, primarily the pelagic goby (*Sufflogobius bibarbatus*), which has lower energy content than the penguins' preferred prey of anchovies and sardines (Ludynia 2007, pp. 45–58; Crawford *et al.* 1985, p. 224). The Namibian population of African penguins, restricted in their breeding locations, will continue to be negatively impacted by this ongoing regime shift away from sardines and anchovies to pelagic goby and jellyfish. Like Benguela Niños events, these sulphide eruptions are predicted to increase with continuing climate change (Ludynia *et al.* 2007, p. 43); eruptions appear to be coincident with increased intensity of wind-driven coastal upwelling and low-pressure weather cells (*e.g.,* sudden warming of sea surface and interruption of coastal upwelling), both of which can be affected by climate change (Weeks *et al.* 2004, p. 153). Furthermore, these sulphide eruptions could potentially contribute to climate change through additional emissions of methane gas into the atmosphere; however, further studies are needed to determine the extent of the effects on climate change (Bakun and Weeks 2004, pp. 1,021–1,022).

We have identified a number of threats to the coastal and marine habitat of the African penguin that have operated in the past, are impacting the species now, and will continue to impact the species in the immediate coming years and into the future. On the basis of this analysis, we find that the present and threatened destruction, modification, or curtailment of both its terrestrial and marine habitats is a threat to the African penguin.

Factor B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

The current use of African penguins for commercial, recreational, scientific, or educational purposes is generally low. Prior estimates of commercial collection of eggs for food from Dassen Island alone were 500,000 in 1925, and more than 700,000 were collected from a number of localities in 1897 (Shelton *et al.* 1984, p. 256). Since 1968, however, commercial collection of penguin eggs for food has ceased.

There are unconfirmed reports of penguins being killed as use for bait in rock-lobster traps. Apparently, they are attractive as bait because their flesh and skin is relatively tough compared to that of fish and other baits. The extent of this practice is unknown, and most reports emanate from the Namibian islands (Ellis *et al.* 1998, p. 121). Use for nonlethal, scientific purposes is highly regulated and does not pose a threat to populations (*See* analysis under Factor D).

In 1975, the African penguin was listed on Appendix II of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). CITES is an international agreement between governments to ensure that the international trade of CITES-listed plant and animal species does not threaten species' survival in the wild. There are currently 175 CITES Parties (member countries or signatories to the Convention). Under this treaty, CITES Parties regulate the import, export, and reexport of CITES-protected plants and animal species (also *see* Factor D). Trade must be authorized through a system of permits and certificates that are provided by the designated CITES Scientific and Management Authorities of each CITES Party (CITES 2010a, unpaginated).

Between the time the African penguin was listed in CITES in 1975 and 2008, 299 CITES-permitted shipments have been reported to the United Nations Environment Programme-World Conservation Monitoring Center (UNEP–WCMC). Of these shipments, 80 (27 percent) were reportedly imported into the United States and 25 (8 percent) were shipments permitted for export from the United States (UNEP–WCMC 2010, unpaginated). With the information given in the UNEP–WCMC

database, between 1975 and 1993, approximately 30 shipments (275 individuals) of live African penguins of unknown origin were traded. Between 1994 and 2003, approximately 7 shipments (42 individuals) of live, wild African penguins were traded for the following purposes: scientific, personal, biomedical, commercial, zoological display, and reintroduction or introduction into the wild. There has been no trade in live, wild African penguins reported since 2003. The other 262 shipments involved trade in live pre-Convention (20 specimens) or captive-born/captive-bred penguins (952 specimens) and trade in parts and products (2,738 scientific specimens, 39 bodies, 121 feathers, 16 skeletons, 6 skins, 8 skulls, and 4 personal sport-hunted trophies).

As a species listed in Appendix II of CITES, commercial trade is allowed. However, CITES requires that before an export can occur, a determination must be made that the specimens were legally obtained (in accordance with national laws) and that the export will not be detrimental to the survival of the species in the wild. Based on the low numbers of live, wild African penguins in trade since 1994 and that the trade in parts and products from wild specimens is primarily scientific samples, we believe that international trade controlled via valid CITES permits is not a threat to the species.

On the basis of this analysis, we find that overutilization for commercial, recreational, scientific, or educational purposes is not a threat to the African penguin now or in the foreseeable future.

Factor C. Disease or Predation

African penguins are hosts to a variety of parasites and diseases (Ellis 1998, pp. 119–120), including avian cholera *(Pasteurella multocida*) and avian malaria (*Plasmodium relictum*). During an outbreak of avian cholera in 1991 on eight islands off western South Africa, mortality was recorded for small numbers of African penguin on Dassen and Dyer islands (Crawford *et al.* 1992, p. 237). From 2002 to 2006, there were annual outbreaks of avian cholera on Dyer Island; however, a characteristic of the avian cholera outbreaks was significant mortality for a single species (Cape cormorant *Phalacrocorax capensis)* with little impact on other species (Waller and Underhill 2007, p. 109). During the 2004–2005 outbreak, which was the largest in extent, only one African penguin death was recorded (Waller and Underhill 2007, p. 107). Therefore, we find that avian cholera has had a minimal effect on African penguins. Although avian malaria does not normally occur in wild populations, there is a high prevalence of the disease in birds held in captivity. The absence of avian malaria in wild penguins can be explained by factors such as age-related immunity to malarias, mosquito-impeding feathers, and escape from mosquitoes into the water (Graczyk *et al.* 1995, p. 704). Those penguins held in captivity are subject to more intense exposure to malarial parasites, but also, most of the birds in captivity are being rehabilitated from exposure to oil pollution, which can immobilize penguins and impair the feather barrier and make the bird more vulnerable to mosquito attacks (Graczyk *et al.* 1995, pp. 705–706). Release of infected rehabilitated birds could pose a hazard to wild penguins once they are released (Graczyk *et al.* 1995, p. 703). However, we could not find any information on the large-scale effect of avian malaria on African penguin populations. The primary concern is preventing the transmission of disease from the large numbers of African penguins rehabilitated after oiling to wild populations (Graczyk *et al.* 1995, p. 706).

Predation by Cape fur seals of protected avian species has become an issue of concern to marine and coastal managers in the Benguela ecosystem as these protected seals have rebounded to become abundant (1.5 to 2 million animals) (David *et al.* 2003, pp. 289–292). Not all seals feed on penguins, usually just subadult male individuals (Kemper 2009, pers. comm.; Mecenero *et al.* 2005, p. 510; du Toit *et al.* 2004, pp. 45, 50). Although only a few individuals may be responsible for predation on African penguins, they can have a detrimental effect on small colonies (Mecenero *et al.* 2005, pp. 509, 511). At Dyer Island, 842 penguins in a colony of 9,690 individuals (8.7 percent) were killed in 1995–1996 (Marks *et al.* 1997, p. 11). At Lambert's Bay, seals kill 4 percent of adult African penguins annually (Crawford *et al.* 2006, p. 124; Crawford *et al.* 2001, p. 440). The practice of removing problem individuals has been advocated in South Africa's Policy on the Management of Seals, Seabirds, and Shorebirds, which allows for the culling of specific seals responsible for the predation of seabirds of conservation concern (Kemper 2009, pers. comm*.;* Department of Environmental Affairs and Tourism 2007, p. 6). Some seals killing penguins have been removed from South African localities (Crawford 2009, pers. comm.), and confirmed problem seals are culled at three islands (Mercury, Ichaboe, and Possession islands) in Namibia (Kemper 2009, pers. comm.); however, it should be noted that 40 percent of the Namibia seal population has shifted north of its breeding range away from penguin breeding locations and main foraging areas (Kemper 2009, pers. comm.; Kemper *et al.* 2007c, p. 339).

Predation on eggs and small chicks of African penguins by kelp gulls is a concern brought on through human disturbance. As described under Factor A, the historic harvesting of guano deprived African penguins of their primary nest-building material, forcing them to nest on the surface in the open where birds are more likely to flee from aerial predators and human disturbance (*see Factor E*), leaving their eggs and chicks more vulnerable to predators such as kelp gulls (Kemper *et al.* 2007b, pp. 101, 104; Griffin 2005, p. 16; Shannon and Crawford 1999, p. 119).

On the basis of this information, we find that predation, in particular by Cape Fur Seals that prey on significant numbers of African penguins at their breeding colonies, is a threat to the African penguin, and we have no reason to believe the threat will be ameliorated in the foreseeable future.

Factor D. Inadequacy of Existing Regulatory Mechanisms

The African penguin is listed on Appendix II of CITES. CITES, an international treaty among 175 nations, including Namibia, South Africa, Congo, Gabon, Mozambique, and the United States, entered into force in 1975. In the United States, CITES is implemented through the U.S. Endangered Species Act. The Secretary of the Interior has delegated the Department's responsibility for CITES to the Director of the Service and established the CITES Scientific and Management Authorities to implement the treaty.

CITES provides varying degrees of protection to more than 32,000 species of animals and plants that are traded as whole specimens, parts, or products. Under this treaty, member countries work together to ensure that international trade in animal and plant species is not detrimental to the survival of wild populations by regulating the import, export, and reexport of CITES-listed animal and plant species (USFWS 2010, unpaginated). Under CITES, a species is listed at one of three levels of protection (*i.e.,* regulation of international trade), which have different permit requirements (CITES 2010b, unpaginated). Appendix II includes species requiring regulation of international trade in order to ensure

that trade of the species is compatible with the species' survival. International trade in specimens of Appendix-II species is authorized when the permitting authority has determined that the export will not be detrimental to the survival of the species in the wild and that the specimens to be exported were legally acquired (CITES 2010a, unpaginated). As discussed under Factor B, we do not consider international trade to be a threat impacting the African penguin. Therefore, protection under this Treaty is an adequate regulatory mechanism.

This species is also included under Appendix II of the Convention on Migratory Species (CMS), of which South Africa is a Party. Inclusion in Appendix II encourages multistate and regional cooperation for conservation (CMS 2009, p. 6). The African-Eurasian Waterbird Agreement (AEWA) was developed under CMS auspices and became effective on November 1, 1999. The Agreement covers 119 Range States in Africa, Europe, parts of Canada, Central Asia, and the Middle East and focuses on 255 waterbird species, including the African penguin (AEWA 2010, p. 10; AEWA 2008, p. 1). Parties to the Agreement are encouraged to engage in a wide range of conservation actions provided in a comprehensive Action Plan (2009–2012). These actions address species and habitat conservation, management of human activities, research and monitoring, education and information, and implementation (AEWA 2010, p. 11).

Under South Africa's Biodiversity Act of 2004, the African penguin is classified as a protected species, defined as an indigenous species of "high conservation value or national importance" that requires national protection (Republic of South Africa 2004, p. 52; Republic of South Africa 2007, p. 10). Activities that may be carried out with respect to such species are restricted and cannot be undertaken without a permit (Republic of South Africa 2004, p. 50). Restricted activities include among other things: Hunting, capturing, or killing living specimens of listed species by any means; collecting specimens of such species (including the animals themselves, eggs, or derivatives or products of such species); importing, exporting, or reexporting; having such specimens within one's physical control; or selling or otherwise trading in such specimens (Republic of South Africa 2004, p. 18).

The species is classified as 'endangered' in Nature and Environmental Conservation Ordinance, No. 19 of the Province of the Cape of Good Hope (Western Cape Nature Conservation Laws Amendment Act 2000, p. 88), providing protection from hunting or requiring a permit for possession of the species. According to Ellis *et al.* (1998, p. 115), this status applies to the Northern Cape, Western Cape, and Eastern Cape Provinces as well.

In Namibia, the African penguin is listed as a "Specially Protected Bird," under the draft Parks and Wildlife Management Bill 2001, due to the recent rapid decline (Kemper 2009, unpaginated; Ministry of Fisheries and Marine Resources 2009, p. 22; Kemper *et al.* 2007c, p. 326); however, we could not find any information indicating this bill has been finalized. Under the Namibian Marine Resources Act of 2000 (Part IV, 18(1)(b) and (c)), except in terms of an exploratory right or an exemption, a person may not kill, disturb, or maim any penguin or harvest any bird on any island, rock, or guano platform in Namibian waters, or on the shore seaward of the high-water mark, or in the air above such areas. This Act also addresses discharge of injurious substances into the marine environment and killing or disabling of marine animals (Ministry of Fisheries and Marine Resources 2009, p. 43). Additionally, all Namibian breeding locations for the African penguin fall within the recently proclaimed Namibian Island's Marine Protected Area (MPA) (Kemper 2009, pers. comm.). One of the key goals of the MPA is to provide greater protection to the breeding and foraging habitat of endangered seabirds, including the African penguin. The MPA will provide high protection status for specific islands and, among other marine-related issues, addresses landing on islands, guano scraping, mining, boat-based eco-tourism, and risks associated with shipping-related threats, such as oil spills (Ministry of Fisheries and Marine Resources 2009, pp. 51–88).

Kemper *et al.* (2007c, p. 326) reported that African penguin colonies in South Africa are all protected under authorities ranging from local, to provincial, to national park status, and all Namibian breeding colonies are under some protection, from restricted access to national park status. While we have no information that allows us to evaluate their overall effectiveness, these national, regional, and local measures to prohibit activities involving African penguins without permits issued by government authorities and to control or restrict access to African penguin colonies are appropriate to protecting African penguins from land-based threats, such as harvest of penguins or their eggs, disturbance from tourism activities, and impacts from unregulated, scientific research activities.

The South African Marine Pollution (Control and Civil Liability) Act (No. 6 of 1981) (SAMPA) provides for the protection of the marine environment (the internal waters, territorial waters, and exclusive economic zone) from pollution by oil and other harmful substances, and is focused on preventing pollution and determining liability for loss or damage caused by the discharge of oil from ships, tankers, and offshore installations. The SAMPA prohibits the discharge of oil into the marine environment, sets requirements for reporting discharge or likely discharge and damage, and designates the South African Maritime Safety Authority the powers of authority to take steps to prevent pollution in the case of actual or likely discharge and to remove pollution should it occur, including powers of authority to direct ship masters and owners in such situations. The SAMPA also contains liability provisions related to the costs of any measures taken by the authority to reduce damage resulting from discharge (Marine Pollution (Control and Civil Liability) Act of 1981 2000, pp. 1–22).

South Africa is a signatory to the 1992 International Convention on Civil Liability for Oil Pollution Damages and its Associate Fund Convention (International Fund for Animal Welfare (IFAW) 2005, p. 1), and southern South African waters have been designated as a Special Area by the International Maritime Organization, providing measures to protect wildlife and the marine environment in an ecologically important region used intensively by shipping (International Convention for the Prevention of Pollution from Ships (MARPOL) 2006, p. 1). One of the prohibitions in such areas is on oil tankers washing their cargo tanks.

Despite these existing regulatory mechanisms, the African penguin continues to decline due to the effects of habitat destruction, predation, and oil pollution. We find that these regulatory and conservation measures have been insufficient to significantly reduce or remove the threats to the African penguin and, therefore, that the inadequacy of existing regulatory mechanisms is a threat to this species.

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

Over the period from 1930 to the present, fisheries harvest by man and more recently competition from fisheries, as well as seals, have hindered

the African penguin's historical ability to rebound from oceanographic changes and prey regime shifts. The reduced carrying capacity of the Benguela ecosystem presents a significant threat to survival of African penguins (Crawford *et al.* 2007b, p. 574).

Crawford (1998, pp. 355–364) described the historical response of African penguins to regime shifts between their two primary prey species, sardines and anchovies, both in terms of numbers and colony distribution from the 1950s through the 1990s. There was a repeated pattern of individual colony collapse in some areas and, as the new food source became dominant, new colony establishment and population increase in other areas. Crawford (1998, p. 362) hypothesized that African penguins have coped successfully with many previous sardine-anchovy shifts. Specific mechanisms, such as the emigration of first-time breeders from natal colonies to areas of greater forage abundance may have historically helped them successfully adapt to changing prey location and abundance. However, over the period from the 1930s to the 1990s, competition for food from increased commercial fish harvest and from burgeoning fish take by recovering populations of the Cape fur seal appears to have overwhelmed the ability of African penguins to compete; the take of fish and cephalopods by man and seals increased by 2 million tons (T) (1.8 million tonnes (t)) per year from the 1930s to the 1980s (Crawford 1998, p. 362). Crawford *et al.* (2007b, p. 574) conclude that due to the increased competition with purse-seine (net) fisheries and abundant fur seal populations, the carrying capacity of the Benguela ecosystem for African penguins has declined by 80 to 90 percent from the 1920s to the present day. In the face of increased competition and reduced prey resources, African penguin populations are no longer rebounding successfully from underlying prey shifts and have experienced sharply decreased reproductive success. Kemper (2009, pers. comm.; Kemper *et al.* 2007c, p. 339) has noted, however, that the Namibian Cape fur seal population is shifting north, away from penguin breeding and foraging areas.

These negative effects of decreased prey availability on reproductive success and on population size have been documented. Breeding success of African penguins was measured at Robben Island from 1989 to 2004 (Crawford *et al.* 2006, p. 119) in concert with hydro-acoustic surveys to estimate the spawner biomass of anchovy and sardine off South Africa. When the combined spawner biomass of fish prey was less than 2 million T (1.8 million t), pairs of African penguins fledged an average of only 0.46 chicks annually. When it was above 2 million T (1.8 million t), annual breeding success had a mean value of 0.73 chicks per pair (Crawford *et al.* 2006, p. 119). The significant relationships obtained between breeding success of African penguins and estimates of the biomass of their fish prey confirm that reproduction is influenced by the abundance of food (Adams *et al.* 1992, p. 969; Crawford *et al.* 1999, p. 143). The levels of breeding success recorded in the most recent studies of the African penguin were found to be inadequate to sustain the African penguin population (Crawford *et al.* 2006, p. 119).

In addition to guano collection, as described in Factor A, disturbance of breeding colonies may arise from other human activities such as tourism (Ellis *et al.* 1998, p. 121). Such disturbances can cause the penguins to panic and desert their nesting sites. In both South Africa and Namibia, there is increasing pressure to open penguin viewing areas for tourism. Although this type of tourism is currently occurring, it is in Boulders, South Africa, where penguins are used to human presence, and the tourism is being conducted in a controlled manner (Kemper 2009, pers. comm.). Unless other areas identified for tourism development are carefully controlled, the disturbance could be detrimental to breeding success (Kemper 2009, pers. comm.). Exploitation and disturbance by humans is probably the reason for penguins ceasing to breed at four colonies, one of which has since been re-colonized (Crawford *et al.* 1995b, p. 112). Burrows can be accidentally destroyed by humans walking near breeding sites, leading to penguin mortality. In addition, human-caused disturbance during avian cholera outbreaks may affect African penguins. Although avian cholera mainly affects Cape cormorants, human presence to remove carcasses, in an effort to reduce the spread of the disease, is considered a high disturbance activity and has caused penguins to move from nests exposing eggs and chicks to predation by kelp gulls (Waller and Underhill 2007, p. 109).

Oil and chemical spills can have direct effects on the African penguin. Based on previous incidents and despite national and international measures to prevent and respond to oil spills referenced in Factor D, we consider this to be a significant threat to the species. African penguins live along the major global transport route for oil and have been frequently impacted by both major and minor oil spills. Since 1948, there have been 13 major oil spill events in South Africa, each of which oiled from 500 to 19,000 African penguins. Nine of these involved tanker collisions or groundings, three involved oil of unknown origins, and one involved an oil supply pipeline bursting in Cape Town harbor (Underhill 2001, pp. 2–3). In addition to these major events, which are described in detail below, there are a significant number of smaller spill events, impacting smaller number of birds. These smaller incidental spills result in about 1,000 oiled penguins being brought to SANCCOB, which has facilities to clean oiled birds, over the course of each year (Adams 1994, pp. 37–38; Underhill 2001, p. 1). Overall, from 1968 to the present, SANCCOB (2007b, p. 2), has handled more than 83,000 oiled sea birds, including many African penguins.

The most recent oil spill occurred in April 2009 when oil began leaking from the hull of a fishing trawler, *Meob Bay,* which sank in June 2002. Approximately 62 mi (100 km) of coastline, from Possession Island to Mercury Island (prime breeding locations), were affected. At least 160 African penguins were rescued and taken to rehabilitation facilities to be treated (Bause 2009, unpaginated). The most serious event occurred on June 23, 2000, when the iron ore carrier *Treasure* sank between Robben and Dassen Islands, where the largest and third-largest colonies of African penguin occur (Crawford *et al.* 2000, pp. 1–4). Large quantities of oil came ashore at both islands. South Africa launched a concerted effort to collect and clean oiled birds, to move nonoiled birds away from the region, to collect penguin chicks for artificial rearing, and to clean up oiled areas. Nineteen thousand oiled African penguins were brought for cleaning to the SANCCOB facility. An additional 19,500 penguins were relocated to prevent them from being oiled. In total, 38,500 birds were handled in the context of this major oil spill. The last oil was removed from *Treasure* on July 18, 2000. Two months after the spill, mortality of African penguins from the spill stood at 2,000 adults and immature birds and 4,350 chicks (Crawford *et al.* 2000, p. 9). The Avian Demography Unit (ADU) of the University of Cape Town has undertaken long-term monitoring of penguins released after spill incidents. Response in the *Treasure* spill and success in rehabilitation have shown that response efforts have improved dramatically.

The next most serious spill of the *Apollo Sea,* which occurred in June 1994, released about 2,401 T (2,177 t) of fuel oil near Dassen Island. About 10,000 penguins were contaminated with only 50 percent of these birds successfully de-oiled and put back in the wild. Over the 10 years following this spill, the ADU followed banded released birds to monitor their survival and reproductive histories (Wolfaardt *et al.* 2007, p. 68). They found that success in restoring oiled birds to the point that they attempt to breed after release has steadily improved. The breeding success of restored birds and the growth rates of their chicks, however, are lower than for nonoiled birds. Nevertheless, because adults could be returned successfully to the breeding population, they concluded that de-oiling and reintroduction of adults are effective conservation interventions (Wolfaardt *et al.* 2007, p. 68).

Therefore, we find that immediate and ongoing competition for food resources with fisheries and other species, overall decreases in food abundance, and ongoing severe direct and indirect threat of oil pollution are threats to the African penguin.

African Penguin Finding

The African penguin is presently in a serious, accelerating decline throughout its range, with a 60.5 percent decline over 28 years (three generations). This verified, accelerating, and immediate decline across all areas inhabited by African penguin populations are directly attributable to ongoing threats that are severely impacting the species at this time. Historical threats to terrestrial habitat, such as destruction of nesting areas for guano collection and the threat of direct harvest, have been overtaken by long-term competition for prey from human fisheries beginning in the 1930s. The impact of competition from fisheries is now exacerbated by the increased role of abundant Cape fur seal populations throughout the range in competing for the prey of the African penguin (Crawford 1998, p. 362). In combination, competition with fisheries and fur seals have reduced the carrying capacity of the marine environment for African penguins to 10 to 20 percent of its 1920s value and by themselves represent significant immediate threats to the African penguin throughout all of its range.

Changes in the different portions of the range of the African penguin are adding additional stressors to the overall declines in the prey of African penguins. In Namibia, the fisheries declines in the marine environment are being exacerbated by long-term declines in upwelling intensities and increased sea surface temperatures. These changes have hampered the recovery of sardine and anchovy populations in the region even as fishing pressure on those species has been relaxed, forcing penguins to shift to a less nutritious prey, the pelagic goby. The changes have also forced a regime shift in the Benguela ecosystem to other fish species, which are not the prey of African penguins. The phenomenon of sulfide eruption has further hampered the recovery of the food base.

In the Western Cape, in addition to the severe fisheries declines and severe reduction of the carrying capacity of the marine environment, the primary food source of African penguins has, beginning in 1997, shifted consistently eastward to areas east of the southernmost tip of South Africa. Over the past decade, the primary food base for the most populous African penguin colonies in South Africa has shifted outside the accessible foraging range for those colonies. This shift has led to declines in penguin recruitment and significant decreases in adult survival and represents an additional significant immediate threat to the West Cape populations of the African penguin.

On land, the historical effects of guano removal from penguin breeding islands continue to be felt in lack of predator protection and heat stress in breeding birds. Predation on penguins by Cape fur seals and kelp gulls has become a predominant threat factor. In Namibia, where African penguin numbers are lowest, with only 3,402 pairs, low-lying islands have experienced flooding from increased rainfall and rising sea-levels, threatening 10 percent of the nests in the four major breeding colonies, further stressing a species under severe immediate threat from factors in the marine environment.

Finally, the marine and coastal habitat of the African penguin lies on one of the world's busiest sea lanes. Despite improvements in oil spill response capability and global recognition of the importance of protecting these waters from the impacts of oil, catastrophic and chronic spills have been and continue to be the norm. The most recent catastrophic spill in 2000 in South Africa resulted in the oiling of 19,000 penguins and the translocation of 19,500 more birds in direct danger from the spill. With the global population at a historical low (between 31,000 and 32,000 pairs), future oil spills, which consistent experience shows may occur at any time, pose a significant and immediate threat to the species throughout all of its range.

Conclusion and Determination for the African Penguin

We have carefully assessed the best scientific and commercial information available regarding the threats faced by this species. The African penguin is in serious decline throughout all of its range, and the decline is currently accelerating. This decline is due to threats of a high magnitude—(1) The immediate impacts of a reduced carrying capacity for the African penguin throughout its range due to food base declines and competition for food with Cape fur seals (severely exacerbated by rapid ongoing ecosystem changes in the marine environment at the northern end of the penguin's distribution and by major shifts of prey resources to outside of the accessible foraging range of breeding penguins at the southern end of distribution); (2) the continued threats to African penguins on land throughout their range from habitat modification and destruction, facilitating predation; and (3) the immediate and ongoing threat of oil spills and oil pollution to the African penguin. The severity of these threats to the African penguin within its breeding and foraging range puts the species in danger of extinction. Therefore, we find that the African penguin is in danger of extinction throughout all of its range.

Available Conservation Measures

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

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

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

encourage conservation programs for foreign endangered species and to provide assistance for such programs in the form of personnel and the training of personnel.

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

We may issue permits to carry out otherwise prohibited activities involving endangered and threatened wildlife species under certain circumstances. Regulations governing permits are codified at 50 CFR 17.22 for endangered species, and at 17.32 for threatened species. With regard to endangered wildlife, a permit must be issued for the following purposes: for scientific purposes, to enhance the propagation or survival of the species, and for incidental take in connection with otherwise lawful activities.

Required Determinations

National Environmental Policy Act (NEPA)

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

References Cited

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

Author

The primary author of this final rule is staff of the Branch of Foreign Species, Endangered Species Program, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Arlington, Virginia 22203.

List of Subjects in 50 CFR Part 17

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

Regulation Promulgation

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

PART 17—[AMENDED]

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

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

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

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*	*	
BIRDS							
*	*	*	*	*	*	*	
Penguin, African	*Spheniscus demersus*.	Atlantic Ocean—South Africa, Namibia.	Entire	E	775	NA	NA
*	*	*	*	*	*	*	

* * * * *

Dated: September 9, 2010.

Paul R. Schmidt,

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

[FR Doc. 2010–24338 Filed 9–27–10; 8:45 am]

BILLING CODE 4310–55–P

Proposed Rules

Federal Register

Vol. 75, No. 187

Tuesday, September 28, 2010

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

DEPARTMENT OF ENERGY

10 CFR Part 431

[Docket No. EERE–2010–BT–STD–0027]

RIN 1904–AC28

Energy Efficiency Program for Certain Commercial and Industrial Equipment: Public Meeting and Availability of the Framework Document for Commercial and Industrial Electric Motors

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of public meeting and availability of the framework document.

SUMMARY: The U.S. Department of Energy (DOE) is initiating the rulemaking to amend the energy conservation standards for certain commercial and industrial electric motors under section 342(b) of the Energy Policy and Conservation Act (EPCA). DOE will hold an informal public meeting to discuss and receive comments on its planned analytical approach and the issues it will address during this rulemaking. DOE welcomes written comments from the public on any subject within the scope of this rulemaking. To inform interested parties and to facilitate this process, DOE has prepared a framework document that details the analytical approach that DOE will use and identifies several issues on which DOE is particularly interested in receiving comment. A copy of the framework document is available at: *http://www1.eere.energy.gov/buildings/appliance_standards/commercial/electric_motors.html.* For information on obtaining a copy of the framework document, see the supplementary information section.

DATES: DOE will hold a public meeting on Monday, October 18th, 2010, from 9 a.m. to 4 p.m. in Washington, DC. DOE must receive requests to speak at the public meeting before 4 p.m., Monday, October 4th, 2010. DOE must receive a signed original and an electronic copy of the statement to be given at the public meeting before 4 p.m., Monday, October 11th, 2010. DOE will accept written comments, data, and information regarding the framework document before and after the public meeting, but no later than October 28, 2010.

ADDRESSES: The public meeting will be held at the U.S. Department of Energy, Forrestal Building, Room 8E089, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Please note that foreign nationals planning to participate in the public meeting are subject to advance security screening procedures. If a foreign national wishes to participate in the public meeting, please inform DOE as soon as possible by contacting Ms. Brenda Edwards at (202) 586–2945 so that the necessary procedures can be completed. Additionally, DOE plans to conduct the public meeting via webinar. The registration information and participant instructions will be available on the product Web page.

Interested parties may submit comments, identified by docket number EERE–2010–BT–STD–0027 and/or Regulation Identifier Number (RIN) 1904–AC28, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: ElecMotors-2010-STD-0027@ee.doe.gov.* Include docket number EERE–2010–BT–STD–0027 and/or RIN 1904–AC28 in the subject line of the message.
- *Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, Framework Document for Electric Motors, Docket No. EERE–2010–BT–STD–0027 and/or RIN 1904–AC28, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Please submit one signed paper original. Due to the potential delays in DOE's receipt and processing of mail sent through the U.S. Postal Service, DOE encourages respondents to submit comments electronically to ensure timely receipt.
- *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Suite 600, 950 L'Enfant Plaza, SW., Washington, DC 20024. Please submit one signed paper original.

Docket: For access to the docket to read background documents, a copy of the transcript of the public meeting, or comments received, go to the U.S. Department of Energy, Resource Room of the Building Technologies Program, Sixth Floor, 950 L'Enfant Plaza, SW., Washington, DC 20024, (202) 586–2945, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Please call Ms. Brenda Edwards first at the above telephone number for additional information regarding visiting the Resource Room.

FOR FURTHER INFORMATION CONTACT: Mr. James Raba, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121, (202) 586–8654, e-mail: *Jim.Raba@ee.doe.gov*.

Ms. Ami Grace-Tardy, U.S. Department of Energy, Office of General Counsel, GC–71, 1000 Independence Avenue, SW., Washington, DC 20585–0121, (202) 586–5709, e-mail: *Ami.Grace-Tardy@hq.doe.gov*.

For information on how to submit or review public comments and on how to participate in the public meeting, contact Ms. Brenda Edwards, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121, (202) 586–2945, e-mail: *Brenda.Edwards@ee.doe.gov*.

SUPPLEMENTARY INFORMATION: Part A of the Energy Policy and Conservation Act of (EPCA) established the "Energy Conservation Program for Consumer Products Other Than Automobiles," a program covering most major household appliances. (42 U.S.C. 6291–6309)

Over time, amendments to EPCA have given DOE expanded authority to regulate the energy efficiency of certain commercial and industrial equipment, including the electric motors that are the focus of this notice. Amendments to EPCA in the Energy Policy Act of 1992 (EPACT 1992) (Pub. L. 102–486) prescribed energy conservation standards for certain electric motors. (42 U.S.C. 6313(b)(1))

In addition, section 313 of the Energy Independence and Security Act of 2007 (EISA 2007) (Pub. L. 110–140) amends EPCA by updating the standards established by EPACT 1992. The amendments redefine the term "electric motor" and add energy conservation

standards for the following categories of electric motors: U-Frame, Design C, close-coupled pump, footless, vertical solid shaft normal thrust, 8-pole (900 rpm), and polyphase motors with a voltage of not more than 600 volts (other than 230 or 460 volts). (42 U.S.C. 6311(13))

EPCA also directs DOE to publish a final rule determining whether to amend existing electric motors standards within 24 months of the effective date of the previous final electric motors rule. (42 U.S.C. 6313(b)(4)(B)) The most recent electric motors standards set out in EISA 2007 and codified in the Code of Federal Regulations (CFR) on March 23, 2009, go into effect on December 19, 2010, under section 313(b)(2) of EISA 2007. Therefore, DOE must publish a final rule determining whether to amend the electric motors standards by December 19, 2012. (42 U.S.C. 6313(b)(4)(B)) Any amended standards established pursuant to this rulemaking would apply to products manufactured five years or more after the effective date of the previous electric motors standard. (42 U.S.C. 6313(b)(4)(B)(i)) Any amended standards that result from this rulemaking process, therefore, would have a compliance date of December 19, 2015. (42 U.S.C. 6313(b)(4)(B)) DOE is, therefore, beginning a rulemaking process to consider further amending these standards with a framework document for electric motors describing the procedural and analytical approaches DOE anticipates using in its evaluation.

The focus of the public meeting noted above will be to discuss the analyses presented and issues identified in the framework document. At the public meeting, DOE will make a number of presentations, invite discussion on the rulemaking process as it applies to electric motors, and solicit comments, data, and information from participants and other interested parties. DOE encourages those who wish to participate in the public meeting to obtain the framework document and to be prepared to discuss its contents. A copy of the draft framework document is available at: *http://www1.eere.energy.gov/buildings/appliance_standards/commercial/electric_motors.html.*

Public meeting participants need not limit their comments to the issues identified in the framework document. DOE is also interested in comments on other relevant issues that participants believe would affect energy conservation standards for this equipment, applicable test procedures, or the preliminary determination on the scope of coverage. DOE invites all interested parties, whether or not they participate in the public meeting, to submit comments and information on matters addressed in the framework document and on other matters relevant to DOE's consideration of amended standards for electric motors in writing by October 28, 2010.

The public meeting will be conducted in an informal, facilitated, conference style. There shall be no discussion of proprietary information, costs or prices, market shares, or other commercial matters regulated by U.S. antitrust laws. A court reporter will record the proceedings of the public meeting, after which a transcript will be available on the DOE Web site at: *http://www1.eere.energy.gov/buildings/appliance_standards/commercial/electric_motors.html* and for purchase from the court reporter.

After the public meeting and the close of the comment period on the framework document, DOE will begin conducting the analyses discussed in the framework document and reviewing the public comments received.

DOE considers public participation to be a very important part of the process for setting energy conservation standards. DOE actively encourages the participation and interaction of the public during the comment period in each stage of the rulemaking process. Beginning with the framework document, and during each subsequent public meeting and comment period, interactions with and between members of the public provide a balanced discussion of the issues to assist DOE in the standards rulemaking process. Accordingly, anyone who wishes to participate in the public meeting, receive meeting materials, or be added to the DOE mailing list to receive future notices and information about this rulemaking should contact Ms. Brenda Edwards at (202) 586–2945, or via e-mail at *Brenda.Edwards@ee.doe.gov.*

Issued in Washington, DC, on September 16, 2010.

Cathy Zoi,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 2010–24288 Filed 9–27–10; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0948; Directorate Identifier 2010–CE–041–AD]

RIN 2120–AA64

Airworthiness Directives; SOCATA Model TBM 700 Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for the products listed above that would supersede an existing AD. 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:

> Following the rupture of an alternator and vapour cycle cooling system pulley drive assembly, the AD 2008–0067–E was published to require the replacement of the pulley drive assembly by a new one of an improved design.
>
> Later on, cases of rupture of the alternator and vapour cycle cooling system compressor drive shaft and of cracks on the standby-alternator and compressor support were reportedly found.
>
> Such failures could lead to the loss of the alternator and of the vapour cycle cooling systems, and could also cause mechanical damage inside the power plant compartment.
>
> To address this condition, the AD 2008–0129–E superseded AD 2008–0067–E and mandates the removal, as a temporary measure, of the compressor drive belt and of the torque limiter, the conditional replacement of the pulley drive shear shaft, and repetitive inspections for cracks of the pulley drive assembly and of the alternator/compressor support.

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 November 12, 2010.

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

- *Federal eRulemaking Portal: Go to http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

• *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Albert Mercado, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4119; fax: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2010–0948; Directorate Identifier 2010–CE–041–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://regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

On September 8, 2008, we issued AD 2008–19–06, Amendment 39–15673 (73 FR 54067; September 18, 2008). That AD required actions intended to address an unsafe condition on the products listed above.

Since we issued AD 2008–19–06, a terminating action has been developed through installation of newly designed alternator/compressor support and pulley drive assemblies.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA AD No.: 2010–0130, dated June 29, 2010, to correct an unsafe condition for the specified products. The MCAI states:

> Following the rupture of an alternator and vapour cycle cooling system pulley drive assembly, the AD 2008–0067–E was published to require the replacement of the pulley drive assembly by a new one of an improved design.
>
> Later on, cases of rupture of the alternator and vapour cycle cooling system compressor drive shaft and of cracks on the standby-alternator and compressor support were reportedly found.
>
> Such failures could lead to the loss of the alternator and of the vapour cycle cooling systems, and could also cause mechanical damage inside the power plant compartment.
>
> To address this condition, the AD 2008–0129–E superseded AD 2008–0067–E and mandates the removal, as a temporary measure, of the compressor drive belt and of the torque limiter, the conditional replacement of the pulley drive shear shaft, and repetitive inspections for cracks of the pulley drive assembly and of the alternator/compressor support.
>
> Revision 1 of the AD 2008–0129–E introduced an alternative temporary solution with the aim to restore the capability to make use of the air conditioning system. This solution consists in replacing the original pulley drive assembly by a time-limited assembly of a new design, corresponding to the SOCATA modification MOD 70–0240–21.
>
> A definitive solution has been released to production aeroplanes by implementation of SOCATA modification MOD 70–0243–21 or Service Bulleting (SB) 70–176–21 for in-service aeroplanes.
>
> This AD which supersedes EASA AD 2008–0129R1–E retaining its requirements, limits the AD applicability and requires accomplishment of the terminating action.

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

Relevant Service Information

SOCATA has issued SB 70–176, Amendment 1, dated February 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 the 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 this State of Design Authority, they have notified us of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all information and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

Differences Between This Proposed 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

We estimate that this proposed AD will affect 66 products of U.S. registry. We also estimate that it would take about 8 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 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 $44,880, or $680 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:g

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 removing Amendment 39–15673 (73 FR 54067; September 18, 2008), and adding the following new AD:

SOCATA: Docket No. FAA–2010–0948; Directorate Identifier 2010–CE–041–AD.

Comments Due Date

(a) We must receive comments by November 12, 2010.

Affected ADs

(b) This AD supersedes AD 2008–19–06, Amendment 39–15673.

Applicability

(c) This AD applies to SOCATA TBM 700 airplanes, serial numbers (S/Ns) 434 through 509, 511 through 516, 519, 520, and 522 through 525, certificated in any category.

Subject

(d) Air Transport Association of America (ATA) Code 21: Air Conditioning.

Reason

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

Following the rupture of an alternator and vapour cycle cooling system pulley drive assembly, the AD 2008–0067–E was published to require the replacement of the pulley drive assembly by a new one of an improved design.

Later on, cases of rupture of the alternator and vapour cycle cooling system compressor drive shaft and of cracks on the standby-alternator and compressor support were reportedly found.

Such failures could lead to the loss of the alternator and of the vapour cycle cooling systems, and could also cause mechanical damage inside the power plant compartment.

To address this condition, the AD 2008–0129–E superseded AD 2008–0067–E and mandates the removal, as a temporary measure, of the compressor drive belt and of the torque limiter, the conditional replacement of the pulley drive shear shaft, and repetitive inspections for cracks of the pulley drive assembly and of the alternator/compressor support.

Revision 1 of the AD 2008–0129–E introduced an alternative temporary solution with the aim to restore the capability to make use of the air conditioning system. This solution consists in replacing the original pulley drive assembly by a time-limited assembly of a new design, corresponding to the SOCATA modification MOD 70–0240–21.

A definitive solution has been released to production aeroplanes by implementation of SOCATA modification MOD 70–0243–21 or Service Bulleting (SB) 70–176–21 for in-service aeroplanes.

This AD which supersedes EASA AD 2008–0129R1–E retaining its requirements, limits the AD applicability and requires accomplishment of the terminating action.

Actions and Compliance

(f) For airplanes S/Ns 434 through 459 only, unless already done, before further flight as of September 18, 2008 (the effective date of AD 2008–19–06), do the following actions following EADS SOCATA Mandatory TBM Aircraft Alert Service Bulletin SB 70–161, amendment 2, dated July 2008:

(1) Remove the pulley drive assembly, the torque limiter, the compressor drive belt, and the alternator/compressor support.

(2) Inspect for cracks on the pulley drive surfaces and the alternator/compressor support welds.

(i) If any crack is detected, before further flight, replace the pulley drive assembly following the accomplishment instructions in SOCATA Mandatory TBM Aircraft Service Bulletin SB 70–176, amendment 1, dated February 2010.

(ii) Replacement of the assembly incorporates replacement of the pulley drive sheer shaft required by paragraph (f)(3) of this AD for airplanes with 30 hours time-in-service (TIS) or more with the torque limiter installed on the pulley drive shear shaft.

(3) Replace any pulley drive shear shaft that has accumulated 30 hours TIS or more with the torque limiter installed. This action is not required if you replaced the whole assembly per paragraph (f)(2)(i) of this AD.

(4) Re-install the pulley drive assembly and the alternator/compressor support, without re-installing the compressor drive belt or the torque limiter.

(5) Insert EADS SOCATA SB 70–161, amendment 2, dated June 2008, in the limitations section of the pilot's operating handbook and install on the instrument panel and in the pilot's primary field of vision a placard with the following text:

"AIR COND" INOPERATIVE

RECOMMENDED "AIR COND" SWITCH POSITION: "MANUAL"

and insert EADS SOCATA SB 70–161–21, amendment 2, dated June 2008, in the limitations section of the pilot's operating handbook.

(g) For all S/N airplanes;

(1) Within 100 hours TIS after September 18, 2008 (the effective date of AD 2008–19–06), and repetitively thereafter at intervals not to exceed 100 hours TIS, inspect for cracks on the pulley drive surfaces and the alternator/compressor support welds, following EADS SOCATA Mandatory TBM Aircraft Alert Service Bulletin SB 70–161, amendment 2, dated July 2008.

(i) For airplanes S/Ns 434 through 459, the inspection required in paragraph (f)(2) of this AD is considered the initial inspection required in paragraph (g)(1) of this AD.

(ii) For accomplishment of the repetitive inspections required by paragraph (g)(1) of this AD, paragraph C.2 of the accomplishment instructions of EADS SOCATA Mandatory TBM Aircraft Alert Service Bulletin SB 70–161, amendment 2, dated July 2008, does not apply since the torque limiter has already been removed.

(2) If cracks are found during any of the inspections required in paragraph (g)(1) of this AD, before further flight, replace the assembly following SOCATA Mandatory TBM Aircraft Service Bulletin SB 70–176, amendment 1, dated February 2010.

(h) At the next annual inspection or within 5 months after the effective date of this AD, whichever occurs first, replace the alternator/compressor support and pulley drive assemblies with P/N T700G215500700100 (alternator/compressor support) and P/N T700G215513500000 (Pulley drive assembly), following the accomplishment instructions of SOCATA SB 70–176, amendment 1, dated February 2010.

(1) After the effective date of this AD, do not install alternator/compressor support P/N T700G215500700000 and a pulley drive assembly P/N T700G215510000000.

(2) Accomplishment of corrective actions as required by paragraph (f)(2)(i), paragraph (g)(2), or paragraph (h) of this AD terminates the actions required in paragraphs (f) and (g) of this AD.

Note 2: SOCATA SB 70–161–21 amendment 4, dated October 2009, has been published by SOCATA in order to close the range of airplane S/Ns concerned by temporary actions.

FAA AD Differences

Note 3: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

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

(1) Alternative Methods of Compliance (AMOCs): The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Albert Mercado, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4119; fax: (816) 329–4090. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

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

Special Flight Permit

(j) We are allowing permission to ferry an airplane to a maintenance location to accomplish actions required by paragraph (1) of this AD provided that the air conditioning is switched off during the entire flight duration.

Related Information

(k) Refer to MCAI EASA AD No.: 2010–0130, dated June 29, 2010; and SOCATA Service Bulletin SB 70–176, amendment 1, dated February 2010, for related information.

Issued in Kansas City, Missouri, on September 22, 2010.

Patrick R. Mullen,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–24248 Filed 9–27–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 187

[Docket No. FAA–2010–0326; Notice No. 10–12]

RIN 2120–AJ68

Update of Overflight Fees

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This NPRM proposes to adjust existing Overflight Fees by using current FAA cost accounting data and air traffic activity data. This action is necessary because operational costs for providing air traffic control and related services for Overflights have increased steadily since the fees were established in 2001. The adjustment of Overflight Fees would result in an increased level of cost recovery for the services being provided.

DATES: Send your comments on or before December 27, 2010.

ADDRESSES: You may send comments identified by Docket Number FAA–2010–0326 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations 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.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

For more information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

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 electronic form of all 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) or you may visit *http://DocketsInfo.dot.gov.*

Docket: To read background documents or comments received, go to *http://www.regulations.gov* at any time and follow the online instructions for accessing the docket, or, go to Docket Operations 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: For technical questions concerning this proposed rule contact David Lawhead, Office of Financial Controls, Financial Analysis Division (AFC 300), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–9759 facsimile (202) 267–5271, e-mail to *Dave.Lawhead@FAA.gov.* For legal questions concerning this proposed rule contact Michael Chase, AGC–240, Office of Chief Counsel, Regulations Division, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–3110; e-mail to *michael.chase@faa.gov.*

SUPPLEMENTARY INFORMATION: Later in this preamble under the Additional Information section, we discuss how you can comment on this proposal and how we will handle your comments. Included in this discussion is related information about the docket, privacy, and the handling of proprietary or confidential business information. We also discuss how you can get a copy of related rulemaking documents.

Authority for This Rulemaking

The FAA's authority to establish these fees is found in Title 49 of the United States Code. This rulemaking is promulgated under the authority described in Chapter 453, Section 45301 *et seq.* Under that Chapter, the FAA is charged with prescribing regulations for the collection of fees for air traffic control and related services provided to aircraft, other than military and civilian aircraft of the United States government or a foreign government, that transit U.S.-controlled airspace, but neither take off from nor land in the United States ("Overflights"). This proposed regulation is within the scope of that authority.

I. Background

The FAA's Overflight Fees were initially authorized in the Federal Aviation Reauthorization Act of 1996 (Pub. L. 104–264, enacted October 9, 1996). Overflight Fees are charges for aircraft flights that transit U.S.-controlled airspace, but neither land in nor depart from the United States. Following enactment of the initial fee authority, and as mandated by that authority, the FAA issued an Interim Final Rule (IFR), "Fees for Air Traffic Services for Certain Flights through U.S. Controlled Airspace" (62 FR 13496), on March 20, 1997. Under the terms of the IFR, the FAA sought public comment on the IFR while concurrently beginning to assess Overflight Fees 60 days after its publication, on May 19, 1997.

On July 17, 1997, petitions for judicial review of the IFR were filed in the U.S.

Court of Appeals for the District of Columbia (the Court) by the Air Transport Association of Canada (ATAC) and seven foreign air carriers. Those petitions were consolidated into a single case (*Asiana Airlines* v. *FAA,* 134 F.3d 393 (D.C. Cir. 1998)). The litigation proceeded throughout the remainder of 1997 while the FAA continued to collect fees pursuant to the statute.

On January 30, 1998, the Court issued a decision, upholding the FAA on three process and procedure issues, but vacating the Rule because the Court found that the methodology the FAA used to allocate costs did not conform to the statute. The FAA immediately suspended billing operations, and eventually refunded nearly $40 million in fees that had then been collected.

Although the 1997 IFR (62 FR 13496) had been set aside by the Court, the statutory requirement that the FAA establish Overflight Fees through an IFR remained in effect. One of the principal criticisms the FAA had received from the public commenters on its 1997 IFR concerned the quality of the cost information upon which the Overflight Fees were based. The FAA had already begun developing a new Cost Accounting System (CAS) in 1996. Early data from the new CAS was becoming available in 1998. Thus, when the FAA decided, following the initial litigation, to issue a new IFR, a key element of that decision was that the fees would be derived from cost data from the new CAS.

A new IFR was published in the **Federal Register** on June 6, 2000 (65 FR 36002), with fees scheduled to go into effect on August 1, 2000. This new IFR was challenged in court by the ATAC and a slightly different group of seven foreign air carriers. The FAA began assessing and collecting the new Overflight Fees as scheduled on August 1, 2000, while public comments were still being received by the FAA on its second IFR. The litigation proceeded concurrently, with oral arguments held on May 14, 2001.

On July 13, 2001, the Court again vacated the FAA's IFR, this time because the Court believed the FAA had failed to explain a key assumption in its costing methodology. (*Air Transport Association of Canada* v. *FAA;* 00–1344, July 13, 2001). Under the Court's order, there were 45 days before the IFR was to be vacated. As noted above, the FAA had solicited public comment on the IFR at the time it was published. The FAA had received many comments on the several issues raised in the litigation. At the time the Court's decision was issued, the FAA was nearing completion of a Final Rule that would address these issues in the disposition of public comments section of its preamble.

The FAA therefore proceeded on two fronts. It successfully petitioned the Court not to vacate the IFR while it proceeded concurrently with issuance of the Final Rule ("Fees for FAA Services for Certain Flights," 66 FR 43680) on August 20, 2001, with revised fees effective immediately. In addition to addressing the public comments received on the IFR, the Final Rule reduced fees by about 15 percent due to adjustments in the original cost data. A new challenge to the revised fees was brought after the issuance of the Final Rule by ATAC and the same group of air carriers. The two cases, one challenging the IFR (65 FR 36002) issued in 2000 and the other challenging the Final Rule (66 FR 43680) issued in 2001, were combined by the Court into a single case.

While the litigation was still pending, on November 19, 2001, Congress enacted the Aviation and Transportation Security Act (ATSA), which included a provision that amended the Overflight Fee authorization (1) To require that the fees be "reasonably" (rather than "directly") related to costs, (2) to clarify that the Administrator has sole authority to determine the costs upon which the fees are based, and (3) to state explicitly that such cost determinations by the Administrator are not subject to judicial review. Meanwhile, the litigation proceeded into 2003, with the FAA continuing to collect the fees as required by statute.

On April 8, 2003, the Court issued a decision setting aside the Final Rule and remanding it back to the FAA, finding that the agency had not adequately explained its handling of controller labor costs in deriving the fees. *Air Transport Association of Canada* v. *FAA,* 323 F.3d 1093 (D.C. Cir. 2003). The Court also found that the Overflight Fees amendments in the ATSA statute were inapplicable because of a generic "savings" provision in the ATSA legislation that stated that nothing enacted in ATSA was applicable to any litigation ongoing prior to the date of enactment of ATSA. Fee collections were immediately suspended.

On December 12, 2003, Congress enacted VISION 100—CENTURY OF AVIATION REAUTHORIZATION ACT, (Vision 100). Section 229 of that Act explicitly "adopted, legalized, and confirmed" both the IFR published in 2000 and the Final Rule published in 2001. In addition, the FAA was directed to hold a consultation meeting with users (those who pay the Overflight Fees to the FAA) and to submit a report to Congress addressing the issues that had been in dispute in the litigation before resuming the billing and collection of the Overflight Fees.

Because there were ambiguous and potentially conflicting provisions in Vision 100 concerning Overflight Fees, the Administrator issued an Order on July 21, 2004, that set forth her interpretation of the language of the statute and, based on that interpretation, made determinations as to the ultimate disposition of Overflight Fees collected by the FAA under both the 2000 IFR and the 2001 Final Rule. The FAA retained a portion of the funds collected under the Final Rule, while either refunding or providing credits to the airlines for all of the fees collected under the IFR and a portion of the fees collected under the Final Rule. A copy of that Order, "Order Directing the Disposition of Certain Fees Collected by the Federal Aviation Administration Pursuant to 49 U.S.C. Section 45301," has been placed in the docket.

The FAA met with users in September 2004 and submitted a report to Congress at the same time, as mandated by the Vision 100 statute. This cleared the way for the FAA to resume the billing and collection of Overflight Fees. In most cases, amounts previously collected by the FAA under the IFR and under the Final Rule up until the date of the ATSA enactment were provided as credits to frequent payers. These amounts were, in most cases, roughly offset by amounts owed by the carriers and other users for the one-year period from March 2003 through February 2004. The carriers had not been billed for this period while the litigation was ongoing, but were ultimately determined by the Administrator to be liable for those fees.

Since that time, the FAA has followed the normal process of issuing monthly bills for the services provided to Overflights. The fees currently being charged were derived from cost and activity data for FY 1999. This NPRM proposes to update the existing fees by using cost and activity data for FY 2008 to derive the fees. The cost methodology applied in this NPRM is applied in the same manner as in 2001, except that overhead has been included in the cost base for the fees this time as a direct result of the ATSA amendment that changed the previous statutory requirement that fees be "directly" related to costs to a less stringent requirement that the fees be "reasonably" related to costs.

The FAA's CAS has been evolving and improving over time. The CAS has always relied on the best available data,

and as new systems and techniques have evolved, the quality and accuracy of the data has improved. There are areas, such as the reporting of labor costs, where costs were allocated or assigned in the past based on estimates, but today are determined by actual data. This is not a difference in how the data is gathered, but rather an improvement in the quality and accuracy of the basic data. A detailed explanation of how the CAS data was assembled can be found in the "Costing Methodology Report, FY 2008," which has been placed in the docket for this rulemaking.

Overflight Fees Aviation Rulemaking Committees (ARC)

In 2004, the FAA established an Overflight Fees ARC. That Committee held two meetings in early 2005, but never issued a report or made a recommendation to the FAA before its Charter expired. Subsequently, on December 17, 2008, the FAA issued a new Charter for an Overflight Fees ARC to advise and make recommendations to the FAA on the updating of its Overflight Fees. The Overflight Fees ARC met several times in 2009 and issued its report and recommendations to the FAA on August 26, 2009. A copy of this report has been placed in the docket. The report contains three principal recommendations:

1. That the FAA pursue the updating of its Overflight Fees through the normal notice and comment type of rulemaking, rather than through the interim final rule process previously mandated by Congress;
2. That, in updating the fees, the FAA abide by the policies of the International Civil Aviation Organization (ICAO), whereby the principle of gradualism is applied so that any substantial fee increase (as in this case where a 9-year update is involved) is spread over several years; and
3. That, in this instance, the specific increases be accomplished over 4 increments, on October 1st of each year from 2011 through 2014, with annual increases of 14% for Enroute and 8% for Oceanic.

The FAA believes that the ARC recommendations are a reasonable approach to move forward on a consensus basis to update its Overflight Fees. This NPRM proposes to implement the recommendations of the ARC. It should be noted that the annual increases recommended by the ARC (14% for the Enroute fee and 8% for the Oceanic fee) were derived from information presented to the ARC by the FAA. The FAA had shown the ARC that, in order for the FAA to approach the cost recovery called for by Federal policy guidance on user fees, based on actual cost and activity data for FY 2008, fee increases of approximately 69% and 36%, respectively, for Enroute and Oceanic, would be necessary. Spreading this increase over 4 years produces the recommended levels of 14% per year, compounded, for Enroute and 8% per year, compounded, for Oceanic.

The actual dollar amounts of each fee as of each of the four October 1st fee revision dates would be as follows:

Time period	Enroute (per 100 nautical miles)	Oceanic (per 100 nautical miles)
October 1, 2011	$38.44	$17.22
October 1, 2012	43.82	18.60
October 1, 2013	49.95	20.09
October 1, 2014	56.86	21.63

II. Discussion of the Proposal

The proposed rule would update the FAA's existing Overflight Fees, which are presently based on Fiscal Year (FY) 1999 cost and activity data. The fees have not been updated since they were initially established on August 20, 2001.

The current fees are derived arithmetically from final FAA CAS data for FY 1999 and from the Enhanced Traffic Management System (ETMS) data for the same year. The updated fees would be derived using basically the same methodology as in 2001, but would be derived from final, audited CAS data and ETMS data for FY 2008. The only difference would be that the updated fees would include overhead in the cost base. Overhead originally was excluded from the cost base for the existing fees, but would be included in the derivation of the updated fees as the result of the previously discussed change in the applicable statutory authority (changing the requirement that fees be "directly" related to costs to a requirement that the fees be "reasonably" related to costs).

Separate overflight fees have been established, and are currently in effect, for flights that transit U.S.-controlled airspace in each of two operational environments—Enroute and Oceanic—without either taking off from or landing in the United States. The updated Enroute fee would be derived by taking (from CAS) the total costs incurred in the Enroute environment in FY 2008 and dividing that number by the number of miles flown in U.S.-controlled Enroute airspace in FY 2008. This would produce a per-mile cost that would be levied as a charge per 100 nautical miles flown, using Great Circle Distance (GCD), from point of entry into, to point of exit from, U.S.-controlled airspace. The separate Oceanic fee is determined in precisely the same manner, by dividing total Oceanic costs for FY 2008 by the total number of Oceanic miles flown in FY 2008. The actual step-by-step derivation of these fees, using actual numbers for FY 2008, is shown in the "Overflight Fee Development Report" which is included in the docket for this rulemaking.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. The FAA has determined that there would be no new requirement for information collection associated with this proposed rule. The FAA information used to track and bill overflights (including the information collection necessary to implement this proposal) is accessed from flight plans filed with the FAA. The collection of Domestic and International Flight Plans is approved under OMB collection Control # 2120–0026. The FAA seeks comment on whether a revision to this information collection would be necessary as a result of this proposal.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the

maximum extent practicable. The FAA has reviewed the corresponding ICAO Standards and Recommended Practices and has identified no differences with these proposed regulations.

III. Regulatory Evaluation, Regulatory Flexibility Determination, and Unfunded Mandates Assessment

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (Pub. L. 96–354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation with base year of 1995). This portion of the preamble summarizes the FAA's analysis of the economic impacts of this proposed rule.

Department of Transportation Order DOT 2100.5 prescribes policies and procedures for simplification, analysis, and review of regulations. If the expected cost impact is so minimal that a proposed or final rule does not warrant a full evaluation, this order permits that a statement to that effect and the basis for it to be included in the preamble if a full regulatory evaluation of the cost and benefits is not prepared. Such a determination has been made for this proposed rule. The reasoning for this determination follows:

Benefit

The benefit of this proposed rule would be that the overflight fees will be more closely related to the actual costs of providing FAA's services for these flights.

Costs

Taxes and government fees are a transfer payment, and, by OMB directive, transfers are not considered a societal cost. Therefore, this rule imposes no costs. We do provide an estimate of the transfers. There would be a 4-year phase-in of fees with yearly increases (14% Enroute and 8% Oceanic). Increases would begin in 2011 and end in 2014. We have determined that approximately 80% of Overflight Fees for domestic operators would be Enroute and 20% would be Oceanic. (See Table 1.)

Most of the transfers from this proposed rule would be borne by foreign operators. The estimated transfers from foreign operators to the FAA are about $73 million ($52 million, present value). (See Table 2.)

Using the preceding information, the FAA estimates that the total transfers resulting from this proposed rule from U.S. entities to the FAA over 5 years would be about $1.1 million ($0.8 million, present value). Again, government fees and taxes are considered transfers and not societal costs, so this proposed rule does not increase society's costs.

Table 1. Domestic Operators' Overflight Fees

Oceanic	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015	FY 2011-2015
Current Fees (20%)	$152,612	$152,612	$152,612	$152,612	$152,612	$763,059
Proposal	$152,612	$164,821	$178,006	$192,247	$207,627	$895,312
Incremental Transfer	$0	$12,209	$25,395	$39,635	$55,015	$132,254
EnRoute	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015	FY 2011-2015
Current Fees (80%)	$610,447	$610,447	$610,447	$610,447	$610,447	$3,052,236
Proposal	$610,447	$695,910	$793,337	$904,404	$1,031,021	$4,035,119
Incremental Transfer	$0	$85,463	$182,890	$293,957	$420,574	$982,883
Total Incremental Transfers	$0	$97,672	$208,285	$333,592	$475,589	$1,115,137
PV Transfers	$0	$79,729	$158,899	$237,847	$316,905	$793,380

Table 2. Foreign Operators' Overflight Fees

Oceanic	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015	FY 2011-2015
Current Fees	$21,640,240	$21,640,240	$21,640,240	$21,640,240	$21,640,240	$108,201,200
Proposal	$21,640,240	$23,371,459	$25,241,176	$27,260,470	$29,441,308	$126,954,653
Incremental Transfer	$0	$1,731,219	$3,600,936	$5,620,230	$7,801,068	$18,753,453
EnRoute	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015	FY 2011-2015
Current Fees	$33,784,067	$33,784,067	$33,784,067	$33,784,067	$33,784,067	$168,920,335
Proposal	$33,784,067	$38,513,836	$43,905,773	$50,052,582	$57,059,943	$223,316,202
Incremental Transfer	$0	$4,729,769	$10,121,706	$16,268,515	$23,275,876	$54,395,867
Total Incremental Transfers	$0	$6,460,989	$13,722,642	$21,888,745	$31,076,944	$73,149,320
PV Transfers	$0	$5,274,091	$10,468,938	$15,606,373	$20,707,880	$52,057,282

The FAA has, therefore, determined that this proposed rule is not an economically "significant regulatory action", but is a "significant regulatory action" for other reasons as defined in section 3(f) of Executive Order 12866

and is "significant" as defined in DOT's Regulatory Policies and Procedures.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation." To achieve that principle, the RFA requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the Act.

The FAA ranked in descending order all domestic entities based on their Overflight Fees. Then we identified 5 small entities having publicly-available financial information (using a size standard of 1,500 or fewer employees) in the top 20 percent of the ranking. We retrieved their annual revenue from World Aviation Directory and compared it to their annualized compliance costs. Of these 5 entities, all of them have annualized compliance costs as a percentage of annual revenues lower than 0.1 percent. We believe this economic impact is not significant. Consequently, the FAA certifies that the proposed rule would not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (in 1995 dollars) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a "significant regulatory action." The FAA currently uses an inflation-adjusted value of $143.1 million in lieu of $100 million. This proposed rule does not contain such a mandate; therefore, the requirements of Title II of the Act do not apply.

Executive Order 13132, Federalism

The FAA has analyzed this proposed rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action 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, and, therefore, would not have federalism implications.

Environmental Analysis

FAA Order 1050.1E identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances. The FAA has determined this proposed rulemaking action qualifies for the categorical exclusion identified in paragraph 312d and involves no extraordinary circumstances.

Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA has analyzed this NPRM under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). We have determined that it is not a "significant regulatory action" under the executive order because, while it is a "significant regulatory action" under DOT's Regulatory Policies and Procedures, it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

Plain English

Executive Order 12866 (58 FR 51735, Oct. 4, 1993) requires each agency to write regulations that are simple and easy to understand. We invite your comments on how to make these proposed regulations easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed regulations clearly stated?
- Do the proposed regulations contain unnecessary technical language or jargon that interferes with their clarity?
- Would the regulations be easier to understand if they were divided into more (but shorter) sections?
- Is the description in the preamble helpful in understanding the proposed regulations?

Please send your comments to the address specified in the Addresses section of this preamble.

Additional Information

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, please send only one copy of written comments, or if you are filing comments electronically, please submit your comments only one time.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, we will consider all comments we receive on or before the closing date for comments. We will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. We may change this proposal in light of the comments we receive.

Proprietary or Confidential Business Information

Do not file in the docket information that you consider to be proprietary or confidential business information. Send or deliver this information directly to the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this document. You must mark the information that you consider proprietary or confidential. If you send the information on a disk or CD–ROM, mark the outside of the disk or CD–ROM and also identify electronically within the disk or CD–ROM the specific information that is proprietary or confidential.

Under 14 CFR 11.35(b), when we are aware of proprietary information filed with a comment, we do not place it in the docket. We hold it in a separate file to which the public does not have access, and we place a note in the docket that we have received it. If we receive a request to examine or copy this information, we treat it as any other request under the Freedom of Information Act (5 U.S.C. 552). We process such a request under the DOT procedures found in 49 CFR part 7.

Availability of Rulemaking Documents

You can get an electronic copy of rulemaking documents using the Internet by—

1. Searching the Federal eRulemaking Portal (*http://www.regulations.gov*);

2. Visiting the FAA's Regulations and Policies Web page at *http://www.faa.gov/regulations_policies;* or

3. Accessing the Government Printing Office's Web page at *http://www.gpoaccess.gov/fr/index.html.*

You can also get a copy by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the docket number or notice number of this rulemaking.

You may access all documents the FAA considered in developing this proposed rule, including economic analyses and technical reports, from the Internet through the Federal eRulemaking Portal referenced in paragraph (1).

List of Subjects in 14 CFR Part 187

Administrative practice and procedure, Air transportation.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend Chapter I of Title 14, Code of Federal Regulations, as follows:

PART 187—FEES

1. The authority citation for part 187 continues to read as follows:

Authority: 31 U.S.C. 9701, 49 U.S.C. 106(g), 49 U.S.C. 106(l)((6), 40104–401–5, 40109, 40113–40114, 44702.

2. In part 187, Appendix B is amended by revising paragraph (e)(2) to read as follows:

Appendix B to Part 187—Fees for FAA Services for Certain Flights

* * * * *

(e) * * *

(2) A User (operator of an Overflight) is assessed a fee for each 100 nautical miles (or portion thereof) flown in each segment and type of U.S.-controlled airspace. Separate calculations are made for transiting Enroute and Oceanic airspace. The total fee charged for an Overflight between any entry and exit point is equal to the sum of these two charges. This relationship is summarized as: $R_{ij} = X*DE_{ij} + Y*DO_{ij}$,

Where:

Rij = the fee charged to aircraft flying between entry point i and exit point j,

DE_{ij} = total great circle distance traveled in each segment of U.S.-controlled Enroute airspace expressed in hundreds of nautical miles for aircraft flying between entry point i and exit point j for each segment of Enroute airspace.

DO_{ij} = total great circle distance traveled in each segment of U.S.-controlled Oceanic airspace expressed in hundreds of nautical miles for aircraft flying between entry point i and exit point j for each segment of Oceanic airspace.

X and Y = the values respectively set forth in the following schedule:

Time period	X (Enroute)	Y (Oceanic)
Through September 30, 2011	$33.72	$15.94
October 1, 2011 through September 30, 2012	38.44	17.22
October 1, 2012 through September 30, 2013	43.82	18.60
October 1, 2013 through September 30, 2014	49.95	20.09
October 1, 2014 and beyond	56.86	21.63

* * * * *

Issued in Washington, DC, on September 22, 2010.

Carl W. Burrus,

Director, Office of Financial Controls.

[FR Doc. 2010–24342 Filed 9–27–10; 8:45 am]

BILLING CODE 4910–13–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 35

Agricultural Swaps

AGENCY: Commodity Futures Trading Commission.

ACTION: Advanced notice of proposed rulemaking and request for comment.

SUMMARY: The Commodity Futures Trading Commission ("Commission" or "CFTC") is charged with proposing rules to implement new statutory provisions enacted by Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act"). Section 723(c)(3) of the Dodd-Frank Act provides that swaps in an "agricultural commodity" (as defined by the Commission) are prohibited unless entered into pursuant to a rule, regulation or order of the Commission adopted pursuant to section 4(c) of the Commodity Exchange Act ("CEA" or "Act"). This advance notice of proposed rulemaking ("ANPRM") requests comment on the appropriate conditions, restrictions or protections to be included in any such rule, regulation or order governing the trading of agricultural swaps.

DATES: Comments must be received on or before October 28, 2010. The Commission is not inclined to grant extensions of this comment period.

ADDRESSES: You may submit comments, identified with "Agricultural Swaps ANPRM" in the subject line, by any of the following methods:

- *E-mail for comments: agswapsANPR@cftc.gov.*
- *Mail:* David A. Stawick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.
- *Hand Delivery/Courier:* Same as mail above.

All comments must be submitted in English, or if not, accompanied by an English translation. All comments provided in any electronic form or on paper will be published on the CFTC Web site, without review and without removal of personally identifying information. All comments are subject to the CFTC privacy policy.

FOR FURTHER INFORMATION CONTACT: Donald Heitman, Senior Special Counsel, (202) 418–5041, *dheitman@cftc.gov,* or Ryne Miller, Attorney Advisor, (202) 418–5921, *rmiller@cftc.gov,* Division of Market Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.

SUPPLEMENTARY INFORMATION:

I. Background

On July 21, 2010, President Obama signed the Dodd-Frank Wall Street Reform and Consumer Protection Act.[1] Title VII of the Dodd-Frank Act [2] amended the CEA[3] to establish a comprehensive new regulatory framework for swaps and security-based

[1] *See* Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (2010). The text of the Dodd-Frank Act may be accessed at *http://www.cftc.gov./LawRegulation/OTCDERIVATIVES/index.htm.*

[2] Pursuant to § 701 of the Dodd-Frank Act, Title VII may be cited as the "Wall Street Transparency and Accountability Act of 2010."

[3] 7 U.S.C. 1 *et seq.*

swaps. The legislation was enacted to reduce risk, increase transparency, and promote market integrity within the financial system by, among other things: (1) Providing for the registration and comprehensive regulation of swap dealers and major swap participants; (2) imposing clearing and trade execution requirements on standardized derivative products; (3) creating robust recordkeeping and real-time reporting regimes; and (4) enhancing the Commission's rulemaking and enforcement authorities with respect to, among others, all registered entities and intermediaries subject to the Commission's oversight.

Section 723(c)(3) of the Dodd-Frank Act provides that swaps in an "agricultural commodity" (as defined by the Commission) are prohibited unless entered into pursuant to a rule, regulation or order of the Commission adopted pursuant to § 4(c) of the Commodity Exchange Act. This ANPRM reviews the current statutory and regulatory framework governing agricultural swaps, as well as the Dodd-Frank Act provisions applicable to agricultural swaps. The ANPRM then requests comment on the appropriate conditions, restrictions or protections to be included in any Commission rule, regulation or order governing the trading of agricultural swaps.

A. Current Statutory Framework for OTC Agricultural Swaps, Including Options Swaps

Since 2000, bilateral over-the-counter ("OTC") swaps [4] between certain sophisticated counterparties have been generally exempted from the Commission's jurisdiction pursuant to current CEA § 2(g),[5] which was added to the CEA by the Commodity Futures Modernization Act of 2000 ("CFMA").[6] However, current § 2(g) specifically excludes an "agreement, contract, or transaction" in an "agricultural commodity" from the CFMA swaps exemption.

While the term "agricultural commodity" is not specifically defined in the Act, it is used in the Act in conjunction with the definition of the term "exempt commodity," which is defined as neither an "agricultural commodity" nor an "excluded commodity." [7] There is limited legislative history regarding the CFMA to explain Congress' intent in excluding "agricultural commodities" from the § 2(g) swaps exemption.[8] However, the legislative history of H.R. 4541, the predecessor to the CFMA (H.R. 5660),[9] which included the same basic structure of excluded and exempt commodities, indicates that Congress did not intend that the term "agricultural commodity" be limited to those commodities enumerated in the definition of the term "commodity" in current CEA § 1a(4).[10] The House Committee on Agriculture stated the following:

> The Committee notes that the term "exempt commodity" means a commodity other than an "excluded commodity" or an "agricultural commodity." For purposes of this definition, the Committee intends "agricultural commodity" to include all agricultural commodities, whether or not such agricultural commodities are specifically enumerated in the definition of "commodity" in section 1a[4] of the CEA.[11]

Notably, the definition of exempt commodity did not change from H.R. 4541 to H.R. 5660, the final version of the CFMA as enacted into law.

The effect of excluding agricultural commodities from current CEA § 2(g) was that swaps involving exempt and excluded commodities were allowed to transact largely outside of the Commission's jurisdiction or oversight, while swaps involving agricultural commodities, including both the enumerated agricultural commodities and other non-enumerated agricultural commodities, remained subject to the Commission's pre-CFMA swaps regulations as set forth in 17 CFR part 35.[12]

Options

The Dodd-Frank Act defines the term "swap" to include not only the various types of swaps listed in the definition, including commodity swaps and agricultural swaps, but also OTC options of any kind.[13] Commodity options are subject to the Commission's plenary authority under CEA § 4c(b).[14] Based on § 4c(b)'s general prohibition of any option transactions contrary to any

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[4] Prior to the Dodd-Frank Act, the Commission had defined a "swap" as follows: "A swap is a privately negotiated exchange of one asset or cash flow for another asset or cash flow. In a commodity swap [including an agricultural swap], at least one of the assets or cash flows is related to the price of one or more commodities." (*See* 72 FR 66099, note 7 (November 27, 2007)). *See* new CEA § 1a(47) for the statutory definition of a "swap," as added to the CEA by § 721 of the Dodd-Frank Act.

[5] Current § 2(g) provides:

Excluded swap transactions.

No provision of this chapter (other than section 5a (to the extent provided in section 5a(g)), 5b, 5d, or 12(e)(2)) shall apply to or govern any agreement, contract, or transaction in a commodity other than an agricultural commodity if the agreement, contract, or transaction is—

(1) Entered into only between persons that are eligible contract participants at the time they enter into the agreement, contract, or transaction;

(2) subject to individual negotiation by the parties; and

(3) not executed or traded on a trading facility.

CEA § 2(g), 7 U.S.C. 2(g).

[6] Current CEA § 2(g) was added to the CEA as § 105(b) of the CFMA, enacted as Appendix E to PL 106–554.

[7] "The term 'exempt commodity' means a commodity that is not an excluded commodity or an agricultural commodity." Current CEA § 1a(14). An "excluded commodity" is defined in current CEA § 1a(13) to include financial commodities such as interest rates, currencies, economic indexes, and other similar items. As noted above, of the three operative terms, only "agricultural commodity" is not defined.

[8] H.R. 5660, the final version of the CFMA, which was enacted into law as an appendix to Public Law No. 106–554, the Consolidated Appropriations Act, 2001, was not accompanied by congressional committee reports.

[9] H.R. 4541, also titled the Commodity Futures Modernization Act of 2000, was reported by all three committees of jurisdiction (Agriculture, Commerce, and Banking and Financial Services) in the House of Representatives and was passed by the House on October 19, 2000 by a vote of 377 yeas to 4 nays. On December 14, 2000, H.R. 5660 was introduced and contained major provisions of the House-passed version of H.R. 4541.

[10] Current CEA § 1a(4) defines the term "commodity" to include wheat, cotton, rice, corn, oats, barley, rye, flaxseed, grain sorghums, mill feeds, butter, eggs, Solanum tuberosum (Irish potatoes), wool, wool tops, fats and oils (including lard, tallow, cottonseed oil, peanut oil, soybean oil, and all other fats and oils), cottonseed meal, cottonseed, peanuts, soybeans, soybean meal, livestock, livestock products, and frozen concentrated orange juice, and all other goods and articles, except onions as provided in Public Law 85–839 (7 U.S.C. 13–1), and all services, rights, and interests in which contracts for future delivery are presently or in the future dealt in." 7 U.S.C. 1a(4). The agricultural commodities specifically identified in current CEA § 1a(4) are often referred to as the "enumerated" agricultural commodities. The Dodd-Frank Act redesignates current CEA § 1a(4) as new CEA § 1a(9).

[11] H.R. Rep. No. 106–711, Part 1, at 33 (June 29, 2000).

[12] Notably, current CEA § 2(g) is not the only statutory provision that excludes or exempts bilateral swaps between eligible contract participants from the Commission's jurisdiction. Current CEA § 2(d)(1) excludes any such bilateral "agreement, contract, or transaction" in excluded commodities from Commission jurisdiction, while CEA § 2(h)(1) creates a similar exemption for a "contract, agreement or transaction" in exempt commodities. The overlap between these two provisions and the swap exemption in CEA § 2(g) serves to reinforce Congress' clear intent to not exclude agricultural swaps from the Commission's jurisdiction through the CFMA.

[13] Exchange-traded futures and options on futures are specifically excluded from the Dodd-Frank swaps definition. *See* new CEA § 1a(47)(B), as added to the CEA by § 721 of the Dodd-Frank Act.

[14] Section 4c(b) provides:

Regulated option trading

No person shall offer to enter into, enter into or confirm the execution of, any transaction involving any commodity regulated under this Act which is of the character of, or is commonly known to the trade as, an "option", "privilege", "indemnity", "bid", "offer", "put", "call", "advance guaranty", or "decline guaranty", contrary to any rule, regulation, or order of the Commission prohibiting any such transaction or allowing any such transaction under such terms and conditions as the Commission shall prescribe. Any such order, rule, or regulation may be made only after notice and opportunity for hearing, and the Commission may set different terms and conditions for different markets. CEA § 4c(b); 7 U.S.C. 6c(b).

Commission rule, regulation or order prohibiting options, or allowing them under such conditions as the Commission may prescribe, the only options currently authorized under the CEA are those specifically provided for in the Commission's regulations.

B. Current Regulatory Framework

Swaps

As mentioned previously, Part 35 of the Commission's regulations provides a broad-based exemption for certain swap agreements. Adopted by the Commission under its § 4(c) exemptive authority in 1993,[15] Part 35 allows for swaps to transact OTC if certain conditions are met: (1) The swap agreements are entered into solely between eligible swap participants; (2) the swap agreements are not part of a fungible class of agreements that are standardized as to their material economic terms; (3) the creditworthiness of any party having an actual or potential obligation under the swap agreement must be a material consideration in entering into or determining the terms of the swap agreement, including pricing, cost, or credit enhancement terms; and (4) the swap agreement is not entered into and traded on or through a multilateral transaction execution facility.[16]

After the CFMA amendments to the CEA, which excluded swaps on "exempt" and "excluded" commodities from virtually all of the Commission's jurisdiction, Part 35 remained relevant only for agricultural swaps. With the exception of three outstanding § 4(c) exemptions related to cleared agricultural basis and calendar swaps,[17] Part 35 is the sole authority under which market participants may transact agricultural swaps that are not options.

Options

As noted above, the Commission maintains plenary authority over options pursuant to CEA § 4c(b). It has used that authority to, among other things, issue Part 32 of the Commission's regulations, which includes a general ban on OTC options,[18] but allows for OTC option transactions under certain conditions. Part 32 allows OTC options on agricultural commodities in two instances.[19]

Rule 32.13 establishes rules for trading OTC options on the "enumerated" agricultural commodities ("agricultural trade options" or "ATOs") whereby ATOs may only be sold by an Agricultural Trade Option Merchant ("ATOM"), who must first register with the Commission as such pursuant to CFTC rule 3.13. Since its 1998 adoption and one amendment in 1999,[20] the ATOM registration scheme has attracted only one registrant, which registrant has since withdrawn its ATOM registration. Accordingly, ATOs currently may only be transacted pursuant to an exemptive provision found at § 32.13(g)(1). The exemption at § 32.13(g)(1) allows ATOs to be sold when: (1) The option is offered to a commercial ("a producer, processor, or commercial user of, or a merchant handling" the underlying commodity); (2) the commercial enters the transaction solely for purposes related to its business as such; and (3) each party to the option contract has a net worth of not less than $10 million.

In either case (whether transacted pursuant to the ATOM registration scheme or accomplished via the exemption at § 32.13(g)), the phrase "agricultural trade option" refers specifically to an OTC option on an enumerated agricultural commodity.

In addition to the § 32.13(g) ATO exemption, Part 32 includes, at § 32.4, a basic trade option exemption applicable to options on commodities other than the enumerated agricultural commodities. The terms of the § 32.4 exemption are essentially the same as those of the § 32.13(g) exemption with one significant difference. Under § 32.4, the option must be offered to a producer, processor, or commercial user of, or a merchant handling, the commodity, who enters into the commodity option transaction solely for purposes related to its business as such. However, § 32.4 does not include any net worth requirement.

Because the term "agricultural commodity" in the Act refers to more than just the enumerated commodities, the Commission recognizes that certain options authorized under § 32.4 (*e.g.* options on coffee, sugar, cocoa, and other agricultural products that do not appear in the enumerated commodity list) would also fall under the Dodd-Frank Act's general prohibition of agricultural swaps (*see* discussion below of the Dodd-Frank rules for agricultural swaps and their implication for the existing agricultural swaps markets, including OTC options on agricultural commodities).

C. Dodd-Frank Provisions

Non-Agricultural Swaps

Under the CEA, as amended by the Dodd-Frank Act, only eligible contract participants ("ECPs")[21] may enter into a swap, unless such swap is entered into on a designated contract market ("DCM"),[22] in which case any person may enter into the swap.[23]

New CEA § 2(h), as added by § 723(a)(3) of the Dodd-Frank Act, establishes a clearing requirement for

[15] *See* 58 FR 5587 (Jan. 22, 1993). Note that because Part 35 was implemented pursuant to a § 4(c) exemption, agricultural swaps that rely on Part 35 for their legal authority will continue to be permitted under the Dodd-Frank language whereby existing agricultural swaps provisions adopted pursuant to § 4(c), including Part 35, are grandfathered. This is discussed more fully at section C, below.

[16] *See id.* at 5590–5591; *see also* 17 C.F.R. § 35.2(a)–(d).

[17] Part 35, at § 35.2(d), also provides that "any person may apply to the Commission for exemption from any of the provisions of the Act (except 2(a)(1)(B) [liability of principal for act of agent]) for other arrangements or facilities, on such terms and conditions as the Commission deems appropriate, including but not limited to, the applicability of other regulatory regimes." *See* 17 CFR 35.2(d). The Commission has granted three such exemptions, which have in each instance been styled as § 4(c) exemptive orders. *See:*

Order: (1) Pursuant to Section 4(c) of the Commodity Exchange Act (a) Permitting Eligible Swap Participants To Submit for Clearing and ICE Clear U.S., Inc. and Futures Commission Merchants To Clear Certain Over-The-Counter Agricultural Swaps and (b) Determining Certain Floor Brokers and Traders To Be Eligible Swap Participants; and (2) Pursuant to Section 4d of the Commodity Exchange Act, Permitting Certain Customer Positions in the Foregoing Swaps and Associated Property To Be Commingled With Other Property Held in Segregated Accounts, 73 FR 77015 (Dec. 18, 2008);

Order (1) Pursuant to Section 4(c) of the Commodity Exchange Act, Permitting the Chicago Mercantile Exchange to Clear Certain Over-the-Counter Agricultural Swaps and (2) Pursuant to Section 4d of the Commodity Exchange Act, Permitting Customer Positions in Such Cleared-Only Contracts and Associated Funds To Be Commingled With Other Positions and Funds Held in Customer Segregated Accounts, 74 FR 12316 (March 24, 2009); and

Order (1) Pursuant to Section 4(c) of the Commodity Exchange Act, Permitting the Kansas City Board of Trade Clearing Corporation To Clear Over-the-Counter Wheat Calendar Swaps and (2) Pursuant to Section 4d of the Commodity Exchange Act, Permitting Customer Positions in Such Cleared-Only Swaps and Associated Funds To Be Commingled With Other Positions and Funds Held in Customer Segregated Accounts, 75 FR 34983 (June 21, 2010).

[18] *See* Commission regulation 32.11, 17 CFR 32.11.

[19] Note that Part 32 was not issued under the Commission's § 4(c) exemptive authority. After the effective date of the Dodd-Frank Act, options on agricultural commodities will also fall under the Dodd-Frank Act's provisions governing the trading of swaps (and, specifically, agricultural swaps) since options on commodities fall within the Act's definition of a swap. Accordingly, it is important to identify what options on agricultural commodities are currently being traded pursuant to part 32.

[20] 63 FR 18821 (April 16, 1998); and 64 FR 68011 (December 6, 1999), respectively.

[21] "Eligible contract participant" is defined in current CEA § 1a(12). Generally speaking, an eligible contract participant is considered to be a sophisticated investor.

[22] A designated contract market is a board of trade designated as a contract market under CEA § 5.

[23] *See* new CEA § 2(e) as added by § 723(a)(2) of the Dodd-Frank Act.

swaps. Under that subsection, the Commission would determine, based on factors listed in the statute, whether a swap, or a group, category, type, or class of swaps, should be required to be cleared. A swap entered into by a commercial end user [24] is not subject to the mandatory clearing requirement; however an end user may opt to submit the swap for clearing. A swap that is required to be cleared must be executed on a DCM or a swap execution facility ("SEF"),[25] if a DCM or SEF makes the swap available for trading. Swaps that are not required to be cleared may be executed bilaterally OTC.

Section 731 of the Dodd-Frank Act adds a new § 4s to the CEA that provides for the registration and regulation of swap dealers and major swap participants.[26] The new requirements for swap dealers and major swap participants include, in part, capital and margin requirements, business conduct standards, and reporting, recordkeeping, and documentation requirements.

Section 737 of the Dodd-Frank Act amends current CEA § 4a regarding position limits. Under the Dodd-Frank provisions, the Commission must adopt position limits for futures, exchange-traded options, and swaps that are economically equivalent to futures and exchange-traded options within 180 days of the date of enactment of the Dodd-Frank Act for exempt commodities and within 270 days of the date of enactment of the Dodd-Frank Act for agricultural commodities.

Agricultural Swaps

Under § 723(c)(3) of the Dodd-Frank Act, swaps in an "agricultural commodity" (as defined by the Commission) are prohibited unless the swap is entered into pursuant to an exemption granted under CEA § 4(c). Generally speaking, § 4(c) provides that, in order to grant an exemption, the Commission must determine that: (1) The exemption would be consistent with the public interest and the purposes of the CEA; (2) any agreement, contract, or transaction affected by the exemption would be entered into by "appropriate persons" as defined in § 4(c); and (3) any agreement, contract, or transaction affected by the exemption would not have a material adverse effect on the ability of the Commission or any contract market to discharge its regulatory or self-regulatory duties under the CEA.

Section 723(c)(3) includes a "grandfather" clause that provides that any rule, regulation, or order regarding agricultural swaps that was issued pursuant to § 4(c), and that was in effect on the date of enactment of the Dodd-Frank Act, would continue to be permitted. Such rules, regulations or orders would include Part 35 with respect to agricultural swaps and the agricultural basis and calendar swaps noted above, but would not include options entered into pursuant to Part 32.

D. Agricultural Commodities Definition

As noted above, § 723(c)(3) of the Dodd-Frank Act applies to any swap in an agricultural commodity "as defined by the Commodity Futures Trading Commission." The Commission plans to publish a proposed definition of the term "agricultural commodity" in the near future. That proposed definition will cover all such commodities that are, or could in the future be, traded pursuant to a swap or futures contract. However, for purposes of commenting on this ANPRM, commenters may assume that "agricultural commodity" includes the following commodities that are currently the subject of derivatives trading, whether listed for trading on a futures exchange or traded bilaterally OTC: (1) The enumerated commodities that are listed in current § 1a(4) of the CEA (*e.g.,* corn, wheat, soybeans, livestock, cotton); (2) the international "soft commodities" (*e.g.,* coffee, sugar, cocoa); (3) lumber, plywood and similar wood-derived commodities; (4) contracts based on underlying commodities listed in (1)–(3) (*e.g.,* corn and wheat basis swaps and calendar swaps); and (5) other commodities derived from living organisms, including plant, animal or aquatic life, that are used for human food, animal feed or fiber, and that currently are the subject of derivatives trading. To the extent that any commenter is aware of any agricultural commodity that is not currently the subject of derivatives trading, but which they anticipate may be so traded in the future, and which might be affected by potential rules governing the trading of agricultural swaps, the Commission would welcome comments regarding such commodity.

Part II—Questions for Comment

Section 723(c)(3) of the Dodd-Frank Act and CEA § 4(c) authorize the Commission to impose such terms and conditions as it deems appropriate in order for a person to enter into or execute an agricultural swap. The Commission is requesting input on the following questions:

Current Agricultural Swaps Business

1. How big is the current agricultural swaps business—including both agricultural swaps trading under current part 35 and ATOs under §§ 32.4 and 32.13(g) of the Commission's regulations?

2. What types of entities are participating in the current agricultural swaps business?

3. Are agricultural swaps/ATO participants significantly different than the types of entities participating in other physical commodity swaps/trade options?

Agricultural Swaps Clearing

4. What percentage of existing agricultural swaps trading is cleared vs. non-cleared?

5. What percentage of existing agricultural swaps would be eligible for the commercial end-user exemption from the mandatory clearing requirement?

6. What percentage of trading would be subject to the Dodd-Frank clearing requirement, if that requirement applied automatically to agricultural swaps (other than those eligible for the commercial end-user exemption)?

7. What would be the practical and economic effect of a rule requiring agricultural swaps transactions (other than those eligible for the commercial end-user exemption) generally to be cleared? The Commission is interested in the views of agricultural swaps market participants (both users and swap dealers) regarding a potential clearing requirement for agricultural swaps.

8. What would be the practical and economic effect of requiring agricultural swaps to be cleared under the Dodd-Frank clearing regime?

Trading

9. Have current agricultural swaps/ATO participants experienced any significant trading problems, including: (a) economic problems (*i.e.,* contracts not providing an effective hedging mechanism, or otherwise not performing as expected); (b) fraud or other types of abuse; or (c) difficulty gaining access to the agricultural swaps market?

Agricultural Swaps Purchasers

10. Do agricultural swaps/ATO purchasers need more protections than

[24] Generally, a commercial end user is described in new CEA § 2(h)(7) as a non-financial entity that is using swaps to hedge or mitigate commercial risk and that notifies the Commission as to how it generally meets its financial obligations associated with entering into non-cleared swaps.

[25] The requirements for SEFs are set forth in new CEA § 5h.

[26] "Swap dealer" is defined in new CEA § 1a(49), as added by § 721(a)(21) of the Dodd-Frank Act. "Major swap participant" is defined in new CEA § 1a(33), as added by § 721(a)(16) of the Dodd-Frank Act.

participants in other physical commodity swaps/trade options?

11. If so, why, and what should those protections be?

12. Would additional protections for agricultural swaps purchasers unduly restrict their risk management opportunities?

13. Should the Commission consider rules to make it easier for agricultural producers to participate in agricultural swaps—for example, by allowing producers who do not qualify as ECPs to purchase agricultural swaps?

Designated Contract Markets

14. Should agricultural swaps transactions be permitted to trade on DCMs to the same extent as all other swaps are permitted on DCMs?

15. If yes, why?

16. If no, what other requirements, conditions or limitations should apply?

Swap Execution Facilities

17. Should agricultural swaps transactions be permitted on SEFs to the same extent as all other swaps are permitted to transact on SEFs?

18. If yes, why?

19. If no, what other requirements, conditions or limitations should apply?

Trading Outside of DCMs and SEFs

20. Should agricultural swaps be permitted to trade outside of a DCM or SEF to the same extent as all other swaps?

21. If yes, why?

22. If no, what other requirements, conditions or limitations should apply?

23. Should agricultural swaps be permitted to trade outside of a DCM or SEF to a different extent than other swaps due to the nature of the products and/or participants in the agricultural swaps market?

24. In general, should agricultural swaps be treated like all other physical commodity swaps under Dodd-Frank?

25. If yes, why?

26. If no, are there any additional requirements, conditions or limitations not already discussed in other answers that should apply?

27. If agricultural swaps are generally treated like swaps in other physical commodities, are there specific agricultural commodities that would require special or different protections?

Issued in Washington, DC, on September 21, 2010, by the Commission.

David A. Stawick,

Secretary of the Commission.

[FR Doc. 2010–24198 Filed 9–27–10; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 866

[Docket No. FDA–2010–N–0429]

Immunology and Microbiology Devices; Reclassification of the Herpes Simplex Virus Serological Assay Device

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend the special controls for the herpes simplex virus (HSV) serological assay device type, which is classified as class II (special controls). These device types are devices that consist of antigens and antisera used in various serological tests to identify antibodies to herpes simplex virus in serum, and the devices that consist of herpes simplex virus antisera conjugated with a fluorescent dye (immunofluorescent assays) used to identify herpes simplex virus directly from clinical specimens or tissue culture isolates derived from clinical specimens. Elsewhere in this issue of the **Federal Register**, FDA is announcing the availability of the revised draft guidance document entitled "Class II Special Controls Guidance Document: Herpes Simplex Virus Types 1 and 2 Serological Assays" that would serve as the special control for the device, if FDA amends the special controls. Because FDA is proposing to amend the special control for this device type, the agency is publishing the proposed rule that designates the revised guidance document as the special control for HSV serological devices.

DATES: Submit written or electronic comments on the proposed rule by November 29, 2010.

ADDRESSES: You may submit comments, identified by Docket No. FDA–2010–N–0429, by any of the following methods, except that comments on information collection issues under the Paperwork Reduction Act of 1995 must be submitted to the Office of Regulatory Affairs, Office of Management and Budget (OMB) (see the "Paperwork Reduction Act of 1995" section of this document).

Electronic Submissions

Submit electronic comments in the following way:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.

Written Submissions

Submit written submissions in the following ways:

- FAX: 301–827–6870.
- Mail/Hand delivery/Courier [For paper, disk, or CD–ROM submissions]: Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

To ensure more timely processing of comments, FDA is no longer accepting comments submitted to the agency by email. FDA encourages you to continue to submit electronic comments by using the Federal eRulemaking Portal, as described previously, in the **ADDRESSES** portion of this document under *Electronic Submissions*.

Instructions: All submissions received must include the agency name and Docket No(s). and Regulatory Information Number (RIN) (if a RIN number has been assigned) for this rulemaking. All comments received may be posted without change to *http://www.regulations.gov*, including any personal information provided. For additional information on submitting comments, see the "Comments" heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* and insert the docket number(s), found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Haja Sittana El Mubarak, Center for Devices and Radiological Health, Bldg. 66, rm. 5519, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993–0002, 301–796–6193.

SUPPLEMENTARY INFORMATION:

I. Regulatory Authorities

The act (21 U.S.C. 301 *et seq.*), as amended by the Medical Device Amendments of 1976 (the 1976 amendments) (Public Law 94–295), Safe Medical Devices Act (SMDA) (Public Law 101–629), Food and Drug Administration Modernization Act (FDAMA) (Public Law 105–115), and the Medical Device User Fee and Modernization Act (MDUFMA) (Public Law 107–250), established a comprehensive system for the regulation of medical devices intended for human use. Section 513 of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 360c) established three categories (classes) of devices, defined

by the regulatory controls needed to provide reasonable assurance of their safety and effectiveness. The three categories of devices are class I (general controls), class II (special controls), and class III (premarket approval).

Under section 513 of the FD&C Act, FDA refers to devices that were in commercial distribution before May 28, 1976 (the date of enactment of the 1976 amendments), as preamendments devices. FDA classifies these devices after it takes the following steps: (1) Receives a recommendation from a device classification panel (an FDA advisory committee); (2) publishes the panel's recommendation for comment, along with a proposed regulation classifying the device; and (3) publishes a final regulation classifying the device. FDA has classified most preamendments devices under these procedures.

Devices that were not in commercial distribution before May 28, 1976, generally referred to as postamendments devices are classified automatically by statute (section 513(f) of the FD&C Act) into class III without any FDA rulemaking process. Those devices remain in class III until FDA does the following: (1) Reclassifies the device into class I or II; (2) issues an order classifying the device into class I or II in accordance with section 513(f)(2) of the FD&C Act; or (3) issues an order finding the device to be substantially equivalent, in accordance with section 513(i) of the FD&C Act, to a legally marketed device that has been classified into class I or class II. The Agency determines whether new devices are substantially equivalent to previously marketed devices by means of premarket notification procedures in section 510(k) of the FD&C Act (21 U.S.C. 360(k)) and 21 CFR part 807 of the regulations.

Under the 1976 amendments, class II devices were defined as devices for which there was insufficient information to show that general controls themselves would provide reasonable assurance of safety and effectiveness, but for which there was sufficient information to establish performance standards to provide such assurance. SMDA broadened the definition of class II devices to mean those devices for which the general controls by themselves are insufficient to provide reasonable assurance of safety and effectiveness, but for which there is sufficient information to establish special controls to provide such assurance, including performance standards, postmarket surveillance, patient registries, development and dissemination of guidelines, recommendations, and any other appropriate actions the Agency deems necessary (section 513(a)(1)(B) of the FD&C Act).

II. Regulatory Background of the Device

In the **Federal Register** of April 3, 2007 (72 FR 15830), FDA published a final rule to reclassify HSV 1 and 2 serological assays into class II. These assays are used as an aid in the clinical laboratory diagnosis of diseases caused by HSV 1 and 2. FDA identified the guidance document entitled "Class II Special Controls Guidance Document: Herpes Simplex Virus Types 1 and 2 Serological Assays" as the special control.

III. Summary of the Reasons for Revising Special Controls

FDA believes that the special controls for HSV 1 and 2 serological assays should be revised because the new special controls, in addition to general controls, would provide reasonable assurance of the safety and effectiveness of the device. FDA believes there is sufficient additional safety and efficacy profile information to justify revising the special controls to better provide such assurance. We have revised the existing guidance by rewriting the method comparison section and the sample selection inclusion and exclusion criteria section. The revisions defined and differentiated the required studies and the study populations for the assessment of the safety and effectiveness of the different types of HSV 1 and HSV 2 serological assays. Additionally, we made several corrections and clarifications throughout the document to ensure accuracy, consistency, and ease of reading.

IV. Special Controls

In addition to general controls, FDA believes that the revised draft guidance document entitled "Class II Special Controls Guidance Document: Herpes Simplex Virus Types 1 and 2 Serological Assays" (the class II special controls guidance document) is a special control that is adequate to address the risks to health associated with the use of the device. FDA believes that the revised class II special controls guidance document, which incorporates voluntary consensus standards and describes labeling recommendations, in addition to general controls, provides reasonable assurance of the safety and effectiveness of the device. Elsewhere in this issue of the **Federal Register**, FDA is publishing a notice of availability of the revised draft class II special controls guidance document that the Agency would use as the special control for this device.

The revised draft class II special controls guidance document sets forth the information FDA believes should be included in premarket notification submissions (510(k)s) for HSV 1 and 2 serological assays. FDA believes that addressing these risks to health in a 510(k) in the manner identified in the revised class II special controls guidance document, or in an acceptable alternative manner, is necessary to provide reasonable assurance of the safety and effectiveness of the device.

V. FDA's Findings

As discussed previously in this document, FDA believes HSV 1 and 2 serological assays should be classified into class II because special controls, in addition to general controls, provide reasonable assurance of the safety and effectiveness of the device and because there is sufficient information to establish special controls to provide such assurance. FDA, therefore, is proposing to establish the revised draft class II special controls guidance document as a special control for the device.

Section 510(m) of the FD&C Act provides that a class II device may be exempt from the premarket notification requirements under section 510(k) of the FD&C Act, if the Agency determines that premarket notification is not necessary to provide reasonable assurance of the safety and effectiveness of the device. For this device, FDA believes that premarket notification is necessary to provide reasonable assurance of safety and effectiveness and, therefore, does not intend to exempt the device from the premarket notification requirements.

VI. Effective Date

FDA proposes that any final regulation based on this proposal become effective 30 days after its date of publication in the **Federal Register**.

VII. Environmental Impact

The agency has determined under 21 CFR 25.34(b) that this proposed reclassification action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VIII. Analysis of Impacts

FDA has examined the impacts of the proposed rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Public

Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The Agency believes that this proposed rule is not a significant regulatory action as defined by the Executive order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because the changes to the guidance are minimal, the Agency proposes to certify that the final rule will not have a significant economic impact on a substantial number of small entities.

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that agencies prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing "any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year." The current threshold after adjustment for inflation is $135 million, using the most current (2009) Implicit Price Deflator for the Gross Domestic Product. FDA does not expect this proposed rule to result in any 1-year expenditure that would meet or exceed this amount.

The changes to the guidance include adding specific recommendations on appropriate comparators for tests for antibodies and antigens, as well as recommendations for sample selection inclusion and exclusion criteria to define the target populations for HSV 1 and HSV 2 serological assays. These recommended changes would increase the usefulness of the guidance while imposing a minimal burden.

IX. Federalism

FDA has analyzed this proposed rule in accordance with the principles set forth in Executive Order 13132. Section 4(a) of the Executive order requires agencies to "construe * * * a Federal statute to preempt State law only where the statute contains an express preemption provision or there is some other clear evidence that the Congress intended preemption of State law, or where the exercise of State authority conflicts with the exercise of Federal authority under the Federal statute." Federal law includes an express preemption provision that preempts certain state requirements "different from or in addition to" certain Federal requirements applicable to devices. (See section 521 of the FD&C Act (21 U.S.C. 360k); *Medtronic* v. *Lohr* 518 U.S. 470 (1996); and *Riegel* v. *Medtronic*, 128 S. Ct. 999 (2008)). If this proposed rule is made final, the special controls established by the final rule would create "requirements" for specific medical devices under 21 U.S.C. 360k, even though product sponsors have some flexibility in how they meet those requirements (see *Papike* v. *Tambrands, Inc.*, 107 F.3d 737, 740–742 (9th Cir. 1997)).

X. Paperwork Reduction Act of 1995

FDA tentatively concludes that this proposed rule contains no new collections of information. Therefore, clearance by OMB under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501–3520) is not required.

This proposed rule designates a revised guidance document as a special control. FDA also tentatively concludes that the revised draft special control guidance document does not contain new information collection provisions that are subject to review and clearance by OMB under the PRA. Elsewhere in this issue of the **Federal Register**, FDA is publishing a notice announcing the availability of that revised draft guidance document entitled "Class II Special Controls Guidance Document: Herpes Simplex Virus Types 1 and 2 Serological Assays," which contains an analysis of the paperwork burden for the draft guidance.

XI. 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.

List of Subjects in 21 CFR Part 866

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 866 be amended as follows:

PART 866—IMMUNOLOGY AND MICROBIOLOGY DEVICES

1. The authority citation for 21 CFR part 866 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

2. Revise § 866.3305 to read as follows:

§ 866.3305 Herpes simplex virus serological assays.

(a) *Identification*. Herpes simplex virus serological assays are devices that consist of antigens and antisera used in various serological tests to identify antibodies to herpes simplex virus in serum. Additionally, some of the assays consist of herpes simplex virus antisera conjugated with a fluorescent dye (immunofluorescent assays) used to identify herpes simplex virus directly from clinical specimens or tissue culture isolates derived from clinical specimens. The identification aids in the diagnosis of diseases caused by herpes simplex viruses and provides epidemiological information on these diseases. Herpes simplex viral infections range from common and mild lesions of the skin and mucous membranes to a severe form of encephalitis (inflammation of the brain). Neonatal herpes virus infections range from a mild infection to a severe generalized disease with a fatal outcome.

(b) *Classification*. Class II (special controls). The device is classified as class II (special controls). The special control for the device is FDA's revised guidance document entitled "Class II Special Controls Guidance Document: Herpes Simplex Virus Types 1 and 2 Serological Assays." For availability of the revised guidance document, see § 866.1(e).

Dated: September 16, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–23639 Filed 9–27–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Chapter I

No Child Left Behind School Facilities and Construction Negotiated Rulemaking Committee—Notice of Meeting

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Negotiated Rulemaking Committee meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, the Bureau of Indian Affairs is announcing that the No Child Left Behind School Facilities and Construction Negotiated Rulemaking Committee will hold its fourth meeting in Bloomington, Minnesota. The purpose of the meeting is to continue working on reports and recommendations to Congress and the Secretary as required under the No Child Left Behind Act of 2001.

DATES: The Committee's fourth meeting will begin at 8 a.m. on October 12, 2010, and end at 12:30 p.m. on October 15, 2010.

ADDRESSES: The meeting will be held at the Ramada Mall of America Hotel, 2300 East American Boulevard, Bloomington, Minnesota 55425.

FOR FURTHER INFORMATION CONTACT: The Designated Federal Official, Michele F. Singer, Director, Office of Regulatory Affairs and Collaborative Action, Office of the Assistant Secretary—Indian Affairs, 1001 Indian School Road, NW., Suite 312, Albuquerque, NM 87104; telephone (505) 563–3805; fax (505) 563–3811.

SUPPLEMENTARY INFORMATION: The No Child Left Behind School Facilities and Construction Negotiated Rulemaking Committee was established to prepare and submit to the Secretary a catalog of the conditions at Bureau-funded schools, and to prepare reports covering: The school replacement and new construction needs at Bureau-funded school facilities; a formula for the equitable distribution of funds to address those needs; a list of major and minor renovation needs at those facilities; and a formula for equitable distribution of funds to address those needs. The reports are to be submitted to Congress and to the Secretary. The Committee also expects to draft proposed regulations covering construction standards for heating, lighting, and cooling in home-living (dormitory) situations.

The following items will be on the agenda:

- Review and approve July 2010 meeting summary;
- General update from September group meeting and progress made;
- Discussion of workgroup drafts, including a section-by-section analysis and organization of content;
- Drafting of full report;
- Planning for January 2011 meeting; and
- Public comments.

Written comments may be sent to the Designated Federal Official listed in the **FOR FURTHER INFORMATION CONTACT** section above. All meetings are open to the public; however, transportation, lodging, and meals are the responsibility of the participating public.

Dated: September 20, 2010.

Larry Echo Hawk,

Assistant Secretary—Indian Affairs.

[FR Doc. 2010–24107 Filed 9–27–10; 8:45 am]

BILLING CODE 4310–W7–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 85, 86, and 600

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 575

[EPA–HQ–OAR–2009–0865; FRL–9208–1; NHTSA–2010–0087]

RIN 2060–AQ09; RIN 2127–AK73

Public Hearing Locations for the Proposed Fuel Economy Labels

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public hearings.

SUMMARY: EPA and NHTSA are announcing the location addresses for the public hearings to be held for "Revisions and Additions to Motor Vehicle Fuel Economy Label," published in the **Federal Register** on September 23, 2010. The goal of a revised label will be to provide consumers with simple, straightforward comparisons across all vehicles types, including electric vehicles (EV), plug-in hybrid electric vehicles (PHEV), and conventional gasoline and diesel vehicles. NHTSA and EPA are proposing these changes in compliance with the Energy Independence and Security Act (EISA) of 2007, which imposes several new labeling requirements. Also, the agencies believe that the current labels can be improved to help consumers make more informed vehicle purchase decisions and to address the entrance of advanced technology vehicles into the U.S. market. The new labels are proposed to be displayed on new vehicles beginning with the 2012 model year.

DATES: NHTSA and EPA will jointly hold two public hearings on the following dates: Thursday, October 14, 2010, in Chicago, Illinois, and Thursday, October 21, 2010, in Los Angeles, California. The hearing sessions will be from 12 p.m. to 4 p.m. and 6 p.m. to 10 p.m. local time and continue until everyone has had a chance to speak. Note that the times have changed from those indicated in the proposed rule.

ADDRESSES: NHTSA and EPA will jointly hold two public hearings at the following locations: Wyndham Hotel, 633 North St. Clair St., Chicago, Illinois 60611 on Thursday, October 14, 2010; and Sheraton Los Angeles Downtown Hotel, 711 South Hope Street, Los Angeles, California 90017 on Thursday, October 21, 2010.

FOR FURTHER INFORMATION CONTACT: EPA: Lucie Audette, Office of Transportation and Air Quality, Assessment and Standards Division, Environmental Protection Agency, 2000 Traverwood Drive, Ann Arbor, MI 48105; telephone number: 734–214–4850; fax number: 734–214–4816; e-mail address: *audette.lucie@epa.gov,* or Assessment and Standards Division Hotline; telephone number (734) 214–4636; e-mail address: *asdinfo@epa.gov.* NHTSA: Gregory Powell, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590. Telephone: (202) 366–5206; Fax: (202) 493–2990; e-mail address: *gregory.powell@dot.gov*.

SUPPLEMENTARY INFORMATION: The purpose of the public hearings is to obtain public testimony or comment on the Agency's proposed revisions and additions to the motor vehicle fuel economy label.[1] If you would like to present testimony at the public hearings, we ask that you notify the EPA and NHTSA contact persons listed under **FOR FURTHER INFORMATION CONTACT** at least ten days before the hearing. Once EPA and NHTSA learn how many people have registered to speak at the public hearing, we will allocate an appropriate amount of time to each participant, allowing time for necessary breaks throughout the hearing. For planning purposes, each speaker should anticipate speaking for approximately ten minutes, although we may need to adjust the time for each speaker if there is a large turnout. We suggest that you bring copies of your statement or other material for the EPA and NHTSA panels and the audience. It would also be helpful if you send us a copy of your statement or other materials before the hearing. To accommodate as many speakers as possible, we prefer that speakers not use technological aids (*e.g.,* audio-visuals, computer slideshows). However, if you

[1] FR–9197–3; EPA–HQ–OAR–2009–0865; NHTSA–2010–0087.

plan to do so, you must notify the contact persons in the **FOR FURTHER INFORMATION CONTACT** section above. You also must make arrangements to provide your presentation or any other aids to NHTSA and EPA in advance of the hearing in order to facilitate set-up. In addition, we will reserve a block of time for anyone else in the audience who wants to give testimony.

The hearing will be held at a site accessible to individuals with disabilities. Individuals who require accommodations such as sign language interpreters should contact the persons listed under **FOR FURTHER INFORMATION CONTACT** section above no later than ten days before the date of the hearing.

NHTSA and EPA will conduct the hearing informally, and technical rules of evidence will not apply. We will arrange for a written transcript of the hearing and keep the official record of the hearing open for 30 days to allow you to submit supplementary information. You may make arrangements for copies of the transcript directly with the court reporter.

Dated: September 24, 2010.

Lori Stewart,

Acting Director, Office of Transportation and Air Quality, Environmental Protection Agency.

Dated: September 23, 2010.

Joseph S. Carra,

Acting Associate Administrator, Office of Rulemaking, National Highway Traffic Safety Administration, Department of Transportation.

[FR Doc. 2010–24409 Filed 9–27–10; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR Part 5

Negotiated Rulemaking Committee on Designation of Medically Underserved Populations and Health Professional Shortage Areas; Notice of Meeting

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Negotiated Rulemaking Committee meeting.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of the following meeting of the Negotiated Rulemaking Committee on Designation of Medically Underserved Populations and Health Professional Shortage Areas.

DATES: Meetings will be held on October 13, 2010, 9:30 a.m. to 5 p.m.; October 14, 2010, 9 a.m. to 4:30 p.m.; and October 15, 2010, 9 a.m. to 12 p.m.

ADDRESSES: Meetings will be held at the Legacy Hotel and Meeting Centre, Georgetown Room, 1775 Rockville Pike, Rockville, Maryland 20852, (301) 881–2300.

FOR FURTHER INFORMATION CONTACT: For more information, please contact Nicole Patterson, Office of Shortage Designation, Bureau of Health Professions, Health Resources and Services Administration, Room 9A–18, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–9027, E-mail: *npatterson@hrsa.gov* or visit *http://bhpr.hrsa.gov/shortage/.*

SUPPLEMENTARY INFORMATION: *Status:* The meeting will be open to the public.

Purpose: The purpose of the Negotiated Rulemaking Committee on Designation of Medically Underserved Populations and Health Professional Shortage Areas is to establish a comprehensive methodology and criteria for Designation of Medically Underserved Populations and Primary Care Health Professional Shortage Areas, using a Negotiated Rulemaking (NR) process. It is hoped that use of the NR process will yield a consensus among technical experts and stakeholders on a new rule, which will then be published as an Interim Final Rule in accordance with Section 5602 of Public Law 111–148, the Patient Protection and Affordable Care Act of 2010.

Agenda: The meeting will be held on Wednesday, October 13, Thursday, October 14 and Friday, October 15. It will include a discussion of the various components of a possible methodology for identifying areas of shortage and underservice, based on the recommendations of the Committee in the previous meeting. The Friday morning meeting will include development of the agenda for the next meeting, as well as an opportunity for public comment.

Requests from the public to make oral comments or to provide written comments to the Committee should be sent to Nicole Patterson at the contact address above at least 10 days prior to the meeting. The meetings will be open to the public as indicated above, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed above at least 10 days prior to the meeting. Members of the public will have the opportunity to provide comments at the Friday morning meeting.

Dated: September 21, 2010.

Sahira Rafiullah,

Director, Division of Policy and Information Coordination.

[FR Doc. 2010–24207 Filed 9–27–10; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 595

[Docket No. NHTSA–2010–0133]

RIN 2127–AK77

Make Inoperative Exemptions; Vehicle Modifications To Accommodate People With Disabilities, Side Impact Protection

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This NPRM proposes to amend our regulations to correct and expand a reference in an exemption relating to the Federal motor vehicle safety standard for side impact protection. The expanded exemption would facilitate the mobility of physically disabled drivers and passengers. This document responds to a petition from Bruno Independent Living Aids.

DATES: You should submit your comments early enough to ensure that the Docket receives them not later than October 28, 2010.

ADDRESSES: You may submit comments to the docket number identified in the heading of this document 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:* 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, 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 of the **SUPPLEMENTARY INFORMATION** section 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 DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

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:
Shelley Bolbrugge, NHTSA Office of Crash Avoidance Standards, NVS–123 (telephone 202–366–9146) (fax 202–493–2739), or Deirdre Fujita, NHTSA Office of Chief Counsel, NCC–112 (telephone 202–366–2992) (fax 202–366–3820). The mailing address for these officials is: National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Background

The National Traffic and Motor Vehicle Safety Act (49 U.S.C. Chapter 301) ("Safety Act") and NHTSA's regulations require vehicle manufacturers to certify that their vehicles comply with all applicable Federal motor vehicle safety standards (FMVSSs) (*see* 49 U.S.C. 30112; 49 CFR part 567). A vehicle manufacturer, distributor, dealer, or repair business generally may not knowingly make inoperative any part of a device or element of design installed in or on a motor vehicle in compliance with an applicable FMVSS (*see* 49 U.S.C. 30122). NHTSA has the authority to issue regulations that exempt regulated entities from the "make inoperative" provision (49 U.S.C. 30122(c)). The agency has used that authority to promulgate 49 CFR part 595, subpart C, "Make Inoperative Exemptions, Vehicle Modifications to Accommodate People with Disabilities."

49 CFR part 595 subpart C sets forth exemptions from the make inoperative provision to permit, under limited circumstances, vehicle modifications that take the vehicles out of compliance with certain FMVSSs when the vehicles are modified to be used by persons with disabilities after the first retail sale of the vehicle for purposes other than resale. The regulation was promulgated to facilitate the modification of motor vehicles so that persons with disabilities can drive or ride in them. The regulation involves information and disclosure requirements and limits the extent of modifications that may be made.

Under the regulation, a motor vehicle repair business that modifies a vehicle to enable a person with a disability to operate or ride as a passenger in the motor vehicle and that avails itself of the exemption provided by 49 CFR part 595 subpart C must register itself with NHTSA. The modifier is exempted from the make inoperative provision of the Safety Act, but only to the extent that the modifications affect the vehicle's compliance with the FMVSSs specified in 49 CFR 595.7(c) and only to the extent specified in 595.7(c). Modifications that would take the vehicle out of compliance with any other FMVSS, or with an FMVSS listed in 595.7(c) but in a manner not specified in that paragraph are not exempted by the regulation. The modifier must affix a permanent label to the vehicle identifying itself as the modifier and the vehicle as no longer complying with all FMVSS in effect at original manufacture, and must provide and retain a document listing the FMVSSs with which the vehicle no longer complies and indicating any reduction in the load carrying capacity of the vehicle of more than 100 kilograms (220 pounds).

Current Exemption in Part 595 Regarding Side Impact Protection

Currently, 49 CFR part 595 subpart C sets forth an exemption from "S5 of 49 CFR 571.214 [FMVSS No. 214] for the designated seating position modified, in any cases in which the restraint system and/or seat at that position must be changed to accommodate a person with a disability." 49 CFR 595.7(c)(15).

The reference to S5 of FMVSS No. 214 is outdated. S5 had referred to the dynamic performance requirements that vehicles must meet when subjected to a moving deformable barrier (MDB) test. The MDB test simulates an intersection collision with one vehicle being struck in the side by another vehicle. In 2007, NHTSA upgraded FMVSS No. 214 and reorganized the standard.[1] The MDB test was redesignated as S7 and upgraded with the adoption of new technically-advanced test dummies representing a 5th percentile adult female and a 50th percentile adult male and enhanced injury criteria.

In addition, the final rule added a new vehicle-to-pole test to the standard (*see* S9, 49 CFR 571.214). The pole test simulates a vehicle crashing sideways into narrow fixed objects, such as utility poles and trees. The pole test requires vehicle manufacturers to assure head and improved chest protection in side crashes for a wide range of occupant sizes and over a broad range of seating positions. Manufacturers will likely meet the upgraded requirements of the standard by vehicle modifications that include installing side air bags in vehicle seats and/or door panels and side roof rails. The phase-in of the upgraded MDB and pole test requirements began September 1, 2010.

Petition for Rulemaking

On February 12, 2009, Bruno Independent Living Aids (Bruno) submitted a petition for rulemaking to expand the specified requirements of FMVSS No. 214 referenced in § 595.7. Bruno manufactures a product line called "Turning Automotive Seating (TAS)." A TAS seat replaces the seat installed by the original equipment manufacturer (OEM). Bruno states that the purpose of the TAS is—

> to provide safe access to private motor vehicles for mobility-impaired drivers or passengers, semi-ambulatory or transferring from a wheelchair.
>
> The Bruno TAS replaces the OEM seat in a sedan, minivan, van, pickup, or SUV. In its various configurations the Bruno TAS seat pivots from the forward-facing driving position to the side-facing entry position, extends outward and lowers to a suitable transfer height, providing the driver and/or passengers a convenient and safe entry into the vehicle. The transfer into the seat takes place safely, while outside the vehicle, and the occupant remains in the seat during the entry process, using the OEM seatbelts while traveling in the vehicle. Exiting the vehicle is accomplished by reversing the process. A further TAS option is a mobility base, which converts the automotive seat into a wheelchair, that eliminates a need for transferring from the seat altogether.

The petitioner believes that this method of vehicle entry and exit is safer than using a platform lift to enter a vehicle or entering and exiting unassisted. Bruno states in its petition that: "* * * torso side air bags are commonly installed in the outboard side of the OEM seat backrest" and would be removed when installing a TAS system requiring the exemption. Bruno seeks a part 595 exemption similar to the

[1] 72 FR 51908, September 11, 2007; response to petitions for reconsideration, 73 FR 32473, June 9, 2003; 75 FR 12123, March 15, 2010.

existing exemption from the MDB test. Additionally, Bruno seeks to expand part 595 to allow an exemption from the new S9 Vehicle-To-Pole test requirements.

Response to Petition

NHTSA has decided to grant Bruno's petition. We propose to amend § 595.7(c)(15) to reference the upgraded MDB requirements and to expand the exemption to include the pole test requirements.

MDB Test Requirements

The September 11, 2007 FMVSS No. 214 final rule redesignated the MDB requirements as S7. Because § 595.7(c)(15)'s reference to S5 is no longer valid, today's NPRM would change that paragraph's reference from S5 to S7.

We believe that there is a continuing need for the exemption from the MDB requirements. The original make inoperative exemption for the MDB requirements was granted because NHTSA was aware of drivers or passengers who needed to have a modifier change the restraint system or vehicle seat to accommodate a disability (66 FR 12637). At the time of the final rule we allowed the exemption because we determined that a change in the restraint system or seat location could affect the measurement of the injury criteria specified in the standard. The upgraded FMVSS No. 214 incorporates enhanced MDB requirements that could likewise be affected by an alteration of the restraint system and/or seat at the designated seating position being modified.

The enhanced MDB requirements will improve head, chest, and pelvic protection in side crashes. Data from tests conducted pursuant to the September 2007 FMVSS No. 214 final rule showed that many vehicles will depend on side impact air bag technology to meet all of the injury criteria of the standard when tested with the 5th percentile female and 50th percentile male dummies. If the side air bags in vehicles designed to the new requirements were removed, modifiers will take the vehicles out of compliance with the MDB test.

The agency also tentatively believes that the compliance with the injury criteria for the MDB test could be affected even if vehicle seats with seat-mounted air bags are not removed but are instead changed in a less significant way to accommodate a person with a disability (*e.g.,* an OEM seat is mounted on a 6-way power seat base). This is because there could be countermeasures that were designed to protect the occupant at the OEM seating position that may no longer be as protective at the position at which the seat is placed after the modification.

Pole Test Requirements

We propose to expand § 595.7(c)(15) to include an exemption for modifications that affect the vehicle's compliance with the pole test requirements of FMVSS No. 214 (set forth in S9 of the standard) in any case in which the restraint system and/or seat at that position must be changed to accommodate a person with a disability. The pole test applies to the driver and right front seat passenger seating positions. When NHTSA issued the final rule upgrading FMVSS No. 214, the agency believed that the upgraded requirements will "lead to the installation of new technologies, such as side curtain air bags and torso side air bags." The countermeasure most likely to be used in the foreseeable future to meet the pole test requirements is side air bag technology incorporated in the vehicle's roof rail (side air bag curtain), door, and/or the vehicle seat.

In our NPRM preceding the make inoperative exemption final rule (63 FR 51547, September 28, 1998), NHTSA stated the following when addressing frontal air bag technology. The agency explained that, when a vehicle is modified to accommodate a person with a disability, typically the nature of the work that is done requires the air bag or some part of the crash sensing system connected to it to be removed. The make inoperative exemption was needed when the OEM-supplied seat had to be removed or work done to disengage or possibly affect the performance of the air bag system.

These same considerations apply to the side air bag systems. Removing an OEM seat that has a side air bag and replacing it with an aftermarket seat that does not would likely make inoperative the system installed in compliance with FMVSS No. 214. Making some other substantive modification of the OEM seat or restraint system to accommodate a person with a disability could also affect the measurement of the injury criteria specified in the standard. We tentatively believe that an exemption from the make inoperative provision with regard to the pole test in FMVSS No. 214 is needed to permit modification of the vehicle's seating system to accommodate a person with a disability. This is comparable to the position taken by NHTSA with regard to the make inoperative exemption for frontal air bags required by FMVSS No. 208. See 595.7(c)(14).

However, we recognize that the petitioner's request presents a trade-off of substantial side impact protection in exchange for continued mobility for people with disabilities and some enhancement in easier and possibly safer vehicle entry and exit.[2] Comments are requested on the proposed exemption. To achieve the maximum safety benefit of the regulations, it is our desire to provide the narrowest exemption possible to accommodate the needs of disabled persons, without unreasonably expanding its use to situations where the benefits of the exemption may be outweighed by the drawbacks of nonconformance with the safety standard. We seek comment on whether an exemption is needed to make inoperative side curtain and torso air bags that are not located in the seat, i.e., side air bags that are found, for example, in door panels, pillars, or roof headliners. Could the vehicle seating system be removed or modified without negatively affecting the crash sensing system for door-mounted side air bags or roof-mounted window curtains? NHTSA would like to know if keeping air bags and activation systems that are not contained in the OEM seating systems would be compatible with adaptive seating currently in use. Would these modifications affect another designated seating position? What types of modifications would be necessary?

Dates

We are limiting the comment period to 30 days because the upgraded FMVSS No. 214 requirements have begun phasing in September 1, 2010. NHTSA would like to consider the comments and complete this response to the petition as quickly as possible.

In view of the September 1, 2010 phase-in date for the FMVSS No. 214 amendments, and because this rulemaking would remove a restriction on the modification of vehicles for persons with disabilities, if a final rule is issued NHTSA anticipates making the amendment effective in less than 180 days following publication of the rule.

Rulemaking Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

NHTSA has considered the impact of this rulemaking action under E.O. 12866 and the Department of Transportation's regulatory policies and procedures. This

[2] NHTSA estimated in the FMVSS No. 214 rulemaking that side head and torso air bags result in a 24 percent reduction in fatality risk for nearside occupants and an estimated 14 percent reduction in fatality risk by torso bags alone. See Docket No. NHTSA–29134, NHTSA's Final Regulatory Impact Analysis.)

rulemaking document was not reviewed by the Office of Management and Budget under E.O. 12866, "Regulatory Planning and Review." It is not considered to be significant under E.O. 12866 or the Department's Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). NHTSA has determined that the effects are so minor that a regulatory evaluation is not needed to support the subject rulemaking. This rulemaking would impose no costs on the vehicle modification industry. If anything, there could be a cost savings due to the proposed exemptions.

Modifying a vehicle in a way that makes inoperative the performance of side impact air bags could be detrimental for the occupants of the vehicle in a side crash. However, the number of vehicles potentially modified would be very few in number. This is essentially the trade-off that NHTSA is faced with when increasing mobility for persons with disabilities: When necessary vehicle modifications are made, some safety may unavoidably be lost to gain personal mobility. We have requested comments on how the agency may make the exemption as narrow as reasonably possible.

Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of proposed rulemaking 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 governmental jurisdictions). The Small Business Administration's regulations at 13 CFR part 121 define a small business, in part, as a business entity "which operates primarily within the United States." (13 CFR 121.105(a)). 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. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

NHTSA has considered the effects of this proposed rule under the Regulatory Flexibility Act. Most dealerships and repair businesses are considered small entities, and a substantial number of these businesses modify vehicles to accommodate individuals with disabilities. I certify that this proposed rule would not have a significant economic impact on a substantial number of small entities. While most dealers and repair businesses would be considered small entities, the proposed exemption would not impose any new requirements, but would instead provide additional flexibility. Therefore, the impacts on any small businesses affected by this rulemaking would not be substantial.

Executive Order 13132 (Federalism)

NHTSA has examined today's proposed rule pursuant to Executive Order 13132 (64 FR 43255; Aug. 10, 1999) and concluded that no additional consultation with States, local governments, or their representatives is mandated beyond the rulemaking process. The agency has concluded that the proposed rule does not have sufficient federalism implications to warrant consultation with State and local officials or the preparation of a federalism summary impact statement. The proposal 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." This proposed rule would not impose any requirements on anyone. This proposal would lessen a burden on modifiers.

NHTSA rules can have preemptive effect in two ways. First, the National Traffic and Motor Vehicle Safety Act contains an express preemption provision:

> When a motor vehicle safety standard is in effect under this chapter, a State or a political subdivision of a State may prescribe or continue in effect a standard applicable to the same aspect of performance of a motor vehicle or motor vehicle equipment only if the standard is identical to the standard prescribed under this chapter.

49 U.S.C. 30103(b)(1). This provision is not relevant to this rulemaking as it does not involve the establishing, amending or revoking or a Federal motor vehicle safety standard.

Second, the Supreme Court has recognized the possibility, in some instances, of implied preemption of State requirements imposed on motor vehicle manufacturers, including sanctions imposed by State tort law. We are unaware of any State law or action that would prohibit the actions that this proposed rule would permit.

Civil Justice Reform

When promulgating a regulation, agencies are required under Executive Order 12988 to make every reasonable effort to ensure that the regulation, as appropriate: (1) Specifies in clear language the preemptive effect; (2) specifies in clear language the effect on existing Federal law or regulation, including all provisions repealed, circumscribed, displaced, impaired, or modified; (3) provides a clear legal standard for affected conduct rather than a general standard, while promoting simplification and burden reduction; (4) specifies in clear language the retroactive effect; (5) specifies whether administrative proceedings are to be required before parties may file suit in court; (6) explicitly or implicitly defines key terms; and (7) addresses other important issues affecting clarity and general draftsmanship of regulations.

Pursuant to this Order, NHTSA notes as follows. The preemptive effect of this proposed rule is discussed above. NHTSA notes further that there is no requirement that individuals submit a petition for reconsideration or pursue other administrative proceeding before they may file suit in court.

National Technology Transfer and Advancement Act

Under the National Technology Transfer and Advancement Act of 1995 (NTTAA) (Pub. L. 104–113), "all Federal agencies and departments shall use technical standards that are developed or adopted by voluntary consensus standards bodies, using such technical standards as a means to carry out policy objectives or activities determined by the agencies and departments." Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies, such as the Society of Automotive Engineers (SAE). The NTTAA directs us to provide Congress, through OMB, explanations when we decide not to use available and applicable voluntary consensus standards. No voluntary standards exist regarding this proposed exemption for modification of vehicles to accommodate persons with disabilities.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually (adjusted for inflation with base year of

1995). This proposed exemption would not result in expenditures by State, local or tribal governments, in the aggregate, or by the private sector in excess of $100 million annually.

National Environmental Policy Act

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this action would not have any significant impact on the quality of the human environment.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA), a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. This proposal does not contain new reporting requirements or requests for information beyond what is already required by 49 CFR Part 595 Subpart C.

Plain Language

Executive Order 12866 requires each agency to write all rules in plain language. Application of the principles of plain language includes consideration of the following questions:

- Have we organized the material to suit the public's needs?
- Are the requirements in the rule clearly stated?
- Does the rule contain technical language or jargon that isn't clear?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?
- Would more (but shorter) sections be better?
- Could we improve clarity by adding tables, lists, or diagrams?
- What else could we do to make the rule easier to understand?

If you have any responses to these questions, please include them in your comments on this proposal.

Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

List of Subjects in 49 CFR Part 595

Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, we propose to amend 49 CFR part 595 to read as follows:

PART 595—MAKE INOPERATIVE EXEMPTIONS

1. The authority citation for part 595 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, 30122 and 30166; delegation of authority at 49 CFR 1.50.

2. Amend § 595.7 by revising paragraph (c)(15) to read as follows:

§ 595.7 Requirements for vehicle modifications to accommodate people with disabilities.

* * * * *

(c)

* * * * *

(15) S7 and S9 of 49 CFR 571.214, for the designated seating position modified, in any cases in which the restraint system and/or seat at that position must be changed to accommodate a person with a disability.

* * * * *

Issued on: September 23, 2010.

Joseph S. Carra,

Acting Associate Administrator for Rulemaking.

[FR Doc. 2010–24344 Filed 9–27–10; 8:45 am]

BILLING CODE 4910–59–P

Notices

Federal Register
Vol. 75, No. 187
Tuesday, September 28, 2010

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

AFRICAN DEVELOPMENT FOUNDATION

Board of Directors Meeting

MEETING: African Development Foundation, Board of Directors Meeting.

TIME: Tuesday, October 19, 2010 *8:30 a.m. to 1 p.m.*

PLACE: African Development Foundation, Conference Room, 1400 I Street, NW., Suite 1000, Washington, DC 20005

DATE: Tuesday, October 19, 2010.

STATUS:

1. Open session, Tuesday, October 19, 2010, *8:30 a.m. to 12 p.m.;* and
2. Closed session, Tuesday, October 19, 2010, *12 p.m. to 1 p.m.*

Due to security requirements and limited seating, all individuals wishing to attend the open session of the meeting must notify Michele M. Rivard at (202) 673–3916 or *mrivard@usadf.gov* of your request to attend by 5 p.m. on Thursday, October 14, 2010.

Lloyd O. Pierson,

President & CEO, USADF.

[FR Doc. 2010–24325 Filed 9–27–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

September 22, 2010.

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 and Nutrition Service

Title: Innovation for Healthy Kids Challenge to Promote the Open Government Initiative.

OMB control number: 0584–0555.

Summary of collection: The demand for innovative and relevant nutrition education technologies is needed to address the epidemic rates of obesity within the U.S. population and address the promotion of the most recent version of the Dietary Guidelines for Americans. The Center for Nutrition Policy and Promotion (CNPP) of the U.S. Department of Agriculture invites developers, programmers, highly motivated gamers and the general public to develop creative and educational games and applications that are based on the Food Nutrition and Consumer Services Dataset. With childhood obesity continuing to rise, the goal of the Challenge is to motivate talented individuals to create innovative, fund, and engaging applications or games that encourage parents and children, especially "tweens" (aged 9–12) to eat more healthfully and be more physically active. The statutory requirements for this collection can be found in the Department of Agriculture Organic Act of 1862, 7 U.S.C. 2201, the National Agricultural Research, Extension, and Teaching Policy Act of 1977 and the National Nutrition Monitoring and Related Research Act of 1990.

Need and use of the information: The information will be collected from individuals, companies, organizations, and government agencies to create challenges and award prizes for solving problems. The purpose of the contest is to develop new and innovative technology to reach children, ages 9–12, either directly or through their parents using the MyPyramid Dataset. This initiative will not only increase access to socially relevant technologies that seek to improve eating and physical activity behaviors among children but could also expand the tools available through the MyPyramid Web site. The contest will explore ways to address the following behavioral objectives: (1) Increase consumption of whole grains, fruit and vegetables, low-or non-fat milk, and lean sources of protein; (2) Develop temporary and relevant nutrition education tools for kids; (3) Address calorie intake and food portion sizes; (4) Increase physical activity. Inability to collect this information will result in a decrease in effort for contributing to the goal of achieving the President's Open Government Initiative.

Description of respondents: Individuals or household; Business or other for-profit; Not-for-profit institutions.

Number of respondents: 100.

Frequency of responses: Third Party disclosure; Reporting: Annually:

Total burden hours: 5,525.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2010–24298 Filed 9–27–10; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

September 22, 2010.

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), *Pamela_Beverly_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.

National Institute of Food and Agriculture

Title: Veterinary Medicine Loan Repayment Program Application.

OMB Control Number: 0524–0047.

Summary of Collection: In January 2003, the National Veterinary Medical Service Act (NVMSA) was passed into law adding section 1415A to the National Agricultural Research, Extension, and Teaching Policy Act of 1997. This law established a new Veterinary Medicine Loan Repayment Program (VMLRP) (7 U.S.C. 3151a) authorizing the Secretary of Agriculture to carry out a program of entering into agreements with veterinarians under which they agree to provide veterinary services in veterinarian shortage situations. The purpose of the program is to assure an adequate supply of trained food animal veterinarians in shortage situations and provide USDA with a pool of veterinary specialists to assist in the control and eradication of animal disease outbreaks.

Need and Use of the Information: The National Institute of Food and Agriculture (NIFA) will collect information using the Application forms. The information collected from applicants relates to their eligibility, qualifications, career interests and recommendations necessary to evaluate their applications for repayment of education indebtedness in return for agreeing to provide veterinary services in veterinarian shortage situations. The information will also be used to determine an applicant's eligibility for participation in the program.

Description of Respondents: State, Local or Tribal Government.

Number of Respondents: 1,260.

Frequency of Responses: Reporting: Biennially.

Total Burden Hours: 2,280.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2010–24303 Filed 9–27–10; 8:45 am]

BILLING CODE 3410–09–P

DEPARTMENT OF AGRICULTURE

Forest Service

Eleven Point Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Eleven Point Resource Advisory Committee will meet in Winona, Missouri. The committee is meeting as authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 110–343) and in compliance with the Federal Advisory Committee Act. The purpose of the meeting is initiate review of proposed forest management projects so that recommendations may be made to the Forest Service on which should be funded through Title II of the Secure Rural Schools and Community Self Determination Act of 2000, as amended in 2008.

DATES: The meeting will be held Tuesday, October 19th, 2010, 6:30 p.m.

ADDRESSES: The meeting will be held at the Twin Pines Conservation Education Center located on US Highway 60, Rt 1, Box 1998, Winona, MO. Written comments should be sent to David Whittekiend, Designated Federal Official, Mark Twain National Forest, 401 Fairgrounds Road, Rolla, MO. Comments may also be sent via e-mail to *dwhittekiend@fs.fed.us* or via facsimile to 573–364–6844.

All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at Mark Twain National Forest Supervisors Office, 401 Fairgrounds Road, Rolla, MO. Visitors are encouraged to call ahead to 573–341–7404 to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Richard Hall, Eleven Point Resource Advisory Committee Coordinator, Mark Twain National Forest, 573–341–7404.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. The following business will be conducted: The meeting will begin to focus on the potential projects that the RAC will be reviewing. Persons who wish to bring related matters to the attention of the Committee may file written statements with David Whittekiend (address above) before or after the meeting.

Dated: September 23, 2010.

David Whittekiend,

Forest Supervisor.

[FR Doc. 2010–24245 Filed 9–27–10; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

El Dorado County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The El Dorado County Resource Advisory Committee will meet in Placerville, California. The committee is meeting as authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 110–343) and in compliance with the Federal Advisory Committee Act. The Agenda for the meeting includes review of the October field trip, administrative costs update and a report out on outreach for proposals.

DATES: The meeting will be held on October 18, 2010 at 6 p.m.– 9 p.m.

ADDRESSES: The meeting will be held at the El Dorado Center of Folsom Lake College, Community Room, 6699

Campus Drive, Placerville, CA 95667. Written comments should be sent to Frank Mosbacher, Forest Supervisor's Office, 100 Forni Road, Placerville, CA 95667. Comments may also be sent via e-mail to *fmosbacher@fs.fed.us,* or via facsimile to 530–621–5297. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at 100 Forni Road, Placerville, CA 95667. Visitors are encouraged to call ahead to 530–622–5061 to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Frank Mosbacher, Public Affairs Officer, Eldorado National Forest Supervisor's Office, 530–621–5230.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. The following business will be conducted: Review of the October field trip; administrative costs update and a report out on outreach for proposals. More information will be posted on the Eldorado National Forest Web site @*http://www.fs.fed.us/r5/Eldorado.* A public comment opportunity will be made available following the business activity. Future meetings will have a formal public input period for those following the yet to be developed public input process.

Dated: September 23, 2010.

Ramiro Villalvazo,

Forest Supervisor.

[FR Doc. 2010–24250 Filed 9–27–10; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Trade Adjustment Assistance for Farmers

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice.

The Administrator of the Foreign Agricultural Service (FAS) has denied a petition (No. 2011029) for trade adjustment assistance for lamb filed under the fiscal year (FY) 2011 program by the Montana Wool Growers Association. The petition was accepted for review by USDA on July 23, 2010.

SUPPLEMENTARY INFORMATION: To qualify under the program, Subtitle C of Title I of the Trade Act of 2002 (Pub. L. 107–210) states that petitions must demonstrate, using data for the most recent, full marketing year or full official marketing season, a greater than 15-percent decline in at least one of the following factors: national average price, quantity of production, value of production, or cash receipts.

According to the statute, it is also necessary for the petition to demonstrate that an increase in imports of like or directly competitive articles, during the same marketing period, contributed importantly to the decrease in one of the above factors for the agricultural commodity.

All petitions were analyzed by USDA's Economic Research Service and reviewed by the Trade Adjustment Assistance (TAA) for Farmers Program Review Committee, comprised of representatives from USDA's Office of the Chief Economist, Farm Service Agency, Agricultural Marketing Service, and FAS. After a review, the Administrator determined that the petition was unable to demonstrate the 'greater than 15-percent decline' criterion, because it showed a 6-percent decline in the quantity of production for 2009, when compared to the previous 3-year period. Additionally, the import data provided for the same time periods showed a 10.9-percent decrease, instead of the required increase, under the program.

Because the petition was unable to meet the 'greater than 15-percent decline' criterion and the 'increase in imports' criterion, the Administrator was not able to certify the petition, making lamb producers in Montana ineligible for trade adjustment assistance in FY 2011.

FOR FURTHER INFORMATION CONTACT: Trade Adjustment Assistance for Farmers Program Staff, Office of Trade Programs, FAS, USDA; or by phone at (202) 720–0638 or (202) 690–0633; or by e-mail at: *tradeadjustment@fas.usda.gov;* or visit the TAA for Farmers' Web site at: *http://www.fas.usda.gov/itp/taa.*

Dated: September 20, 2010.

John D. Brewer,

Administrator, Foreign Agricultural Service.

[FR Doc. 2010–24320 Filed 9–27–10; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Trade Adjustment Assistance for Farmers

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice.

The Administrator of the Foreign Agricultural Service (FAS) has denied a petition (No. 2011004) for trade adjustment assistance for lamb filed under the fiscal year (FY) 2011 program by lamb producers from Idaho, Utah, and Wyoming. The petition was accepted for review by USDA on July 23, 2010.

SUPPLEMENTARY INFORMATION: To qualify under the program, Subtitle C of Title I of the Trade Act of 2002 (Pub. L. 107–210) states that petitions must demonstrate, using data for the most recent, full marketing year or full official marketing season, a greater than 15-percent decline in at least one of the following factors: national average price, quantity of production, value of production, or cash receipts.

According to the statute, it is also necessary for the petition to demonstrate that an increase in imports of like or directly competitive articles, during the same marketing period, contributed importantly to the decrease in one of the above factors for the agricultural commodity.

All petitions were analyzed by USDA's Economic Research Service and reviewed by the Trade Adjustment Assistance for Farmers Program Review Committee, comprised of representatives from USDA's Office of the Chief Economist, Farm Service Agency, Agricultural Marketing Service, and FAS. After a review, the Administrator determined that the petition was unable to demonstrate the 'greater than 15-percent decline' criterion, because it showed only a 6-percent decline in the quantity of production for 2009, when compared to the previous 3-year period. Additionally, the import data provided for the same time period showed a 10.9-percent decrease, instead of the required increase, under the program.

Because the petition was unable to meet the 'greater than 15-percent decline' criterion and the 'increase in imports' criterion, the Administrator was not able to certify the petition, making lamb producers in Idaho, Utah, and Wyoming ineligible for trade adjustment assistance in FY 2011.

FOR FURTHER INFORMATION CONTACT: Trade Adjustment Assistance for

Farmers Program staff, Office of Trade Programs, FAS, USDA; or by phone at (202) 720–0638 or (202) 690–0633; or by e-mail at: *tradeadjustment@fas.usda.gov;* or visit the TAA for Farmers' Web site at: *http://www.fas.usda.gov/itp/taa.*

Dated: September 20, 2010.

John D Brewer,

Administrator, Foreign Agricultural Service.

[FR Doc. 2010–24332 Filed 9–27–10; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Trade Adjustment Assistance for Farmers

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice.

The Administrator of the Foreign Agricultural Service (FAS) has denied a petition (No. 2011005) for trade adjustment assistance for wool filed under the fiscal year (FY) 2011 program by wool producers from Idaho, Utah, and Wyoming. The petition was accepted for review by USDA on July 21, 2010.

SUPPLEMENTARY INFORMATION: To qualify under the program, Subtitle C of Title I of the Trade Act of 2002 (Pub. L. 107–210) states that petitions must demonstrate, using data for the most recent, full marketing year or full official marketing season, a greater than 15-percent decline in at least one of the following factors: national average price, quantity of production, value of production, or cash receipts.

According to the statute, it is also necessary for the petition to demonstrate that an increase in imports of like or directly competitive articles, during the same marketing period, contributed importantly to the decrease in one of the above factors for the agricultural commodity.

All petitions were analyzed by USDA's Economic Research Service and reviewed by the Trade Adjustment Assistance for Farmers Program Review Committee, comprised of representatives from USDA's Office of the Chief Economist, Farm Service Agency, Agricultural Marketing Service, and FAS. After a review, the Administrator determined that the petition demonstrated the 'greater than 15-percent decline' criterion, because it showed a 15.9-percent decline in the value of wool production for 2009, when compared to the previous 3-year period. However, the import data provided for the same time period showed a 37.2-percent decrease, instead of the required increase, under the program.

Because the petition was unable to meet the 'increase in imports' criterion, the Administrator was not able to certify the petition, making wool producers in Idaho, Utah, and Wyoming ineligible for trade adjustment assistance in FY 2011.

FOR FURTHER INFORMATION CONTACT: Trade Adjustment Assistance for Farmers Program Staff, Office of Trade Programs, FAS, USDA, or by phone at (202) 720–0638 or (202) 690–0633, or by e-mail at: *tradeadjustment@fas.usda.gov;* or visit the TAA for Farmers' Web site at: *http://www.fas.usda.gov/itp/taa.*

Dated: September 20, 2010.

John D. Brewer,

Administrator, Foreign Agricultural Service.

[FR Doc. 2010–24322 Filed 9–27–10; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Trade Adjustment Assistance for Farmers

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice.

The Administrator of the Foreign Agricultural Service (FAS) has denied petitions (Nos. 2011023–2011027) for trade adjustment assistance for wool filed under the fiscal year (FY) 2011 program by wool producers from Ohio. The petitions were accepted for review by USDA on July 26, 2010.

SUPPLEMENTARY INFORMATION: To qualify under the program, Subtitle C of Title I of the Trade Act of 2002 (Pub. L. 107–210) states that petitions must demonstrate, using data for the most recent, full marketing year or full official marketing season, a greater than 15-percent decline in at least one of the following factors: National average price, quantity of production, value of production, or cash receipts.

According to the statute, it is also necessary for petitions to demonstrate that an increase in imports of like or directly competitive articles, during the same marketing period, contributed importantly to the decrease in one of the above factors for the agricultural commodity.

All petitions were analyzed by USDA's Economic Research Service and reviewed by the Trade Adjustment Assistance for Farmers Program Review Committee, comprised of representatives from USDA's Office of the Chief Economist, Farm Service Agency, Agricultural Marketing Service, and FAS. After a review, the Administrator determined that the petitions demonstrated the 'greater than 15-percent decline' criterion, because they showed a 15.9-percent decline in the value of wool production for 2009, when compared to the previous 3-year period. However, the import data provided for the same time periods showed a 37.2-percent decrease, instead of the required increase, under the program.

Because the petitions were unable to meet the 'increase in imports' criterion, the Administrator was not able to certify them, making wool producers in Ohio ineligible for trade adjustment assistance in FY 2011.

FOR FURTHER INFORMATION CONTACT: Trade Adjustment Assistance for Farmers Program Staff, Office of Trade Programs, FAS, USDA; or by phone at (202) 720–0638 or (202) 690–0633; or by e-mail at: *tradeadjustment@fas.usda.gov;* or visit the TAA for Farmers' Web site at: *http://www.fas.usda.gov/itp/taa.*

Dated: September 20, 2010.

John D Brewer,

Administrator, Foreign Agricultural Service.

[FR Doc. 2010–24330 Filed 9–27–10; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Trade Adjustment Assistance for Farmers

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice.

The Administrator of the Foreign Agricultural Service (FAS) has denied petitions (No.'s 2011006–2011011, 2011028) for trade adjustment assistance for wool filed under the fiscal year (FY) 2011 program by wool producers from Montana and the Montana Wool Growers Association. The petitions were accepted for review by USDA on July 26, 2010.

SUPPLEMENTARY INFORMATION: To qualify under the program, Subtitle C of Title I of the Trade Act of 2002 (Pub. L. 107–210) states that petitions must demonstrate, using data for the most recent, full marketing year or full official marketing season, a greater than 15-percent decline in at least one of the following factors: national average price, quantity of production, value of production, or cash receipts.

According to the statute, it is also necessary for the petitions to demonstrate that an increase in imports of like or directly competitive articles, during the same marketing period, contributed importantly to the decrease in one of the above factors for the agricultural commodity.

All petitions were analyzed by USDA's Economic Research Service and reviewed by the Trade Adjustment Assistance (TAA) for Farmers Program Review Committee, comprised of representatives from USDA's Office of the Chief Economist, Farm Service Agency, Agricultural Marketing Service, and FAS. After a review, the Administrator determined that the petitions demonstrated the 'greater than 15-percent decline' criterion, because they showed a 15.9-percent decline in the value of wool production for 2009, when compared to the previous 3-year period. However, the import data provided for the same time periods showed a 37.2-percent decrease, instead of the required increase, under the program.

Because the petitions were unable to meet the 'increase in imports' criterion, the Administrator was not able to certify them, making wool producers in Montana ineligible for trade adjustment assistance in FY 2011.

FOR FURTHER INFORMATION CONTACT: Trade Adjustment Assistance for Farmers Program Staff, Office of Trade Programs, FAS, USDA; or by phone at (202) 720–0638, or (202) 690–0633; or by e-mail at: *tradeadjustment@fas.usda.gov;* or visit the TAA for Farmers' Web site at: *http://www.fas.usda.gov/itp/taa.*

Dated: September 20, 2010.

John D. Brewer,

Administrator, Foreign Agricultural Service.

[FR Doc. 2010–24304 Filed 9–27–10; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Trade Adjustment Assistance for Farmers

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice.

The Administrator for the Foreign Agricultural Service (FAS) has denied a petition (No. 2011014) for trade adjustment assistance for dried prunes filed under the fiscal year (FY) 2011 program by the Prune Bargaining Association. The petition was accepted for review by USDA on August 11, 2010.

SUPPLEMENTARY INFORMATION: To qualify under the program, Subtitle C of Title I of the Trade Act of 2002 (Pub. L. 107–210) states that petitions must demonstrate, using data for the most recent, full marketing year or full official marketing season, a greater than 15-percent decline in at least one of the following factors: National average price, quantity of production, value of production, or cash receipts.

According to the statute, it is also necessary for the petition to demonstrate that an increase in imports of like or directly competitive articles, during the same marketing period, contributed importantly to the decrease in one of the above factors for the agricultural commodity.

All petitions were analyzed by USDA's Economic Research Service and reviewed by the Trade Adjustment Assistance for Farmers Program Review Committee, comprised of representatives from USDA's Office of the Chief Economist, Farm Service Agency, Agricultural Marketing Service, and FAS. After the review, the Administrator determined that the petition demonstrated the 'greater than 15-percent decline' criterion, because it showed a 17.1-percent decline in the average annual price for 2009/2010, when compared to the previous 3-year period. Additionally, the import data provided for the same time period showed a 54.2-percent increase, meeting the 'increase in imports' criterion.

However, while the petition was able to demonstrate that California dried prunes met the 'greater than 15-percent decline' criterion and the 'increase in imports' criterion, the import data, along with historical import trends showed no inverse correlation between prices and the quantity of imported dried prunes and prune juice, a necessary requirement under the program.

As a result, it was determined that imports were not an important factor in determining the average annual price of California dried prunes in 2009/2010. Instead, ERS found that changes in domestic prune production, inventories, exports, and domestic consumption were the factors affecting dried prune grower prices in 2009/2010.

Because the petition was unable to demonstrate that the decline in average annual price was *importantly caused* by an increase in imports, the Administrator was not able to certify the petition, making dried prune producers in California ineligible for trade adjustment assistance in FY 2011.

FOR FURTHER INFORMATION, CONTACT: Trade Adjustment Assistance for Farmers Program Staff, Office of Trade Programs, FAS, USDA; or by phone at (202) 720–0638, or (202) 690–0633; or by e-mail at: *tradeadjustment@fas.usda.gov;* or visit the TAA for Farmers' Web site at: *http://www.fas.usda.gov/itp/taa.*

Dated: September 20, 2010.

John D. Brewer,

Administrator, Foreign Agricultural Service.

[FR Doc. 2010–24318 Filed 9–27–10; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Trade Adjustment Assistance for Farmers

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice.

The Administrator of the Foreign Agricultural Service (FAS) has denied a petition (No. 2011020) for trade adjustment assistance for coffee filed under the fiscal year (FY) 2011 program by the Kona Coffee Farmers Association. The petition was accepted for review by USDA on July 21, 2010.

SUPPLEMENTARY INFORMATION: To qualify under the program, Subtitle C of Title I of the Trade Act of 2002 (Pub. L. 107–210) states that petitions must demonstrate, using data for the most recent, full marketing year or full official marketing season, a greater than 15-percent decline in at least one of the following factors: national average price, quantity of production, value of production, or cash receipts.

According to the statute, it is also necessary for the petition to demonstrate that an increase in imports of like or directly competitive articles, during the same marketing period, contributed importantly to the decrease in one of the above factors for the agricultural commodity.

All petitions were analyzed by USDA's Economic Research Service and reviewed by the Trade Adjustment Assistance for Farmers Program Review Committee, comprised of representatives from USDA's Office of the Chief Economist, Farm Service Agency, Agricultural Marketing Service, and FAS. After a review, the Administrator determined that the petition demonstrated the 'greater than 15-percent decline' criterion, because it showed a 19.6-percent decline in the average annual price for 2009/2010, when compared to the previous 3-year period. However, the import data

provided for the same time period showed a 6.1-percent decrease, instead of the required increase, under the program.

Because the petition was unable to meet the 'increase in imports' criterion, the Administrator was not able to certify the petition, making coffee producers in Hawaii ineligible for trade adjustment assistance in FY 2011.

FOR FURTHER INFORMATION CONTACT: Trade Adjustment Assistance for Farmers Program Staff, Office of Trade Programs, FAS, USDA; or by phone at (202) 720–0638 or (202) 690–0633; or by e-mail at: *tradeadjustment@fas.usda.gov;* or visit the TAA for Farmers' Web site at: *http://www.fas.usda.gov/itp/taa.*

Dated: September 20, 2010.

John D. Brewer,

Administrator, Foreign Agricultural Service.

[FR Doc. 2010–24316 Filed 9–27–10; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Trade Adjustment Assistance for Farmers

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice.

The Administrator of the Foreign Agricultural Service (FAS) has denied a petition (No. 2011001) for trade adjustment assistance for coffee filed under the fiscal year (FY) 2011 program by 100% Puerto Rico Coffee Export Board, Inc. The petition was accepted for review by USDA on July 21, 2010.

SUPPLEMENTARY INFORMATION: To qualify under the program, Subtitle C of Title I of the Trade Act of 2002 (Pub. L. 107–210) states that petitions must demonstrate, using data for the most recent, full marketing year or full official marketing season, a greater than 15-percent decline in at least one of the following factors: national average price, quantity of production, value of production, or cash receipts.

According to the statute, it is also necessary for the petition to demonstrate that an increase in imports of like or directly competitive articles, during the same marketing period, contributed importantly to the decrease in one of the above factors for the agricultural commodity.

All petitions were analyzed by USDA's Economic Research Service and reviewed by the Trade Adjustment Assistance for Farmers Program Review Committee, comprised of representatives from USDA's Office of the Chief Economist, Farm Service Agency, Agricultural Marketing Service, and FAS. After a review, the Administrator determined that the petition was unable to demonstrate the 'greater than 15-percent decline' criterion, because it showed only a 12.5-percent decline in the average annual price for 2009/2010, when compared to the previous 3-year period. Additionally, the import data provided for the same time period showed a 6.1-percent decrease, instead of the required increase, under the program.

Because the petition was unable to meet the 'greater than 15-percent decline' criterion and the 'increase in imports' criterion, the Administrator was not able to certify the petition, making coffee producers in Puerto Rico ineligible for trade adjustment assistance in FY 2011.

FOR FURTHER INFORMATION CONTACT: Trade Adjustment Assistance for Farmers Program Staff, Office of Trade Programs, FAS, USDA; or by phone at (202) 720–0638 or (202) 690–0633; or by e-mail at: *tradeadjustment@fas.usda.gov;* or visit the TAA for Farmers' Web site at: *http://www.fas.usda.gov/itp/taa.*

Dated: September 20, 2010.

John D. Brewer,

Administrator, Foreign Agricultural Service.

[FR Doc. 2010–24308 Filed 9–27–10; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Trade Adjustment Assistance for Farmers

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice.

The Administrator of the Foreign Agricultural Service (FAS) has denied a petition (No. 2011017) for trade adjustment assistance for apples filed under the fiscal year (FY) 2011 program by the Maine State Pomological Society. The petition was accepted for review by USDA on August 12, 2010.

SUPPLEMENTARY INFORMATION: To qualify under the program, Subtitle C of Title I of the Trade Act of 2002 (Pub. L. 107–210) states that petitions must demonstrate, using data for the most recent, full marketing year or full official marketing season, a greater than 15-percent decline in at least one of the following factors: National average price, quantity of production, value of production, or cash receipts.

According to the statute, it is also necessary for the petition to demonstrate that an increase in imports of like or directly competitive articles, during the same marketing period, contributed importantly to the decrease in one of the above factors for the agricultural commodity.

All petitions were analyzed by USDA's Economic Research Service and reviewed by the Trade Adjustment Assistance for Farmers Program Review Committee, comprised of representatives from USDA's Office of the Chief Economist, Farm Service Agency, Agricultural Marketing Service, and FAS. After a review, the Administrator determined that the petition was unable to demonstrate the 'greater than 15-percent decline' criterion, because it showed only a 7.2-percent decline in the average annual price for 2009/2010, when compared to the previous 3-year period. Additionally, the import data provided for the same time period showed a 3.7-percent decrease, instead of the required increase, under the program.

Because the petition was unable to meet the 'greater than 15-percent decline' criterion and the 'increase in imports' criterion, the Administrator was not able to certify the petition, making apple producers in Maine ineligible for trade adjustment assistance in FY 2011.

FOR FURTHER INFORMATION, CONTACT: Trade Adjustment Assistance for Farmers Program staff, Office of Trade Programs, USDA; or by phone at (202) 720–0638 or (202) 690–0633; or by e-mail at: *tradeadjustment@fas.usda.gov;* or visit the TAA for Farmers' Web site at: *http://www.fas.usda.gov/itp/taa.*

Dated: September 20, 2010

John D. Brewer,

Administrator, Foreign Agricultural Service.

[FR Doc. 2010–24306 Filed 9–27–10; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Trade Adjustment Assistance for Farmers

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice.

The Administrator, Foreign Agricultural Service (FAS), denied a petition (No. 2011021) for trade adjustment assistance for wool filed under the fiscal year (FY) 2011 program

by the Kansas Sheep Association. The petition was accepted for review by USDA on July 26, 2010.

SUPPLEMENTARY INFORMATION: To qualify under the program, Subtitle C of Title I of the Trade Act of 2002 (Pub. L. 107–210) states that petitions must demonstrate, using data for the most recent, full marketing year or full official marketing season, a greater than 15-percent decline in at least one of the following factors: national average price, quantity of production, value of production, or cash receipts.

According to the statute, it is also necessary for the petitions to demonstrate that an increase in imports of like or directly competitive articles, during the same marketing period, contributed importantly to the decrease in one of the above factors for the agricultural commodity.

All petitions were analyzed by USDA's Economic Research Service and reviewed by the Trade Adjustment Assistance (TAA) for Farmers Program Review Committee, comprised of representatives from USDA's Office of the Chief Economist, Farm Service Agency, Agricultural Marketing Service, and FAS. After a review, the Administrator determined that the petition demonstrated the 'greater than 15-percent decline' criterion, because it showed a 15.9-percent decline in the value of wool production for 2009, when compared to the previous 3-year period. However, the import data provided for the same time period showed a 37.2-percent decrease, instead of the required increase, under the program.

Because the petition was unable to meet the 'increase in imports' criterion, the Administrator was not able to certify the petition, making wool producers in Kansas ineligible for trade adjustment assistance in FY 2011.

FOR FURTHER INFORMATION CONTACT: Trade Adjustment Assistance for Farmers Program Staff, Office of Trade Programs, FAS, USDA, or by phone at (202) 720–0638, or (202) 690–0633, or by e-mail at: *tradeadjustment@fas.usda.gov;* or visit the TAA for Farmers' Web site at: *http://www.fas.usda.gov/itp/taa.*

Dated: September 20, 2010.

John D. Brewer,

Administrator, Foreign Agricultural Service.

[FR Doc. 2010–24302 Filed 9–27–10; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Trade Adjustment Assistance for Farmers

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice.

The Administrator of the Foreign Agricultural Service (FAS) has denied petitions (Nos. 2011024, 2011025) for trade adjustment assistance for lamb filed under the fiscal year (FY) 2011 program by lamb producers from Ohio. The petitions were accepted for review by USDA on July 23, 2010.

SUPPLEMENTARY INFORMATION: To qualify under the program, Subtitle C of Title I of the Trade Act of 2002 (Pub. L. 107–210) states that petitions must demonstrate, using data for the most recent, full marketing year or full official marketing season, a greater than 15-percent decline in at least one of the following factors: national average price, quantity of production, value of production, or cash receipts.

According to the statute, it is also necessary for the petitions to demonstrate that an increase in imports of like or directly competitive articles, during the same marketing period, contributed importantly to the decrease in one of the above factors for the agricultural commodity.

All petitions were analyzed by USDA's Economic Research Service and reviewed by the Trade Adjustment Assistance for Farmers Program Review Committee, comprised of representatives from USDA's Office of the Chief Economist, Farm Service Agency, Agricultural Marketing Service, and FAS. After a review, the Administrator determined that the petitions were unable to demonstrate the 'greater than 15-percent decline' criterion, because they showed only a 6-percent decline in the quantity of production for 2009, when compared to the previous 3-year period. Additionally, the import data provided for the same time periods showed a 10.9-percent decrease, instead of the required increase, under the program.

Because the petitions were unable to meet the 'greater than 15-percent decline' criterion and the 'increase in imports' criterion, the Administrator was not able to certify them, making lamb producers in Ohio ineligible for trade adjustment assistance in FY 2011.

FOR FURTHER INFORMATION CONTACT: Trade Adjustment Assistance for Farmers Program Staff, Office of Trade Programs, FAS, USDA; or by phone at (202) 720–0638 or (202) 690–0633; or by e-mail at: *tradeadjustment@fas.usda.gov;* or visit the TAA for Farmers' Web site at: *http://www.fas.usda.gov/itp/taa.*

Dated: September 20, 2010.

John D. Brewer,

Administrator, Foreign Agricultural Service.

[FR Doc. 2010–24323 Filed 9–27–10; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF COMMERCE

Office of Innovation and Entrepreneurship; the National Advisory Council on Innovation and Entrepreneurship: National Advisory Council on Innovation and Entrepreneurship

AGENCY: Office of Innovation and Entrepreneurship, U.S. Department of Commerce.

ACTION: Notice of an open meeting.

SUMMARY: The National Advisory Committee on Innovation and Entrepreneurship will hold a meeting via conference call on Tuesday, October 12, 2010. The meeting will be conducted from 3 p.m. to 5 p.m. and will be opened to the public. The Council was chartered on November 10, 2009, to advise the Secretary of Commerce on matters relating to innovation and entrepreneurship in the United States.

DATES: October 12, 2010.

Time: 3 p.m.–5 p.m. (EDT).

ADDRESSES: This program will be conducted and available to the public via a listen-in conference number, 888–942–9574, and passcode, 6315042. Please specify any requests for reasonable accommodation of auxiliary aids at least five business days in advance of the meeting. Last minute requests will be accepted, but may be impossible to fill.

SUPPLEMENTARY INFORMATION: Agenda topics to be discussed include: Impressions from the first NACIE meeting, as well as NACIE strategies, goals and processes for 2011. No time will be available for oral comments from members of the public listening to the meeting. Any member of the public may submit pertinent written comments concerning the Council's affairs at any time before and after the meeting. Comments may be submitted to Paul Corson at the contact information indicated below. Copies of Board meeting minutes will be available within 90 days of the meeting.

FOR FURTHER INFORMATION CONTACT: Paul J. Corson, Office of Innovation and

Entrepreneurship, Room 7019, 1401 Constitution Avenue, NW., Washington, DC 20230, telephone: 202–482–2042, e-mail: *pcorson@eda.doc.gov.* Please reference, "NACIE October 12, 2010" in the subject line of your e-mail.

Dated: September 24, 2010.

Esther Lee,

Director, Office of Innovation and Entrepreneurship, U.S. Department of Commerce.

[FR Doc. 2010–24447 Filed 9–27–10; 8:45 am]

BILLING CODE 3510–03–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Coast Pilot Report

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before November 29, 2010.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov).*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Thomas Loeper at 301–713–2750 ext. 165, or *coast.pilot@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

NOAA publishes the United States (U.S.) Coast Pilot, a series of nine books which supplement the suite of nautical charts published by NOAA. The U.S. Coast Pilot contains information essential to navigators plying U.S. coastal and intracoastal waters which cannot be readily displayed upon the charts. The Coast Pilot Report is offered to the public as a means of facilitating suggested changes.

II. Method of Collection

A paper form is used.

III. Data

OMB Control Number: 0648–0007.
Form Number: NOAA Form 77–6.
Type of Review: Regular submission (renewal of a currently approved information collection).
Affected Public: Individuals or households.
Estimated Number of Respondents: 50.
Estimated Time per Response: 30 minutes.
Estimated Total Annual Burden Hours: 25.
Estimated Total Annual Cost to Public: $0.

IV. Request for Comments

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

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: September 23, 2010.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2010–24301 Filed 9–27–10; 8:45 am]

BILLING CODE 3510–JE–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; NOAA Space-Based Data Collection System (DCS) Agreements

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before November 29, 2010.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov).*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Kay Metcalf, 301–817–4558 or *kay.metcalf@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This notice is for renewal of an existing information collection. The National Ocean and Atmospheric Administration (NOAA) operates two space-based data collection systems (DCS), the Geostationary Operational Environmental Satellite (GOES) DCS and the Polar-Orbiting Operational Environmental Satellite (POES) DCS, also known as the Argos system. NOAA allows users access to the DCS if they meet certain criteria. The applicants must submit information to ensure that they meet these criteria. NOAA does not approve agreements where there is a commercial service available to fulfill the user's requirements.

II. Method of Collection

Submittal include Internet, facsimile transmission and postal mailing of paper forms.

III. Data

OMB Control Number: 0648–0157.
Form Number: None.
Type of Review: Regular submission (renewal of a currently approved collection).
Affected Public: Not-for-profit institutions; Federal government; state, local, or tribal government; business or other for-profit organizations.
Estimated Number of Respondents: 415.
Estimated Time Per Response: Estimated Total Annual Burden Hours: One hour and eight minutes per response.
Estimated Total Annual Burden Hours: 470.
Estimated Total Annual Cost to Public: $0 in recordkeeping/reporting costs.

IV. Request for Comments

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

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: September 21, 2010.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2010–24241 Filed 9–27–10; 8:45 am]

BILLING CODE 3510–HR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Alaska Region Bering Sea & Aleutian Islands (BSAI) Crab Economic Data Reports

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before November 29, 2010.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Patsy Bearden, (907) 586–7008 or *Patsy.Bearden@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for an extension without change of a currently approved information collection. The National Marine Fisheries Service (NMFS) manages the crab fisheries in the waters off the coast of Alaska under the Fishery Management Plan (FMP) for the Bering Sea and Aleutian Islands (BSAI) Crab. The Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.* (Magnuson-Stevens Act) mandated the Secretary of Commerce to implement the Crab Rationalization Program (CR Program) for the BSAI Management Area (BSAI) crab fisheries. The CR Program allocates BSAI crab resources among harvesters, processors, and coastal communities and monitors the "economic stability for harvesters, processors, and coastal communities." The Magnuson-Stevens Act provides specific guidance on the CR Program's mandatory economic data collection report (EDR) used to assess the efficacy of the CR Program. Data from the EDR will directly contribute to ongoing evaluation of potential anti-trust and anti-competitive practices in the crab industry.

II. Method of Collection

Respondents have a choice of either electronic or paper forms. Methods of submittal include e-mail of electronic forms, online transmission, and mail transmission of paper forms.

III. Data

OMB Control Number: 0648–0518.

Form Number: None.

Type of Review: Regular submission (extension without change of a currently approved information collection).

Affected Public: Business or other for-profit organizations; not-for-profit institutions.

Estimated Number of Respondents: 131.

Estimated Time Per Response: 7 hours, 30 minutes for annual catcher vessel EDR; 12 hours, 30 minutes for annual catcher/processor EDR; 10 hours for annual stationary floating crab processor EDR; 10 hours for annual shoreside processor EDR; and 3 hours for verification of data.

Estimated Total Annual Burden Hours: 1,478.

Estimated Total Annual Cost to Public: $150,606 in recordkeeping/reporting costs.

IV. Request for Comments

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

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: September 21, 2010.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2010–24240 Filed 9–27–10; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Comprehensive Data Collection on Fishing Dependence of Alaska Communities

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before November 29, 2010.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection

instrument and instructions should be directed to Amber Himes, (206) 526–4221 or *Amber.Hines@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The purpose of this data collection program is to improve commercial fisheries socioeconomic data for North Pacific fisheries, using the community as the unit of reporting and analysis. Communities are often the focus of policy mandates (*e.g.* National Standard 8 of the Magnuson-Stevens Fisheries Management Act (MSA), social impact assessments under the National Environmental Policy Act and MSA, North Pacific Fishery Management Council (NPFMC) programmatic management goals, etc.) and are frequently a recognized stakeholder in NPFMC deliberations and programs. However, much of the existing commercial socioeconomic data is collected and organized around different units of analysis, such as counties (boroughs), fishing firms, vessels, sectors, and gear groups. It is often difficult to aggregate or disaggregate these data for analysis at the individual community or regional level. In addition, at present, some relevant community level socioeconomic data are simply not collected at all. The NPFMC, the Alaska Fisheries Science Center (AFSC), and community stakeholder organizations, have identified ongoing collection of community level economic and socioeconomic information, specifically related to commercial fisheries, as a priority.

The proposed data collection will include information on community revenues based in the fisheries economy, population fluctuations, vessel expenditures in ports, fisheries infrastructure available in the community, support sector business operations in the community, community participation in fisheries management, effects of fisheries management decisions on the community, and demographic information on commercial fisheries participants from the community. The information collected in this program will capture the most relevant and pressing types of data needed for socioeconomic analyses of communities.

II. Method of Collection

The method of data collection will be a survey sent by mail (and by e-mail where possible).

III. Data

OMB Control Number: None.

Form Number: None.

Type of Review: Regular submission.

Affected Public: State, local, or tribal government.

Estimated Number of Respondents: 524.

Estimated Time Per Response: 1 hour.

Estimated Total Annual Burden Hours: 524.

Estimated Total Annual Cost to Public: $0 in recordkeeping/reporting costs.

IV. Request for Comments

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

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: September 21, 2010.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2010–24239 Filed 9–27–10; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 56–2010]

Foreign-Trade Zone 203—Moses Lake, WA; Application for Reorganization and Expansion Under Alternative Site Framework

An application has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board) by the Port of Moses Lake Public Corporation, grantee of FTZ 203, requesting authority to reorganize and expand the zone under the alternative site framework (ASF) adopted by the Board (74 FR 1170, 1/12/09; correction 74 FR 3987, 1/22/09). The ASF is an option for grantees for the establishment or reorganization of general-purpose zones and can permit significantly greater flexibility in the designation of new "usage-driven" FTZ sites for operators/users located within a grantee's "service area" in the context of the Board's standard 2,000-acre activation limit for a general-purpose zone project. The application was submitted pursuant to the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on September 23, 2010.

FTZ 203 was approved by the Board on October 18, 1994 (Board Order 702, 59 FR 54433, 10/31/94). The current zone project includes the following site: *Site 1* (316 acres)—Port of Moses Lake Industrial Park, located within the Grant County International Airport complex, Moses Lake, Washington.

The grantee's proposed service area under the ASF would include all of Benton, Chelan, Columbia, Douglas, Franklin, Grant, Kittitas, Lincoln and Walla Walla Counties, as well as portions of Okanogan and Yakima Counties, Washington, as described in the application. If approved, the grantee would be able to serve sites throughout the service area based on companies' needs for FTZ designation. The proposed service area is within and adjacent to the Moses Lake Customs and Border Protection port of entry.

The applicant is requesting authority to reorganize its existing zone project to include the existing site as a "magnet" site. The ASF allows for the possible exemption of one magnet site from the "sunset" time limits that generally apply to sites under the ASF, and the applicant proposes that Site 1 be so exempted. The applicant is also requesting approval of the following initial "usage-driven" sites in Grant County: *Proposed Site 2* (38 acres)—Zip Truck Line, Inc., 13957 Road 1.9 NE, Moses Lake; and, *Proposed Site 3* (60 acres)—SGL Automotive Carbon Fibers, LLC, 8781 Randolph Road NE, Moses Lake. Because the ASF only pertains to establishing or reorganizing a general-purpose zone, the application would have no impact on FTZ 203's authorized subzone.

In accordance with the Board's regulations, Christopher Kemp of the FTZ Staff is designated examiner to evaluate and analyze the facts and information presented in the application and case record and to report findings and recommendations to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is November 29, 2010. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the

subsequent 15-day period to December 13, 2010.

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 2111, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230–0002, and in the "Reading Room" section of the Board's Web site, which is accessible via *http://www.trade.gov/ftz*. For further information, contact Christopher Kemp at *Christopher.Kemp@trade.gov* or (202) 482–0862.

Dated: September 23, 2010.

Elizabeth Whiteman,

Acting Executive Secretary.

[FR Doc. 2010–24319 Filed 9–27–10; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–533–821]

Certain Hot-Rolled Carbon Steel Flat Products From India: Notice of Court Decision Not in Harmony with Final Results of Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On September 13, 2010, the United States Court of International Trade (CIT) sustained the Department of Commerce's (the Department's) results of redetermination pursuant to the CIT's remand in *United States Steel Corporation, et al. v. United States et al. and Essar Steel Limited v. United States et al.*, Slip Op. 09–152, Remand Order (December 30, 2009)(*Essar*). *See Final Results of Redetermination Pursuant to Court Remand*, dated July 15, 2010 (found at http://ia.ita.doc.gov/remands); and United States Steel Corporation, et al. v. United States et al. and Essar Steel Limited v. United States et al., Slip Op. 10–104 (September 13, 2010) (*Essar*). Consistent with the decision of the United States Court of Appeals for the Federal Circuit (CAFC) in *Timken Co. v. United States*, 893 F.2d 337 (Fed. Cir. 1990) (*Timken*), the Department is notifying the public that the final judgment in this case is not in harmony with the Department's final results of the administrative review of the countervailing duty order on certain hot–rolled carbon steel flat products (HRCS) from India covering the period of review (POR) of January 1, 2006, through December 31, 2006. *See Certain Hot–Rolled Carbon Steel Flat Products from India: Final Results of Countervailing Duty Administrative Review*, 73 FR 40295 (July 14, 2008) (*Final Results*), and accompanying Issues and Decision Memorandum (I&D Memorandum).

EFFECTIVE DATE: September 28, 2010.

FOR FURTHER INFORMATION CONTACT: Gayle Longest, AD/CVD Operations, Office 3, Import Administration International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC, 20230; telephone (202) 482–3338.

SUPPLEMENTARY INFORMATION:

Background

On July 14, 2008, the Department published its final results in the countervailing duty administrative review of HRCS from India covering the POR of January 1, 2006, through December 31, 2006. *See Final Results*. In the *Final Results*, the Department did not include central sales taxes paid on domestic purchases of iron ore lumps and for high–grade iron ore fines because we did not have information on import duties and other taxes and fees payable on imports of iron ore to be included in the calculation of the benchmark. *See* I&D Memorandum at "Sale of High–Grade Iron Ore for Less Than Adequate Remuneration" section and Comment 4. In *Essar*, the CIT determined that the Department's *Final Results* were not supported by substantial evidence on the record, and it remanded to the Department the issue of the deduction of Central Sales Tax from the government price in order for the Department to reevaluate the record evidence supporting this decision.

Moreover, subsequent to the *Final Results*, we discovered that the transportation and delivery charges (*i.e.*, all transportation and handling costs, duties and fees) for iron ore lumps and fines from Vizag port to Hazira port had not been included in either the iron ore lumps or fines calculations. Therefore, the we asked the court for a voluntary remand to adjust Essar's delivered purchase price for fines from NMDC to include missing delivery charges. In *Essar*, the CIT granted the Department's request for a voluntary remand to correct the freight calculations for Essar's purchases of iron ore fines from the National Mineral Development Corporation (NMDC). Specifically, the CIT ordered the Department to adjust the government price for iron ore lumps and fines used in the price comparison to measure the adequacy of remuneration (1) to correct freight calculations for Essar's purchases of iron ore fines from the NMDC and (2) to account for slurry pipe transporation cost to Vizag.

On July 15, 2010, the Department issued its final results of redetermination pursuant to *Essar*. The remand redetermination explained that, in accordance with the CIT's instructions, the Department has made redeterminations with respect to the calculation of the government price for iron ore lumps and fines as well as Essar's purchases of lumps and fines for the following three issues. First, we adjusted our iron ore calculations to measure the adequacy of remuneration of sales of lumps and fines by the GOI to Essar to include Central Sales Tax for Essar's purchase of iron ore lumps and high–grade iron ore fines from the NMDC and to include import duties payable on iron ore with regard to the corresponding benchmark prices. Second, we corrected the government price for iron ore lumps and fines to address erroneous freight calculations for Essar's purchases of iron ore from NMDC. Third, for fines purchases from NMDC made on or after the date the slurry pipeline became operational, we have replaced the per metric ton (MT) rail cost with the per MT slurry transportation costs. The Department's redetermination resulted in changes to the *Final Results* for Essar's net subsidy rate concerning the sale of iron ore for less than adequate remuneration program from 13.21 percent to 19.35 percent. Therefore, the Department's redetermination resulted in the total net countervailable subsidy rate received by Essar in the *Final Results* changing from 17.50 percent to 23.64 percent.

Timken Notice

In its decision in *Timken*, 893 F.2d at 341, the CAFC held that, pursuant to section 516A(e) of the Tariff Act of 1930, as amended (the Act), the Department must publish a notice of a court decision that is not "in harmony" with a Department determination and must suspend liquidation of entries pending a "conclusive" court decision. The CIT's decision in *Essar* on September 13, 2010, constitutes a final decision of that court that is not in harmony with the Department's *Final Results*. This notice is published in fulfillment of the publication requirements of *Timken*. Accordingly, the Department will continue the suspension of liquidation of the subject merchandise pending the expiration of the period of appeal or, if appealed, pending a final and conclusive court decision. In the event the CIT's ruling is not appealed or, if appealed, upheld by the CAFC, the Department will issue an amended final results consistent with

these redeterminations and instruct U.S. Customs and Border Protection to assess countervailing duties on entries of the subject merchandise during the POR from Essar based on the revised assessment rates calculated by the Department.

This notice is issued and published in accordance with section 516A(e)(1) of the Tariff Act of 1930, as amended.

Dated: September 22, 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2010–24312 Filed 9–27–10; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 100604243–0430–02]

RIN 0648–XW88

Endangered and Threatened Wildlife; Notice of 90-Day Finding on a Petition To List Warsaw Grouper as Threatened or Endangered Under the Endangered Species Act (ESA)

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

ACTION: Notice of 90-day petition finding.

SUMMARY: We (NMFS) announce a 90-day finding on a petition to list warsaw grouper (*Epinephelus nigritus*) as threatened or endangered under the ESA. We find that the petition does not present substantial scientific or commercial information indicating that the petitioned action may be warranted.

ADDRESSES: Copies of the petition and related materials are available upon request from the Chief, Protected Resources Division, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701, or online from the NMFS HQ Web site: *http://www.nmfs.noaa.gov/pr/species/fish/warsawgrouper.htm.*

FOR FURTHER INFORMATION CONTACT: Michael Barnette, NMFS Southeast Region, 727–551–5794, or Marta Nammack, NMFS Office of Protected Resources, 301–713–1401.

SUPPLEMENTARY INFORMATION:

Background

On March 3, 2010, we received a petition from the WildEarth Guardians to list warsaw grouper (*Epinephelus nigritus*) as threatened or endangered under the ESA. Copies of this petition are available from us (see **ADDRESSES**, above).

ESA Statutory and Regulatory Provisions and Evaluation Framework

Section 4(b)(3)(A) of the ESA of 1973, as amended (U.S.C. 1531 *et seq.*), requires, to the maximum extent practicable, that within 90 days of receipt of a petition to list a species as threatened or endangered, the Secretary of Commerce make a finding on whether that petition presents substantial scientific or commercial information indicating that the petitioned action may be warranted, and to promptly publish such finding in the **Federal Register** (16 U.S.C. 1533(b)(3)(A)). When it is found that substantial scientific or commercial information in a petition indicates the petitioned action may be warranted (a "positive 90-day finding"), we are required to promptly commence a review of the status of the species concerned during which we will conduct a comprehensive review of the best available scientific and commercial information. In such cases, within 1 year of receipt of the petition, we shall conclude the review with a finding as to whether, in fact, the petitioned action is warranted. Because the finding at the 12-month stage is based on a more thorough review of the available information, as compared to the narrow scope of review at the 90-day stage, a "may be warranted" finding does not prejudge the outcome of the status review.

Under the ESA, a listing determination may address a "species," which is defined to also include subspecies and, for any vertebrate species, a distinct population segment (DPS) that interbreeds when mature (16 U.S.C. 1532(16)). A species, subspecies, or DPS is "endangered" if it is in danger of extinction throughout all or a significant portion of its range, and "threatened" if it is likely to become endangered within the foreseeable future throughout all or a significant portion of its range (ESA sections 3(6) and 3(20), respectively, 16 U.S.C. 1532(6) and (20)). The ESA requires us to determine whether species are threatened or endangered because of any one or a combination of the following five section 4(a)(1) factors: (1) The present or threatened destruction, modification, or curtailment of habitat or range; (2) overutilization for commercial, recreational, scientific, or educational purposes; (3) disease or predation; (4) inadequacy of existing regulatory mechanisms; and (5) any other natural or manmade factors affecting the species' existence (16 U.S.C. 1533(a)(1)).

ESA-implementing regulations issued jointly by NMFS and the U.S. Fish and Wildlife Service (USFWS; 50 CFR 424.14(b)) define "substantial information" in the context of reviewing a petition to list, delist, or reclassify a species as the amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted. In evaluating whether substantial information is contained in a petition, the Secretary must consider whether the petition: (1) Clearly indicates the administrative measure recommended and gives the scientific and any common name of the species involved; (2) contains detailed narrative justification for the recommended measure, describing, based on available information, past and present numbers and distribution of the species involved and any threats faced by the species; (3) provides information regarding the status of the species over all or a significant portion of its range; and (4) is accompanied by the appropriate supporting documentation in the form of bibliographic references, reprints of pertinent publications, copies of reports or letters from authorities, and maps (50 CFR 424.14(b)(2)).

To make a 90-day finding on a petition to list a species, we evaluate whether the petition presents substantial scientific or commercial information indicating the subject species may meet the ESA's definition of either an endangered or a threatened species, and that such status may be the result of one or a combination of the factors listed under section 4(a)(1) of the ESA. Thus, we first evaluate whether the information presented in the petition, along with the information readily available in our files, indicates that the species at issue faces extinction risk that is cause for concern. Risk classifications of the petitioned species by other organizations or made under other statutes may be informative, but may not provide rationale for a positive 90-day finding; many times these classifications are generalized for a group of species, or only describe traits of species that could increase their vulnerability to extinction if they were being adversely impacted. We evaluate any information on specific demographic factors pertinent to evaluating extinction risk for the species at issue (*e.g.,* population abundance and trends, productivity, spatial structure, age structure, sex ratio, diversity, current and historical range, habitat integrity), and the potential contribution of identified demographic risks to

extinction risk for the species. We then evaluate the potential links between these demographic risks and the causative section 4(a)(1) factors. Information on threats should be specific to the species and should reasonably suggest that one or more of these factors may be operative threats that act or have acted on the species to the point that it may warrant protection under the ESA. Broad statements about generalized threats to the species, or identification of factors that could negatively impact a species, do not constitute substantial information that listing may be warranted. We look for information that indicates not just that a species is exposed to a factor, but that also indicates the species may be responding in a negative fashion, and then we assess the potential significance of that negative response.

For a 90-day finding, we evaluate the petitioner's request based upon the information in the petition and its references, and the information readily available in our files. We do not conduct additional research, we do not subject the petition to rigorous critical review, and we do not solicit information from parties outside the agency to help us in evaluating the petition. We will accept the petitioner's sources and characterizations of the information presented, if they appear to be based on accepted scientific principles, unless we have specific information in our files that indicates the petition's information is incorrect, unreliable, or otherwise irrelevant to the requested action. Conclusive information indicating the species may meet the ESA's requirements for listing is not required to make a positive 90-day finding. If the information is equivocal, but reliable information supports a conclusion that listing the species may be warranted, we defer to the information that supports the petition's position. Uncertainty or lack of specific information does not negate a positive 90-day finding, if the uncertainty or unknown information itself suggests an extinction risk of concern for the species at issue.

Warsaw Grouper Species Description

The warsaw grouper is a large member of the sea bass or serranid family distributed from North Carolina south into the Gulf of Mexico to the northern coast of South America (Parker and Mays, 1998). Warsaw grouper seem to be rare in the West Indies, with single records from Cuba, Haiti, and Trinidad; this rarity and their apparent absence from the western Caribbean shelf may be due to the dearth of deep-water fishing in this area (Heemstra and Randall, 1993).

Adults typically inhabit rough, irregular bottoms including steep cliffs and rocky ledges of the continental shelf break in waters 180 to 1,700 feet (55 to 525 m) deep, while juveniles may occasionally be found in shallower waters (Heemstra and Randall, 1993). Warsaw grouper is considered naturally rare, and specimens are most often caught incidentally in fisheries for snowy grouper and other deep-dwelling species (Huntsman *et al.,* 1990). Very little information is available about the reproduction of warsaw grouper; eggs and larvae are presumed to be pelagic. The occurrence of post-spawning females in November may indicate a late summer spawning period (Bullock and Smith, 1991). Warsaw grouper is a long-lived species (up to 41 years) and has a slow growth rate (Manooch and Mason, 1987), with an estimated age of sexual maturity between 4 (Ault *et al.,* 1998) and 9 years (Parker and Mays, 1998). While most serranid species are protogynous hermaphrodites, with individuals first maturing as females and only some large adults becoming males, this has not been verified in warsaw grouper. Maximum size is about 7.7 feet (235 cm) and about 440 pounds (200 kg). Prey items include fish and crustaceans.

Analysis of the Petition

First we evaluated whether the petition presented the information indicated in 50 CFR 424.14(b)(2). The petition clearly indicates the administrative measure recommended and gives the scientific and any common name of the species involved; contains detailed narrative justification for the recommended measure, describing the distribution of the species, as well as the threats faced by the species; and is accompanied by the appropriate supporting documentation in the form of bibliographic references, reprints of pertinent publications, copies of reports or letters from authorities, and maps. However, the petition does not include information on the past and present numbers of the species, or information regarding the status of the species over all or a significant portion of its range, other than conclusions and opinions. This latter information is also not available in our files, as we discuss in detail below.

The petition states that the warsaw grouper is imperiled, that it has declined and continues to decline, that the primary threat to the species is commercial fishing capture, including targeted capture and as bycatch, in gillnets, longlines, bottom trawls, and other fishing gear and activities, and that recreational fishers are likely contributing to the species' endangerment. The petition states that the species' biological constraints increase its susceptibility to adverse impacts from fishing, and that the species is inadequately protected by regulatory mechanisms from the threats it faces. Thus, the petition states that at least three of the five causal factors in section 4(a)(1) of the ESA are adversely affecting the continued existence of the warsaw grouper: overutilization in fisheries; inadequacy of existing regulatory mechanisms; and other natural or manmade factors, particularly the biological constraints of the species' life history.

Information on Extinction Risk

The petition cites classifications made by NMFS, the International Union for Conservation of Nature (IUCN), the American Fisheries Society (AFS), and NatureServe to support its assertion that warsaw grouper is imperiled. Warsaw grouper was added to our species of concern list on April 15, 2004 (69 FR 19975). Warsaw grouper had previously been included on our ESA candidate species list since 1999 (64 FR 33466, June 23, 1999). A species of concern is one about which we have some concerns regarding status and threats, but for which insufficient information is available to indicate a need to list the species under the ESA (71 FR 61022; October 17, 2006). Our rationale for including warsaw grouper on the species of concern list included a potential population decline and threats from fishing and bycatch. The IUCN classified warsaw grouper as critically endangered in 2006, a status assigned to species facing an extremely high risk of extinction in the wild, based on: "an observed, estimated, inferred or suspected population size reduction of ≥ 80% over the last 10 years or three generations, whichever is the longer, where the reduction or its causes may not have ceased or may not be understood or may not be reversible, based on actual or potential levels of exploitation," and "a population size reduction of ≥ 80%, projected or suspected to be met within the next 10 years or three generations, whichever is the longer (up to a maximum of 100 years), based on actual or potential levels of exploitation" *(http://www.iucnredlist.org/apps/redlist/details/7860/0).* In apparent contradiction with this classification, the IUCN's supporting assessment for warsaw grouper states that its population trend is unknown and describes the status of warsaw grouper as "ambiguous." The IUCN explains the critically endangered status for warsaw

grouper instead of a lower status as justified in part: "(a) Because there is no good evidence of a change in condition since the last assessment was conducted; (b) there is no clear indication that management is being effective; and (c) a precautionary approach is being taken, given increasing fishing effort in offshore waters where the species occurs."

The AFS developed its extinction risk criteria for marine fishes in part as a reaction to IUCN's criteria, which the AFS Criteria Workshop stated "grossly overestimate the extinction risk for many if not most marine fish species" because marine fish exhibit a wide range of resilience to population declines based on life history parameters (Musick, 1999). The AFS (Musick *et al.,* 2000) classified warsaw grouper in the U.S. as "endangered," which they define as a species with a "high risk of extinction in the wild in the immediate future (years)," and states the species is "now very rare, only small individuals observed" (from Huntsman *et al.,* 1999). The AFS describes warsaw grouper's risk factors as: "Very low productivity," based on estimates of Brody growth coefficient and maximum age from taxa-specific literature used in Ault *et al.* (1998); rarity; protogynous hermaphroditism; and vulnerability to overfishing (Heemstra and Randall, 1993). Finally, the AFS states warsaw grouper is particularly vulnerable "to extraordinary mortality because of their life history constraints" such as the species' large size (Musick *et al.,* 2000).

NatureServe's vulnerable classification is given to species that are "at moderate risk of extinction or elimination due to a restricted range, relatively few populations, recent and widespread declines, or other factors," but NatureServe does not provide specific information on warsaw grouper's population size or trends.

In summary, none of the cited classifications, including our own species of concern listing or other information in our files, include a specific analysis of extinction risk for warsaw grouper, or an analysis of population size or trends, or other information directly addressing whether the species faces extinction risk that is cause for concern.

The petition describes a few demographic factors specific to warsaw grouper that could be indicative of its extinction risk, for which the petition provides some supporting information. These include a declining population trend, decrease in size of animals in the population, and rarity of males. The petition also asserts that small sizes of adult populations of warsaw groupers are contributing to the species' extinction risk, but no information to support this contention is provided. The petition makes reference to the generally understood natural rarity of the species (*e.g.,* citing results in Koenig *et al.* 2000). However, rarity alone is not an indication that warsaw grouper faces an extinction risk that is cause for concern. A species' rarity could be cause for concern if the species was distributed in small, isolated populations, or had a very restricted geographic range and was subject to specific habitat degradation. Neither of these conditions appears applicable to warsaw grouper. Rarity could also subject a species to heightened extinction risk if specific stressors are negatively affecting its status and trends. Therefore, we next evaluated whether information indicates warsaw grouper's population has declined or continues to decline, and if so whether this suggests extinction risk that is cause for concern.

Population decline can result in extinction risk that is cause for concern in certain circumstances, for instance if the decline is rapid and/or below a critical minimum population threshold and the species has low resilience for recovery from a decline (Musick, 1999). The petition states that fishing has likely resulted in a population decline of warsaw grouper, and uses commercial landings and recreational catch data to document the decline. Fishery landings and catch data may provide inferences about the population status and trends of a species, though such inferences may not be reliable in the absence of information regarding the level or distribution of fishery effort over time, changes in fishing practices, or changes in regulations that may affect catch independent of changes in a species' population.

The fisheries data described in the petition include a graph of weight of warsaw grouper landed in all South Atlantic fisheries combined from the late 1970s to the mid-1990s (from Parker and Mays, 1998), reduction in average weight of landed warsaw grouper, and conclusions from a study (Rudershausen *et al.,* 2008) documenting warsaw grouper were caught recreationally in North Carolina in the 1970s, but not in 2005–2006. Information in our files includes a number of reports, mostly associated with our fishery management actions under Magnuson Stevens Fishery Conservation and Management Act (MSFCMA), noting a decline in catch of warsaw grouper beginning around the mid to late 1970s through the late 1980s or early 1990s. Our species of concern listing similarly relied on the decline in landings in the late 1980s described in Parker and Mays (1998). As will be demonstrated below, we believe that warsaw grouper has always been too uncommonly captured in fisheries for data on landings or weight of fish landed to be a reliable indicator of population status and trends.

Parker and Mays' (1998) study objective was to assemble information on little known fish species of economic importance inhabiting deep reefs (100–300 m) along the south Atlantic coast of the U.S.; the information was needed to support management measures under the MSFCMA in the early 1990s that were triggered by considerable increases in the amount of effort exerted by commercial and recreational fisheries beginning in the mid-1970s. Parker and Mays (1998) describe a downward trend in commercial landings from 1973 through 1995, but the authors also describe the commercial landings information available to them at the time as limited; reliable information on effort was described as unavailable, catch was often not reported by species, and less common species including warsaw grouper are described as "not sufficiently abundant to be targeted or recorded in catches." This observation is also echoed by Potts (2001), who noted, "the species is not that common and never has been in the South Atlantic region as long as records have been collected."

The recreational fishing data discussed in Parker and Mays (1998) are NMFS' Marine Recreational Fisheries Statistics Survey (MRFSS) landings data and headboat landings data. The MRFSS includes telephone surveys of fishing effort and an access-site intercept survey of angler catch, which are then combined and extrapolated to obtain estimates of total catch, effort, and participation for marine recreational fisheries. Headboats are for-hire vessels that carry multiple recreational fishermen to fishing locations in Federal waters. Parker and Mays (1998) describe landings based on MRFSS data as highly variable, with an apparent large spike in 1985 and a subsequent steep decline. We believe the landings data from 1985 are unreliable as an indicator of trends in the warsaw grouper population numbers for a number of reasons. Notably, the 1985 MRFSS Atlantic landings were estimated to total 99,811 fish and 1.28 million pounds (581.5 metric tons (mt)), which is almost four times greater than the highest historical catch of warsaw grouper in the combined Atlantic and Gulf of Mexico commercial fishery (0.36 million pounds (162.6 mt) in 1965). The 1985 MRFSS landings estimates were

extrapolated from low survey effort and small numbers of anglers reporting catching warsaw grouper: 6 Anglers out of 5,426 surveyed in the South Atlantic region reported catching warsaw grouper. Likewise, the headboat data analyzed by Parker and Mays (1998) were also based on very few actual fish evaluated per year—the highest being 41 fish in 1984.

Landings data alone are not very useful in assessing the condition of a population as landings can fluctuate up and down for a variety of reasons. As mentioned above, information about fishing effort, fishing practices, and regulatory measures affecting catch is generally necessary to determine whether trends in fishery landings and catch are indicative of fish species' population status or trends. For example, decline in catch per unit of effort (CPUE) is a generally accepted indicator of decline in abundance of a target fish species. The petition does not discuss information on effort and regulations respecting catch and effort. Parker and Mays (1998) discuss in general terms a considerable increase in the number of commercial and recreational vessels fishing for reef fish off the South Atlantic coast beginning in the mid-1970s. As suggested in Parker and Mays (1998), and other more recent information in our files, warsaw grouper is too infrequently captured in fisheries to allow for reliable estimation of effort or other biological metrics useful in estimating population size and trends. The most recent attempt at assessing warsaw grouper's stock status, due to its MSFCMA classification of undergoing overfishing in the South Atlantic, concluded that commercial and recreational data available were insufficient to proceed with a stock assessment for the species due to data limitations, and specifically stated MRFSS data were insufficient to calculate CPUE indices across fishery sectors (SEDAR, 2004). As mentioned above, implemented regulatory measures have restricted catch or landings, and may have affected effort, beginning in the early 1990s. For example, a deep-water grouper commercial quota was established in 1990 for the Gulf of Mexico, and a one-fish per vessel per trip limit was imposed in 1994 for the South Atlantic (regulatory measures are discussed in detail below in analysis of overutilization). As such, these measures confound our use of landings data across the available time series as indicators of population status or trends, or extinction risk.

The other information presented in the petition as evidence of a population decline of warsaw grouper is Rudershausen *et al.* (2008). However, the single quote from the study contained in the petition is misleading. The petition quotes the study, stating, "while warsaw groupers were caught in the 1970s, they were not caught in 2005–2006." However, the petition neglects to mention that while no warsaw grouper were caught in 2005–2006, only one warsaw grouper was caught from the one study site in the 1970s that was resampled in 2005–2006 (Rudershausen *et al.,* 2008). Additionally, the petition fails to note the study's statement regarding "the total fishing effort in the 1970s was greater than 2005–2006, which could explain the absence of [this] species in the latter period."

The petition includes several examples of reduction in average weight of individual warsaw grouper landed in fisheries to support their assertion the species is imperiled, including weight data reported in Parker and Mays (1988). Declines in average weight of fish may result from excessive fishing pressure, and may be a cause for concern due to potential associated declines in fecundity, as well as population instability due to truncation of the age structure. Conversely, it may also occur due to the introduction of large numbers of new recruits into the population or if fishing effort is focused on areas predominated by younger, smaller individuals of a species (*e.g.,* shallower habitats closer to shore). Regardless, we believe data on landed weight of warsaw grouper in general is unreliable to support inferences of changes in the population status or trends and extinction risk for the species. As discussed above, the numbers of fish measured to describe trends in weight per fish in Parker and Mays (1998) were extremely low throughout the period studied, with a maximum of 58 fish sampled in the commercial fishery in 1988, and 41 fish sampled in the headboat fishery in 1984. These low sample sizes resulted in very large standard deviations in mean weights in many years. Based on the data analyzed, Parker and Mays (1998) describe a reduction in average weight of warsaw grouper caught by headboats over time, but an increasing average weight in commercially caught fish towards the end of the study period. Thus, these data are conflicting as an indicator of the status or trends in the warsaw grouper population. Additionally, since warsaw grouper is an uncommonly caught recreational species, weights are frequently unreported in the MRFSS database, so there is limited weight data to evaluate for indications of population-level trends. For example, MRFSS estimates 3,711 warsaw grouper were caught by Gulf of Mexico recreational fishers in 1989, but no poundage is reported for that year. Further, given the size of adult warsaw grouper and their deep reef habitats, the difficulty in landing larger individuals may bias weight data toward smaller, younger fish.

The petition references an observation of rarity of males in the warsaw grouper population as an indication of its extinction risk (Huntsman's pers. obs., from Chuen and Huntsman, 2006). Protogynous fish populations exhibit naturally-skewed sex ratios, since fish do not transition from females to male until they reach larger sizes or older ages. Fishing pressure can exacerbate this sex bias if older, larger male fish are disproportionately removed, potentially leading to reproductive failure, or by reducing the mean lifespan of the population and reducing the probability that females will survive long enough to become males (Heppell *et al.,* 2006). The seriousness of these phenomena in protogynous fish would depend in part on whether a species is plastic or inflexible in the size or age of sex transition, and whether transition is triggered by biological or social cues, or both (Heppell *et al.,* 2006). Protogynous hermaphroditism in warsaw grouper has not been confirmed. Moreover, we have no information that indicates the size or age at which warsaw grouper might transition from female to male, or what the cues for transition may be. Even if the species is protogynous, there is no data to evaluate current or historical sex ratios within the population to determine if fishing pressure is selectively removing males resulting in an active extinction risk.

We conclude that the petition and information in our files on demographic factors of warsaw grouper does not present substantial information to indicate the species may be facing an extinction risk level that is cause for concern. Even if fisheries landings data could be interpreted as evidencing a decline in warsaw grouper's population, that would seem to have been limited to the corresponding marked increase in commercial and recreational fishing effort for all reef fish off the southeastern U.S. beginning in the mid-1970s. Management measures designed to rebuild stocks of deep-water grouper in general, and warsaw grouper specifically, in the early 1990s resulted in immediate and drastic reductions in landings. There is no indication that a population decline that might have occurred in the 1970s and 1980s

resulted in depensation or other negative effects such as loss of age classes, truncation of age structure, absence of large individuals, or shift in sex ratio in the warsaw grouper population.

Information on Threats to the Species

We next evaluated whether the information in the petition and information in our files concerning the extent and severity of one or more of the ESA section 4(a)(1) factors suggests these impacts and threats may be posing a risk of extinction for warsaw grouper that is cause for concern.

Overutilization in Fisheries

The petition states that "the primary threat to the warsaw grouper is historic and continued overfishing." In support, the petition states the South Atlantic Fishery Management Council (SAFMC) considers warsaw grouper "overfished and undergoing overfishing (NMFS 2003)." The most recent Report to Congress on the Status of U.S. Fisheries (NMFS, 2008, 2009) lists warsaw grouper under SAFMC jurisdiction as undergoing overfishing; the species' status in the Gulf of Mexico is listed as unknown. A species undergoing overfishing is one where the current fishing mortality exceeds an identified mortality threshold, while an overfished species is one where the current biomass falls short of an identified stock threshold; typically, overfishing leads to a stock becoming overfished. These MSFCMA classifications do not necessarily indicate that a species may warrant listing as a threatened or endangered species, however, because these classifications do not have any per se relationship to a species' extinction risk. For example, our 2007 status review for the Atlantic white marlin (73 FR 843, January 4, 2008; *http://sero.nmfs.noaa.gov/pr/endangered%20species/pdf/2007_Atlantic_white_marlin_status_%20review.pdf*) explained in detail important distinctions between the terms "overfished" from the MSFCMA context, and "overutilization" as used in the ESA context. While a stock can be exploited to the point of diminishing returns where the objective is to sustain a harvest of the species, that over-exploitation in and of itself does not imply a continuing downward spiral for a population. A population may equilibrate at an abundance lower than that which would support a desired harvest level, but can still be stable at that level if fishing effort is stable.

The petition also expresses concern over potential bycatch mortality. The MSFCMA defines bycatch to mean fish harvested in a fishery, but which are not sold or kept for personal use, and includes economic discards and regulatory discards; it does not include fish released alive under a recreational catch and release fishery management program. According to SEDAR (2004), estimated release mortality rates for the commercial and recreational warsaw grouper fisheries are not available. There is no available information on post-release mortality rates of warsaw grouper, but bycatch mortality, including post-release mortality, is a potential concern for deep-water species due to the likelihood of barotrauma (*i.e.,* injury resulting from expansion of gasses in internal spaces as ambient pressure is reduced during ascent). The SAFMC has noted that under the existing discard logbook program, discards are self reported and involve a high degree of uncertainty, and they also suspect that the incidental bycatch of warsaw grouper may be responsible for the continued overfishing status of the species. However, bycatch may not be a significant issue for warsaw grouper due to its natural rarity, which likely prevents significant numbers (*i.e.,* beyond the one-fish per vessel limit) from being caught by anglers in the first place, to be subsequently released and subjected to potentially high bycatch mortality rates. Estimates for warsaw grouper discards in the South Atlantic commercial deep-water grouper fishery during all handline and bandit rig gear trips from August 2001 through July 2003 indicate a mean discard rate of 0.098 fish per trip (SEDAR, 2004), and thus a low level of bycatch. Available data indicate bycatch mortality, even with a 100 percent release mortality rate, is not an extinction threat to warsaw grouper because of low catch rates. For example, the estimated average annual warsaw grouper catch-per-trip on commercial South Atlantic deep-water grouper trips (1,674 average annual trips) from 1994–2002 was 0.10 (SEDAR, 2004). Additionally, the annual average of warsaw grouper discards from commercial, headboat, and MRFSS during 2005–2008 was estimated to be 80 fish (SAFMC, 2009). Thus, we believe these low catch and retention levels of warsaw grouper prevent bycatch mortality from producing an extinction risk of concern.

In summary, the petition and information in our files does not comprise substantial information indicating that overutilization may have, or may continue to be causing extinction risk of concern in warsaw grouper.

Inadequacy of Existing Regulatory Mechanisms

The petition states that existing regulatory mechanisms are inadequate to prevent endangerment or extinction of warsaw grouper, focusing on Federal fishing regulations. Specifically, the petition identifies the lack of minimum size, lack of possession limits, and a 726 mt overall deep-water grouper quota in the Gulf of Mexico, and the 1-fish per-vessel per-trip commercial and recreational limit in the South Atlantic that is inadequate given the number of fishers.

In Federal waters of the Gulf of Mexico, warsaw grouper is managed by the Gulf of Mexico Fishery Management Council (GMFMC) through their Reef Fish Fishery Management Plan (FMP). In 1990, Amendment 1 to the FMP established a 1.8 million pound (816 mt) commercial quota for deep-water groupers, which includes misty, snowy, yellowedge, speckled hind, and warsaw grouper, and also includes scamp after the shallow-water grouper quota is filled; since 2004, the deep-water grouper commercial quota has been set at 1.02 million pounds (463 mt). Available species-specific commercial landings reveals the Gulf of Mexico fishery has never exceeded 0.3 million pounds (140 mt) of warsaw grouper. Amendment 16B to the FMP, implemented on November 24, 1999, established a one-fish per vessel recreational bag limit for warsaw grouper, and a prohibition on sale of warsaw grouper when caught recreationally. According to MRFSS landing statistics, this management action reduced recreational landings to low levels, averaging approximately 1,300 fish or 23,000 pounds (10.4 mt) of warsaw grouper annually for the period 1999 through 2009, compared to approximately 8,000 fish or 85,000 pounds (38.6 mt) annually for the period 1988 through 1998. Additionally, the GMFMC's objective for lack of a minimum size in the Gulf of Mexico is to curb bycatch of this deep-water grouper species. Allowing commercial fishermen to retain warsaw grouper that may otherwise become regulatory discards due to size prevents these fish from being thrown back dead due to barotrauma and also excluded from landings statistics.

In Federal waters of the U.S. South Atlantic, warsaw grouper is managed by the SAFMC through their Snapper Grouper FMP. Amendment 6 to the FMP, effective on July 27, 1994, included a one-fish per vessel, per trip, commercial and recreational possession limit for warsaw grouper; a prohibition

on the sale of warsaw grouper; and established the *Oculina* Experimental Closed Area, which prohibited fishing for all snapper grouper species within this area (59 FR 27242). Since the implementation of Amendment 6 in 1994, commercial landings of warsaw grouper have annually averaged approximately 240 pounds (0.1 mt) through 2008. Prior to this action, commercial landings averaged approximately 17,000 pounds (7.7 mt) during the previous 14-year time frame, 1981 through 1994.

The petition, its references, and numerous sources have stated that establishment of large marine protected areas is likely to be the most effective measure for protection and conservation of warsaw grouper. Studies have found larger and more abundant grouper in closed areas than in similar, unprotected areas (Sedberry *et al.,* 1999). Yet, the petition fails to acknowledge that this objective has characterized Federal fishery management of warsaw grouper since the early 1990s. As discussed above, the *Oculina* Banks, a unique deep-water coral reef ecosystem off the South Atlantic coast of the U.S., was protected beginning in 1994 specifically to facilitate rebuilding of deep-water grouper stocks. Amendment 13A to the FMP, effective on April 26, 2004, extended the prohibition on fishing for or possessing snapper grouper species within the *Oculina* Experimental Closed Area for an indefinite period (69 FR 15731). On February 12, 2009, Amendment 14 to the FMP established eight marine protected areas in which fishing for or possession of South Atlantic snapper grouper species is prohibited (74 FR 1621). Similarly, several large closed areas have been established in the Gulf of Mexico, including the Madison and Swanson and Steamboat Lump marine reserves.

In summary, the petition and information in our files does not constitute substantial information indicating existing regulatory mechanisms are inadequate to prevent, or are contributing to, extinction risk for warsaw grouper that is cause for concern. To the contrary, available information suggests management actions have significantly reduced landings, thereby reducing risk of overutilization in both the Gulf of Mexico and South Atlantic. Furthermore, closures of large areas in the Gulf of Mexico and South Atlantic to fishing effort, including known reef habitats important to deep-water groupers, likely offer conservation benefits to the species.

Other Natural or Manmade Factors

The petition and several referenced studies state that warsaw grouper is vulnerable to increased risk of extinction, particularly from fishing pressure, due to biological constraints, including its large size, long lifespan, late age of sexual maturity, low rates of population increase, protogynous hermaphroditism, and formation of spawning aggregations that can be easily targeted by fishermen. Concerns about the inherent vulnerability of rare deep-water grouper species has been a recurring justification for Federal fishery management actions implemented under the MSFCMA. However, as discussed above, fishing pressure has been severely curtailed on this species. Moreover, neither the petition nor information in our files suggests that fishing pressure has resulted in changes in population metrics for the species that might be expected given its particular biological constraints. Additionally, the petition's inclusion of the species' vulnerability to fishing pressure during spawning aggregations is inaccurate. While some grouper species, such as goliath and black grouper, are known to form spawning aggregations, no published studies or other available information in our files document warsaw grouper aggregate to spawn.

The petition also lists potential small population size of adult warsaw grouper and human population growth as other natural or manmade factors contributing to warsaw grouper's vulnerability, but does not provide any supporting information to indicate these generalized concerns are actually negatively affecting warsaw grouper.

Therefore, we conclude that the petition and information in our files does not present substantial information to suggest that other natural or manmade factors, alone or in combination with other factors such as fishing pressure, may be causing extinction risk of concern in warsaw grouper.

Petition Finding

After reviewing the information contained in the petition, as well as information readily available in our files, we conclude the petition fails to present substantial scientific or commercial information indicating the petitioned action may be warranted.

References Cited

A complete list of all references is available upon request from the Protected Resources Division of the NMFS Southeast Regional Office (see **ADDRESSES**).

Authority: The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: September 22, 2010.

Eric C. Schwaab,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 2010–24334 Filed 9–27–10; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 55–2010]

Foreign-Trade Zone 169—Manatee County, Florida; Extension of Subzone; Aso LLC (Adhesive Bandage Manufacturing); Sarasota County, FL

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Manatee County Port Authority, grantee of FTZ 169, requesting to indefinitely extend Subzone 169A, on behalf of Aso LLC (formerly Aso Corporation) (Aso), located in Sarasota County, Florida. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on September 23, 2010.

Subzone 169A (229 employees, total annual capacity of 2.2 billion bandage strips per year) was approved by the Board in 2000 for the manufacture of adhesive bandages under FTZ procedures (Board Order 1120, 65 FR 58508–58509, 9/29/2000) for a period of 4 years of activation, subject to extension upon review. Subzone 169A consists of one site (166,000 square feet of enclosed space on 38 acres) located at 300 Sarasota Center Blvd., within the International Trade Industrial Park, east of Sarasota (Sarasota County), Florida. Since approval, the subzone has been activated intermittently since the company has at times instead used various duty suspension provisions on adhesive tape. Aso is now requesting to indefinitely extend its subzone status with manufacturing authority to produce adhesive bandages (HTSUS 3005.10) using foreign-sourced adhesive tape (HTSUS 3919.10), representing some 22 percent of the final product value.

FTZ procedures would exempt Aso from customs duty payments on the foreign adhesive tape used in export production. The company anticipates that some 6 percent of the plant's shipments will be exported. On its domestic sales, Aso would be able to choose the duty rate during customs

entry procedures that applies to adhesive bandages (duty-free) for the foreign adhesive tape (duty rate—5.8%) noted above. The request indicates that the savings from FTZ procedures help improve the plant's international competitiveness.

In accordance with the Board's regulations, Diane Finver of the FTZ Staff is designated examiner to evaluate and analyze the facts and information presented in the application and case record and to report findings and recommendations to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is November 29, 2010. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to December 13, 2010.

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 2111, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230–0002, and in the "Reading Room" section of the Board's Web site, which is accessible via *http://www.trade.gov/ftz.*

For further information, contact Diane Finver at *Diane.Finver@trade.gov* or (202) 482–1367.

Dated: September 23, 2010.

Elizabeth Whiteman,

Acting Executive Secretary.

[FR Doc. 2010–24315 Filed 9–27–10; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

National Estuarine Research Reserve System

AGENCY: Estuarine Reserves Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce

ACTION: Notice of Final Approval and Availability of Revised Management Plans for the following National Estuarine Research Reserves: Arraigns Bay, RI and Tijuana River, CA.

SUMMARY: Notice is hereby given that the Estuarine Reserves Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce has approved the revised management plans of the Arraigns Bay, RI National Estuarine Research Reserve and the Tijuana River, CA National Estuarine Research Reserve. The Arraigns Bay, RI Reserve plan calls for an expansion to their boundary and the Tijuana River, CA Reserve plan calls for a reduction to their boundary.

The revised management plan for the Arraigns Bay, RI National Estuarine Research Reserve outlines the administrative structure; the education, training, stewardship, and research goals of the reserve; and the plans for future land acquisition and facility development to support reserve operations. The objectives described in this plan are designed to address the most critical coastal issues in Arraigns Bay such as wastewater and storm water management, coastal and watershed development, and invasive species management. Since the last approved management plan in 1998, the reserve has become fully staffed; added a coastal training program that delivers science-based information to key decision makers; and added significant monitoring of invasive species, water quality, fish and bird populations. In addition to programmatic and staffing advances, the reserve upgraded visiting research facilities, space available for education and storage, and has increased the availability of dock space for research and educational programming.

This management plan calls for a boundary expansion of 156 acres. The lands consist of one 128 acre parcel on the northern end of Prudence Island that is adjacent to current reserve property and the addition of the 28 acre Dyer Island. Dyer Island habitats include coastal brush, salt marsh, cobble beaches, and both hard and soft substrate submerged lands. The island is considered a critical bird rookery and hosts an unusual amount of macro algal diversity and rare examples of un ditched salt marsh habitat. The 128 acre Ballard Property on Prudence Island consists of forested land with early succession al shrub land and grassland communities as well as an important freshwater creek and the associated wetlands. The Dyer Island property will provide opportunities for research and passive recreation while the easily accessed Prudence Island parcel will be appropriate for education, recreation, and upland research purposes. This plan can be accessed at *http://www.nbnerr.org* or *nerrs.noaa.gov.*

The revised management plan for the Tijuana River, CA National Estuarine Research Reserve outlines a framework of overarching goals and program specific objectives that will guide the education, training, stewardship, and research programs of the reserve; updates the reserve boundary; proposes criteria for boundary expansion activities through acquisition and/or mitigation; as well as outlines plans for facility use and development to support reserve operations. The goals described in this plan are designed to provide a framework that supports program integration for collaborative management in a highly urbanized bi-national watershed.

Since the last approved management plan in 2000, the reserve has become fully staffed; added a coastal training program that delivers science-based information to key decision makers; developed a robust volunteer program that provides broad support to Reserve programs; added a bi-nationally focused Watershed Program; completed habitat restoration projects to improve estuary function; improved management of sediment delivery to the estuary; and constructed facilities to support essential functions of the reserve including interpretive structures, staff offices, and an on-site laboratory.

This management plan amends the boundary of the reserve to be 2,293 acres, 238 acres less, in part as a result of excluding the Border Infrastructure System completed since the last approved management plan. This plan can be accessed at *trnerr.org/visitors_center.html* or *nerrs.noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Alison Krepp at (301) 563–7105 regarding the Tijuana River CA, National Estuarine Research Reserve and Cory Riley at (603) 862–2813 regarding the Arraigns Bay RI, National Estuarine Research Reserve or Laurie McGilvray at (301) 563–1158 of NOAA's National Ocean Service, Estuarine Reserves Division, 1305 East-West Highway, N/ORM5, 10th floor, Silver Spring, MD 20910.

Dated: September 21, 2010.

Donna Witting,

Acting Director, Office of Ocean and Coastal Resource Management, National Oceanic and Atmospheric Administration.

[FR Doc. 2010–24341 Filed 9–27–10; 8:45 am]

BILLING CODE 3510–08–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

National Sea Grant Advisory Board

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of public meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Sea Grant Advisory Board (Board). Board members will discuss and provide advice on the National Sea Grant College Program in the areas of program evaluation, strategic planning, education and extension, science and technology programs, and other matters as described in the agenda found on the National Sea Grant College Program Web site at *http://www.seagrant.noaa.gov/leadership/advisory_board.html.*

DATES: The announced meeting is scheduled for Saturday, October 16—Sunday October 17, 2010.

ADDRESSES: The meeting will be held at The Astor Crowne Plaza Hotel, 739 Canal Street, New Orleans, LA 70130.

Status: The meeting will be open to public participation with a 15-minute public comment period on October 17 at 2:45 p.m. CDT (check Web site to confirm time.) The Board expects that public statements presented at its meetings will not be repetitive of previously submitted verbal or written statements. In general, each individual or group making a verbal presentation will be limited to a total time of three (3) minutes. Written comments should be received by the Designated Federal Officer by October 8, 2010 to provide sufficient time for Board review. Written comments received after October 8, 2010, will be distributed to the Board, but may not be reviewed prior to the meeting date. Seats will be available on a first-come, first-served basis.

FOR FURTHER INFORMATION CONTACT: Ms. Elizabeth Ban, Designated Federal Officer, National Sea Grant College Program, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Room 11843, Silver Spring, Maryland 20910, (301) 734–1082.

SUPPLEMENTARY INFORMATION: The Board, which consists of a balanced representation from academia, industry, state government and citizens groups, was established in 1976 by Section 209 of the Sea Grant Improvement Act (Pub. L. 94–461, 33 U.S.C. 1128). The Board advises the Secretary of Commerce and the Director of the National Sea Grant College Program with respect to operations under the Act, and such other matters as the Secretary refers to them for review and advice.

The agenda for this meeting can be found at *http://www.seagrant.noaa.gov/leadership/advisory_board.html.*

Dated: September 22, 2010.

Mark E. Brown,

Chief Financial Officer, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.

[FR Doc. 2010–24309 Filed 9–27–10; 8:45 am]

BILLING CODE 3510–KA–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Hydrographic Services Review Panel Meeting

AGENCY: National Ocean Service, National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Notice of open meeting.

SUMMARY: The Hydrographic Services Review Panel (HSRP) is a Federal Advisory Committee established to advise the Under Secretary of Commerce for Oceans and Atmosphere on matters related to the responsibilities and authorities set forth in section 303 of the Hydrographic Services Improvement Act of 1998, its amendments, and such other appropriate matters that the Under Secretary refers to the Panel for review and advice.

Date and Time: The public meeting will be held October 12–13, 2010, from 8:30 a.m. to 5:30 p.m.

Location: The Heathman Lodge, 7801 NE Greenwood Drive, Vancouver, Washington 98662; Tel: (360) 254–3100. Refer to the HSRP Web site listed below for the most current meeting agenda. Times and agenda topics are subject to change.

FOR FURTHER INFORMATION CONTACT: Captain John E. Lowell, Jr., NOAA, Designated Federal Official (DFO), National Ocean Service (NOS), Office of Coast Survey, NOAA (N/CS), 1315 East West Highway, Silver Spring, Maryland 20910; Telephone: 301–713–2770; Fax: 301–713–4019; E-mail: *Hydroservices.panel@noaa.gov* or visit the NOAA HSRP Web site at *http://nauticalcharts.noaa.gov/ocs/hsrp/hsrp.htm.*

SUPPLEMENTARY INFORMATION: The meeting will be open to the public and public comment periods (on-site) will be scheduled at various times throughout the meeting. These comment periods will be included in the final agenda published before October 12, 2010, on the HSRP Web site listed above. Each individual or group making a verbal presentation will be limited to a total time of five (5) minutes. Comments will be recorded. Written comments (at least 30 copies) should be submitted in advance to the DFO by October 6, 2010. Written comments received by the DFO after October 6, 2010, will be distributed to the HSRP, but may not be reviewed before the meeting date. Approximately 30 seats will be available for the public, on a first-come, first-served basis.

Matters to be considered: (1) NOAA priorities, future directions and strategic plans for NOAA; (2) Speaker panels consisting of regional and local stakeholders on the use of and interest in NOAA's Navigation Services; (3) Presentations will include: West Coast Governors' Agreement on Ocean Health, Columbia River and Northwest Regional navigation and hydrographic surveying, climate change and sea level rise impacts for the Northwest, seafloor mapping, the Committee on Marine Transportation System, NOAA updates, HSRP logistics; and (4) public statements.

Dated: September 23, 2010.

Captain John E. Lowell, Jr.

Director, Office of Coast Survey, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. 2010–24373 Filed 9–27–10; 8:45 am]

BILLING CODE 3510–JE–P

COMMISSION OF FINE ARTS

Notice of Meeting

The next meeting of the U.S. Commission of Fine Arts is scheduled for 21 October 2010, at 10 a.m. in the Commission offices at the National Building Museum, Suite 312, Judiciary Square, 401 F Street, NW., Washington, DC 20001–2728. Items of discussion may include buildings, parks and memorials.

Draft agendas and additional information regarding the Commission are available on our Web site: *http://www.cfa.gov.* Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Thomas Luebke, Secretary, U.S. Commission of Fine Arts, at the above address; by e-mailing *staff@cfa.gov;* or by calling 202–504–2200. Individuals requiring sign language interpretation for the hearing impaired should contact

the Secretary at least 10 days before the meeting date.

Dated 24 September 2010 in Washington DC.

Thomas Luebke, AIA,

Secretary.

[FR Doc. 2010–24200 Filed 9–27–10; 8:45 am]

BILLING CODE 6330–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Federal Advisory Committee; Department of Defense Task Force on the Care, Management, and Transition of Recovering Wounded, Ill, and Injured Member of the Armed Forces

AGENCY: Department of Defense (DoD).

ACTION: Establishment of Federal advisory committee.

SUMMARY: Under the provisions of section 724 of Public Law 111–84, the Federal Advisory Committee Act of 1972, (5 U.S.C. Appendix), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b), and 41 CFR 102–3.50, the Department of Defense gives notice that it is establishing the charter for the Department of Defense Task Force on the Care, Management, and Transition of Recovering Wounded, Ill, and Injured Member of the Armed Forces (hereafter referred to as "the Task Force").

FOR FURTHER INFORMATION CONTACT: Jim Freeman, Deputy Committee Management Officer for the Department of Defense, 703–601–6128.

SUPPLEMENTARY INFORMATION: The Task Force is a non-discretionary Federal advisory committee established to (a) access the effectiveness of the policies and programs developed and implemented by the Department of Defense, and by each of the Military Departments to assist and support the care, management, and transition of recovering wounded, ill, and injured members of the Armed Forces; and (b) make recommendations for the continuous improvements of such policies and programs.

The Task Force, pursuant to section 724(c) of public Law 111–84, shall no later than 12 months after the date on which all Task Force members have been appointed, and each year thereafter for the life of the Task Force, shall submit a report to the Secretary of Defense.

The Task Force shall submit to the Secretary of Defense a report on the activities of the Task Force, and on the activities of the Department of Defense, to include the Military Departments, to assist and support the care, management, and transition of recovering wounded, ill, and injured members of the Armed Forces. At a minimum, the Task Force's report shall include the following:

a. The Task Force's findings and conclusions as a result of its assessment of the effectiveness of developed and implemented DoD policies and programs, to include those by each of the Military Departments, to assist and support the care, Management, and transition of recovering wounded, ill, and injured members of the Armed Forces.

b. A description of best practices and various ways in which the Department of Defense, to include the Military Departments, could more effectively address matters relating to the care, management, and transition of recovering wounded, ill, and injured members of the Armed Forces, including members of the Regular and Reserve Components, and support for their families.

c. A plan listing and describing the Task Force's activities for the upcoming year covered by the report.

d. Such recommendations for other legislative or administrative action that the Task Force considers appropriate for measures to improve DoD-wide policies and programs in (a) above, which assist and support the care, management and transition of recovering wounded, ill, and injured members of the Armed Forces.

The Task Force, for the purposes of its reports, shall fully comply with sections 724(c)(2) and (3) of Public Law 111–84 in all matters dealing with the reports; (a) methodology; and (b) matters to be reviewed and assessed.

No later than 90 days after receiving the Task Force's annual report, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives the report and the Secretary's evaluation of the report.

No later than six months after receiving the Task Force's annual report, the Secretary of Defense, in consultation with the Secretaries of the Military Departments, shall submit to the Committees on Armed Services of the Senate and the House of Representatives a plan to implement the recommendations of the Task Force's annual report.

The Task Force, pursuant to section 724(b) of Public Law 111–84, shall be comprised of not more than 14 members appointed by the Secretary of Defense.

Pursuant to 724(b)(2) of Public Law 111–84, the Secretary of Defense shall appoint:

a. At least one member of each of the Regular Components of the Army, the Navy, the Air Force and the Marine Corps;

b. One member of the National Guard;

c. One member of a Reserve Component of the Armed Forces other than the National Guard;

d. At least one family member of a wounded, ill, or injured member of the Armed Forces or veteran who has experience working with wounded, ill, and injured members of the Armed Forces or their families; and

e. A number of person from outside the Department of Defense equal to the total number of personnel from within the Department of Defense (whether members of the Armed Forces or civilian personnel) who are appointed to the Task Force.

Sections 724(b)(2) through (4) of Public Law 111–84, further stipulate the following Task Force appointment requirements:

a. At least one individual appointed to the Task Force from within the Department of Defense shall be the Surgeon General of an Armed Force.

b. The individuals appointed to the Task Force from outside the Department of Defense—

i. With the concurrence of the Secretary of Veterans Affairs, shall include an officer or employee of the Department of Veterans Affairs; and

ii. May include individuals from other departments or agencies of the Federal Government, from State and local agencies, or from the private sector.

c. Persons appointed to the Task Force shall have experience in—

i. Medical care and coordination for wounded, ill, and injured members of the Armed Forces;

ii. Medical case management;

iii. Non-medical case management;

iv. The disability evaluation process for members of the Armed Forces;

v. Veterans benefits;

vi. Treatment of traumatic brain injury and post-traumatic stress disorder;

vii. Family support;

viii. Medical research;

ix. Vocational rehabilitation; or

x. Disability benefits.

There shall be two co-chairs of the Task Force. One of the co-chairs shall be designated by the Secretary of Defense at the time of appointment from among the individuals appointed to the Task Force from within the Department of Defense. The other co-chair shall be selected from among the individuals appointed from outside the Department of Defense by those individuals.

Pursuant to sections 724(e)(1) of Public Law 111–84, Task Force members who are members of the Armed Forces or a civilian officer or employee of the United States shall serve on the Task Force without compensation (other than compensation to which entitled as a member of the Armed Forces or an officer or employee of the United States, as the case may be).

Other Task Force members shall be appointed under the provisions of 5 U.S.C. 316, and shall serve as special government employees. In addition, these special government employees shall serve with compensation under the provisions of 5 U.S.C. 3161.

All Task Force members shall receive travel and per diem when traveling on official Task Force business.

With DoD approval, the Task Force is authorized to establish subcommittees, as necessary and consistent with its mission. These subcommittees or working groups shall operate under the provisions of the Federal Advisory Committee Act of 1972, the Government in the Sunshine Act of 1978 (5 U.S.C. 552b), and other governing Federal regulations.

Such subcommittees or workgroups shall not work independently of the chartered Task Force, and shall report all their recommendation and advice to the Task Force for full deliberation and discussion. Subcommittees or workgroups have no authority to make decisions on behalf of the chartered Task Force; nor can they report directly to the Department of Defense or any Federal officers or employees who are no Task Force members.

Subcommittee members, who are not Task Force members, shall be appointed in the same manner as Task Force members.

The Task Force shall meet at the call of the Designated Federal Officer, in consultation with the co-chairs. The estimated number of Task Force meetings is five per year.

The Designated Federal Officer, pursuant to DoD policy, shall be a full-time or permanent part-time DoD employee, and shall be appointed in accordance with established DoD policies and procedures.

In addition, the Designated Federal Officer is required to be in attendance at all Task Force and subcommittee meetings; however, in the absence of the Designated Federal Officer, the Alternate Designated Federal Officer shall attend the meeting.

Pursuant to 41 CFR 102–3.105(j) and 102–3.140, the public or interested organizations may submit written statements to the Department of Defense Task Force on the Care, Management, and Transition of Recovering Wounded, Ill, and injured Member of the Armed Forces membership about the Task Force's mission and functions. Written statements may be submitted at any time or in response to the stated agenda of planned meeting of the Department of Defense Task Force on the Care, Management, and Transition of Recovering Wounded, Ill, and injured Member of the Armed Forces.

All written statements shall be submitted to the Designated Federal Officer for the Department of Defense Task Force on the Care, Management, and Transition of Recovering Wounded, Ill, and injured Member of the Armed Forces, and this individual will ensure that the written statements are provided to the membership for their consideration. Contact information for the Department of Defense Task Force on the Care, Management, and Transition of Recovering Wounded, Ill, and injured Member of the Armed Forces Designated Federal Officer can be obtained from the GSA's FACA Database—*https://www.fido.gov/facadatabase/public.asp*.

The Designated Federal Officer, pursuant to 41 CFR 102–3.150, will announce planned meetings of the Department of Defense Task Force on the Care, Management, and Transition of Recovering Wounded, Ill, and injured Member of the Armed Forces. The Designated Federal Officer, at that time, may provide additional guidance on the submission of written statements that are in response to the stated agenda for the planned meeting in question.

Dated: September 22, 2010.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2010–24216 Filed 9–27–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Overview Information; Technology and Media Services for Individuals With Disabilities—The Accessible Instructional Materials (AIM) Personnel Development Center; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2011

Catalog of Federal Domestic Assistance (CFDA) Number: 84.327W.

Dates: Applications Available: September 28, 2010.

Deadline for Transmittal of Applications: November 29, 2010.

Deadline for Intergovernmental Review: January 26, 2011.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purposes of the Technology and Media Services for Individuals with Disabilities program is to: (1) Improve results for children with disabilities by promoting the development, demonstration, and use of technology; (2) support educational media services activities designed to be of educational value in the classroom setting for children with disabilities; and (3) provide support for captioning and video description of educational materials that are appropriate for use in the classroom setting, including television programs, videos, and programs and materials associated with new and emerging technologies, such as CDs, DVDs, video streaming, and other forms of multimedia.

Priority: In accordance with 34 CFR 75.105(b)(2)(v), this priority is from allowable activities specified in the statute (see sections 674 and 681(d) of the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. 1400 et seq.).

Absolute Priority: For FY 2011 and any subsequent year in which we make awards from the list of unfunded applicants from this competition, this priority is an absolute priority. Under 34 CFR 75.105(c)(3) we consider only applications that meet this priority.

This priority is:

Technology and Media Services for Individuals with Disabilities—The Accessible Instructional Materials (AIM) Personnel Development Center.

Background: IDEA requires States to provide a free appropriate public education (FAPE) to all children with disabilities. FAPE includes the provision of educational materials in accessible formats for children with disabilities eligible for services under Part B of IDEA, including children with visual impairments and with other print disabilities (section 674(e)(3)(A) of IDEA).

The 2004 amendments to IDEA added provisions to improve the timely production and dissemination of educational materials in accessible formats for students who are blind or who have print disabilities (see sections 612(a)(23) and 674(e) of IDEA). These provisions include the following:

- States must adopt the National Instructional Materials Accessibility Standard (NIMAS) (section 612(a)(23) of IDEA). NIMAS is a technical standard used by publishers to produce source files that may be used to develop

multiple specialized formats (such as Braille or audio books) for students with print disabilities.

- The Department was directed to establish the National Instructional Materials Access Center (NIMAC), a repository for NIMAS files (section 674(e) of IDEA). For more information about NIMAC, go to *http://www.nimac.us.*
- States that choose to coordinate with NIMAC must require publishers to submit NIMAS files to NIMAC as part of State textbook purchase agreements (section 612(a)(23) of IDEA).

These provisions were designed to ensure that State educational agencies (SEAs) and local educational agencies (LEAs) meet the educational needs of all students with disabilities by providing appropriate instructional materials in accessible formats. A major barrier to the implementation of the NIMAS provisions is that some children with disabilities are ineligible to use materials rendered from NIMAC files. The files obtained from NIMAC may only be used for children with disabilities who are eligible under IDEA and who meet the definition of "blind or other persons with print disabilities" under the Act to Provide Books for the Adult Blind (2 U.S.C. 135a), which establishes eligibility criteria for individuals served under the Library of Congress (LOC) regulations (36 CFR 701.6(b)(1)). These eligibility criteria cover individuals who are blind, have other visual disabilities, are unable to read or use standard print as a result of physical limitations, or have reading disabilities resulting from organic dysfunction. The regulations implementing Part B of IDEA require SEAs and LEAs to ensure that children with disabilities who need instructional materials in accessible formats, but are not included under the LOC definition of blind or other persons with print disabilities or who need materials that cannot be produced from NIMAS files obtained through NIMAC, receive those instructional materials in a timely manner (34 CFR 300.172(b)(3) and 300.210(b)(3)). SEAs have addressed these requirements in the systems they developed for producing, accessing, and distributing AIM. However, teachers and administrators in LEAs may be reluctant to provide AIM to students due to a lack of information and understanding about eligibility requirements, and due to limited knowledge of where, and how, to obtain AIM for students who require special formats (Etemad & Burdette, 2009).

In response to concerns from SEAs and LEAs regarding the complexity and limitations of the provisions relating to NIMAS that were added to IDEA in 2004 (the NIMAS provisions) and the difficulties SEAs and LEAs were having as they began to implement these provisions, the Office of Special Education Programs (OSEP) awarded two 18-month grants to support States, the outlying areas, and freely associated States implement the NIMAS provisions. These grants included the Pacific Consortium for Instructional Materials Accessibility Project (Pacific CIMAP) and the AIM Consortium. The Pacific CIMAP facilitated the collaborative commitment of the six Pacific Basin entities to build local and regional capacity for the implementation of the NIMAS and NIMAC requirements. The 15–State AIM Consortium along with the Center for Applied Special Technology (CAST) worked together to develop State systems for increasing the timely provision of AIM for students with print disabilities, and ensure that those systems for identifying, acquiring, and using AIM employed high-quality procedures and practices.

Based on the collective needs and challenging experiences of SEAs in implementing the NIMAS provisions, the consortia's members developed products, training modules, and materials. These resources are available to all States, the outlying areas, and freely associated States on the consortia's respective Web sites: *http://www.guamcedders.org/main/index.php?pg=pacific_*cimap and *http://www.cast.org/research/projects/AIM.html.*

While the Pacific CIMAP and the AIM Consortium produced effective resources, product usability is more effective when personnel development is provided in conjunction with product availability. Both the Pacific CIMAP and the AIM Consortium awards were 18-month awards. Most of the time and resources of these projects focused on determining the needs of the States and developing the products and resources used in the implementation of the NIMAS provisions. States, including those that were part of the two consortia, continue to face the significant challenge of ensuring that all staff in the States receive training that is delivered with consistency and fidelity. (Etemad & Burdette, 2009).

SEAs are responsible for supporting LEAs on implementing NIMAS provisions. However, many SEAs lack the expertise and resources to effectively train LEA personnel on how to use the products, training modules, and materials developed by the two consortia or by other OSEP-funded NIMAS-related projects (*i.e.,* NIMAC; Recording for the Blind and Dyslexic (RFB&D); the National Instructional Materials Accessibility Standard Center (NIMAS Center); the AIM Center; and Bookshare for Education at Bookshare (B4E)). Therefore, OSEP is establishing a priority—the AIM Personnel Development Center—to improve State capacity for training personnel at the LEA level to ensure the effective delivery of AIM to children with disabilities who have visual impairments or print disabilities, including children who are not included under the LOC definition of blind or other persons with print disabilities and children who need AIM materials that cannot be produced from NIMAS files obtained through NIMAC.

Priority: The purpose of this priority is to fund a cooperative agreement to support the establishment and operation of an AIM Personnel Development Center (Center). The Center will support and work with 25 States to: (1) Develop and implement LEA personnel development plans for effectively training LEA staff on the eligibility requirements regarding AIM and on the use of AIM products, training modules, and materials currently available through OSEP-funded NIMAS-related projects; and (2) recruit and select qualified personnel who will provide in-service training to LEA staff on the effective use of these resources. For purposes of this priority, the term "State" refers to a State, outlying area, or freely associated State.

To be considered for funding under this absolute priority, applicants must meet the application requirements contained in this priority. The project funded under this absolute priority also must meet the programmatic and administrative requirements specified in the priority.

Application Requirements. An applicant must include in its application:

(a) A logic model that depicts, at a minimum, the goals, activities, outputs, and outcomes of the proposed project. A logic model communicates how a project will achieve its outcomes and provides a framework for both the formative and summative evaluations of the project.

Note: The following Web sites provide more information on logic models: *http://www.researchutilization.org/matrix/logicmodel_resource3c.html* and *www.tadnet.org/model_and_performance.*

(b) A plan to implement the activities described in the *Project Activities* section of this priority.

(c) A plan, linked to the proposed project's logic model, for a formative

evaluation of the proposed project's activities. The plan must describe how the formative evaluation will use clear performance objectives to ensure continuous improvement in the operation of the Center, including objective measures of progress in implementing the activities of the Center and ensuring the quality of products and services.

(d) A plan for recruiting and selecting 25 States to participate in the activities of the Center. The selection process must be transparent and done in conjunction with OSEP.

(e) A plan for, and description of, how the Center will incorporate the work of, and resources developed from, OSEP-funded NIMAS-related projects in the work of the Center;

(f) A budget for a summative evaluation to be conducted by an independent third party.

(g) A budget for attendance at the following:

(1) A one and one half-day kick-off meeting to be held in Washington, DC, within four weeks after receipt of the award, and an annual planning meeting held in Washington, DC, with the OSEP Project Officer during each subsequent year of the project period.

(2) A two-day Technical Assistance and Dissemination Conference in Washington, DC, during each year of the project period.

(3) A two-day Technology Project Directors' Conference in Washington, DC, during each year of the project period.

(4) A three-day Project Directors' Conference in Washington, DC, during each year of the project period.

(5) A two-day State Representative meeting in Washington, DC, with OSEP staff in the second year of the project period. The budget for attendance at this meeting must include travel and per diem support for one representative from each selected State to attend the meeting.

Project Activities. To meet the requirements of this priority, the Center, at a minimum, must conduct the following activities:

(a) Identify and describe currently available AIM training products, materials, modules, and other training resources that are produced by OSEP-funded projects related to the implementation of the NIMAS provisions in the 2004 amendments of IDEA.

(b) Identify and describe currently available AIM training products, materials, modules, and other training resources that are produced by publishers, universities, non-profit organizations, other federally funded projects, and other NIMAS-related entities.

(c) Develop, and make publicly available through the Center's Web site, an electronic database of all currently available AIM products that are identified and described pursuant to paragraphs (a) and (b) of this section.

(d) Recruit and select 25 States in accordance with the plan described in response to paragraph (d) of the *Application Requirements* of this priority.

(e) Work with the 25 States selected under paragraph (d) of this section to determine their LEA personnel development needs related to each State's system for providing AIM in a timely manner, and to develop their respective LEA personnel development plans. Support the participating States in developing and implementing their personnel development plans. The personnel development plans must include in-service training for LEA level staff on—

(1) How to determine if a child has a print disability and will benefit from AIM;

(2) Eligibility requirements for children with disabilities under IDEA and the LOC regulations;

(3) How to determine the appropriate accessible formats needed for a child who requires AIM;

(4) How to obtain AIM; and

(5) How to effectively use available resources with fidelity, including how to incorporate the use of AIM products, training modules, and materials made available through OSEP-funded NIMAS-related projects and other resources;

(f) Recruit, select, and train personnel from each of the 25 participating States to provide in-service training to LEA staff in their respective States.

(g) Maintain a Web site that meets government or industry-recognized standards for accessibility and that links to the Web site operated by the Technical Assistance Coordination Center (TACC).

(h) Prepare and disseminate reports, documents, and other materials on the Center's training activities.

(i) Maintain ongoing communication with the OSEP Project Officer through bi-monthly phone conversations and e-mail communication.

(j) Conduct a formative evaluation in accordance with the plan described in response to paragraph (c) of the *Application Requirements* in this priority.

References:

Etemad, P. & Burdette, P. (2009). The National Materials Accessibility Standard (NIMAS): State Implementation Update. Project Forum: Alexandria, VA.

Waiver of Proposed Rulemaking: Under the Administrative Procedure Act (APA) (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed priorities and requirements. Section 681(d) of IDEA, however, makes the public comment requirements of the APA inapplicable to the priority in this notice.

Program Authority: 20 U.S.C. 1474 and 1481(d).

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 85, 86, 97, 98, and 99.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education (IHEs) only.

II. Award Information

Type of Award: Cooperative agreement.

Estimated Available Funds: The Administration has requested $41,223,000 for the Technology and Media Services for Individuals with Disabilities program for FY 2011, of which we intend to use an estimated $3,000,000 for the competition announced in this notice. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in FY 2012 from this competition.

Maximum Award: We will reject any application that proposes a budget exceeding $3,000,000 for a single budget period of 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

Estimated Number of Awards: 1.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 24 months.

III. Eligibility Information

1. *Eligible Applicants:* SEAs; IHEs; other public agencies; private nonprofit organizations; outlying areas; freely associated States; and for-profit organizations.

2. *Cost Sharing or Matching:* This competition does not require cost sharing or matching.

3. *Other: General Requirements*—(a) The projects funded under this competition must make positive efforts to employ and advance in employment qualified individuals with disabilities (see section 606 of IDEA).

(b) Applicants and grant recipients funded under this competition must involve individuals with disabilities or parents of individuals with disabilities ages birth through 26 in planning, implementing, and evaluating the projects (see section 682(a)(1)(A) of IDEA).

IV. Application and Submission Information

1. *Address to Request Application Package:* Education Publications Center (ED Pubs), U.S. Department of Education, P.O. Box 22207, Alexandria, VA 22304. Telephone, toll free: 1–877–433–7827. FAX: (703) 605–6794. If you use a telecommunications device for the deaf (TDD), call, toll free: 1–877–576–7734.

You can contact ED Pubs at its Web site, also: *http://www.EDPubs.gov* or at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application package from ED Pubs, be sure to identify this competition as follows: CFDA number 84.327W.

Individuals with disabilities can obtain a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) by contacting the person or team listed under *Accessible Format* in section VIII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit Part III to the equivalent of no more than 50 pages, using the following standards:

- A "page" is 8.5″ × 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, the references, or the letters of support. However, the page limit does apply to all of the application narrative section (Part III).

We will reject your application if you exceed the page limit; or if you apply other standards and exceed the equivalent of the page limit.

3. *Submission Dates and Times:*

Applications Available: September 28, 2010.

Deadline for Transmittal of Applications: November 29, 2010.

Applications for grants under this competition may be submitted electronically using the Electronic Grant Application System (e-Application) accessible through the Department's e-Grants site, or in paper format by mail or hand delivery. For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery, please refer to section IV.7. *Other Submission Requirements* of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

Deadline for Intergovernmental Review: January 26, 2011.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Data Universal Numbering System Number, Taxpayer Identification Number, and Central Contractor Registry:* To do business with the Department of Education, (1) you must have a Data Universal Numbering System (DUNS) number and a Taxpayer Identification Number (TIN); (2) you must register both of those numbers with the Central Contractor Registry (CCR), the Government's primary registrant database; and (3) you must provide those same numbers on your application.

You can obtain a DUNS number from Dun and Bradstreet. A DUNS number can be created within one business day.

If you are a corporate entity, agency, institution, or organization, you can obtain a TIN from the Internal Revenue Service. If you are an individual, you can obtain a TIN from the Internal Revenue Service or the Social Security Administration. If you need a new TIN, please allow 2–5 weeks for your TIN to become active.

The CCR registration process may take five or more business days to complete. If you are currently registered with the CCR, you may not need to make any changes. However, please make certain that the TIN associated with your DUNS number is correct. Also note that you will need to update your CCR registration on an annual basis. This may take three or more business days to complete.

7. *Other Submission Requirements:* Applications for grants under this competition may be submitted electronically or in paper format by mail or hand delivery.

a. *Electronic Submission of Applications.*

If you choose to submit your application to us electronically, you must use e-Application, accessible through the Department's e-Grants Web site at: *http://e-grants.ed.gov.*

While completing your electronic application, you will be entering data online that will be saved into a database. You may not e-mail an electronic copy of a grant application to us.

Please note the following:

- Your participation in e-Application is voluntary.
- You must complete the electronic submission of your grant application by 4:30:00 p.m., Washington, DC time, on the application deadline date. E-Application will not accept an application for this competition after 4:30:00 p.m., Washington, DC time, on the application deadline date. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the application process.
- The hours of operation of the e-Grants Web site are 6:00 a.m. Monday until 7:00 p.m. Wednesday; and 6:00 a.m. Thursday until 8:00 p.m. Sunday, Washington, DC time. Please note that,

because of maintenance, the system is unavailable between 8:00 p.m. on Sundays and 6:00 a.m. on Mondays, and between 7:00 p.m. on Wednesdays and 6:00 a.m. on Thursdays, Washington, DC time. Any modifications to these hours are posted on the e-Grants Web site.

- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you submit your application in paper format.
- You must submit all documents electronically, including all information you typically provide on the following forms: The Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. You must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified in this paragraph or submit a password protected file, we will not review that material.
- Your electronic application must comply with any page limit requirements described in this notice.
- Prior to submitting your electronic application, you may wish to print a copy of it for your records.
- After you electronically submit your application, you will receive an automatic acknowledgment that will include a PR/Award number (an identifying number unique to your application).
- Within three working days after submitting your electronic application, fax a signed copy of the SF 424 to the Application Control Center after following these steps:

(1) Print SF 424 from e-Application.

(2) The applicant's Authorizing Representative must sign this form.

(3) Place the PR/Award number in the upper right hand corner of the hard-copy signature page of the SF 424.

(4) Fax the signed SF 424 to the Application Control Center at (202) 245–6272.

- We may request that you provide us original signatures on other forms at a later date.

Application Deadline Date Extension in Case of System Unavailability: If you are prevented from electronically submitting your application on the application deadline date because e-Application is unavailable, we will grant you an extension of one business day to enable you to transmit your application electronically, by mail, or by hand delivery. We will grant this extension if—

(1) You are a registered user of e-Application and you have initiated an electronic application for this competition; and

(2) (a) E-Application is unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the application deadline date; or

(b) E-Application is unavailable for any period of time between 3:30 p.m. and 4:30:00 p.m., Washington, DC time, on the application deadline date.

We must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension or to confirm our acknowledgment of any system unavailability, you may contact either (1) the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** (see VII. Agency Contact) or (2) the e-Grants help desk at 1–888–336–8930. If e-Application is unavailable due to technical problems with the system and, therefore, the application deadline is extended, an e-mail will be sent to all registered users who have initiated an e-Application.

Extensions referred to in this section apply only to the unavailability of e-Application. If e-Application is available, and, for any reason, you are unable to submit your application electronically or you do not receive an automatic acknowledgment of your submission, you may submit your application in paper format by mail or hand delivery in accordance with the instructions in this notice.

b. *Submission of Paper Applications by Mail.*

If you submit your application in paper format by mail (through the U.S. Postal Service or a commercial carrier), you must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.327W) LBJ Basement Level 1, 400 Maryland Avenue, SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you submit your application in paper format by hand delivery, you (or a courier service) must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.327W) 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this grant notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this program are from 34 CFR 75.210 and are listed in the application package.

2. *Review and Selection Process:* In the past, the Department has had difficulty finding peer reviewers for certain competitions, because so many individuals who are eligible to serve as peer reviewers have conflicts of interest. The Standing Panel requirements under IDEA also have placed additional constraints on the availability of reviewers. Therefore, the Department has determined that, for some discretionary grant competitions, applications may be separated into two

or more groups and ranked and selected for funding within specific groups. This procedure will make it easier for the Department to find peer reviewers, by ensuring that greater numbers of individuals who are eligible to serve as reviewers for any particular group of applicants will not have conflicts of interest. It also will increase the quality, independence, and fairness of the review process, while permitting panel members to review applications under discretionary grant competitions for which they also have submitted applications. However, if the Department decides to select an equal number of applications in each group for funding, this may result in different cut-off points for fundable applications in each group.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *http://www.ed.gov/fund/grant/apply/appforms/appforms.html.*

4. *Performance Measures:* Under the Government Performance and Results Act of 1993 (GPRA), the Department has established a set of performance measures, including long-term measures, that are designed to yield information on various aspects of the effectiveness and quality of the Technology and Media Services for Individuals with Disabilities program. These measures focus on the extent to which projects are of high-quality, are relevant to improving outcomes of children with disabilities, and contribute to improving outcomes for children with disabilities. We will collect data on these measures from the projects funded under this competition.

Grantees will be required to report information on their projects' performance in their annual performance reports to the Department (34 CFR 75.590).

VII. Agency Contact

For Further Information Contact: Glinda Hill, U.S. Department of Education, 400 Maryland Avenue, SW., Room 4063, Potomac Center Plaza (PCP), Washington, DC 20202–2550. Telephone: (202) 245–7376.

If you use a TDD, call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or computer diskette) by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., Room 5075, PCP, Washington, DC 20202–2550. Telephone: (202) 245–7363. If you use a TDD, call the FRS, toll free, at 1–800–877–8339.

Electronic Access to This Document: You can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister*. To use PDF you must have Adobe Acrobat Reader, which is available free at this site.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: September 23, 2010.

Alexa Posny,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2010–24337 Filed 9–27–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Management; Performance Review Board Membership

AGENCY: Department of Education.

ACTION: Notice of membership of the Performance Review Board.

SUMMARY: The Secretary announces the members of the Performance Review Board (PRB) for the Department of Education for the Senior Executive Service (SES) performance cycle that ended September 30, 2010. Under 5 U.S.C. 4314(c)(1) through (5), each agency is required to establish one or more PRBs.

Composition and Duties

The PRB of the Department of Education for 2010 is composed of career and non-career senior executives.

The PRB reviews and evaluates the initial appraisal of each senior executive's performance, along with any comments by that senior executive and by any higher-level executive or executives. The PRB makes recommendations to the appointing authority relative to the performance of the senior executive, including recommendations on performance awards. The Department of Education's PRB also makes recommendations on SES pay adjustments for career senior executives.

Membership

The Secretary has selected the following executives of the Department of Education for the specified SES performance cycle: Chair: Winona H. Varnon, Thomas Skelly, Danny Harris, James Manning, Linda Stracke, Joe Conaty, Sue Betka, Russlyn Ali, and Martha Kanter.

FOR FURTHER INFORMATION CONTACT: Mary Beth Pultz, Director, Executive Resources Team, Human Resources Services, Office of Management, U.S. Department of Education, 400 Maryland Avenue, SW., room 2E124, LBJ, Washington, DC 20202–4573. Telephone: (202) 401–0853.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.,* Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document

You may view this document, as well as all other Department of Education

documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF, you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: September 16, 2010.

Arne Duncan,

Secretary of Education.

[FR Doc. 2010–24290 Filed 9–27–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Hydrogen and Fuel Cell Technical Advisory Committee (HTAC)

AGENCY: Department of Energy, Office of Energy Efficiency and Renewable Energy.

ACTION: Notice of open meeting.

SUMMARY: The Hydrogen and Fuel Cell Technical Advisory Committee (HTAC) was established under section 807 of the Energy Policy Act of 2005 (EPACT), Public Law 109–58; 119 Stat. 849. The Federal Advisory Committee Act, Public Law 92–463, 86 Stat. 770, requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Thursday, October 14, 2010 9 a.m.–5 p.m.; and Friday, October 15, 2010 9 a.m.–2 p.m.

ADDRESSES: Radisson Hotel, 2020 Jefferson Davis Highway, Arlington, VA.

FOR FURTHER INFORMATION CONTACT: *HTAC@nrel.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of the Meeting: To provide advice, information, and recommendations to the Secretary on the program authorized by Title VIII of EPACT.

Tentative Agenda Topics: (Subject to change; updates will be posted on the web at *http://hydrogen.energy.gov* and copies of the final agenda will be available on the date of the meeting).

- DOE Program Updates, including ARPA–E Project Overviews.
- Industry Presentations.
- DOE Safety Codes and Standards Activity Overview.
- HTAC Subcommittee Development.
- HTAC Annual Report Development.
- Open Discussion.

Public Participation: In keeping with procedures, members of the public are welcome to observe the business of the meeting of HTAC and to make oral statements during the specified period for public comment. The public comment period will take place between 9 a.m. and 9:30 a.m. on October 14, 2010. To attend the meeting and/or to make oral statements regarding any of the items on the agenda, please send an e-mail at least 5 business days before the meeting to *HTAC@nrel.gov.* Please indicate if you will be attending the meeting, whether you want to make an oral statement on October 14, 2010, and what organization you represent (if appropriate). Members of the public will be heard in the order in which they sign up for the public comment period. Oral comments should be limited to two minutes in length. Reasonable provision will be made to include the scheduled oral statements on the agenda. The chair of the committee will make every effort to hear the views of all interested parties and to facilitate the orderly conduct of business. If you would like to file a written statement with the committee, you may do so either by submitting a hard copy at the meeting or by submitting an electronic copy to *HTAC@nrel.gov.*

Minutes: The minutes of the meeting will be available for public review at *http://hydrogen.energy.gov.*

Issued at Washington, DC on September 22, 2010.

Carol A. Matthews,

Committee Management Officer.

[FR Doc. 2010–24120 Filed 9–27–10; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Docket No. PR10–106–000; Docket No. PR10–107–000; Docket No. PR10–109–000; Docket No. PR10–110–000; Docket No. PR10–112–000; Docket No. PR10–113–000 (Not Consolidated)

SourceGas Distribution LLC; Bay Gas Storage, LLC; Enterprise Texas Pipeline LLC; Dow Intrastate Gas Company; ONEOK Field Services Company, L.L.C.; Corning Natural Gas Corporation; Notice of Baseline Filings

September 21, 2010.

Take notice that on September 14, 2010, September 16, 2010, September 17, 2010, September 20, 2010, and September 21, 2010, respectively the applicants listed above submitted their baseline filing of its Statement of Operating Conditions for services provided under section 311 of the Natural Gas Policy Act of 1978 (NGPA).

Any person desiring to participate in this rate proceeding must file a motion to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 7 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern time on Monday, October 4, 2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–24231 Filed 9–27–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13661–000]

Coastal Hydropower, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

September 21, 2010.

On February 9, 2010, and supplemented on July 16, 2010, Coastal Hydropower, LLC filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of the Walterville Headgate Dam Hydroelectric Project, to be located at the Walterville Headgate Dam on the Walterville Canal, a tributary of the McKenzie River, in Lane County, Oregon. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of the following: (1) Three new submersible Kaplan turbine/generator units with a total installed capacity of 1.5 megawatts, to be installed replacing some sections of the existing dam; (2) a new control house building; and (3) a new approximately 1,200-foot-long, 15-kilovolt transmission line interconnecting to an existing transmission line. The estimated annual generation of the project would be 7.9 gigawatt-hours.

Applicant Contact: Neil Anderson, Coastal Hydropower, LLC, Key Centre, 601 108th Avenue, NE., Suite 1900, Bellevue, WA 98004; phone: (425) 943–7690.

FERC Contact: Dianne Rodman; phone: (202) 502–6077.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the "eLibrary" link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–13661–000) in the docket number field to access the document. For assistance, contact FERC Online Support.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–24234 Filed 9–27–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13836–000]

Medicine Bow Hydro, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

September 21, 2010.

On August 30, 2010, Medicine Bow Hydro, LLC filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of the Medicine Bow Pumped Storage Project (Medicine Bow Project) to be located in Carbon County, Idaho. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project will consist of the following: (1) A 9,200-foot-circumference, 60-foot-high earth or rockfilled embankment; creating an 88-acre upper reservoir with a storage capacity of 8,750-acre-foot at an elevation of 8,375 feet mean sea level (msl); (2) a 1,480-foot-long, 210-foot-high earth and rockfill or concrete-face rockfill dam; creating an 121-acre lower reservoir with a storage capacity of 8,900-acre-foot at an elevation of 7,325 feet msl; (3) a 19-foot-diameter, 600-foot-long concrete-lined low pressure tunnel; (4) a 19-foot-diameter, 5,060-foot-long high pressure concrete-lined tunnel; (5) a 280-foot-long, 70-foot-wide, 120-foot-high powerhouse containing one reversible 200-megawatt (MW) turbine/generator unit, and two 100–MW turbine/generator units, for a total installed capacity of 400 MW; (6) a 2,600-foot-long, 22.5-foot-diameter tailrace between the powerhouse and the lower reservoir; (7) an approximately 6.8-mile-long, 230-kilovolt transmission line connecting the powerhouse to the existing Miracle Mile-Cheyenne transmission line; and (8) appurtenant facilities. The estimated annual generation of the Medicine Bow Project would be 1,226,400 megawatt-hours.

Applicant Contact: Matthew Shapiro, Gridflex Energy, LLC, 1210 W. Franklin Street, Ste. 2, Boise, ID 83702; phone: (208) 246–9925.

FERC Contact: Jennifer Harper (202) 502–6136.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the "eLibrary" link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–13836–000) in the docket number field to access the

document. For assistance, contact FERC Online Support.

Kimberly D. Bose,
Secretary.

[FR Doc. 2010–24230 Filed 9–27–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13662–000]

Coastal Hydropower, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

September 21, 2010.

On February 9, 2010, and supplemented on July 16, 2010, Coastal Hydropower, LLC filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of the Winchester Dam Hydroelectric Project, to be located at the Winchester dam on the North Umpqua River, in Douglas County, Oregon. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of the following: (1) Five new submersible Kaplan turbine/generator units with a total installed capacity of 2.5 megawatts, to be installed replacing sections of the existing dam; (2) a new control house building; and (3) a new approximately 100-foot-long, 20-kilovolt transmission line interconnecting to an existing substation. The estimated annual generation of the project would be 13 gigawatt-hours.

Applicant Contact: Neil Anderson, Coastal Hydropower, LLC, Key Centre, 601 108th Avenue, NE., Suite 1900, Bellevue, WA 98004; phone: (425) 943–7690.

FERC Contact: Dianne Rodman; phone: (202) 502–6077.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the "eLibrary" link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–13662–000) in the docket number field to access the document. For assistance, contact FERC Online Support.

Kimberly D. Bose,
Secretary.

[FR Doc. 2010–24235 Filed 9–27–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR10–111–000]

Public Service Company of Colorado; Notice of Rate Election

September 21, 2010.

Take notice that on September 17, 2010, Public Service Company of Colorado (PSCo) filed a Rate Election pursuant to section 284.123(b)(1)(ii) of the Commission's regulations. PSCo proposes to utilize rates that are the same as those contained in PSCo's transportation rate schedules for comparable intrastate service on file with the Colorado Public Utilities Commission (Colorado PUC).

Any person desiring to participate in this rate filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 7 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern time on Monday, October 4, 2010.

Kimberly D. Bose,
Secretary.

[FR Doc. 2010–24232 Filed 9–27–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–2001–016; Docket No. ER06–885–000; Docket No. ER04–289–000]

Electric Quarterly Reports; BM2 LLC; DJGW, LLC; Order on Intent To Revoke Market-Based Rate Authority

Issued September 22, 2010.

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

1. Section 205 of the Federal Power Act (FPA), 16 U.S.C. 824d (2006), and 18 CFR part 35 (2010), require, among other things, that all rates, terms, and conditions of jurisdictional services be filed with the Commission. In Order No. 2001, the Commission revised its public utility filing requirements and established a requirement for public utilities, including power marketers, to

file Electric Quarterly Reports summarizing the contractual terms and conditions in their agreements for all jurisdictional services (including market-based power sales, cost-based power sales, and transmission service) and providing transaction information (including rates) for short-term and long-term power sales during the most recent calendar quarter.[1]

2. Commission staff's review of the Electric Quarterly Report submittals indicates that two utilities with authority to sell electric power at market-based rates have failed to file their Electric Quarterly Reports. This order notifies these public utilities that their market-based rate authorizations will be revoked unless they comply with the Commission's requirements within 15 days of the date of issuance of this order.

3. In Order No. 2001, the Commission stated that,

> [i]f a public utility fails to file a[n] Electric Quarterly Report (without an appropriate request for extension), or fails to report an agreement in a report, that public utility may forfeit its market-based rate authority and may be required to file a new application for market-based rate authority if it wishes to resume making sales at market-based rates.[2]

4. The Commission further stated that,

> [o]nce this rule becomes effective, the requirement to comply with this rule will supersede the conditions in public utilities' market-based rate authorizations, and failure to comply with the requirements of this rule will subject public utilities to the same consequences they would face for not satisfying the conditions in their rate authorizations, including possible revocation of their authority to make wholesale power sales at market-based rates.[3]

5. Pursuant to these requirements, the Commission has revoked the market-based rate tariffs of several market-based rate sellers that failed to submit their Electric Quarterly Reports.[4]

6. As noted above, Commission staff's review of the Electric Quarterly Report submittals identified two public utilities with authority to sell power at market-based rates that failed to file Electric Quarterly Reports in the first and second quarters of 2010. Commission staff contacted these entities to remind them of their regulatory obligations.[5]

The two public utilities listed in the caption of this order have not met these obligations.[6] Accordingly, this order notifies these public utilities that their market-based rate authorizations will be revoked unless they comply with the Commission's requirements within 15 days of the issuance of this order.

7. In the event that the above-captioned market-based rate sellers have already filed its Electric Quarterly Report in compliance with the Commission's requirements, its inclusion herein is inadvertent. Such market-based rate seller is directed, within 15 days of the date of issuance of this order, to make a filing with the Commission identifying itself and providing details about its prior filings that establish that it complied with the Commission's Electric Quarterly Report filing requirements.

8. If the above-captioned market-based rate sellers do not wish to continue having market-based rate authority, they may file a notice of cancellation with the Commission pursuant to section 205 of the FPA to cancel their market-based rate tariff.

The Commission orders:

(A) Within 15 days of the date of issuance of this order, each public utility listed in the caption of this order shall file with the Commission all delinquent Electric Quarterly Reports. If a public utility fails to make this filing, the Commission will revoke that public utility's authority to sell power at market-based rates and will terminate its electric market-based rate tariff. The Secretary is hereby directed, upon expiration of the filing deadline in this order, to promptly issue a notice, effective on the date of issuance, listing the public utilities whose tariffs have been revoked for failure to comply with the requirements of this order and the Commission's Electric Quarterly Report filing requirements.

(B) The Secretary is hereby directed to publish this order in the **Federal Register**.

By the Commission.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–24293 Filed 9–27–10; 8:45 am]

BILLING CODE 6717–01–P

[1] *Revised Public Utility Filing Requirements,* Order No. 2001, FERC Stats. & Regs. ¶ 31,127, *reh'g denied,* Order No. 2001–A, 100 FERC ¶ 61,074, *reconsideration and clarification denied,* Order No. 2001–B, 100 FERC ¶ 61,342, *order directing filings,* Order No. 2001–C, 101 FERC ¶ 61,314 (2002), *order directing filings,* Order No. 2001–D, 102 FERC ¶ 61,334 (2003).

[2] Order No. 2001, FERC Stats & Regs. ¶ 31,127 at P 222.

[3] *Id.* P 223.

[4] *See, e.g., Electric Quarterly Reports,* 75 FR 45,111 (Aug. 2, 2010); *Electric Quarterly Reports,* 75 FR 19,646 (Apr. 15, 2010).

[5] *See* BM2 LLC, Docket No. ER06–885–000 (August 2, 2010) (unpublished letter order); DJGW, LLC, Docket No. ER04–289–000 (August 2, 2010) (unpublished letter order).

[6] According to the Commission's records, the companies subject to this order failed to file their Electric Quarterly Reports for the 1st and 2nd quarters of 2010.

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OEI–2010–0746; FRL–9207–5; EPA ICR No. 1665.10, OMB Control No. 2020–0003]

Agency Information Collection Activities; Proposed Collection; Comment Request; Confidentiality Rules (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a request to renew an existing approved Information Collection Request (ICR) to the Office of Management and Budget (OMB). This ICR is scheduled to expire on December 31, 2010. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before November 29, 2010.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OEI–2010–0746, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: docket.oei@epa.gov.*
- *Fax:* 202–566–0224.
- *Mail:* EPA Docket Center, Office of Environmental Information Docket, Mail Code 28221T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.
- *Hand Delivery:* EPA Docket Center, Public Reading Room, EPA West Building, Room 3334, 1301 Constitution Avenue, NW., Washington, DC 20004. Hours of operation: 8:30 a.m.–4:30 p.m., Monday-Friday (except Federal Holidays). The telephone number for the Reading Room is 202–566–1744.
- *Instructions:* Direct your comments to Docket ID No. EPA–HQ–OEI–2010–0746.

EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://*

www.regulations.gov or e-mail. The *http://www.regulations.gov* Web site is an anonymous access system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT:
Larry F. Gottesman, National Freedom of Information Act Officer, Collection Strategies Division, Office of Information Collection, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 202–566–2162; e-mail address: *gottesman.larry@epa.gov.*

SUPPLEMENTARY INFORMATION:

How can I access the docket and/or submit comments?

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OEI–2010–0746, or in person viewing at the OEI Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the OEI Docket is 202–566–1752.

Use *http://www.regulations.gov* to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the public docket that are available electronically. Once in the system, select search, then key in the docket ID number identified in this document.

What information is EPA particularly interested in?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

What should I consider when I prepare my comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible and provide specific examples.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Offer alternative ways to improve the collection activity.
6. Make sure to submit your comments by the deadline identified under **DATES**.
7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

What information collection activity or ICR does this apply to?

Affected entities: Entities potentially affected by this action are businesses or other for-profit entities.

Title: Confidentiality Rules (Renewal).

ICR numbers: EPA ICR No. 1665.10, OMB Control No. 2020–0003.

ICR status: This ICR is currently scheduled to expire on December 31, 2010. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR Part 9.

Abstract: In the course of administering environmental protection statutes, EPA collects data from "business" in many sectors of the U.S. economy. In many cases, "business" marks the data it submits to EPA as confidential business information (CBI). In addition, businesses submit information to EPA without the Agency requesting the information. EPA established the procedures described in 40 CFR Part 2, subparts A and B, to protect the confidentiality of information as well as the rights of the public to obtain access to information under the Freedom of Information Act (FOIA). In accordance with these regulations, when EPA finds it necessary to make a final confidentiality determination (*e.g.,* in response to a FOIA request or in the course of rulemaking or litigation), a resubstantiation of a prior claim, or an advance confidentiality determination, it shall notify the affected business and provide an opportunity to comment (*i.e.,* to submit a substantiation of confidentiality claims). This ICR relates to the collection of information that will assist EPA in determining whether previously submitted information is entitled to confidential treatment.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 4 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information; processing and maintaining information and disclosing and providing information; adjusting

the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; training personnel to be able to respond to a collection of information; searching data sources; completing and reviewing the collection of information; and transmitting or otherwise disclosing the information.

The ICR provides a detailed explanation of the Agency's estimate, which is only briefly summarized here:

Estimated total number of potential respondents: 1,650.

Frequency of response: On occasion.

Estimated total average number of responses for each respondent: 1.

Estimated total annual burden hours: 2,412.30 hours.

Estimated total annual costs: $109,922.45. This includes an estimated burden cost of $0 for capital investment or maintenance and operational costs.

Are there changes in the estimates from the last approval?

There is a decrease of 6,063 hours in the total estimated respondent burden compared with that identified in the ICR currently approved by OMB. This change is predicated upon estimates that were received from the requester community on the actual burden in responding to these requests.

What is the next step in the process for this ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. At that time, EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

Dated: September 21, 2010.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2010–24292 Filed 9–27–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2004–0450; FRL–9207–6; EPA ICR Number 2395.01; OMB Control Number 2060–NEW]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Aerospace Manufacturing and Rework Industry Information Collection

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), this document announces that an Information Collection Request has been forwarded to the Office of Management and Budget for review and approval. This is a request for a new collection. The Information Collection Request, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before October 28, 2010.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OAR–2004–0450, to (1) EPA on-line using *http://www.regulations.gov* (our preferred method), or by mail to: EPA Docket Center, Environmental Protection Agency, Air and Radiation Docket Information Center, Mail Code 28221T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) Office of Management and Budget (OMB) by mail to: Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kim Teal, Office of Air and Radiation, Office of Air Quality Planning and Standards, Mail Code E143–03, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–5580; fax number: (919) 541–3470; e-mail address: *teal.kim@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following Information Collection Request (ICR) to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On Tuesday, June 22, 2010 (75 FR 35454), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received two comment letters during the comment period, which are addressed in the ICR. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OAR–2004–0450 which is available for on-line viewing at *http://www.regulations.gov* or in hard copy at the EPA Docket Center, Public Reading Room, EPA West, Room 3334, 1301 Constitution Avenue, NW., Washington, DC 20004. The normal business hours are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. The telephone number for the Reading Room is 202–566–1744 and the telephone number for the Air and Radiation Docket is 202–566–1742.

Use EPA's electronic docket and comment system at *http://www.regulations.gov* to submit or view public comments, access the index listing of the contents of the docket and to access those documents in the docket that are available electronically. Once in the system, select "docket search," then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI) or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *http://www.regulations.gov.*

Title: Aerospace Manufacturing and Rework Industry Information Collection

ICR number: EPA ICR Number 2395.01, OMB Control Number 2060–NEW

ICR status: This ICR is for a new information collection activity. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in Title 40 of the Code of Federal Regulations (CFR), after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, and are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: This ICR was developed specifically for aerospace manufacturing and rework facilities and has been tailored to the processes at aerospace facilities. Respondents may use an electronic submission approach that will be less burdensome for both the facilities that must respond and for EPA personnel who must compile the

responses. Respondents are asked to complete simple forms from available information and no request is made to create or develop emission estimates from information in the literature.

Information is requested from approximately 1,000 aerospace manufacturing and rework facilities on general facility information, coatings and spray booth information, other process information (*e.g.,* storage tanks, composite processing, *etc.*), emission control devices used at the facilities and their basic design and operating features, quantity of air emissions, pollution prevention programs at each facility, and information regarding startup and shutdown events. This information is necessary for EPA to adequately characterize residual risk at these facilities, to characterize emissions and control measures for operations not currently regulated, and to develop standards for new and existing aerospace facilities under section 112 of the Clean Air Act (CAA), if appropriate. The information will be collected from the electronic completion of simple forms, which will be compiled to develop a computer database.

The EPA is charged under section 112 of the CAA with developing national emission standards for 189 listed hazardous air pollutants (HAP). The Aerospace Manufacturing and Rework Facilities Maximum Achievable Control Technology (Aerospace MACT) standard (40 CFR 63, subpart GG), is a national emission standard for HAP developed under the authority of section 112(d) of the CAA. EPA is required to review each MACT standard and to revise them "as necessary (taking into account developments in practices, processes and control technologies)" no less frequently than every eight years. These reviews are commonly referred to as "technology reviews." In addition, EPA is required to assess the risk remaining (residual risk) after implementation of each MACT standard and promulgate more stringent standards if they are necessary to protect public health. Under EPA's residual risk and technology review (RTR) program, EPA is addressing these two requirements concurrently. EPA is updating the information they currently possess and filling identified data gaps in that information in order to provide a thorough basis for the RTR efforts. The data collection effort will gather additional information to allow comprehensive and technically sound analyses that will form the basis for future rulemaking decisions. Responses to the ICR are mandatory under the authority of section 114 of the CAA.

Burden Statement: The one-time public reporting burden for this collection of information is estimated to average 228 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install and utilize technology and systems for the purposes of collecting, validating and verifying information, processing and maintaining information and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Owners or operators of existing aerospace manufacturing and rework facilities.

Estimated Number of Respondents: 1,000.

Frequency of Response: Once.

Estimated Total Annual Hour Burden: 227,700.

Estimated Total Annual Cost: $10,965,834 in labor costs and no annualized capital or O&M costs.

Changes in the Estimates: This is a new collection.

Dated: September 22, 2010.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2010–24291 Filed 9–27–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–R06–OAR–2010–0510; FRL–9207–4]

Audit Program for Texas Flexible Permit Holders

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final Notice of Clean Air Act (CAA) voluntary audit compliance program for flexible permit holders in the State of Texas (hereinafter "Audit Program"); response to public comments.

SUMMARY: EPA is offering holders of Texas flexible air permits an opportunity to participate in a voluntary Audit Program that is intended to expeditiously identify the federally-enforceable CAA unit specific emission limitations, operating parameter requirements, and monitoring, reporting, and recordkeeping (MRR) requirements for determining compliance for all units covered by a facility's flexible permit. EPA believes that the program will generate environmental benefits for the public in Texas as well as a measure of regulatory stability for holders of Texas flexible permits. This Final Notice makes modifications to the Audit Program based on comments received during the public comment period. A separate document contains the Agency's Response to Comments (RTC).

DATES: Executed Audit Agreements may be submitted no later than December 27, 2010. Participants who execute an Audit Agreement by November 12, 2010 will receive a waiver of the gravity component of any penalties resulting from noncompliance uncovered by the Audit.

ADDRESSES:

Docket: EPA has established a docket for this action under Docket Identification No. EPA–R06–OAR–2010–0510. All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically at *http://www.regulations.gov* or in hard copy at the Air Enforcement Section (6EN–AA), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. The file will be made available by appointment for public inspection in the Region 6 FOIA Review Room between the hours of 8:30 a.m. and 4:30 p.m. weekdays except for legal holidays. Contact the person listed in the paragraph below to make an appointment. If possible, please make the appointment at least two working days in advance of your visit. There will be a 15 cent per page fee for making photocopies of documents. On the day of the visit, please check in at the EPA Region 6 reception area at 1445 Ross Avenue, Suite 700, Dallas, Texas, 75202–2733.

FOR FURTHER INFORMATION CONTACT: To submit executed Audit Agreements or for more information on the Audit Program for Texas flexible permit holders, please contact Mr. John Jones, Air Enforcement Section (6EN–AA), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733, telephone

(214) 665–7233; fax number (214) 665–3177; e-mail address, *jones.john-l@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Audit Program for Texas Flexible Permit Holders

Audit Program Overview

Texas flexible permits are not part of the federally—approved State Implementation Plan ("SIP"), and thus, only contain applicable state permit requirements. Flexible permits are not the appropriate mechanisms for embodying federal requirements, and are not independently federally-enforceable. On September 25, 2007, EPA sent notice letters to all facilities that were issued a flexible permit informing them that flexible permits were pertinent only to Texas State air permit requirements and that facilities were "obligated to comply with the federal requirements applicable to (their) plant, in addition to any particular requirements of (their) flexible permit." Moreover, on September 23, 2009, EPA proposed the disapproval of the Texas flexible permit program as an amendment to the Texas SIP because it does not meet federal Nonattainment New Source Review or Prevention of Significant Deterioration (hereafter collectively referred to as "NSR") requirements (74 FR 48480). EPA followed that proposal with several objections to Title V permits that relied on flexible permits to encompass federal NSR requirements because the terms of the Texas flexible permit are not incorporated into the federally—approved Texas SIP. EPA finalized disapproval of the Texas flexible permit program on July 15, 2010 (75 FR 41312).

EPA is proposing the Audit Program as a mechanism for Texas Flexible Permit holders to transition these permits into SIP approved NSR permits. Under the Audit Program, participants would need to commission a comprehensive third-party Audit to determine all federally-applicable unit-specific limitations and requirements and to evaluate the federal CAA compliance status of emission units covered under the facility's Texas flexible permit. The terms and process of the Audit would be set forth in an agreement executed by EPA and participants.

Under the agreement, the third-party auditor would identify for each emission unit regulated under the source's flexible permit, all current federally—applicable CAA requirements, including: (1) Emission limitations/standards; (2) operational limitations/special conditions; (3) monitoring, recordkeeping, and reporting (MRR) requirements; and (4) specific references for all federal requirements identified (*e.g.,* permit number, specific Maximum Achievable Control Technology, State Implementation Plan citation). The auditor will also need to review and assess the adequacy of the MRR requirements in current permits to evaluate whether MRR is sufficient to demonstrate compliance with all federally applicable emissions limitations and federal standards. Where deficiencies exist, the auditor will provide recommendations for more effective or supplemental MRR requirements.

To the extent that it is determined that a source is not in compliance with NSR requirements with respect to a particular emission unit, the agreement provides that the auditor will include an evaluation of the current (2010) Lowest Achievable Emissions Rate or Best Available Control Technology (hereinafter collectively referred to as "LAER/BACT") for that emissions unit and will recommend an applicable LAER/BACT limit for that emissions unit. Identification of non-compliance with NSR requirements through the Audit Program may require further discussion with EPA regarding a path forward for bringing that emission unit into permanent, consistent compliance with the CAA.

As set forth in the agreement, the third party auditor will perform a year-by-year examination of operational and permitting history of those emission units under the flexible permit. The primary deliverable from the third-party Audit will be a detailed Audit Report that describes the audit process and its conclusions, including clearly organized summary tables of all applicable CAA requirements for each emissions unit that will provide the basis for necessary permitting revisions by the Texas Commission on Environmental Quality (TCEQ). In addition to identifying all applicable unit specific emission limitations, special conditions, operating parameters, and MRR requirements, the auditor will also evaluate the CAA compliance status of the emissions units included under the Texas flexible permit.

The agreement provides that the Audit Participant will then have an opportunity to comment on the results of the third-party Audit, and to propose to EPA alternative emission unit requirements. The parties may elect to negotiate emission unit requirements in the post-audit period.

Finally, under the agreement, any emission unit requirements agreed upon during the post-audit negotiation with EPA, would be memorialized in a Consent Agreement and Final Order ("CAFO") with EPA. The CAFO would set forth the agreed upon emission unit requirements and would require their inclusion in an amended Title V permit and appropriate federally-enforceable permits (*e.g.,* NSR, Texas SIP permits).

As part of this voluntary program, the Audit Participant will also agree to work with its surrounding community to develop Community Project(s) focused on improving, protecting, mitigating, and/or reducing community risks to public health or the environment. The nature and valuation of Community Projects will be based upon the outcome of the Audit and will be finalized during post-audit negotiations with EPA. The details of the Community Projects will be fully described in the CAFO memorializing the results of the Audit.

EPA is offering this program under its discretionary CAA enforcement authority and participation in the Audit Program is purely voluntary. However, interested parties are required to submit an executed Audit Agreement to apply for this program. Participants choosing to enroll in the Audit Program will be required to meet the specific requirements of the third-party Audit set forth in this Notice and memorialized in an Audit Agreement signed by the Audit Participant and EPA. It is important to emphasize that although participation in this Audit Program is voluntary, participants who successfully complete the program and successfully resolve any non-compliance of specific alleged violations will receive appropriate covenants and releases as part of that non-compliance resolution. Merely conducting an Audit does not release a participant from potential liability.

EPA's Audit Policy, "Incentives for Self Policing: Discovery, Disclosure, Correction and Prevention of Violations," 65 FR 19,618 (April 11, 2000) recognizes the critical role of environmental auditing in protecting human health and the environment by identifying, correcting, and ultimately preventing violations of environmental laws, particularly by responsible corporate citizens. This Audit Program reflects the purpose and incentives of EPA's Audit Policy, and participants who execute an Audit Agreement by November 12, 2010 will receive a waiver of the gravity component of any penalties resulting from noncompliance uncovered by the Audit; provided such noncompliance is successfully resolved through a Consent Agreement and Final Order (CAFO) under this audit process. EPA reserves the right to collect any

economic benefit that may have been realized as a result of noncompliance.

Persons who have not secured independently federally-enforceable construction and/or operating permits for all CAA applicable requirements, through participation in this program or through other appropriate mechanisms, may be the subject of federal enforcement action. Nothing in this notice should be read to preclude EPA from taking enforcement action where it determines such action is appropriate to address non-compliance.

Texas Flexible Permit Program History

In the period from 1996 through 2002, the State of Texas proposed a series of modifications to its Federal CAA SIP intended to make its flexible permit program part of the SIP. The flexible permit program, currently codified at 30 TAC 116.710, allows groups of emission sources to be clustered together and issued permit limitations as if they were a single emission source.

EPA has never approved the Texas flexible permit program for inclusion in the SIP. On September 25, 2007, EPA issued a letter to all flexible permit holders making the following points:

- Permits issued under the Texas flexible permit rules reflect Texas state requirements and not necessarily the federally-applicable requirements.
- Texas flexible permit holders are obligated to comply with the applicable federal requirements (*e.g.,* New Source Performance Standards (NSPS), National Emission Standards for Hazardous Air Pollutants (NESHAP), Prevention of Significant Deterioration (PSD), and Non-attainment New Source Review (NNSR), terms and conditions of permits approved under the federally-approved Texas SIP).
- EPA would consider enforcement against sources for failure to comply with applicable federal requirements on a case-by-case basis, including against emission sources that were modified or constructed without the issuance of a federally-enforceable permit.

EPA could initiate enforcement proceedings against these sources on a case-by case basis, However, such an enforcement undertaking on a case-by case basis is not an efficient approach to improving air quality and achieving compliance with the CAA. Therefore, EPA is exercising its discretion to allow holders of flexible permits to participate in this voluntary Audit Program as a mechanism to proactively address the status of emission units operating under the Texas flexible permit program.

Audit Program Implementation

Any facility that chooses to participate in the voluntary Audit Program will conduct an independent third-party audit of all emission units covered by the source's Texas flexible permit to identify/reinstate all of an emission unit's federally-applicable requirements, and to identify each emission unit's CAA compliance status as discussed under the Audit Program Overview. A final CAFO will require that the facility submit applications for Title V and appropriate federally-enforceable permits to the State of Texas in order to memorialize the requirements identified by the audit process for each emission unit.

The Audit Program shall be implemented in the following steps:

1. *Submittal of an executed Audit Agreement by the Audit Participant.* This agreement will memorialize the specific requirements of the independent third-party audit, as well as the company's commitment to work with its community to develop a Community Project(s). EPA will have 15 days to object to the third-party auditor selected by an Audit Participant. Any EPA objections shall be based on concerns regarding the independence of the auditor. Executed Audit Agreements under the Audit Program must be postmarked no later than 90 days after the date of publication in the **Federal Register**.

2. *Completion of Audit Report.* No later than 160 days, or a timeframe agreed upon by EPA, after the date that the Director of the Compliance Assurance and Enforcement Division of EPA Region 6 signs the Audit Agreement, the independent Third-Party Auditor shall submit an Audit Report to the Audit Participant and EPA. This report will include a table containing all of the applicable emission unit requirements for each unit covered by the Audit Participant's Texas flexible permit as well as an analysis of the CAA compliance status for each emissions unit. The Audit Report will include an examination of the operational and permitting history of process units covered by the flexible permit, and those affected by the flexible permit (i.e., in netting calculations). For the purpose of providing transparency to the community on the audit process, the Auditor will work with the Audit Participant to prepare a version of the Audit Report with any confidential business information removed. The non-confidential business information versions of the Audit Report will be made available to the public by EPA.

3. *Audit Participant's comments regarding the Audit Report.* No later than 90 days from the completion of the Audit Report, the Audit Participant shall submit its comments, if any, regarding the Audit Report to EPA. The Audit Participant may specifically address its concerns regarding the CAA compliance determinations and the emission unit requirements identified in the Audit Report. For purposes of providing transparency to the community on the audit process, the Audit Participant will also prepare a version of the comments on the Audit Report with any CBI removed. The Audit Participant's comments regarding the Audit Report will be made available to the public by EPA.

4. *Audit Participant and community development of significant Community Project(s).* After the completion of the Audit, the Audit Participant shall work with the community surrounding the facility to develop community project(s). Within 90 days after completion of the Audit Report, the Audit Participant will submit to EPA a final Community Project proposal for approval. The Community Project proposal shall include a detailed description of the project(s) and a schedule for project(s) implementation (projects must be completed within one year of the CAFO date), a clear discussion of air nexus, and a discussion of the community involvement and outreach conducted as the project was developed. The Audit Participant's Community Project proposal will be made available to the public for review.

5. *Resolution of NSR non-compliance.* One of the major objectives of the third-party auditor will be the evaluation of the permitting history and operational changes and modifications made during the period of the Texas flexible permit for compliance with applicable Federal NSR requirements. Identification of non-compliance with the NSR program may require the installation of LAER/BACT and will require further discussion with EPA regarding a path forward for bringing non-compliant emission units into permanent, consistent compliance. As previously discussed, EPA has elected to waive the gravity portion of any penalties resulting from noncompliance identified through the Audit for those Audit Participants that proactively initiate an Audit Agreement within 45 days of Final Audit FRN publication. In addition, any final CAFO will provide a release and covenant not to sue for the violations alleged.

6. *Filing of a Consent Agreement and Final Order (CAFO) with the Region 6*

Judicial Officer. The CAFO would set forth the Audit Participant's obligation to comply with the requirements of the attached CAFO Compliance Plan and Schedule and commitment to seek the inclusion of agreed upon emission unit requirements in its Title V permit and appropriate federally-enforceable permits. No later than 30-days after the effective date of the CAFO, the Audit Participant will apply to the appropriate permitting authority for a modification of its existing Title V permit to include emission unit requirements (as defined in the model below), a compliance plan, and, if warranted, a compliance schedule as outlined in 30 TAC 122 § 132(e)(4) and 40 CFR 70.5(c)(8). In addition, the Audit Participant shall apply for modifications or for new permits memorializing the emission unit requirements set forth in the CAFO. The CAFO must address all emission units under the flexible permit. EPA will not negotiate settlements where certain emission units are excluded from the settlement discussions. A source will receive a covenant-not-to-sue and release regarding civil liability for possible past violations of the CAA addressed in this CAFO provided that CAA compliant emission unit specific requirements are incorporated into a federally-enforceable permit.

The proposed CAFO shall be made available for public comment for a period of 30 days. EPA will consider any public comments, and as appropriate, seek to work with the Audit Participant to revise the CAFO based on such public comments. After the end of the CAFO public comment period and after any revisions are made, EPA will seek finalization of the CAFO by the Region 6 Judicial Officer. The Agency reserves its right to modify the CAFO. The offering of the CAFO for public comment does not explicitly create an obligation for EPA response or inclusion of such comments in the final CAFO or elsewhere, nor does this create any rights for public objection to the final CAFO.

The text of the Audit Agreement is available for download in either a Word version file or as a portable document format (pdf) file at *http://www.regulations.gov.* Unless explicitly indicated, the text of the Audit Agreement is not subject to negotiation. Entities wishing to participate shall submit: an executed copy of the Audit Agreement with specific site details filled into the provided blanks; a list of emission units covered under its Texas flexible permit; a copy of its current Texas flexible permit, and all permits or other authorizations that applied to the facility prior to the issuance of the Texas flexible permit.

Conclusion: The above represents a short summary of the Audit Program. The Texas Flexible Permit Audit Agreement is available in the public docket for this notice at *http://www.regulations.gov,* and represents the full requirements of the program. In addition, EPA has provided a Model CAFO for Audit Participants in the docket at *http://www.regulations.gov.*

EPA is proposing the Audit Program to ensure that Texas flexible permit holders have a path forward to secure compliance with the requirements of the CAA. As EPA has stated that Texas flexible permits are not independently federally-enforceable permits, industry representatives have expressed concern regarding the legal ramifications of operating facilities and making changes at facilities that do not have independently federally-enforceable permits. Representatives of citizens living in areas near facilities regulated under flexible permits are concerned that in some instances flexible permits allow facilities to emit more harmful pollution than would be allowed under federal law. We believe the Audit Program has the potential to result in beneficial reductions in the levels of air pollutants being emitted by flexible permit holders as well as providing industry a legal framework for continuing operations until independently federally-enforceable permitting authorizations can be obtained.

II. Response to Comments Received on EPA Audit Program for Flexible Permit Holders

On June 17, 2010, EPA solicited comments on an audit program for Texas flexible permit holders (75 FR 34445). The following are EPA's responses to comments received during the comment period on EPA's Audit Program for Flexible Permit Holders. EPA thanks those individuals for their comments and as indicated below, the Agency made several modifications to the Audit Program based upon these comments. As indicated in the **Federal Register** Notice, EPA has chosen to generally respond to comments received.

A. Community Projects

I. Community Projects as a Condition of the Audit

We received numerous comments regarding the requirement to conduct a Community Project as part of the Audit Agreement. Commenters stated that by requiring a Community Project as a prerequisite to participation in the Audit Program, EPA was presuming noncompliance.

In response to these comments, EPA clarified in the Audit Agreement that the condition regarding Community Project(s) would address the SIP and Title V violations identified in the attached model CAFO inherent to all flexible permit holders in addition to any other noncompliance issues identified by the audit. As a result, the agency believes that a commitment from the Audit Participants to conduct a Community Project is a critical element in addressing noncompliance in addition to proactively addressing community concerns regarding potential impacts from noncompliance.

II. Community Project Upfront Valuation

Several Commenters indicated that the Community Project valuation should not occur until after the Audit is completed. Additional comments received indicated that the large upfront expenditure for the Community Projects would have a "chilling effect" on voluntary participation in the Audit Program.

EPA has addressed the concerns regarding the significant upfront costs regarding these projects by removing the upfront Community Project valuation and the Tiering table. EPA has elected to link the valuation of the Community Projects to the findings of the third-party Audit. Noncompliance identified by the Audit will result in Community Projects, injunctive relief and potentially civil penalties. As referenced in the Audit FRN, this Audit Program reflects the purpose and incentives of EPA's Audit Policy, and participants who execute an Audit Agreement within 45 days of the Final Audit publication will receive a waiver of the gravity component of any penalties resulting from noncompliance uncovered by the Audit.

III. Community Involvement

A Commenter requested that the outreach regarding the Community Projects extend beyond the currently established groups and involve the impacted communities. The Commenter further requested that EPA take further steps to encourage meaningful participation from the community by providing notification to the community or establishing a Web site to identify those participating in the Audit Program.

In response to these comments, EPA included language in the Audit Agreement specifying that outreach to the community to obtain input on

Community Projects should extend beyond any pre-established community advisory panels.

EPA has also added language to the Audit Agreement committing the Agency to establish a Web site of all executed Audit Agreements. The Agreements will identify the points of contact for the company, and EPA encourages individuals with ideas specific to the Community Projects to submit them to the company representative for consideration.

B. Tiering of Facilities

I. Additional Clarification on Tiering Process

EPA received numerous comments regarding the tiering process including numerous requests for clarification on how the facility tiers were established.

As indicated above, EPA has elected to remove the Tiering table and upfront valuation for Community Projects and link the valuation of the Community Projects to the findings of the third-party Audit including the initial violations identified in the model CAFO.

C. Third-Party Auditor

I. Auditor Qualifications

Several Commenters provided comments and recommendations regarding the qualifications and certifications of the third-party Auditor.

In response to these comments, we made numerous changes to the Auditor qualifications to include flexibility with regard to the Auditor's familiarity with the concepts of independence and professional care while conducting the Audit. Specifically, we added an additional certification option by the Board of Environmental Health & Safety Auditor Certifications (BEAC), along with the current ISO 19011 requirement.

We also modified the certification condition that the Third-Party Audit results be certified by a professional engineer in the State of Texas. We modified the Audit Agreement to allow for additional flexibility by removing the condition that the professional engineer be certified in Texas and, in addition, we are allowing for a certification by a certified auditor.

II. Auditor Guidance

One Commenter requested that EPA provide specific direction to the Third-Party Auditor regarding EPA's policies and guidance related to RMRR—Routine Maintenance Documentation in Audit Report from EDF

In response to this comment, EPA added additional language to the Audit Agreement specifying that in addition to applying the version of NSR regulations in the approved Texas SIP, the Third-Party Auditor shall also perform their NSR analysis consistent with Agency principles formally identified in EPA NSR Guidance Documents.

D. Audit Program

I. Procedural Concerns

A Commenter expressed procedural concerns with EPA's process for taking comments on this voluntary approach as well as procedural concerns with the Audit Program.

With this notice, EPA has proposed a voluntary path forward under its enforcement discretion that the agency would find acceptable toward settlement of violations associated with Texas Flexible Permits. This is a voluntary process, and does not replace or change any existing rules, regulations, or policies. Given the universe of permittees, EPA is attempting to provide upfront clarity on an acceptable enforcement path where the Agency would resolve existing or potential liability associated with flexible permits. EPA provided additional process by taking comments on the approach. All other options remain. This approach does not take the place of appropriate and required permitting. Obtaining an appropriate valid federal permit is a condition of such a settlement. While the auditor will make recommendations and control levels will be agreed to for a settlement, the Audit and CAFO are clear that these are minimum levels of control for settlement and do not prejudge what Lowest Achievable Emission Rate/Best Available Control Technology (LAER/BACT) determinations are made by the permitting authority. All permitting requirements and procedures must be met at that time.

II. Audit Timeline

One Commenter expressed concern that 160 days was not adequate time to conduct a detailed permitting and compliance audit of a complex facility.

In response to this comment, EPA added language to allow for additional time for audit completion if agreed upon by EPA. EPA recognizes the importance of having adequate time to conduct the comprehensive audit and does not want a hard timeframe to limit participation or encourage a cursory review.

III. CBI

A Commenter requested that EPA establish an expedited CBI challenge process so that the community can have meaningful participation in the Audit process.

EPA understands the Commenter's concerns and is in agreement that the Audit process should be as transparent as possible. However, EPA is required to follow 40 CFR Part 2, Subpart B, which specifies the extent to which information subject to a business confidentiality claim is available to the public and the challenge and determination process the Agency must follow.

E. CAFO

I. Releases Given to Audit Participants

A Commenter expressed concern that the scope of EPA's proposed release and covenant not to sue could be interpreted over broadly.

The Commenter was correct that EPA's intent is to release only those CAA violations expressly alleged and addressed in the CAFO. EPA will tailor each CAFO beyond the limited example provided to include case specific facts and clarify the scope of the release and covenant not to sue.

The Commenter made a related comment concerning detail that should be required in the Audit Report regarding what emission requirements and changes in operational measures or control technologies must be implemented to ensure that disclosed non-NSR violations are eliminated by complying with the CAFO.

EPA recognizes more detail will be required if the Audit identifies noncompliance or concerns broader than NSR and would expect such additional information to be provided in the audit. If insufficient information is provided to make a decision on appropriate measures to address a violation, it would not be alleged or resolved in the audit CAFO but more appropriately handled separately.

II. Stipulated Penalties

A Commenter urged EPA to incorporate stipulated penalties into the CAFO to sanction failing to fully and timely comply with all the substantive requirements of the CAFO.

While we understand the comment, the agency's interest is in compliant permits and this is why we made any release and covenant conditional on full compliance with the CAFO and obtaining the necessary permit(s). Many of the milestones of the audit will be prior to the CAFO and the emission limits of the CAFO will be enforceable until the emission limits are incorporated into valid federal permits.

Dated: September 20, 2010.

Al Armendariz,

Regional Administrator, Region 6.

[FR Doc. 2010–24289 Filed 9–27–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9207–8; Docket ID No. EPA–HQ–ORD–2010–0633]

Draft Toxicological Review of Urea: In Support of Summary Information on the Integrated Risk Information System (IRIS)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public comment period and listening session.

SUMMARY: EPA is announcing a 60-day public comment period and a public listening session for the external review draft human health assessment titled, "Toxicological Review of Urea: In Support of Summary Information on the Integrated Risk Information System (IRIS)" [EPA/635/R–10/005]. The draft assessment was prepared by the National Center for Environmental Assessment (NCEA) within the EPA Office of Research and Development (ORD). EPA is releasing this draft assessment solely for the purpose of pre-dissemination peer review under applicable information quality guidelines. This draft assessment has not been formally disseminated by EPA. It does not represent and should not be construed to represent any Agency policy or determination. After public review and comment, an EPA contractor will convene an expert panel for independent external peer review of this draft assessment. The public comment period and external peer review meeting are separate processes that provide opportunities for all interested parties to comment on the assessment. The external peer review meeting will be scheduled at a later date and announced in the **Federal Register**. Public comments submitted during the public comment period will be provided to the external peer reviewers before the panel meeting and considered by EPA in the disposition of public comments. Public comments received after the public comment period closes will not be submitted to the external peer reviewers and will only be considered by EPA if time permits.

The listening session will be held on November 16, 2010, during the public comment period for this draft assessment. The purpose of the listening session is to allow all interested parties to present scientific and technical comments on draft IRIS health assessments to EPA and other interested parties attending the listening session. EPA welcomes the comments that will be provided to the Agency by the listening session participants. The comments will be considered by the Agency as it revises the draft assessment after the independent external peer review. If listening session participants would like EPA to share their comments with the external peer reviewers, they should also submit written comments during the public comment period using the detailed and established procedures described in the **SUPPLEMENTARY INFORMATION** section of this notice.

DATES: The public comment period begins September 28, 2010, and ends November 29, 2010. Comments should be in writing and must be received by EPA by November 29, 2010.

The listening session on the draft assessment for urea will be held on November 16, 2010, beginning at 9 a.m. and ending at 4 p.m., Eastern Daylight Time. To present at the listening session, indicate in your registration that you want to make oral comments at the session and provide the length of your presentation. To attend the listening session, register by November 9, 2010, via e-mail at *saundkat@versar.com* (subject line: Urea Listening Session), by phone: 703–750–3000, ext. 545, or toll free at 1–800–2–VERSAR (ask for Kathy Coon, the Urea Listening Session Coordinator), or by faxing a registration request to 703–642–6809 (please reference the "Urea Listening Session" and include your name, title, affiliation, full address and contact information). When you register, please indicate if you will need audio-visual equipment (*e.g.,* laptop computer and slide projector). In general, each presentation should be no more than 30 minutes. If, however, there are more requests for presentations than the allotted time allows, then the time limit for each presentation will be adjusted. A copy of the agenda for the listening session will be available at the meeting. If no speakers have registered by November 9, 2010, the listening session will be cancelled, and EPA will notify those registered of the cancellation.

ADDRESSES: The draft "Toxicological Review of Urea: In Support of Summary Information on the Integrated Risk Information System (IRIS)" is available primarily via the Internet on the NCEA home page under the Recent Additions and Publications menus at *http://www.epa.gov/ncea.* A limited number of paper copies are available from the Information Management Team (Address: Information Management Team, National Center for Environmental Assessment (Mail Code: 8601P), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone: 703–347–8561; facsimile: 703–347–8691). If you request a paper copy, please provide your name, mailing address, and the draft assessment title.

Comments may be submitted electronically via *http://www.regulations.gov,* by e-mail, by mail, by facsimile, or by hand delivery/courier. Please follow the detailed instructions provided in the **SUPPLEMENTARY INFORMATION** section of this notice.

The listening session on the draft urea assessment will be held at the EPA offices at Potomac Yard (North Building), Rm. 7100, 2733 South Crystal Drive, Arlington, Virginia 22202. Please note that to gain entrance to this EPA building to attend the meeting, you must have photo identification and must register at the guard's desk in the lobby. The guard will retain your photo identification and will provide you with a visitor's badge. At the guard's desk, you should provide the name Christine Ross and the telephone number 703–347–8592 to the guard on duty. The guard will contact Ms. Ross who will meet you in the reception area to escort you to the meeting room. When you leave the building, please return your visitor's badge to the guard and you will receive your photo identification.

A teleconference line will also be available for registered attendees/speakers. The teleconference number is 866–299–3188, and the access code is 926–378–7897, followed by the pound sign (#). The teleconference line will be activated at 8:45 a.m., and you will be asked to identify yourself and your affiliation at the beginning of the call.

Information on Services for Individuals with Disabilities: EPA welcomes public attendance at the urea listening session and will make every effort to accommodate persons with disabilities. For information on access or services for individuals with disabilities, please contact Christine Ross by phone at 703–347–8592 or by e-mail at *IRISListeningSession@epa.gov.* To request accommodation for a disability, please contact Ms. Ross, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

Additional Information: For information on the docket, *www.regulations.gov*, or the public comment period, please contact the Office of Environmental Information (OEI) Docket (Mail Code: 2822T), U.S.

Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone: 202–566–1752; facsimile: 202–566–1753; or e-mail: *ORD.Docket@epa.gov.*

For information on the public listening session, please contact Christine Ross, IRIS Staff, National Center for Environmental Assessment (Mail Code: 8601P), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone: 703–347–8592; facsimile: 703–347–8689; or e-mail: *IRISListeningSession@epa.gov.*

For information on the draft assessment, please contact Amanda Persad, National Center for Environmental Assessment, Mail Code: B–243–01, U.S. Environmental Protection Agency, Research Triangle Park, NC 27711; telephone: 919–541–9781; facsimile: 919–541–2985; or e-mail: *[FRN_Questions@epa.gov].*

SUPPLEMENTARY INFORMATION:

I. Information About IRIS

EPA's IRIS is a human health assessment program that evaluates quantitative and qualitative risk information on effects that may result from exposure to chemical substances found in the environment. Through the IRIS Program, EPA provides the highest quality science-based human health assessments to support the Agency's regulatory activities. The IRIS database contains information for more than 540 chemical substances that can be used to support the first two steps (hazard identification and dose-response evaluation) of the risk assessment process. When supported by available data, IRIS provides oral reference doses (RfDs) and inhalation reference concentrations (RfCs) for chronic noncancer health effects and cancer assessments. Combined with specific exposure information, government and private entities use IRIS to help characterize public health risks of chemical substances in a site-specific situation and thereby support risk management decisions designed to protect public health.

II. How to Submit Comments to the Docket at *http://www.regulations.gov*

Submit your comments, identified by Docket ID No. EPA–HQ–ORD–2010–0633, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: ORD.Docket@epa.gov.*
- *Facsimile:* 202–566–1753.
- *Mail:* Office of Environmental Information (OEI) Docket (Mail Code: 2822T), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. The telephone number is 202–566–1752. If you provide comments by mail, please submit one unbound original with pages numbered consecutively, and three copies of the comments. For attachments, provide an index, number pages consecutively with the comments, and submit an unbound original and three copies.
- *Hand Delivery:* The OEI Docket is located in the EPA Headquarters Docket Center, EPA West Building, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is 202–566–1744. Deliveries are only accepted during the docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information. If you provide comments by hand delivery, please submit one unbound original with pages numbered consecutively, and three copies of the comments. For attachments, provide an index, number pages consecutively with the comments, and submit an unbound original and three copies.

Instructions: Direct your comments to Docket ID No. EPA–HQ–ORD–2010–0633. Please ensure that your comments are submitted within the specified comment period. Comments received after the closing date will be marked "late," and may only be considered if time permits. It is EPA's policy to include all comments it receives in the public docket without change and to make the comments available online at *http://www.regulations.gov,* including any personal information provided, unless comments include information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means that EPA will not know your identity or contact information unless you provide it in the body of your comments. If you send e-mail comments directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comments that are placed in the public docket and made available on the Internet. If you submit electronic comments, EPA recommends that you include your name and other contact information in the body of your comments and with any disk or CD–ROM you submit. If EPA cannot read your comments due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comments. Electronic files should avoid the use of special characters and any form of encryption and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *http://www.regulations.gov index.* Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically at *http://www.regulations.gov* or in hard copy at the OEI Docket in the EPA Headquarters Docket Center.

Dated: September 20, 2010.

Rebecca Clark,

Acting Director, National Center for Environmental Assessment.

[FR Doc. 2010–24305 Filed 9–27–10; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

SUMMARY:

Background

Notice is hereby given of the final approval of proposed information collection by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.16 (OMB Regulations on Controlling Paperwork Burdens on the Public). Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the Paperwork Reduction Act Submission, supporting statements and approved collection of information instrument(s) are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer —Michelle Shore—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202–452–3829).

OMB Desk Officer—Shagufta Ahmed —Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Final approval under OMB delegated authority of the implementation of the following report:

Report title: Recordkeeping Requirements Associated with Limitations on Interbank Liabilities.

Agency form number: Regulation F.

OMB control number: 7100–NEW.

Frequency: On occasion.

Reporters: State member banks and insured domestic branches of foreign banks.

Estimated annual reporting hours: 6,808 hours.

Estimated average hours per response: 8 hours.

Number of respondents: 851.

General description of report: This information collection is mandatory pursuant to section 23 of the Federal Reserve Act, as added by section 308 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA) (12 U.S.C. 371b–2). Because the Federal Reserve does not collect any information, no issue of confidentiality normally arises. However, if a compliance program becomes a Board record during an examination, the information may be protected from disclosure under exemptions (b)(4) and (b)(8) of the Freedom of Information Act (5 U.S.C. 552(b)(4) and (b)(8)).

Abstract: Pursuant to FDICIA, the Federal Reserve is required to prescribe standards to limit the risks posed by exposure of insured depository institutions to the depository institutions with which they do business (correspondents). Regulation F generally requires banks to develop and implement internal prudential policies and procedures to evaluate and control exposure to correspondents. Section 206.3 of Regulation F stipulates that a bank shall establish and maintain written policies and procedures to prevent excessive exposure to any individual correspondent in relation to the condition of the correspondent. In these policies and procedures, a bank should take into account credit and liquidity risks, including operational risks, in selecting correspondents and terminating those relationships. The policies and procedures should be reviewed and approved by the bank's board of directors at least annually.

Current Actions: On July 20, 2010, the Federal Reserve published a notice in the **Federal Register** (75 FR 42089) requesting public comment for 60 days on the implementation of the Recordkeeping Requirements Associated with Limitations on Interbank Liabilities. The comment period for this notice expired on September 20, 2010. The Federal Reserve did not receive any comments. The recordkeeping requirements will be implemented as proposed.

Board of Governors of the Federal Reserve System, September 23, 2010.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 2010–24265 Filed 9–27–10; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

[File No. 102 3131]

US Search, Inc. And US Search, LLC; Analysis of Proposed Consent Order to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order — embodied in the consent agreement — that would settle these allegations.

DATES: Comments must be received on or before October 22, 2010.

ADDRESSES: Interested parties are invited to submit written comments electronically or in paper form. Comments should refer to"US Search, Inc., File No. 101 3131" to facilitate the organization of comments. Please note that your comment — including your name and your state — will be placed on the public record of this proceeding, including on the publicly accessible FTC website, at (*http://www.ftc.gov/os/publiccomments.shtm*).

Because comments will be made public, they should not include any sensitive personal information, such as an individual's Social Security Number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. Comments also should not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, comments should not include any "[t]rade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential. . . .," as provided in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and Commission Rule 4.10(a)(2), 16 CFR 4.10(a)(2). Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled "Confidential," and must comply with FTC Rule 4.9(c), 16 CFR 4.9(c).[1]

Because paper mail addressed to the FTC is subject to delay due to heightened security screening, please consider submitting your comments in electronic form. Comments filed in electronic form should be submitted by using the following weblink: (*https://ftcpublic.commentworks.com/ftc/ussearch*) and following the instructions on the web-based form. To ensure that the Commission considers an electronic comment, you must file it on the web-based form at the weblink: (*https://ftcpublic.commentworks.com/ftc/ussearch*). If this Notice appears at (*http://www.regulations.gov/search/index.jsp*), you may also file an electronic comment through that website. The Commission will consider all comments that regulations.gov forwards to it. You may also visit the FTC website at (*http://www.ftc.gov/*) to read the Notice and the news release describing it.

A comment filed in paper form should include the "US Search, File No. 101 3131" reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission, Office of the Secretary, Room H-135 (Annex D), 600 Pennsylvania Avenue, NW, Washington, DC 20580. The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions.

The Federal Trade Commission Act ("FTC Act") and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive

[1] The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

public comments that it receives, whether filed in paper or electronic form. Comments received will be available to the public on the FTC website, to the extent practicable, at (*http://www.ftc.gov/os/publiccomments.shtm*). As a matter of discretion, the Commission makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC website. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at (*http://www.ftc.gov/ftc/privacy.shtm*).

FOR FURTHER INFORMATION CONTACT: Anthony Rodriguez (202-326-2757), Bureau of Consumer Protection, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and § 2.34 the Commission Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for September 22, 2010), on the World Wide Web, at (*http://www.ftc.gov/os/actions.shtm*). A paper copy can be obtained from the FTC Public Reference Room, Room 130-H, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580, either in person or by calling (202) 326-2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. All comments should be filed as prescribed in the **ADDRESSES** section above, and must be received on or before the date specified in the **DATES** section.

Analysis of Agreement Containing Consent Order to Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, a consent agreement with US Search, Inc., and US Search, LLC (collectively "US Search").

The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and comments received, and will decide whether it should withdraw from the agreement and take appropriate action or make final the agreement's proposed order.

US Search operates an online data broker service and sells publicly available information about consumers to other consumers through its website, (*www.ussearch.com*). This publicly available information includes name, age, address, phone numbers, email addresses, aliases, maiden name, death records, address history, information about friends, associates, and relatives, marriage and divorce information, bankruptcies, tax liens, civil lawsuits, criminal records, and home values. In conjunction with this service, since June 2009, US Search has offered and sold a PrivacyLock service, which purportedly allows consumers to "lock their records" on the US Search website and prevent their names from appearing on US Search's website, in US Search's advertisements, and in US Search's search results. Until recently, US Search charged most consumers a $10 fee to place a PrivacyLock, and almost 5,000 consumers paid to have their information removed from the US Search site.

The complaint alleges that, in truth and in fact, the PrivacyLock service did not prevent consumers' information from appearing on the US Search website in many instances. The complaint alleges that US Search has engaged in deceptive acts or practices, in violation of Section 5 of the FTC Act, by misrepresenting that the purchase or use of its PrivacyLock service will prevent a consumer's name and address from appearing on US Search's website, US Search's advertisements, and in US Search's search results.

The proposed consent order includes injunctive relief that enjoins US Search from misrepresenting the effectiveness of its PrivacyLock service or any other service offered to consumers that will allow consumers to remove publicly available information from US Search's search results, websites, and advertisements. Also included in the order are redress provisions that require US Search to refund any money consumers paid for the PrivacyLock service. Under the proposed order, US Search would be required to credit consumers' credit and debit card accounts and notify consumers via email that such credits were made.

Part I of the proposed order prohibits US Search from misrepresenting, in any manner, the effectiveness of its "PrivacyLock" service or any other service offered to consumers that will allow consumers to remove publicly available information from US Search's search results, websites, or advertisements.

Part II of the proposed order prohibits US Search from making any representations concerning the effectiveness its "PrivacyLock" service or any other similar service offered to consumers that will allow consumers to remove publicly available information from US Search's search results, websites, or advertisements, unless US Search discloses, clearly and prominently, any material limitations regarding such service, including but not limited to (1) any limitations on the duration of the removal; and (2) any circumstances under which information about the consumers will not be removed or will reappear.

Part III of the proposed order requires US Search to provide full refunds to any consumer who requested "PrivacyLock" and was assessed a charge for such service, by crediting the consumer's credit or debit card used to purchase the service. US Search must also provide notice of the refund through an email message sent to affected consumers. The message must include an address and a toll-free number for consumers to use to contact US Search regarding the refund. US Search must display a notice about its refund program clearly and prominently on its website for a period of one year. Any amounts not refunded to consumers must be deposited with the U.S. Treasury as disgorgement. The proposed order further requires US Search, within one year of issuance of this order, to provide the Commission with an accounting of all refunds paid to consumers, as well as any amounts that were deposited with the U.S. Treasury as disgorgement.

Parts IV through VIII of the proposed order are reporting and compliance provisions. Part IV of the proposed order requires US Search to retain for a period of five (5) years from the last date of dissemination of any representation covered by the order all advertisements and promotional materials containing the representation; complaints and refund requests, and any responses to such requests; and all records and documents necessary to demonstrate full compliance with each provision of the proposed order.

Part V of the proposed order requires dissemination of the order now and in the future to principals, officers, directors, and managers having responsibilities relating to the subject matter of the order. Part VI ensures notification to the FTC of changes in corporate status. Part VII mandates that

US Search submit an initial compliance report to the FTC and make available to the FTC subsequent reports. Part VIII is a provision "sunsetting" the order after twenty (20) years, with certain exceptions.

The purpose of the analysis is to aid public comment on the proposed order. It is not intended to constitute an official interpretation of the proposed order or to modify its terms in any way.

By direction of the Commission.

Donald S. Clark

Secretary.

[FR Doc. 2010–24224 Filed 9–27–10; 1:40 pm]

BILLING CODE 6750–01–S

GOVERNMENT ACCOUNTABILITY OFFICE

Methodology Committee of the Patient-Centered Outcomes Research Institute (PCORI)

AGENCY: Government Accountability Office (GAO).

ACTION: Notice on letters of nomination.

SUMMARY: The Patient Protection and Affordable Care Act gave the Comptroller General of the United States responsibility for appointing not more than 15 members to a Methodology Committee of the Patient-Centered Outcomes Research Institute. In addition, the Directors of the Agency for Healthcare Research and Quality and the National Institutes of Health, or their designees, are members of the Methodology Committee. Methodology Committee members must meet the qualifications listed in Section 6301 of the Act. For these appointments, I am announcing the following: Letters of nomination and resumes should be submitted by October 29, 2010 to ensure adequate opportunity for review and consideration of nominees prior to appointment. If an individual has previously submitted a letter of nomination and resume to be considered for appointment to the PCORI Board of Governors and would also like to be considered for nomination to the PCORI Methodology Committee, please so indicate by e-mail or mail as noted below, however you do not need to submit another resume. Letters of nomination, nominee contact information and resumes can be forwarded to either the e-mail or mailing address listed below.

ADDRESSES: Nominations can be submitted by either of the following:

E-mail: PCORIMethodology@gao.gov (in the subject line, please write "NOMINEE'S LAST NAME, Methodology Committee"). If submitted via e-mail, please do not mail a hard copy.

Mail: GAO Health Care, Attention: PCOR Institute Methodology Committee, 441 G Street, NW., Washington, DC 20548.

FOR FURTHER INFORMATION CONTACT: *GAO:* Office of Public Affairs, (202) 512–4800.

[Sec. 6301, Pub. L. 111–1481].

Gene L. Dodaro,

Acting Comptroller General of the United States.

[FR Doc. 2010–24143 Filed 9–27–10; 8:45 am]

BILLING CODE 1610–02–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Pub.L. 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, e-mail *paperwork@hrsa.gov* or call the HRSA Reports Clearance Officer on (301) 443–1129.

Comments are invited on: (a) The proposed collection of information for the proper performance of the functions of the Agency; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: The Nursing Education Loan Repayment Program Application (OMB No. 0915–0140)—[Revision]

This is a request for revision of the Nursing Education Loan Repayment Program (NELRP) application and participant monitoring forms. The NELRP is authorized by 42 USC 297n(a) (section 846(a) of the Public Health Service Act, as amended by Public Law 107–205, August 1, 2002 and Public Law 111–148, March 23, 2010).

Under the NELRP, registered nurses are offered the opportunity to enter into a contractual agreement with the Secretary to receive loan repayment for up to 85 percent of their qualifying educational loan balance as follows: 30 percent each year for the first 2 years and 25 percent for the optional third year. In exchange, the nurses agree to serve full-time for a minimum of 2 years as a registered nurse at a health care facility with a critical shortage of nurses or as nurse faculty at an eligible school of nursing. The NELRP forms provide information that is needed for selecting participants, repaying qualifying loans for education, and monitoring compliance with service requirements. The NELRP forms include the following: The NELRP Application, the Loan Information and Verification form, the Employment Verification form, the Authorization for Release of Employment Information form, the Authorization to Release Information form, the Certification Regarding Debarment, Suspension, Disqualification and Related Matters form, the Certification of Accreditation Status for School of Nursing Education Programs form, and the NELRP Application Checklist and Self-Certification form.

The program is expecting the number of applications to increase to approximately 8,000 annual respondents. This is an increase of 2,500 respondents for registered nurses at health care facilities and 500 respondents for nurse faculty at eligible schools of nursing.

The annual estimate of burden for Applicants is as follows:

Instrument	Number of respondents	Responses/ respondents	Total responses	Hours per response	Total burden hours
NELRP application	8,000	1	8,000	1.5	12,000
Loan Information and Verification Form	8,000	3	24,000	1	24,000

Instrument	Number of respondents	Responses/ respondents	Total responses	Hours per response	Total burden hours
Employment Verification Form	8,000	1	8,000	.50	4,000
Authorization for Release of Employment Information Form	8,000	1	8,000	.10	800
Authorization to Release Information Form	8,000	1	8,000	.10	800
Certification Regarding Debarment, Suspension, Disqualification and Related Matters Form	8,000	1	8,000	.10	800
Certification of Accreditation Status for School of Nursing Education Programs Form	500	1	500	.10	50
Application Checklist and Self-Certification Form	8,000	1	8,000	.50	4,000
Total			72,500		46,450

The annual estimate of burden for Participants is as follows:

Instrument	Number of respondents	Responses/ respondents	Total responses	Hours per response	Total burden hours
Participant Semi-Annual Employment Verification Form	2,300	2	4,600	.5	2,300
Total	2,300	2	4,600	.5	2,300

E-mail comments to *paperwork@hrsa.gov* or mail the HRSA Reports Clearance Officer, Room 10–33, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: September 22, 2010.

Sahira Rafiullah,

Director, Division of Policy and Information Coordination.

[FR Doc. 2010–24209 Filed 9–27–10; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0356]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Designated New Animal Drugs for Minor Use and Minor Species

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by October 28, 2010.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–7285, or e-mailed to *oira_submission@omb.eop.gov*. All comments should be identified with the OMB control number 0910–0605. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Denver Presley Jr., Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–3793.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Designated New Animal Drugs for Minor Use and Minor Species; (OMB Control Number 0910–0605)—Extension

The Minor Use and Minor Species (MUMS) Animal Health Act of 2004 amended the Federal Food, Drug, and Cosmetic Act to authorize FDA to establish new regulatory procedures intended to make more medications legally available to veterinarians and animal owners for the treatment of minor animal species as well as uncommon diseases in major animal species. This legislation provides incentives designed to help pharmaceutical companies overcome the financial burdens they face in providing limited-demand animal drugs. These incentives are only available to sponsors whose drugs are "MUMS-designated" by FDA. Minor use drugs are drugs for use in major species (cattle, horses, swine, chickens, turkeys, dogs, and cats) that are needed for diseases that occur in only a small number of animals either because they occur infrequently or in limited geographic areas. Minor species are all animals other than the major species, for example, zoo animals, ornamental fish, parrots, ferrets, and guinea pigs. Some animals of agricultural importance are also minor species. These include animals such as sheep, goats, catfish, and honeybees. Participation in the MUMS program is completely optional for drug sponsors so the associated paperwork only applies to those sponsors who request and are subsequently granted "MUMS designation." The rule specifies the criteria and procedures for requesting MUMS designation as well as the annual reporting requirements for MUMS designees.

Under part 516 (21 CFR part 516), § 516.20 provides requirements on the content and format of a request for MUMS-drug designation, § 516.26 provides requirements for amending MUMS-drug designation, § 516.27 provides provisions for change in sponsorship of MUMS-drug designation, § 516.29 provides provisions for termination of MUMS-drug designation, § 516.30 provides requirements for annual reports from sponsor(s) of MUMS-designated drugs, and § 516.36 provides provisions for insufficient quantities of MUMS-designated drugs. Respondents are pharmaceutical companies that sponsor new animal drugs.

In the **Federal Register** of July 20, 2010 (75 FR 42094), FDA published a 60-day notice requesting public comment on the proposed collection of information. In response, FDA received

one comment that was not responsive to the comment request on the information collection provision.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
516.20	15	5	75	16	1,200
516.26	3	1	3	2	6
516.27	1	1	1	1	1
516.29	2	1	2	1	2
516.30	15	5	75	2	150
516.36	1	1	1	3	3
Total					1,362

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The burden estimate for this reporting requirement was derived in our Office of Minor Use and Minor Species Animal Drug Development by extrapolating the current investigational new animal drug (INAD)/new animal drug application (NADA) reporting requirements for similar actions by this same segment of the regulated industry and from previous interactions with the minor use/minor species community.

Dated: September 23, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–24273 Filed 9–27–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0373]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Preparing a Claim of Categorical Exclusion or an Environmental Assessment for Submission to the Center for Food Safety and Applied Nutrition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by October 28, 2010.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–7285, or emailed to *oira_submission@omb.eop.gov*. All comments should be identified with the OMB control number 0910–0541. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Denver Presley Jr., Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–3793.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Preparing a Claim of Categorical Exclusion or an Environmental Assessment for Submission to the Center for Food Safety and Applied Nutrition (OMB Control Number 0910–0541)—Extension

As an integral part of its decisionmaking process, FDA is obligated under the National Environmental Policy Act of 1969 (NEPA) to consider the environmental impact of its actions, including allowing notifications for food contact substances to become effective and approving food additive petitions, color additive petitions and GRAS petition requests for exemption from regulation as a food additive, and actions on certain food labeling citizen petitions, nutrient content claims petitions, and health claims petitions. In 1997, FDA amended its regulations in part 25 (21 CFR part 25) to provide for categorical exclusions for additional classes of actions that do not individually or cumulatively have a significant effect on the human environment (62 FR 40570, July 29, 1997). As a result of that rulemaking, FDA no longer routinely requires submission of information about the manufacturing and production of FDA-regulated articles. FDA also has eliminated the previously required Environmental Assessment (EA) and abbreviated EA formats from the amended regulations. Instead, FDA has provided guidance that contains sample formats to help industry submit a claim of categorical exclusion or an EA to FDA's Center for Food Safety and Applied Nutrition (CFSAN). The guidance document entitled "Preparing a Claim of Categorical Exclusion or an Environmental Assessment for Submission to the Center for Food Safety and Applied Nutrition" identifies, interprets, and clarifies existing requirements imposed by statute and regulation, consistent with the Council on Environmental Quality regulations (40 CFR 1507.3). It consists of recommendations that do not themselves create requirements; rather, they are explanatory guidance for FDA's own procedures in order to ensure full compliance with the purposes and provisions of NEPA.

The guidance provides information to assist in the preparation of claims of categorical exclusion and EAs for submission to CFSAN. The following

questions are covered in this guidance: (1) What types of industry-initiated actions are subject to a claim of categorical exclusion? (2) what must a claim of categorical exclusion include by regulation? (3) what is an EA? (4) when is an EA required by regulation and what format should be used? (5) what are extraordinary circumstances? and (6) what suggestions does CFSAN have for preparing an EA? Although CFSAN encourages industry to use the EA formats described in the guidance because standardized documentation submitted by industry increases the efficiency of the review process, alternative approaches may be used if these approaches satisfy the requirements of the applicable statutes and regulations. FDA is requesting the extension of OMB approval for the information collection provisions in the guidance. The likely respondents include businesses engaged in the manufacture or sale of food, food ingredients, and substances used in materials that come into contact with food.

In the **Federal Register** of July 21, 2010 (75 FR 42446), FDA published a 60-day notice requesting public comment on the proposed collection of information. In response, the agency received one comment that was not responsive to the comment request on the information collection provisions.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
25.32(i)	34	1	34	1	34
25.32(o)	1	1	1	1	1
25.32(q)	2	1	2	1	2
Total					37

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The estimates for respondents and numbers of responses are based on the annualized numbers of petitions and notifications qualifying for § 25.32(i) and (q) that the agency has received in the past 3 years. Please note that, in the past 3 years, there have been no submissions that requested an action that would have been subject to the categorical exclusion in § 25.32(o). To avoid counting this burden as zero, FDA has estimated the burden for this categorical exclusion at one respondent making one submission a year for a total of one annual submission.

To calculate the estimate for the hours per response values, we assumed that the information requested in this guidance for each of these three categorical exclusions is readily available to the submitter. For the information requested for the exclusion in § 25.32(i), we expect that the submitter will need to gather information from appropriate persons in the submitter's company and to prepare this information for attachment to the claim for categorical exclusion. We believe that this effort should take no longer than 1 hour per submission. For the information requested for the exclusions in § 25.32(o) and (q), the submitters will almost always merely need to copy existing documentation and attach it to the claim for categorical exclusion. We believe that collecting this information should also take no longer than 1 hour per submission.

Dated: September 23, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–24272 Filed 9–27–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; Comment Request; Testing Successful Health Communications Surrounding Aging-Related Issues From the National Institute on Aging (NIA)

SUMMARY: In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Institute on Aging, the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection: Title: Testing successful health communications surrounding aging-related issues from the National Institute on Aging (NIA). *Type of Information Collection Request:* New. *Need and Use of Information Collection:* This study will support NIA's mission "to communicate information about aging and advances in research on aging to the scientific community, health care providers, and the public." The primary objectives of this study are to:

- Assess audiences' trusted/preferred sources for information, knowledge, attitudes, behaviors, and other characteristics for the planning/development of health messages and communications strategies;
- Pre-test health messages and outreach strategies while they are in developmental form to assess audience response, including their likes and dislikes.

NIA's Office of Communications and Public liaison will collect this information through formative qualitative research with its key audiences—older people, caregivers, and health professionals. Methods will include focus groups, individual interviews, self-administered questionnaires, and website surveys. The information will be used to (1) Develop and revise health information resources and outreach strategies to maximize their effectiveness; (2) determine new topic areas to explore for future NIA publications; and (3) identify new ways to support the health information needs of older adults and people who serve older adults. NIA is requesting a generic clearance for a range of research data collection procedures to ensure that they successfully develop and disseminate effective health communications on aging-related issues. *Frequency of Response:* On occasion. *Affected Public:* Older people, caregivers, and health professionals (physicians and non-physicians). *Type of Respondents:* Older

people, caregivers, and health professionals (physicians and non-physicians). The annual reporting burden is as follows: *Estimated Number of Respondents:* 630. *Estimated Number of Responses per Respondent:* 1. *Average Burden Hours Per Response:* 0.37. *Estimated Total Annual Burden Hours Requested:* 234. The annualized cost to respondents is estimated at: $5,680. There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

Type of respondents	Estimated number of respondents	Estimated number of responses per respondent	Average burden hours per response	Estimated total annual burden hours requested
Older adults	260	1	.37	97
Non-physician health professionals and caregivers	310	1	.35	107
Physicians	60	1	.5	30
Total				234

Request for Comments: Written comments and/or suggestions from the public and affected agencies should address one or more of the following points: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function 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 the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Megan Homer, Writer/Editor, Office of Communications and Public Liaison, NIH, Building 31C Room 5C27, 9000 Rockville Pike, Bethesda, MD 20892, or call non-toll-free number 301–496–1752 or E-mail your request, including your address to: *homerm@mail.nih.gov*.

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

Dated: September 22, 2010.

Lynn Hellinger,

Director of Management, National Institutes of Health.

[FR Doc. 2010–24277 Filed 9–27–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; Comment Request; Transfusion-Transmitted Retrovirus and Hepatitis Virus Rates and Risk Factors: Improving the Safety of the U.S. Blood Supply Through Hemovigilance

SUMMARY: In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Heart, Lung, and Blood Institute (NHLBI), the National Institutes of Health (NIH), will publish periodic summaries of proposed projects to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection: Title: Transfusion-transmitted retrovirus and hepatitis virus rates and risk factors: Improving the safety of the U.S. blood supply through hemovigilance. *Type of Information Collection Request:* NEW. *Need and Use of Information Collection:* Information on current risk factors in blood donors as assessed using analytical study designs is largely unavailable in the U.S. Studies of risk factor profiles among HIV-infected donors were funded by the CDC for approximately 10 years after implementation of serologic screening in the mid-1980s, whereas studies of HTLV- and HCV-seropositive (and indeterminate) donors, funded by NIH, were conducted in the early 1990s, but unfortunately, none of these studies is ongoing. Infection trend analyses have been conducted by the American Red Cross (ARC). The findings show continued HIV risk with the prevalence of HIV in first time donors hovering around 10 per 100,000 donations in each of the last 10 years and the incidence in repeat donors increasing from 1.49 per 100,000 person-years in 1999–2000 to 2.16 per 100,000 persons-years in 2007–2008. While the prevalence of HCV in first time donors decreased over this time interval from 345 to 163 per 100,000 donations, the incidence in repeat donors did not decrease and evidence of incident infection in first time donors increased. Moreover specific age, gender and race/ethnicity groups were over-represented. Significantly increased incidence of both HIV and HCV were observed in 2007/2008 compared to 2005/2006. Similar analyses for HBV have shown an incidence in all donors of 3.4 per 100,000 person-years which is lower than earlier estimates, but remains higher than for HIV and HCV.

This project represents a collaborative pilot research study that will include a comprehensive interview study of viral infection positive blood donors at the American Red Cross (ARC), Blood Systems Inc. (BSI) and New York Blood Center (NYBC) in order to identify the current predominant risk factors for virus positive donations and will also establish a donor biovigilance capacity that currently does not exist in the U.S. At this time it is not easy to integrate risk factor data and disease marker surveillance information within or across different blood collection organizations because common interview procedures and laboratory confirmation procedures are not being used and so we cannot easily tabulate and analyze behavioral risks or viral infections in U.S. blood donors. This creates the potential for gaps in our understanding of absolute incidence and prevalence as well as risks that could lead to transfusion-transmitted disease. Combined data are critical for appropriate national surveillance efforts. For example, this information could be used to target educational interventions to reduce donations from persons with high risk behaviors. This is particularly important in the case of

behaviors associated with incident (recently acquired) infections because these donations have the greatest potential transmission risk because they could be missed during routine testing. As part of the project a comprehensive research-quality biovigilance database will be created that integrates existing operational information on blood donors, disease marker testing and blood components collected by participating organizations into a research database. The combined database will capture infectious disease and risk factor information on nearly 60% of all blood donors and donations in the country. Following successful completion of the risk factor interviews and research database development, the biovigilance network pilot can be expanded to include additional blood centers and/or re-focused on other safety threats as warranted, such as XMRV. This pilot biovigilance network will thereby establish a standardized process for integration of information across blood collection organizations.

The Specific Aims are to:

(1) Define consensus infectious disease testing classification algorithms for HIV, HCV, HBV, and HTLV that can be used to consistently classify donation testing results across blood collection organizations in the U.S. This will allow for better estimates of infection disease marker prevalence and incidence in the U.S.

(2) Determine current behavioral risk factors associated with prevalent and incident (when possible) HIV, HCV, HBV and HTLV infections in blood donors, including parenteral and sexual risks, across the participating blood collection organizations using a case-control study design.

(3) Determine nationally-representative infectious disease marker prevalence and incidence for HIV, HCV, HBV, and HTLV overall and by demographic characteristics of donors. This will be accomplished by forming research databases from operational data at BSI and NYBC into formats that can be combined with the ARC research database.

(4) Analyze integrated risk factor and infectious marker testing data together because when taken together these may show that blood centers are not achieving the same degree of success in educational efforts to prevent donation by donors with risk behaviors across all demographic groups.

Frequency of Response: Once. *Affected Public:* Individuals. *Type of Respondents:* Adult blood donors. The annual reporting burden is a follows: *Estimated Number of Respondents:* 4150; *Estimated Number of Responses per Respondent:* 1; *Average Burden of Hours per Response:* 0.58 and *Estimated Total Annual Burden Hours Requested:* 2407. The annualized cost to respondents is estimated at: $43,326 (based on $18 per hour). There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

Tables 1–1 and 1–2: Estimate of Requested Burden Hours and Dollar Value of Burden Hours

TABLE 1–1—ESTIMATES OF HOUR BURDEN

Type of respondents	Number of respondents	Frequency of response	Average time per response	Annual hour burden
Cases	1650	1	0.58	957
Controls	2500	1	0.58	1450
Total	4150			2407

TABLE 1–2—ANNUALIZED COST TO RESPONDENTS

Type of respondents	Number of respondents	Frequency of response	Average time per response	Hourly wage rate	Respondent cost
Cases	1650	1	0.58	$18	17,226
Controls	2500	1	0.58	18	26,100
Total	4150				43,326

Request for Comments: Written comments and/or suggestions from the public and affected agencies should address one or more of the following points: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function 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 the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Ms Elizabeth Wagner, Project Officer, NHLBI, Two Rockledge Center, Room 9030, 6701 Rockledge Drive, Bethesda, MD 20892–7950, or call 301–451–9491, or E-mail your request to *elizabeth.wagner@nih.gov.*

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

Dated: September 16, 2010.

Ms. Elizabeth Wagner,

NHLBI Project Officer, NHLBI, National Institutes of Health.

[FR Doc. 2010–24278 Filed 9–27–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Title: Innovative Strategies for Increasing Self-Sufficiency: Baseline Data Collection.

OMB No.: 0970–0343.

Billing Accounting Code (BAC): 418409 (CAN G996121).

Description: The Administration for Children and Families (ACF), U.S. Department of Health and Human Services (HHS), is proposing a data collection activity as part of the Innovative Strategies for Increasing Self-Sufficiency (ISIS) demonstration and evaluation. The ISIS project will test a range of promising strategies to promote employment, self-sufficiency, and reduce dependence on cash welfare. The ISIS project will evaluate multiple employment-focused strategies that build on previous approaches and are adapted to the current Federal, State, and local policy environment. The major goals of the project include increasing the empirical knowledge about the effectiveness of a variety of programs for low-income families to sustain employment and advance to positions that enable self-sufficiency, as well as producing useful findings for both policymakers and program administrators.

This proposed information collection activity focuses on collecting baseline data elements. Two data collection instruments will be completed by all participants prior to random assignment, and a third will be an interview guide to collect information from program staff. The first is a short baseline information form (BIF) that will collect basic identification, demographic, and contact information. The form will include relatively standard items from prior evaluations and national surveys. The second instrument will be a self-administered questionnaire (SAQ), covering information related to the project goals. The third instrument, baseline implementation data collection interviews, will be used to collect information from knowledgeable informants about the service context for each evaluation site using a baseline implementation guide. The purpose of such interviews is to document and assess the service environment in which the evaluation is implemented and the opportunities for control group members to access the same or similar services as the treatment group members.

Respondents: Individuals enrolled in ISIS demonstration interventions, control group members, ISIS program operators (BIF and SAQ) and State and local informants (interviews).

ANNUAL BURDEN ESTIMATES

Instrument	Annual number of respondents	Number of responses per respondent	Average burden hours per response	Total annual burden hours
Baseline Information Form	4,800	1	0.75	3,600
Self-Administered Questionnaire	4800	1	0.75	3,600
Baseline Implementation Data Collection Interviews	30	1	1	30

Estimated Total Annual Burden Hours: 7,230

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 Planning, Research and Evaluation, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: OPRE Reports Clearance Officer. E-mail address: *OPREinfocollection@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.

Dated: September 21, 2010.

Steven M. Hanmer,

Reports Clearance Officer.

[FR Doc. 2010–24122 Filed 9–27–10; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–D–0428]

Draft Guidance for Industry and Food and Drug Administration Staff; Class II Special Controls Guidance Document: Herpes Simplex Virus Types 1 and 2 Serological Assays; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the draft guidance entitled "Class II Special Controls Guidance Document: Herpes Simplex Virus Types 1 and 2 Serological Assays." This draft guidance document describes a means by which the herpes simplex virus (HSV) serological assay device type may comply with the requirement of special controls for class II devices. Elsewhere in this issue of the **Federal Register**, FDA is publishing a proposed rule to designate this guidance as the class II special control. This draft guidance is not final nor is it in effect at this time.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the agency considers your comment of this draft guidance before it begins work on the final version of the guidance, submit either electronic or written comments on the draft guidance by December 27, 2010.

ADDRESSES: Submit written requests for single copies of the draft guidance document entitled "Class II Special Controls Guidance Document: Herpes Simplex Virus Types 1 and 2 Serological Assays" to the Division of

Small Manufacturers, International, and Consumer Assistance, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, rm. 4613, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request, or fax your request to 301–847–8149. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance.

Submit electronic comments on the draft guidance to *http://www.regulations.gov*. Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Identify comments with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Haja Sittana El Mubarak, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, rm. 5519, Silver Spring, MD 20993–0002, 301–796–6193.

SUPPLEMENTARY INFORMATION:

I. Background

This draft guidance document provides recommendations on the types of information and data that FDA believes needs to be included in a premarket notification 510(k) submission for HSV types 1 and 2 serological assays. HSV serological assays are devices that consist of antigens and antisera used in various serological tests to identify antibodies to herpes simplex virus in serum. Additionally, some of the assays consist of herpes simplex virus antisera conjugated with a fluorescent dye (immunofluorescent assays) used to identify herpes simplex virus directly from clinical specimens or tissue culture isolates derived from clinical specimens. The identification aids in the diagnosis of diseases caused by herpes simplex viruses and provides epidemiological information on these diseases. Herpes simplex viral infections range from common and mild lesions of the skin and mucous membranes to a severe form of encephalitis (inflammation of the brain). Neonatal herpes virus infections range from a mild infection to a severe generalized disease with a fatal outcome. We have revised the existing guidance by rewriting the method comparison section and the sample selection inclusion and exclusion criteria section. The revisions defined and differentiated the required studies and the study populations for the assessment of the safety and effectiveness of the different types of HSV 1 and HSV 2 serological assays. Additionally, we made several corrections and clarifications throughout the document to ensure accuracy, consistency, and ease of reading. Elsewhere in this issue of the **Federal Register**, FDA is proposing to designate this guidance as the class II special control for HSV types 1 and 2 serological assays. If this classification rule is finalized, FDA intends that this guidance document will serve as the special control for this device.

Following the effective date of any final classification rule based on this proposal, any firm submitting a premarket notification (510(k)) for HSV types 1 and 2 serological assays will need to address the issues covered in the special controls guidance document. However, the firm need only show that its device meets the recommendations of the guidance document or in some other way provides equivalent assurances of safety and effectiveness.

II. Significance of Guidance

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the agency's current thinking on HSV types 1 and 2 serological assays. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute and regulations.

III. Electronic Access

Persons interested in obtaining a copy of the draft guidance may do so by using the Internet. To receive "Class II Special Controls Guidance Document: Herpes Simplex Virus Types 1 and 2 Serological Assays," you may either send an email request to *dsmica@fda.hhs.gov* to receive an electronic copy of the document or send a fax request to 301–847–8149 to receive a hard copy. Please use the document number 1713 to identify the guidance you are requesting. A search capability for all CDRH guidance documents is available at *http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/default.htm*. Guidance documents are also available at *http://www.regulations.gov*.

IV. Paperwork Reduction Act of 1995

This draft guidance refers to previously approved collections of information found in FDA regulations and guidance documents. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR part 807, subpart E have been approved under OMB control number 0910–0120; the collections of information in 21 CFR part 812 have been approved under OMB control number 0910–0078; and the collections of information in 21 CFR part 801 and 21 CFR 809.10 have been approved under OMB control number 0910–0485.

V. 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.

Dated: September 16, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–23640 Filed 9–27–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Center for Environmental Health/Agency for Toxic Substances and Disease Registry (NCEH/ATSDR); Notice of National Conversation on Public Health and Chemical Exposures Leadership Council Meeting

Time and Date: 9 a.m.—5 p.m. EDT, Tuesday, October 5, 2010.

Location: Omni Shoreham Hotel, 2500 Calvert Street NW., Washington, DC 20008.

Status: Open to the public, on a first come, first served basis, limited by the space available. An opportunity for the public to listen to the meeting by phone will be available. For information on observing the meeting in person or by phone, *see* "contact for additional information" below.

Purpose: This is the sixth meeting of the National Conversation on Public

Health and Chemical Exposures Leadership Council, which is convened by RESOLVE, a non-profit independent facilitator. The National Conversation on Public Health and Chemical Exposures is a collaborative initiative supported by NCEH/ATSDR and through which many organizations and individuals are helping develop an action agenda for strengthening the nation's approach to protecting the public's health from harmful chemical exposures. The Leadership Council provides overall guidance to the National Conversation project and is responsible for issuing the final action agenda. For additional information on the National Conversation on Public Health and Chemical Exposures, visit this Web site: *http://www.atsdr.cdc.gov/nationalconversation/*.

Meeting Agenda: The purpose of the meeting is to discuss key themes and recommendations to feature in the draft action agenda, drawing on draft work group reports and the results of various stakeholder and public engagement activities.

Contact for additional information: If you would like to receive additional information on attending this meeting in person or listening by telephone, please contact: *nationalconversation@cdc.gov* or Ben Gerhardstein at 770–488–3646.

Dated: September 21, 2010.

Tanja Popovic,

Deputy Associate Director for Science, Centers for Disease Control and Prevention.

[FR Doc. 2010–24260 Filed 9–27–10; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Neurodevices, Neuroimaging, and Bioengineering.

Date: October 20, 2010.

Time: 2 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Vilen A. Movsesyan, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4040M, MSC 7806, Bethesda, MD 20892, 301–402–7278, *movsesyanv@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Electromagnetic Devices.

Date: October 26, 2010.

Time: 12 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Antonio Sastre, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5215, MSC 7412, Bethesda, MD 20892, 301–435–2592, *sastrea@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: AIDS Predoctoral and Postdoctoral.

Date: October 27–28, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Shiv A. Prasad, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5220, MSC 7852, Bethesda, MD 20892, 301–443–5779, *prasads@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Dermatology, Rheumatology and Inflammation.

Date: November 1, 2010.

Time: 11:30 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road, Bethesda, MD 20852.

Contact Person: Aftab A. Ansari, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4108, MSC 7814, Bethesda, MD 20892, 301–594–6376, *ansaria@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Stem Cells in Cancer.

Date: November 1, 2010.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Nywana Sizemore, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6204, MSC 7804, Bethesda, MD 20892, 301–435–1718, *sizemoren@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Tooth Development and Mineralization.

Date: November 3, 2010.

Time: 3 p.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Priscilla B. Chen, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4104, MSC 7814, Bethesda, MD 20892, (301) 435–1787, *chenp@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR–08–147: Quick Trials on Imaging and image-Guided Intervention.

Date: November 4, 2010.

Time: 2 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: John Firrell, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5213, MSC 7854, Bethesda, MD 20892, 301–435–2598, *firrellj@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel. Fellowships: Neurodevelopment, Synaptic Plasticity and Neurodegeneration.

Date: November 11–12, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Westin San Diego, 400 West Broadway, San Diego, CA 92101.

Contact Person: Vilen A. Movsesyan, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4040M, MSC 7806, Bethesda, MD 20892, 301–402–7278, *movsesyanv@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Digestive Sciences.

Date: November 15–16, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Bonnie L. Burgess-Beusse, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2182, MSC 7818, Bethesda, MD 20892, 301–435–1783, *beusseb@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; RFA Panel: Diet and Physical Activity Methodologies.

Date: November 16–17, 2010.

Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Fungai Chanetsa, MPH, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3135, MSC 7770, Bethesda, MD 20892, 301–408–9436, *fungai.chanetsa@nih.hhs.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: AIDS/HIV Innovative Research Applications.
Date: November 16–18, 2010.
Time: 8 a.m. to 3 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Kenneth A Roebuck, PhD, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5106, MSC 7852, Bethesda, MD 20892, (301) 435–1166, *roebuckk@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Genes, Genomes, and Genetics.
Date: November 17, 2010.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Renaissance Mayflower Hotel, 1127 Connecticut Avenue, NW., Washington, DC 20036.
Contact Person: Maria DeBernardi, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6158, MSC 7892, Bethesda, MD 20892, 301–435–1355, *debernardima@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowship: Technology Development.
Date: November 17–18, 2010.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Alessandra M. Bini, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5142, MSC 7840, Bethesda, MD 20892, 301–435–1024, *binia@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Special Topics: Bioanalytical and Imaging Technologies.
Date: November 17–18, 2010.
Time: 8:30 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Vonda K. Smith, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6188, MSC 7892, Bethesda, MD 20892, 301–435–1789, *smithvo@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Arthritis, Connective Tissue and Skin Special Emphasis Panel.
Date: November 17, 2010.
Time: 2:30 p.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Jean D. Sipe, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4106, MSC 7814, Bethesda, MD 20892, 301–435–1743, *sipej@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; ODCS Member Conflicts.
Date: November 17, 2010.
Time: 3 p.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Priscilla B. Chen, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4104, MSC 7814, Bethesda, MD 20892, (301) 435–1787, *chenp@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowship: Genes, Genomes, and Genetics.
Date: November 18–19, 2010.
Time: 8 a.m. to 4 p.m.
Agenda: To review and evaluate grant applications,
Place: Hyatt at Fisherman's Wharf, 555 North Point Street, San Francisco, CA 94133.
Contact Person: Michael A. Marino, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2216, MSC 7890, Bethesda, MD 20892, (301) 435–0601, *marinomi@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR–10–082: Shared Instrumentation: S10 Flow Cytometry Review.
Date: November 18–19, 2010.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Renaissance Baltimore Harborplace Hotel, 202 East Pratt Street, Baltimore, MD 21202.
Contact Person: Jonathan Arias, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5170, MSC 7840, Bethesda, MD 20892, 301–435–2406, *ariasj@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Small Business: Respiratory Sciences.
Date: November 18–19, 2010.
Time: 9 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Ghenima Dirami, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4122, MSC 7814, Bethesda, MD 20892, 301–594–1321, *diramig@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: September 22, 2010.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–24279 Filed 9–27–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0001]

Vaccines and Related Biological Products Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.
Name of Committee: Vaccines and Related Biological Products Advisory Committee.
General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.
Date and Time: The meeting will be held on November 16, 2010, from 9 a.m. to approximately 4 p.m. and on November 17, 2010, from 8:30 a.m. to approximately 1:15 p.m.
Location: Hilton Silver Spring Hotel, Maryland Ballroom, 8727 Colesville Rd., Silver Spring, MD 20910.
Contact Person: Donald W. Jehn or Denise Royster, Food and Drug Administration, Center for Biologics Evaluation and Research (HFM–71), Food and Drug Administration, 1401 Rockville, Pike, Rockville, MD 20852, 301–827–0314, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014512391. Please call the Information Line for up-to-date information on this meeting. A notice in the **Federal**

Register about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the agency's Web site and call the appropriate advisory committee hot line/phone line to learn about possible modifications before coming to the meeting.

Agenda: On November 16, 2010, the committee will meet in open session to review and discuss the pathway to licensure for protective antigen-based anthrax vaccines for a post-exposure prophylaxis indication using the animal rule. On November 17, 2010, the committee will meet in open session to review and discuss the effectiveness of vaccinating males and females with Gardasil manufactured by Merck & Co. for the prevention of anal dysplasia and anal cancer.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm*. Scroll down to the appropriate advisory committee link.

Procedure: On November 16, 2010, from 9 a.m. until approximately 11:45 a.m. and from 2 p.m. until approximately 4 p.m. and on November 17, 2010, the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before November 10, 2010. Oral presentations from the public will be scheduled between approximately 2:15 p.m. and 2:45 p.m. on November 16, 2010, and between approximately 11:45 a.m. and 12:15 p.m. on November 17, 2010. Those desiring to make formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before November 2, 2010. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by November 3, 2010.

Closed Committee Deliberations: On November 16, 2010, between 12 p.m. and approximately 2 p.m., the meeting will be closed to permit discussion and review of trade secret and/or confidential commercial information (5 U.S.C. 552b(c)(4)). The committee will hear firms discuss protocols they propose to use for the pathway to licensure for protective antigen-based anthrax vaccines for a post-exposure prophylaxis indication using the animal rule.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Donald W. Jehn or Denise Royster at least 7 days in advance of the meeting. FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: September 23, 2010.

Jill Hartzler Warner,

Acting Associate Commissioner for Special Medical Programs.

[FR Doc. 2010–24253 Filed 9–27–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0001]

Joint Meeting of the Anesthetic and Life Support Drugs Advisory Committee and the Drug Safety and Risk Management Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committees: Anesthetic and Life Support Drugs Advisory Committee and the Drug Safety and Risk Management Advisory Committee.

General Function of the Committees: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on October 21, 2010, from 8:30 a.m. to 4:30 p.m. and on October 22, 2010, from 8:30 a.m. to 4 p.m.

Location: Hilton Washington DC North/Gaithersburg, The Ballrooms, 620 Perry Pkwy., Gaithersburg, MD. The hotel telephone number is 301–977–8900.

Contact Person: Kalyani Bhatt, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, rm. 2417, Silver Spring, MD 20993–0002, 301–796–9001, FAX: 301–847–8533, email: *kalyani.bhatt@fda.hhs.gov*, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), codes 3014512529 and 3014512535. Please call the Information Line for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the agency's Web site and call the appropriate advisory committee hot line/phone line to learn about possible modifications before coming to the meeting.

Agenda: The committee will discuss considerations for the design of postmarketing studies for new drug applications (NDAs) 22–272, OxyContin (oxycodone hydrochloride controlled-release) Tablets, manufactured by Purdue Pharma, Inc., and NDA 22–321, EMBEDA (morphine sulfate extended-release with a sequestered naltrexone hydrochloride inner core) Capsules, manufactured by Alpharma Pharmaceuticals, LLC and King Pharmaceuticals Research & Development, Inc., approved for the management of moderate to severe pain when a continuous, around-the-clock opioid analgesic is needed for an extended period of time. The postmarketing studies are intended to be epidemiological or observational studies that will assess the known serious risks of these products and whether product-specific properties which are intended to discourage misuse and abuse actually result in a decrease in the risks of misuse and abuse, and their

consequences: Addiction, overdose, and death.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm*. Scroll down to the appropriate advisory committee link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before October 14, 2010. Oral presentations from the public will be scheduled between approximately 10:45 a.m. and 11:45 a.m. on October 22, 2010. Those desiring to make formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before October 6, 2010. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by October 7, 2010.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Kalyani Bhatt at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: September 22, 2010.

Jill Hartzler Warner,

Acting Associate Commissioner for Special Medical Programs.

[FR Doc. 2010–24251 Filed 9–27–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the Subcommittee for Planning the Annual Strategic Plan Updating Process of the Interagency Autism Coordinating Committee (IACC).

The purpose of the Subcommittee meeting is to plan the process for updating the IACC Strategic Plan for Autism Spectrum Disorder Research. The meeting will be open to the public and will also be accessible by webinar and conference call.

Name of Committee: Interagency Autism Coordinating Committee (IACC).

Type of meeting: Subcommittee for Planning the Annual Strategic Plan Updating Process.

Date: October 6, 2010.

Time: 9 a.m. to 12 p.m. Eastern Time.

Agenda: To discuss plans for updating the IACC Strategic Plan for ASD Research.

Place: The National Institute of Mental Health, Neuroscience Center, 6001 Executive Boulevard, Conference Room 8120, Rockville, MD 20852.

Webinar Access: https://www2.gotomeeting.com/register/927802003.

Registration: http://www.acclaroresearch.com/oarc/10–06–10_IACC. Pre-registration is recommended to expedite check-in. Seating in the meeting room is limited to room capacity and on a first come, first served basis.

Conference Call: Dial: 888–848–6715, Access code: 5341736.

Contact Person: Ms. Lina Perez, Office of Autism Research Coordination, Office of the Director, National Institute of Mental Health, NIH, 6001 Executive Boulevard, NSC, Room 8200, Bethesda, MD 20892–9669, Phone: (301) 443–6040, E-mail: *IACCPublicInquiries@mail.nih.gov.*

Please Note: The meeting will be open to the public and accessible via webinar and conference call. Members of the public who participate using the conference call phone number will be able to listen to the meeting but will not be heard. If you experience any technical problems with the conference call, please-mail *IACCTechSupport@acclaroresearch.com.*

If you experience any technical problems with the web presentation tool, please contact GoToWebinar at (800) 263–6317. To access the web presentation tool on the Internet the following computer capabilities are required: (A) Internet Explorer 5.0 or later, Netscape Navigator 6.0 or later or Mozilla Firefox 1.0 or later; (B) Windows® 2000, XP Home, XP Pro, 2003 Server or Vista; (C) Stable 56k, cable modem, ISDN, DSL or better Internet connection; (D) Minimum of Pentium 400 with 256 MB of RAM (Recommended); (E) Java Virtual Machine enabled (Recommended).

Individuals who participate in person or by using these electronic services and who need special assistance, such as captioning of the conference call or other reasonable accommodations, should submit a request to the Contact Person listed on this notice at least 7 days prior to the meeting.

This notice is being published less than 15 days prior to the meeting due to the urgent need for the Subcommittee to discuss the upcoming update of the IACC Strategic Plan prior to the IACC meeting scheduled for October 22, 2010.

Schedule is subject to change.

Information about the IACC is available on the Web site: *http://www.iacc.hhs.gov.*

Dated: September 22, 2010.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–24280 Filed 9–27–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Member Conflict Review, Program Announcement (PA) 07–318, Initial Review

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the aforementioned meeting:

TIME AND DATE: 1 p.m.–3 p.m., November 15, 2010 (Closed).

Place: National Institute for Occupational Safety and Health (NIOSH), CDC, 1095 Willowdale Road, Morgantown, West Virginia 26506, telephone: (304)285–6143.

Status: The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters to be Discussed: The meeting will include the initial review, discussion, and evaluation of "Member Conflict Review, PA 07–318."

CONTACT PERSON FOR MORE INFORMATION: M. Chris Langub, PhD., Scientific Review Administrator, Office of Extramural Programs, National Institute for Occupational Safety and Health, CDC, 1600 Clifton Road, NE., Mailstop E74, Atlanta Georgia 30333; Telephone: (404)498–2543.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: September 20, 2010.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2010–24258 Filed 9–27–10; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0001]

Gastrointestinal Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Gastrointestinal Drugs Advisory Committee

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on November 5, 2010, from 8 a.m. to 5 p.m.

Location: Hilton Washington DC North/Gaithersburg, The Ballroom, 620 Perry Pkwy., Gaithersburg, MD. The hotel telephone number is 301–977–8900.

Contact Person: Kristine T. Khuc, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, rm. 2417, Silver Spring, MD 20993–0002, 301–796–9001, FAX: 301–847–8533, email: *kristine.khuc@fda.hhs.gov*, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014512538. Please call the Information Line for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the agency's Web site and call the appropriate advisory committee hot line/phone line to learn about possible modifications before coming to the meeting.

Agenda: On November 5, 2010, the committee will discuss the results from clinical trials of proton pump inhibitors in gastroespohageal reflux disease (GERD) in patients less than 1 year of age, performed in response to a Pediatric Written Request under the Best Pharmaceuticals for Children Act (Nexium, esomeprazole by AstraZeneca LP; Prevacid, lansoprazole by Takeda Pharmaceuticals North America, Inc; Protonix, pantoprazole by Pfizer, Inc.) and Pediatric Research Equity Act commitment (Prilosec, omeprazole by AstraZeneca LP). The pathophysiology (disease process) of GERD, its diagnosis and management, and issues related to the design of clinical trials in this age group will be considered.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm*. Scroll down to the appropriate advisory committee link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before October 21, 2010. Oral presentations from the public will be scheduled between approximately 1:30 p.m. to 2:30 p.m. Those desiring to make formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before October 13, 2010. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by October 14, 2010.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Kristine T. Khuc at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: September 22, 2010.

Jill Hartzler Warner,

Acting Associate Commissioner for Special Medical Programs.

[FR Doc. 2010–24252 Filed 9–27–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2010–0041]

Agency Information Collection Activities: Submission for OMB Review; Comment Request, OMB No. 1660–0036; Federal Emergency Management Agency Individual Assistance Customer Satisfaction Surveys

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice; 30-day notice and request for comments; revision of a currently approved information collection; OMB No. 1660–0036; Caller Services Registration Intake Survey, FEMA Form 007–0–3 (currently 90–147); Caller Services Helpline Survey, FEMA Form 007–0–5 (currently 90–

148); Program Effectiveness & Recovery Survey, FEMA Form 070–0–20 (currently 90–149); Internet On-Line Registration Survey, FEMA Form 070–0–2 (currently 90–150); Internet Applicant Inquiry/Update Phone Survey, FEMA Form 070–0–19 (currently 90–151); Casework Representative Survey, FEMA Form 007–0–6; Direct Housing Operations Survey, FEMA Form 007–0–4; Disability Access and Functional Needs Representative Survey, FEMA Form 007–0–8 (This form was named 'Special Needs Representative Survey' in the 60-day **Federal Register** Notice at 75 FR 40847, July 14, 2010.); Disaster Recovery Center Survey, FEMA Form 007–0–7; Communication and Process Survey, FEMA Form 007–0–9; Contact Survey, FEMA Form 007–0–10; Correspondence and Process Survey, FEMA Form 007–0–11; E–Communications Survey, FEMA Form 007–0–12; Evacuations Survey, FEMA Form 007–0–13; Follow-Up Program Effectiveness and Recovery Survey, FEMA Form 007–0–14; Rapid Temporary Repair Survey, FEMA Form 007–0–15; Recovery Inventory Survey, FEMA Form 007–0–16; Return Home Survey, FEMA Form 007–0–17; and Site Recertification Survey, FEMA Form 007–0–18.

SUMMARY: The Federal Emergency Management Agency (FEMA) has submitted the information collection abstracted below to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995. The submission describes the nature of the information collection, the categories of respondents, the estimated burden (*i.e.,* the time, effort and resources used by respondents to respond) and cost, and the actual data collection instruments FEMA will use.

DATES: Comments must be submitted on or before October 28, 2010.

ADDRESSES: 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 Desk Officer for the Department of Homeland Security, Federal Emergency Management Agency, and sent via electronic mail to *oira.submission@omb.eop.gov* or faxed to (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Director, Records Management Division, 1800 South Bell Street, Arlington, VA 20598–3005, facsimile number (202) 646–3347, or e-mail address *FEMA–Information-Collections-Management@dhs.gov.*

SUPPLEMENTARY INFORMATION:

Collection of Information

Title: Federal Emergency Management Agency Individual Assistance Customer Satisfaction Surveys.

Type of Information Collection: Revision of a currently approved information collection.

OMB Number: 1660–0036.

Form Titles and Numbers: Caller Services Registration Intake Survey, FEMA Form 007–0–3 (currently 90–147); Caller Services Helpline Survey, FEMA Form 007–0–5 (currently 90–148); Program Effectiveness & Recovery Survey, FEMA Form 070–0–20 (currently 90–149); Internet On-Line Registration Survey, FEMA Form 070–0–2 (currently 90–150); Internet Applicant Inquiry/Update Phone Survey, FEMA Form 070–0–19 (currently 90–151); Casework Representative Survey, FEMA Form 007–0–6; Direct Housing Operations Survey, FEMA Form 007–0–4; Disability Access and Functional Needs Representative Survey, FEMA Form 007–0–8 (This form was named 'Special Needs Representative Survey' in the 60-day **Federal Register** Notice at 75 FR 40847, July 14, 2010.); Disaster Recovery Center Survey, FEMA Form 007–0–7; Communication and Process Survey, FEMA Form 007–0–9; Contact Survey, FEMA Form 007–0–10; Correspondence and Process Survey, FEMA Form 007–0–11; E–Communications Survey, FEMA Form 007–0–12; Evacuations Survey, FEMA Form 007–0–13; Follow-Up Program Effectiveness and Recovery Survey, FEMA Form 007–0–14; Rapid Temporary Repair Survey, FEMA Form 007–0–15; Recovery Inventory Survey, FEMA Form 007–0–16; Return Home Survey, FEMA Form 007–0–17; and Site Recertification Survey, FEMA Form 007–0–18.

Abstract: Federal agencies are required to survey their customers to determine the kind and quality of services customers want and their level of satisfaction with existing services. FEMA Managers use the survey results to measure program performance against standards for performance and customer service; measure achievement of the Government Performance and Results Act (GPRA) and strategic planning objectives; and generally gauge and make improvements to disaster services that increase customer satisfaction and program effectiveness.

Affected Public: Individuals and Households.

Estimated Number of Respondents: 57,058.

Frequency of Response: On occasion.

Estimated Average Hour Burden per Respondent: .18 burden hours.

Estimated Total Annual Burden Hours: 10,186.

Estimated Cost: There are no annual capital start-up or annual operations and maintenance costs. The annual non-labor cost is $4,320.

Lesia M. Banks,

Director, Records Management Division, Mission Support Bureau, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2010–24350 Filed 9–27–10; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Agency Information Collection Activities: Arrival and Departure Record (Forms I–94 and I–94W) and Electronic System for Travel Authorization

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security (DHS).

ACTION: 60-Day Notice and request for comments; Extension of an existing collection of information: 1651–0111.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, CBP invites the general public and other Federal agencies to comment on an information collection requirement concerning the CBP Form I–94 (Arrival/Departure Record), CBP Form I–94W (Nonimmigrant Visa Waiver Arrival/Departure), and the Electronic System for Travel Authorization (ESTA). This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before November 29, 2010, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs and Border Protection, *Attn:* Tracey Denning, Regulations and Rulings, Office of International Trade, 799 9th Street, NW., 5th Floor, Washington, DC. 20229–1177.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Tracey Denning, U.S. Customs and Border Protection, Regulations and Rulings, Office of International Trade, 799 9th Street, NW., 5th Floor, Washington, DC. 20229–1177, at 202–325–0265.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual costs burden to respondents or record keepers from the collection of information (a total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: Arrival and Departure Record, Nonimmigrant Visa Waiver Arrival/Departure, and Electronic System for Travel Authorization (ESTA).

OMB Number: 1651–0111.

Form Numbers: I–94 and I–94W.

Abstract: CBP Form I–94 (Arrival/Departure Record) and CBP Form I–94W (Nonimmigrant Visa Waiver Arrival/Departure Record) are used to document a traveler's admission into the United States. These forms are filled out by aliens and are used to collect information on citizenship, residency, and contact information. The data elements collected on these forms enable the DHS to perform its mission related to the screening of alien visitors for potential risks to national security, and the determination of admissibility to the United States. The Electronic System for Travel Authorization (ESTA) applies to aliens traveling to the United States under the Visa Waiver Program (VWP) and requires that VWP travelers provide information electronically to CBP before embarking on travel to the United States.
ESTA can be accessed at *http://www.cbp.gov/xp/cgov/travel/id_visa/esta/.*

Instructions and samples of CBP Forms I–94 and I–94W can be viewed at *http://www.cbp.gov/xp/cgov/travel/id_visa/i-94_instructions/filling_out_i94.xml* and *http://www.cbp.gov/xp/cgov/travel/id_visa/business_pleasure/vwp/i94_samples.xml.*

Current Actions: This submission is being made to extend the expiration date with no change to the burden hours.

Type of Review: Extension (without change).

Affected Public: Individuals, Carriers, and the Travel and Tourism Industry.

I–94 (Arrival and Departure Record):

Estimated Number of Respondents: 14,000,000.

Estimated Number of Total Annual Responses: 14,000,000.

Estimated Time per Response: 8 minutes.

Estimated Total Annual Burden Hours: 1,862,000.

Estimated Total Annualized Cost on the Public: $84,000,000.

I–94W (Nonimmigrant Visa Waiver Arrival/Departure):

Estimated Number of Respondents: 100,000.

Estimated Number of Total Annual Responses: 100,000.

Estimated Time per Response: 8 minutes.

Estimated Total Annual Burden Hours: 13,300.

Estimated Total Annualized Cost on the Public: $600,000.

Electronic System for Travel Authorization (ESTA):

Estimated Number of Respondents: 18,900,000.

Estimated Number of Total Annual Responses: 18,900,000.

Estimated Time per Response: 15 minutes.

Estimated Total Annual Burden Hours: 4,725,000.

Dated: September 22, 2010.

Tracey Denning,

Agency Clearance Officer, U.S. Customs and Border Protection.

[FR Doc. 2010–24270 Filed 9–27–10; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5376–N–95]

Notice of Submission of Proposed Information Collection to OMB Application for Insurance of Advance of Mortgage Proceeds

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 collected to indicate to the mortgagee amounts approved for advance and mortgage insurance.

DATES: *Comments Due Date: October 28, 2010.*

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2503–0033) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; *fax:* 202–395–5806. *E-mail: OIRA_Submission@omb.eop.gov.*

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: Application for Insurance of Advance of Mortgage Proceeds.

OMB Approval Number: 2502–0097.

Form Numbers: HUD–92403.

Description of the Need For the Information and its Proposed Use: This

information is collected to indicate to the mortgagee amounts approved for advance and mortgage insurance.

Frequency of Submission: On Occasion.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	458	13,740		2.0		27,480

Total Estimated Burden Hours: 27,480.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: September 22, 2010.

Leroy McKinney, Jr.,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2010–24197 Filed 9–27–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5376–N–96]

Notice of Submission of Proposed Information Collection to OMB; Record of Employee Interview

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 collected and used by HUD to fulfill its obligation to administer and enforce Federal labor standards provisions, especially to monitor contractor compliance and to act upon allegations of labor standards violations.

DATES: *Comments Due Date: October 28, 2010.*

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2503–0033) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806. E-mail: *OIRA_Submission@omb.eop.gov.*

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: Record of Employee Interview.

OMB Approval Number: 2501–0009.

Form Numbers: HUD–11, HUD–11–SP (Spanish).

Description of the Need for the Information and Its Proposed Use: This information is collected and used by HUD to fulfill its obligation to administer and enforce Federal labor standards provisions, especially to monitor contractor compliance and to act upon allegations of labor standards violations.

Frequency of Submission: On Occasion.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	20,000	20,000		.41		8,200

Total Estimated Burden Hours: 8,200.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: *September 22, 2010.*

Leroy McKinney, Jr.,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2010–24205 Filed 9–27–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[FR–5386–N–09]

Privacy Act of 1974; Notification of a New Privacy Act System of Records, Rapid Re-Housing for Homeless Families Data Files

AGENCY: Office of the Chief Information Officer.

ACTION: Notification of a new SORN.

SUMMARY: Housing Urban Development (HUD) proposes to establish a new Privacy Act of 1974 (5 U.S.C. 552a), SORN. The proposed new system of record is the Rapid Re-Housing for Homeless Families Data (RRHFD) Files. The records system will be used by HUD's Office of Policy Development and Research (PD&R) to evaluate the effectiveness of the RRHFD Program, which is a demonstration program that was authorized by Congress in the Consolidated Appropriations Act, 2008 (Pub. L. 110–161). Refer to the "Objective" caption to obtain detailed

information about the purpose of this study.

Comments Due Date: October 28, 2010.

ADDRESSES: Interested persons are invited to submit comments regarding this notice to the Rules Docket Clerk, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410–0500. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: Donna Robinson-Staton, Departmental Privacy Act Officer, 451 Seventh Street, SW., Room 2256, Washington, DC 20410, Telephone Number (202) 402–8047. (This is not a toll-free number.) A telecommunication device for hearing- and speech-impaired individuals (TTY) is available at (800) 877–8339 (Federal Information Relay Service).

SUPPLEMENTARY INFORMATION: Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a), as amended notice is given that HUD proposes to establish a new SORN as identified as RRHFD.

Title 5 U.S.C. 552a(e)(4) and (11) provide that the public be afforded a 30-day period in which to comment on the new system of records.

The new system report was submitted to the Office of Management and Budget (OMB), the Senate Committee on Governmental Affairs, and the House Committee on Government Reform pursuant to paragraph 4c of Appendix 1 to OMB Circular No. A–130, "Federal Responsibilities for Maintaining Records About Individuals," July 25, 1994 (59 FR 37914).

Authority: 5 U.S.C. 552a 88 Stat. 1896; 42 U.S.C. 3535(d).

Dated: September 22, 2010.

Jerry E. Williams,

Chief Information Officer.

SYSTEM NAME:

Rapid Re-Housing for Homeless Families Data Files.

SYSTEM LOCATION:

Rapid Re-Housing for Homeless Families Data Files are to be located at Abt Associates Inc., 55 Wheeler Street, Cambridge, MA; Abt Associates Inc., 4550 Montgomery Avenue, Bethesda, MD; and the AT&T Datacenter, 15 Enterprise Ave., Secaucus, NJ 07094.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Families enrolled in RRHFD.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name; Social Security Number; study identifier; birth date; contact information (home address, telephone numbers, e-mail address); demographic characteristics of the family head (*e.g.,* race/ethnicity, gender, marital status); number of children and other adults in the household (a roster of adults and children with the family head at baseline and spouse/partner and children not with the family head at baseline, and characteristics of these family members); income sources and total family income; employment and earnings for the family head; current housing conditions, rent and rental assistance received; housing history since program completion; barriers to housing; homeless program participation; contact information for landlord, family and friends; and study tracking information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sec. 501, 502, Housing and Urban Development Act of 1970 (Pub. L. 91–609), 12 U.S.C. 1701z–1, 1701z–2.

PURPOSE:

The FY 2008 budget for the U.S. Department of Housing and Urban Development (H.R. 2764) included a $25 million set-aside to implement a Rapid Re-housing for Families Demonstration Program "expressly for the purposes of providing housing and services to homeless families." Also included in the legislation was a requirement that there be an evaluation of the demonstration program "in order to evaluate the effectiveness of the rapid re-housing approach in addressing the needs of homeless families." The underlying presumption of the rapid re-housing program posits that providers, through the use of an assessment tool they have developed for the program, will be able to predict with considerable confidence which homeless families, with a minimum amount of housing and supportive services, will be able to achieve housing stability and self-sufficiency at the conclusion of the program. In order to measure the efficacy of the program, HUD will seek to enroll approximately 1,200 participating families into the outcomes evaluation. A follow-up survey will be administered to each participating family 12 months after completion of the program. The survey will collect data related to housing stability; self-sufficiency; employment and earnings; family well-being; and health.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

- Authorized Abt/SRBI staff will use the data files in the Web-based study contact database to track study participants and locate participants for 12-month follow-up interviews. Staff will use the data files to match with other datasets for tracking purposes, such as change of address and credit bureau databases.
- A limited number of authorized Abt researchers will access personally identifying information to link data from one phase of data collection to another or to match primary study data with other datasets for data collection purposes (*e.g.,* matching records from primary data collection with local Homeless management Information Systems (HMIS) administrative data).
- Authorized Abt researchers will also use the data for statistical analysis and to develop findings for this research study.
- Authorized Abt researchers may use the data to create a public use file of non-identifiable data for disclosure to authorized researchers for other purposes.
- If the Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; or if the Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the HUD or another agency or entity) that rely upon the compromised information; then the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the HUD's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

Each data user's permissions will be defined based on the user's role on the project. For example, the local site interviewer will be able to review data for study participants only for his or her own specific site. Study data will be aggregated or de-identified at the highest level possible for each required, authorized use.

Abt Associates will not use or disclose the data for any purposes other than for the "The Evaluation of the Rapid Re-Housing for Families Demonstration Program." Abt Associates will not disclose the data to additional parties without the written authority of

the providing organization, except where required by law.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

SAFEGUARDS:

The following safeguards shall be used to secure data in storage, retrieval, during access, and disposal.

- All personal data (identifiable and de-identified data analyses files) will be encrypted and maintained on a secure workstation or server that is protected by a firewall, complex passwords, and multi-authentication factors, in a directory that can only be accessed by the network administrators and the analysts actively working on the data.
- Data on the secure server will be encrypted using an industry standard algorithm incorporating at least 128-bit encryption. The decryption key will only be known to analysts actively working with the data.
- Separate data files will be maintained for each questionnaire and for identifying information. Data files used for analysis will be stored in a separate location from files with identifying information to minimize the risk that an unauthorized user could use the unique identification number to link de-identified files with the identifiers. The unique identification number will be protected through multi-mode authentication, in addition to encryption technologies.
- Access rights to the data are granted to limited researchers on a need-to-know basis, and the level of access provided to each researcher is based on the minimal level required by that individual to fulfill his research role.
- Abt Associates will backup the data on a regular basis to safeguard against system failures or disasters. Only encrypted versions of the data will be copied to the backup media. Unencrypted data will never be stored on a laptop or on a movable media such as CDs, diskettes, or USB flash drives.
- If an authorized researcher leaves employment or is no longer working on this project, their user ID and access will be terminated within one day, as will VPN access. These steps will be documented as part of termination process.
- The site interviewers will securely store any hard copy documents with personal protected information, such as signed consent forms, tracking letters, or interview appointment schedules.

Consent Forms. The participation agreement/informed consent and contact information form will be a paper form. After the family signs the informed consent form, the RRHD program staff person will record the participant's contact information in the secure, Web-based study contact database. After the contact information is recorded, the hard copy form will be placed within a sealed envelope and stored temporarily in a locked cabinet in a secure physical location within the RRHD program's administrative office. (If the contact information cannot be immediately recorded in the database, the RRHD program staff will store the signed form in the designated locked cabinet until the staff person is able to record the data. Alternatively, the program can submit the signed form to the Abt Director of Analysis, and Abt research staff can enter the contact information into the study contact database.)

Tracking documentation. The site interviewer will store any tracking letters, appointment schedules, or other documentation with personal protected information, such as name, in a locked cabinet that can only be accessed by the interviewer. Tracking documentation with personal protected information should not be generated until needed in the tracking process to limit risk of unauthorized disclosures. Site interviewers should use study IDs in lieu of personal protected information on tracking documentation whenever feasible to limit risk of unauthorized disclosures.

All hard copy forms with personal identifying data (the participant agreement/informed consent form) will be stored securely in a locked cabinet that can only be accessed by authorized individuals working on the data. The locked cabinet will be stored in a locked office in a limited access building.

Hard copy forms that are no longer needed for the study will be shredded. If site interviewers do not have access to a paper shredder, they will submit the paperwork to the Abt Director of Analysis via FedEx with clear instructions to destroy the documents upon receipt.

RETRIEVING:

The contact database will include personal identifiers that can be used to locate records to update families' whereabouts during the tracking period. Records within the contact database can be retrieved by name, social security number, study identification number, birthdate, or spouse name.

After data collection is complete, researchers will use a dataset that is stripped of identifying information for all analyses, with the exception of a unique study identification number assigned to each participating family. The study identification number will be randomly generated at the time of random assignment and will be unrelated to personal information such as SSN, DOB, or name. The study identifier can be linked to the personal identifying information but only by a small number of central research staff at Abt Associates.

RETENTION AND DISPOSAL:

PII will be maintained only as long as required and only under conditions specified in the study protocol. Upon completion of all research for The Evaluation of the Rapid Re-Housing for Families Demonstration Program, Abt Associates will permanently destroy all electronic personally-identifiable information on the working server using one of the methods described by the NIST SP 800–88 "Guidelines for Media Sanitization" (September 2006). Encrypted versions of the data may remain on backup media for a longer period of time, but will be similarly permanently destroyed.

At the end of the contract, records that do not need to be retained will be shredded and the remainder of the files will be shredded after the three-year retention period required in the contract. The retention and disposal procedures are in keeping with HUD's records management policies as described in 44 USC 3101 and 44 USC 3303.

SYSTEM MANAGER(S) AND ADDRESS:

Carol Star, Director of the Program Evaluation Division, Office of Policy Development and Research, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410, Telephone Number (202) 402–6139.

NOTIFICATION PROCEDURE:

For information, assistance, or inquiry about existence or records, contact Donna Robinson-Stanton, Departmental Privacy Act Officer, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC, in accordance with the procedures in 24 CFR part 16.

RECORD ACCESS PROCEDURES:

The Department's rules for providing access to records to the individual concerned appear in 24 CFR part 16. If additional information or assistance is required, contact the Privacy Act Officer at the appropriate location.

CONTESTING RECORD PROCEDURES:

The Department's rules for contesting the contents of records and appealing initial denials, by the individual concerned, appear in 24 CFR part 16. If additional information or assistance is

needed, it may be obtained by contacting:

(i) In relation to contesting contents of records, the Departmental Privacy Act, Department of Housing and Urban Development, 451 Seventh Street SW., Room 2256, Washington, DC 20410;

(ii) In relation to appeals of initial denials, the HUD Departmental Privacy Appeals Officers, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410.

RECORD SOURCE CATEGORIES:

Original data collected directly from participating families, third party data for tracking purposes (*e.g.*, National Change of Address database, credit bureaus), and administrative data on Homeless Management Information Systems.

EXEMPTION FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 2010–24346 Filed 9–27–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Agency Information Collection Activities; Proposed Revisions to a Currently Approved Information Collection; Comment Request

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of renewal of a currently approved collection (OMB No. 1006–0023).

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Bureau of Reclamation (we, our, or us) intends to submit a request for renewal (with revisions) of an existing approved information collection to the Office of Management and Budget (OMB): Forms to Determine Compliance by Certain Landholders, 43 CFR part 426, OMB Control Number: 1006–0023. We request your comments on the proposed Reclamation Reform Act of 1982 (RRA) forms and specific aspects of the information collection.

DATES: Your written comments must be received on or before November 29, 2010.

ADDRESSES: You may send written comments to the Bureau of Reclamation, Attention: 84–53000, PO Box 25007, Denver, CO 80225–0007. You may request copies of the proposed forms by writing to the above address or by contacting Stephanie McPhee at: (303) 445–2897.

FOR FURTHER INFORMATION CONTACT: Stephanie McPhee at: (303) 445–2897.

SUPPLEMENTARY INFORMATION:

Title: Forms to Determine Compliance by Certain Landholders, 43 CFR part 426.

Abstract: Identification of limited recipients—Some entities that receive Reclamation irrigation water may believe that they are under the RRA forms submittal threshold and, consequently, may not submit the appropriate RRA form(s). However, some of these entities may in fact have a different RRA forms submittal threshold than what they believe it to be due to the number of natural persons benefiting from each entity and the location of the land held by each entity. In addition, some entities that are exempt from the requirement to submit RRA forms due to the size of their landholdings (directly and indirectly owned and leased land) may in fact be receiving Reclamation irrigation water for which the full-cost rate must be paid because the start of Reclamation irrigation water deliveries occurred after October 1, 1981 [43 CFR 426.6(b)(2)]. The information obtained through completion of the Limited Recipient Identification Sheet (Form 7–2536) allows us to establish entities' compliance with Federal reclamation law. The Limited Recipient Identification Sheet is disbursed at our discretion. There are no proposed revisions to the Limited Recipient Identification Sheet.

Trust review—In order to administer section 214 of the RRA and 43 CFR 426.7, we are required to review and approve all trusts. Land held in trust generally will be attributed to the beneficiaries of the trust rather than the trustee if the criteria specified in the RRA and 43 CFR 426.7 are met. When we become aware of trusts with a relatively small landholding (40 acres or less), we may extend to those trusts the option to complete and submit for our review the Trust Information Sheet (Form 7–2537) instead of actual trust documents. If we find nothing on the completed Trust Information Sheet that would warrant the further investigation of a particular trust, that trustee will not be burdened with submitting trust documents to us for in-depth review. The Trust Information Sheet is disbursed at our discretion. There are no proposed revisions to the Trust Information Sheet.

Acreage limitation provisions applicable to public entities—Land farmed by a public entity can be considered exempt from the application of the acreage limitation provisions provided the public entity meets certain criteria pertaining to the revenue generated through the entity's farming activities (43 CFR 426.10 and the Act of July 7, 1970, Pub. L. 91–310). We are required to ascertain whether or not public entities that receive Reclamation irrigation water meet such revenue criteria regardless of how much land the public entities hold (directly or indirectly own or lease) [43 CFR 426.10(a)]. In order to minimize the burden on public entities, standard RRA forms are submitted by a public entity only when the public entity holds more than 40 acres subject to the acreage limitation provisions westwide, which makes it difficult to apply the revenue criteria as required to those public entities that hold less than 40 acres. When we become aware of such public entities, we request those public entities complete and submit for our review the Public Entity Information Sheet (Form 7–2565), which allows us to establish compliance with Federal reclamation law for those public entities that hold 40 acres or less and, thus, do not submit a standard RRA form because they are below the RRA forms submittal threshold. In addition, for those public entities that do not meet the exemption criteria, we must determine the proper rate to charge for Reclamation irrigation water deliveries. The Public Entity Information Sheet is disbursed at our discretion. There are no proposed revisions to the Public Entity Information Sheet.

Acreage limitation provisions applicable to religious or charitable organizations—Some religious or charitable organizations that receive Reclamation irrigation water may believe that they are under the RRA forms submittal threshold and, consequently, may not submit the appropriate RRA form(s). However, some of these organizations may in fact have a different RRA forms submittal threshold than what they believe it to be depending on whether these organizations meet all of the required criteria for full special application of the acreage limitations provisions to religious or charitable organizations [43 CFR 426.9(b)]. In addition, some organizations that (1) do not meet the criteria to be treated as a religious or charitable organization under the acreage limitation provisions, and (2) are exempt from the requirement to submit RRA forms due to the size of their landholdings (directly and indirectly owned and leased land), may in fact be receiving Reclamation

irrigation water for which the full-cost rate must be paid because the start of Reclamation irrigation water deliveries occurred after October 1, 1981 [43 CFR 426.6(b)(2)]. The Religious or Charitable Organization Identification Sheet (Form 7–2578) allows us to establish certain religious or charitable organizations' compliance with Federal reclamation law. The Religious or Charitable Organization Identification Sheet is disbursed at our discretion. There are no proposed revisions to the Religious or Charitable Organization Sheet.

Frequency: Generally, these forms will be submitted only once per identified entity, trust, public entity, or religious or charitable organization. Each year, we expect new responses in accordance with the following numbers.

Respondents: Entity landholders, trusts, public entities, and religious or charitable organizations identified by Reclamation that are subject to the acreage limitation provisions of Federal reclamation law.

Estimated Total Number of Respondents: 500.

Estimated Number of Responses per Respondent: 1.0.

Estimated Total Number of Annual Responses: 500.

Estimated Total Annual Burden on Respondents: 72 hours.

Form Number	Burden estimate per form (in minutes)	Number of respondents	Annual number of responses	Annual burden on respondents (in hours)
Limited Recipient Identification Sheet	5	175	175	15
Trust Information Sheet	5	150	150	13
Public Entity Information Sheet	15	100	100	25
Religious or Charitable Identification Sheet	15	75	75	19
Totals	....	500	500	72

Comments

Comments are invited on:

(a) Whether the proposed collection of information is necessary for the proper performance of our functions, including whether the information will have practical use;

(b) Accuracy of our burden estimate for the proposed collection of information;

(c) Ways to enhance the quality, usefulness, and clarity of the information to be collected; and

(d) 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.

We will summarize all comments received regarding this notice. We will publish that summary in the **Federal Register** when the information collection request is submitted to OMB for review and approval.

Before including your address, telephone 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.

Roseann Gonzales,

Director, Policy and Administration Denver Office.

[FR Doc. 2010–24262 Filed 9–27–10; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Agency Information Collection; Proposed Revisions to a Currently Approved Information Collection; Comment Request

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of renewal of a currently approved collection (OMB No. 1006–0006).

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Bureau of Reclamation (we, our, or us) intends to submit a request for renewal (with revisions) of an existing approved information collection to the Office of Management and Budget (OMB): Certification Summary Form, Reporting Summary Form for Acreage Limitation, 43 CFR part 426 and 43 CFR part 428, OMB Control Number: 1006–0006. We request your comments on the revised RRA forms and specific aspects of the information collection.

DATES: Your written comments must be received on or before November 29, 2010.

ADDRESSES: You may send written comments to the Bureau of Reclamation, *Attention:* 84–53000, P.O. Box 25007, Denver, CO 80225–0007. You may request copies of the proposed revised forms by writing to the above address or by contacting Stephanie McPhee at: (303) 445–2897.

FOR FURTHER INFORMATION CONTACT: Stephanie McPhee at: (303) 445–2897.

SUPPLEMENTARY INFORMATION:

Title: Certification Summary Form, Reporting Summary Form for Acreage Limitation, 43 CFR part 426 and 43 CFR part 428.

Abstract: This information collection is required under the Reclamation Reform Act of 1982 (RRA), Acreage Limitation Rules and Regulations, 43 CFR part 426, and Information Requirements for Certain Farm Operations In Excess of 960 Acres and the Eligibility of Certain Formerly Excess Land, 43 CFR part 428. The forms in this information collection are to be used by district offices to summarize individual landholder (direct or indirect landowner or lessee) and farm operator certification and reporting forms as required by the RRA, 43 CFR part 426, and 43 CFR part 428. This information allows us to establish water user compliance with Federal reclamation law.

Changes to the RRA forms and the instructions to those forms.

The changes made to the current Form 7–21SUMM–C, Form 7–21SUMM–R, and the corresponding instructions are editorial in nature and are designed to assist the respondents by increasing their understanding of the forms, and clarifying the instructions for use when completing the forms. The proposed revisions to the RRA forms will be effective in the 2012 water year.

Frequency: Annually.

Respondents: Contracting entities that are subject to the acreage limitation provisions of Federal reclamation law.

Estimated Total Number of Respondents: 210.

Estimated Number of Responses per Respondent: 1.25.

Estimated Total Number of Annual Responses: 263.

Estimated Total Annual Burden on Respondents: 10,520 hours.

ESTIMATE OF BURDEN FOR EACH FORM

Form Number	Burden estimate per form (in hours)	Number of respondents	Annual number of responses	Annual burden on respondents (in hours)
7–21SUMM–C and associated tabulation sheets	40	198	248	9,920
7–21SUMM–R and associated tabulation sheets	40	12	15	600
Totals		210	263	10,520

Comments

Comments are invited on:

(a) Whether the proposed collection of information is necessary for the proper performance of our functions, including whether the information will have practical use;

(b) Accuracy of our burden estimate for the proposed collection of information;

(c) Ways to enhance the quality, usefulness, and clarity of the information to be collected; and

(d) 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.

We will summarize all comments received regarding this notice. We will publish that summary in the **Federal Register** when the information collection request is submitted to OMB for review and approval.

Before including your address, telephone 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.

Roseann Gonzales,

Director, Policy and Administration, Denver Office.

[FR Doc. 2010–24264 Filed 9–27–10; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Agency Information Collection; Proposed Revisions to a Currently Approved Information Collection; Comment Request

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of renewal of a currently approved collection (OMB No. 1006–0005).

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Bureau of Reclamation (we, our, or us) intends to submit a request for renewal (with revisions) of an existing approved information collection to the Office of Management and Budget (OMB): Individual Landholder's and Farm Operator's Certification and Reporting Forms for Acreage Limitation, 43 CFR part 426 and 43 CFR part 428, OMB Control Number: 1006–0005. We request your comments on the revised RRA forms and specific aspects of the information collection.

DATES: Your written comments must be received on or before November 29, 2010.

ADDRESSES: You may send written comments to the Bureau of Reclamation, Attention: 84–53000, P.O. Box 25007, Denver, CO 80225–0007. You may request copies of the proposed revised forms by writing to the above address or by contacting Stephanie McPhee at: (303) 445–2897.

FOR FURTHER INFORMATION CONTACT: Stephanie McPhee at: (303) 445–2897.

SUPPLEMENTARY INFORMATION: *Title:* Individual Landholder's and Farm Operator's Certification and Reporting Forms for Acreage Limitation, 43 CFR part 426 and 43 CFR part 428.

Abstract: This information collection is required under the Reclamation Reform Act of 1982 (RRA), Acreage Limitation Rules and Regulations, 43 CFR part 426, and Information Requirements for Certain Farm Operations In Excess of 960 Acres and the Eligibility of Certain Formerly Excess Land, 43 CFR part 428. This information collection requires certain landholders (direct or indirect landowners or lessees) and farm operators to complete forms demonstrating their compliance with the acreage limitation provisions of Federal reclamation law. The forms in this information collection are submitted to districts that use the information to establish each landholder's status with respect to landownership limitations, full-cost pricing thresholds, lease requirements, and other provisions of Federal reclamation law. In addition, forms are submitted by certain farm operators to provide information concerning the services they provide and the nature of their farm operating arrangements. All landholders whose entire westwide landholdings total 40 acres or less are exempt from the requirement to submit RRA forms. Landholders who are "qualified recipients" have RRA forms submittal thresholds of 80 acres or 240 acres depending on the district's RRA forms submittal threshold category where the land is held. Only farm operators who provide multiple services to more than 960 acres held in trusts or by legal entities are required to submit forms.

Changes to the RRA Forms and the Instructions to Those Forms

The changes made to the currently approved RRA forms and the corresponding instructions are editorial in nature and are designed to assist the respondents by increasing their understanding of the forms, clarifying the instructions for use when completing the forms, and clarifying the information that is required to be submitted to the districts with the forms. The proposed revisions to the RRA forms will be effective in the 2012 water year.

Frequency: Annually.

Respondents: Landholders and farm operators of certain lands in our projects, whose landholdings exceed specified RRA forms submittal thresholds.

Estimated Total Number of Respondents: 15,279.

Estimated Number of Responses per Respondent: 1.02.

Estimated Total Number of Annual Responses: 15,585.

Estimated Total Annual Burden on Respondents: 11,522 hours.

Estimate of Burden for Each Form:

Form No.	Burden estimate per form (in minutes)	Number of respondents	Annual number of responses	Annual burden on respondents (in hours)
Form 7–2180	60	4,124	4,206	4,206
Form 7–2180EZ	45	425	434	326
Form 7–2181	78	1,205	1,229	1,598
Form 7–2184	45	32	33	25
Form 7–2190	60	1,620	1,652	1,652
Form 7–2190EZ	45	96	98	74
Form 7–2191	78	777	793	1,031
Form 7–2194	45	4	4	3
Form 7–21PE	75	146	149	186
Form 7–21PE–IND	12	4	4	1
Form 7–21TRUST	60	882	900	900
Form 7–21VERIFY	12	5,434	5,543	1,109
Form 7–21FC	30	214	218	109
Form 7–21XS	30	144	147	74
Form 7–21FARMOP	78	172	175	228
Totals		15,279	15,585	11,522

Comments

Comments are invited on:

(a) Whether the proposed collection of information is necessary for the proper performance of our functions, including whether the information will have practical use;

(b) Accuracy of our burden estimate for the proposed collection of information;

(c) Ways to enhance the quality, usefulness, and clarity of the information to be collected; and

(d) 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.

We will summarize all comments received regarding this notice. We will publish that summary in the **Federal Register** when the information collection request is submitted to OMB for review and approval.

Before including your address, telephone 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.

Roseann Gonzales,

Director, Policy and Administration, Denver Office.

[FR Doc. 2010–24263 Filed 9–27–10; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCO922000–L13100000–FI0000; COC69113]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease COC69113

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of proposed reinstatement of terminated oil and gas lease

SUMMARY: Under the provisions of 30 U.S.C. 188(d) and (e), and 43 CFR 3108.2–3(a) and (b), the Bureau of Land Management (BLM) received a petition for reinstatement of oil and gas lease COC69113 from MAB Resources LLC, for lands in Rio Blanco County, Colorado. The petition was filed on time and was accompanied by all the rentals due since the date the lease terminated under the law.

FOR FURTHER INFORMATION CONTACT: BLM, Milada Krasilinec, Land Law Examiner, Branch of Fluid Minerals Adjudication, at (303) 239–3767.

SUPPLEMENTARY INFORMATION: The lessee has agreed to the amended lease terms for rentals and royalties at rates of $10 per acre or fraction thereof per year and 16⅔ percent, respectively. The lessee has paid the required $500 administrative fee and $163 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Section 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the BLM is proposing to reinstate lease COC69113 effective March 1, 2010, under the original terms and conditions of the lease and the increased rental and royalty rates cited above. The BLM has not issued a valid lease to any other interest affecting the lands.

Helen M. Hankins,

State Director.

[FR Doc. 2010–24287 Filed 9–27–10; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLMTB072000–L14300000–ET0000; MTM 98499]

Notice of Proposed Withdrawal and Opportunity for Public Meeting; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Assistant Secretary for Land and Minerals Management proposes to withdraw, on behalf of the Bureau of Land Management (BLM), approximately 18,760 acres of public land located in Broadwater County, Montana, from settlement, sale, location, and entry under the general land laws, including the United States mining laws, but not the mineral leasing laws for a period of 5 years to protect the Limestone Hills Training Area pending the processing of an application for withdrawal of those lands for military purposes under the Engle Act.

DATES: Comments must be received on or before December 27, 2010.

ADDRESSES: Comments should be sent to the Bureau of Land Management, Montana State Office, 5001 Southgate Drive, Billings, Montana 59101.

FOR FURTHER INFORMATION CONTACT: Sandra Ward, BLM, Montana State Office at 406–896–5052.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Land and Minerals Management proposes to withdraw the following described public land located in Broadwater County, Montana, from settlement, sale, location and entry under the general land laws, including the mining laws, subject to valid existing rights, to protect the land pending action on an application for withdrawal of public lands for military purposes under the Engle Act:

Principal Meridian, Montana

T. 6 N., R. 1 E.,
sec. 2, lots 1 to 4, inclusive, S½N½, N½SW¼, SE¼SW¼, and SE¼;
sec. 3, lots 1 to 4, inclusive, S½N½, and S½;
sec. 4, lots 1 to 4, inclusive, S½N½, and S½;
sec. 5, lots 1 and 2, S½NE¼, and SE¼;
sec. 8, E½ and E½SW¼;
secs. 9 and 10;
sec. 11, E½, E½W½, and SW¼SW¼;
sec. 12, lots 1 to 4, inclusive, W½E½ and W½;
sec. 13, lots 1 to 4, inclusive, W½E½ and W½;
secs. 14 and 15;
sec. 17, E½ and E½W½;
sec. 20, E½ and E½W½;
sec. 21;
sec. 22, lots 3 and 4, W½NW¼, and S½SW¼;
sec. 23;
sec. 24, lots 1 to 4, inclusive, W½E½ and W½;
sec. 25, lots 1 to 4, inclusive, W½E½ and W½;
sec. 26;
sec. 27, lots 1 to 9, inclusive, NE¼NE¼, S½NE¼, and SE¼;
sec. 28, lots 1 to 4, inclusive, N½NE¼, W½, and W½SE¼;
sec. 29, NE¼, E½NW¼, NE¼SW¼, N½SE¼, and SW¼SE¼;
sec. 33, E½;
sec. 34, lots 1 to 8, inclusive, NE¼, N½NW¼, and N½SE¼;
sec. 35, lots 1 to 4, inclusive, N½ and N½S½.
T. 6 N., R. 2 E.,
sec. 17, S½SW¼;
sec. 18, lot 4, SE¼SW¼, and S½SE¼;
sec. 19, lots 1, 2, and 3;
sec. 20, W½;
sec. 30, lots 2, 3, and 4, NE¼NE¼, S½NE¼, SE¼NW¼, E½SW¼, and SE¼.
T. 7 N., R. 1 E.,
sec. 26, S½;
sec. 27, lots 5 to 8, inclusive, and S½S½;
sec. 28, S½SE¼;
sec. 32, E½ except patented lands;
secs. 33, 34, and 35.

The area described contains 18,760.63 acres in Broadwater County.

The Assistant Secretary for Land and Minerals Management has approved the Bureau of Land Management's petition for approval to file its withdrawal application. The Assistant Secretary's approval of the petition constitutes her proposal to withdraw the subject lands.

The purpose of the proposed withdrawal is to protect the above-described land pending action on an application for withdrawal of public land for military purposes under the Engle Act. The land is currently used as a military training range involving live-fire exercises necessary for national security.

The use of a right-of-way or cooperative agreement would not provide adequate authorization for the use of this area due to the broad scope of military training exercises, as well as the non-discretionary nature of the mining laws.

There are no suitable alternative sites. The land described above is unique in having been used previously as a military training range with the attendant capital investments. The use of a different site would needlessly degrade a second site and require new capital investments.

Potable water from two wells would be used to meet the daily needs for training exercises. The proposed withdrawal itself would not require any water.

On or before December 27, 2010, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the BLM Montana State Director at the address indicated above.

Comments and records relating to the proposed withdrawal will be available for public review at the BLM Montana State Office at the address above during regular business hours. Individual respondents may request confidentiality. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, be advised 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 from public review your personal identifying information, we cannot guarantee that we will be able to do so.

The proposed withdrawal of public land for military purposes under the Engle Act was discussed at five public meetings as part of the scoping process for the legislative withdrawal Environmental Impact Statement.

This withdrawal proposal will be processed in accordance with the regulations set forth in 43 CFR part 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the land will be segregated from settlement, sale, location, and entry under the general land laws, including the mining laws, unless the application is denied or canceled or the withdrawal is approved prior to that date. Land uses currently permitted under the existing right-of-way agreement may continue during the segregative period.

Notice is hereby given that one or more public meetings will be held in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the BLM Montana State Director at the address above by December 27, 2010. A notice of the time and place of any public meetings will be published in the **Federal Register** and at least one local newspaper at least 30 days before the scheduled date of the meeting.

Authority: 43 CFR 2310.3–1(b)(1).

Gary P Smith,
Acting Chief, Branch of Land Resources, Montana State Office.

[FR Doc. 2010–24281 Filed 9–27–10; 8:45 am]
BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLOR–936000–L14300000–FQ0000; HAG–09–0002; WAOR–22197 K]

Public Land Order No. 7752; Partial Revocation of a Light Station Reservation; Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order partially revokes the withdrawal created by an Executive Order insofar as it affects approximately 37.32 acres of public land reserved for

use by the United States Coast Guard for lighthouse purposes.

DATES: *Effective Date:* September 28, 2010.

FOR FURTHER INFORMATION CONTACT: Charles R. Roy, BLM Oregon/Washington State Office, P.O. Box 2965, Portland, Oregon 97208–2965, 808–952–6189.

SUPPLEMENTARY INFORMATION: The land is no longer needed for the purpose for which it was reserved. Approximately 1 acre has been determined to be unsuitable for return to the public domain and will be reported along with the improvements to the General Services Administration as excess property. The surface estate of the remaining 36.32 acres has been previously transferred out of Federal ownership and this is a record clearing action only on that portion.

Order

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714, it is ordered as follows:

The reservation of public land for the Lime Kiln Light Station created by an Executive Order dated July 15, 1875, is hereby revoked insofar as it affects the following described land:

(a) The following described land has been determined unsuitable for return to the public domain, and for disposition under the public land, mining, or mineral leasing laws:

Willamette Meridian

T. 35 N., R. 4 W.,

Sec. 23, Portion of lot 3, commencing at the Meander Corner of the East line of said section 23 which lies 387.5 feet more or less South 0° 12′ West from the one quarter of said section 23; Thence North 0° 12′ East 1140 feet along the East line of said section 23 to a point; Thence North 89° 48′ West 1030 feet to the true point of beginning; Thence North 89° 48′ West 35 feet more or less to the high water-line of Haro Straight; Thence Southerly and Easterly along the said high water-line to a point which bears due South of the true point of beginning; Thence North 400 feet more or less to the true point of beginning.

The area described contains approximately 1 acre, more or less, in San Juan County.

(b) The surface estate of the following described land has been previously conveyed from Federal ownership:

Willamette Meridian

T. 35 N., R. 4 W.,

Sec. 23, lot 4, and lot 3 excluding a parcel commencing at the Meander Corner of the East line of said section 23 which lies 387.5 feet more or less South 0° 12′ West from the one quarter of said section 23; Thence North 0° 12′ East 1140 feet along the East line of said section 23 to a point; Thence North 89° 48′ West 1030 feet to the true point of beginning; Thence North 89° 48′ West 35 feet more or less to the high water line of Haro Straight; Thence Southerly and Easterly along the said high water line to a point which bears due South of the true point of beginning; Thence North 400 feet more or less to the true point of beginning.

The area described contains approximately 36.32 acres, more or less, in San Juan County.

The areas described in (a) and (b) above aggregate 37.32 acres in San Juan County.

Dated: September 13, 2010.

Wilma A. Lewis,

Assistant Secretary—Land and Minerals Management.

[FR Doc. 2010–24284 Filed 9–27–10; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES–960–1430–FQ; MIES–002777]

Public Land Order No. 7751; Revocation of the Withdrawal Established by Executive Order Dated January 19, 1861; Michigan

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order revokes in its entirety the withdrawal established by an Executive Order as to 569.45 acres of public land withdrawn from all forms of appropriation under the public land laws and reserved for use by the United States Coast Guard for lighthouse purposes. The reservation is no longer needed. This order opens the land to the operation of the public land laws, subject to valid existing rights and other segregations of record.

DATES: *Effective Date:* September 28, 2010.

FOR FURTHER INFORMATION CONTACT: Nate Felton, Bureau of Land Management—Eastern States Office, 7450 Boston Boulevard, Springfield, Virginia 22153, 703–440–1511.

SUPPLEMENTARY INFORMATION: A lighthouse was never constructed on the land, which is located on Manitou Island. The United States Coast Guard has determined that the reservation is no longer needed and has requested the revocation.

Order

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714, it is ordered as follows:

1. The withdrawal established by Executive Order dated January 19, 1861, which reserved public land on Manitou Island for lighthouse purposes, is hereby revoked in its entirety:

Michigan Meridian

T. 58 N., R. 26 W.,

Fractional secs. 17, 20, and 21.

The area described contains 569.45 acres in Keweenaw County.

2. At 9 a.m. on October 28, 2010, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law, the public land described in Paragraph 1 shall be opened to the operation of the public land laws generally. All valid applications received at or prior to 9 a.m. on October 28, 2010, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

Dated: September 13, 2010.

Wilma A. Lewis,

Assistant Secretary—Land and Minerals Management.

[FR Doc. 2010–24286 Filed 9–27–10; 8:45 am]

BILLING CODE 4310–GJ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLOR–936000–L14300000–FQ0000; HAG–09–0142; OR–20249]

Public Land Order No. 7750; Partial Revocation of Secretarial Order dated January 20, 1910; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order partially revokes a Secretarial Order dated January 20, 1910, insofar as it affects approximately 9,001.84 acres of public land withdrawn for use by the Bureau of Reclamation for reclamation purposes. The land is no longer needed for the purpose for which it was withdrawn.

DATES: *Effective Date:* September 28, 2010.

FOR FURTHER INFORMATION CONTACT: Charles R. Roy, BLM Oregon/Washington State Office, P.O. Box 2965, Portland, Oregon 97208–2965, 808–952–6189.

SUPPLEMENTARY INFORMATION: The land is located entirely within the exterior boundary of the Upper Klamath National Wildlife Refuge and will remain closed to the public land laws, including the mining laws. The land will continue to be managed by the United States Fish and Wildlife Service.

Order

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714, it is ordered as follows:

The Secretarial Order dated January 20, 1910, which withdrew land on behalf of the Bureau of Reclamation for the Klamath Reclamation Project is hereby revoked insofar as it affects the following described land:

Willamette Meridian

T. 34 S., R. 6 E.,
Sec. 25, NE¼ and S½;
Sec. 26, NE¼SE¼ and S½SE¼;
Sec. 35, E½E½ and E½W½NE¼;
Sec. 36.
T. 35 S., R. 6 E.,
Sec. 1, lots 1 through 4, inclusive, S½N½, and S½;
Sec. 2, lot 1, S½NE¼, and SE¼;
Secs. 12, 13, 24, and 25;
Sec. 35, E½;
Sec. 36.
T. 36 S., R. 6 E.,
Sec. 1;
Sec. 2, lot 3, E½, SE¼NW¼, and SW¼;
Sec. 3, E½SE¼;
Sec. 11, NE¼ and S½;
Sec. 12;
Sec. 13, N½ and E½SE¼;
Sec. 14, NE¼, N½NW¼, SE¼NW¼, and NW¼SE¼.

The area described contains approximately 9,001.84 acres, more or less, in Klamath County.

Authority: 43 CFR 2370.

Dated: September 13, 2010.

Wilma A. Lewis,

Assistant Secretary—Land and Minerals Management.

[FR Doc. 2010–24285 Filed 9–27–10; 8:45 am]

BILLING CODE 4310–MN–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–376 and 379 and 731–TA–788, 790–793 (Second Review)]

Stainless Steel Plate From Belgium, Italy, Korea, South Africa, and Taiwan

AGENCY: United States International Trade Commission.

ACTION: Notice of Commission determination to conduct full five-year reviews concerning the countervailing duty orders on stainless steel plate from Belgium and South Africa and the antidumping duty orders on stainless steel plate from Belgium, Italy, Korea, South Africa, and Taiwan.

SUMMARY: The Commission hereby gives notice that it will proceed with full reviews pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) to determine whether revocation of the countervailing duty orders on stainless steel plate from Belgium and South Africa and the antidumping duty orders on stainless steel plate from Belgium, Italy, Korea, South Africa, and Taiwan would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. A schedule for the reviews will be established and announced at a later date. For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

DATES: *Effective Date:* September 7, 2010.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server *(http://www.usitc.gov).* The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION: On September 7, 2010, the Commission determined that it should proceed to full reviews in the subject five-year reviews pursuant to section 751(c)(5) of the Act. The Commission found that the domestic interested party group response to its notice of institution (75 FR 30434, June 1, 2010) was adequate and that the respondent interested party group response with respect to Italy was adequate and decided to conduct a full review with respect to the antidumping duty order concerning stainless steel plate from Italy. The Commission found that the respondent interested party group responses with respect to Belgium, Korea, South Africa, and Taiwan were inadequate. However, the Commission determined to conduct full reviews concerning the antidumping duty orders on stainless steel plate from Belgium, Korea, South Africa, and Taiwan to promote administrative efficiency in light of its decision to conduct a full review with respect to the antidumping duty order concerning stainless steel plate from Italy. A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's Web site.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: September 22, 2010.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 2010–24244 Filed 9–27–10; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–382 and 731–TA–798–803 (Second Review)]

Stainless Steel Sheet and Strip From Germany, Italy, Japan, Korea, Mexico, and Taiwan

AGENCY: United States International Trade Commission.

ACTION: Notice of Commission determination to conduct full five-year reviews concerning the countervailing duty order on stainless steel sheet and strip from Korea and the antidumping duty orders on stainless steel sheet and strip from Germany, Italy, Japan, Korea, Mexico, and Taiwan.

SUMMARY: The Commission hereby gives notice that it will proceed with full reviews pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) to determine whether revocation of the countervailing duty order on stainless steel sheet and strip from Korea and the antidumping duty orders on stainless steel sheet and strip from Germany, Italy, Japan, Korea, Mexico, and Taiwan would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. A schedule for the reviews will be established and announced at a later date. For further information concerning the conduct of these reviews and rules of general application, consult the Commission's

Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

DATES: *Effective Date:* September 7, 2010.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION: On September 7, 2010, the Commission determined that it should proceed to full reviews in the subject five-year reviews pursuant to section 751(c)(5) of the Act. The Commission found that the domestic interested party group response to its notice of institution (75 FR 30437, June 1, 2010) was adequate and that the respondent interested party group responses with respect to Germany, Italy, Korea, and Mexico were adequate and decided to conduct full reviews with respect to the orders concerning stainless steel sheet and strip from Germany, Italy, Korea, and Mexico. The Commission found that the respondent interested party group responses with respect to Japan and Taiwan were inadequate. However, the Commission determined to conduct full reviews concerning the orders on stainless steel sheet and strip from Japan and Taiwan to promote administrative efficiency in light of its decision to conduct full reviews with respect to the orders concerning stainless steel sheet and strip from Germany, Italy, Korea, and Mexico. A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's web site.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: September 22, 2010.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 2010–24243 Filed 9–27–10; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–738]

In the Matter of: Certain Components for Installation of Marine Autopilots With GPS or IMU; Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on August 26, 2010, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of American GNC of Simi Valley, California. An amended complaint was filed on September 16, 2010. The amended complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain installation of marine autopilots with GPS or IMU by reason of infringement of certain claims of U.S. Patent No. 6,596,976 ("the '976 patent"). The amended complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue an exclusion order and cease and desist orders.

ADDRESSES: The amended complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202–205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *http://www.usitc.gov*. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

FOR FURTHER INFORMATION CONTACT: Anne Goalwin, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2574.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2010).

Scope of Investigation: Having considered the amended complaint, the U.S. International Trade Commission, on September 21, 2010, ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain components for installation of marine autopilots with GPS or IMU that infringe one or more of claims 2, 5, 10–13, 28, 30, 54, and 55 of the '976 patent, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) Pursuant to Commission Rule 210.50(b)(1), 19 CFR 210.50(b)(1), the presiding administrative law judge shall take evidence or other information and hear arguments from the parties and other interested persons with respect to the public interest in this investigation, as appropriate, and provide the Commission with findings of fact on this issue;

(3) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is:

American GNC, 888 Easy Street, Simi Valley, CA 93065.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the amended complaint is to be served:

Furuno Electronics Co., Ltd., 9–52 Ashibara-cho, Nishinomiya City, Hyogo 662–8530, Japan.

Furuno U.S.A. Inc., 4400 NW Pacific Rim Boulevard, Camas, WA 98607, Navico Holdings AS.

Strandvelen 18, Lysaker, Norway.

Navico UK, Ltd., Premier Way, Abbey Park, Romsey Hampshire, United Kingdom 50519DM.

Navico, Inc., 410 Amherst Street, Suite 110, Nashua, NH 03063.

Flir Systems, Inc., 27700A SW Parkway Avenue, Wilsonville, OR 97070.

Raymarine UK Ltd., Marine House, 5 Harbourgate, Southampton Road.

Portsmouth Hampshire, PO6 4QB, United Kingdom.

Raymarine Inc., 21 Manchester Street, Merrimack, NH 03054.

(c) The Commission investigative attorney, party to this investigation, is Anne Goalwin, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Suite 401, Washington, DC 20436; and

(4) For the investigation so instituted, the Honorable Paul J. Luckern, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the amended complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d)–(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the amended complaint and the notice of investigation. Extensions of time for submitting responses to the amended complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the amended complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the amended complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the amended complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: September 22, 2010.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 2010–24242 Filed 9–27–10; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

[OMB Number 1123–0010]

Criminal Division; Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-Day Notice of Information Collection Under Review: Request for Registration Under the Gambling Devices Act of 1962.

The Department of Justice (DOJ), Criminal Division, will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty days" until November 29, 2010. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Sandra A. Holland, U.S. Department of Justice, 950 Pennsylvania Avenue, NW., Criminal Division, Office of Enforcement Operations, Gambling Device Registration Program, JCK Building, Room 1040, Washington, DC 20530–0001.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Revision of a currently approved collection.

(2) *Title of the Form/Collection:* Request for Registration Under the Gambling Devices Act of 1962.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* DOJ\CRM\OEO\GDR–1. Sponsoring component: Criminal Division, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Business or other for-profit. *Other:* Not-for-profit institutions, individuals or households, and State, Local or Tribal Government. The form can be used by any entity required to register under the Gambling Devices Act of 1962 (15 U.S.C. 1171–1178).

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 4,200 respondents will complete each form within approximately 5 minutes.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 350 total annual burden hours associated with this collection.

If additional information is required contact: Lynn Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street, NE., Suite 2E–502, Washington, DC 20530.

Dated: September 23, 2010.

Lynn Murray,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. 2010–24223 Filed 9–27–10; 8:45 am]

BILLING CODE 4410–14–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Clean Air Act

Notice is hereby given that on September 22, 2010, a proposed Consent Decree ("Decree") in *United States* v. *Appleton Papers Inc.,* Civil Action No. 10–C–0828, was lodged with the United States District Court for the Eastern District of Wisconsin.

In this proposed settlement the United States resolves violations of the Clean Air Act at Defendant's two paper manufacturing facilities located in West

Carrollton, Ohio and Roaring Springs, Pennsylvania. The violations include failing to meet the industrial refrigerant leak repair, testing, recordkeeping and reporting regulations at 40 CFR part 82, Subpart F, and, at the West Carrollton facility only, failing to limit visible emissions from two coal-fired spreader boilers as required by the facility's Title V permit. Under the proposed Decree, Defendant agrees, among other things, to comply with the opacity limitation specified in the Title V permit and to replace industrial process refrigeration appliances containing ozone-depleting substances with appliances that contain non-ozone depleting refrigerants. Defendant also agrees to pay a civil penalty in the amount of $96,324.00 and complete a Supplemental Environmental Project.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to Appleton Papers Inc., D.J. Ref. No. 90–5–2–1–09575.

The proposed Decree may be examined at the Office of the United States Attorney, 517 E. Wisconsin Avenue, Suite 530, Milwaukee, Wisconsin 53202–4588 and at U.S. EPA Region 5, 77 W. Jackson Blvd., 16th Floor (EPA Library), Chicago, Illinois 60604. During the public comment period, the proposed Decree may also be examined on the following Department of Justice Web site *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the proposed Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $11.00 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Maureen Katz,

Assistant Chief Environmental Enforcement Section.

[FR Doc. 2010–24299 Filed 9–27–10; 8:45 am]

BILLING CODE 4410–15–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (10–113)]

NASA Advisory Council; Meeting.

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council.

DATES: Wednesday, October 6, 2010, 8 a.m.–5 p.m. (local time). Thursday, October 7, 2010, 8 a.m.–12 noon (local time).

ADDRESSES: The AERO Institute, 38256 Sierra Highway, Palmdale, CA 93550.

FOR FURTHER INFORMATION CONTACT: Ms. Marla King, NAC Administrative Officer, National Aeronautics and Space Administration Headquarters, Washington, DC 20546, (202) 358–1148.

SUPPLEMENTARY INFORMATION: The agenda for the meeting will include reports from the NAC Committees:

—Aeronautics.
—Audit, Finance, and Analysis.
—Commercial Space.
—Education and Public Outreach.
—Exploration.
—Information Technology Infrastructure.
—Science.
—Space Operations.
—Technology and Innovation.

The meeting will be open to the public up to the seating capacity of the room. It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants. Due to technical problems associated with original publication, this meeting notice is being re-submitted for publication less than 15 days in advance.

Dated: September 23, 2010.

P. Diane Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2010–24348 Filed 9–23–10; 4:15 pm]

BILLING CODE P

NEIGHBORHOOD REINVESTMENT CORPORATION

Regular Board of Directors Meeting; Sunshine Act

TIME AND DATE: 2 p.m.. Wednesday, September 22, 2010.

PLACE: 1325 G Street NW., Suite 800, Boardroom, Washington, DC 20005.

STATUS: Open.

CONTACT PERSON FOR MORE INFORMATION: Erica Hall, Assistant Corporate Secretary, (202) 220–2376, *ehall@nw.org.*

AGENDA:

I. Call to Order.
II. Approval of the Minutes.
III. Summary Report of the Corporate Administration Committee.
IV. Summary Report of the Corporate Administration Committee.
V. Approval of the Minutes.
VI. Summary Report of the Finance, Budget and Program Committee.
VII. Approval of the Minutes.
VIII. Approval of the Minutes.
IX. Summary of the Audit Committee.
X. Approval of the Minutes.
XI. Approval of the Revised Minutes.
XII. Board Policy Regarding Elected Officials.
XIII. NeighborWorks Transition Grant_CHC.
XIV. Financial Report.
XV. Corporate Scorecard.
XVI. Chief Executive Officer's Quarterly Management Report.
XVII. Strategic Planning Discussion.
XVIII. Adjournment.
No. 06–2.

Erica Hill,

Assistant Corporate Secretary.

[FR Doc. 2010–24121 Filed 9–27–10; 8:45 am]

BILLING CODE 7570–02–M

NEIGHBORHOOD REINVESTMENT CORPORATION

Special Board of Directors Meeting; Sunshine Act

TIME AND DATE: 1 p.m., Tuesday, September 7, 2010.

PLACE: 1325 G Street, NW., Suite 800, Boardroom, Washington, DC 20005.

STATUS: Open.

CONTACT PERSON FOR MORE INFORMATION: Erica Hall, Assistant Corporate Secretary, (202) 220–2376; *ehall@nw.org.*

AGENDA:

I. Call to Order.
II. Draft Policy Regarding Elected Officials.
III. Chief Executive Officer's Update.

IV. NHSA Update.
V. Resolutions for Approval.
VI. Adjournment.

Erica Hall,

Assistant Corporate Secretary.

[FR Doc. 2010–24124 Filed 9–27–10; 8:45 am]

BILLING CODE 7570–02–M

NEIGHBORHOOD REINVESTMENT CORPORATION

Special Board of Directors Meeting; Sunshine Act

TIME AND DATE: 4 p.m., Monday, August 9, 2010.

PLACE: 1325 G Street, NW., Suite 800, Boardroom, Washington, DC 20005.

STATUS: Open.

CONTACT PERSON FOR MORE INFORMATION: Erica Hall, Assistant Corporate Secretary, (202) 220–2376; *ehall@nw.org.*

AGENDA:

I. Call to Order.
II. Appropriations Update.
III. NACA Update.
IV. AHCOA Update.
V. NUSA Update/Replacement Plan.
VI. Adjournment.

Erica Hall,

Assistant Corporate Secretary.

[FR Doc. 2010–24125 Filed 9–27–10; 8:45 am]

BILLING CODE 7570–02–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 040–8027; NRC–2010–0306]

Notice of License Amendment for the Sequoyah Fuels Corporation's Facility at Gore, OK

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice of Action.

FOR FURTHER INFORMATION CONTACT: Ken Kalman, Project Manager, Decommissioning and Uranium Recovery Licensing Directorate, Division of Waste Management and Environmental Protection, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; Telephone: (301) 415–6664; fax number (301) 415–5369; e-mail: *kenneth.kalman@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of a license amendment to Sequoyah Fuels Corporation (SFC or licensee) for License No. SUB–1010. This action would authorize SFC to implement the groundwater corrective action plan (CAP) proposed for its site in Gore, Oklahoma. SFC's proposal for the CAP was first submitted to the NRC by letter dated June 16, 2003, and was supplemented by additional information submitted to the NRC by letters dated, December 16, 2005, July 2, 2009, and July 31, 2009. By letter dated August 18, 2010, SFC submitted a June 14, 2010, revision of the CAP that encompasses all supplements in a single document. NRC previously issued an Environmental Impact Statement (EIS) in support of this action in accordance with the requirements of 10 CFR part 51. *See* NUREG–1888, "Environmental Impact Statement for the Reclamation of the Sequoyah Fuels Corporation Site in Gore, Oklahoma," issued May 2008.

II. Proposed Action

The purpose of this proposed CAP is to remediate existing groundwater contamination and to facilitate the eventual termination of License No. SUB–1010. This CAP is part of an overall site reclamation program described in SFC's Reclamation Plan (RP) dated January 2003. SFC's RP was reviewed and approved by NRC on April 20, 2009 (License Amendment 33). Whereas the RP primarily addresses the site decommissioning, disposal cell construction, and surface reclamation, the CAP addresses residual contamination in groundwater.

III. NRC Review

The NRC staff reviewed the CAP and supporting documents using Section 4.0 of NUREG–1620, "Standard Review Plan for the Review of a Reclamation Plan for Mill Tailings Sites Under Title II of the Uranium Mill Tailings Radiation Control Act of 1978," Rev. 1, issued June 2003. The staff's review process included evaluating the site hydrogeology particularly with respect to the locations and types of groundwater restoration structures. Effectiveness of the proposed action was then evaluated by reviewing flow and transport models, as well as actual volume and concentration data from the current structures. Finally, the staff reviewed groundwater flow and contaminant transport models to evaluate the long-term groundwater contaminant concentrations and pollutant loads during and after corrective actions are completed.

SFC's CAP specifies the use of interceptor trenches and recovery wells placed in hydrologically strategic positions to intercept groundwater contamination remaining onsite. The CAP does not draw back any contamination that has passed the extraction points. Consequently, the CAP allows small pollutant loads (defined as pollutant concentration x volumetric flow) to enter the surface water system. However, NRC staff determined that the pollutant loads to surface water pose little threat to human health and safety and the environment. A Safety Evaluation Report (SER) dated September 20, 2010 (ML101170749) documents the NRC staff's technical review of the CAP to determine its compliance with 10 CFR Part 40, Appendix A.

SFC's request for the proposed amendment was previously noticed in the **Federal Register** (68 FR 51033; Aug. 25, 2003) with a notice of an opportunity to request a hearing. The State of Oklahoma and the Cherokee Nation submitted requests for hearing on September 29, 2003 and October 2, 2003, respectively. Both requests were subsequently denied on November 19, 2003. No other comments or requests for a hearing were received.

The Final EIS for the Reclamation of the Sequoyah Fuels Corporation Site in Gore, Oklahoma (NUREG–1888) was issued on May 20, 2008. The EIS documented the NRC staff's determination that all steps in the proposed reclamation could be accomplished in compliance with the NRC public and occupational dose limits, effluent release limits, and residual radioactive material limits. In addition, the EIS concluded that approval of the proposed action, in accordance with the commitments in NRC License SUB–1010 and the final RP, would not result in a significant adverse impact on the environment.

The findings, required by the Atomic Energy Act of 1954, as amended, necessary to support the proposed site reclamation activities will be documented in an SER that will be issued in connection with this license amendment.

IV. Further Information

Documents related to this action, including the application for amendment and supporting documentation, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this site, you can access the NRC's Agency-wide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The ADAMS accession

numbers for the documents related to this notice are:

Document	PDR*	Web	ADAMS	NRC Staff
SFC's letter to NRC dated June 16, 2003	X	X	ML031710029	X
SFC's letter to NRC dated December 16, 2005	X	X	ML053560158	X
SFC's letter to NRC dated July 2, 2009	X	X	ML092040088	X
SFC's letter to NRC dated July 31, 2009	X	X	ML092240691	X
SFC's letter to NRC dated August 18, 2010	X	X	ML102380151	X
NUREG–1888, "Environmental Impact Statement for the Reclamation of the Sequoyah Fuels Corporation Site in Gore, Oklahoma," issued May 2008.	X	X	ML081300103	X
Notice of Receipt of License Amendment Request from the Sequoyah Fuels Corp. to Approve a Groundwater Monitoring Plan for Its Gore, Oklahoma Facility, and Opportunity to Request a Hearing August 25, 2003 (68 FR 51033).	X	X	ML032310041	X
Federal Register Notice for this license amendment	X	X	ML101170703	X

* PDR—Public Document Room

If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov.*

Any questions should be referred to Kenneth Kalman, Division of Waste Management and Environmental Protection, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Mailstop T–7E18, telephone (301) 415–6664, fax (301) 415–5369.

Dated at Rockville, Maryland, this 20th day of September, 2010.

For the Nuclear Regulatory Commission.

Paul Michalak,

Acting Deputy Director, Decommissioning and Uranium Recovery Licensing Directorate, Division of Waste Management and Environmental Protection, Office of Federal and State Materials and Environmental Management Programs.

[FR Doc. 2010–24268 Filed 9–27–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2010–0002]

Sunshine Federal Register Notice

AGENCY HOLDING THE MEETINGS: Nuclear Regulatory Commission.

DATES: Weeks of September 27, October 4, 11, 18, 25, and November 1, 2010.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Week of September 27, 2010

Wednesday, September 29, 2010

12:55 p.m. Affirmation Session (Public Meeting) (Tentative)

a. *South Texas Project Nuclear Operating Co.* (South Texas Project Units 3 and 4), NRC Staff Notice of Appeal, Brief on Appeal, and Request for Stay of LBP–10–02, Order (Rulings on the Admissibility of New Contentions and on Intervenors' Challenge to Staff Denial of Documentary Access) (Feb. 9, 2010) (Tentative).

b. *Luminant Generation Company LLC* (Comanche Peak Nuclear Power Plant, Units 3 and 4), NRC Staff Notice of Appeal, Brief on Appeal, and Request for Stay of Sections IV and V.B of LBP–10–5, Order (Ruling on Intervenors' Access to ISG–016) (Mar. 22, 2010) (Tentative)

c. *Tennessee Valley Authority* (Bellefonte Nuclear Plant, Units 1 and 2), LBP–10–7 (Apr. 2, 2010), Docket Nos. 50–438–CP & 50–439–CP (Tentative).

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

1 p.m. Briefing on Resolution of Generic Safety Issue (GSI)—191, Assessment of Debris Accumulation on Pressurized Water Reactor (PWR) Sump Performance (Public Meeting).

(Contact: Michael Scott, 301–415–0565).

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Week of October 4, 2010—Tentative

There are no meetings scheduled for the week of October 4, 2010.

Week of October 11, 2010—Tentative

Thursday, October 14, 2010

9:30 a.m. Briefing on Alternative Risk Metrics for New Light Water Reactors (Public Meeting) (Contact: CJ Fong, 301 415–6249).

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Week of October 18, 2010—Tentative

Monday, October 18, 2010

1:30 p.m. NRC All Employees Meeting (Public Meeting), Marriott Bethesda North Hotel, 5701 Marinelli Road, Rockville, MD 20852.

Wednesday, October 20, 2010

9 a.m. Briefing on Medical Issues (Public Meeting) (Contact: Michael Fuller, 301 415–0520).

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Week of October 25, 2010—Tentative

Tuesday, October 26, 2010

9:30 a.m. Briefing on Security Issues (Closed—Ex. 1).

Week of November 1, 2010—Tentative

Tuesday, November 2, 2010

9:30 a.m. Briefing on Equal Employment Opportunity (EEO) and Small Business Programs (Public Meeting), (Contact: Barbara Williams, 301–415–7388).

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

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* The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings, call (recording)—(301) 415–1292. Contact person for more information: Rochelle Bavol, (301) 415–1651.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/about-nrc/policy-making/schedule.html.*

* * * * *

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.* braille, large print), please notify Angela Bolduc, Chief, Employee/Labor Relations and Work Life Branch, at 301–492–2230, TDD: 301–415–2100, or by e-

mail at *angela.bolduc@nrc.gov*. Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed electronically to subscribers. If you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969), or send an e-mail to *darlene.wright@nrc.gov*.

Dated: September 23, 2010.

Rochelle C. Bavol,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2010–24391 Filed 9–24–10; 4:15 pm]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

Sunshine Act Meetings

TIME AND DATE: Wednesday, October 6, 2010 at 11 a.m.

PLACE: Commission hearing room, 901 New York Avenue, NW., Suite 200, Washington, DC 20268–0001.

STATUS: Most items on the agenda will be considered in a session open to public observation. Several items will be considered in a session closed to public observation. The open session will be audiocast.

MATTERS TO BE CONSIDERED:

PORTIONS OPEN TO THE PUBLIC:

1. Review of postal-related congressional activity.
2. Report on international activities.
3. Review of active cases.
4. Report on recent activites of the Joint Periodicals Task Force and status of the report to the Congress pursuant to secton 708 of the PAEA.
5. Report on the October 1 budgetary meeting at OMB.
6. Report on vacancies and positions recently filled.

PORTIONS CLOSED TO THE PUBLIC:

7. Discussion of pending litigation.
8. Discussion of confidential personnel issues.
9. Discussion of contracts involving confidential commercial information.

CONTACT PERSON FOR FURTHER INFORMATION: Stephen L. Sharfman, General Counsel, Postal Regulatory Commission, at 202-789-6820 or *stephen.sharfman@prc.gov* (for questions concerning the agenda) and Shoshana M. Grove at 202-789-6842 or *shoshana.grove@prc.gov* (for questions concerning audiocasting or matters related to public observation).

Dated: September 24, 2010.

Shoshana M. Grove,

Secretary.

[FR Doc. 2010–24396 Filed 9–24–10; 4:15 pm]

BILLING CODE 7710–FW–S

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12258 and #12259]

Iowa Disaster Number IA–00026

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 5.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of Iowa (FEMA–1930–DR), dated 07/29/2010.

Incident: Severe Storms, Flooding, and Tornadoes.

Incident Period: 06/01/2010 through 08/31/2010.

Effective Date: 09/17/2010.

Physical Loan Application Deadline Date: 09/27/2010.

Economic Injury (EIDL) Loan Application Deadline Date: 04/29/2011.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of Iowa, dated 07/29/2010, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Pocahontas

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2010–23996 Filed 9–27–10; 8:45 am]

BILLING CODE 8025–01–M

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 203–3, Form ADV–H; SEC File No. 270–481; OMB Control No. 3235–0538.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget ("OMB") a request for extension of the previously approved collection of information discussed below.

The title for the collection of information is "Rule 203–3 and Form ADV–H under the Investment Advisers Act of 1940." Rule 203–3 (17 CFR 275.203–3) under the Investment Advisers Act of 1940 (15 U.S.C. 80b) establishes procedures for an investment adviser to obtain a hardship exemption from the electronic filing requirements of the Investment Advisers Act. Rule 203–3 requires every person requesting a hardship exemption to file Form ADV–H (17 CFR 279.3) with the Commission. The purpose of this collection of information is to permit advisers to obtain a hardship exemption, on a continuing or temporary basis, to not complete an electronic filing. The temporary hardship exemption permits advisers to make late filings due to unforeseen computer or software problems, while the continuing hardship exemption permits advisers to submit all required electronic filings on hard copy for data entry by the operator of the IARD.

The respondents to the collection of information are all investment advisers that are registered with the Commission. The Commission has estimated that compliance with the requirement to complete Form ADV–H imposes a total burden of approximately 1 hour for an adviser. Based on our experience with hardship filings, we estimate that we will receive 11 Form ADV–H filings annually. Based on the 60 minute per respondent estimate, the Commission estimates a total annual burden of 11 hours for this collection of information.

Rule 203–3 and Form ADV–H do not require recordkeeping or records retention. The collection of information requirements under the rule and form are mandatory. The information collected pursuant to the rule and Form ADV–H consists of filings with the Commission. These filings are not kept confidential. 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.

Please direct general comments regarding the above information to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or send an e-mail to Shagufta Ahmed at *Shagufta_Ahmed@omb.eop.gov;* and (ii) Jeff Heslop, Acting Director/CIO, Securities and Exchange Commission, C/O Remi Pavlik-Simon, 6432 General Green Way, Alexandria, VA, 22312; or send an e-mail to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

September 20, 2010.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–24186 Filed 9–27–10; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 17e–1; SEC File No. 270–224; OMB Control No. 3235–0217.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), the Securities and Exchange Commission (the "Commission") has submitted to the Office of Management and Budget ("OMB") a request for extension of the previously approved collection of information described below.

Rule 17e–1 (17 CFR 270.17e–1) under the Investment Company Act of 1940 (15 U.S.C. 80a) (the "Act") is entitled "Brokerage Transactions on a Securities Exchange." The rule governs the remuneration that a broker affiliated with a registered investment company ("fund") may receive in connection with securities transactions by the fund. The rule requires a fund's board of directors to establish, and review as necessary, procedures reasonably designed to provide that the remuneration to an affiliated broker is a fair amount compared to that received by other brokers in connection with transactions in similar securities during a comparable period of time. Each quarter, the board must determine that all transactions with affiliated brokers during the preceding quarter complied with the procedures established under the rule. Rule 17e–1 also requires the fund to (i) maintain permanently a written copy of the procedures adopted by the board for complying with the requirements of the rule; and (ii) maintain for a period of six years a written record of each transaction subject to the rule, setting forth: the amount and source of the commission, fee or other remuneration received; the identity of the broker; the terms of the transaction; and the materials used to determine that the transactions were effected in compliance with the procedures adopted by the board. The Commission's examination staff uses these records to evaluate transactions between funds and their affiliated brokers for compliance with the rule.

Based on an analysis of fund filings, the staff estimates that approximately 252 fund portfolios enter into subadvisory agreements each year.[1] Based on discussions with industry representatives, the staff estimates that it will require approximately 3 attorney hours to draft and execute additional clauses in new subadvisory contracts in order for funds and subadvisers to be able to rely on the exemptions in rule 17e–1. Because these additional clauses are identical to the clauses that a fund would need to insert in their subadvisory contracts to rely on rules 12d3–1, 10f–3, 17a–10, and because we believe that funds that use one such rule generally use all of these rules, we apportion this 3 hour time burden equally to all four rules. Therefore, we estimate that the burden allocated to rule 17e–1 for this contract change would be 0.75 hours.[2] Assuming that all 252 funds that enter into new subadvisory contracts each year make the modification to their contract required by the rule, we estimate that the rule's contract modification requirement will result in 189 burden hours annually, with an associated cost of approximately $59,724.[3]

[1] Based on information in Commission filings, we estimate that 42.5 percent of funds are advised by subadvisers.

[2] This estimate is based on the following calculation (3 hours ÷ 4 rules = .75 hours).

[3] These estimates are based on the following calculations: (0.75 hours × 252 portfolios = 189 burden hours); ($316 per hour × 189 hours = $59,724 total cost). The Commission staff's estimates concerning the wage rates for attorney time are based on salary information for the securities industry compiled by the Securities Industry Association. The $316 per hour figure for an attorney is from the SIFMA Report on Management & Professional Earnings in the Securities Industry 2009, modified to account for an 1800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead.

Based on an analysis of fund filings, the staff estimates that approximately 1935 funds use at least one affiliated broker. Based on conversations with fund representatives, the staff estimates that rule 17e–1's exemption would free approximately 40 percent of transactions that occur under rule 17e–1 from the rule's recordkeeping and review requirements. This would leave approximately 1161 funds (1935 funds x .6 = 1161) still subject to the rule's recordkeeping and review requirements. The staff estimates that each of these funds spends approximately 59 hours per year (40 hours by accounting staff, 15 hours by an attorney, and 4 director hours) at a cost of approximately $25,500 per year to comply with rule 17e–1's requirements that (i) the fund retain records of transactions entered into pursuant to the rule, and (ii) the fund's directors review those transactions quarterly.[4] We estimate, therefore, that the total yearly hourly burden for all funds relying on this exemption is 68,499 hours,[5] with yearly costs of approximately $29,605,500.[6] Therefore, the estimated annual aggregate burden hour associated with rule 17e–1 is 68,688,[7] and the estimated annual aggregate cost associated with it is $29,665,224.[8]

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act, and is not derived from a comprehensive or even a representative survey or study. 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. These collection of information requirements are mandatory. Responses will not be kept confidential.

[4] This estimate is based on the following calculations: (40 hours accounting staff × $119 per hour = $4760) (15 hours by an attorney × $316 per hour = $4740); (4 hours by directors × $4000 = $16,000) ($4760 + $4740 + $16,000 = $25,500 total cost). The Commission staff's estimates concerning the wage rate for professional time are based on salary information for the securities industry compiled by the Securities Industry Association, except for the estimate of $4000 per hour for a board of directors. The $316 per hour estimate for an attorney and the $119 per hour estimate for accountant time is from the SIFMA Report on Management & Professional Earnings in the Securities Industry 2009, modified to account for an 1800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead.

[5] This estimate is based on the following calculation: (1161 funds × 59 hours = 68,499).

[6] This estimate is based on the following calculation: ($25,500 × 1161 funds = $29,605,500).

[7] This estimate is based on the following calculation: (189 hours + 68,499 hours = 68,688 total hours).

[8] This estimate is based on the following calculation: ($59,724 + $29,605,500 = $29,665,224).

Please direct general comments regarding the above information to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or send an email to Shagufta Ahmed at *Shagufta_Ahmed@omb.eop.gov;* and (ii) Jeff Heslop, Acting Director/Chief Information Officer, Securities and Exchange Commission, C/O Remi Pavlik-Simon, 6432 General Green Way, Alexandria, VA, 22312; or send an e-mail to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: September 20, 2010.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–24187 Filed 9–27–10; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62966; File No. SR–CTA–2010–02]

Consolidated Tape Association; Notice of Filing and Immediate Effectiveness of the Fifteenth Charges Amendment to the Second Restatement of the Consolidated Tape Association Plan

September 21, 2010.

Pursuant to Section 11A of the Securities Exchange Act of 1934 (“Act”),[1] and Rule 608 thereunder,[2] notice is hereby given that on September 21, 2010, the Consolidated Tape Association (“CTA”) Plan and participants (“Participants”)[3] filed with the Securities and Exchange Commission (“Commission”) a proposal to amend the Second Restatement of the CTA Plan (the “CTA Plan”).[4] The proposal represents the fifteenth charges amendment to the CTA Plan (“Fifteenth Charges Amendment”), and reflects changes unanimously adopted by the Participants. The Fifteenth Charges Amendment seeks to reduce the maximum amount that any entity is required to pay for any calendar month’s charge for broadcast, cable or satellite television distribution of a Network A ticker. Pursuant to Rule 608(b)(3) under Regulation NMS, the Participants designate the amendment as establishing or changing a fee or other charge collected on their behalf in connection with access to, or use of, the facilities contemplated by the Plans. As a result, the amendment becomes effective upon filing with the Commission. The Commission is publishing this notice to solicit comments from interested persons on the proposed amendment.

I. Rule 608(a)

A. Description and Purpose of the Amendment

The CTA Plan currently imposes a monthly charge of $2.00 for every 1000 households reached on broadcast, cable and satellite television distribution of a Network A ticker (the “Broadcast Charge”). A minimum monthly vendor payment of $2,000 applies. CTA permits prorating for those who broadcast the data for less than the entire business day, based upon the number of minutes that the vendor displays the real-time ticker, divided by the number of minutes the primary market is open for trading (currently 390 minutes).

In 2007, the Participants introduced a cap (the “Television Ticker Maximum”) on the Broadcast Charge each calendar month. For months falling in calendar year 2007, the “Television Ticker Maximum” was $150,000.

For each subsequent calendar year, the monthly Television Ticker Maximum increases by the “Annual Increase Amount.” The “Annual Increase Amount” is an amount equal to the percentage increase in the annual composite share volume for the preceding calendar year, subject to a maximum annual increase of five percent. For 2008, the “Annual Increase Amount” raised the “Television Ticker Maximum” to $157,500. For 2008, the “Annual Increase Amount” raised the “Television Ticker Maximum” to $164,000. The “Annual Increase Amount” is the same adjustment factor that the Network A rate schedule has long applied to the monthly broker-dealer enterprise fee.

In light of the Network A Participants’ experience with the Network A ticker, the Participants have determined to reduce the Television Ticker Maximum. In the amendment, the Participants propose to re-set the Television Ticker Maximum to $125,000 for calendar months falling in 2010. For calendar months falling in subsequent calendar years, the Participants would impose the Annual Increase Amount to the Television Ticker Maximum. For example, for calendar months falling in 2011, the Participants would increase 2010’s $125,000 monthly Television Ticker Maximum by the Annual Increase Amount.

The text of the proposed amendment is available on the CTA’s Web site (*http://www.nysedata.com/cta*), at the principal office of the CTA, and at the Commission’s Public Reference Room.

B. Additional Information Required by Rule 608(a)

1. Governing or Constituent Documents

Not applicable.

2. Implementation of the Amendment

The reduction in the monthly Television Ticker Maximum currently affects only one vendor. The Participants have notified that vendor. The Participants propose to implement the change retroactively so that it applies to all calendar months of 2010.

3. Development and Implementation Phases

See Item I(B)(2) above.

4. Analysis of Impact on Competition

The amendment will impose no burden on competition.

5. Written Understanding or Agreements Relating to Interpretation of, or Participation in, Plan

The Participants have no written understandings or agreements relating to interpretation of the CTA Plan as a result of the amendment.

6. Approval by Sponsors in Accordance With Plan

Under Section IV(b) of the CTA Plan, each CTA Plan Participant must execute a written amendment to the CTA Plan before the amendment can become effective. The amendment is so executed.

7. Description of Operation of Facility Contemplated by the Proposed Amendment

Not applicable.

8. Terms and Conditions of Access

Not applicable.

9. Method of Determination and Imposition, and Amount of, Fees and Charges

The Participants believe that the proposed reduction in the cap on

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[1] 15 U.S.C. 78k–1.

[2] 17 CFR 242.608.

[3] Each participant executed the proposed amendment. The Participants are: BATS Exchange, Inc.; Chicago Board Options Exchange, Inc.; Chicago Stock Exchange, Inc.; Financial Industry Regulatory Authority, Inc.; International Securities Exchange, LLC; NASDAQ OMX BX, Inc.; NASDAQ OMX PHLX, Inc.; The NASDAQ Stock Market LLC; National Stock Exchange, Inc.; New York Stock Exchange LLC; NYSE Amex LLC; and NYSE Arca, Inc.

[4] *See* Securities Exchange Act Release No. 10787 (May 10, 1974), 39 FR 17799 (declaring the CTA Plan effective). The CTA Plan, pursuant to which markets collect and disseminate last sale price information for non-NASDAQ listed securities, is a “transaction reporting plan” under Rule 601 under the Act, 17 CFR 242.601, and a “national market system plan” under Rule 608 under the Act, 17 CFR 242.608.

Broadcast Charges is fair and reasonable and provides for an equitable allocation of dues, fees, and other charges among vendors, data recipients and other persons using CTA Network A facilities.

10. Method of Frequency of Processor Evaluation

Not applicable.

11. Dispute Resolution

Not applicable.

II. Rule 601(a)

A. Equity Securities for Which Transaction Reports Shall Be Required by the Plan

Not applicable.

B. Reporting Requirements

Not applicable.

C. Manner of Collecting, Processing, Sequencing, Making Available and Disseminating Last Sale Information

Not applicable.

D. Manner of Consolidation

Not applicable.

E. Standards and Methods Ensuring Promptness, Accuracy and Completeness of Transaction Reports

Not applicable.

F. Rules and Procedures Addressed to Fraudulent or Manipulative Dissemination

Not applicable.

G. Terms of Access to Transaction Reports

The Network A Participants and the vendor that the proposed amendment would affect have already entered into the Network A Participants' standard form of agreement. No new terms of access will apply, other than the reduction to the cap on the Broadcast Charge.

8. Identification of Marketplace of Execution

Not applicable.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed Fifteenth Charges Amendment to the CTA Plan is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–CTA–2010–02 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CTA–2010–02. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site *(http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the Fifteenth Charges Amendment to the CTA Plan that are filed with the Commission, and all written communications relating to the Fifteenth Charges Amendment to the CTA Plan between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the Fifteenth Charges Amendment to the CTA Plan also will be available for inspection and copying at the principal office of the CTA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CTA–2010–02 and should be submitted on or before October 19, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[5]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–24226 Filed 9–27–10; 8:45 am]

BILLING CODE 8010–01–P

[5] 17 CFR 200.30–3(a)(27).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62963; File No. SR–NYSEAmex–2010–71]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NYSE Amex LLC Amending NYSE Amex Equities Rule 36

September 21, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 14, 2010, the NYSE Amex LLC ("NYSE Amex" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend NYSE Amex Equities Rule 36 ("Communications Between Exchange and Members' Offices") to incorporate the provisions of its current Wireless Policy. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.nyse.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

NYSE Amex proposes to amend NYSE Amex Equities Rule 36 ("Communications Between Exchange and Members' Offices") to incorporate

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

the provisions of its current Wireless Policy into Supplementary Material .70 of the Rule.[3] The Wireless Policy was previously approved by the Commission.[4]

Background

Current NYSE Amex Equities rules permit a Floor broker to communicate information to a customer using a wired telephone line,[5] NYSE Amex approved portable telephones,[6] or through a written electronic communication from the Floor brokers' hand-held device as permitted by the NYSE Amex's "Wireless Data Communications Initiatives." Wireless communications can be sent and received directly to and from a Floor broker's hand-held device and orders entered from off the Floor may be transmitted directly to a hand-held device, bypassing the booth. Floor brokers may send order-related messages and information (*e.g.,* cancellations and administrative messages, as well as market probes and market looks) back to the customer directly through the hand-held device.

Pursuant to the Exchange's Wireless Policy, a record must be established and maintained for transmissions that are sent: (1) From a member's off-Floor location to a booth terminal and then retransmitted from the booth terminal to a member's hand-held device; or (2) directly to the hand-held device, bypassing the booth. Orders sent from off-Floor to the booth or the hand-held device are first sent through a secured network and routed to an Exchange-wired database that captures and records the orders. Likewise, order-related messages or information generated from the Floor broker's booth or hand-held device are transmitted back to the Exchange-wired databases via the secured wireless network, where the information is captured and recorded, and then sent off-Floor to the customer via the Exchange's secured network. The Exchange records all of the information sent to and transmitted from the hand-held devices.

Proposed Amendments to NYSE Amex Equities Rule 36

The Exchange proposes to revise NYSE Amex Equities Rule 36 to incorporate the provisions of its Wireless Policy, previously approved by the Commission, in Supplementary Material .70 of the Rule. In addition, the Exchange is making certain clarifying changes as part of the incorporation of the Wireless Policy into the Rule.

First, the Exchange proposes to clarify the language in Supplementary Material .70 and the Wireless Policy by using consistent terminology when referring to the hand-held devices in the proposed rule change. Thus, for example, references in paragraph (a) of the current Supplementary Material to "wireless trading devices" would be changed to "wireless hand-held devices." The use of consistent terminology would make clear that the Exchange is referencing the same type of device in both paragraphs of the proposed rule.

Second, the Exchange is clarifying that Floor brokers may send order-related messages outside their member organizations only to customers. In this regard, the Exchange is clarifying the rule text to provide that order-related messages and information include market looks. The Exchange also notes that a customer must be specifically enabled by the Floor broker to receive communications from the Floor broker's hand-held device.

For purposes of this proposed rule change, the term "customer" means a person who the Floor broker reasonably believes is receiving the order-related message(s) in consideration of a securities transaction or potential securities transaction with the Floor broker. Whether such a belief is reasonable is based on the relevant facts and circumstances including, without limitation: Whether the customer is a *bona fide* market participant; any prior history of the customer entering orders with the Floor broker for execution on the Exchange; and acknowledgement by the customer (including by negative consent) that the customer is receiving order-related messages in consideration of a securities transaction or potential securities transaction with the Floor broker. A Floor broker may provide order-related messages to a customer pursuant to proposed Supplementary Material .70 notwithstanding the fact that the customer's receipt of particular messages does not lead to an order with the Floor broker.

Third, the Exchange is clarifying that the Wireless Policy does not allow Floor brokers to retransmit datafeeds received on hand-held devices or send orders to another hand-held device.[7]

Fourth, the Exchange is clarifying that Floor brokers may send trade reports on their hand-held devices.

Finally, the Exchange is clarifying that the Wireless Policy applies not only to member organizations but also to employees of member organizations.

As proposed, Supplementary Material .70 is substantially similar to the Exchange's Wireless Policy as previously filed with and approved by the Commission.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)[8] that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The instant proposal is in keeping with these principles because the incorporation of the Wireless Policy in the Exchange's rules promotes transparency and makes clear what type of information may be communicated to and from hand-held devices.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[9] and Rule 19b–4(f)(6) thereunder.[10]

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[3] The Exchange notes that parallel changes are proposed to the rules of its affiliate, The New York Stock Exchange LLC. *See* SR–NYSE–2010–53.

[4] *See* Securities Exchange Act Release No. 59627 (March 25, 2009), 74 FR 14834 (April 1, 2009) (SR–NYSEAmex–2009–02). The Wireless Policy was attached as an exhibit to that proposed rule change.

[5] NYSE Amex Equities Rule 36.20.

[6] NYSE Amex Equities Rule 36.21.

[7] However, Floor brokers are permitted to provide their customers with specific data points from datafeeds made available on the hand-held devices.

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act [11] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6) [12] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. NYSE Amex requests that the Commission waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission notes that the proposed rule change codifies into rule text an existing policy and provides certain other clarifications. For this reason, the Commission believes that waiving the 30-day operative delay [13] is consistent with the protection of investors and the public interest. Therefore, the Commission designates the proposal operative upon filing.

At any time within the 60-day period beginning on the date of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSEAmex–2010–71 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEAmex–2010–71. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission,[14] all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEAmex–2010–71 and should be submitted on or before October 19, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Florence E. Harmon,

Deputy Secretary.

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BILLING CODE 8010–01–P

change, or such shorter time as designated by the Commission. NYSE Amex has satisfied this requirement.

[11] 17 CFR 240.19b–4(f)(6).

[12] 17 CFR 240.19b–4(f)(6).

[13] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[14] The text of the proposed rule change is available on the Commission's Web site at *http://www.sec.gov/rules/sro.shtml.*

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62965; File No. S7–24–89]

Joint Industry Plan; Notice of Filing and Immediate Effectiveness of Amendment No. 22 to the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privileges Basis Submitted by the BATS Exchange, Inc., Chicago Board Options Exchange, Incorporated, Chicago Stock Exchange, Inc., Financial Industry Regulatory Authority, Inc., International Securities Exchange LLC, NASDAQ OMX BX, Inc., NASDAQ OMX PHLX, Inc., Nasdaq Stock Market LLC, National Stock Exchange, Inc., New York Stock Exchange LLC, NYSE Amex, Inc., and NYSE Arca, Inc.

September 21, 2010.

Pursuant to Rule 608 of the Securities Exchange Act of 1934 (the "Act") [1] notice is hereby given that on September 21, 2010, the operating committee ("Operating Committee" or "Committee") [2] of the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation, and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privilege Basis ("Nasdaq/UTP Plan" or "Plan") filed with the Securities and Exchange Commission ("Commission") an amendment to the Plan.[3] This amendment represents Amendment No. 22 to the Plan and proposes to add EDGA Exchange, Inc. and EDGX

[1] 17 CFR 242.608.

[2] The Plan Participants (collectively, "Participants") are the: BATS Exchange, Inc. ("BATS"); Chicago Board Options Exchange, Incorporated ("CBOE"); Chicago Stock Exchange, Inc. ("CHX"); Financial Industry Regulatory Authority, Inc. ("FINRA"); International Securities Exchange LLC ("ISE"); NASDAQ OMX BX, Inc. ("BX"); NASDAQ OMX PHLX, Inc. ("PHLX"); Nasdaq Stock Market LLC ("Nasdaq"); National Stock Exchange, Inc. ("NSX"); New York Stock Exchange LLC ("NYSE"); NYSE Amex, Inc. ("NYSEAmex"); and NYSE Arca, Inc. ("NYSEArca").

[3] The Plan governs the collection, processing, and dissemination on a consolidated basis of quotation information and transaction reports in Eligible Securities for each of its Participants. This consolidated information informs investors of the current quotation and recent trade prices of Nasdaq securities. It enables investors to ascertain from one data source the current prices in all the markets trading Nasdaq securities. The Plan serves as the required transaction reporting plan for its Participants, which is a prerequisite for their trading Eligible Securities. *See* Securities Exchange Act Release No. 55647 (April 19, 2007) 72 FR 20891 (April 26, 2007).

Exchange, Inc. to the Plan. The Commission is publishing this notice to solicit comments from interested persons on the proposed Amendment.

I. Rule 608(a)

A. Purpose of the Amendments

The amendment proposes to add EDGA Exchange, Inc. and EDGX Exchange, Inc. as new Participants to each Plan.

B. Governing or Constituent Documents

Not applicable.

C. Implementation of Amendment

Because the Participants designate the amendment as concerned solely with the administration of the Plan, the amendment becomes effective upon filing with the Commission.

D. Development and Implementation Phases

Not applicable.

E. Analysis of Impact on Competition

The proposed amendment does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. The Participants do not believe that the proposed plan amendment introduces terms that are unreasonably discriminatory for the purposes of Section 11A(c)(1)(D) of the Exchange Act.

F. Written Understanding or Agreements Relating to Interpretation of, or Participation in, Plan

Not applicable.

G. Approval by Sponsors in Accordance With Plan

Each of the Plan's Participants has executed a written amendment to the Plan.

H. Description of Operation of Facility Contemplated by the Proposed Amendment

Not applicable.

I. Terms and Conditions of Access

See Item I(A) above.

J. Method of Determination and Imposition, and Amount of, Fees and Charges

See Item I(A) above.

K. Method and Frequency of Processor Evaluation

Not applicable.

L. Dispute Resolution

Not applicable.

II. Rule 601(a)

A. Reporting Requirements

Not applicable.

B. Manner of Collecting, Processing, Sequencing, Making Available and Disseminating Last Sale Information

Not applicable.

C. Manner of Consolidation

Not applicable.

D. Standards and Methods Ensuring Promptness, Accuracy and Completeness of Transaction Reports

Not applicable.

E. Rules and Procedures Addressed to Fraudulent or Manipulative Dissemination

Not applicable.

F. Terms of Access to Transaction Reports

Not applicable.

G. Identification of Marketplace of Execution

Not Applicable.

III. Solicitation of Comments

The Commission seeks general comments on Amendment No. 22. Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number S7–24–89 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number S7–24–89. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all written statements with respect to the proposed Plan amendment that are filed with the Commission, and all written communications relating to the proposed Plan amendment between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for Web site viewing and printing at the Office of the Secretary of the Committee, currently located at the CBOE, 400 S. LaSalle Street, Chicago, IL 60605. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number S7–24–89 and should be submitted on or before October 19, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[4]

Florence E. Harmon,

Deputy Secretary.

Exhibit A

Nasdaq UTP Plan

Amended and Restated Plan

Amendment No. 22

The undersigned registered national securities association and national securities exchanges (collectively referred to as the "Participants"), have jointly developed and hereby enter into this Nasdaq Unlisted Trading Privileges Plan ("Nasdaq UTP Plan" or "Plan").

I. Participants

The Participants include the following:

A. Participants

1. BATS Exchange, Inc.
   8050 Marshall Drive
   Lenexa, Kansas 66214
2. Chicago Board Options Exchange, Inc.
   400 South LaSalle Street, 26th Floor
   Chicago, Illinois 60605
3. Chicago Stock Exchange
   440 South LaSalle Street
   Chicago, Illinois 60605
4. EDGA Exchange, Inc.
   545 Washington Boulevard
   Sixth Floor
   Jersey City, NJ 07310
5. EDGX Exchange, Inc.
   545 Washington Boulevard
   Sixth Floor
   Jersey City, NJ 07310

[4] 17 CFR 200.30–3(a)(27).

6. Financial Industry Regulatory Authority, Inc.
1735 K Street, N.W.
Washington, D.C. 20006
7. International Securities Exchange, LLC
60 Broad Street
New York, New York 10004
8. NASDAQ OMX BX, Inc.
One Liberty Plaza
New York, New York 10006
9. NASDAQ OMX PHLX, Inc.
1900 Market Street
Philadelphia, Pennsylvania 19103
10. National Stock Exchange, Inc.
101 Hudson, Suite 1200
Jersey City, NJ 07302
11. New York Stock Exchange LLC
11 Wall Street
New York, New York 10005
12. NYSE Amex LLC
20 Broad Street
New York, New York 10005
13. NYSE Arca, Inc.
100 South Wacker Drive
Suite 1800
Chicago, IL 60606
14. The Nasdaq Stock Market LLC
1 Liberty Plaza
165 Broadway
New York, NY 10006

B. Additional Participants

Any other national securities association or national securities exchange, in whose market Eligible Securities become traded, may become a Participant, provided that said organization executes a copy of this Plan, provides to the Processor its Projected Processor Capacity Requirements, as specified in Exhibit 3, and pays its share of development costs as specified in Section XIII.

II. Purpose of Plan

The purpose of this Plan is to provide for the collection, consolidation and dissemination of Quotation Information and Transaction Reports in Eligible Securities from the Participants in a manner consistent with the Exchange Act. The Participants commenced publication of Quotation Information and Transaction Reports on Eligible Securities as contemplated by this Plan on July 12, 1993.

It is expressly understood that each Participant shall be responsible for the collection of Quotation Information and Transaction Reports within its market and that nothing in this Plan shall be deemed to govern or apply to the manner in which each Participant does so.

III. Definitions

A. "Current" means, with respect to Transaction Reports or Quotation Information, such Transaction Reports or Quotation Information during the fifteen (15) minute period immediately following the initial transmission thereof by the Processor.

B. "Eligible Security" means any Nasdaq Global Market or Nasdaq Capital Market security, as defined in NASDAQ Rule 4200. Eligible Securities under this Nasdaq UTP Plan shall not include any security that is defined as an "Eligible Security" within Section VII of the Consolidated Tape Association Plan.

A security shall cease to be an Eligible Security for purposes of this Plan if: (i) The security does not substantially meet the requirements from time to time in effect for continued listing on Nasdaq, and thus is suspended from trading; or (ii) the security has been suspended from trading because the issuer thereof is in liquidation, bankruptcy or other similar type proceedings. The determination as to whether a security substantially meets the criteria of the definition of Eligible Security shall be made by the exchange on which such security is listed provided, however, that if such security is listed on more than one exchange then such determination shall be made by the exchange on which, the greatest number of the transactions in such security were effected during the previous twelve-month period.

C. "Commission" and "SEC" shall mean the U.S. Securities and Exchange Commission.

D. "Exchange Act" means the Securities Exchange Act of 1934*, as amended.*

E. "Market" shall mean (i) when used with respect to Quotation Information, FINRA in the case of a FINRA Participant, or the Participant on whose floor or through whose facilities the quotation was disseminated; and (ii) when used with respect to Transaction Reports, the Participant through whose facilities the transaction took place or is reported, or the Participant to whose facilities the order was sent for execution.

F. "FINRA" means the Financial Industry Regulatory Authority, Inc.

G. "FINRA Participant" means a FINRA member that is registered as a market maker or an electronic communications network or otherwise utilizes the facilities of FINRA pursuant to applicable FINRA rules.

H. "UTP Quote Data Feed" means the service that provides Subscribers with the National Best Bid and Offer quotations, size and market center identifier, as well as the Best Bid and Offer quotations, size and market center identifier from each individual Participant in Eligible Securities and, in the case of FINRA, the FINRA Participant(s) that constitute*s* FINRA's Best Bid and Offer quotations.

I. "Nasdaq System" means collectively the automated quotation system operated by Nasdaq and the system provided for in the Transaction Reporting Plan filed with and approved by the Commission pursuant to SEC Rule 11Aa3–1, subsequently re-designated as Rule 601 of Regulation NMS, governing the reporting of transactions in Nasdaq securities.

J. "UTP Trade Data Feed" means the service that provides Vendors and Subscribers with Transaction Reports.

K. "Nasdaq Security" or "Nasdaq-listed Security" means any security listed on the Nasdaq Global Market or Nasdaq Capital Market.

L. "News Service" means a person who receives Transaction Reports or Quotation Information provided by the Nasdaq System or provided by a Vendor, on a Current basis, in connection with such person's business of furnishing such information to newspapers, radio and television stations and other news media, for publication at least fifteen (15) minutes following the time when the information first has been published by the Processor.

M. "OTC Montage Data Feed" means the data stream of information that provides Vendors and Subscribers with quotations and sizes from each FINRA Participant.

N. "Participant" means a registered national securities exchange or national securities association that is a signatory to this Plan.

O. "Plan" means this Nasdaq UTP Plan, as from time to time amended according to its provisions, governing the collection, consolidation and dissemination of Quotation Information and Transaction Reports in Eligible Securities.

P. "Processor" means the entity selected by the Participants to perform the processing functions set forth in the Plan.

Q. "Quotation Information" means all bids, offers, displayed quotation sizes, the market center identifiers and, in the case of FINRA, the FINRA Participant that entered the quotation, withdrawals and other information pertaining to quotations in Eligible Securities required to be collected and made available to the Processor pursuant to this Plan.

R. "Regulatory Halt" means a trade suspension or halt called for the purpose of dissemination of material news, as described at Section X hereof or that is called for where there are regulatory problems relating to an

Eligible Security that should be clarified before trading therein is permitted to continue, including a trading halt for extraordinary market activity due to system misuse or malfunction under Section X.E.1. of the Plan ("Extraordinary Market Regulatory Halt").

S. "Subscriber" means a person who receives Current Quotation Information or Transaction Reports provided by the Processor or provided by a Vendor, for its own use or for distribution on a non-Current basis, other than in connection with its activities as a Vendor.

T. "Transaction Reports" means reports required to be collected and made available pursuant to this Plan containing the stock symbol, price, and size of the transaction executed, the Market in which the transaction was executed, and related information, including a buy/sell/cross indicator and trade modifiers, reflecting completed transactions in Eligible Securities.

U. "Vendor" means a person who receives Current Quotation Information or Transaction Reports provided by the Processor or provided by a Vendor, in connection with such person's business of distributing, publishing, or otherwise furnishing such information on a Current basis to Subscribers, News Services or other Vendors.

IV. Administration of Plan

A. Operating Committee: Composition

The Plan shall be administered by the Participants through an operating committee ("Operating Committee"), which shall be composed of one representative designated by each Participant. Each Participant may designate an alternate representative or representatives who shall be authorized to act on behalf of the Participant in the absence of the designated representative. Within the areas of its responsibilities and authority, decisions made or actions taken by the Operating Committee, directly or by duly delegated individuals, committees as may be established from time to time, or others, shall be binding upon each Participant, without prejudice to the rights of any Participant to seek redress from the SEC pursuant to Rule 608 of Regulation NMS under the Exchange Act or in any other appropriate forum.

An Electronic Communications Network, Alternative Trading System, Broker-Dealer or other securities organization ("Organization") which is not a Participant, but has an actively pending Form 1 Application on file with the Commission to become a national securities exchange, will be permitted to appoint one representative and one alternate representative to attend regularly scheduled Operating Committee meetings in the capacity of an observer/advisor. If the Organization's Form 1 petition is withdrawn, returned, or is otherwise not actively pending with the Commission for any reason, then the Organization will no longer be eligible to be represented in the Operating Committee meetings. The Operating Committee shall have the discretion, in limited instances, to deviate from this policy if, as indicated by majority vote, the Operating Committee agrees that circumstances so warrant.

Nothing in this section or elsewhere within the Plan shall authorize any person or organization other than Participants, their representatives, and members of the Advisory Committee to participate on the Operating Committee in any manner other than as an advisor or observer. Only the Participants and their representatives as well as Commission staff may participate in Executive Sessions of the Operating Committee.

B. Operating Committee: Authority

The Operating Committee shall be responsible for:

1. Overseeing the consolidation of Quotation Information and Transaction Reports in Eligible Securities from the Participants for dissemination to Vendors, Subscribers, News Services and others in accordance with the provisions of the Plan;

2. Periodically evaluating the Processor;

3. Setting the level of fees to be paid by Vendors, Subscribers, News Services or others for services relating to Quotation Information or Transaction Reports in Eligible Securities, and taking action in respect thereto in accordance with the provisions of the Plan;

4. Determining matters involving the interpretation of the provisions of the Plan;

5. Determining matters relating to the Plan's provisions for cost allocation and revenue-sharing; and

6. Carrying out such other specific responsibilities as provided under the Plan.

C. Operating Committee: Voting

Each Participant shall have one vote on all matters considered by the Operating Committee.

1. The affirmative and unanimous vote of all Participants entitled to vote shall be necessary to constitute the action of the Operating Committee with respect to:

a. Amendments to the Plan;

b. amendments to contracts between the Processor and Vendors, Subscribers, News Services and others receiving Quotation Information and Transaction Reports in Eligible Securities;

c. replacement of the Processor, except for termination for cause, which shall be governed by Section V(B) hereof;

d. reductions in existing fees relating to Quotation Information and Transaction Reports in Eligible Securities; and

e. except as provided under Section IV(C)(3) hereof, requests for system changes; and

f. all other matters not specifically addressed by the Plan.

2. With respect to the establishment of new fees or increases in existing fees relating to Quotation Information and Transaction Reports in Eligible Securities, the affirmative vote of two-thirds of the Participants entitled to vote shall be necessary to constitute the action of the Operating Committee.

3. The affirmative vote of a majority of the Participants entitled to vote shall be necessary to constitute the action of the Operating Committee with respect to:

a. requests for system changes reasonably related to the function of the Processor as defined under the Plan. All other requests for system changes shall be governed by Section IV(C)(1)(e) hereof.

b. interpretive matters and decisions of the Operating Committee arising under, or specifically required to be taken by, the provisions of the Plan as written;

c. interpretive matters arising under Rules 601 and 602 of Regulation NMS; and

d. denials of access (other than for breach of contract, which shall be handled by the Processor),

4. It is expressly agreed and understood that neither this Plan nor the Operating Committee shall have authority in any respect over any Participant's proprietary systems. Nor shall the Plan or the Operating Committee have any authority over the collection and dissemination of quotation or transaction information in Eligible Securities in any Participant's marketplace, or, in the case of FINRA, from FINRA Participants.

D. Operating Committee: Meetings

Regular meetings of the Operating Committee may be attended by each Participant's designated representative and/or its alternate representative(s), and may be attended by one or more other representatives of the parties. Meetings shall be held at such times and

locations as shall from time to time be determined by the Operating Committee.

Quorum: Any action requiring a vote only can be taken at a meeting in which a quorum of all Participants is present. For actions requiring a simple majority vote of all Participants, a quorum of greater than 50% of all Participants entitled to vote must be present at the meeting before such a vote may be taken. For actions requiring a 2/3rd majority vote of all Participants, a quorum of at least 2/3rd of all Participants entitled to vote must be present at the meeting before such a vote may be taken. For actions requiring a unanimous vote of all Participants, a quorum of all Participants entitled to vote must be present at the meeting before such a vote may be taken.

A Participant is considered present at a meeting only if a Participant's designated representative or alternate representative(s) is either in physical attendance at the meeting or is participating by conference telephone, or other acceptable electronic means.

Any action sought to be resolved at a meeting must be sent to each Participant entitled to vote on such matter at least one week prior to the meeting via electronic mail, regular U.S. or private mail, or facsimile transmission, provided however that this requirement may be waived by the vote of the percentage of the Committee required to vote on any particular matter, under Section C above.

Any action may be taken without a meeting if a consent in writing, setting forth the action so taken, is sent to and signed by all Participant representatives entitled to vote with respect to the subject matter thereof. All the approvals evidencing the consent shall be delivered to the Chairman of the Operating Committee to be filed in the Operating Committee records. The action taken shall be effective when the minimum number of Participants entitled to vote have approved the action, unless the consent specifies a different effective date.

The Chairman of the Operating Committee shall be elected annually by and from among the Participants by a majority vote of all Participants entitled to vote. The Chairman shall designate a person to act as Secretary to record the minutes of each meeting. The location of meetings shall be rotated among the locations of the principal offices of the Participants, or such other locations as may from time to time be determined by the Operating Committee.

Meetings may be held by conference telephone and action may be taken without a meeting if the representatives of all Participants entitled to vote consent thereto in writing or other means the Operating Committee deems acceptable.

E. Advisory Committee

(a) *Formation.* Notwithstanding any other provision of this Plan, an Advisory Committee to the Plan shall be formed and shall function in accordance with the provisions set forth in this section.

(b) *Composition.* Members of the Advisory Committee shall be selected for two year terms as follows:

(1) Operating Committee Selections. By affirmative vote of a majority of the Participants entitled to vote, the Operating Committee shall select at least one representative from each of the following categories to be members of the Advisory Committee: (i) A broker-dealer with a substantial retail investor customer base, (ii) a broker-dealer with a substantial institutional investor customer base, (iii) an alternative trade system, (iv) a data vendor, and (v) an investor.

(2) Participant Selections. Each Participant shall have the right to select one member of the Advisory Committee. A Participant shall not select any person employed by or affiliated with any participant or its affiliates or facilities.

(c) *Function.* Members of the Advisory Committee shall have the right to submit their views to the Operating Committee on Plan matters, prior to a decision by the Operating Committee on such matters. Such matters shall include, but not be limited to, any new or modified product, fee, contract, or pilot program that is offered or used pursuant to the Plan.

(d) *Meetings and Information.* Members of the Advisory Committee shall have the right to attend all meetings of the Operating Committee and to receive any information concerning Plan matters that is distributed to the Operating Committee; provided, however, that the Operating Committee may meet in executive session if, by affirmative vote of a majority of the Participants entitled to vote, the Operating Committee determines that an item of Plan business requires confidential treatment.

V. Selection and Evaluation of the Processor

A. Generally

The Processor's performance of its functions under the Plan shall be subject to review by the Operating Committee at least every two years, or from time to time upon the request of any two Participants but not more frequently than once each year. Based on this review, the Operating Committee may choose to make a recommendation to the Participants with respect to the continuing operation of the Processor. The Operating Committee shall notify the SEC of any recommendations the Operating Committee shall make pursuant to the Operating Committee's review of the Processor and shall supply the Commission with a copy of any reports that may be prepared in connection therewith.

B. Termination of the Processor for Cause

If the Operating Committee determines that the Processor has failed to perform its functions in a reasonably acceptable manner in accordance with the provisions of the Plan or that its reimbursable expenses have become excessive and are not justified on a cost basis, the Processor may be terminated at such time as may be determined by a majority vote of the Operating Committee.

C. Factors To Be Considered in Termination for Cause

Among the factors to be considered in evaluating whether the Processor has performed its functions in a reasonably acceptable manner in accordance with the provisions of the Plan shall be the reasonableness of its response to requests from Participants for technological changes or enhancements pursuant to Section IV(C)(3) hereof. The reasonableness of the Processor's response to such requests shall be evaluated by the Operating Committee in terms of the cost to the Processor of purchasing the same service from a third party and integrating such service into the Processor's existing systems and operations as well as the extent to which the requested change would adversely impact the then current technical (as opposed to business or competitive) operations of the Processor.

D. Processor's Right To Appeal Termination for Cause

The Processor shall have the right to appeal to the SEC a determination of the Operating Committee terminating the Processor for cause and no action shall become final until the SEC has ruled on the matter and all legal appeals of right therefrom have been exhausted.

E. Process for Selecting New Processor

At any time following effectiveness of the Plan, but no later than upon the termination of the Processor, whether for cause pursuant to Section IV(C)(1)(c) or V(B) of the Plan or upon the

Processor's resignation, the Operating Committee shall establish procedures for selecting a new Processor (the "Selection Procedures"). The Operating Committee, as part of the process of establishing Selection Procedures, may solicit and consider the timely comment of any entity affected by the operation of this Plan. The Selection Procedures shall be established by a two-thirds majority vote of the Plan Participants, and shall set forth, at a minimum:

1. The entity that will:

(a) draft the Operating Committee's request for proposal for bids on a new processor;

(b) assist the Operating Committee in evaluating bids for the new processor; and

(c) otherwise provide assistance and guidance to the Operating Committee in the selection process.

2. the minimum technical and operational requirements to be fulfilled by the Processor;

3. the criteria to be considered in selecting the Processor; and

4. the entities (other than Plan Participants) that are eligible to comment on the selection of the Processor.

Nothing in this provision shall be interpreted as limiting Participants' rights under Section IV or Section V of the Plan or other Commission order.

VI. Functions of the Processor

A. Generally

The Processor shall collect from the Participants, and consolidate and disseminate to Vendors, Subscribers and News Services, Quotation Information and Transaction Reports in Eligible Securities in a manner designed to assure the prompt, accurate and reliable collection, processing and dissemination of information with respect to all Eligible Securities in a fair and non-discriminatory manner. The Processor shall commence operations upon the Processor's notification to the Participants that it is ready and able to commence such operations.

B. Collection and Consolidation of Information

For as long as Nasdaq is the Processor, the Processor shall be capable of receiving Quotation Information and Transaction Reports in Eligible Securities from Participants by the Plan-approved, Processor sponsored interface, and shall consolidate and disseminate such information via the UTP Quote Data Feed, the UTP Trade Data Feed, and the OTC Montage Data Feed to Vendors, Subscribers and News Services.

C. Dissemination of Information

The Processor shall disseminate consolidated Quotation Information and Transaction Reports in Eligible Securities via the UTP Quote Data Feed, the UTP Trade Data Feed, and the OTC Montage Data Feed to authorized Vendors, Subscribers and News Services in a fair and non-discriminatory manner. The Processor shall specifically be permitted to enter into agreements with Vendors, Subscribers and News Services for the dissemination of quotation or transaction information on Eligible Securities to foreign (non-U.S.) marketplaces or in foreign countries.

The Processor shall, in such instance, disseminate consolidated quotation or transaction information on Eligible Securities from all Participants.

Nothing herein shall be construed so as to prohibit or restrict in any way the right of any Participant to distribute quotation, transaction or other information with respect to Eligible Securities quoted on or traded in its marketplace to a marketplace outside the United States solely for the purpose of supporting an intermarket linkage, or to distribute information within its own marketplace concerning Eligible Securities in accordance with its own format. If a Participant requests, the Processor shall make information about Eligible Securities in the Participant's marketplace available to a foreign marketplace on behalf of the requesting Participant, in which event the cost shall be borne by that Participant.

1. Best Bid and Offer

The Processor shall disseminate on the UTP Quote Data Feed the best bid and offer information supplied by each Participant, including the FINRA Participant(s) that constitute*s* FINRA's single Best Bid and Offer quotations, and shall also calculate and disseminate on the UTP Quote Data Feed a national best bid and asked quotation with size based upon Quotation Information for Eligible Securities received from Participants. The Processor shall not calculate the best bid and offer for any individual Participant, including FINRA.

The Participant responsible for each side of the best bid and asked quotation making up the national best bid and offer shall be identified by an appropriate symbol. If the quotations of more than one Participant shall be the same best price, the largest displayed size among those shall be deemed to be the best. If the quotations of more than one Participant are the same best price and best displayed size, the earliest among those measured by the time reported shall be deemed to be the best. A reduction of only bid size and/or ask size will not change the time priority of a Participant's quote for the purposes of determining time reported, whereas an increase of the bid size and/or ask size will result in a new time reported. The consolidated size shall be the size of the Participant that is at the best.

If the best bid/best offer results in a locked or crossed quotation, the Processor shall forward that locked or crossed quote on the appropriate output lines (i.e., a crossed quote of bid 12, ask 11.87 shall be disseminated). The Processor shall normally cease the calculation of the best bid/best offer after 6:30 p.m., Eastern Time.

2. Quotation Data Streams

The Processor shall disseminate on the UTP Quote Data Feed a data stream of all Quotation Information regarding Eligible Securities received from Participants. Each quotation shall be designated with a symbol identifying the Participant from which the quotation emanates and, in the case of FINRA, the FINRA Participant(s) that constitute*s* FINRA's Best Bid and Offer quotations. In addition, the Processor shall separately distribute on the OTC Montage Data Feed the Quotation Information regarding Eligible Securities from all FINRA Participants from which quotations emanate.

3. Transaction Reports

The Processor shall disseminate on the UTP Trade Data Feed a data stream of all Transaction Reports in Eligible Securities received from Participants. Each transaction report shall be designated with a symbol identifying the Participant in whose Market the transaction took place.

D. Closing Reports

At the conclusion of each trading day, the Processor shall disseminate a "closing price" for each Eligible Security. Such "closing price" shall be the price of the last Transaction Report in such security received prior to dissemination. The Processor shall also tabulate and disseminate at the conclusion of each trading day the aggregate volume reflected by all Transaction Reports in Eligible Securities reported by the Participants.

E. Statistics

The Processor shall maintain quarterly, semi-annual and annual transaction and volume statistical counts. The Processor shall, at cost to the user Participant(s), make such statistics available in a form agreed

upon by the Operating Committee, such as a secure Web site.

F. Capacity Planning

1. The Processor shall provide computer and communications facility capacity in accordance with a capacity planning process set forth in Exhibit 3, which process may be modified by the Operating Committee from time to time, requiring a simple majority vote.

2. The Processor shall establish information barriers to ensure that information revealed by any Plan Participant to the Processor during the capacity planning process is not shared with any other Plan Participant, including Nasdaq, other than information that is aggregated for all Plan Participants.

3. Plan Participants shall cooperate fully in the capacity planning process including complying with all requirements set forth in Exhibit 3.

VII. Administrative Functions of the Processor

Subject to the general direction of the Operating Committee, the Processor shall be responsible for carrying out all administrative functions necessary to the operation and maintenance of the consolidated information collection and dissemination system provided for in this Plan, including, but not limited to, record keeping, billing, contract administration, and the preparation of financial reports.

VIII. Transmission of Information to Processor by Participants

A. Quotation Information

Each Participant shall, during the time it is open for trading be responsible promptly to collect and transmit to the Processor accurate Quotation Information in Eligible Securities through any means prescribed herein.

Quotation Information shall include:

1. identification of the Eligible Security, using the Nasdaq Symbol;

2. the price bid and offered, together with size;

3. the FINRA Participant along with the FINRA Participant's market participant identification or Participant from which the quotation emanates;

4. identification of quotations that are not firm; and

5. through appropriate codes and messages, withdrawals and similar matters.

B. Transaction Reports

Each Participant shall, during the time it is open for trading, be responsible promptly to collect and transmit to the Processor Transaction Reports in Eligible Securities executed in its Market by means prescribed herein. With respect to orders sent by one Market to another Market for execution, each Participant shall adopt procedures governing the reporting of transactions in Eligible Securities specifying that the transaction will be reported by the Participant whose member sold the security. This provision shall apply only to transactions between Participants.

Transaction Reports shall include:

1. Identification of the Eligible Security, using the Nasdaq Symbol;

2. the number of shares in the transaction;

3. the price at which the shares were purchased or sold;

4. the buy/sell/cross indicator;

5. the Market of execution; and,

6. through appropriate codes and messages, late or out-of-sequence trades, corrections and similar matters.

All such Transaction Reports shall be transmitted to the Processor within 90 seconds after the time of execution of the transaction. Transaction Reports transmitted beyond the 90-second period shall be designated as "late" by the appropriate code or message.

The following types of transactions are not required to be reported to the Processor pursuant to the Plan:

1. Transactions that are part of a primary distribution by an issuer or of a registered secondary distribution or of an unregistered secondary distribution;

2. transactions made in reliance on Section 4(2) of the Securities Act of 1933;

3. transactions in which the buyer and the seller have agreed to trade at a price unrelated to the *current market* for the security, e.g., to enable the seller to make a gift;

4. odd-lot transactions;

5. the acquisition of securities by a broker-dealer as principal in anticipation of making an immediate exchange distribution or exchange offering on an exchange;

6. purchases of securities pursuant to a tender offer; and

7. purchases or sales of securities effected upon the exercise of an option pursuant to the terms thereof or the exercise of any other right to acquire securities at a pre-established consideration unrelated to the *current market.*

C. Symbols for Market Identification for Quotation Information and Transaction Reports

The following symbols shall be used to denote the marketplaces:

CODE	PARTICIPANT
A	NYSE Amex LLC.
Z	BATS Exchange, Inc.
B	NASDAQ OMX BX, Inc.
W	Chicago Board Options Exchange, Inc.
M	Chicago Stock Exchange, Inc.
I	International Securities Exchange, LLC.
D	Financial Industry Regulatory Authority, Inc.
Q	Nasdaq Stock Market LLC.
C	National Stock Exchange, Inc.
N	New York Stock Exchange LLC.
P	NYSE Arca, Inc.
X	Nasdaq OMX PHLX, Inc.

D. Whenever a Participant determines that a level of trading activity or other unusual market conditions prevent it from collecting and transmitting Quotation Information or Transaction Reports to the Processor, or where a trading halt or suspension in an Eligible Security is in effect in its Market, the Participant shall promptly notify the Processor of such condition or event and shall resume collecting and transmitting Quotation Information and Transaction Reports to it as soon as the condition or event is terminated. In the event of a system malfunction resulting in the inability of a Participant or its members to transmit Quotation Information or Transaction Reports to the Processor, the Participant shall promptly notify the Processor of such event or condition. Upon receiving such notification, the Processor shall take appropriate action, including either closing the quotation or purging the system of the affected quotations.

IX. Market Access

Pursuant to the requirements of Rule 610 of Regulation NMS, a Participant that operates an SRO trading facility shall provide for fair and efficient order execution access to quotations in each Eligible Security displayed through its trading facility. In the case of a Participant that operates an SRO display-only quotation facility, trading centers posting quotations through such SRO display-only quotation facility must provide for fair and efficient order execution access to quotations in each Eligible Security displayed through the SRO display-only quotation facility. A Participant that operates an SRO trading facility may elect to allow such access to its quotations through the utilization of private electronic linkages between the Participant and other trading centers. In the case of a Participant that operates an SRO display-only quotation facility, trading centers posting

quotations through such SRO display-only quotation facility may elect to allow such access to their quotations through the utilization of private electronic linkages between the trading center and SRO trading facilities of Participants and/or other trading centers.

In accordance with Regulation NMS, a Participant shall not impose, or permit to be imposed, any fee or fees for the execution of an order against a protected quotation of the Participant or of a trading center posting quotes through a Participant's SRO display-only quotation facility in an Eligible Security or against any other quotation displayed by the Participant in an Eligible Security that is the Participant's displayed best bid or offer for that Eligible Security, where such fee or fees exceed the limits provided for in Rule 610(c) of Regulation NMS. As required under Regulation NMS, the terms of access to a Participant's quotations or of a trading center posting quotes through a Participant's SRO display-only quotation facility in an Eligible Security may not be unfairly discriminatory so as to prevent or inhibit any person from obtaining efficient access to such displayed quotations through a member of the Participant or a subscriber of a trading center.

X. Regulatory Halts

A. Whenever, in the exercise of its regulatory functions, the Listing Market for an Eligible Security determines that a Regulatory Halt is appropriate pursuant to Section III.S, the Listing Market will notify all other Participants pursuant to Section X.E and all other Participants shall also halt or suspend trading in that security until notified that the halt or suspension is no longer in effect. The Listing Market shall immediately notify the Processor of such Regulatory Halt as well as provide notice that a Regulatory Halt has been lifted. The Processor, in turn, shall disseminate to Participants notice of the Regulatory Halt (as well as notice of the lifting of a *Regulatory Halt* through the UTP Quote Data Feed. This notice shall serve as official notice of a *Regulatory Halt* for purposes of the Plan only, and shall not substitute or otherwise supplant notice that a Participant may recognize or require under its own rules. Nothing in this provision shall be read so as to supplant or be inconsistent with a Participant's own rules on trade halts, which rules apply to the Participant's own members. The Processor will reject any quotation information or transaction reports received from any Participant on an Eligible Security that has a Regulatory Halt in effect.

B. Whenever the Listing Market determines that adequate publication or dissemination of information has occurred so as to permit the termination of the Regulatory Halt then in effect, the Listing Market shall promptly notify the Processor and each of the other Participants that conducts trading in such security pursuant to Section X.F. Except in extraordinary circumstances, adequate publication or dissemination shall be presumed by the Listing Market to have occurred upon the expiration of one hour after initial publication in a national news dissemination service of the information that gave rise to the Regulatory Halt.

C. Except in the case of a Regulatory Halt, the Processor shall not cease the dissemination of quotation or transaction information regarding any Eligible Security. In particular, it shall not cease dissemination of such information because of a delayed opening, imbalance of orders or other market-related problems involving such security. During a Regulatory Halt, the Processor shall collect and disseminate Transaction Information but shall cease collection and dissemination of all Quotation Information.

D. For purposes of this Section X, "Listing Market" for an Eligible Security means the Participant's Market on which the Eligible Security is listed. If an Eligible Security is dually listed, Listing Market shall mean the Participant's Market on which the Eligible Security is listed that also has the highest number of the average of the reported transactions and reported share volume for the preceding 12-month period. The Listing Market for dually-listed Eligible Securities shall be determined at the beginning of each calendar quarter.

E. For purposes of coordinating trading halts in Eligible Securities, all Participants are required to utilize the national market system communication media ("Hoot-n-Holler") to provide real-time information to all Participants. Each Participant shall be required to continuously monitor the Hoot-n-Holler system during market hours, and the failure of a Participant to do so at any time shall not prevent the Listing Market from initiating a Regulatory Halt in accordance with the procedures specified herein.

1. The following procedures shall be followed when one or more Participants experiences extraordinary market activity in an Eligible Security that is believed to be caused by the misuse or malfunction of systems operated by or linked to one or more Participants.

a. The Participant(s) experiencing the extraordinary market activity or any Participant that becomes aware of extraordinary market activity will immediately use best efforts to notify all Participants of the extraordinary market activity utilizing the Hoot-n-Holler system.

b. The Listing Market will use best efforts to determine whether there is material news regarding the Eligible Security. If the Listing Market determines that there is undisclosed material news, it will immediately call a Regulatory Halt pursuant to Section X.E.2.

c. Each Participant(s) will use best efforts to determine whether one of its systems, or the system of a direct or indirect participant in its market, is responsible for the extraordinary market activity.

d. If a Participant determines the potential source of extraordinary market activity pursuant to Section X.1.c., the Participant will use best efforts to determine whether removing the quotations of one or more direct or indirect market participants or barring one or more direct or indirect market participants from entering orders will resolve the extraordinary market activity. Accordingly, the Participant will prevent the quotations from one or more direct or indirect market participants in the affected Eligible Securities from being transmitted to the Processor.

e. If the procedures described in Section X.E.1.a.–d. do not rectify the situation, the Participant(s) experiencing extraordinary market activity will cease transmitting all quotations in the affected Eligible Securities to the Processor.

f. If the procedures described in Section X.E.1.a–e do not rectify the situation within five minutes of the first notification through the Hoot-n-Holler system, or if Participants agree to call a halt sooner through unanimous approval among those Participants actively trading impacted Eligible Securities, the Listing Market may determine based on the facts and circumstances, including available input from Participants, to declare an Extraordinary Market Regulatory Halt in the affected Eligible Securities. Simultaneously with the notification of the Processor to suspend the dissemination of quotations across all Participants, the Listing Market must notify all Participants of the trading halt utilizing the Hoot-n-Holler system.

g. Absent any evidence of system misuse or malfunction, best efforts will be used to ensure that trading is not halted across all Participants.

2. If the Listing Market declares a Regulatory Halt in circumstances other

than pursuant to Section X.E.1.f., the Listing Market must, simultaneously with the notification of the Processor to suspend the dissemination of quotations across all Participants, notify all Participants of the trading halt utilizing the Hoot-n-Holler system.

F. If the Listing Market declares a Regulatory Halt, trading will resume according to the following procedures:

1. Within 15 minutes of the declaration of the halt, all Participants will make best efforts to indicate via the Hoot-n-Holler their intentions with respect to canceling or modifying transactions.

2. All Participants will disseminate to their members information regarding the canceled or modified transactions as promptly as possible, and in any event prior to the resumption of trading.

3. After all Participants have met the requirements of Section X.F.1–2, the Listing Market will notify the Participants utilizing the Hoot-n-Holler and the Processor when trading may resume. Upon receiving this information, Participants may commence trading pursuant to Section X.A.

XI. Hours of Operation

A. Quotation Information may be entered by Participants as to all Eligible Securities in which they make a market between 9:30 a.m. and 4 p.m. Eastern Time ("ET") on all days the Processor is in operation. Transaction Reports shall be entered between 9:30 a.m. and 4:01:30 p.m. ET by Participants as to all Eligible Securities in which they execute transactions between 9:30 a.m. and 4 p.m. ET on all days the Processor is in operation.

B. Participants that execute transactions in Eligible Securities outside the hours of 9:30 a.m. ET and 4 p.m. ET, shall report such transactions as follows:

(i) transactions in Eligible Securities executed between 4 a.m. and 9:29:59 a.m. ET and between 4:01 p.m. and 8 p.m. ET, shall be designated as ".T" trades to denote their execution outside normal market hours;

(ii) transactions in Eligible Securities executed after 8 p.m. and before 12 a.m. (midnight) shall be reported to the Processor between the hours of 4 a.m. and 8 p.m. ET on the next business day (T+1), and shall be designated "as/of" trades to denote their execution on a prior day, and be accompanied by the time of execution;

(iii) transactions in Eligible Securities executed between 12 a.m. (midnight) and 4 a.m. ET shall be transmitted to the Processor between 4 a.m. and 9:30 a.m. ET, on trade date, shall be designated as ".T" trades to denote their execution outside normal market hours, and shall be accompanied by the time of execution;

(iv) transactions reported pursuant to this provision of the Plan shall be included in the calculation of total trade volume for purposes of determining net distributable operating revenue, but shall not be included in the calculation of the daily high, low, or last sale.

C. Late trades shall be reported in accordance with the rules of the Participant in whose Market the transaction occurred and can be reported between the hours of 4 a.m. and 8 p.m.

D. The Processor shall collect, process and disseminate Quotation Information in Eligible Securities at other times between 4 a.m. and 9:30 a.m. ET, and after 4 p.m. ET, when any Participant or FINRA Participant is open for trading, until 8 p.m. ET (the "Additional Period"); provided, however, that the national best bid and offer quotation will not be disseminated before 4 a.m. or after 8 p.m. ET. Participants that enter Quotation Information or submit Transaction Reports to the Processor during the Additional Period shall do so for all Eligible Securities in which they enter quotations.

XII. Undertaking by All Participants

The filing with and approval by the Commission of this Plan shall obligate each Participant to enforce compliance by its members with the provisions thereof. In all other respects not inconsistent herewith, the rules of each Participant shall apply to the actions of its members in effecting, reporting, honoring and settling transactions executed through its facilities, and the entry, maintenance and firmness of quotations to ensure that such occurs in a manner consistent with just and equitable principles of trade.

XIII. Financial Matters

A. Development Costs

Any Participant becoming a signatory to this Plan after June 26, 1990, shall, as a condition to becoming a Participant, pay to the other Plan Participants a proportionate share of the aggregate development costs previously paid by Plan Participants to the Processor, which aggregate development costs totaled $439,530, with the result that each Participant's share of all development costs is the same.

Each Participant shall bear the cost of implementation of any technical enhancements to the Nasdaq System made at its request and solely for its use, subject to reapportionment should any other Participant subsequently make use of the enhancement, or the development thereof.

B. Cost Allocation, Revenue Sharing, and Fees

The provisions governing cost allocation and revenue sharing among the Participants are set forth in Exhibit 1 to the Plan. The provisions governing fees applicable to Quotation Information and Transaction Reports disseminated pursuant to the Plan are set forth in Exhibit 2 to the Plan.

C. Maintenance of Financial Records

The Processor shall maintain records of revenues generated and development and operating expenditures incurred in connection with the Plan. In addition, the Processor shall provide the Participants with: (a) A statement of financial and operational condition on a quarterly basis; and (b) an audited statement of financial and operational condition on an annual basis.

XIV. Indemnification

Each Participant agrees, severally and not jointly, to indemnify and hold harmless each other Participant, Nasdaq *(in its capacity as Processor),* and each of its directors, officers, employees and agents (including the Operating Committee and its employees and agents) from and against any and all loss, liability, claim, damage and expense whatsoever incurred or threatened against such persons as a result of any Transaction Reports, Quotation Information or other information reported to the Processor by such Participant and disseminated by the Processor to Vendors. This indemnity agreement shall be in addition to any liability that the indemnifying Participant may otherwise have.

Promptly after receipt by an indemnified Participant of notice of the commencement of any action, such indemnified Participant will, if a claim in respect thereof is to be made against an indemnifying Participant, notify the indemnifying Participant in writing of the commencement thereof; but the omission to so notify the indemnifying Participant will not relieve the indemnifying Participant from any liability which it may have to any indemnified Participant. In case any such action is brought against any indemnified Participant and it promptly notifies an indemnifying Participant of the commencement thereof, the indemnifying Participant will be entitled to participate in, and, to the extent that it may wish, jointly with any other indemnifying Participant similarly

notified, to assume and control the defense thereof with counsel chosen by it. After notice from the indemnifying Participant of its election to assume the defense thereof, the indemnifying Participant will not be liable to such indemnified Participant for any legal or other expenses subsequently incurred by such indemnified Participant in connection with the defense thereof but the indemnified Participant may, at its own expense, participate in such defense by counsel chosen by it without, however, impairing the indemnifying Participant's control of the defense. The indemnifying Participant may negotiate a compromise or settlement of any such action, provided that such compromise or settlement does not require a contribution by the indemnified Participant.

XV. Withdrawal

Any Participant may withdraw from the Plan at any time on not less than 30 days prior written notice to each of the other Participants. Any Participant withdrawing from the Plan shall remain liable for, and shall pay upon demand, any fees for equipment or services being provided to such Participant pursuant to the contract executed by it or an agreement or schedule of fees covering such then in effect.

A withdrawing Participant shall also remain liable for its proportionate share, without any right of recovery, of administrative and operating expenses, including start-up costs and other sums for which it may be responsible pursuant to Section XIV hereof. Except as aforesaid, a withdrawing Participant shall have no further obligation under the Plan or to any of the other Participants with respect to the period following the effectiveness of its withdrawal.

XVI. Modifications to the Plan

The Plan may be modified from time to time when authorized by the agreement of all of the Participants, subject to the approval of the SEC or when such modification otherwise becomes effective pursuant to Section 11A of the Exchange Act and Rule 608 of Regulation NMS.

XVII. Applicability of Securities Exchange Act of 1934

The rights and obligations of the Participants and of Vendors, News Services, Subscribers and other persons contracting with Participant in respect of the matters covered by the Plan shall at all times be subject to any applicable provisions of the Exchange Act and any rules and regulations promulgated thereunder.

XVIII. Operational Issues

A. Each Participant shall be responsible for collecting and validating quotes and last sale reports within its own system prior to transmitting this data to the Processor.

B. Each Participant may utilize a dedicated Participant line into the Processor to transmit trade and quote information in Eligible Securities to the Processor. The Processor shall accept from Exchange Participants input for only those issues that are deemed Eligible Securities.

C. The Processor shall consolidate trade and quote information from each Participant and disseminate this information on the Processor's existing vendor lines.

D. The Processor shall perform gross validation processing for quotes and last sale messages in addition to the collection and dissemination functions, as follows:

1. Basic Message Validation

(a) The Processor may validate format for each type of message, and reject nonconforming messages.

(b) Input must be for an Eligible Security.

2. Logging Function—The Processor shall return all Participant input messages that do not pass the validation checks (described above) to the inputting Participant, on the entering Participant line, with an appropriate reject notation. For all accepted Participant input messages (i.e., those that pass the validation check), the information shall be retained in the Processor system.

XIX. Headings

The section and other headings contained in this Plan are for reference purposes only and shall not be deemed to be a part of this Plan or to affect the meaning or interpretation of any provisions of this Plan.

XX. Counterparts

This Plan may be executed by the Participants in any number of counterparts, no one of which need contain the signature of all Participants. As many such counterparts as shall together contain all such signatures shall constitute one and the same instrument.

IN WITNESS WHEREOF, this Plan has been executed as of the __ day of ______, 2010, by each of the Signatories hereto.

NYSE AMEX LLC
BY: ______________________

NASDAQ OMX BX, INC.
BY: ______________________

CHICAGO BOARD OPTIONS EXCHANGE, INC.
BY: ______________________

EDGX EXCHANGE, INC.
BY: ______________________

INTERNATIONAL SECURITIES EXCHANGE, LLC
BY: ______________________

NEW YORK STOCK EXCHANGE LLC
BY: ______________________

NASDAQ OMX PHLX, INC.
BY: ______________________

BATS EXCHANGE, INC.
BY: ______________________

CHICAGO STOCK EXCHANGE, INC.
BY: ______________________

EDGA EXCHANGE, INC.
BY: ______________________

FINRA
BY: ______________________

NATIONAL STOCK EXCHANGE, INC.
BY: ______________________

NYSE ARCA, INC.
BY: ______________________

THE NASDAQ STOCK MARKET LLC
BY: ______________________

Exhibit 1

1. Each Participant eligible to receive revenue under the Plan will receive an annual payment for each calendar year that is equal to the sum of the Participant's Trading Shares and Quoting Shares, as defined below, in each Eligible Security for the calendar year. In the event that total net distributable operating income (as defined below) is negative, each Participant eligible to receive revenue under the Plan will receive an annual bill for each calendar year to be determined according to the same formula (described in this paragraph) for determining annual payments to eligible Participants. Unless otherwise stated in this agreement, a year shall run from January 1 to December 31 and quarters shall end on March 31, June 30, September 30, and December 31. Processor shall endeavor to provide Participants with written estimates of each Participant's percentage of total volume within five business days of month end.

2. Security Income Allocation. The Security Income Allocation for an Eligible Security shall be determined by multiplying (i) the "net distributable operating income" of this Nasdaq UTP Plan for the calendar year by (ii) the Volume Percentage for such Eligible Security (the "initial allocation"), and then adding or subtracting any amounts specified in the reallocation set forth below. The Volume Percentage for an

Eligible Security shall be determined by dividing (A) the square root of the dollar volume of transaction reports disseminated by the Processor in such Eligible Security during the calendar year by (B) the sum of the square roots of the dollar volume of transaction reports disseminated by the Processor in each Eligible Security during the calendar year. If the initial allocation of net distributable operating income in accordance with the Volume Percentage of an Eligible Security equals an amount greater than $4.00 multiplied by the total number of qualified transaction reports in such Eligible Security during the calendar year, the excess amount shall be subtracted from the initial allocation for such Eligible Security and reallocated among all Eligible Securities in direct proportion to the dollar volume of transaction reports disseminated by the Processor in Eligible Securities during the calendar year. A transaction report with a dollar volume of $5000 or more shall constitute one qualified transaction report. A transaction report with a dollar volume of less than $5000 shall constitute a fraction of a qualified transaction report that equals the dollar volume of the transaction report divided by $5000.

3. Trading Share. The Trading Share of a Participant in an Eligible Security shall be determined by multiplying (i) an amount equal to fifty percent of the Security Income Allocation for the Eligible Security by (ii) the Participant's Trade Rating in the Eligible Security. A Participant's Trade Rating in an Eligible Security shall be determined by taking the average of (A) the Participant's percentage of the total dollar volume of transaction reports disseminated by the Processor in the Eligible Security during the calendar year, and (B) the 25 Participant's percentage of the total number of qualified transaction reports disseminated by the Processor in the Eligible Security during the calendar year.

4. Quoting Share. The Quoting Share of a Participant in an Eligible Security shall be determined by multiplying (A) an amount equal to fifty percent of the Security Income Allocation for the Eligible Security by (B) the Participant's Quote Rating in the Eligible Security. A Participant's Quote Rating in an Eligible Security shall be determined by dividing (A) the sum of the Quote Credits earned by the Participant in such Eligible Security during the calendar year by (B) the sum of the Quote Credits earned by all Participants in such Eligible Security during the calendar year. A Participant shall earn one Quote Credit for each second of time (with a minimum of one full second) multiplied by dollar value of size that an automated best bid (offer) transmitted by the Participant to the Processor during regular trading hours is equal to the price of the national best bid (offer) in the Eligible Security and does not lock or cross a previously displayed automated quotation. An automated bid (offer) shall have the meaning specified in Rule 600 of Regulation NMS of the Act for an "automated quotation." The dollar value of size of a quote shall be determined by multiplying the price of a quote by its size.

5. For purposes of this Exhibit 1, net distributable operating income for any particular calendar year shall be calculated by adding all revenues from the UTP Quote Data Feed, the UTP Trade Data Feed, and the OTC Montage Data Feed including revenues from the dissemination of information respecting Eligible Securities to foreign marketplaces, and also including FINRA quotation data and last sale information for securities classified as OTC Equity Securities under FINRA's Rule 6400 Series (the "FINRA OTC Data") (collectively, "the Data Feeds"), and subtracting from such revenues 6.25% to compensate FINRA for the FINRA OTC Data, after which are subtracted the costs incurred by the Processor, set forth below, in collecting, consolidating, validating, generating, and disseminating the Data Feeds. These costs include,[5] but are not limited to, the following:

a. The Processor costs directly attributable to creating OTC Montage Data Feed, including:

1. cost of collecting Participant quotes into the Processor's quote engine;

2. cost of processing quotes and creating OTC Montage Data Feed messages within the Processor's quote engine;

3. cost of the Processor's communication management subsystem that distributes OTC Montage Data Feed to the market data vendor network for further distribution.

b. The costs directly attributable to creating the UTP Quote Data Feed, including:

1. the costs of collecting each Participant's best bid, best offer, and aggregate volume into the Processor's quote engine and, in the case of FINRA, the costs of identifying the FINRA Participant(s) that constitute FINRA's Best Bid and Offer quotations;

2. cost of calculating the national best bid and offer price within the Processor's quote engine;

3. cost of creating the UTP Quote Data Feed message within the Processor's quote engine;

4. cost of the Processor's communication management subsystem that distributes the UTP Quote Data Feed to the market data vendors' networks for further distribution.

c. The costs directly attributable to creating the UTP Trade Data Feed, including:

1. the costs of collecting each Participant's last sale and volume amount into the Processor's quote engine;

2. cost of determining the appropriate last sale price and volume amount within the Processor's trade engine;

3. cost of utilizing the Processor's trade engine to distribute the UTP Trade Data Feed for distribution to the market data vendors;

4. cost of the Processor's communication management subsystem that distributes the UTP Trade Data Feed to the marker data vendors' networks for further distribution.

d. The additional costs that are shared across all Data Feeds, including:

1. telecommunication Operations costs of supporting the Participant lines into the Processor's facilities;

2. Telecommunications Operations costs of supporting the external market data vendor network;

3. Data Products account management and auditing function with the market data vendors;

4. Market Operations costs to support symbol maintenance, and other data integrity issues;

5. overhead costs, including management support of the Processor, Human Resources, Finance, Legal, and Administrative Services; and

6. Costs of establishing and supporting the Security Income Allocation System.

e. Processor costs excluded from the calculation of net distributable operating income include trade execution costs for transactions executed using a Nasdaq service and trade report collection costs reported through a Nasdaq service, as such services are market functions for which Participants electing to use such services pay market rate.

f. For the purposes of this provision, the following definitions shall apply:

[5] All costs associated with collecting, consolidating, validating, generating, and disseminating the FINRA OTC Data are borne directly by FINRA and not the Plan and the Participants. Such costs are established in and subject to a separate bilateral contractual agreement between FINRA and the Processor (acting as FINRA's vendor in this capacity). The Processor is responsible for insuring that no costs associated with the FINRA OTC Data are incorporated with the costs incurred by the Processor on behalf of the UTP Plan.

1. "quote engine" shall mean the Nasdaq's NT or Tandem system that is operated by Nasdaq to collect quotation information for Eligible Securities;

2. "trade engine" shall mean the Nasdaq Tandem system that is operated by Nasdaq for the purpose of collecting last sale information in Eligible Securities.

6. At the time a Participant implements a Processor-approved electronic interface with the Processor, the Participant will become eligible to receive revenue.

7. Processor shall endeavor to provide Participants with written estimates of each Participant's quarterly net distributable operating income within 45 calendar days of the end of the quarter, and estimated quarterly payments or billings shall be made on the basis of such estimates. All quarterly payments or billings shall be made to each eligible Participant within 45 days following the end of each calendar quarter in which the Participant is eligible to receive revenue, provided that each quarterly payment or billing shall be reconciled against a Participant's cumulative year-to-date payment or billing received to date and adjusted accordingly, and further provided that the total of such estimated payments or billings shall be reconciled at the end of each calendar year and, if necessary, adjusted by March 31st of the following year. Interest shall be included in quarterly payments and in adjusted payments made on March 31st of the following year. Such interest shall accrue monthly during the period in which revenue was earned and not yet paid and will be based on the 90-day Treasury bill rate in effect at the end of the quarter in which the payment is made. Monthly interest shall start accruing 45 days following the month in which it is earned and accrue until the date on which the payment is made.

In conjunction with calculating estimated quarterly and reconciled annual payments under this Exhibit 1, the Processor shall submit to the Participants a quarterly itemized statement setting forth the basis upon which net operating income was calculated, including a quarterly itemized statement of the Processor costs set forth in Paragraph 3 of this Exhibit. Such Processor costs and Plan revenues shall be adjusted annually based solely on the Processor's quarterly itemized statement audited pursuant to Processor's annual audit. Processor shall pay or bill Participants for the audit adjustments within thirty days of completion of the annual audit. By majority vote of the Operating Committee, the Processor shall engage an independent auditor to audit the Processor's costs or other calculation(s), the cost of which audit shall be shared equally by all Participants. The Processor agrees to cooperate fully in providing the information necessary to complete such audit.

Exhibit 2

Fees for UTP Services

(a) Level 1 Service

The charge for each interrogation device receiving UTP Level 1 Service is $20.00 per month. This Service includes the following data:

(1) Inside bid/ask quotations calculated for securities listed in The Nasdaq Stock Market;

(2) Last sale information on Nasdaq-listed securities.

UTP Level 1 Service also includes FINRA OTC Data.

(b) Non-Professional Services

(1) The charge for distribution of UTP Level 1 Service to a non-professional subscriber shall be $1.00 per interrogation device per month.

(2) A "non-professional" is a natural person who is neither:

(A) Registered or qualified in any capacity with the Commission, the Commodities Futures Trading Commission, any state securities agency, any securities exchange or association or any commodities or futures contract market or association;

(B) Engaged as an "investment adviser" as that term is defined in Section 202(a)(11) of the Investment Advisors Act of 1940 (whether or not registered or qualified under that Act); nor

(C) Employed by a bank or other organization exempt from registration under federal or state securities laws to perform functions that would require registration or qualification if such functions were performed for an organization not so exempt.

(c) Automated Voice Response Service Fee

The monthly charge for distribution of UTP Level 1 Service through automated voice response services shall be $21.25 for each voice port.

(d) Per Query Fee

The charge for distribution of UTP Level 1 Service through a per query system shall be $.005 per query.

(e) Cable Television Ticker Fee

The monthly charge for distribution of UTP Level 1 Service through a cable television distribution system shall be as set forth below:

First 10 million Subscriber Households.	$2.00 per 1,000 households.
Next 10 million Subscriber Households.	1.00 per 1,000 households.
For Subsequent Subscriber Households.	0.50 per 1,000 households.

(f) Annual Administrative Fees

The annual administrative fee to be paid by distributor for access to UTP Level 1 Service shall be as set forth below:

Delayed distributor	$250
0–999 real-time terminals	500
1,000–4,999 real-time terminals	1,250
5,000–9,999 real-time terminals	2,250
10,000+ real-time terminals	3,750

Exhibit 3

UTP Capacity Planning Process

This document sets forth a capacity planning process for the Processor and includes certain procedures to facilitate that process. The capacity planning process will be done on a semi-annual basis and will cover the then current six-month period and each of the next two six-month periods, with each six-month period commencing on January 1st and July 1st, as appropriate (referred to collectively as the "Capacity Planning Period"), provided however that, notwithstanding the foregoing, the first Capacity Planning Period shall cover the then current six-month period and each of the next two six-month periods.

All information specified in this document that is required to be submitted by each of the Participants to the Processor, by the Processor to each of the Participants, and by the Operating Committee to the Processor, shall be submitted within the time frames set forth in the capacity planning process calendar attached hereto as Attachment 1, which may be modified from time to time by the Operating Committee.

Projected Processor Capacity Requirements

Each Participant's "Projected Processor Capacity Requirements" shall consist of the following two components:

1. The projected peak quote/trade messages per second for such Participant calculated on a 5-second peak (the "Projected Peak 5-second MPS"); and

2. The projected peak total quote/trade transactions per day for such Participant.

Each Participant's projected requirements for both of these components shall include whatever buffer factor the Participant deems adequate for its needs and shall reflect the Participant's anticipated requirements as of the beginning of each

six-month period in the applicable Capacity Planning Period.

Each Participant shall submit to the Processor in writing, which may include email, an "initial" set of Projected Processor Capacity Requirements as of the beginning of each six-month period in the applicable Capacity Planning Period. Once the Processor receives the initial Projected Processor Capacity Requirements from all the Participants, the Processor will aggregate both components—the Projected Peak 5-second MPS and the projected peak total transactions per day—to determine the initial Projected Processor Capacity Requirements for all Participants. The Processor will notify each Participant in writing, which may include email, of (a) the aggregate initial Projected Processor Capacity Requirements; and (b) the percentage of the aggregate initial Projected Peak 5-second MPS that is attributable to such Participant.

Once each Participant receives the foregoing information, each such Participant shall submit to the Processor in writing, which may include email, its final Projected Processor Capacity Requirements. The Processor will then notify each Participant in writing, which may include email, of: (a) The aggregate final Projected Processor Capacity Requirements; and (b) the percentage of the aggregate final Projected Peak 5-second MPS that is attributable to such Participant.

The Processor will not disclose to any Participant the initial or final individual capacity projections of any other Participant or the percentage of the Peak 5-second MPS attributable to any other Participant.

In the event that a Participant fails to notify the Processor of its final Projected Processor Capacity Requirements within the required time frame, then such Participant's final Projected Processor Capacity Requirements for: (a) Each six-month period for which the required notice was not given on a timely basis shall be deemed to be the same as that for the latest six-month period covered by the Participant's most recent final Projected Processor Capacity Requirements provided to the Processor within the required time frame; and (b) each six-month period for which the required notice was previously given on a timely basis shall remain the same.

Processor System Capacity Changes

The Processor shall, on a semi-annual basis, determine and inform each Participant in writing, which may include email, of the total amount of the then-current system capacity available for each of the two capacity components—the Peak 5-second MPS and the peak total transactions per day (referred to as "Total System Capacity").

The Projected Processor Capacity Requirements for all Participants shall be referred to as the "Base Capacity." The amount, if any, by which Total System Capacity exceeds Base Capacity, shall be referred to as "Excess Capacity." The amount, if any, by which Total System Capacity is less than the Base Capacity shall be referred to as "Deficit Capacity." At the time that the Processor notifies each Participant of the initial and final aggregate Projected Processor Capacity Requirements, the Processor shall also determine, based on such initial and final capacity projections, respectively, and inform each Participant in writing, which may include email, of, the amount of any projected Excess Capacity and/or any projected Deficit Capacity at the beginning of each six-month period in the applicable Capacity Planning Period.

On a semi-annual basis, the Operating Committee shall determine and advise the Processor in writing, which may include email, of any changes (i.e., increases or decreases) that it proposes be made to the Total System Capacity, including any required ancillary systems and network capacity changes ("System Capacity Changes"); provided, however, that any System Capacity Changes must result in the Total System Capacity meeting or exceeding Base Capacity. The Processor will develop a written proposal for System Capacity Changes and submit it to the Operating Committee, which proposal will include the timeframe and estimated costs for implementing the System Capacity Changes. If the Processor's proposal is accepted, such acceptance will be set forth in the minutes of the applicable Operating Committee meeting. The Processor will then implement such System Capacity Changes. Such System Capacity Changes implemented by the Processor may, in the Processor's discretion reasonably exercised and with the prior approval of the Operating Committee, result in creating some additional amount of Excess Capacity.

Emergency Capacity Planning Process

In addition to the semi-annual capacity planning process described above, the Processor may recommend to the Operating Committee emergency planning cycles ("EPC") as may be reasonably necessary. The Processor shall submit a recommendation to the Operating Committee detailing the EPC request and required timeframe for response, via e-mail. The Operating Committee, at an emergency meeting if necessary, shall determine whether to approve the request.

Payment For Services

Each Participant's "Proportionate Share" shall be the percentage of the final Projected Peak 5-second MPS for all Participants that is attributable to such Participant. A Participant's Proportionate Share shall remain in effect until the next System Capacity Change is implemented, provided, however, that such Proportionate Share may change from time to time in accordance with the provisions set forth in the following two Sections of this Exhibit. The cost for such services shall be such Participant's Proportionate Share of the cost of the services rendered by the Processor to all Participants, unless otherwise agreed to by the Processor and the Operating Committee. Each Participant shall be entitled to use its Proportionate Share of the Base Capacity and the Excess Capacity, if any, at no additional cost. If, however, the report(s) generated by the Processor setting forth daily system activity for Participants shows that a Participant's actual Peak 5-second MPS exceeds such Participant's Proportionate Share of the Base Capacity and the Excess Capacity, if any (e.g., via dynamic throttling), such Participant may be required, in accordance with the provisions set forth in Attachment 2, which may be modified from time to time by the Operating Committee, to: (a) Pay a penalty to the Processor in the amount set forth in Attachment 2; and (b) increase its capacity projections in the next Capacity Planning Period to reflect at least such actual Peak 5-second MPS. Any such penalty shall be divided and distributed to each of the other Participants in accordance with their Proportionate Shares.

Purchase Of Capacity

Without limiting the generality of the foregoing, a Participant may increase its Proportionate Share of the Base Capacity by purchasing all or a portion of the "Available Base Capacity" (as such term is defined in Item 1, below) and/or Excess Capacity, if any (collectively with "Available Base Capacity," hereinafter referred to as "Capacity"), subject to the following:

1. A Participant wishing to purchase Capacity shall advise the Processor in writing of the amount of Capacity (expressed as UTP 5-second MPS) it wishes to purchase. A Participant shall only be entitled to purchase Capacity (and such request shall only be filled) if, and to the extent that:

a. There are any currently outstanding unfilled request(s) from other

Participant(s) to decrease Base Capacity (referred to as "Available Base Capacity"); and/or

b. There is Excess Capacity.

Furthermore, all requests to purchase Capacity shall be filled first through any Available Base Capacity, and second through any Excess Capacity. All Participant requests to purchase Capacity shall be filled on a "first come, first served" basis.

2. Within two (2) trading days of receipt of such notice, the Processor shall confirm the request directly with such Participant. The Processor shall fill the request if, and to the extent that, there is sufficient Available Base Capacity and/or Excess Capacity. The Processor shall then notify all Participants in writing of:

a. The amount of Available Base Capacity and/or Excess Capacity that remains, if any; and/or

b. The amount by which any Participant request(s) to increase Capacity remains unfilled.

3. A Participant's request to increase Capacity shall remain outstanding until filled, or cancelled by such Participant, or the next System Capacity Change, whichever occurs first. Whenever a request is cancelled, the Processor shall then notify all Participants in writing whether, and the extent to which, any Participant request(s) to increase Capacity remain in effect.

4. The Processor will not disclose to any other Participant the Participant(s) that have requested purchasing, and/or that have purchased, Capacity.

5. Whenever a Participant purchases Available Base Capacity such Participant's Proportionate Share of the Base Capacity shall be increased accordingly, effective on the first trading day that the Processor implements the requisite technical changes to reflect the changes in such Participant's Base Capacity. As of such date, the costs associated, for that Participant, shall be increased to the extent of the resulting increase in that Participant's Proportionate Share. The Processor shall notify such Participant of its new Proportionate Share and the effective date of such change.

6. Whenever a Participant purchases a portion (or all) of the Excess Capacity, such Participant's Proportionate Share of the Base Capacity shall be increased accordingly, effective on the first trading day that the Processor implements the requisite technical changes to reflect the changes in such Participant's Base Capacity. As of such date:

a. The costs allocated to that Participant shall be increased to the extent of the resulting increase in that Participant's Proportionate Share; and

b. There shall be a corresponding reduction in:

i. Each of the other Participants' Proportionate Share of the Base Capacity; and

ii. The costs allocated to the other Participants shall be decreased, to the extent of the resulting decrease in each such Participant's Proportionate Share. The Processor shall notify each Participant of its new Proportionate Share and the effective date of such change.

Reduction of Base Capacity

Without limiting the generality of the foregoing, a Participant may be entitled to decrease its Proportionate Share by reducing its Base Capacity, subject to the following:

1. A Participant wishing to reduce its Base Capacity shall advise the Processor in writing of the amount of its Base Capacity it wishes to decrease (which decrease shall be expressed as UTP 5-second MPS). A Participant shall only be entitled to decrease its Base Capacity (and such request shall only be filled) if, and to the extent that, there are any currently outstanding unfilled requests from other Participant(s) to increase Capacity. All Participant requests to decrease Base Capacity shall be filled on a "first come, first served" basis.

2. Within two (2) trading days of receipt of such notice, the Processor shall confirm the request directly with such Participant. The Processor shall fill the request if, and to the extent that, there are any currently outstanding unfilled requests from other Participant(s) to increase Capacity. The Processor shall then notify all Participants in writing of:

a. The amount of Available Base Capacity that remains, if any; and/or

b. The amount by which any Participant request(s) to decrease Base Capacity remain unfilled.

3. A Participant's request to decrease Base Capacity shall remain outstanding until filled, or cancelled by such Participant, or the next System Capacity Change, whichever occurs first. Whenever a request is cancelled, the Processor shall then notify all Participants in writing whether, and the extent to which, any Participant request(s) to decrease Base Capacity remain in effect.

4. The Processor will not disclose to any other Participant the Participant(s) that have requested decreasing, and/or that have decreased, Base Capacity.

Whenever a Participant reduces its Base Capacity pursuant to this Section, such Participant's Proportionate Share of the Base Capacity shall be decreased accordingly, effective on the first trading day that the Processor implements the requisite technical changes to reflect the changes in such Participant's Base Capacity. As of such date, the costs associated, for that Participant, shall be decreased to the extent of the resulting decrease in that Participant's Proportionate Share. The Processor shall notify such Participant of its new Proportionate Share and the effective date of such change.

ATTACHMENT 1

PROCESSOR CAPACITY PLANNING PROCESS CALENDAR

[Approximately 3.5 Calendar Months]

Step No.	Description	Duration (trading days)	Start date	End date
1	The Processor requests initial capacity projections from Participants via email.	1	1st trading day in 3rd month of applicable Capacity Planning Period.	1st trading day in 3rd month of applicable Capacity Planning Period.
2	Participants submit initial capacity projections to the Processor via email.	10		

PROCESSOR CAPACITY PLANNING PROCESS CALENDAR—Continued

[Approximately 3.5 Calendar Months]

Step No.	Description	Duration (trading days)	Start date	End date
3	The Processor advises each Participant of initial capacity projections for all Participants, current system capacity, and any projected Excess and/or Deficit Capacity, via email.	5		
4	Participants submit final capacity projections to the Processor via email.	15		
5	The Processor advises each Participant of final capacity projections for all Participants, current system capacity, and any projected Excess and/or Deficit Capacity, via email.	5		
6	At a meeting of the Operating Committee at which the Processor is present, the Operating Committee will determine and then advise the Processor in writing (i.e., by minutes of such meeting) of any System Capacity Changes.	5		
7	The Processor submits a proposal to the Operating Committee for System Capacity Changes, including estimated timeframes and costs for implementing them, via e-mail. The Processor will notify each Participant via email of: (a) the aggregate final Projected Processor Capacity Requirements; and (b) the percentage of the aggregate final Projected Peak 5-second MPS that is attributable to such Participant.	20		
8	At a meeting of the Operating Committee at which the Processor is present, the Operating Committee will decide and then advise the Processor in writing (i.e., by minutes of such meeting) if it accepts the Processor's proposal for System Capacity Changes.	10		

ATTACHMENT 2

UTP CAPACITY PROCESS—PENALTIES FOR EXCEEDING PROPORTIONATE SHARE

Scenario	Description	Penalty	Increase projections
Participant System Problem/Recovery.	Participant's actual peak 5-second MPS exceeds its Proportionate Share for 30 consecutive seconds artificially (e.g., due to draining of queued data following a system recovery).	None	No.
Occasional (inconsistent).	Participant's actual peak 5-second MPS exceeds its Proportionate Share for 30 consecutive seconds on no more than 2 days during a month.	None	No.

UTP CAPACITY PROCESS—PENALTIES FOR EXCEEDING PROPORTIONATE SHARE—Continued

Scenario	Description	Penalty	Increase projections
Regular	Participant's actual peak 5-Second MPS exceeds its Proportionate Share for 30 consecutive seconds on each of 3 or more days during a month.	Participant's penalty will be calculated and billed according to the following formula:. • (Total MPS in Excess) × (Penalty MPS $ Rate). To find the Total MPS in Excess for any month:. 1. Determine which days during the month ("Days in Excess") the Participant exceeded its proportionate share of MPS for 30 or more consecutive seconds (each, a "Period in Excess"), whether it did so once or multiple times on any day; 2. For each Day in Excess during a month, determine that day's "Highest Period in Excess"; and 3. Add the Participant's MPS in excess of its Proportionate Share for each Day in Excess' Highest Period in Excess. A day's "Highest Period in Excess" refers to the Period in Excess during which the Participant exceeded its Proportionate Share of MPS by more than it did during the day's other Periods in Excess. To find the Penalty MPS $ Rate for any month, multiply twice the current monthly MPS $ rate by the percentage of trading days during the month that were Days in Excess; that is: (2 × current monthly MPS $ rate) × (# Days in Excess/# trading days in the month).	Yes—to be determined

Notes:
1. The Processor reports containing daily/monthly/quarterly activity by Participant will be used to determine if any of the above penalty criteria have been met.
2. The Processor will notify a Participant in the event it has been assessed a penalty.
3. Participant penalties will be distributed to the other Participants based on each Participant's Proportionate Share.
4. Reports provided by the Processor to the Participants will include the total monthly costs, that Participant's Proportionate Share, any penalties to be paid by that Participant, any redistribution of penalties paid by other Participant(s) and the number of Participants who paid penalties broken down by Quote and Trade separately.
• Participant's Monthly Costs are Total Monthly Costs multiplied by Participant's Proportionate Share.

UTP Capacity Planning

Participant Projected Processor Capacity Requirements—Input Document

Participant Name: __________________

Initial Projected Requirements:

Period beginning:	Projected peak 5 second MPS		Projected peak total daily transactions	
	UTP Quote	UTP Trade	UTP Quote	UTP Trade

Approved By: ______________________

Date Submitted: ______________________

Final Projected Requirements:

Period beginning:	Projected peak 5 second MPS		Projected peak total daily transactions	
	UTP Quote	UTP Trade	UTP Quote	UTP Trade

Period beginning:	Projected peak 5 second MPS		Projected peak total daily transactions	
	UTP Quote	UTP Trade	UTP Quote	UTP Trade

Approved By: ____________

Date Submitted: ____________

[FR Doc. 2010–24225 Filed 9–27–10; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62970; File No. SR–FINRA–2010–037]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving the Proposed Rule Change To Amend FINRA Rule 5190 (Notification Requirements for Offering Participants)

September 22, 2010.

I. Introduction

On July 27, 2010, the Financial Industry Regulatory Authority, Inc. ("FINRA") (f/k/a National Association of Securities Dealers, Inc. ("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 proposal to amend FINRA Rule 5190 (Notification Requirements for Offering Participants) relating to the notice requirements applicable to distributions of "actively traded" securities, as defined under Regulation M. This proposal was published for comment in the **Federal Register** on August 13, 2010.[3] The Commission received no comments regarding the proposal. This order approves this proposed rule change.

II. Description of the Proposed Rule Change

FINRA Rule 5190 imposes certain notice requirements on FINRA members participating in distributions of listed and unlisted securities and is designed to ensure that FINRA receives pertinent distribution-related information from its members in a timely fashion to facilitate its Regulation M surveillance program.

Rule 5190(d) sets forth the notice requirements applicable to distributions of securities that are considered "actively traded" and thus are not subject to a restricted period under Rule 101 of Regulation M.[4] In connection with such distributions, pursuant to Rule 5190(d)(1), FINRA members are required to provide written notice to FINRA of the member's determination that no restricted period applies and the basis for such determination. FINRA members must provide such notice at least one business day prior to the pricing of the distribution, unless later notification is necessary under specific circumstances. Rule 5190(d)(2) requires that, upon pricing a distribution of an "actively traded" security, FINRA members provide written notice to FINRA along with pricing-related information such as the offering price, the last sale before the distribution, and the pricing basis. Notice of pricing must be provided no later than the close of business the next business day following the pricing of the distribution, unless later notification is necessary under specific circumstances.

FINRA proposed to amend Rule 5190(d) to require that notice under subparagraphs (1) and (2) be provided at the same time, specifically no later than the close of business the next business day following the pricing of the distribution. While the timing of notice under subparagraph (1) would change, the information required would not change. Thus, pursuant to the proposed rule change, FINRA members will be required to provide a single notice after pricing of the distribution and will be required to provide all of the same information that they provide today.

FINRA has determined that it will be sufficient for members to provide notice of their determination that no restricted period applies following the pricing of the distribution. FINRA clarified that the proposed rule change will not impact FINRA's Regulation M surveillance program.

In its filing, FINRA stated that a significant number of distributions of "actively traded" securities evolve quickly after the market close and are priced overnight before the next trading session. Thus, FINRA believes that its members frequently do not have sufficient advance knowledge of their participation in the distribution to provide notice to FINRA at least one business day prior to pricing and in such instances are unable to comply with the express terms of Rule 5190(d)(1). FINRA then must make a determination whether later notification was necessary under the circumstances, in accordance with the rule. FINRA has stated that the proposed rule change will clarify members' notice obligations in the context of such distributions.

FINRA represented that the proposed rule change will be effective on the date of Commission approval.

III. Discussion and Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act, and the rules and regulations thereunder that are applicable to a national securities association.[5] In particular, the Commission believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[6] which requires, among other things, that FINRA rules 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 proposed rule change will streamline FINRA member obligations and continue FINRA's surveillance program regarding Regulation M to protect investors.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[7] that the proposed rule change (File No. SR–FINRA–2010–037) be, and hereby is, approved.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 62664 (Aug. 9, 2010), 75 FR 49542 (Aug. 13, 2010) (SR–FINRA–2010–037).

[4] The exception for "actively traded" securities in Rule 101 of Regulation M applies to securities with an ADTV value, as defined in Rule 100 of Regulation M, of at least $1 million and are issued by an issuer whose common equity securities have a public float value of at least $150 million, provided, however, that such securities are not issued by the distribution participant or an affiliate of the distribution participant. 17 CFR 242.101(c)(1).

[5] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78o–3(b)(6).

[7] 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–24227 Filed 9–27–10; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62971; File No. SR–NYSEAmex–2010–95]

Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Clarify the Requirement for Floor Official Approval for Certain Halts of Nasdaq Securities Traded via UTP

September 22, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 16, 2010, NYSE Amex LLC (the "Exchange" or "NYSE Amex") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 515—NYSE Amex Equities. The text of the proposed rule change is available at the Exchange's principal office, the Commission's Public Reference Room, the Commission's Web site (*http://www.sec.gov*), and *http://www.nyse.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend Rule 515—NYSE Amex Equities.

a. Background

On July 9, 2010, the Exchange received approval from the Commission to begin trading, as a pilot program, securities listed on the Nasdaq Stock Market pursuant to unlisted trading privileges ("Nasdaq Securities"). The Nasdaq Securities program commenced on July 13, 2010.[3]

b. Proposed Amendments to Rule 515—NYSE Amex Equities

The Exchange proposes to amend Rule 515—NYSE Amex Equities dealing with trading halts. In its filing adopting the Nasdaq Securities program, the Exchange included a provision in Rule 515(a)(1)—NYSE Amex Equities that DMM Units did not need to obtain Floor Official approval in order to halt trading in a Nasdaq Security pursuant to Rule 123D—NYSE Amex Equities. Upon further review of the operation of this provision and the Nasdaq Securities program, the Exchange believes it should revise this provision to clarify that the DMM does not need to obtain Floor Official approval if a Nasdaq Security is halted, suspended, or paused pursuant to section (a)(2)–(4) of the Rule. Accordingly, if a Nasdaq Security is halted, suspended or paused from trading by the UTP Listing Market for regulatory purposes in accordance with its rules and/or the UTP Plan, or if the authority to trade the Nasdaq Security on the Exchange is revoked, Floor Official approval to halt trading on the Exchange is not required. However, if the Exchange halts trading of a Nasdaq Security pursuant to Rule 123D—NYSE Amex Equities for non-regulatory purposes, such as an imbalance halt or an equipment changeover halt, the DMM must obtain prior Floor Official approval as provided for in that rule. The proposed provision would be consistent with the manner by which Rule 123D—NYSE Amex Equities operates for listed securities when a non-regulatory halt is invoked on the Exchange.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[4] in general, and furthers the objectives of Section 6(b)(5) of the Act,[5] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change supports the objectives of the Act by harmonizing the procedures for implementing non-regulatory trading halts under Rule 123D—NYSE Amex Equities for both its listed securities and Nasdaq Securities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[6] and Rule 19b–4(f)(6) thereunder.[7] Because the

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[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 62479 (July 9, 2010), 75 FR 41264 (July 15, 2010) (order approving SR–NYSEAmex–2010–31 and the adoption of the NYSE Amex Equities Rule 500 Series). The pilot program is scheduled to run until September 30, 2010, the expiration date of the New York Stock Exchange LLC's ("NYSE") and the Exchange's New Market Model ("NMM") pilot program, on which the Nasdaq Securities program relies. *See* Securities Exchange Act Release Nos. 61274 (March 17, 2010), 75 FR 14221 (March 24, 2010)(SR–NYSE–2010–25) *and* 61275 (March 17, 2010), 75 FR 14223 (March 24, 2010)(SR–NYSEAmex–2010–28) (extending operation of the NMM pilot program on NYSE and NYSE Amex until the earlier of the Commission's approval to make the program permanent or September 30, 2010). For more information on the NMM pilot program, *see* Securities Exchange Act Release No.58845 (October 24, 2008), 73 FR 64379 (October 29, 2008)(SR–NYSE–2008–46).

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78s(b)(3)(A)(iii).

[7] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time

proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

The Exchange has requested that the Commission waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, because such waiver will promote consistency between the rules governing the trading of Nasdaq Securities and listed securities on the Exchange. Accordingly, the Commission waives the 30-day operative delay requirement and designates the proposed rule change as operative upon filing with the Commission.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form *(http://www.sec.gov/rules/sro.shtml);* or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSEAmex–2010–95 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEAmex–2010–95. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site *(http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEAmex–2010–95 and should be submitted on or before October 19, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–24261 Filed 9–27–10; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62977; File No. SR–CBOE–2010–084]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Proposed Rule Change Regarding Registration and Qualification Requirements

September 22, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 10, 2010, the Chicago Board Options Exchange, Incorporated ("Exchange" or "CBOE") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its rules regarding qualification and registration of individual Trading Permit Holders and associated persons. The text of the rule proposal is available on the Exchange's Web site (*http://www.cboe.org/legal*), at the Exchange's Office of the Secretary, on the Commission's Web site (*http://www.sec.gov*), and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

CBOE is proposing to amend its rules regarding qualification, registration and continuing education of individual Trading Permit Holders and individual associated persons.[3] Specifically, in response to a request by the Division of Trading and Markets of the U.S. Securities and Exchange Commission and in light of recent market events, the Exchange is proposing to expand its registration and qualification requirements to include additional

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as designated by the Commission. The Exchange has satisfied this requirement.

[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] CBOE Rule 1.1(qq) provides "The term 'Associated Person' or 'Person Associated with a Trading Permit Holder' means any partner, officer, director or branch manager of a Trading Permit Holder (or any person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or under common control with a Trading Permit Holder, or any employee of a Trading Permit Holder." This filing refers specifically to the classification of "individual associated persons" as an organization could fall within the scope of CBOE Rule 1.1(qq) and it is not CBOE's intention to require registration by an organization.

types of individual Trading Permit Holders and individual associated persons. The revised requirements apply to both CBOE and CBOE Stock Exchange ("CBSX") Trading Permit Holders and their associated persons. CBOE is also proposing to clarify that certain requirements throughout Rule 3.6A, including proposed Rule 3.6A(a), 3.6A(b) and Interpretation and Policy .03 to 3.6A, apply to both Trading Permit Holders and TPH organizations.[4] The Exchange believes the proposed rule changes are consistent with Rule 15b7–1,[5] promulgated under the Securities Exchange Act of 1934, as amended ("Exchange Act"),[6] which provides: "No registered broker or dealer shall effect any transaction in * * * any security unless any natural person associated with such broker or dealer who effects or is involved in effecting such transaction is registered or approved in accordance with the standards of training, experience, competence, and other qualification standards * * * established by the rules of any national securities exchange * * *"

CBOE Rule 3.6A establishes the qualification and registration requirements for associated persons of TPH organizations. This rule currently establishes registration requirements for a Financial/Operations Principal for each Trading Permit Holder and TPH organization subject to the Exchange Act Rule 15c3–1.[7] Rule 3.6A also references the registration requirements set forth in Chapter IX of the Exchange's Rulebook for associated persons of TPH organizations that conduct a public customer business.

The Exchange is proposing to require additional Trading Permit Holders and associated persons to submit the appropriate application for registration online through the Central Registration Depository system ("Web CRD"), which is operated by the Financial Industry Regulatory Authority, Incorporated ("FINRA"), successfully complete any qualification examination(s) as prescribed by the Exchange and submit any required registration and examination fees. Specifically, the Exchange is proposing to move the existing Rule 3.6A(a), governing registration requirements for Financial and Operations Principals to 3.6A(b). CBOE is proposing to add Rule 3.6A(a)(1) that will require registration and qualification by individual Trading Permit Holders and individual associated persons engaged or to be engaged in the securities business of a Trading Permit Holder or TPH organization.[8]

CBOE is also proposing to adopt Interpretation and Policy .06 to define what it means to be "engaged in the securities business of a Trading Permit Holder or TPH organization" for purposes of this rule. Specifically, an individual Trading Permit Holder or individual associated person shall be considered to be a person engaged in the securities business of a Trading Permit Holder or TPH organization if (i) the individual Trading Permit Holder or associated person conducts proprietary trading, acts as a market-maker, effects transactions on behalf of a broker-dealer account, supervises or monitors proprietary trading, market-making or brokerage activities on behalf of the broker-dealer, supervises or conducts training for those engaged in proprietary trading, market-making or brokerage activities on behalf of a broker-dealer account; or (ii) the individual Trading Permit Holder or associated person engages in the management of any individual Trading Permit Holder or individual associated person identified in (i) above as an officer, partner or director.[9]

Web CRD has been enhanced by FINRA to allow for general registration of applicable Trading Permit Holders and associated persons. CBOE will require that all applicable Trading Permit Holders and individual associated persons that are not already registered in Web CRD, that are required to register under proposed Rule 3.6A, to register within 60 days of the approval date of this filing by the U.S. Securities and Exchange Commission. CBOE is currently working with the Division of Trading and Markets of the U.S. Securities and Exchange Commission to identify a reasonable time period for which compliance with the additional examination requirements will be required. The availability of the appropriate category on Web CRD for any new qualification examinations recognized by the Exchange may be subject to the timing for any required systems development on Web CRD.

CBOE is considering various alternatives for an appropriate qualification examination(s) for Trading Permit Holders and associated persons required to register under proposed Rule 3.6A(a). These alternatives include, but are not limited to, the successful completion of CBOE's Trading Permit Holder Qualification Examination or the development of a new qualification examination.[10] The Exchange will notify its Trading Permit Holders and TPH organizations via regulatory circular what qualification examination(s) will be acceptable for compliance with the requirements proposed in Rule 3.6A(a)(1). Individual Trading Permit Holders or individual associated persons acting in the capacity of a sole proprietor, officer, partner, director or Chief Compliance Officer will be subject to heightened qualification requirements. In addition, an individual Trading Permit Holder or individual associated person that is engaged in the supervision or monitoring of proprietary trading, market-making or brokerage activities and/or that is engaged in the supervision or training of those engaged in proprietary trading, market-making or brokerage activities with respect to

[4] Section 1.1 of CBOE's By-Laws provides: "The term 'Trading Permit Holder' means any individual, corporation, partnership, limited liability company or other entity authorized by the Rules that holds a Trading Permit. If a Trading Permit Holder is an individual, the Trading Permit Holder may also be referred to as an 'individual Trading Permit Holder.' If a Trading Permit Holder is not an individual, the Trading Permit Holder may also be referred to as a 'TPH organization.' A Trading Permit Holder is a 'member' solely for purposes of the Act; however, one's status as a Trading Permit Holder does not confer on that Person any ownership interest in the Exchange."

[5] 17 CFR 240.15b7–1.

[6] 15 U.S.C. 78a *et seq.*

[7] 17 CFR 240.15c3–1.

[8] An individual with an indirect ownership interest in a Trading Permit Holder or TPH organization, that is engaged in the securities business of such Trading Permit Holder or TPH organization, is required to register under proposed Rule 3.6A(a)(1).

[9] With the exception of its application to sole proprietors (as registration of sole proprietors at CBOE is required under proposed subparagraph (a) of Interpretation and Policy .06 to Rule 3.6A), this requirement is consistent with FINRA's registration requirement for Principals (as defined in NASD Rule 1021). CBOE is declining to adopt the term "Principal" in the Exchange Rulebook to avoid confusion with existing terms, such as "Option Principal."

[10] CBOE has represented to Commission staff that it intends to develop, within six months of the approval date of this filing, the appropriate qualification examination(s) for the individual Trading Permit Holders and associated persons that will be required to register following the approval of this filing. Once the development of an examination(s) has been completed, the implementation and effective date will be subject to approval by the Commission and any necessary systems development schedules to implement the examination. If the Exchange does not complete development of the examination(s) within six months of the approval date of this filing, the Exchange will establish a deadline for qualification based on the existing categories of registration and qualification examinations available on Web CRD, until such time as the development and implementation of an alternative examination(s) has been completed. The referenced categories of registration available on Web CRD include, but may not be limited to, the General Securities Representative (GS) and General Securities Principal (GP), as applicable to the type of business activities conducted. The accompanying qualification examination for the General Securities Representative is the Series 7 and the accompanying qualification examination for the General Securities Principal is the Series 24.

those activities will be subject to heightened qualification requirements. The Exchange believes that the heightened qualification requirements should enhance the supervisory structure for Trading Permit Holders and TPH organizations that do not conduct a public customer business.

The Exchange is also proposing to add Rule 3.6A(a)(2) to identify several categories of persons that are exempt from these additional registration requirements. The categories of individual Trading Permit Holders and associated persons that are exempt from the registration requirements set forth in Rule 3.6A(a)(1) include (i) Individual associated persons functioning solely and exclusively in a clerical or ministerial capacity; (ii) individual Trading Permit Holders and individual associated persons that are not actively engaged in the securities business, (iii) individual Trading Permit Holders and individual associated persons functioning solely and exclusively to meet a Trading Permit Holder's or TPH organization's need for nominal corporate officers or for capital participation; and (iv) individual associated persons whose functions are solely and exclusively related to transactions in commodities, transactions in security futures and/or effecting transactions on the floor of another national securities exchange and who are registered as floor members with such exchange. The Exchange believes these registration exemptions are appropriate because CBOE would not consider individuals that fall into the exemptions to be actively engaged in securities business unless they are registered as floor members on another national securities exchange, in which case, they are already registered as floor members and not required to register at CBOE.[11] CBOE believes incorporating these exemptions into the rule provides additional clarity to individual Trading Permit Holders and individual associated persons as to who will or will not be required to register under the proposed rule. Any applicable FINRA registration requirements would continue to apply to Trading Permit Holders and TPH organizations that are also members of FINRA.

The Exchange is proposing to move the existing Rule 3.6A(b), referencing the types of associated persons required to register under Chapter IX of CBOE's Rules, to Rule 3.6A(d). CBOE is also proposing to clarify the language in this section to make it clear that individual associated persons, including Registered Options Principals and Registered Representatives, are also subject to the registration requirements set forth in Chapter IX of CBOE's Rules. Chapter IX is generally applicable to TPH organizations that conduct a public customer business.

The Exchange is also proposing to adopt Rule 3.6A(c) to require the designation of a Chief Compliance Officer by Trading Permit Holders and TPH organizations that are registered broker-dealers, which designation shall be updated on Schedule A of Form BD. Under the proposed rule, the Chief Compliance Officer shall be required to register and pass the appropriate qualification examination as prescribed by the Exchange.[12] This is consistent with FINRA Rule 3130 requiring designation of at least one Chief Compliance Officer on Schedule A of Form BD. In addition, NASD Rule 1022 requires registration by each person designated as Chief Compliance Officer on Schedule A of Form BD. CBOE is also proposing to implement a limited exemption from the requirement to pass the appropriate qualification examination by a Chief Compliance Officer. Specifically, a person that has been designated as a Chief Compliance Officer on Schedule A of Form BD for at least two years immediately prior to January 1, 2002, and who has not been subject within the last ten years to any statutory disqualification as defined in Section 3(a)(39) of the Act; a suspension; or the imposition of a $5,000 or more fine for a violation(s) of any provision of any securities law or regulation, or any agreement with, rule or standard of conduct of any securities governmental agency, securities self-regulatory organization, or as imposed by any such self-regulatory organization in connection with a disciplinary proceeding, shall be required to register in the category of registration appropriate to the function to be performed as prescribed by the Exchange, but shall be exempt from the requirement to pass the heightened qualification examination as prescribed by the Exchange.

The Exchange is proposing to adopt Rule 3.6A(e) to set forth the requirements for examinations where there is a lapse in registration. Specifically, an individual Trading Permit Holder or individual associated person shall be required to pass the appropriate qualification examination for the category of registration if the individual Trading Permit Holder's or individual associated person's registration has been revoked by the Exchange as a disciplinary sanction or whose most recent registration has been terminated for a period of two or more years.

The Exchange is proposing to move the language in the existing Interpretation and Policy .01 to Interpretation and Policy .02. The Exchange is proposing to add language to Interpretation and Policy .01 requiring each individual Trading Permit Holder or individual associated person subject to the registration requirements in Rule 3.6A to electronically file a Uniform Application for Securities Industry Registration through Web CRD.

The Exchange is also proposing to move the existing Interpretation and Policies .02 and .03 to Interpretation and Policies .03 and .04, respectively. The Exchange is also proposing to modify the proposed Interpretation and Policies .02, .03 and .04 to remove the existing references to those with "an associated person status" enumerated under paragraph (a) or (b) of the current Rule 3.6A and extend the applicability to all individual Trading Permit Holders or individual associated persons subject to the registration requirements in Rule 3.6A.

The Exchange is also proposing to adopt Interpretation and Policy .05 to Rule 3.6A. This will enable the Exchange to waive the qualification examination requirement where good cause is shown. Similar rules are in place at the New York Stock Exchange, Inc. ("NYSE") and FINRA.[13] In determining whether a waiver shall be granted, the Exchange shall consider, among other things, previous industry employment, training and/or the successful completion of similar qualification examinations of other self-regulatory organizations.

In addition, the Exchange is proposing to add Interpretation and Policy .07 that will require registration and successful completion of a heightened qualification examination by at least two individuals that are each an officer, partner or director of each Trading Permit Holder or TPH organization that is a registered broker-dealer and has trading privileges on the Exchange.[14] However, please note that

[11] The Commission notes that these firms must comply with Section 15(b)(8) of the Act.

[12] The appropriate qualification examination for a Chief Compliance Officer is the Series 14 (Compliance Official). CBOE is working with FINRA to establish this category of registration and make the accompanying qualification examination available at CBOE on Web CRD.

[13] *See* NASD Rule 1070—*Qualification Examinations and Waiver of Requirements* and NYSE Rule 345—*Employees—Registration, Approval, Records.*

[14] With the exception of its application to sole proprietors, this requirement is consistent with the

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all individuals who engage in supervisory functions of the Trading Permit Holder's or TPH organization's securities business shall be required to register and pass the appropriate heightened qualification examination(s) relevant to the particular category of registration. Trading Permit Holders that are sole proprietors are exempt from this requirement. In addition, the Exchange may waive the requirement to have two officers, partners and/or directors registered if a Trading Permit Holder or TPH organization conclusively demonstrates that only one officer, partner or director should be required to register. For example, a TPH organization could conclusively demonstrate that only one individual is required to register if such TPH organization is owned by one individual (such as a single member limited liability company), such individual acts as the only trader on behalf of the TPH organization, and the TPH organization employs only one other individual who functions only in a clerical capacity. The ability to waive this registration requirement is consistent with similar FINRA rules regarding principal registration.[15]

CBOE is also proposing to allow a Trading Permit Holder or TPH organization that conducts proprietary trading only and has 25 or fewer registered persons to have only one officer or partner registered under this section rather than two. This exception is similar to that of several other exchanges and reflects that such Trading Permit Holders or TPH organizations do not necessitate the same level of supervisory structure as those Trading Permit Holders or TPH organizations that have customers or are larger in size. For purposes of this Interpretation and Policy .07 to Rule 3.6A, a Trading Permit Holder or TPH organization shall be considered to conduct only proprietary trading if it has the following characteristics: (i) the Trading Permit Holder or TPH organization is not required by Section 15(b)(8) of the Exchange Act to become a FINRA member but is a member of another registered securities exchange not registered solely under Section 6(g) of the Exchange Act; (ii) all funds used or proposed to be used by the Trading Permit Holder or TPH organization are the Trading Permit Holder's or TPH organization's own capital, traded through the Trading Permit Holder's or TPH organization's own accounts; (iii) the Trading Permit Holder or TPH organization does not, and will not, have customers; and (iv) all persons registered on behalf of the Trading Permit Holder or TPH organization acting or to be acting in the capacity of a trader must be owners of, employees of, or contractors to the Trading Permit Holder or TPH organization. The description of what constitutes proprietary trading for purposes of this Interpretation and Policy .07 to Rule 3.6A is appropriate in that it provides additional clarity for Trading Permit Holders and individual associated persons to evaluate whether two individuals are required to register.

In conjunction with the additional registration requirements, the Exchange is proposing to delete a reference in Interpretation and Policy .01 to Rule 9.3A that excludes those people whose activities are limited solely to the transaction of business on the Floor with Trading Permit Holders or registered broker-dealers from the definition of "registered person" for purposes of Rule 9.3A. The changes proposed to Interpretation and Policy .04 of Rule 3.6A would subject individual Trading Permit Holders and individual associated persons whose activities are limited solely to the transaction of business on the Floor with Trading Permit Holders or registered broker dealers to the continuing education requirements set forth in Rule 9.3A or any other continuing education requirements as prescribed by the Exchange.

This filing also proposes to make several technical and/or non-substantive changes. First, the Exchange is proposing to modify the title of Rule 3.6A to delete the term "Certain" and to clarify that the registration requirements set forth in Rule 3.6A also apply to specified Trading Permit Holders. The Exchange is also proposing to make a technical change to proposed Rule 3.6A(b) that will replace the reference to the "Department of Financial and Sales Practice Compliance" with the "Exchange" because the Exchange no longer has a department by that name. In addition, the Exchange is proposing to replace the two references in this section to "in a form and manner prescribed by the Exchange" with "as prescribed by the Exchange" for consistency throughout Rule 3.6A. The Exchange is also proposing to amend several references in CBOE Rules 3.6A, 9.2 and 9.3. Specifically, these rules currently reference "NASD's Web CRD System." Since NASD is now known as FINRA, CBOE is proposing to change this reference to "Web CRD." The Exchange is proposing to clarify Rule 9.3(c) relating to amended Form U–5 to provide "the facts or circumstances giving rise to *the need for* the amendment" rather than "facts and circumstances giving rise to the amendment." Finally, CBOE is proposing to replace language relating to "said termination notice" in Rule 9.3(b) and "notice" in Rule 9.3(c) with "Form U–5" for specificity.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act,[16] in general, and furthers the objectives of Section 6(b)(5) of the Act,[17] which requires, among other things, that the Exchange's rules be designed to remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest. Specifically, the enhanced registration and qualification requirements will provide additional protection to investors and further promote the public interest.

In addition, the Exchange believes that the proposed rule change is consistent with Section 6(c) of the Act,[18] in general, and furthers the objectives of Section 6(c)(3)(B) of the Act,[19] which provides, among other things, that a national securities exchange may bar a natural person from becoming associated with a member if such natural person does not meet the standards of training, experience and competence as prescribed by the rules of the national securities exchange. The Exchange also believes that the proposed rule change furthers the objectives of Section 6(c)(3)(C) of the Act,[20] which provides, among other things, that a national securities exchange may bar any person from becoming associated with a member if such person does not agree to supply the exchange with such information with respect to its dealings with the member as may be specified by the rules of the exchange and to permit the examination of its books and records to verify the accuracy of any information so supplied.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

registration requirement set forth in NASD Rule 1021 addressing registration of two Principals (as defined in NASD Rule 1021).

[15] *See* NASD Rule 1021(e).

[16] 15 U.S.C. 78f(b).

[17] 15 U.S.C. 78f(b)(5).

[18] 15 U.S.C. 78f(c).

[19] 15 U.S.C. 78f(c)(3)(B).

[20] 15 U.S.C. 78f(c)(3)(C).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposal.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File No. SR–CBOE–2010–084 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–CBOE–2010–084. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission,[21] all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–CBOE–2010–084 and should be submitted on or before October 19, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–24343 Filed 9–27–10; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62969; File No. SR–BX–2010–064]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Order Granting Accelerated Approval to a Proposed Rule Change To Establish Pricing for 10Gb Direct Circuit Connections and To Codify Pricing for Direct Circuit Connections Capable of Supporting Up to 1Gb for Customers Who Are Not Co-Located in the Exchange's Datacenter

September 22, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 10, 2010, The NASDAQ OMX BX, Inc. (the "Exchange" or "BX") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons, and is approving the proposal on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange is filing with the Commission a proposed rule change to establish pricing for 10Gb direct circuit connections and to codify pricing for direct circuit connections capable of supporting up to 1Gb for customers who are not co-located in the Exchange's datacenter. The text of the proposed rule change is below. Proposed new language is underlined and proposed deletions are in brackets [sic].[3]

* * * * *

7051. DIRECT CONNECTIVITY TO BX

Description	*Installation Fee*	*Ongoing Monthly Fee*
Direct Circuit Connection to BX (10Gb)	*$1,000*	*$5000*
Direct Circuit Connection to BX (supports up to 1Gb)	*$1000*	*$1000*
Optional Cable Router	*$925*	

[21] The text of the proposed rule change is available on the Commission's Web site at *http://www.sec.gov.*

[22] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Changes are marked to the rule text that appears in the electronic manual of BX found at *http://nasdaqomxbx.cchwallstreet.com.*

(b) and (c) Not applicable [sic].

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

a. Purpose

The Exchange is re-proposing to establish fees for direct 10Gb circuit connections, and to codify fees for direct circuit connections capable of supporting up to 1Gb, for customers who are not co-located at the Exchange's datacenter.[4] Currently, the Exchange already makes available to co-located customers a 10Gb circuit connection and charges for each a $1000 initial installation charge as well as an ongoing monthly fee of $5000. The Exchange is establishing the same fees for non co-located customers with a 10Gb circuit.[5]

The Exchange also already makes available to both co-located and non co-located customers direct connections capable of supporting up to 1Gb, with per connection monthly fees of $500 for co-located customers and $1000 for non co-located customers. Monthly fees are higher for non co-located customers because direct connections require BX to provide cabinet space and middleware for those customers' third-party vendors to connect into the datacenter and, ultimately, to the trading system. Finally, for non co-located customers the Exchange charges an optional installation fee of $925 if the customer chooses to use an on-site router.

[4] The Exchange filed SR–BX–2010–043 seeking to establish and codify the fees set forth in this filing. That proposal was published for comment and approved by the Commission. The approval, however, pre-dated the BX Board's approval of the proposal. As such, BX is re-filing the proposal and seeking accelerated approval.

[5] BX provides an additional 1Gb copper connection option to the Exchange for co-located customers. Given the technological constraints of copper connections over longer distances, the Exchange does not offer a copper connection option to users outside of its datacenter.

b. Statutory Basis

BX believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[6] in general, and with Sections 6(b)(5) of the Act,[7] in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and 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. In particular, the proposal will provide greater transparency into the connectivity options available to market participants.

The Exchange also believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[8] in general, and with Section 6(b)(4) of the Act,[9] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the Exchange operates or controls. The filing codifies and makes transparent the fees imposed for direct connections to non co-located customers. These fees are uniform for all such customers and are either comparable to fees charged to co-located customers or vary due to different costs associated with providing service to the two customer types.

B. Self-Regulatory Organization's Statement on Burden on Competition

BX does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

[6] 15 U.S.C. 78f.

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78f.

[9] 15 U.S.C. 78f(b)(4).

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–BX–2010–064 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BX–2010–064. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BX–2010–064 and should be submitted on or before October 19, 2010.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities

exchange.[10] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(4) of the Act,[11] which requires that the rules of a national securities exchange provide for the equitable allocation of reasonable dues, fees and other charges among its members and issuers and other persons using its facilities, and with Section 6(b)(5) of the Act,[12] which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission believes that the proposed fees for 10Gb and 1Gb direct circuit connections are reasonable and equitably allocated insofar as they are applied on the same terms to similarly-situated market participants. In addition, the Commission believes that the connectivity options described in the proposed rule change are not unfairly discriminatory because BX makes the 10Gb and 1Gb direct circuit connections uniformly available to all non-co-located customers who voluntarily request them and pay the fees as detailed in the proposal. As represented by BX, these fees are uniform for all such customers and are either the same as fees charged to co-located customers, or vary due to different costs incurred by BX associated with providing service to the two different customer types. Finally, the Commission believes that the proposal will further the protection of investors and the public interest because it will provide greater transparency regarding the connectivity options available to market participants.

The substance of the proposed rule has already been subject to full notice and public comment, and no comments were received.[13] Moreover, similar pricing is already in effect for these same services being offered by BX's sister markets, the NASDAQ Stock Market, LLC and NASDAQ OMX PHLX, Inc.[14] Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act, for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[15] that the proposed rule change (SR–BX–2010–064) be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading & Markets, pursuant to delegated authority.[16]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–24259 Filed 9–27–10; 8:45 am]

BILLING CODE 8010–01–P

[10] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[11] 15 U.S.C. 78f(b)(4).

[12] 15 U.S.C. 78f(b)(5).

[13] *See supra* note 4.

[14] *See* Securities Exchange Act Release Nos. 62663 (August 9, 2010), 75 FR 49543 (August 13, 2010) (SR–NASDAQ–2010–77) (Order approving a NASDAQ Stock Market, LLC proposed rule change relating to pricing for direct circuit connections); 62639 (August 4, 2010), 75 FR 48391 (August 10, 2010) (SR–Phlx–2010–89) (Order approving a NASDAQ OMX PHLX, Inc. proposed rule change relating to pricing for direct circuit connections).

[15] 15 U.S.C. 78s(b)(2).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISION

[Release No. 34–62942; File No. SR–OCC–2010–16]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Proposed Rule Change Relating to Weekly Options And Monthly Options

September 20, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on September 15, 2010, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission the proposed rule change as described in Items I and II below, which Items have been prepared primarily by OCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The proposed rule change would accommodate options that expire on (a) any Friday of a calendar month other than the third Friday of a calendar month ("Weekly Options") or (b) on the last trading day of a calendar month ("Monthly Options").

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of this proposed rule change is to accommodate Weekly Options and Monthly Options. The Chicago Board Options Exchange, Inc. ("CBOE"), is proposing to trade Weekly Options and Monthly Options on broad-based indexes ("Weekly Index Options" and "Monthly Index Options," respectively).[2] Series of Weekly Index Options will expire on a Friday of a calendar month other than the third Friday and Monthly Index Options will expire on the last trading day of a calendar month. If the last trading day of the month is a Friday, CBOE would opt to list Monthly Index Options over Weekly Index Options. Weekly Index Options and Monthly Index Options would be European-style, P.M.-settled contracts. CBOE proposes for these contracts to be subject to "automatic exercise procedures," meaning that these contracts would automatically be exercised at expiration without the opportunity for the clearing member to submit contrary exercise instructions if immediately prior to expiration the contract's settlement amount or exceeds a certain predetermined amount.

Weekly Options and Monthly Options can be cleared and settled by OCC with relatively minor revisions to current By-laws and Rules to provide for options that expire on a monthly or weekly schedule as proposed by CBOE.[3] Therefore, OCC proposes amending Article I, Section 1 of its by-laws to include definitions covering Weekly

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 62658 (Aug. 5, 2010), 75 FR 49010 (Aug. 12, 2010).

[3] OCC's By-laws and Rules already accommodate equity and index options that expire on a day other than a Saturday following the third Friday of the month. For example, they accommodate quarterly options, which expire on the last business day of a calendar quarter, and short term options, which expire a week after their introduction for trading. Quarterly index options and short term index options are also subject to automatic exercise procedures.

and Monthly Options. Changes to Rule 801, which relates to the submission of exercise notices, would be made to permit a Weekly or Monthly Option to be exercised on the business day before the expiration date and to include Weekly Index Options and Monthly Index Options in the listing of options series subject to automatic exercise. Changes to Interpretation and Policy .03 to Rule 805, which relates to expiration date exercise processing, would be made to permit OCC to specify time frames for submitting exercise instructions and furnishing reports with respect to Weekly and Monthly Options on equity interests that are different than those time frames effect for conventional options.[4] A conforming change to Rule 1804, which supplements Rule 805, also would be made to add Weekly Index Options and Monthly Index Options to the list of options series subject to automatic exercise.

OCC states that the proposed changes to OCC's By-Laws and Rules are consistent with the purposes and requirements of Section 17A of the Act[5] because they are designed to permit OCC to perform clearing services for products that are subject to the jurisdiction of the SEC without adversely affecting OCC's obligations with respect to the prompt and accurate clearance and settlement of securities transactions or the protection of investors and the public interest. They accomplish this purpose by applying substantially the same rules and procedures to transactions in Monthly Index Options and Weekly Index Options as OCC applies to transactions in other options with a nonconventional expiry date, including Quarterly Index Options. The proposed rule change is not inconsistent with any rules of OCC, including any rules proposed to be amended.

B. Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

OCC has not solicited or received written comments relating to the proposed rule change. OCC will notify the Commission of any written comments it receives.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove the proposed rule change or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form *(http://www.sec.gov/rules/sro.shtml);* or
- Send an e-mail to *rule-comments@sec.gov.* Please include File No. SR–OCC–2010–16 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–OCC–2010–16. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site *(http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m.. Copies of such filing also will be available for inspection and copying at OCC's principal office and on OCC's Web site at *http://www.theocc.com/publications/rules/proposed_changes/proposed_changes.jspU.* All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submission should refer to File No. SR–OCC–2010–16 and should be submitted on or before October 19, 2010

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[6]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–24199 Filed 9–27–10; 8:45 am]

BILLING CODE 8010–01–P

[4] Interpretation .03 would also be amended to clarify that it covers equity options with non-conventional expiration dates as opposed to index options with nonconventional expiration dates, which are subject to automatic exercise as described in Rule 1804.

[5] 15 U.S.C. 78q–1.

[6] 17 CFR 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA 2010–0040]

Privacy Act of 1974, as Amended; Computer Matching Program (SSA/Railroad Retirement Board (RRB))—Match Number 1006

AGENCY: Social Security Administration (SSA).

ACTION: Notice of a renewal of an existing computer matching program that is scheduled to expire on March 1, 2011.

SUMMARY: In accordance with the provisions of the Privacy Act, as amended, this notice announces a renewal of an existing computer matching program that we are currently conducting with RRB.

DATES: We will file a report of the subject matching program with the Committee on Homeland Security and Governmental Affairs of the Senate; the Committee on Oversight and Government Reform of the House of Representatives, and the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB). The renewal of the matching program will be effective as indicated below.

ADDRESSES: Interested parties may comment on this notice by either telefaxing to (410) 966–0869 or writing to the Executive Director, Office of

Privacy and Disclosure, Office of the General Counsel, 617 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235–6401. All comments received will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: The Executive Director, Office of Privacy and Disclosure, Office of the General Counsel as shown above.

SUPPLEMENTARY INFORMATION:

A. General

The Computer Matching and Privacy Protection Act of 1988 (Pub. L.) 100–503), amended the Privacy Act (5 U.S.C. 552a) by describing the conditions under which computer matching involving the Federal government could be performed and adding certain protections for persons applying for, and receiving, Federal benefits. Section 7201 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508) further amended the Privacy Act regarding protections for such persons.

The Privacy Act, as amended, regulates the use of computer matching by Federal agencies when records in a system of records are matched with other Federal, State, or local government records. It requires Federal agencies involved in computer matching programs to:

(1) Negotiate written agreements with the other agency or agencies participating in the matching programs;

(2) Obtain the approval of the matching agreement by the Data Integrity Boards (DIB) of the participating Federal agencies;

(3) Publish notice of the computer matching program in the **Federal Register**;

(4) Furnish detailed reports about matching programs to Congress and OMB;

(5) Notify applicants and beneficiaries that their records are subject to matching; and

(6) Verify match findings before reducing, suspending, terminating, or denying a person's benefits or payments.

B. SSA Computer Matches Subject to the Privacy Act

We have taken action to ensure that all of our computer matching programs comply with the requirements of the Privacy Act, as amended.

Jonathan R. Cantor,

Executive Director, Office of Privacy and Disclosure, Office of the General Counsel.

Notice of Computer Matching Program, SSA With RRB

A. Participating Agencies

SSA and RRB.

B. Purpose of the Matching Program

The purpose of this matching program is to establish the conditions, safeguards, and procedures under which RRB will disclose RRB annuity payment data to us. This disclosure will provide us with information necessary to verify Supplemental Security Income (SSI) program and Special Veterans Benefits (SVB) eligibility and benefit payment amounts. It also helps to ensure the correct recording on the Supplemental Security Income Record (SSR) of railroad annuity amounts paid to SSI and SVB recipients by RRB. The SSI program provides payments to aged, blind, and disabled recipients with income and resources at or below levels established by law and regulations. The SVB program provides similar benefits to certain World War II veterans.

C. Authority for Conducting the Matching Program

The legal authority for the SSI portion of this matching program is contained in sections 1631(e)(1)(A) and (B) and 1631(f) of the Social Security Act (Act), (42 U.S.C. 1383(e)(1)(A) and (B) and 1383(f)). The legal authority for the SVB portion of this matching program is contained in section 806(b) of the Act, (42 U.S.C. 1006(b)).

D. Categories of Records and Persons Covered by the Matching Program

RRB will provide SSA with an electronic data file containing annuity payment data from RRB's system of records, RRB–22 Railroad Retirement, Survivor, and Pensioner Benefits System, entitled Checkwriting Integrated Computer Operation (CHICO) Benefit Payment Master. SSA will match the RRB data with data maintained in the SSR, Supplemental Security Income Record and Special Veterans Benefits, SSA/ODSSIS, 60–0103. SVB data also resides on the SSR.

E. Inclusive Dates of the Matching Program

The effective date of this matching program is March 1, 2011; provided that the following notice periods have lapsed: 30 days after publication of this notice in the **Federal Register** and 40 days after notice of the matching program is sent to Congress and OMB. The matching program will continue for 18 months from the effective date and may be extended for an additional 12 months thereafter, if certain conditions are met.

[FR Doc. 2010–24246 Filed 9–27–10; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice 7187]

Culturally Significant Objects Imported for Exhibition Determinations: "Imagining the Past in France, 1250–1500"

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236–3 of August 28, 2000, I hereby determine that the objects to be included in the exhibition "Imagining the Past in France, 1250–1500," imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the J. Paul Getty Museum, Los Angeles, CA, from on or about November 16, 2010, until on or about February 6, 2011, and at possible additional exhibitions or venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Carol B. Epstein, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/632–6473). The address is U.S. Department of State, SA–5, L/PD, Fifth Floor, Washington, DC 20522–0505.

Dated: September 22, 2010.

Ann Stock,

Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2010–24300 Filed 9–27–10; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

Waiver of Restriction on Assistance to the Government of Saudi Arabia

Pursuant to section 7086(c)(2) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2010 (Division F, Pub. L. 111–117) ("the Act"), and Department of State Delegation of Authority Number 245–1, I hereby determine that it is important to the national interest of the United States to waive the requirements of section 7086(c)(1) of the Act with respect to the Government of Saudi Arabia, and I hereby waive such restriction.

This determination shall be reported to the Congress, and published in the **Federal Register**.

Dated: August 13, 2010.

Jacob J. Lew,

Deputy Secretary of State for Management and Resources.

[FR Doc. 2010–24297 Filed 9–27–10; 8:45 am]

BILLING CODE 4710–31–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–2010–0126]

Agency Information Collection Activities: Notice of Request for Extension of Currently Approved Information Collection

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of request for extension of currently approved information collection.

SUMMARY: The FHWA invites public comments about our intention to request the Office of Management and Budget's (OMB) approval for renewal of an existing information collection that is summarized below under SUPPLEMENTARY INFORMATION. The **Federal Register** notice with a 60-day public comment period soliciting comments on this information collection was published on June 30, 2010. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Please submit comments by October 28, 2010.

ADDRESSES: You may 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 DOT Desk Officer. You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the U.S. DOT's performance; (2) the accuracy of the estimated burden; (3) ways for the U.S. DOT to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized, including the use of electronic technology, without reducing the quality of the collected information. All comments should include the Docket number FHWA–2010–0126.

FOR FURTHER INFORMATION CONTACT: Gloria Williams, 202–366–5032, Department of Transportation, Federal Highway Administration, Office of Highway Policy Information, 1200 New Jersey Avenue, SE., Washington, DC 20590, Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Certification of Enforcement of the Heavy Vehicle Use Tax.

OMB Control #: 2125–0541.

Background: Title 23 United States Code, Section 141(c), provides that a State's apportionment of funds under 23 U.S.C. 104(b)(4) shall be reduced in an amount up to 25 percent of the amount to be apportioned during any fiscal year beginning after September 30, 1984, if vehicles subject to the Federal heavy vehicle use tax are lawfully registered in the State without having presented proof of payment of the tax. The annual certification by the State Governor or designated official regarding the collection of the heavy vehicle use tax serves as the FHWA's primary means of determining State compliance. The FHWA has determined that an annual certification of compliance by each State is the least obtrusive means of administering the provisions of the legislative mandate. In addition, States are required to retain for 1 year a Schedule 1, IRS Form 2290, Heavy Vehicle Use Tax Return (or other suitable alternative provided by regulation). The FHWA conducts compliance reviews at least once every 3 years to determine if the annual certification is adequate to ensure effective administration of 23 U.S.C. 141(c). The estimated annual reporting burden is 102 hours; the estimated recordkeeping burden is 510 hours for a total of 612 hours. The 50 States and the District of Columbia share this burden. Preparing and processing the annual certification is estimated to require 2 hours per State. Recordkeeping is estimated to require an average of 10 hours per State.

Respondents: 50 State Transportation Departments, and the District of Columbia for a total of 51 respondents.

Frequency: Annually.

Estimated Average Annual Burden per Response: The average burden to submit the certification and to retain required records is 12 hours per respondent.

Estimated Total Annual Burden Hours: Total estimated average annual burden is 612 hours.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.48.

Issued On: September 21, 2010.

Juli Huynh,

Chief, Management Programs and Analysis Division.

[FR Doc. 2010–24275 Filed 9–27–10; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–2010–0093]

Agency Information Collection Activities: Notice of Request for Extension of Currently Approved Information Collection

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of request for extension of currently approved information collection.

SUMMARY: The FHWA invites public comments about our intention to request the Office of Management and Budget's (OMB) approval for renewal of an existing information collection that is summarized below under **SUPPLEMENTARY INFORMATION**. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Please submit comments by November 29, 2010.

ADDRESSES: You may submit comments identified by DOT Docket ID Number 2010–0093 by any of the following methods:

Web site: For access to the docket to read background documents or comments received, go to the Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Fax: 1–202–493–2251.

Mail: Docket Management Facility, U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

Hand Delivery or Courier: 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. ET, Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jon Obenberger, 202–366–2221, Office of Infrastructure, Federal Highway Administration, Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590, Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: *Title:* Utility Adjustments, Agreements, Eligibility Statements and Accommodation Policies. (*Formerly: Developing and Recording Costs for Utility Adjustments*).

OMB Control Number: 2125–0519.

Background: Federal laws dealing with the relocation and accommodation of utility facilities associated with the right-of-way of highway facilities are contained in the United States Code (U.S.C.) 23, Sections 123 and 109(I)(1). Regulations dealing with the utility facility accommodation and relocation are based upon the laws contained in 23 U.S.C. and are found in the Code of Federal Regulations (CFR), title 23, chapter I, subchapter G, part 645, subparts A and B.

Collection #1: Developing and Recording Costs for Utility Adjustments

The FHWA requires utility companies to document costs or expenses for adjusting their facilities (23 CFR 645 subpart A—Utility Relocations, Adjustments, and Reimbursement). These utility companies must have a system for recording labor, materials, supplies and equipment costs incurred when undertaking adjustments to accommodate highway projects. This record of costs forms the basis for payment by the SDOT or local transportation department to the utility company. In turn, the FHWA reimburses the SDOT or local transportation department for its payment to the utility company. The utility company is required to maintain these records of costs for 3 years after final payment is received.

Respondents: 3,000 Utility Firms.

Frequency: Annually.

Estimated Annual Burden: The FHWA estimates that this collection imposes a total annual burden of 24,000 hours. Utility adjustments are made yearly by approximately 3,000 utility firms. The average amount of time required by these firms to calculate the adjustment costs and maintain the required records is estimated at 8 hours for each adjustment.

Collection #2: Utility Use and Occupancy Agreements

The SDOT and/or local agency transportation departments are responsible for maintaining the highway rights-of-way, including the control of its use by the utility companies. In managing the use of the highway rights-of-way, the SDOT and/or local agency transportation department is required (23 CFR 645.205 and 23 CFR 645.213) to document the terms under which utility facilities are allowed to cross or otherwise occupy the highway rights-of-way, in the form of utility use and occupancy agreements with each utility company. This documentation, consisting of a use and occupancy agreement (permit), must be in writing and must be maintained in the SDOT and/or local agency transportation department.

Respondents: 4,600 State/local highway authorities.

Frequency: There are 15 agreements per year.

Estimated Annual Burden: The estimated amount of time required by the State/local highway authorities to process the permits is 8 hours. The FHWA estimates that the total annual burden imposed on the public by this collection is 552,000 hours.

Collection #3: Eligibility Statement for Utility Adjustments

Each SDOT is required (23 CFR 615.215) to submit to the FHWA a utility adjustment eligibility statement that establishes the SDOT legal authority and policies it employs for accommodating utilities within highway right-of-ways or obligation to pay for utility adjustments. FHWA has previously reviewed and approved these eligibility statements for each State DOT. The statements are used as a basis for Federal-aid reimbursement in utility relocation costs under the provisions of 23 U.S.C. 123. Updated statements may be submitted for review at the States discretion where circumstances have modified (for example, a change in State statute) the extent to which utility adjustments are eligible for reimbursement by the State or those instances where a local SDOT's legal basis for payment of utility adjustments differs from that of the State.

Respondents: 52 State Transportation Departments, including the District of Columbia and Puerto Rico.

Frequency: Updates for review, as required at the States' discretion.

Estimated Annual Burden: The average burden for preparing and submitting an updated eligibility statement is 18 hours per response. The estimated total annual burden, based upon 5 updated eligibility statements per year, is 90 hours.

Collection #4: Develop and Submit Utility Accommodation Policies

Each SDOT is also required (23 CFR 645.215) to develop and submit to FHWA their utility accommodation policies that will be used to regulate and manage the utility facilities within the rights-of-way of Federal-aid highway projects. The agencies utility accommodation policies need to address the basis for utility facilities to use and occupy highway right-of-ways; the State's authority to regulate such use; and the policies and/or procedures employed for managing and accommodating utilities within the right-of-ways of Federal-aid highway projects. Upon FHWA's approval of the policy statement, the SDOT may take any action required in accordance with the approved policy statement without a case-by-case review by the FHWA.

Respondents: 52 State Transportation Departments, including the District of Columbia and Puerto Rico.

Frequency: Updates for review, as required at the States' discretion.

Estimated Annual Burden: The average burden for updating an existing policy is 280 hours per response. The estimated total annual burden, based upon an estimated 5 updates per year, is 1,400 hours.

The accumulated annual burden for the combined information collection is 577,490.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection of information is necessary for the U.S. DOT's performance, including whether the information will have practical utility; (2) the accuracy of the U.S. DOT's estimate of the burden of the proposed information collection; (3) ways to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized, including the use of electronic technology, 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.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.48.

Issued On: September 22, 2010.

Juli Huynh,

Chief, Management Programs and Analysis Division.

[FR Doc. 2010–24276 Filed 9–27–10; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: Maritime Administration, DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and approval. The nature of the information collection is described as well as its expected burden.

DATES: Comments must be submitted on or before October 28, 2010. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on June 23, 2010. No comments were received.

FOR FURTHER INFORMATION CONTACT: Michael Gordon, Maritime Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590. Telephone: 202–366–5468; or e-mail *Michael.Gordon@dot.gov.* Copies of this collection also can be obtained from that office.

SUPPLEMENTARY INFORMATION: Maritime Administration (MARAD).

Title: America's Marine Highway Program.

OMB Control Number: 2133–0541.

Type Of Request: Extension of currently approved information collection.

Affected Public: Individuals, partnerships or coalitions seeking designation.

Forms: None.

Abstract: This collection of information will be used to evaluate applications submitted for project designation under the America's Marine Highway Program.

Annual Estimated Burden Hours: 200 hours.

Addressee: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention MARAD Desk Officer.

Comments are Invited on: 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; the accuracy of the agency'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 best assured of having its full effect if OMB receives it within 30 days of publication.

Authority: 49 CFR 1.66.

By Order of the Maritime Administrator.

Dated: September 22, 2010.

Christine Gurland,

Secretary, Maritime Administration.

[FR Doc. 2010–24340 Filed 9–27–10; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[FMCSA Docket No. FMCSA–2010–0212]

Notice of Fiscal Year 2011 Safety Grants and Solicitation for Applications

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

ACTION: Notice; change in application due dates.

SUMMARY: This notice is to inform the public of FMCSA's Fiscal Year (FY) 2011 safety grant opportunities and FMCSA's changes to its application dates. At present, FMCSA is operating under an extension of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy of Users (Pub. L. 109–59) which will expire December 31, 2010, unless extended by Congress. While the Agency expects new authorizing legislation to make changes to its grant programs, the Agency is preparing for FY 2011 assuming that the following grant programs will continue for part or all of the upcoming fiscal year. The 10 safety grant programs include the Motor Carrier Safety Assistance Program (MCSAP) Basic grants; MCSAP Incentive grants; MCSAP New Entrant Safety Audit grants; MCSAP High Priority grants; Commercial Motor Vehicle (CMV) Operator Safety Training grants; Border Enforcement grants (BEG); Commercial Driver's License Program Improvement (CDLPI) grants; Performance and Registration Information Systems Management (PRISM) grants; Safety Data Improvement Program grants (SaDIP); and the Commercial Vehicle Information Systems and Networks (CVISN) grants. It should be noted that FMCSA does not expect the Commercial Driver's License Information System (CDLIS) Modernization grants to be continued in reauthorization, and, therefore, FMCSA will not be soliciting applications for this grant program in FY 2011.

FOR FURTHER INFORMATION: Please contact the following FMCSA staff with questions or needed information on the Agency's grant programs:

MCSAP Basic/Incentive Grants—Jack Kostelnik, *john.kostelnik@dot.gov,* 202–366–5721.

New Entrant Safety Audits Grants—Arthur Williams, *arthur.williams@dot.gov,* 202–366–3695.

Border Enforcement Grants—Carla Vagnini, *carla.vagnini@dot.gov,* 202–366–3771.

MCSAP High Priority Grants—Cim Weiss, *cim.weiss@dot.gov,* 202–366–0275.

CMV Operator Safety Training Grants—Julie Otto, *julie.otto@dot.gov,* 202–366–0710.

CDLPI Grants—Brandon Poarch, *brandon.poarch@dot.gov,* 202–366–3030.

SaDIP Grants—Cim Weiss, *cim.weiss@dot.gov,* 202–366–0275.

PRISM Grants—Tom Lawler, *tom.lawler@dot.gov,* 202–366–3866.

CVISN Grants—Julie Otto, *julie.otto@dot.gov,* 202–366–0710.

All staff may be reached at FMCSA, 1200 New Jersey Avenue, SE., Washington, DC 20590. Office hours are from 9 a.m. to 5 p.m., EST, Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background and Purpose

The FMCSA recognizes that State and local governments and other grantees are dependent on its safety grants to develop and maintain important CMV safety programs. The FMCSA further acknowledges that delays in awarding grant funds may have an adverse impact on these important safety programs. As a result, FMCSA completed a grants process review to identify ways to streamline the application, award, and grants management processes, and to award grant funds earlier each fiscal year. In addition, FMCSA made changes in the grants application, award and oversight processes to standardize

application forms, increase the use of electronic documents, standardize quarterly reports and reduce the number of needed grant amendments.

The FMCSA continues to enter into grant agreements beginning October 1 or as soon thereafter as administratively practicable. FMCSA intends to enter into grant agreements no later than 90 days from the date the application is due.

The FMCSA is using a standard grant application form and a new quarterly reporting process. The FMCSA requires the Standard Form 424 ("Application for Federal Assistance") and its attachments for all grant program applications. While each grant program may request different data in some of the data fields on the form, the use of the Standard Form 424 is mandatory. FMCSA adopted the Standard Form—Project Progress Report (SF–PPR) as its required form for quarterly reporting. Again, each grant program may, in certain instances, request that different data be submitted in some of the fields or boxes on the form but SF–PRR is mandatory for quarterly reporting.

The number of original copies of grant agreements required to be submitted to FMCSA was reduced from three copies to two. In addition, FMCSA will provide most grant agreement documents electronically to its financial processing office. Grantees will, however, be required to submit the completed Automated Clearing House (ACH) Vendor Payment Form (SF–3881) directly to FMCSA's financial processing office by U.S. Postal Service, courier service or secure fax. Changes were necessitated by the Agency's implementation of a new grants management information technology system—GrantSolutions. GrantSolutions is a comprehensive grants management system provided by the Grants Center of Excellence (COE). The Grants COE serves as one of three consortia leads under the Grants Management Line of Business E–Gov initiative offering government-wide grants management system support services. It is expected that after full implementation, the GrantSolutions system will allow FMCSA to more quickly award grant funds, and will provide standardized grant application, award, and management and oversight throughout the Agency's grant programs. It should be noted that in FY 2011, FMCSA will be implementing the electronic signatures functionality of the GrantSolutions system. As a result, this will be the Agency's preferred method for securing grant agreement signatures. If electronic signature is used, two copies of the grant agreement do not have to be signed. Additional information will be provided to grantees during the grant award process.

Discussion of Comments

On July 13, 2010, FMCSA published a notice and request for comments regarding FMCSA's anticipated Fiscal Year (FY) 2011 safety grant opportunities (75 FR 40023). This notice requested comments on the originally proposed dates. Only one comment was submitted to the docket. It did not directly discuss the grant programs or the proposed dates. Rather, the anonymous commenter provided an opinion about SAFETEA–LU.

Additional information is provided below for each individual grant program.

MCSAP Basic and Incentive Grants: Sections 4101 and 4107 of SAFETEA–LU authorize FMCSA's Motor Carrier Safety Grants. MCSAP Basic and Incentive *formula* grants are governed by 49 U.S.C. 31102–31104 and 49 CFR Part 350. Under the Basic and Incentive grants programs, a State lead MCSAP agency, as designated by its Governor, is eligible to apply for Basic and Incentive grant funding by submitting a commercial vehicle safety plan (CVSP). *See* 49 CFR 350.201 and 350.205. The following jurisdictions are not eligible for Incentive funds: The Virgin Islands, American Samoa, Guam, Puerto Rico, and the Commonwealth of the Northern Mariana Islands. Pursuant to 49 U.S.C. 31103 and 49 CFR 350.303, FMCSA will reimburse each lead State MCSAP agency 80 percent of eligible costs incurred in a fiscal year. Each State will provide a 20 percent match to qualify for the program. The FMCSA Administrator waives the requirement for matching funds for the Virgin Islands, American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands. *See* 49 CFR 350.305. In accordance with 49 CFR 350.323, the Basic grant funds will be distributed proportionally to each State's lead MCSAP agency using the following four, equally weighted (25 percent) factors:

(1) 1997 road miles (all highways) as defined by the FMCSA;

(2) All vehicle miles traveled (VMT) as defined by the FMCSA;

(3) Population—annual census estimates as issued by the U.S. Census Bureau; and

(4) Special fuel consumption (net after reciprocity adjustment) as defined by the FMCSA.

A State's lead MCSAP agency may qualify for Incentive Funds if it can demonstrate that the State's CMV safety program has shown improvement in any or all of the following five categories:

(1) Reduction in the number of large truck-involved fatal accidents;

(2) Reduction in the rate of large-truck-involved fatal accidents or maintenance of a large- truck-involved fatal accident rate that is among the lowest 10 percent of such rates for MCSAP recipients and is not higher than the rate most recently achieved;

(3) Upload of CMV accident reports in accordance with current FMCSA policy guidelines;

(4) Verification of Commercial Driver's Licenses during all roadside inspections; and

(5) Upload of CMV inspection data in accordance with current FMCSA policy guidelines.

Incentive funds will be distributed in accordance with 49 CFR 350.327(b).

Prior to the start of each fiscal year, FMCSA calculates the amount of Basic and Incentive funding each State is expected to receive. This information is provided to the States and is made available on the Agency's Web site. The FY 2011 information is available at *http://www.fmcsa.dot.gov.*

It should be noted that MCSAP Basic and Incentive formula grants are awarded based on the State's submission of the CVSP. The evaluation factors described in the section below titled "Application Information for FY 2011 Grants" will not be considered. MCSAP Basic and Incentive grant applications must be submitted electronically through grants.gov (*http://www.grants.gov*).

New Entrant Safety Audit Grants: Sections 4101 and 4107 of SAFETEA–LU also authorize the Motor Carrier Safety Grants to enable grant recipients to conduct interstate New Entrant safety audits consistent with 49 CFR Parts 350.321 and 385.301. Eligible recipients are State agencies, local governments, and organizations representing government agencies that use and train qualified officers and employees in coordination with State motor vehicle safety agencies. The FMCSA's share of these grant funds will be 100 percent. New Entrant grant applications must be submitted electronically through grants.gov (*http://www.grants.gov*).

MCSAP High Priority Grants: Section 4107 of SAFETEA–LU also authorizes the Motor Carrier Safety Grants to enable recipients to carry out activities and projects that improve CMV safety and compliance with CMV regulations. Funding is available for projects that are national in scope, increase public awareness and education, demonstrate new technologies and reduce the number and rate of CMV accidents. Eligible

recipients are State agencies, local governments, and organizations representing government agencies that use and train qualified officers and employees in coordination with State motor vehicle safety agencies.

For grants awarded for public education activities, the Federal share will be 100 percent. For all High Priority grants other than those awarded in support of public education activities, FMCSA will provide reimbursements for no more than 80 percent of all eligible costs, and recipients will be required to provide a 20 percent match. FMCSA may reserve High Priority funding exclusively for innovative traffic enforcement projects, with particular emphasis on work zone enforcement and rural road safety. Also, FMCSA may reserve funding for an innovative traffic enforcement initiative known as "Ticketing Aggressive Cars and Trucks" or TACT. TACT provides a research-based safety model that can be replicated by States when conducting a high-visibility traffic enforcement program to promote safe driving behaviors among car and truck drivers. The objective of this program is to reduce the number of commercial truck and bus related crashes, fatalities and injuries resulting from improper operation of motor vehicles and aggressive driving behavior. More information regarding TACT can be found at *http://www.fmcsa.dot.gov/safety-security/tact/abouttact.htm.*

High Priority grant applications must be submitted through grants.gov.

CMV Operator Safety Training Grants:

Section 4134 of SAFETEA–LU established a grant program which enables recipients to train current and future drivers in the safe operation of CMVs, as defined in 49 U.S. C. 31301(4). Eligible awardees include State governments, local governments and accredited post-secondary educational institutions (public or private) such as colleges, universities, vocational-technical schools and truck driver training schools. Funding priority for this discretionary grant program will be given to regional or multi-state educational or nonprofit associations serving economically distressed regions of the United States. The Federal share of these funds will be 80 percent, and recipients will be required to provide a 20 percent match. CMV Operator Safety Training grant applications must be submitted electronically through grants.gov.

Border Enforcement Grants (BEG):

Section 4110 of SAFETEA–LU established the BEG program. The purpose of this discretionary program is to provide funding for border CMV safety programs and related enforcement activities and projects. An entity or a State that shares a land border with another country is eligible to receive this grant funding. Eligible awardees include State governments, local governments, and entities (i.e., accredited post-secondary public or private educational institutions such as universities). Requests from entities must be coordinated with the State lead CMV inspection agency. Applications must include a Border Enforcement Plan and meet the required maintenance of expenditure requirement. BEG funding decisions take into consideration the State or entity's performance on previous BEG awards; its ability to expend the awarded funds with the BEG performance year; and activities meeting the BEG national criteria established by FMCSA. As established by SAFETEA–LU, the Federal share of these funds will be 100 percent. As a result, there is no matching requirement. BEG grant applications must be submitted electronically through grants.gov.

CDLPI Grants:

Section 4124 of SAFETEA–LU established a discretionary grant program that provides funding for improving States' implementation of the Commercial Driver's License (CDL) program, including expenses for computer hardware and software, publications, testing, personnel, and training. Funds may not be used to rent, lease, or buy land or buildings. The agency designated by each State as the primary driver licensing agency responsible for the development, implementation, and maintenance of the CDL program is eligible to apply for basic grant funding. State agencies, local governments, and other entities that can support a State's effort to improve its CDL program or conduct projects on a national scale to improve the national CDL program may also apply for projects under the High Priority and Emerging Issues components. Grant proposals must include a detailed budget explaining how the funds will be used. The Federal share of funds for projects awarded under this grant is established by SAFETEA–LU as 100 percent; therefore, there is no grantee matching requirement. The funding opportunity announcement on grants.gov will provide more detailed information on the application process; national funding priorities for FY 2011; evaluation criteria; required documents and certifications; State maintenance of expenditure requirements; and additional information related to the availability of funds. CLDPI grant applications must be submitted electronically through grants.gov.

SaDIP Grants:

Section 4128 of SAFETEA–LU established a SaDIP grant program to improve the quality of crash and inspection truck and bus data reported by the States to FMCSA, as described 49 USC 31102. Eligible recipients are State agencies, local governments, and organizations representing government agencies that are involved with highway traffic safety activities and must demonstrate a capacity to work with highway traffic safety stakeholders. The State's SaDIP proposal must focus on a project that enhances the accuracy, timeliness, and completeness of the collection and reporting of Commercial Motor Vehicle crash information in all components of the State's record system. An applicant's proposed SaDIP project must address the seven (7) application requirements plus the overriding indicator established for the State Safety Data Quality (SSDQ) program. The FMCSA will provide reimbursements for no more that 80 percent of all eligible costs and recipients are required to provide a 20 percent match.

PRISM Grants:

Section 4109 of SAFETEA–LU authorizes FMCSA to award financial assistance funds to States to implement the PRISM requirements that link Federal motor carrier safety information systems with State CMV registration and licensing systems. This program enables a State to determine the safety fitness of a motor carrier or registrant when licensing or registering or while the license or registration is in effect. PRISM grant applications must be submitted electronically through grants.gov. No matching funds are required.

CVISN Grants:

Section 4126 of SAFETEA–LU authorizes FMCSA to award financial assistance to States to deploy, operate, and maintain elements of their CVISN Program, including commercial vehicle, commercial driver, and carrier-specific information systems and networks. The agency in each State designated as the primary agency responsible for the development, implementation, and maintenance of a CVISN-related system is eligible to apply for grant funding.

Section 4126 of SAFETEA–LU distinguishes between two types of CVISN projects: Core and Expanded. To be eligible for funding of Core CVISN deployment project(s), a State must have its most current Core CVISN Program Plan and Top-Level Design approved by FMCSA and the proposed project(s) should be consistent with its approved Core CVISN Program Plan and Top-Level Design. If a State does not have a

Core CVISN Program Plan and Top-Level Design, it may apply for up to $100,000 in funds to either compile or update a Core CVISN Program Plan and Top-Level Design.

A State may also apply for funds to prepare an Expanded CVISN Program Plan and Top-Level Design if FMCSA acknowledged the State as having completed Core CVISN deployment. In order to be eligible for funding of any Expanded CVISN deployment project(s), a State must have its most current Expanded CVISN Program Plan and Top-Level Design approved by FMCSA and any proposed Expanded CVISN project(s) should be consistent with its Expanded CVISN Program Plan and Top-Level Design. If a State does not have an existing or up-to-date Expanded CVISN Program Plan and Top-Level Design, it may apply for up to $100,000 in funds to either compile or update an Expanded CVISN Program Plan and Top-Level Design.

CVISN grant applications must be submitted electronically through grants.gov. Awards for approved CVISN grant applications are made on a first-come, first-served basis. States must provide a match of 50 percent.

Application Information For FY 2011 GRANTS:

General information about the FMCSA grant programs is available in the Catalog of Federal Domestic Assistance (CFDA) which can be found on the internet at *http://www.cfda.gov.* To apply for funding, applicants must register with grants.gov at *http://www.grants.gov/applicants/get—registered.jsp* and submit an application in accordance with instructions provided.

Evaluation Factors: The following evaluation factors will be used in reviewing the applications for all FMCSA discretionary grants:

(1) Prior performance—Completion of identified programs and goals per the project plan.

(2) Effective Use of Prior Grants—Demonstrated timely use and expensing of available funds.

(3) Cost Effectiveness—Applications will be evaluated and prioritized on the basis of expected impact on safety relative to the investment of grant funds. Where appropriate, costs per unit will be calculated and compared with national averages to determine effectiveness. In other areas, proposed costs will be compared with historical information to confirm reasonableness.

(4) Applicability to announced priorities—If national priorities are included in the grants.gov notice, those grants that specifically address these issues will be given priority consideration.

(5) Ability of the applicant to support the strategies and activities in the proposal for the entire project period of performance.

(6) Use of innovative approaches in executing a project plan to address identified safety issues.

(7) Feasibility of overall program coordination and implementation based upon the project plan.

(8) Any grant-specific evaluation factors, such as program balance or geographic diversity, will be included in the grants.gov application information.

Revised Application Due Dates: For the following grant programs, FMCSA will consider funding complete applications or plans submitted by the following dates:

MCSAP Basic and Incentive Grants—August 1, 2010.
Border Enforcement Grants—September 15, 2010.
MCSAP High Priority Grants—October 15, 2010.
CMV Operator Safety Training Grants—December 15, 2010.
New Entrant Safety Audit Grants—October 15, 2010.
CVISN Grants—February 1, 2011.
CDLPI Grants—November 15, 2010.
PRISM Grants—February 1, 2011.
SaDIP Grants—February 15, 2011.

Applications submitted after due dates may be considered on a case-by-case basis and are subject to availability of funds.

Issued on: September 20, 2010.

William A. Quade,

Associate Administrator for Enforcement and Program Delivery.

[FR Doc. 2010–24044 Filed 9–27–10; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Highway in New Hampshire

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of limitation on claims for judicial review of actions by FHWA and other Federal agencies.

SUMMARY: This notice announces actions taken by the FHWA and other Federal agencies that are final within the meaning of 23 U.S.C.139(l)(1). The actions relate to a proposed highway project in Rockingham and Hillsborough Counties in the State of New Hampshire, Interstate 93 extending from the Massachusetts/New Hampshire state line northward approximately 19.8-miles through the Towns of Salem, Windham, Derry and Londonderry, and ending at the I–93/I–293 interchange in the City of Manchester. Those actions grant licenses, permits, and approvals for the project.

DATES: By this notice, the FHWA is advising the public of final agency actions subject to 23 U.S.C. 139(l)(1). A claim seeking judicial review of the Federal agency actions that are covered by this notice will be barred unless the claim is filed on or before March 28, 2011. If the Federal law that authorizes judicial review of a claim provides a time period of less than 180 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: For FHWA: Mr. Jamison S. Sikora, Environmental Programs Manager, Federal Highway Administration, 19 Chenell Drive, Suite One, Concord, NH, 03301, *Office Hours:* 8 a.m. to 4 p.m., (603) 228–3057, *e-mail: Jamie.Sikora@.dot.gov.* For NHDOT: William J. Cass, P.E., Director of Project Development, NH Department of Transportation, 1 Hazen Drive, PO Box 483, Concord, NH 03302, Office Hours: 8 a.m. to 4 p.m., (603) 271–6152, *e-mail: bcass@dot.state.nh.us.*

SUPPLEMENTARY INFORMATION: On May 30, 2007, the FHWA published a "Notice of Final Federal Agency Actions on the Proposed Highway in New Hampshire" in the **Federal Register** at 72 FR 30047–01 for the following highway project in the State of New Hampshire: improvements to an approximately 19.8-mile segment of the Interstate 93 corridor between Salem and Manchester, New Hampshire. Improvements consist of widening the existing four-lane Interstate highway to eight lanes, improvements at each of the five interchange locations along this highway segment, and addressing existing geometric deficiencies. Improvements to the corridor are considered necessary to improve transportation efficiency and reduce safety deficiencies. The FHWA project number is IM–IR–93–1(174)0. Federal agency actions covered by the May 30, 2007 FHWA notice include Final Environmental Impact Statement (FEIS) for the project, approved on April 28, 2004, FHWA Record of Decision (ROD) issued on June 28, 2005, and U.S. Army Corps of Engineers decision and permit (USACE Permit No. 199201232/NAE–2004–233). Notice is hereby given that subsequent to the May 30, 2007 FHWA notice, FHWA has taken final agency actions within the meaning of 23 U.S.C.

139(l)(1) by issuing approvals for the highway project. The FHWA's actions and the laws under which such actions were taken, are described in the FHWA Final Supplemental Environmental Impact Statement (FSEIS) for the project, approved on May 3, 2010, in the FHWA Supplemental Record of Decision (SROD) issued on September 20, 2010, and in other documents in the FHWA administrative record. The FSEIS, SROD, and other documents in the FHWA administrative record file are available by contacting the FHWA or the New Hampshire Department of Transportation at the addresses provided above. The FHWA FSEIS and SROD can be viewed and downloaded from the project Web site at *http://www.rebuildingi93.com/*.

This notice applies to all FHWA and other Federal agency actions taken after the May 30, 2007 FHWA **Federal Register** Notice described above. The laws under which actions were taken may include, but are not limited to:

1. *General:* National Environmental Policy Act (NEPA) [42 U.S.C. 4321–4351]; Federal-Aid Highway Act [23 U.S.C. 109].

2. *Air:* Clean Air Act, 42 U.S.C. 7401–7671(q).

3. *Land:* Section 4(f) of the Department of Transportation Act of 1966 [49 U.S.C. 303]; Landscaping and Scenic Enhancement (Wildflowers), 23 U.S.C. 319.

4. *Wildlife:* Endangered Species Act [16 U.S.C. 1531–1544 and Section 1536], Marine Mammal Protection Act [16 U.S.C. 1361], Fish and Wildlife Coordination Act [16 U.S.C. 661–667(d)], Migratory Bird Treaty Act [16 U.S.C. 703–712].

5. *Historic and Cultural Resources:* Section 106 of the National Historic Preservation Act of 1966, as amended [16 U.S.C. 470(f) *et seq.*]; Archeological Resources Protection Act of 1977 [16 U.S.C. 470(aa)–11]; Archeological and Historic Preservation Act [16 U.S.C. 469–469(c)]; Native American Grave Protection and Repatriation Act (NAGPRA) [25 U.S.C. 3001–3013].

6. *Social and Economic:* Civil Rights Act of 1964 [42 U.S.C. 2000(d)–2000(d)(1)]; American Indian Religious Freedom Act [42 U.S.C. 1996]; Farmland Protection Policy Act (FPPA) [7 U.S.C. 4201–4209].

7. *Wetlands and Water Resources:* Clean Water Act, 33 U.S.C. 1251–1377 (Section 404, Section 401, Section 319); Land and Water Conservation Fund (LWCF), 16 U.S.C. 4601–4604; Safe Drinking Water Act (SDWA), 42 U.S.C. 300(f)–300(j)(6); Rivers and Harbors Act of 1899, 33 U.S.C. 401–406; Wild and Scenic Rivers Act, 16 U.S.C. 1271–1287; Emergency Wetlands Resources Act, 16 U.S.C. 3921, 3931; TEA–21 Wetlands Mitigation, 23 U.S.C. 103(b)(6)(m), 133(b)(11); Flood Disaster Protection Act, 42 U.S.C. 4001–4128.

8. *Executive Orders:* E.O. 11990 Protection of Wetlands; E.O. 11988 Floodplain Management; E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations; E.O. 11593 Protection and Enhancement of Cultural Resources; E.O. 13007 Indian Sacred Sites; E.O. 13287 Preserve America; E.O. 13175 Consultation and Coordination with Indian Tribal Governments; E.O. 11514 Protection and Enhancement of Environmental Quality; E.O. 13112 Invasive Species.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(l)(1).

Issued on: September 20, 2010.

Kathleen O. Laffey,

Division Administrator, Federal Highway Administration, New Hampshire Division, Concord, New Hampshire.

[FR Doc. 2010–24097 Filed 9–27–10; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA- 2010–0288]

Qualification of Drivers; Exemption Applications; Diabetes Mellitus

AGENCY: Federal Motor Carrier Safety Administration (FMCSA).

ACTION: Notice of applications for exemption from the diabetes mellitus standard; request for comments.

SUMMARY: FMCSA announces receipt of applications from 32 individuals for exemption from the prohibition against persons with insulin-treated diabetes mellitus (ITDM) operating commercial motor vehicles (CMVs) in interstate commerce. If granted, the exemptions would enable these individuals with ITDM to operate CMVs in interstate commerce.

DATES: Comments must be received on or before October 28, 2010.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket No. FMCSA–2010–0288 using any of the following methods:

- *Federal Rulemaking 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:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

Instructions: Each submission must include the Agency name and the docket numbers for this notice. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below for further information.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Federal Docket Management System (FDMS) is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments online.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's Privacy Act Statement for the FDMS published in the **Federal Register** on January 17, 2008 (73 FR 3316), or you may visit *http://edocket.access.gpo.gov/2008/pdf/E8–785.pdf.*

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Director, Medical Programs, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue, SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the Federal Motor Carrier Safety Regulations for a 2-year period if it finds "such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption." The statute also allows the Agency to renew exemptions at the end of the 2-year period. The 32 individuals listed in this notice have recently requested such an exemption from the diabetes prohibition in 49 CFR 391.41(b)(3), which applies to drivers of CMVs in interstate commerce. Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting the exemption will achieve the required level of safety mandated by the statutes.

Qualifications of Applicants

Shale W. Anderson

Mr. Anderson, 37, has had ITDM since 2008. His endocrinologist examined him in 2010 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years; understands diabetes management and monitoring; has stable control of his diabetes using insulin; and is able to drive a CMV safely. Mr. Anderson meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2010 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Florida.

Charles L. Arnburg

Mr. Anrburg, age 70, has had ITDM since 2007. His endocrinologist examined him in 2010 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years; understands diabetes management and monitoring; has stable control of his diabetes using insulin; and is able to drive a CMV safely. Mr. Arnburg meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2010 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class B Commercial Driver's License (CDL) from Iowa.

Ronald D. Ayers

Mr. Ayers, 54, has had ITDM since 2010. His endocrinologist examined him in 2010 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years; understands diabetes management and monitoring; has stable control of his diabetes using insulin; and is able to drive a CMV safely. Mr. Ayers meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2010 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from West Virginia.

Keith F. Blessing

Mr. Blessing, 30, has had ITDM since 1988. His endocrinologist examined him in 2010 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years; understands diabetes management and monitoring; has stable control of his diabetes using insulin; and is able to drive a CMV safely. Mr. Blessing meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2010 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class D operator's license from New Jersey.

Ronald A. Boyle

Mr. Boyle, 54, has had ITDM since 2002. His endocrinologist examined him in 2010 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years; understands diabetes management and monitoring; has stable control of his diabetes using insulin; and is able to drive a CMV safely. Mr. Boyle meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2010 and certified that he does not have diabetic retinopathy. He holds a Class D operator's license from Arizona.

Garrett D. Couch

Mr. Couch, 35, has had ITDM since 2009. His endocrinologist examined him in 2010 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years; understands diabetes management and monitoring; has stable control of his diabetes using insulin; and is able to drive a CMV safely. Mr. Couch meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2010 and certified that he does not have diabetic retinopathy. He holds a Class C chauffeur's license from Michigan.

Stanley P. Eickhoff

Mr. Eickhoff, 56, has had ITDM since 2009. His endocrinologist examined him in 2010 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years; understands diabetes management and monitoring; has stable control of his diabetes using insulin; and is able to drive a CMV safely. Mr. Eickhoff meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2010 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Indiana.

Peter B. Galvin

Mr. Galvin, 40, has had ITDM since 1981. His endocrinologist examined him in 2010 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years; understands diabetes management and monitoring; has stable control of his diabetes using insulin; and is able to drive a CMV safely. Mr. Galvin meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2010 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class R operator's license from Colorado which allows him to

drive any motor vehicle with a gross weight of less than 26,001 pounds.

Mark W. Garver

Mr. Garver, 42, has had ITDM since 1995. His endocrinologist examined him in 2010 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years; understands diabetes management and monitoring; has stable control of his diabetes using insulin; and is able to drive a CMV safely. Mr. Garver meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2010 and certified that he does not have diabetic retinopathy. He holds a Class A CDL license from Minnesota.

Richard S. Jackson

Mr. Jackson, 59, has had ITDM since 2005. His endocrinologist examined him in 2010 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years; understands diabetes management and monitoring; has stable control of his diabetes using insulin; and is able to drive a CMV safely. Mr. Jackson meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2010 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class C operator's license from Georgia.

Alfred K. Kataoka

Mr. Kataoka, 63, has had ITDM since 2009. His endocrinologist examined him in 2010 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years; understands diabetes management and monitoring; has stable control of his diabetes using insulin; and is able to drive a CMV safely. Mr. Kataoka meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2010 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Iowa.

Donald S. Keller

Mr. Keller, 61, has had ITDM since 2006. His endocrinologist examined him in 2010 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years; understands diabetes management and monitoring; has stable control of his diabetes using insulin; and is able to drive a CMV safely. Mr. Keller meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2010 and certified that he does not have diabetic retinopathy. He holds a Class B CDL license from Michigan.

Edwin I. Longstreth

Mr. Longstreth, 66, has had ITDM since 2010. His endocrinologist examined him in 2010 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years; understands diabetes management and monitoring; has stable control of his diabetes using insulin; and is able to drive a CMV safely. Mr. Longstreth meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2010 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Iowa.

Jason M. Luper

Mr. Luper, 39, has had ITDM since 1982. His endocrinologist examined him in 2010 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years; understands diabetes management and monitoring; has stable control of his diabetes using insulin; and is able to drive a CMV safely. Mr. Luper meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2010 and certified that he does not have diabetic retinopathy. He holds a Class A CDL license from Missouri.

Craig S. Lynn

Mr. Lynn, 41, has had ITDM since 1970. His endocrinologist examined him in 2010 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years; understands diabetes management and monitoring; has stable control of his diabetes using insulin; and is able to drive a CMV safely. Mr. Lynn meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2010 and certified that he does not have diabetic retinopathy. He holds a Class D operator's license from New Mexico.

George M. Michael, Jr.

Mr. Michael, 66, has had ITDM since 2008. His endocrinologist examined him in 2010 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years; understands diabetes management and monitoring; has stable control of his diabetes using insulin; and is able to drive a CMV safely. Mr. Michael meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2010 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A CDL from Mississippi.

Thomas J. Millard

Mr. Millard, 30, has had ITDM since 1986. His endocrinologist examined him in 2010 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years; understands diabetes management and monitoring; has stable control of his diabetes using insulin; and is able to drive a CMV safely. Mr. Millard meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2010 and certified that he does not have diabetic retinopathy. He holds a Class C operator's license from Georgia.

Travis F. Moon

Mr. Moon, 39, has had ITDM since 1987. His endocrinologist examined him in 2010 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years; understands diabetes management and monitoring; has stable control of his diabetes using insulin; and is able to drive a CMV safely. Mr. Moon meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2010 and certified that he does not have diabetic retinopathy. He holds a Class A CDL license from Georgia.

Kenneth M. Pachniak

Mr. Pachniak, 58, has had ITDM since 2003. His endocrinologist examined him in 2010 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years; understands diabetes management and monitoring; has stable control of his diabetes using insulin; and is able to drive a CMV safely. Mr. Pachniak meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2010 and certified that he does not have diabetic retinopathy. He holds a Class C chauffeur's license from Michigan.

Robert M. Pardoe

Mr. Pardoe, 50, has had ITDM since 2010. His endocrinologist examined him in 2010 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years; understands diabetes management and monitoring; has stable control of his diabetes using insulin; and is able to drive a CMV safely. Mr. Pardoe meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2010 and certified that he does not have diabetic retinopathy. He holds a Class C operator's license from Pennsylvania.

James A. Patchett

Mr. Patchett, 62, has had ITDM since 2009. His endocrinologist examined him in 2010 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years; understands diabetes management and monitoring; has stable control of his diabetes using insulin; and is able to drive a CMV safely. Mr. Patchett meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2010 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Washington.

Joseph D. Pfandner

Mr. Pfandner, 66, has had ITDM since 1996. His endocrinologist examined him in 2010 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years; understands diabetes management and monitoring; has stable control of his diabetes using insulin; and is able to drive a CMV safely. Mr. Pfandner meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2010 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Illinois.

Harold L. Phillips

Mr. Phillips, 55, has had ITDM since 2001. His endocrinologist examined him in 2010 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years; understands diabetes management and monitoring; has stable control of his diabetes using insulin; and is able to drive a CMV safely. Mr. Phillips meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2010 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class D operator's license from Oklahoma.

William Rhoten, Jr.

Mr. Rhoten, 44, has had ITDM since 1982. His endocrinologist examined him in 2010 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years; understands diabetes management and monitoring; has stable control of his diabetes using insulin; and is able to drive a CMV safely. Mr. Rhoten meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2010 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Ohio.

Heath A. Senkel

Mr. Senkel, 35, has had ITDM since 2002. His endocrinologist examined him in 2010 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years; understands diabetes management and monitoring; has stable control of his diabetes using insulin; and is able to drive a CMV safely. Mr. Senkel meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2010 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Colorado.

Roland R. Unruh

Mr. Unruh, 41, has had ITDM since 1995. His endocrinologist examined him in 2010 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years; understands diabetes management and monitoring; has stable control of his diabetes using insulin; and is able to drive a CMV safely. Mr. Unruh meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2010 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Kansas.

Norman J. Vantuyle, II

Mr. Vantuyle, II, 43, has had ITDM since 2009. His endocrinologist examined him in 2010 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in

impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years; understands diabetes management and monitoring; has stable control of his diabetes using insulin; and is able to drive a CMV safely. Mr. Vantuyle meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2010 and certified that he does not have diabetic retinopathy. He holds a Class A CDL license from Michigan.

Danny E. Vawn

Mr. Vawn, 53, has had ITDM since 2009. His endocrinologist examined him in 2010 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years; understands diabetes management and monitoring; has stable control of his diabetes using insulin; and is able to drive a CMV safely. Mr. Vawn meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2010 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Iowa.

John M. Warden

Mr. Warden, 48, has had ITDM since 2010. His endocrinologist examined him in 2010 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years; understands diabetes management and monitoring; has stable control of his diabetes using insulin; and is able to drive a CMV safely. Mr. Warden meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2010 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Texas.

Donald E. Weadon

Mr. Weadon, 55, has had ITDM since 1983. His endocrinologist examined him in 2010 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years; understands diabetes management and monitoring; has stable control of his diabetes using insulin; and is able to drive a CMV safely. Mr. Weadon meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2010 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A operator's license from Maryland.

Douglas W. Williams

Mr. Williams, 49, has had ITDM since 2010. His endocrinologist examined him in 2010 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years; understands diabetes management and monitoring; has stable control of his diabetes using insulin; and is able to drive a CMV safely. Mr. Williams meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2010 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A CDL from Tennessee.

Thomas A. Woehrle

Mr. Woehrle, 60, has had ITDM since 2010. His endocrinologist examined him in 2010 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years; understands diabetes management and monitoring; has stable control of his diabetes using insulin; and is able to drive a CMV safely. Mr. Woehrle meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2010 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Minnesota.

Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315, FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. We will consider all comments received before the close of business on the closing date indicated in the date section of the notice.

FMCSA notes that section 4129 of the Safe, Accountable, Flexible and Efficient Transportation Equity Act: A Legacy for Users requires the Secretary to revise its diabetes exemption program established on September 3, 2003 (68 FR 52441).[1] The revision must provide for individual assessment of drivers with diabetes mellitus, and be consistent with the criteria described in section 4018 of the Transportation Equity Act for the 21st Century (49 U.S.C. 31305).

Section 4129 requires: (1) Elimination of the requirement for 3 years of experience operating CMVs while being treated with insulin; and (2) establishment of a specified minimum period of insulin use to demonstrate stable control of diabetes before being allowed to operate a CMV.

In response to section 4129, FMCSA made immediate revisions to the diabetes exemption program established by the September 3, 2003 notice. FMCSA discontinued use of the 3-year driving experience and fulfilled the requirements of section 4129 while continuing to ensure that operation of CMVs by drivers with ITDM will achieve the requisite level of safety required of all exemptions granted under 49 USC. 31136 (e).

Section 4129(d) also directed FMCSA to ensure that drivers of CMVs with ITDM are not held to a higher standard than other drivers, with the exception of limited operating, monitoring and medical requirements that are deemed medically necessary. The FMCSA concluded that all of the operating, monitoring and medical requirements set out in the September 3, 2003 notice, except as modified, were in compliance with section 4129(d). Therefore, all of the requirements set out in the September 3, 2003 notice, except as modified by the notice in the **Federal Register** on November 8, 2005 (70 FR 67777), remain in effect.

Issued on: September 21, 2010.

Larry W. Minor

Associate Administrator for Policy and Program Development.

[FR Doc. 2010–24210 Filed 9–27–10; 8:45 am]

BILLING CODE P

[1] Section 4129(a) refers to the 2003 notice as a "final rule." However, the 2003 notice did not issue a "final rule" but did establish the procedures and standards for issuing exemptions for drivers with ITDM.

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2010–0161]

Qualification of Drivers; Exemption Applications; Vision

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

ACTION: Notice of applications for exemptions; request for comments.

SUMMARY: FMCSA announces receipt of applications from 17 individuals for exemption from the vision requirement in the Federal Motor Carrier Safety Regulations. If granted, the exemptions would enable these individuals to qualify as drivers of commercial motor vehicles (CMVs) in interstate commerce without meeting the Federal vision standard.

DATES: Comments must be received on or before October 28, 2010.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket No. FMCSA–2010–0161 using 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:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

Instructions: Each submission must include the Agency name and the docket numbers for this Notice. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below for further information.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments online.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19476). This information is also available at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Director, Medical Programs, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue, SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the Federal Motor Carrier Safety Regulations for a 2-year period if it finds "such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption." FMCSA can renew exemptions at the end of each 2-year period. The 17 individuals listed in this Notice have each requested such an exemption from the vision requirement in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce. Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting an exemption will achieve the required level of safety mandated by statute.

Qualifications of Applicants

Ramon Adame

Mr. Adame, age 48, has had retinal detachment in his left eye since 1983. The best corrected visual acuity in his right eye is 20/20 and in his left eye, light perception only. Following an examination in 2009, his optometrist noted, "Has sufficient vision to drive a commercial vehicle." Mr. Adame reported that he has driven straight trucks for 6 years, accumulating 165,000 miles. He holds a Class B Commercial Driver's License (CDL) from Illinois. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Calvin D. Bills

Mr. Bills, 59, has had amblyopia in his right eye since childhood. The best corrected visual acuity in his right eye is 20/70 and in his left eye, 20/20. Following an examination in 2009, his optometrist noted, "Mr. Calvin Bills, in my opinion, has the ability and sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Bills reported that he has driven straight trucks for 5 years, accumulating 50,000 miles and tractor-trailer combinations for 10 years, accumulating 4 million miles. He holds a Class A CDL from Virginia. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Joel W. Bryant

Mr. Bryant, 53, has had a prosthetic right eye since 1990 due to a traumatic injury. The best corrected visual acuity in his left eye is 20/20. Following an examination in 2009, his optometrist noted, "Mr. Bryant appears to have sufficient vision to perform driving tasks in operating a commercial vehicle using his left eye." Mr. Bryant reported that he has driven straight trucks for 32 years, accumulating 1.2 million miles and tractor-trailer combinations for 3 years, accumulating 150,000 miles. He holds a Class D chauffeur's license from Louisiana. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Jonathan Carriaga

Mr. Carriaga, 35, has had amblyopia in his left eye since childhood. The best corrected visual acuity in his right eye is 20/20 and in his left eye, 20/60. Following an examination in 2010, his optometrist noted, "In my medical opinion Jonathan Carriaga has sufficient vision with or without glasses to drive a commercial vehicle safely." Mr. Carriaga reported that he has driven straight trucks for 12 years, accumulating 62,400 miles and tractor-trailer combinations for 10 years, accumulating 52,000 miles. He holds a Class A CDL from New Mexico. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Michael R. Clark

Mr. Clark, 54, has had macular scarring in his right eye since childhood. The best corrected visual acuity in his right eye is 20/200 and in his left eye, 20/15. Following an examination in 2010, his optometrist noted, "It is my medical opinion that Mr. Clark has sufficient vision to

perform all driving tasks required of him to drive a commercial vehicle." Mr. Clark reported that he has driven straight trucks for 5 years, accumulating 100,000 miles and tractor-trailer combinations for 26 years accumulating 1.3 million miles. He holds a Class A CDL from Tennessee. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

James D. Drabek, Jr.

Mr. Drabek, 52, has had idiopathic macular choroidal neovascularization in both eyes since 1998. The best corrected visual acuity in his right eye is 20/60 and in his left eye, 20/20. Following an examination in 2010, his optometrist noted, "James Drabek, Jr. has sufficient vision to perform driving tasks required to operate a commercial vehicle." Mr. Drabek reported that he has driven tractor-trailer combinations for 28 years, accumulating 1.4 million miles. He holds a Class A CDL from Illinois. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Curtis E. Firari

Mr. Firari, 54, has had macular scarring in his left eye since 1976. The best corrected visual acuity in his right eye is 20/15 and in his left eye, 20/350. Following an examination in 2010, his optometrist noted, "In my opinion, Curt has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Firari reported that he has driven tractor-trailer combinations for 33 years accumulating 330,000 miles. He holds a Class A CDL from Wisconsin. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Percy L. Gaston

Mr. Gaston, 57, has had central vision loss in his right eye since childhood. The best corrected visual acuity in his right eye is hand-motion vision and in his left eye, 20/20. Following an examination in 2010, his ophthalmologist noted, "Patient has sufficient vision at this time to operate a commercial vehicle." Mr. Gaston reported that he has driven straight trucks for 2 years, accumulating 5,200 miles and tractor-trailer combinations for 29 years, accumulating 105,560 miles. He holds a Class A CDL from Texas. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Ronald M. Green

Mr. Green, 51, has had central serous retinopathy in his right eye since 1997. The best corrected visual acuity in his right eye is 20/60 and in his left eye, 20/15. Following an examination in 2010, his optometrist noted, "I certify that in my medical opinion, Ronald Green has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Green reported that he has driven tractor-trailer combinations for 13 years, accumulating 1 million miles. He holds a Class A CDL from Ohio. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Richard Iocolano

Mr. Iocolano, 51, has had retinal scarring in his left eye since childhood. The best corrected visual acuity in his right eye is 20/20 and in his left eye, 20/400. Following an examination in 2010, his ophthalmologist noted, "In my opinion Richard has sufficient vision to perform the driving tasks required to operate a commercial vehicle safely." Mr. Iocolano reported that he has driven straight trucks for 35 years, accumulating 350,000 miles. He holds a Class B CDL from New York. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Daniel W. Johnson

Mr. Johnson, 50, has had retinal scarring in his right eye since 2002. The best corrected visual acuity in his right eye is light perception only and in his left eye, 20/20. Following an examination in 2010, his optometrist noted, "There would be no reason to think that he could not perform all the visual tasks required to drive. It is my opinion that he is visually able to perform commercial driving tasks." Mr. Johnson reported that he has driven straight trucks for 3 years, accumulating 39,000 miles. He holds a Class A CDL from New York. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Albert E. Joiner

Mr. Joiner, 53, has had macular scarring in his right eye since 2006. The best corrected visual acuity in his right eye is 20/400 and in his left eye, 20/20. Following an examination in 2009, his ophthalmologist noted, "In my medical opinion, I believe the applicant has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Joiner reported that he has driven straight trucks for 4 years, accumulating 166,400 miles and tractor-trailer combinations for 33 years accumulating 2.5 million miles. He holds a Class A CDL from Ohio. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Richard L. Kelley

Mr. Kelley, 72, has had optic nerve atrophy in his left eye since 2000. The best corrected visual acuity in his right eye is 20/25 and in his left eye, 20/150. Following an examination in 2010, his ophthalmologist noted, "It is my opinion that he has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Kelley reported that he has driven tractor-trailer combinations for 27 years, accumulating 3.3 million miles. He holds a Class A CDL from Minnesota. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Charles E. Queen

Mr. Queen, 53, sustained traumatic injury to his left optic nerve at age 14. The best corrected visual acuity in his right eye is 20/20 and in his left eye, 20/300. Following an examination in 2009, his optometrist noted, "In my medical opinion, Charles E. Queen has sufficient peripheral vision to perform the driving tasks required to operate a commercial vehicle." Mr. Queen reported that he has driven straight trucks for 26 years, accumulating 1.6 million miles and tractor-trailer combinations for 26 years, accumulating 1.6 million miles. He holds a Class A CDL from Ohio. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Matias P. Quintanilla

Mr. Quintanilla, 47, has a ruptured globe in his left eye due to a traumatic injury sustained in 2005. The best corrected visual acuity in his right eye is 20/20 and in his left eye, hand-motion vision. Following an examination in 2010, his optometrist noted, "In my opinion, he should have sufficient vision to operate a commercial vehicle."

Mr. Quintanilla reported that he has driven tractor-trailer combinations for 9 years, accumulating 720,000 miles. He holds a Class A CDL from California. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Richard T. Traigle

Mr. Traigle, 49, has had macular scarring in his left eye since 2000. The best corrected visual acuity in his right eye is 20/20 and in his left eye, 20/200. Following an examination in 2010, his

ophthalmologist noted, "In my medical opinion, Mr. Traigle has sufficient vision to perform any driving tasks that he may need to perform in operating a commercial vehicle." Mr. Traigle reported that he has driven straight trucks for 15 years, accumulating 300,000 miles. He holds a Class D chauffeur's from Louisiana. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Eugene E. Wright

Mr. Wright, 62, has had amblyopia in his left eye since 1998. The best corrected visual acuity in his right eye is 20/20 and in his left eye, 20/400. Following an examination in 2010, his ophthalmologist noted, "In my opinion he has adequate visual acuity and field to drive a commercial vehicle." Mr. Wright reported that he has driven tractor-trailer combinations for 16 years, accumulating 1.5 million miles. He holds a Class A CDL from Pennsylvania. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315, FMCSA requests public comment from all interested persons on the exemption petitions described in this Notice. The Agency will consider all comments received before the close of business October 28, 2010. Comments will be available for examination in the docket at the location listed under the **ADDRESSES** section of this notice. The Agency will file comments received after the comment closing date in the public docket, and will consider them to the extent practicable.

In addition to late comments, FMCSA will also continue to file, in the public docket, relevant information that becomes available after the comment closing date. Interested persons should monitor the public docket for new material.

Issued on: September 21, 2010.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. 2010–24204 Filed 9–27–10; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

September 22, 2010.

The Department of the Treasury will submit the following public information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13 on or after the date of publication of this notice. A copy of the submissions may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding these information collections should be addressed to the OMB reviewer listed and to the Treasury PRA Clearance Officer, Department of the Treasury, 1750 Pennsylvania Avenue, NW., Suite 11010, Washington, DC 20220.

DATES: Written comments should be received on or before October 28, 2010 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1155.
Type of Review: Extension without change to a currently approved collection.
Title: PS–74–89 (TD 8282) Final Election of Reduced Research Credit.
Abstract: These regulations prescribe the procedure for making the election described in section 280C(c)(3) of the Internal Revenue Code. Taxpayers making this election must reduce their section 41(a) research credit, but are not required to reduce their deductions for qualified research expenses, as required in paragraphs (1) and (2) of section 280C(c).
Respondents: Private Sector: Businesses or other for-profits.
Estimated Total Burden Hours: 50 hours.
OMB Number: 1545–0042.
Type of Review: Revision of a currently approved collection.
Title: Application To Use LIFO Inventory Method.
Form: 970
Abstract: Form 970 is filed by individuals, partnerships, trusts, estates, or corporations to elect to use the LIFO inventory method or to extend the LIFO method to additional goods. The IRS uses Form 970 to determine if the election was properly made.
Respondents: Private Sector: Businesses or other for-profits.
Estimated Total Burden Hours: 42,220 hours.
OMB Number: 1545–0757.
Type of Review: Extension without change to a currently approved collection.
Title: LR–209–76 (Final) Special Lien for Estate Taxes Deferred Under Section 6166 or 6166A.
Abstract: Section 632A permits the executor of a decedent's estate to elect a lien on section 6166 property in favor of the United States in lieu of a bond or personal liability if an election under section 6166 was made and the executor files an agreement under section 6323A(c).
Respondents: Individuals or households.
Estimated Total Burden Hours: 8,650 hours.
OMB Number: 1545–1861.
Type of Review: Extension without change to a currently approved collection.
Title: Revenue Procedure 2004–19, Probable or Prospective Reserves Safe Harbor.
Abstract: This revenue procedure requires a taxpayer to file an election statement with the Service if the taxpayer wants to use the safe harbor to estimate the taxpayers' oil and gas properties' probable or prospective reserves for purposes of computing cost depletion under Sec. 611 of the Internal Revenue Code.
Respondents: Private Sector: Businesses or other for-profits.
Estimated Total Burden Hours: 50 hours.
OMB Number: 1545–1879.
Type of Review: Extension without change to a currently approved collection.
Title: Exempt Organization Declaration and Signature for Electronic Filing.
Form: 8453–EO
Abstract: Form 8453–EO is used to authenticate an electronic Forms 990, 990–EZ, 1120–POL, or 8868 authorize the electronic return originator, and/or intermediate service provider, if any, to transmit via a third-party transmitter; and provide the organization's consent to directly deposit any refund and/or authorize an electronic funds withdrawal for payment of Federal taxes owed.
Respondents: Private Sector: Not-for-profit institutions.
Estimated Total Burden Hours: 1,046 hours.
OMB Number: 1545–0800.
Type of Review: Extension without change to a currently approved collection.
Title: Reg. 601.601 Rules and Regulations.
Abstract: Persons wishing to speak at a public hearing on a proposed rule must submit written comments and an outline within prescribed time limits, for use in preparing agendas and allocating time. Persons interested in the issuance, amendment, or repeal of a rule may submit a petition for this. IRS considers the petitions in its deliberations.
Respondents: Private Sector: Not-for-profit institutions, Businesses or other for-profits and Farms.
Estimated Total Burden Hours: 900 hours.
OMB Number: 1545–0806.

Type of Review: Extension without change to a currently approved collection.

Title: EE–12–78 (Final) Non-Bank Trustees.

Abstract: IRC section 408(a)(2) permits an institution other than a bank to be the trustee of an individual retirement account (IRA). To do so, an application needs to be filed and various requirements need to be met. IRS uses the information to determine whether an institution qualifies to be a non-bank trustee.

Respondents: Private Sector: Not-for-profit institutions.

Estimated Total Burden Hours: 13 hours.

OMB Number: 1545–1433.

Type of Review: Extension without change to a currently approved collection.

Title: CO–11–91 (TD 8597) (Final) Consolidated and Controlled Groups-Intercompany Transactions and Related Rules; CO–24–95 (TD 8660) (Final) Consolidated Groups-Intercompany Transactions and Related Rules.

Abstract: The regulations require common parents that make elections under Section 1.1502–13 to provide certain information. The information will be used to identify and assure that the amount, location, timing and attributes of intercompany transactions and corresponding items are properly maintained.

Respondents: Private Sector: Not-for-profit institutions.

Estimated Total Burden Hours: 1,050 hours.

OMB Number: 1545–0982.

Type of Review: Extension without change to a currently approved collection.

Title: LR–77–86 Temporary (TD 8124) Certain Elections Under the Tax Reform Act of 1986.

Abstract: These regulations establish various elections with respect to which immediate interim guidance on the time and manner of making the election is necessary. These regulations enable taxpayers to take advantage of the benefits of various Code provisions.

Respondents: Private Sector: Not-for-profit institutions.

Estimated Total Burden Hours: 28,678 hours.

OMB Number: 1545–2085.

Type of Review: Revision of a currently approved collection.

Title: 990–N Electronic Notice (e-Postcard).

Form: 990–N.

Abstract: Section 1223 of the Pension Protection Act of 2006 (PPA '06), enacted on August 17, 2006, amended Internal Revenue Code (Code) section 6033 by adding Code section 6033(i), which requires certain tax-exempt organizations to file an annual electronic notice (Form 990–N) for tax years beginning after December 31, 2006. These organizations are not required to file Form 990 (or Form 990–EZ) because their gross receipts are normally $25,000 or less.

Respondents: Private Sector: Not-for-profit institutions.

Estimated Total Burden Hours: 75,000 hours.

OMB Number: 1545–1255.

Type of Review: Extension without change to a currently approved collection.

Title: INTL–870–89 (NPRM) Earnings Stripping (Section 163(j)).

Abstract: Certain taxpayers are allowed to write off the fixed basis of the stock of an acquired corporation. The data obtained by the IRS from the various elections and identifications is used to verify that taxpayers have, in fact, elected special treatment under section 163(j).

Respondents: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 1,196 hours.

OMB Number: 1545–2167.

Type of Review: Extension without change to a currently approved collection.

Title: Notice 2010–28, Stripping Transactions for Qualified Tax Credit Bonds.

Abstract: The IRS requires the information to ensure compliance with the tax credit bond credit coupon stripping requirements, including ensuring that no excess tax credit is taken by holders of bonds and coupon strips. The information is required in order to inform holders of qualified tax credit bonds whether the credit coupons relating to those bonds may be stripped as provided under § 54A(i). The respondents are issuers of tax credit bonds, including states and local governments and other eligible issuers.

Respondents: State, Local, and Tribal Governments.

Estimated Total Burden Hours: 1,000 hours.

OMB Number: 1545–1576.

Type of Review: Extension without change to a currently approved collection.

Title: Student Loan Interest Statement

Form: 1098–E.

Abstract: Section 6050S(b)(2) of the Internal Revenue Code requires persons (financial institutions, governmental units, etc.) to report $600 or more of interest paid on student loans to the IRS and the students.

Respondents: Individuals or households.

Estimated Total Burden Hours: 1,051,357 hours.

OMB Number: 1545–1156.

Type of Review: Extension without change to a currently approved collection.

Title: Records (26 CFR 1.6001–1).

Abstract: Internal Revenue Code section 6001 requires, in part, that every person liable for tax, or for the collection of that tax, keep such records and comply with such rules and regulations as the Secretary may from time to time prescribe. These records are needed to ensure proper compliance with the Code.

Respondents: Individuals or households.

Estimated Total Burden Hours: 1 hour.

OMB Number: 1545–1881.

Type of Review: Extension without change to a currently approved collection.

Title: Election To Treat a Qualified Revocable Trust as Part of an Estate.

Form: 8855.

Abstract: Form 8855 is used to make a section 645 election that allows a qualified revocable trust to be treated and taxed (for income tax purposes) as part of its related estate during the election period.

Respondents: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 28,200 hours.

OMB Number: 1545–1443.

Type of Review: Extension without change to a currently approved collection.

Title: PS–25–94 (Final) Requirements to Ensure Collection of Section 2056A Estate Tax (TD 8686).

Abstract: The regulation provides guidance relating to the additional requirements necessary to ensure the collection of the estate tax imposed under Section 2056A(b) with respect to taxable events involving qualified domestic trusts (QDOT'S). In order to ensure collection of the tax, the regulation provides various security options that may be selected by the trust and the requirements associated with each option. In addition, under certain circumstances the trust is required to file an annual statement with the IRS disclosing the assets held by the trust.

Respondents: Individuals or households.

Estimated Total Burden Hours: 6,070 hours.

OMB Number: 1545–2052.

Type of Review: Extension without change to a currently approved collection.

Title: U.S. Income Tax Return for Cooperative Associations.

Form: 1120–C.

Abstract: IRS Code section 1381 requires subchapter T cooperatives to file returns. Previously, farmers' cooperatives filed Form 990–C and other subchapter T cooperatives filed Form 1120. If the subchapter T cooperative does not meet certain requirements, the due date of their return is two and one-half months after the end of their tax year which is the same as the due date for all other corporations. The due date for income tax returns filed by subchapter T cooperatives who meet certain requirements is eight and one-half months after the end of their tax year. Cooperatives who filed their income tax returns on Form 1120 were considered to be late and penalties were assessed since they had not filed by the normal due date for Form 1120. Due to the assessment of the penalties, burden was placed on the taxpayer and on the IRS employees to resolve the issue.

Respondents: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 430,400 hours.

OMB Number: 1545–1287.

Type of Review: Extension without change to a currently approved collection.

Title: FI–3–91 (TD 8456—Final) Capitalization of Certain Policy Acquisition Expenses.

Abstract: Insurance companies that enter into reinsurance agreement must determine the amounts to be capitalized under those agreements consistently. The regulations provide elections to permit companies to shift the burden of capitalization for their mutual benefit.

Respondents: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 2,070 hours.

OMB Number: 1545–1138.

Type of Review: Extension without change to a currently approved collection.

Title: INTL–955–86 (Final) Requirements For Investments to Qualify under Section 936(d)(4) as Investments in Qualified Caribbean Basin Countries.

Abstract: The collection of information is required by the Internal Revenue Service to verify that an investment qualifies under IRC section 936(d)(4). The recordkeepers will be possession corporations, certain financial institutions located in Puerto Rico, and borrowers of funds covered by this regulation.

Respondents: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 1,500 hours.

OMB Number: 1545–1308.

Type of Review: Extension without change to a currently approved collection.

Title: PS–260–82 (Final) Election, Revocation, Termination, and Tax Effect of Subchapter S Status—TD 8449.

Abstract: Section 1–1362 through 1.1362–7 of the Income Tax Regulations provide the specific procedures and requirements necessary to implement section 1362, including the filing of various elections and statements with the Internal Revenue Service.

Respondents: Individuals or households.

Estimated Total Burden Hours: 322 hours.

OMB Number: 1545–0122.

Type of Review: Extension without change to a currently approved collection.

Title: Foreign Tax Credit Corporations.

Form: 1118 (Schedule I, J, K).

Abstract: Form 1118 and separate Schedules I, J, and K are used by domestic and foreign corporations to claim a credit for taxes paid to foreign countries. The IRS uses Form 1118 and related schedules to determine if the corporation has computed the foreign tax credit correctly.

Respondents: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 3,483,016 hours.

OMB Number: 1545–0191.

Type of Review: Extension without change to a currently approved collection.

Title: Investment Interest Expense Deduction.

Form: 4952.

Abstract: Internal Revenue Code section 163(d) provides a limitation on individuals, estates, or trusts that paid or accrued interest on investment indebtedness. Form 4952 is used to accumulate a taxpayer's interest from all sources and provides a line-by-line computation of the allowable deduction for investment interest.

Respondents: Individuals or households.

Estimated Total Burden Hours: 205,596 hours.

OMB Number: 1545–1072.

Type of Review: Extension without change to a currently approved collection.

Title: INTL–952–86 (TD 8410–Final) Allocation and Apportionment of Interest Expense and Certain Other Expenses.

Abstract: The regulations provide rules concerning the allocation and apportionment of expenses to foreign source income for purposes of the foreign tax credit and other provisions.

Respondents: Individuals or households.

Estimated Total Burden Hours: 3,750 hours.

Bureau Clearance Officer: R. Joseph Durbala, Internal Revenue Service, 1111 Constitution Avenue, NW., Room 6129, Washington, DC 20224; (202) 622–3634.

OMB Reviewer: Shagufta Ahmed, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; (202) 395–7873.

Celina Elphage,

Treasury PRA Clearance Officer.

[FR Doc. 2010–24213 Filed 9–27–10; 8:45 am]

BILLING CODE 4810–01–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

Proposed Information Collections; Comment Request

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Notice and request for comments.

SUMMARY: As part of our continuing effort to reduce paperwork and respondent burden, and as required by the Paperwork Reduction Act of 1995, we invite comments on the proposed or continuing information collections listed below in this notice.

DATES: We must receive your written comments on or before November 29, 2010.

ADDRESSES: You may send comments to Mary A. Wood, Alcohol and Tobacco Tax and Trade Bureau, at any of these addresses:

- P.O. Box 14412, Washington, DC 20044–4412;
- 202–453–2686 (facsimile); or
- *formcomments@ttb.gov* (e-mail).

Please send separate comments for each specific information collection listed below. You must reference the information collection's title, form or recordkeeping requirement number, and OMB number (if any) in your comment. If you submit your comment via facsimile, send no more than five 8.5 x 11 inch pages in order to ensure electronic access to our equipment.

FOR FURTHER INFORMATION CONTACT: To obtain additional information, copies of the information collection and its instructions, or copies of any comments received, contact Mary A. Wood, Alcohol and Tobacco Tax and Trade Bureau, P.O. Box 14412, Washington, DC 20044–4412; or telephone 202–453–2265.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Department of the Treasury and its Alcohol and Tobacco Tax and Trade Bureau (TTB), as part of their continuing effort to reduce paperwork and respondent burden, invite the general public and other Federal agencies to comment on the proposed or continuing information collections listed below in this notice, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Comments submitted in response to this notice will be included or summarized in our request for Office of Management and Budget (OMB) approval of the relevant information collection. All comments are part of the public record and subject to disclosure. Please not do include any confidential or inappropriate material in your comments.

We invite comments on: (a) Whether this information collection is necessary for the proper performance of the agency's functions, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the information collection's burden; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the information collection's burden on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide the requested information.

Information Collections Open for Comment

Currently, we are seeking comments on the following forms and recordkeeping requirements:

Title: Tax Information Authorization.

OMB Control Number: 1513–0001.

TTB Form Numbers: 5000.19.

Abstract: TTB F 5000.19 is required by TTB to be filed when a respondent's representative, not having a power of attorney, wishes to obtain confidential information regarding the respondent. After proper completion of the form, information can be released to the representative. TTB uses this form to properly identify the representative and his/her authority to obtain confidential information.

Current Actions: We are submitting this information collection for extension purposes only. The information collection, estimated number of respondents, and estimated total annual burden hours remain unchanged.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit; Individuals or Households.

Estimated Number of Respondents: 50.

Estimated Total Annual Burden Hours: 50.

Title: Referral of Information.

OMB Control Number: 1513–0003.

TTB Form Numbers: 5000.21.

Abstract: When we discover potential violations of Federal, State, or local law, we use TTB F 5000.21 to make referrals to Federal, State, or local agencies to determine if they plan to take action, and to internally refer potential violations of TTB administered statutes. We also use TTB F 5000.21 to evaluate the effectiveness of these referrals.

Current Actions: We are submitting this information collection for extension purposes only. The information collection, estimated number of respondents, and estimated total annual burden hours remain unchanged.

Type of Review: Extension of a currently approved collection.

Affected Public: Federal Government; State, Local, or Tribal Government.

Estimated Number of Respondents: 500.

Estimated Total Annual Burden Hours: 500.

Title: Notice of Release of Tobacco Products, Cigarette Papers, or Cigarette Tubes.

OMB Control Number: 1513–0025.

TTB Form Number: 5200.11.

Abstract: This form documents the release of tobacco products and cigarette papers and tubes from Customs custody, and the return of such articles, to a manufacturer or export warehouse proprietor for use in the United States. The form is also used to ensure compliance with laws and regulations at the time of these transactions and for post audit examinations.

Current Actions: We are submitting this information collection for extension purposes only. The information collection, estimated number of respondents, and estimated total annual burden hours remain unchanged.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 268.

Estimated Total Annual Burden Hours: 536.

Title: Usual and Customary Business Records Maintained by Brewers.

OMB Control Number: 1513–0058.

TTB Recordkeeping Number: 5130/1.

Abstract: TTB audits brewers' records to verify production of beer and cereal beverages and to verify the quantity of beer removed subject to tax and removed without payment of tax. TTB believes that these records would be normally kept in the course of doing business.

Current Actions: We are submitting this information collection for extension purposes only. The information collection, estimated number of respondents, and estimated total annual burden hours remain unchanged.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 2,026.

Estimated Total Annual Burden Hours: One (1).

Title: Recordkeeping for Tobacco Products Removed in Bond from a Manufacturer's Premises for Experimental Purposes—27 CFR 40.232(e).

OMB Control Number: 1513–0110.

TTB Form Number: None.

TTB Recordkeeping Number: None.

Abstract: The prescribed records apply to manufacturers who ship tobacco products in bond for experimental purposes. TTB can examine these records to determine that the proprietor has complied with law and regulations that allow such tobacco products to be shipped in bond for experimental purposes without payment of the excise tax.

Current Actions: We are submitting this information collection request for extension purposes only. The information collection, estimated number of respondents, and estimated total annual burden hours remain unchanged.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 170.

Estimated Total Annual Burden Hours: One (1).

Dated: September 21, 2010.

Gerald Isenberg,

Director, Regulations and Rulings Division.

[FR Doc. 2010–24328 Filed 9–27–10; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a proposed information collection, as required by the Paperwork Reduction Act of 1995. An agency may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid OMB control number. Currently, the OCC is soliciting comments concerning an information collection titled "Guidance on Sound Incentive Compensation Practices." The OCC also gives notice that it has sent the collection to OMB for review.

DATES: Written comments should be submitted by October 28, 2010.

ADDRESSES: Communications Division, Office of the Comptroller of the Currency, Mailstop 2–3, Attention 1557–0245, 250 E Street, SW., Washington, DC 20219. In addition, comments may be sent by facsimile transmission to (202) 874–5274, or by electronic mail to *regs.comments@occ.treas.gov*. You may personally inspect and photocopy comments at the OCC, 250 E Street, SW., Washington, DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 874–4700. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

Additionally, you should send a copy of your comments by mail to: OCC Desk Officer, 1557–0245, U.S. Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: You can request additional information or a copy of the collection from Mary H. Gottlieb, (202) 874–5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION: The OCC is requesting regular clearance of a collection for which it received emergency approval.[1]

Title: Guidance on Sound Incentive Compensation Policies.

OMB Number: 1557–0245.

Abstract: Under the guidance, national banks are required to: (i) Have policies and procedures that identify and describe the role(s) of the personnel and units authorized to be involved in incentive compensation arrangements, identify the source of significant risk-related inputs, establish appropriate controls governing these inputs to help ensure their integrity, and identify the individual(s) and unit(s) whose approval is necessary for the establishment or modification of incentive compensation arrangements; (ii) create and maintain sufficient documentation to permit an audit of the organization's processes for incentive compensation arrangements; (iii) have any material exceptions or adjustments to the incentive compensation arrangements established for senior executives approved and documented by its board of directors; and (iv) have its board of directors receive and review, on an annual or more frequent basis, an assessment by management of the effectiveness of the design and operation of the organization's incentive compensation system in providing risk-taking incentives that are consistent with the organization's safety and soundness.

Type of Review: Regular.

Affected Public: Businesses or other for-profit.

Estimated Number of Respondents: 1,033 large banks; 617 small banks.

Estimated Burden per Respondent: 480 hours for large banks to modify policies and procedures to monitor incentive compensation. 80 hours for small banks to establish or modify policies and procedures to monitor incentive compensation. 40 hours annually for all banks to maintain policies and procedures to monitor incentive compensation arrangements.

Frequency of Response: Annually.

Total Annual Burden: 611,200 hours.

A 60-Day **Federal Register** notice was issued on July 22, 2010 (75 FR 42823). No comments were received. Comments continue to be invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the OCC, including whether the information has practical utility;

(b) The accuracy of the OCCs estimate of the information collection burden;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: September 22, 2010.

Michele Meyer,

Assistant Director, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency.

[FR Doc. 2010–24282 Filed 9–27–10; 8:45 am]

BILLING CODE 4810–33–P

[1] 75 FR 36395 (June 25, 2010).

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Purchase of Branch Office(s) and/or Transfer of Assets/Liabilities

AGENCY: Office of Thrift Supervision (OTS), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on proposed and continuing information collections, as required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3507. The Office of Thrift Supervision within the Department of the Treasury will submit the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. Today, OTS is soliciting public comments on its proposal to extend this information collection.

DATES: Submit written comments on or before November 29, 2010.

ADDRESSES: Send comments, referring to the collection by title of the proposal or by OMB approval number, to Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552; send a facsimile transmission to (202) 906–6518; or send an e-mail to *infocollection.comments@ots.treas.gov*. OTS will post comments and the related index on the OTS Internet Site at *http://www.ots.treas.gov*. In addition, interested persons may inspect comments at the Public Reading Room, 1700 G Street, NW,. by appointment. To make an appointment, call (202) 906–

5922, send an e-mail to *public.info@ots.treas.gov*, or send a facsimile transmission to (202) 906–7755.

FOR FURTHER INFORMATION CONTACT: You can request additional information about this proposed information collection from Mr. Donald W. Dwyer on (202) 906–6414, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: OTS may not conduct or sponsor an information collection, and respondents are not required to respond to an information collection, unless the information collection displays a currently valid OMB control number. As part of the approval process, we invite comments on the following information collection.

Comments should address one or more of the following points:

a. Whether the proposed collection of information is necessary for the proper performance of the functions of OTS;

b. The accuracy of OTS's estimate of the burden of the proposed information collection;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of the information collection on respondents, including through the use of information technology.

We will summarize the comments that we receive and include them in the OTS request for OMB approval. All comments will become a matter of public record. In this notice, OTS is soliciting comments concerning the following information collection.

Title of Proposal: Purchase of Branch Office(s) and/or Transfer of Assets/Liabilities.

OMB Number: 1550–0025.

Form Number: N/A.

Description:

The information for a Purchase of Branch Office(s) and/or Transfer of Assets/Liabilities application is to provide the OTS with the information necessary to determine if the request should be approved. It allows for OTS evaluation of supervisory, accounting, and legal issues related to these transaction types. If the information were not collected, OTS would not be able to properly evaluate whether the proposed transaction meets applicable criteria.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit.

Estimated Number of Respondents: 40.

Estimated Frequency of Response: On occasion.

Estimated Total Burden: 960 hours.

Dated: September 22, 2010.

Ira L. Mills,

Paperwork Clearance Officer, Office of Chief Counsel, Office of Thrift Supervision.

[FR Doc. 2010–24208 Filed 9–27–10; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Senior Executive Service; Public Debt Performance Review Board (PRB)

AGENCY: Bureau of the Public Debt, Treasury.

ACTION: Notice of Members of Public Debt Performance Review Board.

SUMMARY: This notice announces the appointment of the members of the Public Debt Performance Review Board (PRB) for the Bureau of the Public Debt (BPD). The PRB reviews the performance appraisals of career senior executives who are below the level of Assistant Commissioner/Executive Director and who are not assigned to the Office of the Commissioner in BPD. The PRB makes recommendations regarding proposed performance appraisals, ratings, bonuses, pay adjustments, and other appropriate personnel actions.

DATES: The membership on the Public Debt PRB as described in the Notice is effective on September 28, 2010.

FOR FURTHER INFORMATION CONTACT: Angela Jones, Director, Human Resources Division, Office of Management Services, BPD, (304) 480–8949.

SUPPLEMENTARY INFORMATION: Pursuant to 5 U.S.C. 4314(c)(4), this Notice announces the appointment of the following primary and alternate members to the Public Debt PRB:

Primary Members:

Anita Shandor, Deputy Commissioner, Office of the Commissioner, BPD Kimberly A. McCoy, Assistant Commissioner, Office of Information Technology, BPD.

Cynthia Z. Springer, Executive Director, Administrative Resource Center, BPD.

Alternate Members:

Dara Seaman, Assistant Commissioner, Office of Financing, BPD.

Van Zeck,

Commissioner.

[FR Doc. 2010–24267 Filed 9–27–10; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; Report of Matching Program

AGENCY: Department of Veterans Affairs.

ACTION: Notice of computer matching program.

SUMMARY: Notice is hereby given that the Department of Veterans Affairs (VA) intends to conduct a recurring computer-matching program matching Railroad Retirement Board (RRB), retirement and survivor benefits records with VA pension, compensation, and dependency and indemnity compensation (DIC) records. The goal of this match is to identify beneficiaries who are receiving VA benefits, and to reduce or terminate benefits, if appropriate. The match will include records of current VA beneficiaries.

DATES: The match will start no sooner than 30 days after publication of this notice in the **Federal Register**, or 40 days after copies of this Notice and the agreement of the parties is submitted to Congress and the Office of Management and Budget, whichever is later, and end not more than 18 months after the agreement is properly implemented by the parties. The involved agencies' Data Integrity Boards (DIB) may extend this match for 12 months provided the agencies certify to their DIBs, within three months of the ending date of the original match, that the matching program will be conducted without change and that the matching program has been conducted in compliance with the original matching program.

ADDRESSES: Written comments may be submitted through *http://*www.Regulations.gov; by mail or hand-delivery to the Director, Regulations Management (02REG), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1068, Washington, DC 20420; or by fax to (202) 273–9026. Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8 a.m. and 4:30 p.m. Monday through Friday (except holidays). Please call (202) 461–4902 for an appointment. In addition, during the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *http://www.Regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Pamela Burd (212B), (202) 461–9149.

SUPPLEMENTARY INFORMATION: VA will use this information to verify the income information submitted by

income dependent beneficiaries and adjust VA benefit payments as prescribed by law. The proposed matching program will enable VA to accurately identify beneficiaries who are in receipt of RRB benefits and have not reported the income as required by law.

The legal authority to conduct this match is 38 U.S.C. 5106, which requires any Federal department or agency to provide VA such information as VA requests for the purposes of determining eligibility for, or the amount of VA benefits, or verifying other information with respect thereto.

The VA records involved in the match are the VA system of records, Compensation, Pension and Education and Vocational Rehabilitation and Employment Records—VA (58 VA 21/22/28), published at 74 FR 29275, June 19, 2009. The RRB records consist of information from the system of records identified as the RRB Research File of Retirement and Survivor Benefits, System of Records RRB–25 and RRB–26 contained in the Privacy Act Issuances, 1991 compilation, Volume V, pages 518—519.

In accordance with Title 5 U.S.C., subsection 552a(o)(2) and (r), copies of the agreement are being sent to both Houses of Congress and to the Office of Management and Budget. This notice is provided in accordance with the provisions of Privacy Act of 1974 as amended by Public Law 100–503.

Approved: September 10, 2010.

John R. Gingrich,

Chief of Staff, Department of Veterans Affairs.

[FR Doc. 2010–24269 Filed 9–27–10; 8:45 am]

BILLING CODE 8320–01–P

Federal Register

Tuesday,

September 28, 2010

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination for the Gunnison Sage-grouse as a Threatened or Endangered Species; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[DOCKET NO. FWS-R6-ES-2009-0080]

MO 92210-0-0008

Endangered and Threatened Wildlife and Plants; Determination for the Gunnison Sage-grouse as a Threatened or Endangered Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of the results of a status review.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce our 12–month finding on whether to list the Gunnison sage-grouse (*Centrocercus minimus*) as threatened or endangered under the Endangered Species Act of 1973, as amended (Act). After reviewing the best available scientific and commercial information, we find that the species is warranted for listing. Currently, however, listing the Gunnison sage-grouse is precluded by higher priority actions to amend the Lists of Endangered and Threatened Wildlife and Plants. Upon publication of this 12-month finding, we will add the Gunnison sage-grouse to our candidate species list. We will develop a proposed rule to list this species as our priorities allow. We will make any determination on critical habitat during development of the proposed listing rule.

DATES: The determination announced in this document was made on September 28, 2010.

ADDRESSES: This finding is available on the Internet at *http://www.regulations.gov* at Docket Number FWS-R6-ES-2009-0080. 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, Western Colorado Ecological Services Field Office, U.S. Fish and Wildlife Service, 764 Horizon Drive, Building B, Grand Junction, Colorado 81506-3946. Please submit any new information, materials, comments, or questions concerning this finding to the above address.

FOR FURTHER INFORMATION CONTACT: Allan Pfister, Western Colorado Supervisor (see **ADDRESSES** section); by telephone at (970) 243-2778 ext. 29; or by facsimile at (970) 245-6933. If you use a telecommunications device for the deaf (TDD), please call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Act (16 U.S.C. 1531 *et seq.*) requires that, for any petition to revise the Federal Lists of Threatened and Endangered Wildlife and Plants that contains substantial scientific or commercial information that listing a species may be warranted, we make a finding within 12 months of the date of receipt of the petition. In this finding, we determine whether the petitioned action is: (a) Not warranted, (b) warranted, or (c) warranted, but immediate proposal of a regulation implementing the petitioned action is precluded by other pending proposals to determine whether species are threatened or endangered, and expeditious progress is being made to add or remove qualified species from the Federal Lists of Endangered and Threatened Wildlife and Plants. Section 4(b)(3)(C) of the Act requires that we treat a petition for which the requested action is found to be warranted but precluded as though resubmitted on the date of such finding, that is, requiring a subsequent finding to be made within 12 months. We must publish these 12–month findings in the **Federal Register**.

Previous Federal Actions

On January 18, 2000, we designated the Gunnison sage-grouse as a candidate species under the Act, with a listing priority number of 5. However, Candidate Notices of Review (CNOR) are only published annually; therefore, the **Federal Register** notice regarding this decision was not published until December 28, 2000 (65 FR 82310). Candidate species are plants and animals for which the Service has sufficient information on their biological status and threats to propose them as endangered or threatened under the Act, but for which the development of a proposed listing regulation is precluded by other higher priority listing activities. A listing priority of 5 is assigned to species with high magnitude threats that are non-imminent.

On January 26, 2000, American Lands Alliance, Biodiversity Legal Foundation, and others petitioned the Service to list the Gunnison sage-grouse (Webb 2000, pp. 94-95). In 2003, the U.S. District Court ruled that the species was designated as a candidate by the Service prior to receipt of the petition, and that the determination that a species should be on the candidate list is equivalent to a 12-month finding (*American Lands Alliance* v. *Gale A. Norton*, C.A. No. 00-2339, D. D.C.). Therefore, we did not need to respond to the petition.

In the 2003 CNOR, we elevated the listing priority number for Gunnison sage-grouse from 5 to 2 (69 FR 24876; May 4, 2004), as the imminence of the threats had increased. In the subsequent CNOR (70 FR 24870; May 11, 2005), we maintained the listing priority number for Gunnison sage-grouse as a 2. A listing priority number of 2 is assigned to species with high magnitude threats that are imminent.

Plaintiffs amended their complaint in May 2004, to allege that the Service's warranted but precluded finding and decision not to emergency list the Gunnison sage-grouse were in violation of the Act. The parties filed a stipulated settlement agreement with the court on November 14, 2005, which included a provision that the Service would make a proposed listing determination by March 31, 2006. On March 28, 2006, the plaintiffs agreed to a one-week extension (April 7, 2006) for this determination.

In April 2005, the Colorado Division of Wildlife (CDOW) applied to the Service for an Enhancement of Survival Permit for the Gunnison sage-grouse pursuant to section 10(a)(1)(A) of the Act. The permit application included a proposed Candidate Conservation Agreement with Assurances (CCAA) between CDOW and the Service. The standard that a CCAA must meet is that the "benefits of the conservation measures implemented under a CCAA, when combined with those benefits that would be achieved if it is assumed that conservation measures were also to be implemented on other necessary properties, would preclude or remove any need to list the species." The CCAA, the permit application, and the Environmental Assessment were made available for public comment on July 6, 2005 (70 FR 38977). The CCAA and Environmental Assessment were finalized in October 2006, and the associated permit was issued on October 23, 2006. Landowners with eligible property in southwestern Colorado who wish to participate can voluntarily sign up under the CCAA and associated permit through a Certificate of Inclusion by providing habitat protection or enhancement measures on their lands. If the Gunnison sage-grouse is listed under the Act, the permit authorizes incidental take of Gunnison sage-grouse due to otherwise lawful activities in accordance with the terms of the CCAA (e.g., crop cultivation, crop harvesting, livestock grazing, farm equipment operation, commercial/residential development, etc.), as long as the participating landowner is performing

activities identified in the Certificate of Inclusion. Four Certificates of Inclusion have been issued by the CDOW and Service to private landowners to date.

On April 11, 2006, the Service determined that listing the Gunnison sage-grouse as a threatened or endangered species was not warranted and published the final listing determination in the **Federal Register** on April 18, 2006 (71 FR 19954). Consequently, we removed Gunnison sage-grouse from the candidate species list at the time of the final listing determination. On November 14, 2006, Plaintiffs (the County of San Miguel, Colorado; Center for Biological Diversity; WildEarth Guardians; Public Employees for Environmental Responsibility; National Audubon Society; The Larch Company; Center for Native Ecosystems; Sinapu; Sagebrush Sea Campaign; Black Canyon Audubon Society; and Sheep Mountain Alliance) filed a Complaint for Declaratory and Injunctive relief, pursuant to the Act, and on October 24, 2007, filed an amended Complaint for Declaratory and Injunctive relief, alleging that the 12–month finding on the Gunnison sage-grouse violated the Act. On August 18, 2009, a stipulated settlement agreement and Order was filed with the court, with a June 30, 2010, date by which the Service shall submit to the **Federal Register** a 12–month finding, pursuant to 16 U.S.C. § 1533(b)(3)(B), that listing the Gunnison sage-grouse under the Act is (a) warranted; (b) not warranted; or (c) warranted but precluded by higher priority listing actions. We published a notice of intent to conduct a status review of Gunnison sage-grouse on November 23, 2009 (74 Fr 61100). The Court approved an extension of the June 30, 2010, deadline for the 12–month finding to September 15, 2010.

Additional Special Status Considerations

The Gunnison sage-grouse has an International Union for Conservation of Nature (IUCN) Red List Category of "endangered" (Birdlife International 2009). NatureServe currently ranks the Gunnison sage-grouse as G1—Critically Imperiled (Nature Serve 2010, entire). The Gunnison sage-grouse is on the National Audubon Society's WatchList 2007 Red Category which is "for species that are declining rapidly or have very small populations or limited ranges, and face major conservation threats."

Biology and Ecology of Gunnison Sage-grouse

Gunnison Sage-grouse Species Description

Sage-grouse are the largest grouse in North America. Sage-grouse (both greater and Gunnison) are most easily identified by their large size, dark brown color, distinctive black bellies, long pointed tails, and association with sagebrush habitats. They are dimorphic in size, with females being smaller. Both sexes have yellow-green eye combs, which are less prominent in females. Sage-grouse are known for their elaborate mating ritual where males congregate on strutting grounds called leks and "dance" to attract a mate. During the breeding season, males have conspicuous filoplumes (specialized erectile feathers on the neck), and exhibit yellow-green apteria (fleshy bare patches of skin) on their breasts (Schroeder *et al.* 1999, p. 2, 18). Gunnison sage-grouse are smaller in size, have more white barring in their tail feathers, and have more filoplumes than greater sage-grouse.

Since Gunnison and greater sage-grouse were only recognized as separate species in 2000, the vast majority of the research relative to the biology and management of the two species has been conducted on greater sage-grouse. Gunnison sage-grouse and greater sage-grouse have similar life histories and habitat requirements (Young 1994, p. 44). In this finding, we use information specific to the Gunnison sage-grouse where available but still apply scientific management principles found relevant for greater sage-grouse to Gunnison sage-grouse management needs and strategies, a practice followed by the wildlife agencies that have responsibility for management of both species and their habitat.

Taxonomy

Gunnison sage-grouse and greater sage-grouse are members of the Phasianidae family. For many years, sage-grouse were considered a single species. Gunnison sage-grouse (*Centrocercus minimus*) were identified as a distinct species based on morphological (Hupp and Braun 1991, pp. 257-259; Young *et al.* 2000, pp. 447-448), genetic (Kahn *et al.* 1999, pp. 820-821; Oyler-McCance *et al.* 1999, pp. 1460-1462), and behavioral (Barber 1991, pp. 6-9; Young 1994; Young *et al.* 2000, p. 449-451) differences and geographical isolation (Young *et al.* 2000, pp. 447-451). Based on these differences, the American Ornithologist's Union (2000, pp. 849-850) accepted the Gunnison sage-grouse as a distinct species. The current ranges of the two species do not overlap (Schroeder *et al.* 2004, p. 369). Due to the several lines of evidence separating the two species cited above, we determined that the best available information indicates that the Gunnison sage-grouse is a valid taxonomic species and a listable entity under the Act.

Life History Characteristics

Gunnison and 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 (Patterson 1952, p. 42; Braun *et al.* 1976, p. 168; Schroeder *et al.* 1999, pp. 4-5; Connelly *et al.* 2000a, pp. 970-972; Connelly *et al.* 2004, p. 4-1, Miller *et al.* in press, p. 10). Dietary requirements of the two species are also similar, being composed of nearly 100 percent sagebrush in the winter, and forbs and insects as well as sagebrush in the remainder of the year (Wallestad *et al.* 1975, p. 21; Schroeder *et al.* 1999, p. 5; Young *et al.* 2000, p. 452). Gunnison and greater sage-grouse do not possess muscular gizzards and, therefore, lack the ability to grind and digest seeds (Leach and Hensley 1954, p. 389).

In addition to serving as a primary year-round food source, sagebrush also provides cover for nests (Connelly *et al.* 2000a, pp. 970-971). Thus, sage-grouse distribution is strongly correlated with the distribution of sagebrush habitats (Schroeder *et al.* 2004, p. 364). Connelly *et al.* (2000a, p. 970-972) segregated habitat requirements into four seasons: (1) breeding (2) summer - late brood-rearing (3) fall and (4) winter. Depending on habitat availability and proximity, some seasonal habitats may be indistinguishable. The Gunnison Sage-grouse Rangewide Steering Committee (GSRSC) (2005, p. 27-31) segregated habitat requirements into three seasons: (1) breeding (2) summer–late fall and (3) winter. For purposes of this finding, the seasons referenced in GSRSC (2005) are used because that publication deals specifically with Gunnison sage-grouse.

Sage-grouse exhibit strong site fidelity (loyalty to a particular area) to seasonal habitats, which includes breeding, nesting, brood rearing, and wintering areas, even when the area is no longer of value (Connelly *et al.* 2004, p. 3-1). Adult sage-grouse rarely switch among these habitats once they have been selected, limiting their adaptability to changes. Sage-grouse distribution is associated with sagebrush (Schroeder *et al.* 2004 p. 364), although sagebrush is more widely distributed than sage-grouse because sagebrush does not

always provide suitable habitat due to fragmentation and degradation (Schroeder *et al.* 2004, pp. 369, 372). Very little of the extant sagebrush in North America is undisturbed, with up to 50 to 60 percent having altered understories (forb and grass vegetative composition under the sagebrush) or having been lost to direct conversion (Knick *et al.* 2003, p. 612 and references therein). Mapping altered and depleted understories is challenging, particularly in semi-arid regions, so maps depicting only sagebrush as a dominant cover type are deceptive in their reflection of habitat quality and, therefore, use by sage-grouse (Knick *et al.* 2003, p. 616 and references therein). As such, variations in the quality of sagebrush habitats for sage-grouse (from either abiotic or anthropogenic events) are better reflected by sage-grouse distribution and densities, rather than by broad geographic scale maps of the distribution of sagebrush.

Sage-grouse exhibit a polygamous mating system where a male mates with several females. Males perform courtship displays and defend their leks (Patterson 1952, p. 83). Lek displaying occurs from mid-March through late May, depending on elevation (Rogers 1964, p. 21; Young *et al.* 2000, p. 448). Numerous researchers have observed that a relatively small number of dominant males account for the majority of copulations on each lek (Schroeder *et al.* 1999, p. 8). However, an average of 45.9 percent (range 14.3 to 54.5 percent) of genetically identified males in a population fathered offspring in a given year (Bush 2009, p. 106). This more recent work suggests that males and females likely engage in off-lek copulations. Males do not incubate eggs or assist in chick rearing.

Lek sites can be located on areas of bare soil, wind-swept ridges, exposed knolls, low sagebrush, meadows, and other relatively open sites with good visibility and low vegetation structure (Connelly *et al.* 1981, pp. 153-154; Gates 1985, pp. 219-221; Klott and Lindzey 1989, pp. 276-277; Connelly *et al.* 2004, pp. 3-7 and references therein). In addition, leks are usually located on flat to gently sloping areas of less than 15 percent grade (Patterson 1952, p. 83; Giezentanner and Clark 1974, p. 218; Wallestad 1975, p. 17; Autenrieth 1981, p. 13). Leks are often surrounded by denser shrub-steppe cover, which is used for escape, and thermal and feeding cover. Leks can be formed opportunistically at any appropriate site within or adjacent to nesting habitat (Connelly *et al.* 2000a, p. 970). Lek habitat availability is not considered to be a limiting factor for sage-grouse (Schroeder 1997, p. 939). However, adult male sage-grouse demonstrate strong yearly fidelity to lek sites (Patterson 1952, p. 91; Dalke 1963 *et al.*, pp. 817-818), and some Gunnison sage-grouse leks have been used since the 1950s (Rogers 1964, pp. 35-40).

The pre-laying period is from late-March to April. Pre-laying habitats for sage-grouse need to provide a diversity of vegetation including forbs that are rich in calcium, phosphorous, and protein to meet the nutritional needs of females during the egg development period (Barnett and Crawford 1994, p. 117; Connelly *et al.* 2000a, p. 970). During the pre-egg laying period, female sage-grouse select forbs that generally have higher amounts of calcium and crude protein than sagebrush (Barnett and Crawford 1994, p. 117).

Nesting occurs from mid-April to June. Average earliest nest initiation was April 30, and the average latest nest initiation was May 19, in the western portion of the Gunnison Basin (Childers 2009, p. 3). Radio-tracked Gunnison sage-grouse nest an average of 4.3 kilometers (km) (2.7 miles (mi)) from the lek nearest to their capture site, with almost half nesting within 3 km (2 mi) of their capture site (Young 1994, p. 37). Nest sites are selected independent of lek locations, but the reverse is not true (Bradbury *et al.* 1989, p. 22; Wakkinen *et al.* 1992, p. 382). Thus, leks are indicative of nesting habitat. Eighty-seven percent of all Gunnison sage-grouse nests were located less than 6 km (4 mi) from the lek of capture (Apa 2004, p. 21). While earlier studies indicated that most greater sage-grouse hens nest within 3 km (2 mi) of a lek, more recent research indicated that many hens actually move much further from leks to nest based on nesting habitat quality (Connelly *et al.* 2004, p. 4-4). Female greater sage-grouse have been documented to travel more than 20 km (13 mi) to their nest site after mating (Connelly *et al.* 2000a, p. 970). Female Gunnison sage-grouse exhibit strong fidelity to nesting locations (Young 1994, p. 42; Lyon 2000, p. 20, Connelly *et al.* 2004, p. 4-5; Holloran and Anderson 2005, p. 747). The degree of fidelity to a specific nesting area appears to diminish if the female's first nest attempt in that area was unsuccessful (Young 1994, p. 42). However, there is no statistical indication that movement to new nesting areas results in increased nesting success (Connelly *et al.* 2004, p. 3-6; Holloran and Anderson 2005, p. 748).

Gunnison sage-grouse typically select nest sites under sagebrush cover with some forb and grass cover (Young 1994, p. 38), and successful nests were found in higher shrub density and greater forb and grass cover than unsuccessful nests (Young 1994, p. 39). The understory of productive sage-grouse nesting areas contains native grasses and forbs, with horizontal and vertical structural diversity that provides an insect prey base, herbaceous forage for pre-laying and nesting hens, and cover for the hen while she is incubating (Schroeder *et al.* 1999, p. 11; Connelly *et al.* 2000a, p. 971; Connelly *et al.* 2004, pp. 4-5–4-8). Shrub canopy and grass cover provide concealment for sage-grouse nests and young, and are critical for reproductive success (Barnett and Crawford 1994, pp. 116-117; Gregg *et al.* 1994, pp. 164-165; DeLong *et al.* 1995, pp. 90-91; Connelly *et al.* 2004, p. 4-4). Few herbaceous plants are growing in April when nesting begins, so residual herbaceous cover from the previous growing season is critical for nest concealment in most areas (Connelly *et al.* 2000a, p. 977).

Nesting success for Gunnison sage-grouse is highest in areas where forb and grass covers are found below a sagebrush canopy cover of 15 to 30 percent (Young *et al.* 2000, p. 451). These numbers are comparable to those reported for the greater sage-grouse (Connelly *et al.* 2000a, p. 971). Nest success for greater sage-grouse is greatest where grass cover is present (Connelly *et al.* 2000a, p. 971). Because of the similarities between these two species, we believe that increased nest success in areas of forb and grass cover below the appropriate sagebrush canopy cover is likely the case for Gunnison sage-grouse as well.

Mean clutch size for Gunnison sage-grouse is 6.8 ± 0.7 eggs (Young 1994, p. 37). The mean clutch size for Gunnison sage-grouse in the Gunnison Basin was 6.3, with 94 percent of eggs in successful nests hatching (Childers 2009, p. 3). Despite average clutch sizes of 7 eggs (Connelly *et al.* in press, p. 15), little evidence exists that populations of sage-grouse produce large annual surpluses (Connelly *et al.* in press, p. 15, 24). The inability of sage-grouse to produce large annual surpluses limits their ability to respond under favorable environmental conditions to make up for population declines. Re-nesting rates following the loss of the original nest appear very low in Gunnison sage-grouse, with one study reporting re-nesting rates of 4.8 percent (Young 1994, p. 37). Only one instance of re-nesting was observed over a 5–year period during which a total of 91 nesting Gunnison sage-grouse hens were monitored (Childers 2009, p. 3).

Most sage-grouse eggs hatch in June, with a peak between June 10 and June

20 (GSRSC, 2005, p. 24). Chicks are precocial (mobile upon hatching) and leave the nest with the hen shortly after hatching. Forbs and insects are essential nutritional components for sage-grouse chicks (Klebenow and Gray 1968, pp. 81-83; Peterson 1970, pp. 149-151; Johnson and Boyce 1991, p. 90; Connelly *et al.* 2004, p. 3-3). Therefore, early brood-rearing habitat for females with chicks must provide adequate cover adjacent to areas rich in forbs and insects to assure chick survival during this period (Connelly *et al.* 2000, p. 971; Connelly *et al.* 2004, p. 4-11). Gunnison sage-grouse chick dietary requirements of insects and forbs also are expected to be similar to greater sage-grouse and other grouse species (Apa 2005, pers. comm.).

The availability of food and cover are key factors that affect chick and juvenile survival. During the first 3 weeks after hatching, insects are the primary food of chicks (Patterson 1952, p. 201; Klebenow and Gray 1968, p. 81; Peterson 1970, pp. 150-151; Johnson and Boyce 1990, pp. 90-91; Johnson and Boyce 1991, p. 92; Drut *et al.* 1994b, p. 93; Pyle and Crawford 1996, p. 320; Fischer *et al.* 1996a, p. 194). Diets of 4- to 8-week-old greater sage-grouse chicks were found to have more plant material as the chicks matured (Peterson 1970, p. 151). Succulent forbs are predominant in the diet until chicks exceed 3 months of age, at which time sagebrush becomes a major dietary component (Klebenow 1969, pp. 665-656; Connelly and Markham 1983, pp. 171-173; Fischer *et al.* 1996b, p. 871; Schroeder *et al.* 1999, p. 5).

Early brood-rearing habitat is found close to nest sites (Connelly *et al.* 2000a, p. 971), although individual females with broods may move large distances (Connelly 1982, as cited in Connelly *et al.* 2000a, p. 971). Young (1994, pp. 41-42) found that Gunnison sage-grouse with broods used areas with lower slopes than nesting areas, high grass and forb cover, and relatively low sagebrush cover and density. Broods frequently used the edges of hay meadows, but were often flushed from areas found in interfaces of wet meadows and habitats providing more cover, such as sagebrush or willow-alder (*Salix-Alnus*).

By late summer and into the early fall, individuals become more social, and flocks are more concentrated (Patterson 1952, p. 187). Intermixing of broods and flocks of adult birds is common, and the birds move from riparian areas to sagebrush-dominated landscapes that continue to provide green forbs. During this period, Gunnison sage-grouse can be observed in atypical habitat such as agricultural fields (Commons 1997, pp. 79-81). However, broods in the Gunnison Basin typically do not use hay meadows further away than 50 meters (m) (165 feet (ft)) of the edge of sagebrush stands (Colorado Sage Grouse Working Group (CSGWG) 1997, p. 13).

As fall approaches, sage-grouse move from riparian to upland areas and start to shift to a winter diet (GSRSC 2005, p. 25). Movements to winter ranges are slow and meandering (Connelly *et al.* 1988, p. 119). The extent of movement varies with severity of winter weather, topography, and vegetation cover. Sage-grouse may travel short distances or many miles between seasonal ranges. In response to severe winters, Gunnison sage-grouse move as far as 27 km (17 mi) (Root 2002, p. 14). Flock size in winter is variable (15 to 100+), and flocks frequently consist of a single sex (Beck 1977, p. 21).

From late autumn through early spring, greater and Gunnison sage-grouse diet is almost exclusively sagebrush (Rasmussen and Griner 1938, p. 855; Batterson and Morse 1948, p. 20; Patterson 1952, pp. 197-198; Wallestad *et al.* 1975, pp. 628-629; Young *et al.* 2000, p. 452). Many species of sagebrush can be consumed (Remington and Braun 1985, pp. 1056-1057; Welch *et al.* 1988, p. 276, 1991; Myers 1992, p. 55). Characteristics of sage-grouse winter habitats are also similar through the range of both species (Connelly *et al.* 2000a, p. 972). In winter, Gunnison sage-grouse are restricted to areas of 15 to 30 percent sagebrush cover, similar to the greater sage-grouse (Connelly *et al.* 2000a, p. 972; Young *et al.* 2000, p. 451). However, they may also use areas with more deciduous shrubs during the winter (Young *et al.* 2000, p. 451).

Sagebrush stand selection in winter is influenced by snow depth (Patterson 1952, pp. 188-189; Connelly 1982 as cited in Connelly *et al.* 2000a, p. 980) and in some areas, topography (Beck 1977, p. 22; Crawford *et al.* 2004, p. 5). Winter areas are typically characterized by canopy cover greater than 25 percent and sagebrush greater than 30 to 41 cm (12 to 16 in) tall (Shoenberg 1982, p. 40) associated with drainages, ridges, or southwest aspects with slopes less than 15 percent (Beck 1977, p. 22). Lower flat areas and shorter sagebrush along ridge tops provide roosting areas. In extreme winter conditions, greater sage-grouse will spend nights and portions of the day burrowed into "snow burrows" (Back *et al.* 1987, p. 488).

Hupp and Braun (1989, p. 825) found that most Gunnison sage-grouse feeding activity in the winter occurred in drainages and on slopes with south or west aspects in the Gunnison Basin. During a severe winter in the Gunnison Basin in 1984, less than 10 percent of the sagebrush was exposed above the snow and available to sage-grouse (Hupp, 1987, pp. 45-46). In these conditions, the tall and vigorous sagebrush typical in drainages was an especially important food source.

Sage-grouse typically live between 3 and 6 years, but individuals up to 9 years of age have been recorded in the wild (Connelly *et al.* 2004, p. 3-12). Adult female Gunnison sage-grouse apparent survival rates from April through September averaged 57 percent, and adult male survival averaged 45 percent (Childers 2009, p. 2). From October through March, adult female Gunnison sage-grouse apparent survival rates averaged 79 percent, and adult male survival averaged 96 percent (Childers 2009, p.2). In one study, Gunnison sage-grouse survival from April 2002 through March 2003 was 48 (± 7) percent for males and 57 (± 7) percent for females (Apa 2004, p. 22). Preliminary results from the Gunnison and San Miguel populations indicate potential important temporal and spatial variation in demographic parameters, with apparent annual adult survival rates ranging from approximately 65 to 80 percent (CDOW 2009a, p. 8). Gunnison sage-grouse female survival in small isolated populations was 52 (± 8) percent, compared to 71 (± 11) percent survival in the Gunnison Basin, the only population with greater than 500 individuals (Apa 2004, p. 22). Higher adult survival has been observed in a lower elevation and warmer area (Dry Creek Basin of the San Miguel population – 90 percent) than in a higher elevation and colder, snowier, area (Miramonte portion of the San Miguel population – 65 percent) (CDOW 2009a, p.8). Other factors affecting survival rates include climatic differences between years and age (Zablan 1993, pp. 5-6).

Apparent chick survival from hatch to the beginning of fall (30 September) averaged 7 percent over a 5–year period in the western portion of the Gunnison Basin (Childers 2009, pp. 4-6). Apparent chick survival to 90 days of age has ranged from approximately 15 to 30 percent in the Gunnison Basin, with no juvenile recruitment observed over several years in the San Miguel population (CDOW 2009a, p. 8). Based on a review of many field studies, juvenile survival rates range from 7 to 60 percent (Connelly *et al.* 2004, p. 3-12). The variation in juvenile survival rates may be associated with sex, weather, harvest rates (no harvesting of Gunnison sage-grouse is currently permitted), age of brood female (broods with adult females have higher

survival), and with habitat quality (rates decrease in poor habitats) (Schroeder *et al.* 1999, p. 14; Connelly *et al.*, in press, p. 20).

Greater sage-grouse require large, interconnected expanses of sagebrush with healthy, native understories (Patterson 1952, p. 9; Knick *et al.* 2003, p. 623; Connelly *et al.* 2004, pp. 4-15; Connelly *et al.* in press, p. 10; Pyke in press, p. 7; Wisdom *et al.* in press, p. 4). However, little information is available regarding minimum sagebrush patch sizes required to support populations of greater or Gunnison sage-grouse. Gunnison sage-grouse have not been observed to undertake the large seasonal and annual movements observed in greater sage-grouse. However, movements of up to 24 km (15 mi) have been observed in individual Gunnison sage-grouse in the Gunnison Basin population only (Phillips 2010, pers. comm.).

Sage-grouse typically occupy large expanses of sagebrush-dominated habitats composed of a diversity of sagebrush species and subspecies. Use of other habitats intermixed with sagebrush, such as riparian meadows, agricultural lands, steppe dominated by native grasses and forbs, scrub willow (*Salix spp.*), and sagebrush habitats with some conifer or quaking aspen (*Populus tremuloides*), is not uncommon (Connelly *et al* 2004, p. 4-18 and references therein). Sage-grouse have been observed using human-altered habitats throughout their range.

However, the use of non-sagebrush habitats by sage-grouse is dependent on the presence of sagebrush habitats in close proximity (Connelly *et a.lal* 2004, p. 4-18 and references therein).

Historic Range and Distribution of Gunnison Sage-grouse

Based on historical records, museum specimens, and potential habitat distribution, Gunnison sage-grouse historically occurred in southwestern Colorado, northwestern New Mexico, northeastern Arizona, and southeastern Utah (Schroeder *et al.* 2004, pp. 370-371). Accounts of Gunnison sage-grouse in Kansas and Oklahoma, as suggested by Young *et al.* (2000, pp. 446-447), are not supported with museum specimens, and Schroeder *et al.* (2004, p. 371) found inconsistencies with the historical records and the sagebrush habitat currently available in those areas. Applegate (2001, p. 241) found that none of the sagebrush species closely associated with sage-grouse occurred in Kansas. He attributed historical, anecdotal reports as mistaken locations or misidentification of lesser prairie chickens. For these reasons, southwestern Kansas and western Oklahoma are not considered within the historic range of Gunnison sage-grouse (Schroeder *et al.* 2004, p. 371).

The GSRSC (2005) modified the historic range from Schroeder *et al.* (2004), based on more complete information on historic and current habitat and the distribution of the species (GSRSC 2005, pp. 34-35). Based on this information, the maximum Gunnison sage-grouse historical (presettlement) range is estimated to have been 55,350 square kilometers (km^2) (21,370 square miles (mi^2)) (GSRSC 2005, p. 32). To be clear, only a portion of the historical range would have been occupied at any one time, while all of the current range is considered occupied. Also, we do not know what portion of the historical range was simultaneously occupied, or what the total population was.

Much of what was once Gunnison sage-grouse sagebrush habitat was already lost prior to 1958. A qualitative decrease in sagebrush was attributed to overgrazing from the 1870s until about 1934 (Rogers 1964, p. 13). Additional adverse effects occurred as a result of newer range management techniques implemented to support livestock by the Bureau of Land Management (BLM), Soil Conservation Service, and U.S. Forest Service (USFS) (Rogers 1964, p. 13). In the 1950s, large areas of sagebrush within the range of Gunnison sage-grouse were eradicated by herbicide spraying or burning (Rogers 1964, pp. 12-13, 22-23, 26).

About 155,673 hectares (ha) (384,676 ac) of sagebrush habitat was lost from 1958 to 1993 within southwestern Colorado (Oyler-McCance *et al.* 2001, p. 327). Sagebrush loss was lower in the Gunnison Basin (11 percent) compared to all other areas in southwestern Colorado (28 percent) (Oyler-McCance *et al.* 2001, p. 328). Considerable fragmentation of sagebrush vegetation was also quantitatively documented during that same time period (Oyler-McCance *et al.* 2001, p. 329). Sage-grouse habitat in southwestern Colorado (the majority of the range of Gunnison sage-grouse) has been more severely impacted than sagebrush habitat elsewhere in Colorado.

The Colorado River Storage Project (CRSP) resulted in construction of three reservoirs within the Gunnison Basin in the mid-late 1960s (Blue Mesa and Morrow) and mid-1970s (Crystal). Several projects associated with CRSP were constructed in this same general timeframe to provide additional water storage and resulted in the loss of an unquantified, but likely small, amount of sagebrush habitat. These projects provide water storage and, to a certain extent, facilitate agricultural activities that maintain the fragmentation and habitat lost historically throughout the range of Gunnison sage-grouse.

In summary, a substantial amount of sagebrush habitat within the range of the Gunnison sage-grouse had been lost prior to 1960. The majority of the remaining habitat is highly fragmented, although to a lesser extent in the Gunnison Basin than in the remainder of the species habitat.

Current Distribution and Population Estimates

The historic and current geographic ranges of Gunnison's and greater sage-grouse were quantitatively analyzed to determine the species' response to habitat loss and detrimental land uses (Wisdom *et al.*, in press, 2009, entire). A broad spectrum of biotic, abiotic, and anthropogenic conditions were found to be significantly different between extirpated and occupied ranges (Wisdom *et al.*, in press, 2009, p. 1.). Sagebrush area is one of the best landscape predictors of sage-grouse persistence (Wisdom *et al.*, in press, 2009, p. 17 and references therein). Because of the loss and fragmentation of habitat within its range, no expansive, contiguous areas that could be considered strongholds (areas of occupied range where the risk of extirpation appears low) are evident for Gunnison sage-grouse (Wisdom *et al.*, in press, 2009, p. 24). We do not know the minimum amount of sagebrush habitat needed by Gunnison sage-grouse to ensure long-term persistence. However, based on Wisdom *et al.*, in press, we do know that landscapes containing large and contiguous sagebrush patches and sagebrush patches in close proximity increase the likelihood of sage-grouse persistence.

Gunnison sage-grouse currently occur in seven widely scattered and isolated populations in Colorado and Utah, occu2pying 3,795 km^2 (1,511mi^2) (GSRSC 2005, pp. 36-37; CDOW 2009b, p. 1). The seven populations are Gunnison Basin, San Miguel Basin, Monticello–Dove Creek, Pĩnon Mesa, Crawford, Cerro Summit–Cimarron–Sims Mesa, and Poncha Pass (Figure 1). A comparative summary of the land ownership and recent population estimates among these seven populations is presented in Table 1 and Table 2, respectively. Population trends over the last nine years indicate that six of the populations are in decline. The Gunnison Basin population, while showing variation over the years, has been relatively stable through the period (CDOW 2009a p. 2). Six of the

populations are very small and fragmented (all with less than 40,500 ha (100,000 acres) of habitat likely used by grouse and less than 50 males counted on leks) (CDOW 2009a, p. 5). The San Miguel population, the second largest, comprises six fragmented subpopulations.

Figure 1. Locations of Current Gunnison Sage-grouse Populations.

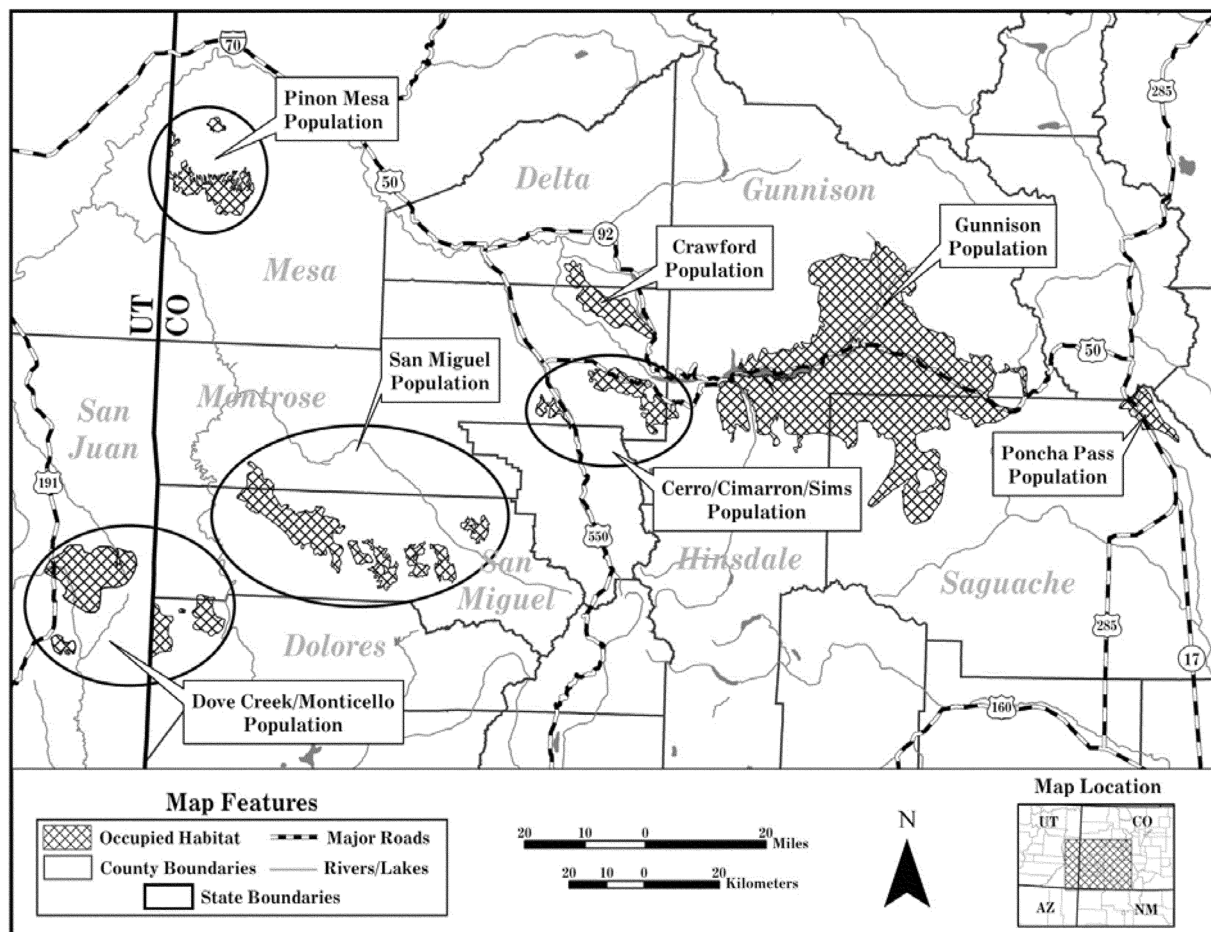

TABLE 1. PERCENT SURFACE OWNERSHIP OF TOTAL GUNNISON SAGE-GROUSE OCCUPIED[A] HABITAT (FROM GSRSC[B] 2005, PP. D-3-D-6; CDOW[C] 2009B, P. 1)

Population	hectares	acres	Gunnison Sage-grouse Occupied Habitat Management and Ownership						
			BLM[d]	NPS[e]	USFS[f]	CDOW	CO State Land Board	State of UT	Private
			%	%	%	%	%	%	%
Gunnison Basin	239,953	592,936	51	2	14	3	<1	0	29
San Miguel Basin	41,022	101,368	36[g]	0	1	11	3[g]	0	49[g]
Monticello–Dove Creek (Combined)	45,275	111,877	7	0	0	3	0	<1	90
Dove Creek	16,706	41,282	11	0	0	8	0	0	81
Monticello	28,569	70,595	4	0	0	0	0	1	95
Piñon Mesa	15,744	38,904	28	0	2	19	0	0	51
Cerro Summit–Cimarron–Sims Mesa	15,039	37,161	13	<1	0	11	0	0	76
Crawford	14,170	35,015	63	12	0	2	0	0	23

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Population	hectares	acres	Gunnison Sage-grouse Occupied Habitat Management and Ownership						
			BLM[d]	NPS[e]	USFS[f]	CDOW	CO State Land Board	State of UT	Private
			%	%	%	%	%	%	%
Poncha Pass	8,262	20,415	48	0	26	0	2	0	23
Rangewide	379,464	937,676	42	2	10	5	<1	<1	41

[a]Occupied Gunnison sage-grouse habitat is defined as areas of suitable habitat known to be used by Gunnison sage-grouse within the last 10 years from the date of mapping, and areas of suitable habitat contiguous with areas of known use, which have no barriers to grouse movement from known use areas (GSRSC 2005, p. 54).
[b]Gunnison Sage-grouse Rangewide Steering Committee
[c]Colorado Division of Wildlife
[d]Bureau of Land Management
[e]National Park Service
[f]United States Forest Service
[g]Estimates reported in San Miguel Basin Gunnison Sage-grouse Conservation Plan (2009 p. 28) vary by up to 2 percent in these categories from those reported here. We consider these differences insignificant.

TABLE 2. GUNNISON SAGE-GROUSE POPULATION ESTIMATES BY YEAR DERIVED FROM THE FORMULA PRESENTED IN THE GUNNISON SAGE-GROUSE RANGEWIDE CONSERVATION PLAN (GSRSC[A] 2005, PP. 44-45) APPLIED TO HIGH MALE COUNTS ON LEKS (CDOW[B] 2009A, P. 2).

Population	Estimated Population									
	Year									
	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
Gunnison Basin	3,493	3,027	2,453	2,443	4,700	5,205	4,616	3,669	3,817	3,655
San Miguel Basin	392	383	250	255	334	378	324	216	162	123
Monticello–Dove Creek (Combined)	363	270	186	162	196	191	245	245	191	n/a[c]
Monticello	231	172	147	152	162	118	216	216	182	n/a[c]
Dove Creek	132	98	39	10	34	74	29	29	10	44
Piñon Mesa	152	132	123	142	167	152	123	108	78	74
Cerro Summit–Cimarron–Sims Mesa	59	39	29	39	25	49	34	10	39	5
Crawford	137	206	118	128	191	201	113	103	78	20
Poncha Pass	25	44	34	39	44	44	25	25	20	15
Totals	4,621	4,101	3,194	3,208	5,656	6,220	5,480	4,376	4,386	n/a[c]

[a]Gunnison Sage-grouse Rangewide Steering Committee
[b]Colorado Division of Wildlife
[c]2010 lek count data for the Monticello group was not available at the time of publication

Gunnison Basin Population – The Gunnison Basin is an intermontane basin that includes parts of Gunnison and Saguache Counties, Colorado. The current Gunnison Basin population is distributed across approximately 240,000 ha (593,000 ac), roughly centered on the town of Gunnison. Elevations in the area range from 2,300 to 2,900 m (7,500 to 9,500 ft). Approximately 70 percent of the land area is managed by Federal agencies (67 percent) and CDOW (3 percent), and the remaining 30 percent comprises primarily private lands. Big sagebrush (*Artemesia tridentata*) dominates the upland vegetation and has a highly variable growth form depending on local site conditions. In 2009, 83 leks were surveyed for breeding activity in the Gunnison Basin, and 42 of these leks were active (at least two males in attendance during at least two of four 10–day count periods), 6 inactive

(inactive for at least 5 consecutive years), 9 historic (inactive for at least 10 consecutive years), and 26 were of unknown status (variability in counts resulted in lek not meeting requirements for active, inactive, or historic) (CDOW 2009d, pp. 28-30). Approximately 45 percent of leks in the Gunnison Basin occur on private land and 55 percent on public land, primarily BLM (GSRSC 2005, p. 75). The 2010 population estimate for the Gunnison Basin was 3,655 (CDOW 2010a, p. 2). Rogers (1964, p. 20) stated that Gunnison County was one of five counties containing the majority of sage-grouse in Colorado in 1961. The vast majority (87 percent) of Gunnison sage-grouse are now found only in the Gunnison Basin population.

San Miguel Basin Population – The San Miguel Basin population is in Montrose and San Miguel Counties in Colorado, and is composed of six small subpopulations using different areas—(Dry Creek Basin, Hamilton Mesa, Miramonte Reservoir, Gurley Reservoir, Beaver Mesa, and Iron Springs) occupying a total of approximately 41,000 ha (101,000 ac). Some of these six areas are used year-round by sage-grouse, and others are used seasonally. The overall acreage figure for this population is heavily skewed by the large percentage (approximately 62 percent) of land in the Dry Creek Basin (San Miguel Basin Gunnison Sage-grouse Working Group 2009, p. 28). The Dry Creek Basin area contains some of the poorest habitat and smallest grouse populations in the San Miguel population (San Miguel Basin Gunnison sage-grouse Conservation Plan 2009, pp. 28, 36). Gunnison sage-grouse in the San Miguel Basin move widely between these areas (Apa 2004, p. 29; Stiver and Gibson 2005, p. 12). The area encompassed by this population is believed to have once served as critical migration corridors between populations to the north (Cerro Summit–Cimarron–Sims Mesa) and to the south (Monticello-Dove Creek) (San Miguel Basin Gunnison Sage-grouse Working Group 2009, p. 9).

Sagebrush habitat in the Dry Creek Basin area is patchily distributed, and the understory is either lacking in grass and forb diversity or nonexistent. Where irrigation is possible, private lands in the southeast portion of Dry Creek Basin are cultivated. Sagebrush habitat on private land has been heavily thinned or removed entirely (GSRSC 2005, p. 96). Gunnison sage-grouse use the Hamilton Mesa area (1,940 ha (4,800 ac)) in the summer, but use of Hamilton Mesa during other seasons is unknown. Gunnison sage-grouse occupy approximately 4,700 ha (11,600 ac) around Miramonte Reservoir (GSRSC 2005, p. 96). Sagebrush stands there are generally contiguous with a mixed grass and forb understory. Occupied habitat at the Gurley Reservoir area (3,305 ha (7,500 ac)) is heavily fragmented by urban development, and the understory is a mixed grass and forb community. Farming attempts in the early 20th century led to the removal of much of the sagebrush, although agricultural activities are now restricted primarily to the seasonally irrigated crops (hay meadows), and sagebrush has reestablished in most of the failed pastures. However, grazing pressure and competition from introduced grasses have kept the overall sagebrush representation low (GSRSC 2005, pp. 96-97). Sagebrush stands in the Iron Springs and Beaver Mesa areas (2,590 ha and 3,560 ha (6,400 ac and 8,800 ac respectively)) are contiguous with a mixed grass understory. The Beaver Mesa area has numerous scattered patches of oakbrush (*Quercus gambelii*). Rogers (1964, p. 9) reported that all big sagebrush-dominated habitats in San Miguel and Montrose Counties were historically used by Gunnison sage-grouse.

The 2010 population estimate for the entire San Miguel Basin was 123 individuals on nine leks (CDOW 20010, p. 3). With the exception of 2007, CDOW has been translocating Gunnison sage-grouse from the Gunnison Basin to Dry Creek Basin on a yearly basis since the spring of 2006 (CDOW 2009a, p. 133). In the spring of 2006, six individuals were released near the Desert Lek. An additional two individuals were released in the fall. Nine individuals were translocated in the spring of 2008. An additional 30 individuals were translocated in the fall of 2009. A 40 to 50 percent mortality rate has been observed within the first year after release, compared to an average annual mortality rate of approximately 20 percent for radiomarked adult sage-grouse (CDOWa 2009, p. 9).

Monticello–Dove Creek Population – This population is divided into two disjunct subpopulations of Gunnison sage-grouse. Currently, the largest group is near the town of Monticello, in San Juan County, Utah. Gunnison sage-grouse in this subpopulation inhabit a broad plateau on the northeast side of the Abajo Mountains, with fragmented patches of sagebrush interspersed with large grass pastures and agricultural fields. The Utah Division of Wildlife Resources (UDWR) estimated population numbers between 583 and 1,050 individuals in 1972 and between 178 and 308 individuals in 2002 (UDWR 2009, 29.21 p. 1). The UDWR estimates that Gunnison sage-grouse currently occupy about 24,000 ha (60,000 ac) in the Monticello area. The 2009 population estimate for Monticello was 182 individuals with three active and one inactive leks (UDWR 2009, p. 5).

The Dove Creek subpoulation is located primarily in western Dolores County, Colorado, north and west of Dove Creek, although a small portion of occupied habitat extends north into San Miguel County. Habitat north of Dove Creek is characterized as mountain shrub habitat, dominated by oakbrush interspersed with sagebrush. The area west of Dove Creek is dominated by sagebrush, but the habitat is highly fragmented. Lek counts in the Dove Creek area were over 50 males in 1999, suggesting a population of about 245 birds, but declined to 2 males in 2009 (CDOW 2009a, p. 71), suggesting a population of 10 birds. A new lek was found in 2010, and the 2010 population estimate was 44 individuals on 2 leks (CDOW 2010, p. 1). Low sagebrush canopy cover, as well as low grass height, exacerbated by drought, may have led to nest failure and subsequent population declines (Connelly *et al.* 2000a, p. 974; Apa 2004, p. 30). Rogers (1964, p. 9) reported that all sagebrush-dominated habitats in Dolores and Montezuma Counties within Gunnison sage-grouse range in Colorado were historically used by Gunnison sage-grouse.

Pĩnon Mesa Population – The Pĩnon Mesa population occurs on the northwest end of the Uncompahgre Plateau in Mesa County, about 35 km (22 mi) southwest of Grand Junction, Colorado. The 2010 population estimate for Pĩnon Mesa was 74 (CDOW 2010, p. 2). Of the ten known leks, only four were active in 2009 (CDOW, 2009a, p. 3). The Pĩnon Mesa area may have additional leks, but the high percentage of private land, a lack of roads, and heavy snow cover during spring make locating additional leks difficult. Gunnison sage-grouse likely occurred historically in all suitable sagebrush habitat in the Pĩnon Mesa area, including the Dominguez Canyon area of the Uncompagphre Plateau, southeast of Pĩnon Mesa proper (Rogers 1964, p. 114). Their current distribution has been substantially reduced from historic levels to 15,744 ha (38,904 ac) (GSRSC 2005, p. 87).

Crawford Population – The Crawford population of Gunnison sage-grouse is in Montrose County, Colorado, about 13 km (8 mi) southwest of the town of Crawford and north of the Gunnison River. Basin big sagebrush (*Artemisia tridentata tridentata*) and black

sagebrush (*A. nova*) dominate the mid-elevation uplands (GSRSC 2005, p. 62). The 2010 population estimate for Crawford was 20 individuals (CDOW 2010, p. 1) in 14,170 ha (35,015 ac) of occupied habitat. Four active leks are currently in the Crawford population on BLM lands in sagebrush habitat adjacent to an 11-km (7-mi) stretch of road. This area represents the largest contiguous sagebrush-dominated habitat within the Crawford boundary (GSRSC 2005, p. 64).

Cerro Summit–Cimarron–Sims Mesa Population – This population is divided into two geographically separated subpopulations, both in Montrose County, Colorado. The Cerro Summit–Cimarron subpopulation is centered about 24 km (15 mi) east of Montrose. The habitat consists of 15,039 ha (37,161 ac) of patches of sagebrush habitat fragmented by oakbrush and irrigated pastures. Five leks are currently known in the Cerro Summit–Cimarron group, but only one individual was observed on one lek in 2010 resulting in a population estimate of 5 individuals for the population (CDOW 2010, p. 1). Rogers (1964, p. 115) noted a small population of sage-grouse in the Cimarron River drainage, but did not report population numbers. He noted that lek counts at Cerro Summit in 1959 listed four individuals.

The Sims Mesa area, about 11 km (7 mi) south of Montrose, consists of small patches of sagebrush that are heavily fragmented by pinyon-juniper, residential and recreational development, and agriculture. The one known lek in Sims Mesa has lacked Gunnison sage-grouse attendance for the last six years, which indicates this population is likely extirpated (CDOW 2009a, p. 43). In 2000, the CDOW translocated six Gunnison sage-grouse from the Gunnison Basin to Sims Mesa (Nehring and Apa 2000, p. 12). Rogers (1964, p. 95) recorded eight males in a lek count at Sims Mesa in 1960. We do not know if sage-grouse move between the Cerro Summit–Cimarron and Sims Mesa subpopulations.

Poncha Pass Population – The Poncha Pass Gunnison sage-grouse population is located in Saguache County, approximately 16 km (10 mi) northwest of Villa Grove, Colorado. This population was established through the reintroduction of 30 birds from the Gunnison Basin in 1971 and 1972 during efforts to reintroduce the species to the San Luis Valley (GSRSC 2005, p. 94). The known population distribution is in 8,262 ha (20,415 ac) of sagebrush habitat from the summit of Poncha Pass extending south for about 13 km (8 mi) on either side of U.S. Highway 285. Sagebrush in this area is continuous with little fragmentation; sagebrush habitat quality throughout the area is adequate to support the species (Nehring and Apa 2000 p. 25). San Luis Creek runs through the area, providing a year-round water source and lush, wet meadow riparian habitat for brood-rearing.

A high male count of 3 males was made in 2010 (CDOW 2009a, p. 121), resulting in an estimated population size of 15 for the Poncha Pass population (CDOW 2010, p. 3). The only current lek is located on BLM-administered land. In 1992, a CDOW effort to simplify hunting restrictions inadvertently opened the Poncha Pass area to sage-grouse hunting, and at least 30 grouse were harvested from this population. Due to declining population numbers since the 1992 hunt, CDOW translocated 24 additional birds from the Gunnison Basin (Nehring and Apa 2000, p. 11). In 2001 and 2002, an additional 20 and 7 birds, respectively, were moved to Poncha Pass by the CDOW (GSRSC 2005, p. 94). Translocated females have bred successfully (Apa 2004, pers. comm.), and display activity resumed on the historic lek in spring 2001.

Summary of Information Pertaining to the Five Factors

Section 4 of the Act (16 U.S.C. 1533), and implementing regulations (50 CFR 424), set forth procedures for adding species to the Federal Lists of Endangered and Threatened Wildlife and Plants. Under section 4(a)(1) of the Act, a species may be determined to be endangered or threatened based on any of the following five factors: (1) The present or threatened destruction, modification, or curtailment of its habitat or range; (2) overutilization for commercial, recreational, scientific, or educational purposes; (3) disease or predation; (4) the inadequacy of existing regulatory mechanisms; or (5) other natural or manmade factors affecting its continued existence. In making this finding, information pertaining to the Gunnison sage-grouse, in relation to the five factors provided in section 4(a)(1) of the Act, is discussed below.

In considering what factors might constitute threats to a species, we must look beyond the exposure of the species to a factor to evaluate whether the species may respond to the factor in a way that causes actual impacts to the species. If there is exposure to a factor and the species responds negatively, the factor may be a threat and we attempt to determine how significant a threat it is. The threat is significant if it drives, or contributes to, the risk of extinction of the species such that the species warrants listing as endangered or threatened as those terms are defined in the Act.

The Gunnison Basin contains 87 percent of the current rangewide Gunnison sage-grouse population and 62 percent of the area occupied by the species. The remaining six populations cumulatively and individually have substantially smaller population sizes and occupy substantially less habitat than the Gunnison Basin population (see Table 2).

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Sagebrush habitats within the range of Gunnison sage-grouse are becoming increasingly fragmented as a result of various changes in land uses and the expansion in the density and distribution of invasive plant species (Oyler-McCance *et al.* 2001, pp. 329-330; Schroeder *et al.* 2004, p. 372). Habitat fragmentation is the separation or splitting apart of previously contiguous, functional habitat components of a species. Fragmentation can result from direct habitat losses that leave the remaining habitat in non-contiguous patches, or from alteration of habitat areas that render the altered patches unusable to a species (i.e., functional habitat loss). Functional habitat losses include disturbances that change a habitat's successional state or remove one or more habitat functions; physical barriers that preclude use of otherwise suitable areas; or activities that prevent animals from using suitable habitat patches due to behavioral avoidance.

A variety of human developments including roads, energy development, and other factors that cause habitat fragmentation have contributed to or been associated with Gunnison and greater sage-grouse extirpation (Wisdom *et al.* in press, p. 18). Based on a quantitative analysis of environmental factors most closely associated with extirpation, no strongholds (areas where the risk of Gunnison sage-grouse extirpation is low) exist (Wisdom *et al.* in press, p. 26). Estimating the impact of habitat fragmentation on sage-grouse is complicated by time lags in response to habitat changes (Garton *et al.,* in press, p. 71), particularly since these relatively long-lived birds will continue to return to altered breeding areas (leks, nesting areas, and early brood-rearing areas) due to strong site fidelity despite nesting or productivity failures (Rogers 1964, pp. 35-40; Wiens and Rotenberry 1985, p. 666; Young 1994, p. 42; Lyon

2000, p. 20, Connelly *et al.* 2004, p. 45; Holloran and Anderson 2005, p. 747).

Habitat fragmentation can have an adverse effect on Gunnison sage-grouse populations. Many of the factors that result in fragmentation may be exacerbated by the effects of climate change, which may influence long-term habitat and population trends. The following sections examine factors that can contribute to habitat fragmentation to determine whether they threaten Gunnison sage-grouse and their habitat.

Historic Modification of Gunnison Sage-grouse Habitat

The historic and current distribution of the Gunnison sage-grouse closely matches the distribution of sagebrush. Potential Gunnison sage-grouse range is estimated to have been 5,536,358 ha (13,680,640 ac) historically (GSRSC 2005, p. 32). Gunnison sage-grouse currently occupy approximately 379,464 ha (937,676 ac) in southwestern Colorado and southeastern Utah (CDOW 2009b, p. 1; GSRSC 2005, p. 81), an area that represents approximately 7 percent of the species' potential historic range. The following describes the factors affecting Gunnison sage-grouse and Gunnison sage-grouse habitat within the current range of the species.

The onset of EuroAmerican settlement in the late 1800s resulted in significant alterations to sagebrush ecosystems throughout North America (West and Young 2000, pp. 263-265; Miller *et al.* in press, p. 6), primarily as a result of urbanization, agricultural conversion, and irrigation projects. Areas that supported basin big sagebrush (*Artemisia tridentata* ssp. *tridentata*) were among the first sagebrush community types converted to agriculture because their typical soils and topography are well suited for agriculture (Rogers 1964, p. 13).

In southwestern Colorado, Oyler-McCance *et al.* (2001, p. 326) found that, between 1958 and 1993, 20 percent (155,673 ha (384,676 ac)) of sagebrush was lost in Colorado, and 37 percent of sagebrush plots examined were fragmented. In another analysis, it was estimated that approximately 342,000 ha (845,000 ac) of sagebrush, or 13 percent of the pre-EuroAmerican settlement sagebrush extent, were lost in Colorado, which includes both greater sage-grouse and Gunnison sage-grouse habitat (Boyle and Reeder 2005, p. 3-3). However, the authors noted that the estimate of historic sagebrush area used in their analyses was conservative, possibly resulting in a substantial underestimate of historic sagebrush losses (Boyle and Reeder 2005, p. 3-4). Within the range of Gunnison sage-grouse, the principal areas of sagebrush loss were in the Gunnison Basin, San Miguel Basin, and areas near Dove Creek, Colorado. The authors point out that the rate of loss in the Gunnison Basin was lower than other areas of sagebrush distribution in Colorado. The Gunnison Basin contains approximately 250,000 ha (617,000 ac) of sagebrush; this area partially comprises other habitat types such as riparian areas and patches of non-sagebrush vegetation types, including aspen forest, mixed-conifer forest, and oakbrush (Boyle and Reeder 2005, p. 3-3). Within the portion of the Gunnison Basin currently occupied by Gunnison sage-grouse, 170,000 ha (420,000 ac) comprises exclusively sagebrush vegetation types, as derived from Southwest Regional Gap Analsis Project (SWReGAP) landcover data (multi-season satellite imagery acquired between 1999 and 2001) (USGS 2004, entire).

Conversion to Agriculture

While sage-grouse may forage on agricultural croplands, they avoid landscapes dominated by agriculture (Aldridge *et al.* 2008, p. 991). Influences resulting from agricultural activities extend into adjoining sagebrush, and include increased predation and reduced nest success due to predators associated with agriculture (Connelly *et al.* 2004, p. 7-23). Agricultural conversion can provide some limited benefits for sage-grouse. Some crops, such as alfalfa (*Medicago sativa*) and young bean sprouts (*Phaseolus* spp.), are eaten or used for cover by Gunnison sage-grouse (Braun 1998, pers. comm.). However, crop monocultures do not provide adequate year-round food or cover (GSRSC 2005, pp. 22-30).

Current Agriculture in All Gunnison Sage-grouse Population Areas – The following estimates of land area dedicated to agriculture (including grass/forb pasture) were derived from SWReGAP landcover data (USGS 2004, entire). Habitat conversion to agriculture is most prevalent in the Monticello–Dove Creek population area where approximately 23,220 ha (57,377 ac) or 51 percent of Gunnison sage-grouse occupied range is currently in agricultural production. In the Gunnison Basin, approximately 20,754 ha (51,285 ac) or 9 percent of the occupied range is currently in agricultural production. Approximately 6,287 ha (15,535 ac) or 15 percent of the occupied range in the San Miguel Basin is currently in agricultural production. In the Cerro Summit–Cimarron–Sims Mesa population, approximately 14 percent (5,133 ha (2,077 ac)) of the occupied range is currently in agricultural production. Habitat conversion due to agricultural activities is limited in the Crawford, Pĩnon Mesa, and Poncha Pass populations, with 3 percent or less of the occupied range currently in agricultural production in each of the population areas.

Other than in Gunnison County, total area of harvested cropland has declined over the past two decades in all counties within the occupied range of Gunnison sage-grouse (USDA NASS 2010, entire). Information on the amount of land area devoted to cropland was not available for Gunnison County, most likely because the majority of agricultural land use in the county is for hay production. However, total area in hay production has correspondingly declined in Gunnison County over the past two decades (USDA NASS 2009, p. 1). Because of this long-term trend in reduced land area devoted to agriculture, we do not expect a significant amount of Gunnison sage-grouse habitat to be converted to agricultural purposes in the future.

Conservation Reserve Program – The loss of Gunnison sage-grouse habitat to conversion to agriculture has been mitigated somewhat by the Conservation Reserve Program (CRP). The CRP is administered by the United States Department of Agriculture (USDA) Farm Service Agency (FSA) and provides incentives to agricultural landowners to convert certain cropland to more natural vegetative conditions. Except in emergency situations, CRP-enrolled lands are not hayed or grazed.

Lands within the occupied range of Gunnison sage-grouse enrolled into the CRP are limited to Dolores and San Miguel counties in Colorado, and San Juan County in Utah (USDA FSA 2010, entire). From 2000 to 2008, CRP-enrollment averaged 10,622 ha (26,247 ac) in Dolores County, 1,350 ha (3,337 ac) in San Miguel County, and 14,698 ha (36,320 ac) in San Juan County (USDA FSA 2010, entire). These CRP enrolled areas potentially constitute approximately 56 percent of the Monticello–Dove Creek population and 3 percent of the San Miguel population; however, we are unsure of the proportion of these CRP lands that are within Gunnison sage-grouse habitat. Approximately 735 ha (1,816 ac) of leases on these CRP-enrolled lands expired on September 30, 2009, and 10,431 ha (25,778 ac) are due to expire on September 30, 2010 (UDWR 2009, p. 7).

In San Juan County, Gunnison sage-grouse use CRP lands in proportion to their availability (Lupis *et al.* 2006, p. 959). The CRP areas are used by grouse primarily as brood-rearing habitat, but

these areas vary greatly in plant diversity and forb abundance, and generally lack any shrub cover (Lupis *et al.* 2006, pp. 959-960). In response to a severe drought, four CRP parcels totaling 1,487 ha (3,674 ac) in San Juan County, UT, were emergency grazed for a duration of 1 to 2 months in the summer of 2002 (Lupis 2006, p. 959).

Largely as a result of agricultural conversion, sagebrush patches in the Monticello–Dove Creek subpopulation area have progressively become smaller and more fragmented, which has limited the amount of available nesting and winter habitat (GSRSC 2005, pp. 82, 276). Overall, the CRP has protected a portion of the Monticello–Dove Creek population from more intensive agricultural use and development. However, the overall value of CRP lands is limited because they largely lack sagebrush cover required by Gunnison sage-sage grouse throughout most of the year. The CRP was renewed under the Food, Conservation, and Energy Act of 2008. A new CRP sign-up for individual landowners is not anticipated until 2012 and the extent to which existing CRP lands will be re-enrolled is unknown (UDWR 2009, p. 4).

Summary of Conversion to Agriculture

Throughout the range of Gunnison sage-grouse there is a declining trend in the amount of land area devoted to agriculture. Therefore, although we expect a large proportion of land currently in agricultural production to remain so indefinitely, we do not expect significant additional, future habitat conversion to agriculture within the range of Gunnison sage-grouse. The loss of sagebrush habitat from 1958 to 1993 was estimated to be approximately 20 percent throughout the range of Gunnison sage-grouse (Oyler-McCance *et al.* 2001, p. 326). The exception is the Monticello–Dove Creek population where more than half of the occupied range is currently in agriculture or other land uses incompatible with Gunnison sage-grouse conservation. This habitat loss is being somewhat mitigated by the current enrollment of lands in the CRP. Even so, this relative scarcity of sagebrush cover indicates a high risk of population extirpation (Wisdom *et al.* in press, p. 19) for this population. Because of its limited extent, we do not consider the conversion of sagebrush habitats to agriculture alone to be a current or future significant threat to Gunnison sage-grouse and its habitat. However, we recognize lands already converted to agriculture are located throughout all Gunnison sage-grouse populations and are, therefore, contributing to the fragmentation of remaining habitat.

Water Development

Water Development in All Population Areas – Irrigation projects have resulted in loss of sage-grouse habitat (Braun 1998, p. 6). Reservoir development in the Gunnison Basin flooded 3,700 ha (9,200 ac), or 1.5 percent of likely sage-grouse habitat (McCall 2005, pers. comm.). Three other reservoirs inundated approximately 2 percent of habitat in the San Miguel Basin population area (Garner 2005, pers. comm.). We are unaware of any plans for additional reservoir construction. Because of the small amount of Gunnison sage-grouse habitat lost to water development projects and the unlikelihood of future projects, we do not consider water development alone to be a current or future significant threat to the Gunnison sage-grouse. However, we expect these existing reservoirs to be maintained indefinitely, thus acting as another source of fragmentation of Gunnison sage-grouse habitat.

Residential Development

Human population growth in the rural Rocky Mountains is driven by the availability of natural amenities, recreational opportunities, aesthetically desirable settings, grandiose viewscapes, and perceived remoteness (Riebsame 1996, p. 396, 402; Theobald 1996, p. 408; Gosnell and Travis 2005, pp. 192-197; Mitchell *et al.* 2002, p. 6; Hansen *et al.* 2005, pp. 1899-1901). This human population growth is occurring throughout much of the range of Gunnison sage-grouse. The human population in all counties within the range of Gunnison sage-grouse averaged a 70 percent increase since 1980 (Colorado Department of Local Affairs (CDOLA) 2009a, pp. 2-3). The year 2050 projected human population for the Gunnison River basin (an area that encompasses the majority of the current range of Gunnison sage-grouse) is expected to be 2.3 times greater than the 2005 population (CWCB 2009, p. 15). The population of Gunnison County, an area that supports over 80 percent of all Gunnison sage-grouse, is predicted to more than double to approximately 31,100 residents by 2050 (CWCB 2009, p. 53).

The increase in residential and commercial development associated with the expanding human population is different from historic land use patterns (Theobald 2001, p. 548). The allocation of land for resource-based activities such as agriculture and livestock production is decreasing as the relative economic importance of these activities diminishes (Theobald 1996, p. 413; Sammons 1998, p. 32; Gosnell and Travis 2005, pp. 191-192). Currently, agribusiness occupations constitute approximately 3 percent of the total job base in Gunnison County (CDOLAb 2009, p. 4). Recent conversion of farm and ranch lands to housing development has been significant in Colorado (Odell and Knight 2001, p. 1144). Many large private ranches in the Rocky Mountains, including the Gunnison Basin, are being subdivided into both high-density subdivisions and larger, scattered ranchettes with lots typically greater than 14 ha (35 ac), which encompass a large, isolated house (Riebsame 1996, p. 399; Theobald 1996, p. 408).

The resulting pattern of residential development is less associated with existing town sites or existing subdivisions, and is increasingly exurban in nature (Theobald *et al.* 1996, pp. 408, 415; Theobald 2001, p. 546). Exurban development is described as low-density growth outside of urban and suburban areas (Clark *et al.* 2009, p. 178; Theobald 2004, p.140) with less than one housing unit per 1 ha (2.5 ac) (Theobald 2003, p. 1627; Theobald 2004, p. 139). The resulting pattern is one of increased residential lot size and the diffuse scattering of residential lots in previously rural areas with a premium placed on adjacency to federal lands and isolated open spaces (Riebsame *et al.* 1996, p. 396, 398; Theobald 1996, pp. 413, 417; Theobald 2001, p. 546; Brown *et al.* 2005, p. 1858). The residential subdivision that results from exurban development causes landscape fragmentation (Gosnell and Travis 2005, p. 196) primarily through the accumulation of roads, buildings, (Theobald 1996, p. 410; Mitchell *et al.* 2002, p. 3) and other associated infrastructure such as power lines, and pipelines. In the East River Valley of Gunnison County, residential development in the early 1990s increased road density by 17 percent (Theobald *et al.* 1996, p. 410). The habitat fragmentation resulting from this development pattern is especially detrimental to Gunnison sage-grouse because of their dependence on large areas of contiguous sagebrush (Patterson 1952, p. 48; Connelly *et al.* 2004, p. 4-1; Connelly *et al.* in press a, p. 10; Wisdom *et al.* in press, p. 4).

Residential Development in the Gunnison Basin Population Area – Nearly three quarters (approximately 71 percent) of the Gunnison Basin population of Gunnison sage-grouse occurs within Gunnison County, with the remainder occurring in Saguache

County. Within Gunnison County, approximately 30 percent of the occupied range of this species occurs on private lands. We performed a GIS analysis of parcel ownership data that was focused on the spatial and temporal pattern of human development within occupied Gunnison sage-grouse habitat. Some of our analyses were limited to the portion of occupied habitat in Gunnison County because parcel data was only available for Gunnison County and not for Saguache County. The cumulative number of human developments has increased dramatically in Gunnison County, especially since the early 1970s (USFWS 2010a, p. 1). The number of new developments averaged approximately 70 per year from the late 1800s to 1969, increasing to approximately 450 per year from 1970 to 2008 (USFWS 2010a, pp. 2-5). Furthermore, there has been an increasing trend toward development away from major roadways (primary and secondary paved roads) into areas that had previously undergone very limited development in occupied Gunnison sage-grouse habitat (USFWS 2010b, p. 7). Between 1889 and 1968, there were approximately 51 human developments located more than 1.6 km (1 mi) from a major road in currently occupied Gunnison sage-grouse habitat. Between 1969 and 2008, this number increased to approximately 476 developments (USFWS 2010b, p. 7).

In order to assess the impacts of existing residential development, we relied on two evaluations of Gunnison sage-grouse response and habitat availability in relation to development. The first was a landscape-scale spatial model predicting Gunnison sage-grouse nesting probability in the Gunnison Basin (Aldridge *et al.* 2010, entire). The model indicated that Gunnison sage-grouse select nest sites in areas with moderate shrub cover, and avoid residential development within a radius of 1.5 km (0.9 mi) (Aldridge *et al.* 2010, p. 18). The model was applied to the entire Gunnison Basin population area to predict the likelihood of Gunnison sage-grouse nesting based on data from the western portion (Aldridge *et al.* 2010, p. 16). We used Aldridge *et al.* (2010)'s radius of 1.5 km (0.9 mi) avoidance distance to calculate the indirect effects likely from the current level of development within occupied Gunnison sage-grouse habitat in Gunnison County. We found that 49 percent of the land area within the range of Gunnison sage-grouse has at least one housing unit within a radius of 1.5 km (0.9 mi) (USFWS 2010b, p. 7). This residential development is currently compromising the likelihood of use by Gunnison sage-grouse for nesting habitat in these areas.

Furthermore, since early brood-rearing habitat is often in close proximity to nest sites (Connelly *et al.* 2000a, p. 971), the functional loss of nesting habitat is closely linked with the loss of early brood-rearing habitat. Limitations in the quality and quantity of nesting and early brood-rearing habitat are particularly problematic because Gunnison sage-grouse population dynamics are most sensitive during these life-history stages (GSRSC 2005, p. G-15). We recognize that the potential percentages of habitat loss mentioned above, whether direct or functional, will not necessarily correspond to the same percentage loss in sage-grouse numbers. The recent efforts to conserve Gunnison sage-grouse and their habitat within the Basin provide protection for the foreseeable future for several areas of high-quality habitat (see discussion in Factor D). Nonetheless, given the large landscape-level needs of this species, we expect this current level of habitat loss, degradation, and fragmentation, from residential development, as described above, to substantially limit the probability of persistence of Gunnison sage-grouse in the Gunnison Basin.

We also calculated a "lower" development impact scenario using the smaller impact footprint hypothesized by the GSRSC (2005, pp. 160-161). This analysis assumed that residential density in excess of one housing unit per 1.3 km^2 (0.5 mi^2) could cause declines in Gunnison sage-grouse populations. Within Gunnison County, 18 percent of the land area within the range of Gunnison sage-grouse currently has a residential density greater than one housing unit per 1.3 km^2 (0.5 mi^2) (USFWS 2010b, p. 8). Therefore, according to the GSRSC estimate of potential residential impacts, human residential densities in the Gunnison Basin population area are such that we expect they are limiting the Gunnison sage-grouse population in at least 18 percent of the population area.

We expect the density and distribution of human residences to expand in the future. Based on our GIS analysis, we estimate that approximately 20,236 ha (50,004 ac) of private lands on approximately 1,190 parcels not subject to conservation easements currently lack human development in occupied Gunnison sage-grouse habitat in Gunnison County (USFWS 2010b, p. 11). These lands are scattered throughout occupied Gunnison sage-grouse habitat in the Gunnison Basin. We used the 20,236 ha (50,004 ac) as an initial basis to assess the potential impacts of future development. A lack of parcel data availability from surrounding counties precluded expanding this analysis beyond Gunnison County; however, the analysis area constitutes 71 percent of the Gunnison Basin population area. Approximately 93 percent of occupied Gunnison sage-grouse habitat in Gunnison County consists of parcels greater than 14.2 ha (35 ac), allowing exemptions from some county land development regulations. Applying a 1.7 percent average annual population increase under a "middle" growth scenario (CWCB 2009, p. 56) and an average 2.29 persons per household (CDOLA 2009b, p. 6) to the 2008 Gunnison County human population estimate results in the potential addition of nearly 7,000 housing units to the county by 2050.

Currently, approximately two-thirds of the human population in Gunnison County occurs within the currently mapped occupied range of Gunnison sage-grouse. Assuming this pattern will continue, two-thirds of the population increase will occur within occupied Gunnison sage-grouse habitat. The above projection could potentially result in the addition of approximately 4,630 housing units and the potential for 25,829 ha (63,824 ac) of new habitat loss, whether direct or functional, on parcels that currently have no development. Based on the estimated area of impact determined by Aldridge *et al.* (2010), this potential functional habitat loss constitutes an additional impact of 15 percent of the current extent of the Gunnison Basin population area (USFWS 2010b, p. 14). When combined with the existing loss, whether direct or functional, of 49 percent of Gunnison sage-grouse nesting habitat, the total amount of habitat subject to the indirect effects of residential development now and in the foreseeable future increases to 64 percent.

Using the same methodology as discussed above, but applying the estimated area of impact determined by GSRSC (2005, p. F-3), results in a future potential functional habitat loss of 9 percent. When combined with the existing loss, whether direct or functional, of 18 percent of Gunnison sage-grouse habitat, an estimated 27 percent of habitat will be functionally lost for Gunnison sage-grouse under this minimum impact scenario. We believe that impacts to Gunnison sage-grouse implicit in even the lower or more conservative estimates of direct and

functional habitat loss are limiting the persistence of the species.

We also anticipate increased housing density in many areas of occupied Gunnison sage-grouse habitat because the anticipated number of new housing units will exceed the number of undeveloped parcels by nearly four times (USFWS 2010b, p. 16). Some of this anticipated development and subsequent functional habitat loss will undoubtedly occur on parcels that currently have existing human development, which could lessen the effects to Gunnison sage-grouse. However, the above calculation of an increase in future housing units is likely an underestimate because it does not take into account the expected increase in second home development (CDOLA 2009b, p. 7), which could increase negative effects to Gunnison sage-grouse. The U.S. Census Bureau only tallies the inhabitants of primary residences in population totals. This methodology results in an underestimate of the population, particularly in amenity communities, because of the increased number of part-time residents inhabiting second homes and vacation homes in these areas (Riebsame 1996, p. 397; Theobald 2001, p. 550, Theobald 2004, p. 143). In Gunnison County, approximately 90 percent of vacant housing units were seasonal-use units (CDOLA 2009c, p. 1). The housing vacancy rate, which is computed by dividing the number of vacant housing units by the total housing units, was 42.5 percent in Gunnison County over the last two decades (CDOLA 2009d, p. 2).

We expect some development to be moderated by the establishment of additional voluntary landowner conservation easements such as those currently facilitated by the CDOW and land trust organizations. While conservation easements can minimize the overall impacts to Gunnison sage-grouse, because less than 5 percent of occupied Gunnison sage-grouse habitat in the Gunnison Basin has been placed in conservation easements to date, we do not expect the amount of land potentially placed in future easements will significantly offset the overall affects of human development.

Our analyses, based on the evaluations of impacts to Gunnison sage-grouse discussed above, result in estimates of existing functional habitat loss of 18 to 49 percent of the Gunnison Basin population area. Future estimates of functional habitat loss result in an increase of 9 to 15 percent, for a cumulative total of 27 and 64 percent loss of the Gunnison Basin population area. We believe that impacts within these ranges limit the persistence of Gunnison sage-grouse.

Residential Development in All Other Population Areas – In 2004, within the Crawford Population area, approximately 951 ha (2,350 ac), or 7 percent of the occupied Gunnison sage-grouse habitat, was subdivided into 48 parcels ranging in size from 14.2 ha (35 ac) to 28.3 ha (70 ac) (CDOW 2009a, p. 59). Local landowners and the National Park Service (NPS) have ongoing efforts to protect portions of the subdivided area through conservation easements. Residential subdivision continues to occur in the northern part of the Poncha Pass population area, and the CDOW considers this to be the highest priority threat to this population (CDOW 2009a, p. 124). The rate of residential development in the San Miguel Basin population increased between 2005 and 2008 but slowed in 2009 (CDOW 2009a, p. 135). However, a 429 ha (1,057 ac) parcel north of Miramonte Reservoir is currently being developed as a retreat. The CDOW reports that potential impacts to Gunnison sage-grouse resulting from the development may be reduced by possibly placing a portion of the property into a conservation easement and the relocation of a proposed major road to avoid occupied habitat (CDOW 2009a, p. 136). No recent or planned residential developments are known for the Cerro Summit–Cimarron–Sims Mesa population area (CDOW 2009a, p. 45), Monticello–Dove Creek population area (CDOW 2009a, p. 73), or Pĩnon Mesa population area (CDOW 2009a, p. 109). The remaining limited amounts of habitat, the fragmented nature of this remaining habitat, and the anticipated increases in exurban development within each of the six smaller populations pose a significant threat to these six populations.

Summary of Residential Development

Because Gunnison sage-grouse are dependent on expansive, contiguous areas of sagebrush habitat to meet their life-history needs, the development patterns described above have resulted in the direct and functional loss of sagebrush habitat and have negatively affected the species by limiting already scarce habitat, especially within the six smaller populations. The collective influences of fragmentation and disturbance from human activities around residences and associated roads reduce the effective habitat around these areas, making them inhospitable to Gunnison sage-grouse (Aldridge *et al.* 2010, pp. 24-25; Knick, *et al.* 2009, in press, p. 25 and references therein; Aldridge and Boyce 2007, p.520). Human population growth that results in a dispersed exurban development pattern throughout sagebrush habitats will reduce the likelihood of sage-grouse persistence in these areas. Human populations are increasing throughout the range of Gunnison sage-grouse, and we expect this trend to continue. Given the current demographic trends described above, we believe the rate of residential development in Gunnison sage-grouse habitat will continue at least through 2050, and likely longer. The resulting habitat loss and fragmentation from residential development is a significant threat to Gunnison sage-grouse now and in the foreseeable future.

Fences

The effects of fencing on sage-grouse include direct mortality through collisions, creation of raptor and corvid (Family Corvidae: crows, ravens, magpies, etc.) perch sites, the potential creation of predator corridors along fences (particularly if a road is maintained next to the fence), incursion of exotic species along the fencing corridor, and habitat fragmentation (Call and Maser 1985, p. 22; Braun 1998, p. 145; Connelly *et al.* 2000a, p. 974; Beck *et al.* 2003, p. 211; Knick *et al.* 2003, p. 612; Connelly *et al.* 2004, p. 1-2). Corvids are significant sage-grouse nest predators and were responsible for more than 50 percent of nest predations in Nevada (Coates 2007, pp. 26-30). Sage-grouse frequently fly low and fast across sagebrush flats, and fences can create a collision hazard resulting in direct mortality (Call and Maser 1985, p. 22). Not all fences present the same mortality risk to sage-grouse. Mortality risk appears to be dependent on a combination of factors including design of fencing, landscape topography, and spatial relationship with seasonal habitats (Christiansen 2009). This variability in fence mortality rate and the lack of systematic fence monitoring make it difficult to determine the magnitude of impacts to sage-grouse populations; however, in some cases the level of mortality is likely significant to localized areas within populations. Fences directly kill greater sage grouse (Call and Maser 1985, p. 22; Christiansen 2009, pp. 1-2); we assume that Gunnison sage-grouse are also killed by fences but do not have species-specific data. Although the effects of direct strike mortality on populations are not fully analyzed, fences are ubiquitous across the landscape. Fence collisions continue to be identified as a source of mortality for Gunnison and greater sage-grouse and we expect this source of mortality to continue into the foreseeable future (Braun 1998, p. 145;

Connelly *et al.* 2000a, p. 974; Oyler-McCance *et al.* 2001, p. 330; Connelly *et al.* 2004, p. 7-3).

Fence posts create perching places for raptors and corvids, which may increase their ability to prey on sage-grouse (Braun 1998, p. 145; Oyler-McCance *et al.* 2001, p. 330; Connelly *et al.* 2004, p. 13-12). We anticipate that the effect on sage-grouse populations through the creation of new raptor perches and predator corridors into sagebrush habitats is similar to that of powerlines discussed below (Braun 1998, p. 145; Connelly *et al.* 2004, p. 7-3). Fences and their associated roads also facilitate the spread of invasive plant species that replace sagebrush plants upon which sage-grouse depend (Braun 1998, p. 145; Connelly *et al.* 2000a, p. 973; Gelbard and Belnap 2003, p. 421; Connelly *et al.* 2004, p. 7-3). Greater sage-grouse avoidance of habitat adjacent to fences, presumably to minimize the risk of predation, effectively results in habitat fragmentation even if the actual habitat is not removed (Braun 1998, p. 145). Because of similarities in behavior and habitat use, we believe the response of Gunnison sage-grouse is similar to that observed in greater sage-grouse.

At least 1,540 km (960 mi) of fence are on BLM lands within the Gunnison Basin (Borthwick 2005a, pers. comm.; BLM 2005a, 2005e) and an unquantified amount of fence on land owned or managed by other landowners. Fences are present within all other Gunnison sage-grouse population areas, but we have no quantitative information on the amount or types of fencing in these areas.

Summary of Fences

While fences contribute to habitat fragmentation and increase the potential for loss of individual grouse through collisions or enhanced predation, such effects have been ongoing since the first agricultural conversions occurred in sage-grouse habitat. We expect that the majority of existing fences will remain on the landscape indefinitely. However, because we do not expect a major increase in the number of fences, particularly 3-wire range fencing, we do not believe fencing, on its own, is a significant threat to Gunnison sage-grouse at the species level. In the smaller Gunnison sage-grouse populations, the impacts of fencing could become another source of mortality that cumulatively affects the species. We also recognize that fences are located throughout all Gunnison sage-grouse populations and are, therefore, contributing to the fragmentation of remaining habitat.

Roads

Impacts from roads may include direct habitat loss, direct mortality, barriers to migration corridors or seasonal habitats, facilitation of predation and spread of invasive vegetative species, and other indirect influences such as noise (Forman and Alexander 1998, pp. 207-231). Greater sage-grouse mortality resulting from collisions with vehicles does occur, but mortalities are typically not monitored or recorded (Patterson 1952, p. 81). Therefore, we are unable to determine the importance of this factor on sage-grouse populations. We have no information on the number of direct mortalities of Gunnison sage-grouse resulting from vehicles or roads; however, because of similarities in their habitat and habitat use, we expect similar effects as those observed in greater sage-grouse. Roads within Gunnison sage-grouse habitats have been shown to impede movement of local populations between the resultant patches, with road avoidance presumably being a behavioral means to limit exposure to predation (Oyler-McCance *et al.* 2001, p. 330).

The presence of roads increases human access and resulting disturbance effects in remote areas (Forman and Alexander 1998, p. 221; Forman 2000, p. 35; Connelly *et al.* 2004, pp. 7-6 to 7-25). In addition, roads can provide corridors for predators to move into previously unoccupied areas. For some mammalian species known to prey on sage-grouse, such as red fox (*Vulpes vulpes*), raccoons (*Procyon lotor*), and striped skunks (*Mephitis mephitis*), dispersal along roads has greatly increased their distribution (Forman and Alexander 1998, p. 212; Forman 2000, p. 33; Frey and Conover 2006, pp. 1114-1115). Corvids also use linear features such as primary and secondary roads as travel routes, expanding their movements into previously unused regions (Knight and Kawashima 1993, p. 268; Connelly *et al.* 2004, p. 12-3). Corvids are significant sage-grouse nest predators and were responsible for more than 50 percent of nest predations in Nevada (Coates 2007, pp. 26-30). Ravens were documented following roads in oil and gas fields while foraging (Bui 2009, p. 31).

The expansion of road networks contributes to exotic plant invasions via introduced road fill, vehicle transport, and road maintenance activities (Forman and Alexander 1998, p. 210; Forman 2000, p. 32; Gelbard and Belnap 2003, p. 426; Knick *et al.* 2003, p. 619; Connelly *et al.* 2004, p. 7-25). Invasive species are not limited to roadsides, but also encroach into surrounding habitats (Forman and Alexander 1998, p. 210; Forman 2000, p. 33; Gelbard and Belnap 2003, p. 427). In their study of roads on the Colorado Plateau of southern Utah, Gelbard and Belnap (2003, p. 426) found that improving unpaved four-wheel drive roads to paved roads resulted in increased cover of exotic plant species within the interior of adjacent plant communities. This effect was associated with road construction and maintenance activities and vehicle traffic, and not with differences in site characteristics. The incursion of exotic plants into native sagebrush systems can negatively affect Gunnison sage-grouse through habitat losses and conversions (see further discussion below in Invasive Plants).

Additional indirect effects of roads may result from birds' behavioral avoidance of road areas because of noise, visual disturbance, pollutants, and predators moving along a road. The landscape-scale spatial model predicting Gunnison sage-grouse nest site selection showed strong avoidance of areas with high road densities of roads classed 1 through 4 (primary paved highways through primitive roads with 2-wheel drive sedan clearance) within 6.4 km (4 mi)) of nest sites (Aldridge *et al.* 2010 p. 18). The occurrence of Gunnison sage-grouse nest sites also decreased with increased proximity to primary and secondary paved highways (roads classes 1 and 2) (Aldridge *et al.* 2010, p. 27). Male greater sage-grouse lek attendance was shown to decline within 3 km (1.9 mi) of a methane well or haul road with traffic volume exceeding one vehicle per day (Holloran 2005, p. 40). Male sage-grouse depend on acoustical signals to attract females to leks (Gibson and Bradbury 1985, p. 82; Gratson 1993, p. 692). If noise interferes with mating displays, and thereby female attendance, younger males will not be drawn to the lek and eventually leks will become inactive (Amstrup and Phillips 1977, p. 26; Braun 1986, pp. 229-230).

In a study on the Pinedale Anticline in Wyoming, greater sage-grouse hens that bred on leks within 3 km (1.9 mi) of roads associated with oil and gas development traveled twice as far to nest as did hens that bred on leks greater than 3 km (1.9 mi) from roads. Nest initiation rates for hens bred on leks close to roads also were lower (65 versus 89 percent), affecting population recruitment (33 versus 44 percent) (Lyon 2000, p. 33; Lyon and Anderson 2003, pp. 489-490). Lyon and Anderson (2003, p. 490) suggested that roads may be the primary impact of oil and gas

development to sage-grouse, due to their persistence and continued use even after drilling and production have ceased. Lek abandonment patterns suggested that daily vehicular traffic along road networks for oil wells can impact greater sage-grouse breeding activities (Braun *et al.* 2002, p. 5). We believe the effects of vehicular traffic on Gunnison sage-grouse, regardless of its purpose (e.g., in support of energy production or local commuting and recreation), are similar to those observed in greater sage-grouse.

Aldridge *et al.* (2008, p. 992) did not find road density to be an important factor affecting greater sage-grouse persistence or rangewide patterns in sage-grouse extirpation. However, the authors did not consider the intensity of human use of roads in their modeling efforts. They also indicated that their analyses may have been influenced by inaccuracies in spatial road data sets, particularly for secondary roads (Aldridge *et al.* 2008, p. 992). Historic range where greater and Gunnison sage grouse have been extirpated has a 25 percent higher density of roads than occupied range (Wisdom *et al.* in press, p. 18). Wisdom *et al.*'s (in press) greater and Gunnison sage-grouse rangewide analysis supports the findings of numerous local studies showing that roads can have both direct and indirect impacts on sage-grouse distribution and individual fitness (reproduction and survival) (e.g., Lyon and Anderson 2003 p. 490 , Aldridge and Boyce 2007, p. 520).

Recreational activities including off highway vehicles (OHV), all-terrain vehicles (ATV), motorcycles, mountain biking and other mechanized methods of travel have been recognized as a potential direct and indirect threat to Gunnison sage-grouse and their habitat (BLM 2009, p. 36). In Colorado, the number of annual off highway vehicle (OHV) registrations has increased from 12,000 in 1991 to 131,000 in 2007 (BLM 2009, p. 37). Four wheel drive, OHV, motorcycle, specialty vehicle, and mountain bike use is expected to increase in the future based on increased population in general and increased population density in the area (as discussed above). Numerous off-road routes and access points to habitat used by Gunnison sage-grouse combined with increasing capabilities for mechanized travel and increased human population further contribute to habitat fragmentation.

Roads in the Gunnison Basin Population Area – On BLM lands in the Gunnison Basin there are currently 2,050 km (1,274 mi) of roads within 6.4 km (4 mi) of Gunnison sage-grouse leks. Eighty-seven percent of all Gunnison sage-grouse nests were located less than 6.4 km (4 mi) from the lek of capture (Apa 2004, p. 21). However, the BLM proposes to reduce road length to 1,157 km (719 mi) (BLM 2010, p. 147). Currently, 1,349 km (838 mi) of roads accessible to 2-wheel drive passenger cars exist in occupied Gunnison sage-grouse habitat in the Gunnison Basin. Four-wheel-drive vehicle roads, as well as motorcycle, mountain bike, horse, and hiking trails are heavily distributed throughout the range of Gunnison sage-grouse (BLM 2009, pp. 27, 55, 86), which further increases the overall density of roads and their direct and indirect effects on Gunnison sage-grouse. User-created roads and trails have increased since 2004 (BLM 2009, p. 33), although we do not know the percentage increase.

Using a spatial dataset of roads in the Gunnison Basin we performed GIS analyses on the potential effects of roads to Gunnison sage-grouse and their habitat. To account for secondary effects from invasive weed spread from roads (see discussion below in Invasive Plants), we applied a 0.7 km (0.4 mi) buffer (Bradley and Mustard 2006, p. 1146) to all roads in the Gunnison Basin. Results of these analyses indicate that approximately 85 percent of occupied habitat in the Gunnison Basin has an increased likelihood of current or future road-related invasive weed invasion. When all roads in the Gunnison basin are buffered by 6.4 km (4 mi) or 9.6 km (6 mi) to account for nesting avoidance (Aldridge *et al.* 2010, p. 27) and secondary effects from mammal and corvid foraging areas (Knick *et al* in press, p. 113), respectively, all occupied habitat in the Gunnison Basin is indirectly affected by roads.

Roads in All Other Population Areas – Approximately 140 km (87 mi), 243 km (151 mi), and 217 km (135 mi) of roads (all road classes) occur on BLM lands within the Cerro Summit–Cimarron–Sims Mesa, Crawford, and San Miguel Basin population areas, respectively, all of which are managed by the BLM (BLM 2009, p. 71). We do not have information on the total length of roads within the Monticello–Dove Creek, Pĩnon Mesa, or Poncha Pass Gunnison sage-grouse populations. However, several maps provided by the BLM show that roads are widespread and common throughout these population areas (BLM 2009, pp. 27, 55, 86).

Summary of Roads

As described above in the 'Residential Development' section, the human population is increasing throughout the range of Gunnison sage-grouse (CDOLA 2009a, pp. 2-3; CWCB 2009, p. 15), and we have no data indicating this trend will be reversed. Gunnison sage-grouse are dependent on large contiguous and unfragmented landscapes to meet their life-history needs (GSRSC 2005, pp. 26-30), and the existing road density throughout much of the range of Gunnison sage-grouse has negatively affected the species. The collective influences of fragmentation and disturbance from roads reduce the effective habitat around these areas making them inhospitable to sage-grouse (Aldridge *et al.* 2010, pp. 24-25; Aldridge and Boyce 2007, p. 520; Knick *et al.* 2009, in press, p. 25 and references therein). Given the current human demographic and economic trends described above in the Residential Development section, we believe that increased road use and increased road construction associated with residential development will continue at least through 2050, and likely longer. The resulting habitat loss, degradation, and fragmentation from roads is a significant threat to Gunnison sage-grouse now and in the foreseeable future.

Powerlines

Powerlines can directly affect greater sage-grouse by posing a collision and electrocution hazard (Braun 1998, pp. 145-146; Connelly *et al.* 2000a, p. 974), and can have indirect effects by decreasing lek recruitment (Braun *et al.* 2002, p. 10), increasing predation (Connelly *et al.* 2004, p. 13-12), fragmenting habitat (Braun 1998, p. 146), and facilitating the invasion of exotic annual plants (Knick *et al.* 2003, p. 612; Connelly *et al.* 2004, p. 7-25). Proximity to powerlines is associated with Gunnison and greater sage-grouse extirpation (Wisdom *et al.* in press, p. 20). Due to the potential spread of invasive species and predators as a result of powerline construction and maintenance, the impact from a powerline is greater than its actual footprint. We believe the effects to Gunnison sage-grouse are similar to those observed in greater sage-grouse and that the impact from a powerline is greater than its footprint.

In areas where the vegetation is low and the terrain relatively flat, power poles provide an attractive hunting and roosting perch, as well as nesting stratum for many species of raptors and corvids (Steenhof *et al.* 1993, p. 27; Connelly *et al.* 2000a, p. 974; Manville 2002, p. 7; Vander Haegen *et al.* 2002, p. 503). Power poles increase a raptor's range of vision, allow for greater speed during attacks on prey, and serve as

territorial markers (Steenhof *et al.* 1993, p. 275; Manville 2002, p. 7). Raptors may actively seek out power poles where natural perches are limited. For example, within 1 year of construction of a 596-km (3–2 -mi) transmission line in southern Idaho and Oregon, raptors and common ravens began nesting on the supporting poles (Steenhof *et al.* 1993, p. 275). Within 10 years of construction, 133 pairs of raptors and ravens were nesting along this stretch (Steenhof *et al.* 1993, p. 275). Raven counts increased by approximately 200 percent along the Falcon-Gondor transmission line corridor in Nevada within 5 years of construction (Atamian *et al.* 2007, p. 2). The increased abundance of raptors and corvids within occupied greater and Gunnison sage-grouse habitats can result in increased predation. Ellis (1985, p. 10) reported that golden eagle (*Aquila chryrsaetos*) predation on sage-grouse on leks increased from 26 to 73 percent of the total predation after completion of a transmission line within 200 meters (m) (220 yards (yd)) of an active sage-grouse lek in northeastern Utah. The lek was eventually abandoned, and Ellis (1985, p. 10) concluded that the presence of the powerline resulted in changes in sage-grouse dispersal patterns and caused fragmentation of the habitat. Golden eagles are found throughout the range of Gunnison sage-grouse (USGS 2010, p. 1), and golden eagles were found to be the dominant species recorded perching on power poles in Utah in Gunnison sage-grouse habitat (Prather and Messmer 2009, p. 12).

Leks within 0.4 km (0.25 mi) of new powerlines constructed for coalbed methane development in the Powder River Basin of Wyoming had significantly lower growth rates, as measured by recruitment of new males onto the lek, compared to leks further from these lines, presumably resulting from increased raptor predation (Braun *et al.* 2002, p. 10). Within their analysis area, Connelly *et al.* (2004, p. 7-26) assumed a 5 to 6.9-km (3.1 to 4.3-mi) radius buffer around the perches, based on the average foraging distance of these corvids and raptors, and estimated that the area potentially influenced by additional perches provided by powerlines was 672,644 to 837,390 km^2 (259,641 to 323,317 mi^2), or 32 to 40 percent of their assessment area. The actual impact on an area would depend on corvid and raptor densities within the area (see discussion in Factor C, below).

The presence of a powerline may fragment sage-grouse habitats even if raptors are not present. The use of otherwise suitable habitat by sage-grouse near powerlines increased as distance from the powerline increased for up to 600 m (660 yd) (Braun 1998, p. 8). Based on those unpublished data, Braun (1998, p. 8) reported that the presence of powerlines may limit Gunnison and greater sage-grouse use within 1 km (0.6 mi) in otherwise suitable habitat. Similar results were recorded for other grouse species. For example, lesser and greater prairie-chickens (*Tympanuchus pallidicinctus* and *T. cupido*, respectively) avoided otherwise suitable habitat near powerlines (Pruett *et al.* 2009, p. 6). Additionally, both species also crossed powerlines less often than nearby roads, which suggests that powerlines are a particularly strong barrier to movement (Pruett *et al.* 2009, p. 6).

Sage-grouse also may avoid powerlines as a result of the electromagnetic fields present (Wisdom *et al.* in press, p. 19). Electromagnetic fields have been demonstrated to alter the behavior, physiology, endocrine systems and immune function in birds, with negative consequences on reproduction and development (Fernie and Reynolds 2005, p. 135). Birds are diverse in their sensitivities to electromagnetic field exposures, with domestic chickens being very sensitive. Many raptor species are less affected (Fernie and Reynolds 2005, p. 135). No studies have been conducted specifically on sage-grouse. Therefore, we do not know the impact to the Gunnison sage-grouse from electromagnetic fields.

Linear corridors through sagebrush habitats can facilitate the spread of invasive species, such as cheatgrass (*Bromus tectorum*) (Gelbard and Belnap 2003, pp. 424-426; Knick *et al.* 2003, p. 620; Connelly *et al.* 2004, p. 1-2). However, we were unable to find any information regarding the amount of invasive species incursion as a result of powerline construction.

Powerlines in the Gunnison Basin Population Area – On approximately 121,000 ha (300,000 ac) of BLM land in the Gunnison Basin, 36 rights-of-way for power facilities, power lines, and transmission lines have resulted in the direct loss of 350 ha (858 ac) of occupied habitat (Borthwick 2005b, pers comm.). As discussed above, the impacts of these lines likely extend beyond their actual footprint. We performed a GIS analysis of transmission line location in relation to overall habitat area and Gunnison sage-grouse lek locations in the Gunnison Basin Population area to obtain an estimate of the potential effects in the Basin. Results of these analyses indicate that 68 percent of the Gunnison Basin population area is within 6.9 km (4.3 mi) of an electrical transmission line and is potentially influenced by avian predators utilizing the additional perches provided by transmission lines. This area contains 65 of 109 active leks (60 percent) in the Gunnison Basin population. These results suggest that potential increased predation resulting from transmission lines have the potential to affect a substantial portion of the Gunnison Basin population.

Powerlines in All Other Population Areas – A transmission line runs through the Dry Creek Basin group in the San Miguel Basin population, and the Beaver Mesa group has two transmission lines. None of the transmission lines in the San Miguel Basin have raptor proofing, nor do most distribution lines (Ferguson 2005, pers comm.) so their use by raptors and corvids as perch sites for hunting and use for nest sites is not discouraged. One major electric transmission line runs east-west in the northern portion of the current range of the Monticello group (San Juan County Gunnison Sage-grouse Working Group (GSWG) 2005, p. 17). Powerlines do not appear to be present in sufficient density to pose a significant threat to Gunnison sage-grouse in the Pĩnon Mesa population at this time. One transmission line parallels Highway 92 in the Crawford population, and distribution lines run from there to homes on the periphery of the current range (Ferguson 2005, pers. comm.).

Summary of Powerlines

The projected human population growth rate in and near most Gunnison sage-grouse populations is high (see discussion under Residential Development). As a result, we expect an associated increase in distribution powerlines. Powerlines are likely negatively affecting Gunnison sage-grouse as they contribute to habitat loss and fragmentation and facilitation of predators of Gunnison sage-grouse. Given the current demographic and economic trends described above, we believe that existing powerlines and anticipated distribution of powerlines associated with residential development will continue at least through 2050, and likely longer. The resulting habitat loss and fragmentation from powerlines, and the effects of avian predators that use them, is a significant threat to Gunnison sage-grouse now and in the foreseeable future.

Fire

The nature of historical fire patterns in sagebrush communities, particularly in Wyoming big sagebrush (*Artemisia*

tridentata var. *wyomingensis)*, is not well understood, and a high degree of variability likely occurred (Miller and Eddleman 2000, p. 16; Zouhar *et al.* 2008, p. 154; Baker in press, p. 16). In general, mean fire return intervals in low-lying, xeric (dry) big sagebrush communities range from more than 100 to 350 years, and return intervals decrease from 50 to more than 200 years in more mesic (wet) areas, at higher elevations, during wetter climatic periods, and in locations associated with grasslands (Baker 2006, p. 181; Mensing *et al.* 2006, p. 75; Baker, in press, pp. 15-16; Miller *et al.*, in press, p. 35).

Mountain big sagebrush (*Artemisia tridenata* var. *vaseyana)*, the most important and widespread sagebrush species for Gunnison sage-grouse, is killed by fire and can require decades to recover. In nesting and wintering sites, fire causes direct loss of habitat due to reduced cover and forage (Call and Maser 1985, p. 17). While there may be limited instances where burned habitat is beneficial, these gains are lost if alternative sagebrush habitat is not readily available (Woodward 2006, p. 65).

Herbaceous understory vegetation plays a critical role throughout the breeding season as a source of forage and cover for Gunnison sage-grouse females and chicks. The response of herbaceous understory vegetation to fire varies with differences in species composition, pre-burn site condition, fire intensity, and pre- and post-fire patterns of precipitation. In general, when not considering the synergistic effects of invasive species, any beneficial short-term flush of understory grasses and forbs is lost after only a few years and little difference is apparent between burned and unburned sites (Cook *et al.* 1994, p. 298; Fischer *et al.* 1996, p. 196; Crawford 1999, p. 7; Wrobleski 1999, p. 31; Nelle *et al.* 2000, p. 588; Paysen *et al.* 2000, p. 154; Wambolt *et al.* 2001, p. 250).

In addition to altering plant community structure, fires can influence invertebrate food sources (Schroeder *et al.* 1999, p. 5). However, because few studies have been conducted and the results of those available vary, the specific magnitude and duration of the effects of fire on insect communities is still uncertain.

A clear positive response of Gunnison or greater sage-grouse to fire has not been demonstrated (Braun 1998, p. 9). The few studies that have suggested fire may be beneficial for greater sage-grouse were primarily conducted in mesic areas used for brood-rearing (Klebenow 1970, p. 399; Pyle and Crawford 1996, p. 323; Gates 1983, *in* Connelly *et al.* 2000c, p. 90; Sime 1991, *in* Connelly *et al.* 2000a, p. 972). In this type of habitat, small fires may maintain a suitable habitat mosaic by reducing shrub encroachment and encouraging understory growth. However, without available nearby sagebrush cover, the utility of these sites is questionable, especially within the six small Gunnison sage-grouse populations where fire could further degrade and fragment the remaining habitat. Sagebrush loss as a result of fire is likely to have proportionally more individual bird and population level impacts as the amount of sagebrush declines within each of the remaining populations. As the amount of sagebrush remaining within a population declines, the greater the potential impact is to that population.

The invasion of the exotic cheatgrass increases fire frequency within the sagebrush ecosystem (Zouhar *et al.* 2008, p. 41; Miller *et al.* in press, p. 39). Cheatgrass readily invades sagebrush communities, especially disturbed sites, and changes historical fire patterns by providing an abundant and easily ignitable fuel source that facilitates fire spread. While sagebrush is killed by fire and is slow to reestablish, cheatgrass recovers within 1 to 2 years of a fire event (Young and Evans 1978, p. 285). This annual recovery leads to a readily burnable fuel source and ultimately a reoccurring fire cycle that prevents sagebrush reestablishment (Eiswerth *et al.* 2009, p. 1324). The extensive distribution and highly invasive nature of cheatgrass poses substantial increased risk of fire and permanent loss of sagebrush habitat, as areas disturbed by fire are highly susceptible to further invasion and ultimately habitat conversion to an altered community state. For example, Link *et al.* (2006, p. 116) show that risk of fire increases from approximately 46 to 100 percent when ground cover of cheatgrass increases from 12 to 45 percent or more. We do not have a reliable estimate of the amount of area occupied by cheatgrass in the range of Gunnison sage-grouse. However, cheatgrass is found at numerous locations throughout the Gunnison Basin (BLM 2009, p. 60).

Fire in the Gunnison Basin Population Area – Six prescribed burns have occurred on BLM lands in the Gunnison Basin since 1984, totaling approximately 409 ha (1,010 ac) (BLM 2009, p. 35). The fires created large sagebrush-free areas that were further degraded by poor post-burn livestock management (BLM 2005a, p. 13). As a result, these areas are no longer suitable as Gunnison sage-grouse habitat. Approximately 8,470 ha (20,930 ac) of prescribed burns occurred on Forest Service lands in the Gunnison Basin since 1983 (USFS 2009, p. 1). A small wildfire on BLM lands near Hartman Rocks burned 8 ha (20 ac) in 2007 (BLM 2009, p. 35). The total area of occupied Gunnison sage-grouse habitat burned in recent decades is approximately 8,887 ha (21,960 ac), which constitutes 1.5 percent of the occupied Gunnison sage-grouse habitat area. Cumulatively, this equates to a relatively small amount of habitat burned over a period of nearly three decades. This information suggests that there has not been a demonstrated change in fire cycle in the Gunnison Basin population area to date.

Fire in All Other Population Areas – Two prescribed burns conducted in 1986 (105 ha (260 ac)) and 1992 (140 ha (350 ac)) on BLM land in the San Miguel Basin on the north side of Dry Creek Basin had negative impacts on sage-grouse. The burns were conducted for big game forage improvement, but the sagebrush died and was largely replaced with weeds (BLM 2005b, pp. 7-8). The Burn Canyon fire in the Dry Creek Basin and Hamilton Mesa areas burned 890 ha (2,200 ac) in 2000. Three fires have occurred in Gunnison sage-grouse habitat since 2004 on lands managed by the BLM in the Crawford, Cerro Summit–Cimarron–Sims Mesa, and San Miguel Basin population areas. There have been no fires since 2004 on lands managed by the BLM within the Monticello–Dove Creek population. Because these fires were mostly small in size, we do not believe they resulted in substantial impacts to Gunnison sage-grouse.

Several wildfires near or within the Pĩnon Mesa population area have occurred in the past 20 years. One fire burned a small amount of occupied Gunnison sage-grouse habitat in 1995, and several fires burned in potential Gunnison sage-grouse habitat. Individual burned areas ranged from 3.6 ha (9 ac) to 2,160 ha (5,338 ac). A wildfire in 2009 burned 1,053 ha (2,602 ac), predominantly within vacant or unknown Gunnison sage-grouse habitat (suitable habitat for sage-grouse that is separated from occupied habitats that has not been adequately inventoried, or without recent documentation of grouse presence) near the Pĩnon Mesa population. Since 2004, a single 2.8 ha (7 ac) wildfire occurred in the Cerro Summit–Cimarron–Sims Mesa population area, and two prescribed fires, both less than 12 ha (30 ac), were implemented in the San Miguel population area. There was no fire activity within occupied Gunnison sage-grouse habitat in the last two decades in

the Poncha Pass population area (CDOW 2009a, pp. 125-126) or the Monticello–Dove Creek population area (CDOW 2009a, p. 75; UDWR 2009, p. 5).

Summary of Fire

Fires can cause the proliferation of weeds and can degrade suitable sage-grouse habitat, which may not recover to suitable conditions for decades, if at all (Pyke in press, pp. 18-19). Recent fires in Gunnison sage-grouse habitat were mostly small in size and did not result in substantial impacts to Gunnison sage-grouse, and there has been no obvious change in fire cycle in any Gunnison sage-grouse population area. Therefore, we do not consider fire to be a significant threat to Gunnison sage-grouse or its habitat at this time. It is not currently possible to predict the extent or location of future fire events. However, existing data indicates that climate change has the potential to alter changes in the distribution and extent of cheatgrass and sagebrush and associated fire frequencies. The best available data indicates that fire frequency may increase in the foreseeable future (which we consider to be indefinite) because of increases in cover of cheatgrass (Zouhar *et al.* 2008, p. 41; Miller *et al.* in press, p. 39; Whisenant 1990, p. 4) and the projected effects of climate change (Miller *et al.* in press, p. 47; Prevey *et al.* 2009, p. 11) (see Invasive Plants and Climate Change discussions below). Therefore, fire is likely to become an increasingly significant threat to the Gunnison sage-grouse in the foreseeable future.

Invasive Plants

For the purposes of this finding, we define invasive plants as those that are not native to an ecosystem and that have a negative impact on Gunnison sage-grouse habitat. Invasive plants alter native plant community structure and composition, productivity, nutrient cycling, and hydrology (Vitousek 1990, p. 7) and may cause declines in native plant populations through competitive exclusion and niche displacement, among other mechanisms (Mooney and Cleland 2001, p. 5446). Invasive plants reduce and, in cases where monocultures of them occur, eliminate vegetation that sage-grouse use for food and cover. Invasive plants do not provide quality sage-grouse habitat. Sage-grouse depend on a variety of native forbs and the insects associated with them for chick survival, and sagebrush, which is used exclusively throughout the winter for food and cover.

Along with replacing or removing vegetation essential to sage-grouse, invasive plants fragment existing sage-grouse habitat. They can create long-term changes in ecosystem processes, such as fire-cycles (see discussion under Fire above) and other disturbance regimes that persist even after an invasive plant is removed (Zouhar *et al.* 2008, p. 33). A variety of nonnative annuals and perennials are invasive to sagebrush ecosystems (Connelly *et al.* 2004, pp. 7-107 and 7-108; Zouhar *et al.* 2008, p. 144). Cheatgrass is considered most invasive in *Artemisia tridentata* ssp. *wyomingensis* communities (Connelly *et al.* 2004, p. 5-9). Other invasive plants found within the range of Gunnison sage-grouse that are reported to take over large areas include: spotted knapweed (*Centaurea maculosa*), Russian knapweed (*Acroptilon repens*), oxeye daisy (*Leucanthemum vulgare)*, yellow toadflax (*Linaria vulgaris)*, and field bindweed (*Convolvulus arvensis)* (BLM 2009, p. 28, 36; Gunnison Watershed Weed Commission (GWWC) 2009, pp. 4-6). Although not yet reported to create large expanses in the range of Gunnison sage-grouse, the following weeds are also known from the species' range and do cover large expanses in other parts of western North America: diffuse knapweed (*Centaurea diffusa*), whitetop (*Cardaria draba*), jointed goatgrass (*Aegilops cylindrica*), and yellow starthistle (*Centaurea solstitialis*). Other invasive plant species present within the range of Gunnison sage-grouse that are problematic yet less likely to overtake large areas include: Canada thistle (*Cirsium arvense)*, musk thistle (*Carduus nutans*), bull thistle (*Cirsium vulgare*), houndstongue (*Cynoglossum officinale*), black henbane (*Hyoscyamus niger),* common tansy *(Tanacetum vulgare*), and absinth wormwood (*Artemisia biennis*) (BLM 2009, p. 28, 36; GWWC 2009, pp. 4-6).

Cheatgrass impacts sagebrush ecosystems by potentially shortening fire intervals from several decades, depending on the type of sagebrush plant community and site productivity, to as low as 3 to 5 years, perpetuating its own persistence and intensifying the role of fire (Whisenant 1990, p. 4). Connelly *et al.* (2004, p. 7-5) suggested that cheatgrass shortens fire intervals to less than 10 years. As discussed under the discussion of climate change below, temperature increases may increase the competitive advantage of cheatgrass in higher elevation areas where its current distribution is limited (Miller *et al.* in press, p. 47). Decreased summer precipitation reduces the competitive advantage of summer perennial grasses, reduces sagebrush cover, and subsequently increases the likelihood of cheatgrass invasion (Bradley 2009, pp. 202-204; Prevey *et al.* 2009, p. 11). This could increase the susceptibility of sagebrush areas in Utah and Colorado to cheatgrass invasion (Bradley 2009, p. 204).

A variety of restoration and rehabilitation techniques are used to treat invasive plants, but they can be costly and are mostly unproven and experimental at a large scale. In the last approximately 100 years, no broad-scale cheatgrass eradication method has been developed. Habitat treatments that either disturb the soil surface or deposit a layer of litter increase cheatgrass establishment in the Gunnison Basin when a cheatgrass seed source is present (Sokolow 2005, p. 51). Therefore, researchers recommend using habitat treatment tools, such as brush mowers, with caution and suggest that treated sites should be monitored for increases in cheatgrass emergence (Sokolow 2005, p. 49).

Invasive Plants in the Gunnison Basin Population Area – Quantifying the total amount of Gunnison sage-grouse habitat impacted by invasive plants is difficult due to differing sampling methodologies, incomplete sampling, inconsistencies in species sampled, and varying interpretations of what constitutes an infestation (Miller *et al.,* in press, p. 19). Cheatgrass has invaded areas in Gunnison sage-grouse range, supplanting sagebrush habitat in some areas. However, we do not have a reliable estimate of the amount of area occupied by cheatgrass in the range of Gunnison sage-grouse. While not ubiquitous, cheatgrass is found at numerous locations throughout the Gunnison Basin (BLM 2009, p. 60). Cheatgrass infestation within a particular area can range from a small number of individuals scattered sparsely throughout a site, to complete or near-complete understory domination of a site. Cheatgrass has increased throughout the Gunnison Basin in the last decade and is becoming increasingly detrimental to sagebrush community types (BLM 2009, p. 7). Currently in the Gunnison Basin, cheatgrass attains site dominance most often along roadways; however, other highly disturbed areas have similar cheatgrass densities. Cheatgrass is currently present in almost every grazing allotment in Gunnison sage-grouse occupied habitat and other invasive plant species, such as Canada thistle, black henbane, spotted knapweed, Russian knapweed, Kochia, bull thistle, musk thistle, oxeye daisy, yellow toadflax and field bindweed, are found in riparian areas and roadsides

throughout the Gunnison Basin (BLM 2009, p. 7).

Although disturbed areas most often contain the highest cheatgrass densities, cheatgrass can readily spread into less disturbed and even undisturbed habitat. A strong indicator for future cheatgrass locations is the proximity to current locations (Bradley and Mustard 2006, p. 1146) as well as summer, annual, and spring precipitation, and winter temperature (Bradley 2009, p. 196). Although we lack the information to make a detailed determination on the actual extent or rate of increase, given its invasive nature, we believe cheatgrass and its negative influence on Gunnison sage-grouse will increase in the Gunnison Basin in the future because of potential exacerbation from climate change interactions and the limited success of broad-scale control efforts.

Invasive Plants in All Other Population Areas – Cheatgrass is present throughout much of the current range in the San Miguel Basin (BLM 2005c, p. 62005d), but is most abundant in the Dry Creek Basin group (CDOW 2005a, p. 101), which comprises 62 percent of the San Miguel Basin population. It is present in the five Gunnison sage-grouse subpopulations east of Dry Creek Basin although at much lower densities and does not currently pose a serious threat to Gunnison sage-grouse (CDOW 2005a, p. 101). Invasive species are present at low levels in the Monticello group (San Juan County GSGWG 2005, p. 20). However, there is no evidence that they are affecting the population. Cheatgrass dominates 10–15 percent of the sagebrush understory in the current range of the Pĩnon Mesa population (Lambeth 2005, pers comm.). It occurs in the lower elevation areas below Pĩnon Mesa that were formerly Gunnison sage-grouse range. Cheatgrass invaded two small prescribed burns in or near occupied habitat conducted in 1989 and 1998 (BLM 2005d, p. 62005a), and continues to be a concern with new ground-disturbing projects. Invasive plants, especially cheatgrass, occur primarily along roads, other disturbed areas, and isolated areas of untreated vegetation in the Crawford population. The threat of cheatgrass may be greater to sage-grouse than all other nonnative species combined and could be a significant limiting factor when and if disturbance is used to improve habitat conditions, unless mitigated (BLM 2005c, p. 6). No current estimates of the extent of weed invasion are available (BLM 2005c, p. 82005d).

Within the Pĩnon Mesa Gunnison sage-grouse population area, 520 ha (1,284 ac) of BLM lands are currently mapped with cheatgrass as the dominant species (BLM 2009, p. 3). This is not a comprehensive inventory of cheatgrass occurrence, as it only includes areas where cheatgrass dominates the plant community and does not include areas where the species is present at lower densities. Cheatgrass distribution has not been comprehensively mapped for the Monticello–Dove Creek population area; however, cheatgrass is beginning to be assessed on a site-specific and project-level basis. No significant invasive plant occurrences are currently known in the Poncha Pass population area.

Summary of Invasive Plants

Invasive plants negatively impact Gunnison sage-grouse primarily by reducing or eliminating native vegetation that sage-grouse require for food and cover, resulting in habitat loss and fragmentation. Although invasive plants, especially cheatgrass, have affected some Gunnison sage-grouse habitat, the impacts do not currently appear to be threatening individual populations or the species rangewide. However, invasive plants continue to expand their range, facilitated by ground disturbances such as fire, grazing, and human infrastructure. Climate change will likely alter the range of individual invasive species, increasing fragmentation and habitat loss of sagebrush communities. Even with treatments, given the history of invasive plants on the landscape, and our continued inability to control such species, we anticipate invasive plants will persist and will likely continue to spread throughout the range of the species. Therefore, invasive plants and associated fire risk will be on the landscape for the foreseeable future. Although currently not a significant threat to the Gunnison sage-grouse at the species level, we anticipate invasive species to become an increasingly significant threat to the species in the foreseeable future, particularly when considered in conjunction with future climate projections and potential changes in sagebrush plant community composition and dynamics.

Pĩnon-Juniper Encroachment

Pĩnon-juniper woodlands are a native habitat type dominated by Pĩnon pine (*Pinus edulis*) and various juniper species (*Juniperus* spp.) that can encroach upon, infill, and eventually replace sagebrush habitat. Pĩnon-juniper extent has increased 10-fold in the Intermountain West since EuroAmerican settlement, causing the loss of many bunchgrass and sagebrush-bunchgrass communities (Miller and Tausch 2001, pp. 15-16). Pĩnon-juniper woodlands have also been expanding throughout portions of the range of Gunnison sage-grouse (BLM 2009, pp. 14, 17, 25). Pĩnon-juniper expansion has been attributed to the reduced role of fire, the introduction of livestock grazing, increases in global carbon dioxide concentrations, climate change, and natural recovery from past disturbance (Miller and Rose 1999, pp. 555-556; Miller and Tausch 2001, p. 15; Baker, in press, p. 24). In addititon, Gambel oak invasion as a result of fire suppression also has been identified as a potential threat to Gunnison sage-grouse (CDOW 2002, p. 139).

Similar to powerlines, trees provide perches for raptors, and as a consequence, Gunnison sage-grouse avoid areas with Pĩnon-juniper (Commons *et al.* 1999, p. 239). The number of male Gunnison sage-grouse on leks in southwest Colorado doubled after Pĩnon-juniper removal and mechanical treatment of mountain sagebrush and deciduous brush (Commons *et al.* 1999, p. 238).

Pĩnon-Juniper Encroachment in All Population Areas – We have no information indicating that the Gunnison Basin population area is currently undergoing significant Pĩnon-juniper encroachment. A significant portion of the Pĩnon Mesa population is undergoing Pĩnon-juniper encroachment. Approximately 9 percent (1,140 ha [3,484 ac]) of occupied habitat in the Pĩnon Mesa population area have Pĩnon-juniper coverage, while 7 percent (4,414 ha [10,907 ac]) of vacant or unknown and 13 percent (7,239 ha [17,888 ac]) of potential habitat (unoccupied habitats that could be suitable for occupation of sage-grouse if practical restoration were applied) have encroachment (BLM 2009, p. 17).

Some areas on lands managed by the BLM are known to be undergoing Pĩnon-juniper invasion. However, the extent of the area affected has not been quantified (BLM 2009, p. 74; BLM 2009, p. 9). Approximately 9 percent of the 1,300 ha (3,200 ac) of the current range in the Crawford population is classified as dominated by Pĩnon-juniper (GSRSC 2005, p. 264). However, BLM (2005d, p. 8) estimates that as much as 20 percent of the population area is occupied by Pĩnon-juniper. Pĩnon and juniper trees have been encroaching in peripheral habitat on Sims Mesa, and to a lesser extent on Cerro Summit, but not to the point where it is a serious threat to the Cerro Summit–Cimarron–Sims Mesa population area (CDOW 2009a, p. 47). Pĩnon and juniper trees are reported to be encroaching throughout the current

range in the Monticello group, based on a comparison of historical versus current aerial photos, but no quantification or mapping of the encroachment has occurred (San Juan County GSWG 2005, p. 20). A relatively recent invasion of Pĩnon and juniper trees between the Dove Creek and Monticello groups appears to be contributing to their isolation from each other (GSRSC 2005, p. 276).

Within the range of Gunnison sage-grouse, approximately 5,341 ha (13,197 ac) of Pĩnon-juniper have been treated with various methods designed to remove Pĩnon and juniper trees since 2005, and nearly half of which occurred in the Pĩnon Mesa population (CDOW 2009c, entire). Mechanical treatment of areas experiencing Pĩnon-juniper encroachment continues to be one of the most successful and economical habitat treatments for the benefit of Gunnison sage-grouse.

Summary of Pĩnon-Juniper Encroachment

Most Gunnison sage-grouse population areas are experiencing low to moderate levels of Pĩnon-juniper encroachment; however, Pĩnon-juniper encroachment in the Pĩnon Mesa population has been significant. The encroachment of Pĩnon-juniper into sagebrush habitats contributes to the fragmentation of Gunnison sage-grouse habitat. However, Pĩnon-juniper treatments, particularly when completed in the early stages of encroachment when the sagebrush and forb understory is still intact, have the potential to provide an immediate benefit to sage-grouse. Approximately 5,341 ha (13,197 ac) of Pĩnon-juniper encroachment within the range of Gunnison sage-grouse has been treated. We expect Pĩnon-juniper encroachment and corresponding treatment efforts to continue into the foreseeable future, which we consider to be indefinite for this threat. Although Pĩnon-juniper encroachment is contributing to habitat fragmentation in a limited area, the level of encroachment is not sufficient to pose a significant threat to Gunnison sage-grouse at a population or rangewide level either now or in the foreseeable future. Pĩnon-juniper encroachment may become an increasingly significant threat to the Gunnison sage-grouse if mechanical treatment of areas experiencing Pĩnon-juniper encroachment declines, and if suitable habitat continues to be lost due to other threats such as residential and associated infrastructure development.

Domestic Grazing and Wild Ungulate Herbivory

At least 87 percent of occupied Gunnison sage-grouse habitat on Federal lands is currently grazed by domestic livestock (USFWS 2010c, entire). We lack information on the proportion of Gunnison sage-grouse habitat on private lands that is currently grazed. Excessive grazing by domestic livestock during the late 1800s and early 1900s, along with severe drought, significantly impacted sagebrush ecosystems (Knick *et al.* 2003, p. 616). Although current livestock stocking rates in the range of Gunnison sage-grouse are substantially lower than historical levels (Laycock *et al.* 1996, p. 3), long-term effects from this overgrazing, including changes in plant communities and soils, persist today (Knick *et al.* 2003, p.116).

Although livestock grazing and associated land treatments have likely altered plant composition, increased topsoil loss, and increased spread of exotic plants, the impacts on Gunnison sage-grouse are not clear. Few studies have directly addressed the effect of livestock grazing on sage-grouse (Beck and Mitchell 2000, pp. 998-1000; Wamboldt *et al.* 2002, p. 7; Crawford *et al.* 2004, p. 11), and little direct experimental evidence links grazing practices to Gunnison sage-grouse population levels (Braun 1987, pp. 136-137, Connelly and Braun 1997, p. 7-9). Rowland (2004, p. 17-18) conducted a literature review and found no experimental research that demonstrates grazing alone is responsible for reduction in sage-grouse numbers.

Despite the obvious impacts of grazing on plant communities within the range of the species, the GSRSC (2005, p. 114) could not find a direct correlation between historic grazing and reduced Gunnison sage-grouse numbers. While implications on population-level impacts from grazing can be made based on impacts of grazing on individuals, no studies have documented (positively or negatively) the actual impacts of grazing at the population level.

Sage-grouse need significant grass and shrub cover for protection from predators, particularly during nesting season, and females will preferentially choose nesting sites based on these qualities (Hagen *et al.* 2007, p. 46). In particular, nest success in Gunnison sage-grouse habitat is related to greater grass and forb heights and shrub density (Young 1994, p. 38). The reduction of grass heights due to livestock grazing in sage-grouse nesting and brood-rearing areas has been shown to negatively affect nesting success when cover is reduced below the 18 cm (7 in.) needed for predator avoidance (Gregg *et al.* 1994, p. 165). Based on measurements of cattle foraging rates on bunchgrasses both between and under sagebrush canopies, the probability of foraging on under-canopy bunchgrasses depends on sagebrush size and shape and, consequently, the effects of grazing on nesting habitats might be site specific (France *et al.* 2008, pp. 392-393).

Several authors have noted that grazing by livestock could reduce the suitability of breeding and brood-rearing habitat, negatively affecting sage-grouse populations (Braun 1987, p. 137; Dobkin 1995, p. 18; Connelly and Braun 1997, p. 231; Beck and Mitchell 2000, pp. 998-1000). Domestic livestock grazing reduces water infiltration rates and the cover of herbaceous plants and litter, compacts the soil, and increases soil erosion (Braun 1998, p. 147; Dobkin *et al.* 1998, p. 213). These impacts change the proportion of shrub, grass, and forb components in the affected area, and facilitate invasion of exotic plant species that do not provide suitable habitat for sage-grouse (Mack and Thompson 1982, p. 761; Miller and Eddleman 2000, p. 19; Knick *et al.*, in press, p. 41).

Livestock may compete directly with sage-grouse for rangeland resources. Cattle are grazers, feeding mostly on grasses, but they will make seasonal use of forbs and shrub species like sagebrush (Vallentine 1990, p. 226), a primary source of nutrition for sage-grouse. A sage-grouse hen's nutritional condition affects nest initiation rate, clutch size, and subsequent reproductive success (Barnett and Crawford 1994, p. 117; Coggins 1998, p. 30). Other effects of direct competition between livestock and sage-grouse depend on condition of the habitat and the grazing practices. Thus, the effects vary across the range of Gunnison sage-grouse. For example, poor livestock management in mesic sites results in a reduction of forbs and grasses available to sage-grouse chicks, thereby affecting chick survival (Aldridge and Brigham 2003, p. 30). Chick survival is one of the most important factors in maintaining Gunnison sage-grouse population viability (GSRSC 2005, p. 173).

Livestock can trample sage-grouse and its habitat. Although the effect of trampling at a population level is unknown, outright nest destruction has been documented, and the presence of livestock can cause sage-grouse to abandon their nests (Rasmussen and Griner 1938, p. 863; Patterson 1952, p. 111; Call and Maser 1985, p. 17; Holloran and Anderson 2003, p. 309; Coates 2007, p. 28). Coates (2007, p. 28) documented nest abandonment

following partial nest depredation by a cow. In general, all recorded encounters between livestock and grouse nests resulted in hens flushing from nests, which could expose the eggs to predation. Visual predators like ravens likely use hen movements to locate sage-grouse nests (Coates 2007, p. 33). Livestock also may trample sagebrush seedlings, thereby removing a source of future sage-grouse food and cover (Connelly *et al.* 2004, pp. 7-31). Trampling of soil by livestock can reduce or eliminate biological soil crusts making these areas susceptible to cheatgrass invasion (Mack 1981, pp. 148-149; Young and Allen 1997, p. 531).

Livestock grazing may have positive effects on sage-grouse under some habitat conditions. Evans (1986, p. 67) found that sage-grouse used grazed meadows significantly more during late summer than ungrazed meadows because grazing had stimulated the regrowth of forbs. Greater sage-grouse sought out and used openings in meadows created by cattle grazing in northern Nevada (Klebenow 1981, p. 121). Also, both sheep and goats have been used to control invasive weeds (Mosley 1996 *in* Connelly *et al.* 2004, pp. 7-49; Merritt *et al.* 2001, p. 4; Olsen and Wallander 2001, p. 30) and woody plant encroachment (Riggs and Urness 1989, p. 358) in sage-grouse habitat.

Sagebrush plant communities are not adapted to domestic grazing disturbance. Grazing changed the functioning of systems into less resilient, and in some cases, altered communities (Knick *et al.*, in press, p. 39). The ability to restore or rehabilitate areas depends on the condition of the area relative to the ability of a site to support a specific plant community (Knick *et al.*, in press, p. 39). For example, if an area has a balanced mix of shrubs and native understory vegetation, a change in grazing management can restore the habitat to its potential historic species composition (Pyke, in press, p. 11). Wambolt and Payne (1986, p. 318) found that rest from grazing had a better perennial grass response than other treatments. Active restoration would be required where native understory vegetation is much reduced (Pyke, in press, p. 15). But, if an area has soil loss or invasive species, returning the site to the native historical plant community may be impossible (Daubenmire 1970, p. 82; Knick *et al.*, in press, p. 39; Pyke, in press, p. 17). Aldridge *et al.* (2008, p. 990) did not find any relationship between sage-grouse persistence and livestock densities. However, the authors noted that livestock numbers do not necessarily correlate with range condition. They concluded that the intensity, duration, and distribution of livestock grazing are more influential on rangeland condition than the livestock density values used in their modeling efforts (Aldridge *et al.* 2008, p. 990). Currently, there is little direct evidence linking grazing practices to population levels of Gunnison or greater sage-grouse. Although grazing has not been examined at large spatial scales, as discussed above, we do know that grazing can have negative impacts to individuals, nests, breeding productivity, and sagebrush and, consequently, to sage-grouse at local scales.

Public Lands Grazing in the Gunnison Basin Population Area – Our analysis of grazing is focused on BLM lands because nearly all of the information available to us regarding current grazing management within the range of Gunnison sage-grouse was provided by the BLM. However, this information is pertinent to over 40 percent of the land area currently occupied by Gunnison sage-grouse. A summary of domestic livestock grazing management on BLM and USFS lands in occupied Gunnison sage-grouse habitat is provided in Table 3. The BLM manages approximately 122,376 ha (301,267 ac), or 51 percent of the area currently occupied by Gunnison sage-grouse in the Gunnison Basin, and approximately 98 percent of this area is actively grazed. The USFS manages approximately 34,544 ha (85,361 ac) or 14 percent of the occupied portion of the Gunnison Basin population area. In 2009, within the occupied range in the Gunnison Basin population, 13 of 62 (21 percent) active BLM grazing allotments and 3 of 35 (9 percent) of USFS grazing allotments had Gunnison sage-grouse habitat objectives incorporated into the allotment management plans or Records of Decision for permit renewals (USFWS 2010c, pp. 1-2). Habitat objectives for Gunnison sage-grouse within allotment management plans were designed such that they provide good habitat for the species when allotments are managed in accordance with the objectives. In 2009, 57 percent of the area of occupied habitat in active BLM grazing allotments (45 percent of the entire Gunnison Basin population area) had a recently completed land health assessment (LHA), and 94 percent of the area in occupied habitat in active allotments was deemed by the BLM as not meeting LHA objectives specific to Gunnison sage-grouse. The remainder of the LHA-monitored allotments were deemed to be meeting objectives or as “unknown”. LHAs are assessments of the on-the-ground condition and represent the best available information on the status of the habitat. We are uncertain of habitat conditions on the remaining 55 percent of BLM lands in the Gunnison Basin. Based on the assumption that the same proportion of these lands are also not meeting LHA objectives results in an estimate of 94 percent of BLM lands in the Gunnison Basin not meeting LHA objectives specific to Gunnison sage-grouse habitat. This analysis indicates that, without taking into account habitat conditions on private lands and other Federal and State lands, up to 48 percent of the entire Gunnison Basin population area is not providing optimal habitat conditions for Gunnison sage-grouse.

The fact that most grazing allotments are not meeting LHA objectives indicates that grazing is a factor that is likely contributing to Gunnison sage-grouse habitat degradation. In addition, grazing has negatively impacted several Gunnison sage grouse treatments (projects aimed at improving habitat condition) in the Gunnison Basin (BLM 2009, p. 34). Although these areas are generally rested for 2 years after treatment, several have been heavily used by cattle shortly after the treatment, and the effectiveness of the treatments decreased (BLM 2009, p. 34) and reduced the potential benefits of the treatments.

TABLE 3. SUMMARY OF DOMESTIC LIVESTOCK GRAZING MANAGEMENT ON BLM AND USFS LANDS IN OCCUPIED HABITAT FOR EACH OF THE GUNNISON SAGE-GROUSE POPULATIONS (FROM USFWS[A] 2010C, COMPILATION OF DATA PROVIDED BY BLM[B] AND USFS[C]).

			Percent		
Population	Number of Active USFS Allotments	Number of Active BLM Allotments	Active Allotments with GUSG[d] Objectives	BLM Allotments with Completed LHA[e]	Assessed BLM Allotments Meeting LHA Objectives
Gunnison	34	62	21	66	22
San Miguel Basin	*no data*	13	0	77	40
Monticello–Dove Creek:					
Dove Creek	*n/a*	3	0	0	0
Monticello	*n/a*[f]	6	100	83	80
Piñon Mesa	*no data*	15	53	27	100
Cerro Summit–Cimarron–Sims Mesa	*n/a*[f]	10	10	50	40
Crawford[g]	*n/a*[f]	7	71	100	86
Poncha Pass	*no data*	8	13	100	100
Rangewide Averages			34	63	59

[a]United States Fish and Wildlife Service
[b]Bureau of Land Management
[c]United States Forest Service
[d]Gunnison sage-grouse
[e]Land Health Assessments
[f]No United States Forest Service Land in occupied habitat in this population area.
[f]Includes allotments on National Park Service lands but managed by the Bureau of Land Management.

Public Lands Grazing in All Other Population Areas – The BLM manages approximately 36 percent of the area currently occupied by Gunnison sage-grouse in the San Miguel Basin, and approximately 79 percent of this area is actively grazed. Within the occupied range in the San Miguel population, no active BLM grazing allotments have Gunnison sage-grouse habitat objectives incorporated into the allotment management plans or Records of Decision for permit renewals (USFWS 2010c, p. 9). In 2009, 10 of 15 (77 percent) active allotments had LHAs completed in the last 15 years; 4 of 10 allotments (40 percent) were deemed by the BLM to meet LHA objectives. Gunnison sage-grouse habitat within the 60 percent of allotments not meeting LHA objectives and the 5 allotments with no LHAs completed are likely being adversely impacted by grazing. Therefore, it appears that grazing in a large portion of this population area is a factor that is likely contributing to Gunnison sage-grouse habitat degradation.

The BLM manages 11 percent of the occupied habitat in the Dove Creek group, and 41 percent of this area is actively grazed. Within the occupied range in the Dove Creek group of the Monticello–Dove Creek population, no active BLM grazing allotments have Gunnison sage-grouse habitat objectives incorporated into the allotment management plans or Records of Decision for permit renewals (USFWS 2010c, p. 3). In 2009, no active allotments in occupied habitat had completed LHAs. Gunnison sage-grouse are not explicitly considered in grazing management planning, and the lack of habitat data limits our ability to determine the impact to the habitat on public lands.

The BLM manages on 4 percent of the occupied habitat in the Monticello group, and 83 percent of this area is grazed. Within the occupied range in the Monticello group, 6 of 6 active BLM grazing allotments have Gunnison sage-grouse habitat objectives incorporated into the allotment management plans or Records of Decision for permit renewals (USFWS 2010c, p. 6). In 2009, 88 percent of the area of occupied habitat in active allotments had a recently completed LHA. Approximately 60 percent of the area in occupied habitat in active allotments were deemed by the BLM to meet LHA objectives. This information suggests that grazing the majority of lands managed by the BLM is not likely significantly contributing to Gunnison sage-grouse habitat degradation in the Monticello population group.

The BLM manages 28 percent of occupied habitat in the Pĩnon Mesa population area, and approximately 97 percent of this area is grazed. Over 50 percent of occupied habitat in this population area is privately owned and, while grazing certainly occurs on these lands, we have no information on its extent. Within the occupied range in the Pĩnon Mesa population, 8 of 15 (53 percent) active BLM grazing allotments have Gunnison sage-grouse habitat objectives incorporated into the allotment management plans or Records of Decision for permit renewals (USFWS 2010c, p. 5). In 2009, 23 percent of the area of occupied Gunnison sage-grouse habitat in active allotments in the Pĩnon Mesa population area had LHAs completed in the last 15 years, and all of these were deemed by the BLM to meet LHA objectives. Therefore, for the portion of the Pĩnon Mesa population area for which we have information, it appears that grazing is not likely significantly contributing to Gunnison sage-grouse habitat degradation.

The BLM manages on 13 percent of the occupied habitat in the Cerro Summit–Cimarron–Sims Mesa population area, and 83 percent of this area is grazed. Within the occupied

range in the Cerro Summit–Cimarron–Sims Mesa population, 1 of 10 (10 percent) active BLM grazing allotments have Gunnison sage-grouse habitat objectives incorporated into the allotment management plans or Records of Decision for permit renewals (USFWS 2010c, p. 7). In 2009, 5 of the 10 active allotments had LHAs completed in the last 15 years and 3 (60 percent) of these were deemed by the BLM as not meeting LHA objectives. Therefore, for the small portion of the Cerro Summit–Cimarron–Sims Mesa population area for which we have information, it appears that grazing is a factor that is likely contributing to some Gunnison sage-grouse habitat degradation.

Lands administered by the BLM and NPS comprise over 75 percent of occupied habitat in the Crawford population, and 96 percent of this area is actively grazed. Grazing allotments on NPS lands in this area are administered by the BLM. Within occupied range in the Crawford population, 1 of 7 (14 percent) active BLM grazing allotments have Gunnison sage-grouse habitat objectives incorporated into the allotment management plans or Records of Decision for permit renewals (USFWS 2010c, p. 8). In 2009, all of the active allotments had LHAs completed in the last 15 years, and 86 percent were deemed by the BLM to meet LHA objectives. Seasonal forage utilization levels were below 30 percent in most Crawford Area allotments, although a small number of allotments had nearly 50 percent utilization (BLM 2009x, p. 68). Based on this information, it appears that grazing is not likely significantly contributing to Gunnison sage-grouse habitat degradation in the majority of the Crawford population area.

The BLM manages nearly half of occupied habitat in the Poncha Pass population area, and approximately 98 percent of this area is actively grazed. Within the occupied range in the Poncha Pass population, 1 of 8 (13 percent) active BLM grazing allotments have Gunnison sage-grouse habitat objectives incorporated into the allotment management plans or Records of Decision for permit renewals (USFWS 2010c, p. 4). In 2009, all active allotments in occupied habitat had completed LHAs, and all were meeting LHA objectives. Based on this information it appears that grazing is not likely significantly contributing to Gunnison sage-grouse habitat degradation in the majority of the Poncha Pass population area.

Non-federal Lands Grazing in All Population Areas –Livestock grazing on private and other non-federal lands, where present, has the potential to impact Gunnison sage-grouse, but we lack sufficient information to make an assessment. Table 1 summarizes the percentage of land area potentially available to grazing within each of the populations.

As discussed earlier, some private lands are enrolled in the CRP program and provide some benefits to Gunnison sage-grouse. The CRP land in the Monticello group has provided a considerable amount of brood-rearing habitat because of its forb component. Grazing of CRP land in Utah occurred in 2002 under emergency Farm Bill provisions due to drought and removed at least some of the grass and forb habitat component thus likely negatively affecting Gunnison sage-grouse chick survival. Radio-collared males and non-brood-rearing females exhibited temporary avoidance of grazed fields during and after grazing (Lupis *et al.* 2006, pp. 959-960), although one hen with a brood continued to use a grazed CRP field. This indicates that when CRP lands are grazed, negative impacts to their habitat and behavior may result. Since we have very little information on the status of Gunnison sage-grouse habitat on non-federal lands, we cannot assess whether the impacts that are occurring rise to the level of being a threat.

Wild Ungulate Herbivory in All Population Areas – Overgrazing by deer and elk may cause local degradation of habitats by removal of forage and residual hiding and nesting cover. Hobbs *et al.* (1996, pp. 210-213) documented a decline in available perennial grasses as elk densities increased. Such grazing could negatively impact nesting cover for sage-grouse. The winter range of deer and elk overlaps the year-round range of the Gunnison sage-grouse. Excessive but localized deer and elk grazing has been documented in the Gunnison Basin (BLM 2005a, pp. 17-18; Jones 2005, pers. comm.).

Grazing by deer and elk occurs in all Gunnison sage-grouse population areas. Although we have no information indicating that competition for resources is limiting Gunnison sage-grouse in the Gunnison Basin, BLM observed that certain mountain shrubs were being browsed heavily by wild ungulates (BLM 2009, p. 34). Subsequent results of monitoring in mountain shrub communities indicated that drought and big game were having large impacts on the survivability and size of mountain mahogany (*Cercocarpus utahensis*), bitterbrush (*Purshia tridentata*), and serviceberry (*Amelanchier alnifolia*) in the Gunnison Basin (Jupuntich *et al.* 2010, pp. 7-9). The authors raised concerns that observed reductions in shrub size and vigor will reduce drifting snow accumulation, resulting in decreased moisture availability to grasses and forbs during the spring melt. Reduced grass and forb growth could negatively impact Gunnison sage-grouse nesting and early brood-rearing habitat.

Grazing Summary

Livestock management and domestic grazing have the potential to seriously degrade Gunnison sage-grouse habitat. Grazing can adversely impact nesting and brood-rearing habitat by decreasing vegetation available for concealment from predators. Grazing also has been shown to compact soils, decrease herbaceous abundance, increase erosion, and increase the probability of invasion of exotic plant species.

The impacts of livestock operations on Gunnison sage-grouse depend upon stocking levels and season of use. We recognize that not all livestock grazing result in habitat degradation and many livestock operations within the range of Gunnison sage-grouse are employing innovative grazing strategies and conservation actions (Gunnison County Stockgrowers 2009, entire). However, available information suggests that LHA objectives specific to Gunnison sage-grouse are not being met on more than 50 percent of BLM-managed occupied Gunnison sage-grouse habitat in the Gunnison Basin, San Miguel Basin, and the Cerro Summit–Cimarron–Sims Mesa population areas. Cumulatively, the BLM-managed portion of these populations constitutes approximately 33 percent of the entire range of the species. Reduced habitat quality, as reflected in unmet LHA objectives is likely to negatively impact Gunnison sage-grouse, particularly nesting and early brood-rearing habitat, and chick survival is one of the most important factors in maintaining Gunnison sage-grouse population viability (GSRSC 2005, p. 173).

We know that grazing can have negative impacts to sagebrush and consequently to Gunnison sage-grouse at local scales. Available data indicates that impacts to sagebrush are occurring on a significant portion of the range of the species. Given the widespread nature of grazing within the range of Gunnison sage-grouse, the potential for population-level impacts is highly likely. Further, we expect grazing to persist throughout the range of Gunnison sage-grouse for the foreseeable future. Effects of domestic livestock grazing are likely being exacerbated by intense browsing of

woody species by wild ungulates in portions of the Gunnison Basin. We conclude that habitat degradation that can result from improper grazing is a significant threat to Gunnison sage-grouse now and in the foreseeable future.

Nonrenewable Energy Development

Energy development on Federal (BLM and USFS) lands is regulated by the BLM and can contain conservation measures for wildlife species (see Factor D for a more thorough discussion). The BLM (1999, p. 1) classified the area encompassing all Gunnison sage-grouse habitat for its gas and oil potential. Three of the populations have areas with high (San Miguel Basin, Monticello group) or medium (Crawford) oil and gas potential. San Miguel County, where much oil and gas activity has occurred in the last few years, ranked 9 out of 39 in Colorado counties producing natural gas in 2009 (Colorado Oil and Gas Conservation Commission 2010, p. 1) and 29 of 39 in oil production in 2009 (Colorado Oil and Gas Conservation commission 2010, p. 2).

Energy development impacts sage-grouse and sagebrush habitats through direct habitat loss from well pad construction, seismic surveys, roads, powerlines and pipeline corridors, and indirectly from noise, gaseous emissions, changes in water availability and quality, and human presence. The interaction and intensity of effects could cumulatively or individually lead to habitat fragmentation (Suter 1978, pp. 6-13; Aldridge 1998, p. 12; Braun 1998, pp. 144-148; Aldridge and Brigham 2003, p. 31; Knick *et al.* 2003, pp. 612, 619; Lyon and Anderson 2003, pp. 489-490; Connelly *et al.* 2004, pp. 7-40 to 7-41; Holloran 2005, pp. 56-57; Holloran 2007 *et al.,*, pp. 18-19; Aldridge and Boyce 2007, pp. 521-522; Walker *et al.* 2007a, pp. 2652-2653; Zou *et al.* 2006, pp. 1039-1040; Doherty *et al.* 2008, p. 193; Leu and Hanser, in press, p. 28). Increased human presence resulting from oil and gas development can impact sage-grouse either through avoidance of suitable habitat, or disruption of breeding activities (Braun *et al.* 2002, pp. 4-5; Aldridge and Brigham 2003, pp. 30-31; Aldridge and Boyce 2007, p. 518; Doherty *et al.* 2008, p. 194).

The development of oil and gas resources requires surveys for economically recoverable reserves, construction of well pads and access roads, subsequent drilling and extraction, and transport of oil and gas, typically through pipelines. Ancillary facilities can include compressor stations, pumping stations, electrical generators and powerlines (Connelly *et al.* 2004, p. 7-39; BLM 2007, p. 2-110). Surveys for recoverable resources occur primarily through noisy seismic exploration activities. These surveys can result in the crushing of vegetation. Well pads vary in size from 0.10 ha (0.25 ac) for coal-bed natural gas wells in areas of level topography to greater than 7 ha (17.3 ac) for deep gas wells and multiwell pads (Connelly *et al.* 2004, pp. 7-39; BLM 2007, pp. 2-123). Pads for compressor stations require 5–7 ha (12.4–17.3 ac) (Connelly *et al.* 2004, pp. 7-39).

The amount of direct habitat loss within an area is ultimately determined by well densities and the associated loss from ancillary facilities. Roads associated with oil and gas development were suggested to be the primary impact to greater sage-grouse due to their persistence and continued use even after drilling and production ceased (Lyon and Anderson 2003, p. 489). Declines in male greater sage-grouse lek attendance were reported within 3 km (1.9 mi) of a well or haul road with a traffic volume exceeding one vehicle per day (Holloran 2005, p. 40). Because of reasons discussed previously, we believe the effects to Gunnison sage-grouse are similar to those observed in greater sage-grouse. Sage-grouse also may be at increased risk for collision with vehicles simply due to the increased traffic associated with oil and gas activities (Aldridge 1998, p. 14; BLM 2003, p. 4-222).

Habitat fragmentation resulting from oil and gas development infrastructure, including access roads, may have greater effects on sage-grouse than the associated direct habitat losses. Energy development and associated infrastructure works cumulatively with other human activity or development to decrease available habitat and increase fragmentation. Greater sage-grouse leks had the lowest probability of persisting (40–50 percent) in a landscape with less than 30 percent sagebrush within 6.4 km (4 mi) of the lek (Walker *et al.* 2007a, p. 2652). These probabilities were even less in landscapes where energy development also was a factor.

Nonrenewable Energy Development in All Population Areas – Approximately 33 percent of the Gunnison Basin population area ranked as low oil and gas potential with the remainder having no potential for oil and gas development (GSRSC 2005, p. 130). Forty-three gas wells occur on private lands within the occupied range of the Gunnison sage-grouse. Of these, 27 wells occur in the San Miguel population, 8 in the Gunnison Basin population, 6 in the Dove Creek group of the Monticello–Dove Creek population, and 1 in each of the Crawford and Cerro Summit–Cimarron–Sims Mesa populations (derived from Colorado Oil and Gas Commission 2010, GIS dataset).

No federally leased lands exist within the Gunnison Basin population area (BLM and USFS 2010). The Monticello group is in an area of high energy potential (GSRSC 2005, p. 130); however, less than two percent of the population area contains Federal leases upon which production is occurring, and no producing leases occur in currently occupied Gunnison sage-grouse habitat (BLM Geocommunicator, 2010). No oil and gas wells or authorized Federal leases are within the Pĩnon Mesa population area (BLM 2009, p. 1; BLM Geocommunicator), and no potential for oil or gas exists in this area except for a small area on the eastern edge of the largest habitat block (BLM 1999, p. 1; GSRSC 2005, p. 130). The Crawford population is in an area with high to medium potential for oil and gas development (GSRSC 2005, p. 130). A single authorized Federal lease (BLM Geocommunicator) constitutes less than 1 percent of the Crawford population area.

Energy development is occurring primarily in the San Miguel Basin Gunnison sage-grouse population area in Colorado. The entire San Miguel Basin population area has high potential for oil and gas development (GSRSC 2005, p. 130). Approximately 13 percent of occupied habitat area within the San Miguel Basin population has authorized Federal leases; of that, production is occurring on approximately 5 percent (BLM National Integrated Lands System (NILS) p. 1). Currently, 25 gas wells are active within occupied habitat of the San Miguel Basin, and an additional 18 active wells occur immediately adjacent to occupied habitat (San Miguel County 2009, p. 1). All of these wells are in or near the Dry Creek group. The exact locations of any future drill sites are not known, but because the area is small, they will likely lie within 3 km (2 mi) of one of only three leks in this group (CDOW 2005a, p. 108).

Although the BLM has deferred (temporarily withheld from recent lease sales) oil and gas parcels nominated for leasing in occupied Gunnison sage-grouse habitat in Colorado since 2005, we expect energy development in the San Miguel Basin on public and private lands to continue over the next 20 years based on the length of development and production projects described in existing project and management plans. Current impacts from gas development may exacerbate Gunnison sage-grouse imperilment in the Dry Creek group

because this area contains some of the poorest habitat and smallest grouse populations within the San Miguel population (San Miguel Basin Gunnison sage-grouse Working Group, 2009 pp. 28 and 36).

The San Miguel Basin population area is the only area within the Gunnison sage-grouse range with a high potential for oil and gas development. However, the immediate threat to Gunnison sage-grouse is limited because the BLM is deferring leases until they can be considered within Land Use Plans (BLM 2009, p. 78). We anticipate energy development activities to continue over the next 20 years. However, because nonrenewable energy activities are limited to a small portion of the range, primarily the Dry Creek portion of the San Miguel Basin population of Gunnison sage-grouse, we do not consider nonrenewable energy development to be a significant threat to the species.

Renewable Energy – Geothermal, Solar, Wind

Geothermal energy production is similar to oil and gas development in that it requires surface exploration, exploratory drilling, field development, and plant construction and operation. Wells are drilled to access the thermal source and could take from 3 weeks to 2 months of drilling occurring on a continuous basis (Suter 1978, p. 3), which may cause disturbance to sage-grouse. The ultimate number of wells, and therefore potential loss of habitat, depends on the thermal output of the source and expected production of the plant (Suter 1978, p. 3). Pipelines are needed to carry steam or superheated liquids to the generating plant, which is similar in size to a coal- or gas-fired plant, resulting in further habitat destruction and indirect disturbance. Direct habitat loss occurs from well pads, structures, roads, pipelines and transmission lines, and impacts would be similar to those described previously for oil and gas development. The development of geothermal energy requires intensive human activity during field development and operation. Geothermal development could cause toxic gas release. The type and effect of these gases depends on the geological formation in which drilling occurs (Suter 1978, pp. 7-9). The amount of water necessary for drilling and condenser cooling may be high. Local water depletions may be a concern if such depletions result in the loss of brood-rearing habitat.

Renewable Energy in the Gunnison Basin Population Area – Approximately 87 percent of the occupied range of Gunnison sage-grouse is within a region of known geothermal potential (BLM Geocommunicator 2010, p. 1). We were unable to find any information on the presence of active geothermal energy generation facilities; however, we are aware of three current applications for geothermal leases within the range of Gunnison sage-grouse. All of the applications are located in the same general vicinity on private, BLM, USFS, and Colorado State Land Board lands near Tomichi Dome and Waunita Hot Springs in southeastern Gunnison County. The cumulative area of the geothermal lease application parcels is approximately 4,061 ha (10,035 ac), of which approximately 3,802 ha (9,395 ac) is occupied Gunnison sage-grouse habitat, or approximately 2 percent of the Gunnison Basin population area. One active lek and two inactive leks are located within the lease application parcels. In addition, six active leks and four inactive leks are within 6.4 km (4 mi) of the lease application parcels indicating that over 80 percent of Gunnison sage-grouse seasonal use occurs within the area associated with these leks (GSRSC 2005, p. J-4). There are 74 active leks in the Gunnison Basin population, so approximately 10 percent of active leks may be affected. A significant amount of high-quality Gunnison sage-grouse nesting habitat exists on and near the lease application parcels (Aldridge *et al.* 2010, in press). This potential geothermal development would likely negatively impact Gunnison sage-grouse through the direct loss of habitat and the functional loss of habitat resulting from increased human activity in the area; however, we cannot determine the potential extent of the impact at this time because the size and location of potential geothermal energy generation infrastructure and potential resource protection conditions are unknown at this time.

Renewable Energy in All Other Population Areas – We could find no information on the presence of existing, pending, or authorized wind energy sites, solar energy sites, nor any solar energy study areas within the range of Gunnison sage-grouse. A 388-ha (960-ac) wind energy generation facility is authorized on BLM lands in San Juan County, UT. However, the authorized facility is approximately 12.9 km (8 mi) from the nearest lek in the Monticello group of the Monticello–Dove Creek Gunnison sage-grouse population. Therefore, we conclude that wind and solar energy development are not a significant threat to the Gunnison sage-grouse and we do not expect these activities to become significant threats in the foreseeable future.

The only existing or proposed renewable energy project we are aware of is located in the Gunnison Basin. A portion of the Gunnison Basin population will likely be adversely affected by proposed geothermal development if it is implemented. Because of the current preliminary status of geothermal development, we lack the specific project details to evaluate the extent to which this activity will affect the population's overall viability. Therefore, we do not consider renewable energy development to be a threat to the Gunnison sage-grouse at this time. Geothermal energy development could become a future threat to the species, but we do not know to what extent future geothermal energy development will occur. Future geothermal development could be encouraged by a new Colorado State law, signed April 30, 2010, that will facilitate streamlining of the State permitting process.

Summary of Nonrenewable and Renewable Energy Development

The San Miguel Basin population area is the only area within the Gunnison sage-grouse range with a high potential for oil and gas development. However, the immediate threat to Gunnison sage-grouse is limited because the BLM is temporarily deferring leases until they can be considered within Land Use Plans. We anticipate energy development activities to continue over the next 20 years. Although we recognize that the Dry Creek portion of the San Miguel Basin population may be impacted by nonrenewable energy development, we do not consider nonrenewable energy development to be a significant threat to the species now or in the foreseeable future, because its current and anticipated extent is limited throughout the range of Gunnison sage-grouse. Similarly, we do not consider renewable energy development to be a significant threat to Gunnison sage-grouse now or in the foreseeable future. However, geothermal energy development could increase in the future and could (depending on the level of development and minimization and mitigation measures) substantially influence the overall long-term viability of the Gunnison Basin population.

Climate Change

According to the Intergovernmental Panel on Climate Change (IPCC), “Warming of the climate system in recent decades is unequivocal, as is now evident from observations of increases in global average air and ocean

temperatures, widespread melting of snow and ice, and rising global sea level" (IPCC 2007, p. 1). Average Northern Hemisphere temperatures during the second half of the 20th century were very likely higher than during any other 50–year period in the last 500 years and likely the highest in at least the past 1,300 years (IPCC 2007, p. 30). Over the past 50 years cold days, cold nights, and frosts have become less frequent over most land areas, and hot days and hot nights have become more frequent. Heat waves have become more frequent over most land areas, and the frequency of heavy precipitation events has increased over most areas (IPCC 2007, p. 30). For the southwestern region of the United States, including western Colorado, warming is occurring more rapidly than elsewhere in the country (Karl *et al.* 2009, p. 129). Annual average temperature in west-central Colorado increased 3.6 °C (2 °F) over the past 30 years, but high variability in annual precipitation precludes the detection of long-term trends (Ray *et al.* 2008, p. 5).

Under high emission scenarios, future projections for the southwestern United States show increased probability of drought (Karl *et al.* 2009, pp. 129-134) and the number of days over 32 °C (90 °F) could double by the end of the century (Karl *et al.* 2009, p. 34). Climate models predict annual temperature increase of approximately 2.2 °C (4 °F) in the southwest by 2050, with summers warming more than winters (Ray *et al.* 2008, p. 29). Projections also show declines in snowpack across the West, with the most dramatic declines at lower elevations (below 2,500 m (8,200 ft)) (Ray *et al.*, p. 29).

Localized climate projections are problematic for mountainous areas because current global climate models are unable to capture this topographic variability at local or regional scales (Ray *et al.* 2008, pp. 7, 20). To obtain climate projections specific to the range of Gunnison sage-grouse, we requested a statistically downscaled model from the National Center for Atmospheric Research for a region covering western Colorado. The resulting projections indicate the highest probability scenario is that average summer (June through September) temperature could increase by 2.8 °C (5.1 °F), and average winter (October through March) temperature could increase by 2.2 °C (4.0 °F) by 2050 (University Corporation for Atmospheric Research (UCAR) 2009, pp. 1-15). Annual mean precipitation projections for Colorado are unclear; however, multi-model averages show a shift towards increased winter precipitation and decreased spring and summer precipitation (Ray *et al.* 2008, p. 34; Karl *et al.* 2009, p. 30). Similarly, the multi-model averages show the highest probability of a five percent increase in average winter precipitation and a five percent decrease in average spring-summer precipitation in 2050 (UCAR 2009, p. 15).

While it is unclear at this time whether or not the year 2050 predicted changes in precipitation and temperature will be of significant magnitude to alter sagebrush plant community composition and dynamics, we believe climate change is likely to alter fire frequency, community assemblages, and the ability of nonnative species to proliferate. Increasing temperature as well as changes in the timing and amount of precipitation will alter the competitive advantage among plant species (Miller *et al.* in press, p. 44), and may shift individual species and ecosystem distributions (Bachelet *et al.* 2001, p. 174). For sagebrush, spring and summer precipitation comprises the majority of the moisture available to the species; thus, the interaction between reduced precipitation in the spring-summer growing season and increased summer temperatures will likely decrease growth of mountain big sagebrush (*Artemisia tridentata* ssp. *vaseyana*). This could result in a significant long-term reduction in the distribution of sagebrush communities (Miller *et al.* in press, pp. 41-45). In the Gunnison Basin, increased summer temperature was strongly correlated with reduced growth of mountain big sagebrush (Poore *et al.* 2009, p. 558). Based on these results and the likelihood of increased winter precipitation falling as rain rather than snow, Poore *et al.* (2009, p. 559) predict decreased growth of mountain big sagebrush, particularly at the lower elevation limit of the species. Because Gunnison sage-grouse are sagebrush obligates, loss of sagebrush would result in a reduction of suitable habitat and negatively impact the species. The interaction of climate change with other stressors likely has impacted and will impact the sagebrush steppe ecosystem within which Gunnison sage-grouse occur.

Temperature increases may increase the competitive advantage of cheatgrass in higher elevation areas where its current distribution is limited (Miller *et al.* in press, p. 47). Decreased summer precipitation reduces the competitive advantage of summer perennial grasses, reduces sagebrush cover, and subsequently increases the likelihood of cheatgrass invasion (Prevey *et al.* 2009, p. 11). This impact could increase the susceptibility of areas within Gunnison sage-grouse range to cheatgrass invasion (Bradley 2009, p. 204), which would reduce the overall cover of native vegetation, reduce habitat quality, and potentially decrease fire return intervals, all of which would negatively affect the species.

Summary of Climate Change

Climate change predictions are based on models with assumptions, and there are uncertainties regarding the magnitude of associated climate change parameters such as the amount and timing of precipitation and seasonal temperature changes. There is also uncertainty as to the magnitude of effects of predicted climate parameters on sagebrush plant community dynamics. These factors make it difficult to predict the effects of climate change on Gunnison sage-grouse. We recognize that climate change has the potential to alter Gunnison sage-grouse habitat by facilitating an increase in the distribution of cheatgrass and concurrently increase the potential for wildfires, which would have negative effects on Gunnison sage-grouse. However, based on the best available information on climate change projections into the next 40 years, we do not consider climate change to be a significant threat to the Gunnison sage-grouse at this time. Existing data indicates that climate change has the potential to alter changes in the distribution and extent of cheatgrass and sagebrush and associated fire frequencies and therefore is likely to become an increasingly important factor affecting Gunnison sage-grouse and its habitat in the foreseeable future.

Summary of Factor A

Gunnison sage-grouse require large, contiguous areas of sagebrush for long-term persistence, and thus are affected by factors that occur at the landscape scale. Broad-scale characteristics within surrounding landscapes influence habitat selection, and adult Gunnison sage-grouse exhibit a high fidelity to all seasonal habitats, resulting in low adaptability to habitat changes. Fragmentation of sagebrush habitats has been cited as a primary cause of the decline of Gunnison and greater sage-grouse populations (Patterson 1952, pp. 192-193; Connelly and Braun 1997, p. 4; Braun 1998, p. 140; Johnson and Braun 1999, p. 78; Connelly *et al.* 2000a, p. 975; Miller and Eddleman 2000, p. 1; Schroeder and Baydack 2001, p. 29; Johnsgard 2002, p. 108; Aldridge and Brigham 2003, p. 25; Beck *et al.* 2003, p. 203; Pedersen *et al.* 2003, pp. 23-24; Connelly *et al.* 2004, p. 4-15; Schroeder *et al.* 2004, p. 368; Leu *et al.* in press,

p. 19). Documented negative effects of fragmentation include reduced lek persistence, lek attendance, population recruitment, yearling and adult annual survival, female nest site selection, and nest initiation rates, as well as the loss of leks and winter habitat (Holloran 2005, p. 49; Aldridge and Boyce 2007, pp. 517-523; Walker *et al*. 2007a, pp. 2651-2652; Doherty *et al*. 2008, p. 194).

We examined several factors that result in habitat loss and fragmentation. Historically, losses of sagebrush habitats occurred due to conversion for agricultural croplands; however, this trend has slowed or slightly reversed in recent decades. Currently, direct and functional loss of habitat due to residential and road development in all populations, including the largest population in the Gunnison Basin, is the principal threat to Gunnison sage-grouse. Functional habitat loss also contributes to habitat fragmentation as sage-grouse avoid areas due to human activities, including noise, even when sagebrush remains intact. The collective disturbance from human activities around residences and roads reduces the effective habitat around these areas, making them inhospitable to Gunnison sage-grouse. Human populations are increasing in Colorado and throughout the range of Gunnison sage-grouse. This trend is expected to continue at least through 2050. The resulting habitat loss and fragmentation will continue to negatively affect Gunnison sage-grouse and its habitat.

Other threats from human infrastructure such as fences and powerlines may not individually threaten the Gunnison sage-grouse. However, the cumulative presence of all these features, particularly when considered in conjunction with residential and road development, does constitute a significant threat to Gunnison sage-grouse as they collectively contribute to habitat loss and fragmentation. This impact is particularly of consequence in light of the decreases in Gunnison sage-grouse population sizes observed in the six smallest populations. These infrastructure components are associated with overall increases in human populations and thus we expect them to continue to increase in the foreseeable future.

Several issues discussed above, such as fire, invasive species, and climate change, may not individually threaten the Gunnison sage-grouse. However, the documented synergy among these issues result in a high likelihood that they will threaten the species in the future. Nonnative invasive plants, including cheatgrass and other noxious weeds, continue to expand their range, facilitated by ground disturbances such as fire, grazing, and human infrastructure. Invasive plants negatively impact Gunnison sage-grouse primarily by reducing or eliminating native vegetation that sage-grouse require for food and cover, resulting in habitat loss (both direct and functional) and fragmentation. Cheatgrass is present at varying levels in nearly all Gunnison sage-grouse population areas, but there has not yet been a demonstrated change in fire cycle in the range of Gunnison sage-grouse. However, climate change may alter the range of invasive plants, intensifying the proliferation of invasive plants to the point that they and their effects on Gunnison sage-grouse habitat will likely become a threat to the species. Even with aggressive treatments, invasive plants will persist and will likely continue to spread throughout the range of Gunnison sage-grouse in the foreseeable future.

Livestock management has the potential to degrade sage-grouse habitat at local scales by causing the loss of nesting cover and decreases in native vegetation, and by increasing the probability of incursion of invasive plants. Given the widespread nature of grazing within the range of Gunnison sage-grouse, the potential for population-level impacts is highly likely. Effects of domestic livestock grazing are likely being exacerbated by intense browsing of woody species by wild ungulates in portions of the Gunnison Basin. We conclude that habitat degradation that can result from improper grazing is a significant threat to Gunnison sage-grouse now and in the foreseeable future.

Threats identified above, particularly residential development and associated infrastructure such as fences, roads, and powerlines, are cumulatively causing significant habitat fragmentation that is negatively affecting Gunnison sage-grouse. We have evaluated the best available scientific information available on the present or threatened destruction, modification or curtailment of the Gunnison sage-grouse's habitat or range. Based on the current and anticipated habitat threats identified above, and their cumulative effects as they contribute to the overall fragmentation of Gunnison sage-grouse habitat, we have determined that the present or threatened destruction, modification, or curtailment of Gunnison sage-grouse habitat poses a significant threat to the species throughout its range.

The species is being impacted by several other factors, but their significance is not at a level that they cause the species to become threatened or endangered in the foreseeable future. We do not consider nonrenewable energy development to be a significant threat to the species because its current and anticipated extent is limited throughout the range of Gunnison sage-grouse. Similarly, we do not consider renewable energy development to be a significant threat to the Gunnison sage-grouse at this time. However, geothermal energy development could increase in the future. Pĩnon-juniper encroachment does not pose a significant threat to Gunnison sage-grouse at a population or rangewide level because of its limited distribution throughout the range of Gunnison sage-grouse and the observed effectiveness of treatment projects.

A review of a database compiled by the CDOW that included local, State, and Federal ongoing and proposed Gunnison sage-grouse conservation actions (CDOW 2009c, entire) revealed a total of 224 individual conservation efforts. Of these 224 efforts, a total of 165 efforts have been completed and were focused on habitat improvement or protection. These efforts resulted in the treatment of 9,324 ha (23,041 ac), or approximately 2.5 percent of occupied Gunnison sage-grouse habitat. A monitoring component was included in 75 (45 percent) of these 165 efforts, although we do not have information on the overall effectiveness of these efforts. Given the limited collective extent of these efforts, they do not ameliorate the effects of habitat fragmentation at a sufficient scale range-wide to effectively reduce or eliminate the most significant threats to the species. We recognize ongoing and proposed conservation efforts by all entities across the range of the Gunnison sage-grouse, and all parties should be commended for their conservation efforts. Our review of conservation efforts indicates that the measures identified are not adequate to address the primary threat of habitat fragmentation at this time in a manner that effectively reduces or eliminates the most significant contributors (e.g., residential development) to this threat. All of the conservation efforts are limited in size and the measures provided to us were simply not implemented at the scale (even when considered cumulatively) that would be required to effectively reduce the threats to the species across its range. Although the ongoing conservation efforts are a positive step toward the conservation of the Gunnison sage-grouse, and some have likely reduced the severity of some threats to the species (e.g., Pĩnon-juniper invasion), on the whole we find

that the conservation efforts in place at this time are not sufficient to offset the degree of threat posed to the species by the present and threatened destruction, modification, or curtailment of its habitat.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Hunting

Hunting for Gunnison sage-grouse does not currently occur. Hunting was eliminated in the Gunnison Basin in 2000 due to concerns with meeting Gunnison sage-grouse population objectives (CSGWG 1997, p. 66). Hunting has not occurred in the other Colorado populations of Gunnison sage-grouse since 1995 when the Pĩnon Mesa area was closed (GSRSC 2005, p. 122). Utah has not allowed hunting of Gunnison sage-grouse since 1989 (GSRSC 2005, p. 82).

Both Colorado and Utah will only consider hunting of Gunnison sage-grouse if populations can be sustained (GSRSC 2005, pp. 5, 8, 229). The Gunnison Basin Plan calls for a minimum population of 500 males counted on leks before hunting would occur again (CSGWG 1997, p. 66). The minimum population level has been exceeded in all years since 1996, except 2003 and 2004 (CDOW 2009d, p. 18-19). However, the sensitive State regulatory status and potential political ramifications of hunting the species has precluded the States from opening a hunting season. If hunting does ever occur again, harvest will likely be restricted to only 5 to 10 percent of the fall population, and will be structured to limit harvest of females to the extent possible (GSRSC 2005, p. 229). However, the ability of these measures to be implemented is in question, as adequate means to estimate fall population size have not been developed (Reese and Connelly in press, p. 21) and limiting female harvest may not be possible (WGFD 2004, p. 4; WGFD 2006, pp. 5, 7). Despite these questions, we believe that the low level of hunting that could be allowed in the future would not be a significant threat to the Gunnison sage-grouse.

One sage-grouse was known to be illegally harvested in 2001 in the Poncha Pass population (Nehring 2010, pers. comm.), but based on the best available information we do not believe that illegal harvest has contributed to Gunnison sage-grouse population declines in either Colorado or Utah. We do not anticipate hunting to be opened in the Gunnison Basin or smaller populations for many years, if ever. Consequently, we do not consider hunting to be a significant threat to the species now or in the foreseeable future.

Lek Viewing

The Gunnison sage-grouse was designated as a new species in 2000 (American Ornithologists' Union 2000, pp. 847-858), which has prompted increased interest by bird watchers to view the species on their leks (Pfister 2010, pers. comm.). Daily human disturbances on sage-grouse leks could cause a reduction in mating, and some reduction in total production (Call and Maser 1985, p. 19). Human disturbance, particularly if additive to disturbance by predators, could reduce the time a lek is active, as well as reduce its size by lowering male attendance (Boyko *et al.* 2004, *in* GSRSC 2005, p. 125). Smaller lek sizes have been hypothesized to be less attractive to females, thereby conceivably reducing the numbers of females mating. Disturbance during the peak of mating also could result in some females not breeding (GSRSC 2005, p. 125). Furthermore, disturbance from lek viewing might affect nesting habitat selection by females (GSRSC 2005, p. 126), as leks are typically close to areas in which females nest. If females move to poorer quality habitat farther away from disturbed leks, nest success could decline. If chronic disturbance causes sage-grouse to move to a new lek site away from preferred and presumably higher quality areas, both survival and nest success could decline. Whether any or all of these have significant population effects would depend on timing and degree of disturbance (GSRSC 2005, p. 126).

Throughout the range of Gunnison sage-grouse, public viewing of leks is limited by a general lack of knowledge in the public of lek locations, seasonal road closures in some areas, and difficulty in accessing many leks. Furthermore, 52 of 109 active Gunnison sage-grouse leks occur on private lands, which further limits access by the public. The BLM closed a lek in the Gunnison Basin to viewing in the late 1990s due to declining population counts, which were perceived as resulting from recreational viewing, although no scientific studies were conducted (BLM 2005a, p. 13; GSRSC 2005, pp. 124, 126). The Waunita lek east of Gunnison is the only lek in Colorado designated by the CDOW for public viewing (CDOW 2009a, p. 86). Since 1998, a comparison of male counts on the Waunita lek versus male counts on other leks in the Doyleville zone show that the Waunita lek's male counts generally follow the same trend as the others (CDOW 2009d, pp. 31-32). In fact, in 2008 and 2009 the Waunita lek increased in the number of males counted along with three other leks, while seven leks decreased in the Doyleville zone (CDOW 2009d, pp. 31-32). These data suggest that lek viewing on the Waunita lek has not impacted the Gunnison sage-grouse. Two lek-viewing tours per year are organized and led by UDWR on a privately owned lek in the Monticello population. The lek declined in males counted in 2009, but 2007 and 2008 had the highest counts for several years, suggesting that lek viewing is also not impacting that lek. Data collected by CDOW on greater sage-grouse viewing leks also indicates that controlled lek visitation has not impacted greater sage-grouse at the viewed leks (GSRSC 2005, p. 124).

A lek viewing protocol has been developed and has largely been followed on the Waunita lek, likely reducing impacts to sage-grouse using the lek (GSRSC 2005, p. 125). During 2004-2009, the percentage of individuals or groups of people in vehicles following the Waunita lek viewing protocol in the Gunnison Basin ranged from 71–92 percent (CDOW 2009a, p. 86, 87; Magee *et al.* 2009, p. 7, 10). Violations of the protocol, such as showing up after the sage-grouse started to display and creating noise, caused one or more sage-grouse to flush from the lek (CDOW 2009a, pp. 86, 87). Despite the protocol violations, the percentage of days from 2004 to 2009 that grouse were flushed by humans was relatively low, ranging from 2.5 percent to 5.4 percent (Magee *et al.* 2009, p.10). Nonetheless, the lek viewing protocol is currently being revised to make it more stringent and to include considerations for photography, research, and education related viewing (CDOW 2009a, p. 86). Maintenance of this protocol should preclude lek viewing from becoming a threat to this lek.

The CDOW and UDWR will continue to coordinate and implement lek counts to determine population levels. We expect annual lek viewing and lek counts to continue indefinitely. However, all leks counted will receive lower disturbance from counters than the Waunita lek received from public viewing, so we do not consider lek counts and viewing a threat to the Gunnison sage-grouse now or in the foreseeable future.

Scientific Research

Gunnison sage-grouse have been the subject of scientific research studies, some of which included the capture and handling of the species. Most of the research has been conducted in the Gunnison Basin population, San Miguel

Basin population, and Monticello portion of the Monticello–Dove Creek population. Between zero and seven percent mortality of handled adults or juveniles and chicks has occurred during recent Gunnison sage-grouse studies where trapping and radio-tagging was done (Apa 2004, p. 19; Childers 2009, p. 14; Lupis 2005, p. 26; San Miguel Basin Working Group 2009, p. A-10). Additionally, one radio-tagged hen was flushed off a nest during subsequent monitoring and did not return after the second day, resulting in loss of 10 eggs (Ward 2007, p. 52). The CDOW does not believe that these losses or disturbance have any significant impacts on the sage-grouse (CDOW 2009a, p. 29).

Some of the radio-tagged sage-grouse have been translocated from the Gunnison Basin to other populations. Over a 5–year period (2000–2002 and 2006–2007), 68 sage-grouse were translocated from the Gunnison Basin to the Poncha Pass and San Miguel Basin populations (CDOW 2009a, p. 9). These experimental translocations were conducted to determine translocation techniques and survivorship in order to increase both size of the receiving populations and to increase genetic diversity in populations outside of the Gunnison Basin. However, the translocated grouse experienced 40–50 percent mortality within the first year after release, which is double the average annual mortality of non-translocated sage-grouse (CDOW 2009a, p. 9). Greater sage-grouse translocations have not appeared to fare any better. Over 7,200 greater sage-grouse were translocated between 1933 and 1990, but only five percent of the translocation efforts were considered to be successful in producing sustained, resident populations at the translocation sites (Reese and Connelly 1997, pp. 235-238, 240). More recent translocations from 2003 to 2005 into Strawberry Valley, Utah, resulted in a 40 percent annual mortality rate (Baxter *et al.* 2008, p. 182). We believe the lack of success of translocations found in greater sage-grouse is applicable to Gunnison sage-grouse since the two species exhibit similar behavior and life-history traits, and are managed accordingly.

Because the survival rate for translocated sage-grouse has not been as high as desired, the CDOW started a captive-rearing program in 2009 to study whether techniques can be developed to captively rear and release Gunnison sage-grouse and enhance their survival (CDOW 2009a, pp. 9-12). The Gunnison Sage-grouse Rangewide Steering Committee conducted a review of captive-rearing attempts for both greater sage-grouse and other gallinaceous birds and concluded that survival will be very low, unless innovative strategies are developed and tested (GSRSC 2005, pp. 181-183). However, greater sage-grouse have been captively reared, and survival of released chicks was similar to that of wild chicks (CDOW 2009a, p. 10). Consequently, the CDOW decided to try captive rearing. Of 40 Gunnison sage-grouse eggs taken from the wild, only 11 chicks (about 25 percent) survived through October 2009. Although chick survival was low, the CDOW believes they have gained valuable knowledge on Gunnison sage-grouse rearing techniques. As techniques improve, the CDOW intends to develop a captive-breeding manual (CDOW 2009a, p. 11). Although adults or juveniles have been captured and moved out of the Gunnison Basin, as well as eggs, the removal of the grouse only accounts for a very small percentage of the total population of the Gunnison Basin sage-grouse population (about 1 percent).

The CDOW has a policy regarding trapping, handling, and marking techniques approved by their Animal Use and Care Committee (San Miguel Basin Working Group 2009, p. A-10, Childers 2009, p. 13). Evaluation of research projects by the Animal Use and Care Committee and improvement of trapping, handling, and marking techniques over the last several years has resulted in fewer mortalities and injuries. In fact, in the San Miguel Basin, researchers have handled over 200 sage-grouse with no trapping mortalities (San Miguel Basin Working Group (SMBWG) 2009, p. A-10). The CDOW has also drafted a sage-grouse trapping and handling protocol, which is required training for people handling Gunnison sage-grouse, to minimize mortality and injury of the birds (CDOW 2002, pp. 1-4 in SMBWG 2009, pp. A-22-A-25). Injury and mortality does occasionally occur from trapping, handling, marking, and flushing off nests. However, research-related mortality is typically below three percent of handled birds and equates to one half of one percent or less of annual population estimates (Apa 2004, p. 19; Childers 2009, p. 14; Lupis 2005, p. 26; San Miguel Basin Working Group 2009, p. A-10).

Research needs may gradually dwindle over the years but annual or occasional research is expected to occur for at least 50 years constituting the foreseeable future for this potential threat. Short-term disturbance effects to individuals occur as does injury and mortality, but we do not believe these effects cause a threat to the Gunnison sage-grouse population as a whole. Based on the available information, we believe scientific research on Gunnison sage-grouse has a relatively minor impact that does not rise to the level of a threat to the species now or is it expected to do so in the foreseeable future.

Summary of Factor B

We have no evidence suggesting that hunting, when it was legal, resulted in overutilization of Gunnison sage-grouse. If hunting is allowed again, future hunting may result in additive mortality due to habitat degradation and fragmentation, despite harvest level restrictions and management intended to limit impacts to hens. Nonetheless, we do not expect hunting to be reinstated in the foreseeable future. Illegal hunting has been documented only once in Colorado and is not considered a threat to the species. Lek viewing has not affected the Gunnison sage-grouse, and lek viewing protocols designed to reduce disturbance have generally been followed. CDOW is currently revising their lek viewing protocol to make it more stringent and to include considerations for photography, research, and education-related viewing. Mortality from scientific research is low (2 percent) and is not considered a threat. We know of no overutilization for commercial or educational purposes. Thus, based on the best scientific and commercial data available, we have concluded that overutilization for commercial, recreational, scientific, or educational purposes does not constitute a significant threat to the Gunnison sage-grouse.

C. Disease or Predation

Disease

No research has been published about the types or pathology of diseases in Gunnison sage-grouse. However, multiple bacterial and parasitic diseases have been documented in greater sage-grouse (Patterson 1952, pp. 71-72; Schroeder *et al.* 1999, p. 14, 27). Some early studies have suggested that greater sage-grouse populations are adversely affected by parasitic infections (Batterson and Morse 1948, p. 22). However, the role of parasites or infectious diseases in population declines of greater sage-grouse is unknown based on the few systematic surveys conducted (Connelly *et al.* 2004, p. 10-3). No parasites have been documented to cause mortality in Gunnison sage-grouse, but the protozoan, *Eimeria* spp., which causes coccidiosis, has been reported to cause

death in greater sage-grouse (Connelly *et al.* 2004, p. 10-4). Infections tend to be localized to specific geographic areas, and no cases of greater sage-grouse mortality resulting from coccidiosis have been documented since the early 1960s (Connelly *et al.* 2004, p. 10-4).

Parasites have been implicated in greater sage-grouse mate selection, with potentially subsequent effects on the genetic diversity of this species (Boyce 1990, p.263; Deibert 1995, p. 38). These relationships may be important to the long-term ecology of greater sage-grouse, but they have not been shown to be significant to the immediate status of populations (Connelly *et al.* 2004, p. 10-6). Although diseases and parasites have been suggested to affect isolated sage-grouse populations (Connelly *et al.* 2004, p. 10-3), we have no evidence indicating that parasitic diseases are a threat to Gunnison sage-grouse populations.

Greater sage-grouse are subject to a variety of bacterial, fungal, and viral pathogens. The bacterium *Salmonella* sp. has caused a single documented mortality in the greater sage-grouse and studies have shown that infection rates in wild birds are low (Connelly *et al.* 2004, p. 10-7). The bacteria are apparently contracted through exposure to contaminated water supplies around livestock stock tanks (Connelly *et al.* 2004, p. 10-7). Other bacteria found in greater sage-grouse include *Escherichia coli*, botulism (*Clostridium* spp.), avian tuberculosis (*Mycobacterium avium*), and avian cholera (*Pasteurella multocida*). These bacteria have never been identified as a cause of mortality in greater sage-grouse and the risk of exposure and hence, population effects, is low (Connelly *et al.* 2004, p. 10-7 to 10-8). We have no reason to expect that mortality and exposure risk are different in Gunnison sage-grouse; therefore, we do not believe these bacteria to be a threat to the species.

West Nile virus was introduced into the northeastern United States in 1999 and has subsequently spread across North America (Marra *et al.* 2004, p.394). In sagebrush habitats, West Nile virus transmission is primarily regulated by environmental factors, including temperature, precipitation, and anthropogenic water sources, such as stock ponds and coal-bed methane ponds that support the mosquito vectors (Reisen *et al.* 2006, p. 309; Walker and Naugle in press, pp. 10-12). The virus persists largely within a mosquito-bird-mosquito infection cycle (McLean 2006, p. 45). However, direct bird-to-bird transmission of the virus has been documented in several species (McLean 2006, pp. 54, 59) including the greater sage-grouse (Walker and Naugle in press, p. 13; Cornish 2009, pers. comm.). The frequency of direct transmission has not been determined (McLean 2006, p. 54). Cold ambient temperatures preclude mosquito activity and virus amplification, so transmission to and in sage-grouse is limited to the summer (mid-May to mid-September) (Naugle *et al.* 2005, p. 620; Zou *et al.* 2007, p. 4), with a peak in July and August (Walker and Naugle in press, p. 10). Reduced and delayed West Nile virus transmission in sage-grouse has occurred in years with lower summer temperatures (Naugle *et al.* 2005, p. 621; Walker *et al.* 2007b, p. 694). In non-sagebrush ecosystems, high temperatures associated with drought conditions increase West Nile virus transmission by allowing for more rapid larval mosquito development and shorter virus incubation periods (Shaman *et al.* 2005, p. 134; Walker and Naugle in press, p. 11). Additional details on the impacts of West Nile virus on greater sage-grouse can be found in our recent finding (75 FR 13910; March 23, 2010).

Greater sage-grouse congregate in mesic habitats in the mid-late summer (Connelly *et al.* 2000, p. 971), thereby increasing their risk of exposure to mosquitoes. If West Nile virus outbreaks coincide with drought conditions that aggregate birds in habitat near water sources, the risk of exposure to West Nile virus will be elevated (Walker and Naugle in press, p. 11). Greater sage-grouse inhabiting higher elevation sites in summer (similar to the northern portion of the Gunnison Basin) are likely less vulnerable to contracting West Nile virus than birds at lower elevation (similar to Dry Creek Basin of the San Miguel population) as ambient temperatures are typically cooler (Walker and Naugle in press, p. 11).

West Nile Virus has caused population declines in wild bird populations on the local and regional scale (Walker and Naugle in press, p. 7) and has been shown to affect survival rates of greater sage-grouse (Naugle *et al.* 2004, p. 710; Naugle *et al.* 2005, p. 616). Experimental results, combined with field data, suggest that a widespread West Nile virus infection has negatively affected greater sage-grouse (Naugle *et al.* 2004, p. 711; Naugle *et al.* 2005, p. 616). Summer habitat requirements of sage-grouse potentially increase their exposure to West Nile virus. Greater sage-grouse are considered to have a high susceptibility to West Nile virus, with resultant high levels of mortality (Clark *et al.* 2006, p. 19; McLean 2006, p. 54). Data collected on greater sage-grouse suggest that sage-grouse do not develop a resistance to the disease, and death is certain once an individual is exposed (Clark *et al.* 2006, p. 18).

To date, West Nile virus has not been documented in Gunnison sage-grouse despite the presence of West Nile virus-positive mosquitoes in nearly all counties throughout their range (Colorado Department of Public Health 2004, pp. 1-5; U.S. Centers for Disease Control and Prevention 2004, entire). We do not know whether this is a result of the small number of birds that are marked, the relatively few birds that exist in the wild, or unsuitable conditions in Gunnison sage-grouse habitat for the virus to become virulent. West Nile virus activity within the range of Gunnison sage-grouse has been low compared to other parts of Colorado and the western United States. A total of 77 wild bird (other than Gunnison sage-grouse) deaths resulting from West Nile virus have been confirmed from counties within the occupied range of Gunnison sage-grouse since 2002 when reporting began in Colorado (USGS 2009, entire). Fifty-two (68 percent) of these West-Nile-virus-caused bird deaths were reported from Mesa County (where the Pĩnon Mesa population is found). Only San Miguel, Dolores, and Hinsdale Counties had no confirmed avian mortalities resulting from West Nile virus.

Walker and Naugle (in press, p. 27) predict that West Nile virus outbreaks in small, isolated, and genetically depauperate populations could reduce sage-grouse numbers below a threshold from which recovery is unlikely because of limited or nonexistent demographic and genetic exchange from adjacent populations. Thus, a West Nile virus outbreak in any Gunnison sage-grouse population, except perhaps the Gunnison Basin population, could limit the persistence of these populations.

Although West Nile virus is a potential threat, the best available information suggests that it is not currently a significant threat to Gunnison sage-grouse, since West Nile virus has not been documented in Gunnison sage-grouse despite the presence of West Nile virus-positive mosquitoes in nearly all counties throughout their range. No other diseases or parasitic infections are considered to be threatening the Gunnison sage-grouse at this time.

Predation

Predation is the most commonly identified cause of direct mortality for sage-grouse during all life stages (Schroeder *et al.* 1999, p. 9; Connelly *et al.* 2000b, p. 228; Connelly *et al.* in press a, p. 23). However, sage-grouse

have co-evolved with a variety of predators, and their cryptic plumage and behavioral adaptations have allowed them to persist despite this mortality factor (Schroeder *et al.* 1999, p. 10; Coates 2008 p. 69; Coates and Delehanty 2008, p. 635; Hagen in press, p. 3). Until recently, little published information has been available that indicates predation is a limiting factor for the greater sage-grouse (Connelly *et al.* 2004, p. 10-1), particularly where habitat quality has not been compromised (Hagen in press, p. 3). Although many predators will consume sage-grouse, none specialize on the species (Hagen in press, p. 5). Generalist predators have the greatest effect on ground-nesting birds because predator numbers are independent of the density of a single prey source since they can switch to other prey sources when a given prey source (e.g., Gunnison sage-grouse) is not abundant (Coates 2007, p. 4). We believe that the effects of predation observed in greater sage-grouse are applicable to the effects anticipated in Gunnison sage-grouse since overall behavior and life-history traits are similar for the two species.

Major predators of adult sage-grouse include many species including golden eagles (*Aquila chrysaetos*), red foxes (*Vulpes fulva),* and bobcats (*Felis rufus*) (Hartzler 1974, pp. 532-536; Schroeder *et al.* 1999, pp. 10-11; Schroeder and Baydack 2001, p. 25; Rowland and Wisdom 2002, p. 14; Hagen in press, pp. 4-5). Juvenile sage-grouse also are killed by many raptors as well as common ravens (*Corvus corax*), badgers (*Taxidea taxus)*, red foxes, coyotes (*Canis latrans*) and weasels (*Mustela* spp.) (Braun 1995, entire; Schroeder *et al.* 1999, p. 10). Nest predators include badgers, weasels, coyotes, common ravens, American crows (*Corvus brachyrhyncos*) and magpies (*Pica* spp.), elk (*Cervus canadensis*) (Holloran and Anderson 2003, p.309), and domestic cows (*Bovus* spp.) (Coates *et al.* 2008, pp. 425-426). Ground squirrels (*Spermophilus* spp.) also have been identified as nest predators (Patterson 1952, p. 107; Schroeder *et al.* 1999, p. 10; Schroder and Baydack 2001, p. 25), but recent data show that they are physically incapable of puncturing eggs (Holloran and Anderson 2003, p. 309; Coates *et al.* 2008, p. 426; Hagen in press, p. 6). Several other small mammals visited sage-grouse nests in Nevada, but none resulted in predation events (Coates *et al.* 2008, p. 425). The most common predators of Gunnison sage-grouse eggs are weasels, ground squirrels, coyotes, and corvids (Young 1994, p. 37). Most raptor predation of sage-grouse is on juveniles and older age classes (GSRSC 2005, p. 135). Golden eagles were found to be the dominant species recorded perching on power poles in Utah in Gunnison sage-grouse habitat (Prather and Messmer 2009, p. 12). Twenty-two and 40 percent of 111 adult mortalities were the result of avian and mammalian predation, respectively (Childers 2009, p. 7). Twenty-five and 35 percent of 40 chick mortalities were caused by avian and mammalian predation, respectively (Childers 2009, p. 7). A causative agent of mortality was not determined in the remaining depredations observed in the western portion of the Gunnison Basin from 2000 to 2009 (Childers 2009, p. 7).

Adult male Gunnison sage-grouse are very susceptible to predation while on the lek (Schroeder *et al.* 1999, p. 10; Schroeder and Baydack 2001, p. 25; Hagen in press, p. 5), presumably because they are conspicuous while performing their mating displays. Because leks are attended daily by numerous grouse, predators also may be attracted to these areas during the breeding season (Braun 1995, p. 2). Connelly *et al.* (2000b, p. 228) found that among 40 radio-collared males, 83 percent of the mortality was due to predation and 42 percent of those mortalities occurred during the lekking season (March through June). Adult female greater sage-grouse are susceptible to predators while on the nest, but mortality rates are low (Hagen in press, p. 6). Hens will abandon their nest when disturbed by predators (Patterson 1952, p. 110), likely reducing this mortality (Hagen in press, p. 6). Among 77 adult hens, 52 percent of the mortality was due to predation and 52 percent of those mortalities occurred between March and August, which includes the nesting and brood-rearing periods (Connelly *et al.* 2000b, p. 228). Sage-grouse populations are likely more sensitive to predation upon females given the highly negative response of Gunnison sage-grouse population dynamics to adult female reproductive success and chick mortality (GSRSC, 2005, p. 173). Predation of adult sage-grouse is low outside the lekking, nesting, and brood-rearing season (Connelly *et al.* 2000b, p. 230; Naugle *et al.* 2004, p. 711; Moynahan *et al.* 2006, p. 1536; Hagen in press, p. 6).

Estimates of predation rates on juveniles are limited due to the difficulties in studying this age class (Aldridge and Boyce 2007, p. 509; Hagen in press, p. 8). For greater sage-grouse, chick mortality from predation ranged from 10 to 51 percent in 2002 and 2003 on three study sites in Oregon (Gregg *et al.* 2003a, p. 15; 2003b, p. 17). Mortality due to predation during the first few weeks after hatching was estimated to be 82 percent (Gregg *et al.* 2007, p. 648). Survival of juveniles to their first breeding season was estimated to be low (10 percent). It is reasonable, given the sources of adult mortality, to assume that predation is a contributor to the high juvenile mortality rates (Crawford *et al.* 2004, p. 4).

Sage-grouse nests are subject to varying levels of predation. Predation can be total (all eggs destroyed) or partial (one or more eggs destroyed). However, hens abandon nests in either case (Coates, 2007, p. 26). Gregg *et al.* (1994, p. 164) reported that over a 3–year period in Oregon, 106 of 124 nests (84 percent) were preyed upon (Gregg *et al.* 1994, p. 164). Patterson (1952, p.104) reported nest predation rates of 41 percent in Wyoming. Holloran and Anderson (2003, p. 309) reported a predation rate of 12 percent (3 of 26) in Wyoming. Moynahan *et al.* (2007, p. 1777) attributed 131 of 258 (54 percent) nest failures to predation in Montana. Studies have shown that re-nesting rates are low in Gunnison sage-grouse (Young, 1994, p. 44; Childers, 2009, p. 7), suggesting that re-nesting is unlikely to offset losses due to predation. Losses of breeding hens and young chicks to predation potentially can influence overall greater and Gunnison sage-grouse population numbers, as these two groups contribute most significantly to population productivity (GSRSC, 2005, p. 29, Baxter *et al.* 2008, p. 185; Connelly *et al,* in press a, p. 18).

Nesting success of greater sage-grouse is positively correlated with the presence of big sagebrush and grass and forb cover (Connelly *et al.* 2000, p. 971). Females actively select nest sites with these qualities (Schroeder and Baydack 2001, p. 25; Hagen *et al.* 2007, p. 46). Nest predation appears to be related to the amount of herbaceous cover surrounding the nest (Gregg *et al.* 1994, p. 164; Braun 1995, pp. 1-2; DeLong *et al.* 1995, p. 90; Braun 1998; Coggins 1998, p. 30; Connelly *et al.* 2000b, p. 975; Schroeder and Baydack 2001, p. 25; Coates and Delehanty 2008, p. 636). Loss of nesting cover from any source (e.g., grazing, fire) can reduce nest success and adult hen survival. However, Coates (2007, p. 149) found that badger predation was facilitated by nest cover as it attracts small mammals, a badger's primary prey. Similarly, habitat alteration that reduces cover for young chicks can increase their rate of predation (Schroeder and Baydack 2001, p. 27).

In a review of published nesting studies, Connelly *et al.* (in press, p. 14) reported that nesting success was greater in unaltered habitats versus

habitats affected by anthropogenic activities. Where greater sage-grouse habitat has been altered, the influx of predators can decrease annual recruitment into a population (Gregg *et al.* 1994, p. 164; Braun 1995, pp. 1-2; Braun 1998; DeLong *et al.* 1995, p. 91; Schroeder and Baydack 2001, p. 28; Coates 2007, p. 2; Hagen in press, p. 7). Agricultural development, landscape fragmentation, and human populations have the potential to increase predation pressure on all life stages of greater sage-grouse by forcing birds to nest in less suitable or marginal habitats, increasing travel time through altered habitats where they are vulnerable to predation, and increasing the diversity and density of predators (Ritchie *et al.* 1994, p. 125; Schroeder and Baydack 2001, p. 25; Connelly *et al.* 2004, p. 7-23; and Summers *et al.* 2004, p. 523). We believe the aforementioned is also applicable to Gunnison sage-grouse because overall behavior and life-history traits are similar for the two species (Young 1994, p. 4).

Abundance of red fox and corvids, which historically were rare in the sagebrush landscape, has increased in association with human-altered landscapes (Sovada *et al.* 1995, p. 5). In the Strawberry Valley of Utah, low survival of greater sage-grouse may have been due to an unusually high density of red foxes, which apparently were attracted to that area by anthropogenic activities (Bambrough *et al.* 2000). The red fox population has increased within the Gunnison Basin (BLM, 2009, p. 37). Ranches, farms, and housing developments have resulted in the introduction of nonnative predators including domestic dogs (*Canis domesticus*) and cats (*Felis domesticus*) into greater sage-grouse habitats (Connelly *et al.* 2004, p. 12-2). We believe this is also applicable to Gunnison sage-grouse because of the habitat similarities of the two species and similar patterns of human development. Local attraction of ravens to nesting hens may be facilitated by loss and fragmentation of native shrublands, which increases exposure of nests to potential predators (Aldridge and Boyce 2007, p. 522; Bui 2009, p. 32). The presence of ravens was negatively associated with greater sage-grouse nest and brood fate in western Wyoming (Bui 2009, p. 27).

Raven abundance has increased as much as 1,500 percent in some areas of western North America since the 1960s (Coates 2007, p. 5). Breeding bird survey trends from 1966 to 2007 indicate increases throughout Colorado and Utah (USGS, 2009, pp. 1-2). Increases in raven numbers are suggested in the Pĩnon Mesa population, though data have not been collected (CDOW 2009a, p. 110). Human-made structures in the environment increase the effect of raven predation, particularly in low canopy cover areas, by providing ravens with perches (Braun 1998, pp.145-146; Coates 2007, p. 155; Bui 2009, p. 2). Reduction in patch size and diversity of sagebrush habitat, as well as the construction of fences, powerlines and other infrastructure also are likely to encourage the presence of the common raven (Coates *et al.* 2008, p. 426; Bui 2009, p. 4). For example, raven counts have increased by approximately 200 percent along the Falcon-Gondor transmission line corridor in Nevada (Atamian *et al.* 2007, p. 2). Atamian *et al.* (2007, p. 2) found that ravens contributed to lek disturbance events in the areas surrounding the transmission line. However, cause of decline in surrounding sage-grouse population numbers could not be separated from other potential impacts. Holloran (2005, p. 58) attributed increased sage-grouse nest depredation to high corvid abundances, which resulted from anthropogenic food and perching subsidies in areas of natural gas development in western Wyoming. Bui (2009, p. 31) also found that ravens used road networks associated with oil fields in the same Wyoming location for foraging activities. Holmes (2009, pp. 2-4) also found that common raven abundance increased in association with oil and gas development in southwestern Wyoming. Raven abundance was strongly associated with sage-grouse nest failure in northeastern Nevada, with resultant negative effects on sage-grouse reproduction (Coates 2007, p. 130). The presence of high numbers of predators within a sage-grouse nesting area may negatively affect sage-grouse productivity without causing direct mortality. Coates (2007, pp. 85-86) suggested that ravens may reduce the time spent off the nest by female sage-grouse, thereby potentially compromising their ability to secure sufficient nutrition to complete the incubation period.

As more suitable grouse habitat is converted to exurban development, agriculture, or other non-sagebrush habitat types, grouse nesting and brood-rearing become increasingly spatially restricted (Bui 2009, p. 32). As discussed in Factor A, we anticipate a substantial increase in the distribution of residential development throughout the range of Gunnison sage-grouse. This increase will likely cause additional restriction of nesting habitat within the species' range, given removal of sagebrush habitats and the strong selection for sagebrush by the species. Additionally, Gunnison sage-grouse avoid residential development, resulting in functional habitat loss (Aldridge *et al.* 2010, p. 24). Ninety-one percent of nest locations in the western portion of the Gunnison Basin population occur within 35 percent of the available habitat (Aldridge *et al.* 2010, p. 25-26). Unnaturally high nest densities which result from habitat fragmentation or disturbance associated with the presence of edges, fencerows, or trails may increase predation rates by making foraging easier for predators (Holloran 2005, p. C37). Increased nest density could negatively influence the probability of a successful hatch (Holloran and Anderson, 2005, p. 748). The influence of the human footprint in sagebrush ecosystems may be underestimated (Leu and Hanser, in press, pp. 24-25) since it is uncertain how much more habitat sage-grouse (a large landscape-scale species) need for persistence in increasingly fragmented landscapes (Connelly *et al.*, in press, pp. 28-34). Therefore, the influence of ravens and other predators associated with human activities may be underestimated.

Ongoing studies in the San Miguel population suggest that the lack of recruitment in Gunnison sage-grouse is likely due to predation (CDOW 2009a, p. 31). In this area, 6 of 12 observed nests were destroyed by predation, with none of the chicks from the remaining nests surviving beyond two weeks (CDOW 2009a, p. 30). In small and declining populations, small changes to habitat abundance or quality, or in predator abundance, could have large consequences.

Predator removal efforts have sometimes shown short-term gains that may benefit fall populations, but not breeding population sizes (Cote and Sutherland 1997, p. 402; Hagen in press, p. 9; Leu and Hanser in press, p. 27). Predator removal may have greater benefits in areas with low habitat quality, but predator numbers quickly rebound without continual control (Hagen in press, p. 9). Red fox removal in Utah appeared to increase adult greater sage-grouse survival and productivity, but the study did not compare these rates against other non-removal areas, so inferences are limited (Hagen in press, p. 11).

Slater (2003, p. 133) demonstrated that coyote control failed to have an effect on greater sage-grouse nesting success in southwestern Wyoming. However, coyotes may not be an important predator of sage-grouse. In a coyote prey base analysis, Johnson and

Hansen (1979, p. 954) showed that sage-grouse and bird egg shells made up a very small percentage (0.4–2.4 percent) of analyzed scat samples. Additionally, coyote removal can have unintended consequences resulting in the release of smaller predators, many of which, like the red fox, may have greater negative impacts on sage-grouse (Mezquida *et al.* 2006, p. 752).

Removal of ravens from an area in northeastern Nevada caused only short-term reductions in raven populations (less than one year), as apparently transient birds from neighboring sites repopulated the removal area (Coates 2007, p. 151). Additionally, badger predation appeared to partially compensate for decreases due to raven removal (Coates 2007, p. 152). In their review of literature regarding predation, Connelly *et al.* (2004, p. 10-1) noted that only two of nine studies examining survival and nest success indicated that predation had limited a sage-grouse population by decreasing nest success, and both studies indicated low nest success due to predation was ultimately related to poor nesting habitat. Bui (2009, pp. 36-37) suggested removal of anthropogenic subsidies (e.g., landfills, tall structures) may be an important step to reducing the presence of sage-grouse predators. Leu and Hanser (in press, p. 27) also argue that reducing the effects of predation on sage-grouse can only be effectively addressed by precluding these features.

Summary of Predation

Predation has a strong relationship with anthropogenic factors on the landscape, and human presence on the landscape will continue to increase for the foreseeable future.

Gunnison sage-grouse are adapted to minimize predation by cryptic plumage and behavior. Gunnison sage-grouse may be increasingly subject to levels of predation that would not normally occur in the historically contiguous unaltered sagebrush habitats. The impacts of predation on greater sage-grouse can increase where habitat quality has been compromised by anthropogenic activities (exurban development, road development, etc.) (e.g., Coates 2007, p. 154, 155; Bui 2009, p. 16; Hagen in press, p. 12). Landscape fragmentation, habitat degradation, and human populations have the potential to increase predator populations through increasing ease of securing prey and subsidizing food sources and nest or den substrate. Thus, otherwise suitable habitat may change into a habitat sink for grouse populations (Aldridge and Boyce 2007, p. 517).

Anthropogenic influences on sagebrush habitats that increase suitability for ravens may also limit sage-grouse populations (Bui 2009, p. 32). Current land-use practices in the intermountain West favor high predator (in particular, raven) abundance relative to historical numbers (Coates *et al.* 2008, p. 426). The interaction between changes in habitat and predation may have substantial effects to the Gunnison sage-grouse at the landscape level (Coates 2007, p. 3-5). Since the Gunnison and greater sage-grouse have such similar behavior and life-history traits, we believe the current impacts on Gunnison sage-grouse are at least as significant as those documented in greater sage-grouse and to date in Gunnison sage-grouse. Given the small population sizes and fragmented nature of the remaining Gunnison sage-grouse habitat, we believe that the impacts of predation will likely be even greater as habitat fragmentation continues.

The studies presented above for greater sage-grouse suggest that, in areas of intensive habitat alteration and fragmentation, sage-grouse productivity and, therefore, populations could be negatively affected by increasing predation. Nest predation may be higher, more variable, and have a greater impact on the small, fragmented Gunnison sage-grouse populations, particularly the six smallest populations (GSRSC 2005, p. 134). Unfortunately, except for the relatively few studies presented here, data are lacking that link Gunnison sage-grouse population numbers and predator abundance. However, in at least six of the seven populations (Gunnison Basin potentially excluded), where habitats have been significantly altered by human activities, we believe that predation could be limiting Gunnison sage-grouse populations. As more habitats face development, even dispersed development such as that occurring throughout the range of Gunnison sage-grouse, we expect this threat to spread and increase. Studies of the effectiveness of predator control have failed to demonstrate a long-term inverse relationship between the predator numbers and sage-grouse nesting success or population numbers. Therefore, we believe that predation is currently a threat to the Gunnison sage-grouse and will continue to be a threat to the species within the foreseeable future.

Summary of Factor C

We have reviewed the available information on the effects of disease and predation on the Gunnison sage-grouse. The only disease that currently presents a potential impact to the Gunnison sage-grouse is West Nile virus. This virus is distributed throughout most of the species' range. However, despite its near 100 percent lethality, disease occurrence is sporadic in other taxa across the species' range and has not been detected to date in Gunnison sage-grouse. While we have no evidence of West Nile virus acting on the Gunnison sage-grouse, because of its presence within the species' range and the continued development of anthropogenic water sources in the area, the virus may pose a future threat to the species. We anticipate that West Nile virus will persist within the range of Gunnison sage-grouse indefinitely and will be exacerbated by any factor (e.g., climate change) that increases ambient temperatures and the presence of the vector on the landscape.

We believe that existing and continued landscape fragmentation will increase the effects of predation on this species, particularly in the six smaller populations, resulting in a reduction in sage-grouse productivity and abundance in the future.

We have evaluated the best available scientific information regarding disease and predation and their effects on the Gunnison sage-grouse. Based on the information available, we have determined that predation is a significant threat to the species throughout all or a significant portion of its range. Furthermore, we determine that disease is not currently a significant threat but has the potential to become a significant threat at any time.

D. The Inadequacy of Existing Regulatory Mechanisms

Under this factor, we examine whether threats to the Gunnison sage-grouse are adequately addressed by existing regulatory mechanisms. Existing regulatory mechanisms that could provide some protection for Gunnison sage-grouse include: (1) local land use laws, processes, and ordinances; (2) State laws and regulations; and (3) Federal laws and regulations. An example of a regulatory mechanism is the terms and conditions attached to a grazing permit that describe how a permittee will manage livestock on a BLM allotment. They are non-discretionary and enforceable, and are considered a regulatory mechanism under this analysis. Other examples include city or county ordinances, State governmental actions enforced under a State statute or constitution, or Federal action under statute. Actions adopted by local groups, States, or Federal entities that are discretionary or are not enforceable, including conservation

strategies and guidance, are typically not regulatory mechanisms.

Regulatory mechanisms, if they exist, may preclude the need for listing if such mechanisms are judged to adequately address the threat to the species such that listing is not warranted. Conversely, threats on the landscape are exacerbated when not addressed by existing regulatory mechanisms, or when the existing mechanisms are not adequate (or not adequately implemented or enforced). We cannot predict when or how local, State, and Federal laws, regulations, and policies will change; however, most Federal land use plans are valid for at least 20 years. In this section we review actions undertaken by local, State, and Federal entities designed to reduce or remove threats to Gunnison sage-grouse and its habitat.

Local Laws and Regulations

Rangewide approximately 41 percent of occupied Gunnison sage-grouse habitat is privately owned (calculation from Table 1). Gunnison County and San Miguel County, Colorado, are the only local or County entities that have regulations and policy, respectively, that provide a level of conservation consideration for the Gunnison sage-grouse or its habitats on private land (Dolores County 2002; Mesa County 2003; Montrose County 2003). In 2007, the Gunnison County, Colorado Board of County Commissioners approved Land Use Resolution (LUR) Number 07-17 to ensure all applications for land use change permits, including building permits, individual sewage disposal system permits, Gunnison County access permits, and Gunnison County Reclamation permits be reviewed for impact to Gunnison sage-grouse habitat within 1 km (0.6 mile) of an active lek. If impacts are determined to result from a project, impacts are to be avoided, minimized, and/or mitigated. Approximately 79 percent of private land occupied by the Gunnison Basin population is in Gunnison County, and thereby under the purview of these regulations. The remaining 21 percent of the private lands in the Gunnison Basin population is in Saguache County where similar regulations are not in place or applicable. Actions outside the 1 km (0.6 mi) buffer are not subject to Gunnison County LUR 07-17.

Colorado State statute (C.R.S. 30-28-101) exempts parcels of land of 14 ha (35 ac) or more per home from regulation, so county zoning laws in Colorado such as LUR 07-17 only apply to properties with housing densities greater than one house per 14 ha (35 ac). This statute allows these parcels to be exempt from county regulation and may negatively affect Gunnison sage-grouse by allowing for further development, degradation, and loss of the species' habitat. A total of 1,190 parcels, covering 16,351 ha (40,405 ac), within occupied habitat in Gunnison County currently contain development. Of those 1,190 parcels, 851 are less than 14 ha (35 ac) in size and subject to County review. However, those 851 parcels encompass only 13.1 percent of private land area with existing development in occupied habitat within Gunnison County. Parcels greater than 14 ha (35 ac) in size (339 of the 1,190) encompass 86.9 of the existing private land area within occupied habitat within Gunnison County. Cumulatively, 91 percent of the private land within the Gunnison County portion of the Gunnison Basin population that either has existing development or is potentially developable land is allocated in lots greater than 14 ha (35 ac) in size and therefore not subject to Gunnison County LUR 07-17. This situation limits the effectiveness of LUR 07-17 in providing protection to Gunnison sage-grouse in Gunnison County.

The only required review by Gunnison County under LUR 07-17 pertains to the construction of roads, driveways, and individual building permits. Of the 79 percent of area occupied by the Gunnison Basin population that falls within Gunnison County, 37 percent of the private land is not subject to the County LUR because the action would not be within 1 km (0.6 mi) of a lek. Gunnison County reviewed 231 projects from July 2006 through November 2009 under the LUR for impacts to Gunnison sage-grouse. All but one project was within the overall boundary of the Gunnison Basin population's occupied habitat, with most of the activity focused in the northern portion of this population. All of these projects were approved and allowed to proceed. The majority of these projects were within established areas of development, and some were for activities such as outbuildings or additions to existing buildings; nonetheless, these projects provide an indication of further encroachment and fragmentation of the remaining occupied habitat. Nineteen percent (44) of the projects were within 1 km (0.6 mi) of a lek. Nineteen percent (45) of the projects contained language within the permit that established conditions for control of pets. The use of the 1-km (0.6-mi) buffer around the lek provides some conservation benefit to the grouse. This buffer is not as large as that recommended by GSRSC (2005 entire) to meet all the species' year-round life-history needs (6.4 km (4 mi)). Because research summarized in GSRSC (2005 entire) has shown that impacts occur up to 6.4 km (4 mi) from the point of disturbance, these minimally or unregulated negative impacts will continue to fragment the habitat and thus have substantial impacts on the local, as well as landscape, conservation of the species. In summary, Gunnison County is to be highly commended for the regulatory steps they have implemented. However, the scope and implementation of that regulatory authority is limited in its ability to effectively and collectively conserve Gunnison sage-grouse due to the County's limited authority within the Gunnison Basin portion of the species' range.

In 2005, San Miguel County amended its Land Use Codes to include consideration and implementation, to the extent possible, of conservation measures recommended in GSRSC (2005, entire) for the Gunnison sage-grouse when considering land use activities and development located within its habitat (San Miguel County 2005). The County is only involved when there is a request for a special use permit, which limits their involvement in review of projects adversely affecting Gunnison sage-grouse and their habitat and providing recommendations. Conservation measures are solicited from the CDOW and a local Gunnison sage-grouse working group. Implementation of the conservation measure is dependent on negotiations between the County and the applicant. Some positive measures (e.g., locating a special use activity outside grouse habitat, establishing a 324-ha (800-ac) conservation easement; implementing speed limits to reduce likelihood of bird/vehicle collisions) have been implemented as a result of the policy. Typically, the County has not been involved with residential development, and most measures that result from discussions with applicants result in measures that the Service considers minimization, not mitigation measures, but which the County considers mitigation (Henderson 2010, pers. comm.). The San Miguel County Land Use Codes provide some conservation benefit to the species through some minimization of impacts and encouraging landowners to voluntarily minimize/mitigate impacts of residential development in grouse habitat. However, the codes allow for limited regulatory authority but are not sufficient to prevent or mitigate for the continued degradation and

fragmentation of Gunnison sage-grouse habitat.

In addition to the county regulations, Gunnison County hired a Gunnison Sage-grouse Coordinator (2005 to present) and organized a Strategic Committee (2005 to present) to facilitate implementation of conservation measures in the Gunnison Basin under both the local Conservation Plan and Rangewide Conservation Plan (RCP) (GSRSC 2005). San Miguel County hired a Gunnison Sage-grouse Coordinator for the San Miguel Basin population in March 2006. The Crawford working group hired a Gunnison sage-grouse coordinator in December 2009. Saguache County has applied for a grant to hire a part-time coordinator for the Poncha Pass population (grant status still pending). These efforts facilitate coordination relative to sage-grouse management and reflect positively on these Counties' willingness to conserve Gunnison sage-grouse, but have no regulatory authority. None of the other Counties with Gunnison sage-grouse populations have regulations, or staff, that implement regulation or policy review that consider the conservation needs of Gunnison sage-grouse. The inadequacy of existing regulatory mechanisms that address habitat loss, fragmentation, and degradation, in the other populations constitutes a threat to those populations.

Conservation measures that have regulatory authority that have been implemented as a result of the aforementioned collective efforts include: closing of shed antler collection in the Gunnison Basin by the Colorado Wildlife Commission due to its disturbance of Gunnison sage-grouse during the early breeding season; and a BLM/USFS/Gunnison County/CDOW collective effort to implement and enforce road closures during the early breeding season (March 15 to May 15). These regulatory efforts have provided benefits to Gunnison sage-grouse during the breeding season. However, these measures do not adequately address the primary threat to the species of fragmentation of the habitat.

Habitat loss is not regulated or monitored in Colorado counties where Gunnison sage-grouse occur. Therefore, conversion of agricultural land from one use to another, such as native pasture containing sagebrush converted to another use, such as cropland, would not normally come before a county zoning commission. Based on the information we have available for the range of the species, we do not believe that habitat loss from conversion of sagebrush habitat to agricultural lands is occurring at a level that makes it a threat. The permanent loss, and associated fragmentation and degradation, of sagebrush habitat is considered the largest threat to Gunnison sage-grouse (GSRSC 2005, p. 2). The minimally regulated residential/exurban development found throughout the vast majority of the species range is a primary cause of this loss, fragmentation, and degradation of Gunnison sage-grouse habitat. We are not aware of any existing local regulatory mechanisms that adequately address this threat.

We recognize that county or city ordinances in San Juan County, Utah, that address agricultural lands, transportation, and zoning for various types of land uses have the potential to influence sage-grouse. However, we are not aware of any existing County regulations that provide adequate regulatory mechanisms to address threats to the Gunnison sage-grouse and its habitat.

Each of the seven populations of Gunnison sage-grouse has a Conservation Plan written by the respective local working group with publication dates of 1999 to 2009. These plans provide recommendations for management of Gunnison sage-grouse and have been the basis for identifying and prioritizing local conservation efforts, but do not provide regulatory protection for Gunnison sage-grouse or its habitat.

State Laws and Regulations

State laws and regulations provide specific authority for sage-grouse conservation over lands that are directly owned by the State, provide broad authority to regulate and protect wildlife on all lands within their borders, and provide a mechanism for indirect conservation through regulation of threats to the species (e.g., noxious weeds).

Colorado Revised Statutes, Title 33, Article 1 gives CDOW responsibility for the management and conservation of wildlife resources within State borders. Title 33 Article 1-101, Legislative Declaration requires a continuous operation of planning, acquisition, and development of wildlife habitats and facilities for wildlife-related opportunities. The CDOW is required by statute (C.R.S. 106-7-104) to provide counties with information on "significant wildlife habitat," and provide technical assistance in establishing guidelines for designating and administering such areas, if asked. The CDOW also has authority to regulate possession of the Gunnison sage-grouse, set hunting seasons, and issue citations for poaching. These authorities provide individual Gunnison sage-grouse with protection from direct human-caused mortality to the level that hunting is not considered a threat to the species (see Factor B discussion, above). The Colorado Wildlife Commission is currently considering whether to include the Gunnison sage-grouse as an endangered or threatened species in accordance with Administrative Directive W-7 (State of Colorado, 2007, entire). These authorities do not regulate the primary threat to the species of fragmentation of habitat as described in Factor A.

The Wildlife Resources Code of Utah (Title 23) provides UDWR the powers, duties, rights, and responsibilities to protect, propagate, manage, conserve, and distribute wildlife throughout the State. Section 23-13-3 declares that wildlife existing within the State, not held by private ownership and legally acquired, is property of the State. Sections 23-14-18 and 23-14-19 authorize the Utah Wildlife Board to prescribe rules and regulations for the taking and/or possession of protected wildlife, including Gunnison sage-grouse. These authorities provide adequate protection to individual Gunnison sage-grouse from direct, human-caused mortality to the level that hunting is not considered a threat to the species (see Factor B discussion, above). However, these laws and regulations do not provide the regulatory authority needed to conserve sage-grouse habitats from the threats described in Factor A.

Gunnison sage-grouse are managed by CDOW and UDWR on all lands within each State as resident native game birds. In both States this classification allows the direct human taking of the bird during hunting seasons authorized and conducted under State laws and regulations. In 2000, CDOW closed the hunting season for Gunnison sage-grouse in the Gunnison Basin, the only area then open to hunting for the species. The hunting season for Gunnison sage-grouse in Utah has been closed since 1989. The Gunnison sage-grouse is listed as a species of special concern in Colorado, as a sensitive species in Utah, and as a Tier I species under the Utah Wildlife Action Plan, providing heightened priority for management (CDOW 2009a, p. 40; UDWR 2009, p. 9). The Colorado Wildlife Commission is currently considering a proposal from CDOW to list the Gunnison sage-grouse as a State endangered or threatened species. State listed species will be the focus of conservation actions such as monitoring, research, enhancement, restoration, or inventory, and will receive preferential consideration in the

annual budget development process (State of Colorado, 2007, p. 1). Hunting and other State regulations that deal with issues such as harassment provide adequate protection for individual birds (see discussion under Factor B), but do not protect the habitat. While we strongly support the use of regulatory mechanisms to control hunting of the species, the protection afforded through the aforementioned State regulatory mechanisms is limited.

Easements that prevent long-term or permanent habitat loss by prohibiting development are held by CDOW, UDWR, Natural Resources Conservation Service (NRCS), NPS, and non-governmental organizations (Table 4). Although the decision of whether to enter into a conservation easement is voluntary on the part of the landowner, conservation easements are legally binding documents. Therefore, we have determined that perpetual conservation easements offer some level of regulatory protection to the species. Some of the easements include conservation measures that are specific for Gunnison sage-grouse, while many are directed at other species, such as big game (GSRSC 2005, pp. 59-103). Some of these easements protect existing Gunnison sage-grouse habitat. Sixty-nine percent of the area under conservation easements have land cover types other than agricultural (covering 31 percent) that provide habitat for Gunnison sage-grouse. However, considering that the total easements recorded to date cover only 5.1 percent of private lands rangewide, that not all easements have sage-grouse specific habitat or conservation measures, and their scattered distribution throughout the range of the species, we believe that while easements provide some level of protection from future development, they are not sufficient to ameliorate the threat of loss and fragmentation of Gunnison sage-grouse habitat. We believe this to be true now and into the future, especially considering the costs of purchasing easements when compared to the cost paid for development of those lands, and money available through all sources to purchase easements. In addition, because entering into a conservation easement is voluntary on the part of the landowner, we cannot be sure that any future conservation easements will occur in such a configuration and magnitude that they will offer the species or its habitat substantial protection.

TABLE 4. AREA OF CONSERVATION EASEMENTS IN HECTARES (HA) AND ACRES (AC) BY POPULATION AND PERCENTAGE OF OCCUPIED HABITAT IN CONSERVATION EASEMENTS AS OF SEPTEMBER 2009.

Population	hectares	acres	Percent of Occupied Habitat in Respective Population
Gunnison Basin	11,334	28,008	4.7
Piñon Mesa	4,270	10,551	27.1
Cerro Summit-Cimarron-Sims Mesa	1,395	3,447	9.3
Monticello	1,036	2,560	3.6
San Miguel Basin	843	2,084	2.1
Dove Creek Group	330	815	2.0
Crawford	249	616	1.8
Poncha Pass	0	0	0
Rangewide	19,457	48,081	5.1

The CDOW has been implementing the CCAA referenced earlier in this document. As of February 2010, 4 landowners have completed Certificates of Inclusion (CI) for their properties enrolling 2,581 ha (6,377 ac). Because the Service issues a permit to applicants with an approved CCAA, we have some regulatory oversight over the implementation of the CCAA. However, permit holders and landowners can voluntarily opt out of the CCAA at any time. Thus, the CCAA provides important conservation measures that assist the species, and provides regulatory protection to enrolled landowners, but due to its voluntary nature, provides no regulatory protection. An additional 38 landowners (totaling approximately 18,211 ha (45,000 ac) within Gunnison sage-grouse occupied habitat), have worked with the CDOW to complete baseline reports in preparation for issuance of CIs. The reports describe property infrastructure and number of acres of Gunnison sage-grouse seasonal habitat. A CDOW review of all these reports and the condition of the habitat is pending. The CCAA/CI efforts described in this paragragh will provide conservation benefits to Gunnison sage-grouse throughout their range where they are in place (27 in the Gunnison Basin, 3 in San Miguel, 2 in Crawford, 5 in Pĩnon Mesa, 1 in Dove Creek). Even assuming the area of all landowners expressing interest and with completed baselines will ultimately be covered under CIs, the fact remains that these properties constitute only 13 percent of the total private land throughout the species range and that they are scattered throughout the species range. Therefore, we do not believe the CCAA/CI efforts would provide adequate regulatory coverage to ensure the long-term conservation of the species on private lands.

On April 22, 2009, the Governor of Colorado signed into law new rules (House Bill 1298) for the Colorado Oil and Gas Conservation Commission (COGCC), which is the entity responsible for permitting oil and gas well development in Colorado (COGCC 2009, entire). The rules went into effect on private lands on April 1, 2009, and on Federal lands July 1, 2009. The new rules require that permittees and

operators determine whether their proposed development location overlaps with "sensitive wildlife habitat," or is within a restricted surface occupancy (RSO) area. For Gunnison sage-grouse, areas within 1 km (0.6 mi) of an active lek can be designated as RSOs (CDOW 2009a, p. 27), and surface area occupancy will be avoided except in cases of economic or technical infeasibility (CDOW 2009a, p. 27). Areas within approximately 6.4 km (4 mi) of an active lek are considered sensitive wildlife habitat (CDOW 2009a, p. 27) and the development proponent is required to consult with the CDOW to identify measures to (1) avoid impacts on wildlife resources, including sage-grouse; (2) minimize the extent and severity of those impacts that cannot be avoided; and (3) mitigate those effects that cannot be avoided or minimized (COGCC 2009, section 1202.a). The COGCC will consider CDOW's recommendations in the permitting decision, although the final permitting and conditioning authority remains with COGCC. As stated in Section 1202.d of the new rules, consultation with CDOW is not required under certain circumstances such as, the issuance of a variance by the Director of the COGCC, the existence of a previously CDOW-approved wildlife mitigation plan, and others. Other categories for potential exemptions also can be found in the new rules (e.g., 1203.b).

Because the new rules have only been in place for less than a year and their implementation is still being discussed, it remains to be seen what level of protection will be afforded to Gunnison sage-grouse. The new rules could provide for greater consideration of the conservation needs of the species. It should be noted that leases that have already been approved but not drilled (e.g., COGCC 2009, 1202.d(1)), or drilling operations that are already on the landscape, may continue to operate without further restriction into the future. We are not aware of any situations where RSOs have been effectively applied or where conservation measures have been implemented for potential oil and gas development impacts to Gunnison sage-grouse on private lands underlain with privately owned minerals, which are regulated by the appropriate governing bodies.

Colorado and Utah have laws that directly address the priorities for use of State school section lands, which require that management of these properties be based on maximizing financial returns. State school section lands account for only one percent of occupied habitat in Colorado and one percent in Utah, so impacts may be considered negligible. We are not aware of any conservation measures that will be implemented under regulatory authority for Gunnison sage-grouse on State school section lands, other than a request to withdraw or apply "no surface occupancy" and conservation measures from the RCP (GSRSC 2005) to four sections available for oil and gas leasing in the San Miguel Basin population (see Factor A for further discussion). The State Land Board (SLB) recently purchased the Miramonte Meadows property (approximately 809 ha (2,000 ac) next to the Dan Noble State Wildlife Area (SWA). Roughly 526 ha (1,300 ac) is considered prime Gunnison sage-grouse habitat (Garner 2010, pers. comm.). Discussions with the SLB have indicated a willingness to implement habitat improvements (juniper removal) on the property. They have also accepted an application to designate the tract as a "Stewardship Trust" parcel. The Stewardship Trust program is capped at 119,383 to 121,406 ha (295,000 to 300,000 ac), and no more property can be added until another tract is removed from the program. Because of this cap, it is unknown if or when the designation of the tract as a Stewardship Trust parcel may occur. The scattered nature of State school sections (single sections) across the landscape and the requirement to conduct activities to maximize financial returns minimize the likelihood of implementation of measures that will benefit Gunnison sage-grouse. Thus, mechanisms present on State trust lands are inadequate to minimize degradation and fragmentation of habitat and thus ensure conservation of the species.

Some States require landowners to control noxious weeds, a potential habitat threat to sage-grouse (as discussed in Factor A). The types of plants considered to be noxious weeds vary by State. Cheatgrass is listed as a Class C species in Colorado (Colorado Department of Agriculture 2010, p. 3). The Class C designation delegates to local governments the choice of whether or not to implement activities for the control of cheatgrass. Gunnison, Saguache, and Hinsdale Counties target cheatgrass with herbicide applications (GWWC 2009, pp. 2- 3). The CDOW annually sprays for weeds on SWAs (CDOW 2009a, p. 106). The State of Utah does not consider cheatgrass as noxious within the State (Utah Department of Agriculture 2010, p. 1) nor in San Juan County (Utah Department of Agriculture 2010a, p. 1). The laws dealing with other noxious and invasive weeds may provide some protection for sage-grouse in local areas by requiring some control of the invasive plants, although large-scale control of the most problematic invasive plants is not occurring. Rehabilitation and restoration techniques for sagebrush habitats are mostly unproven and experimental (Pyke in press, p. 25). Regulatory authority has not been demonstrated to be effective in addressing the overall impacts of invasive plants on the degradation and fragmentation of sagebrush habitat within the species range.

Federal Laws and Regulations

Gunnison sage-grouse are not covered or managed under the provisions of the Migratory Bird Treaty Act (16 U.S.C. 703-712) because they are considered resident game species. Federal agencies are responsible for managing 54 percent of the total Gunnison sage-grouse habitat. The Federal agencies with the most sagebrush habitat are BLM, an agency of the Department of the Interior, and USFS, an agency of the Department of Agriculture. The NPS in the Department of the Interior also has responsibility for lands that contain Gunnison sage-grouse habitat.

BLM

About 42 percent of Gunnison sage-grouse occupied habitat is on BLM-administered land (Table 1 details percent ownership within each population). The Federal Land Policy and Management Act of 1976 (FLPMA) (43 U.S.C. 1701 *et seq.*) is the primary Federal law governing most land uses on BLM-administered lands. Section 102(a)(8) of FLPMA specifically recognizes wildlife and fish resources as being among the uses for which these lands are to be managed. Regulations pursuant to FLPMA and the Mineral Leasing Act (30 U.S.C. 181 *et seq.*) that address wildlife habitat protection on BLM-administered land include 43 CFR 3162.3-1 and 43 CFR 3162.5-1; 43 CFR 4120 *et seq.*; and 43 CFR 4180 *et seq.*

Gunnison sage-grouse have been designated as a BLM Sensitive Species since they were first identified and described in 2000 (BLM 2009, p. 7). The management guidance afforded sensitive species under BLM Manual 6840 – Special Status Species Management (BLM 2008, entire) states that "Bureau sensitive species will be managed consistent with species and habitat management objectives in land use and implementation plans to promote their conservation and to minimize the likelihood and need for listing under the ESA" (BLM 2008, p. 05V). BLM Manual 6840 further requires

that Resource Management Plans (RMPs) should address sensitive species, and that implementation "should consider all site-specific methods and procedures needed to bring species and their habitats to the condition under which management under the Bureau sensitive species policies would no longer be necessary" (BLM 2008, p. 2A1). As a designated sensitive species under BLM Manual 6840, sage-grouse conservation must be addressed in the development and implementation of RMPs on BLM lands.

RMPs are the basis for all actions and authorizations involving BLM-administered lands and resources. They establish allowable resource uses, resource condition goals and objectives to be attained, program constraints and general management practices needed to attain the goals and objectives, general implementation sequences, and intervals and standards for monitoring and evaluating the plan to determine its effectiveness and the need for amendment or revision (43 CFR 1601.0-5(k)).

The RMPs provide a framework and programmatic guidance for activity plans, which are site-specific plans written to implement decisions made in a RMP. Examples include Allotment Management Plans that address livestock grazing, oil and gas field development, travel management (motorized and mechanized road and trail use), and wildlife habitat management. Activity plan decisions normally require additional planning and National Environmental Policy Act (NEPA) analysis. If an RMP contains specific direction regarding sage-grouse habitat, conservation, or management, it represents an enforceable regulatory mechanism to ensure that the species and its habitats are considered during permitting and other decision-making on BLM lands.

The BLM manages Gunnison sage-grouse habitat under five existing RMPs. These RMPs contain some specific measures or direction pertinent to management of Gunnison sage-grouse or their habitats. Three of these RMPs (San Juan, Grand Junction, and Uncompahgre– covering all or portions of the San Miguel, Pĩnon Mesa, Crawford, and Cerro Summit–Cimarron–Sims Mesa populations, and the Dove Creek group) are in various stages of revision. All RMPs currently propose some conservation measures (measures that if implemented should provide a level of benefit to Gunnison sage-grouse) outlined in GSRSC (2005, entire) or local Gunnison sage-grouse Conservation Plans through project- or activity-level NEPA reviews (BLM 2009, p. 6). In addition, several offices have undergone other program-level planning, such as travel management, that incorporate some conservation measures to benefit the species (BLM 2009, p. 6). However, the information provided to us by the BLM in Colorado did not specify what requirements, direction, measures, or guidance will ultimately be included in the revised Colorado RMPs to address threats to sage-grouse and sagebrush habitat. Additionally we do not know the effectiveness of these proposed measures.

We do not have information on RMP implementation by Utah BLM. Therefore, we cannot assess the future value of BLM RMPs as regulatory mechanisms for the conservation of the Gunnison sage-grouse. Current BLM RMPs provide some limited regulatory authority as they are being implemented through project-level planning (e.g., travel management (the management of the motorized and nonmotorized use of public lands) and grazing permit renewals). We do not know the final measures that will be included in the revised RMPs and therefore what will be implemented, so we cannot evaluate their effectiveness. Based on modeling results demonstrating the effects of roads on Gunnison sage-grouse (Aldridge and Saher 2010 entire – discussed in detail in Factor A), we believe that implementation of even the most restrictive travel management alternatives proposed by the BLM and USFS will still result in further degradation and fragmentation of Gunnison sage-grouse habitat in the Gunnison Basin.

In addition to land use planning, BLM uses Instruction Memoranda (IM) to provide instruction to district and field offices regarding specific resource issues. Instruction Memoranda are guidance that require a process to be followed but do not mandate results. Additionally, IMs are of short duration (1 to 2 years) and are intended to address resource concerns by providing direction to staff until a threat passes or the resource issue can be addressed in a long-term planning document. BLM issued IM Number CO-2005-038 on July 12, 2005, stating BLM's intent and commitment to assist with and participate in the implementation of the RCP. Although this IM has not been formally updated or reissued, it continues to be used for BLM-administered lands in the State (BLM 2009, p. 6).

The BLM has regulatory authority for oil and gas leasing on Federal lands and on private lands with a severed Federal mineral estate, as provided at 43 CFR 3100 *et seq.*, and they are authorized to require stipulations as a condition of issuing a lease. The BLM's planning handbook has program-specific guidance for fluid minerals (which include oil and gas) that specifies that RMP decisions will identify restrictions on areas subject to leasing, including closures, as well as lease stipulations (BLM 2000, Appendix C, p.16). The handbook also specifies that all stipulations must have waiver, exception, or modification criteria documented in the plan, and notes that the least restrictive constraint to meet the resource protection objective should be used (BLM 2000, Appendix C, p. 16). The BLM has regulatory authority to condition "Application for Permit to Drill" authorizations, conducted under a lease that does not contain specific sage-grouse conservation stipulations, but utilization of conditions is discretionary and we are uncertain as to how this authority will be applied. Also, oil and gas leases have a 200-m (650-ft) stipulation, which allows movement of the drilling area by that distance to avoid sensitive resources. Many of the BLM field offices work with the operators to move a proposed drilling site farther or justify such a move through the site-specific NEPA process.

For existing oil and gas leases on BLM land in occupied Gunnison sage-grouse habitat, oil and gas companies can conduct drilling operations if they wish, but are always subject to permit conditions. The BLM has stopped issuing new drilling leases in occupied sage-grouse habitat in Colorado at least until the new RMPs are in place. All occupied habitat in the Crawford Area and Gunnison Basin populations are covered by this policy. However, leases already exist in 17 percent of the Pĩnon Mesa population, and 49 percent of the San Miguel Basin population. Given the already small and fragmented nature of the populations where oil and gas leases are likely to occur, additional development within occupied habitat would negatively impact those populations by causing additional actual and functional habitat loss and fragmentation. Since we do not know what minimization and mitigation measures might be applied, we cannot assess the overall conservation impacts to those populations.

The oil and gas leasing regulations authorize BLM to modify or waive lease terms and stipulations if the authorized officer determines that the factors leading to inclusion of the term or stipulation have changed sufficiently to no longer justify protection, or if proposed operations would not cause unacceptable impacts (43 CFR 3101.1-

4). The Service has no information indicating that the BLM has granted any waivers of stipulations pertaining to the Gunnison sage-grouse and their habitat.

The Energy Policy and Conservation Act of 2000 included provisions requiring the Secretary of the Department of the Interior to conduct a scientific inventory of all onshore Federal lands to identify oil and gas resources underlying these lands and the nature and extent of any restrictions or impediments to the development of such resources (U.S.C. Title 42, Chapter 77, §6217(a)). On May 18, 2001, President Bush signed Executive Order 13212-Actions to Expedite Energy-Related Projects (66 FR 28357, May 22, 2001), which states that the executive departments and agencies shall take appropriate actions, to the extent consistent with applicable law, to expedite projects that will increase the production, transmission, or conservation of energy. The Executive Order specifies that this includes expediting review of permits or taking other actions as necessary to accelerate the completion of projects, while maintaining safety, public health, and environmental protections. Due to the relatively small amount of energy development activities occurring within Gunnison sage-grouse habitat (with the exception of the Dry Creek Basin subpopulation of the San Miguel population), we believe that energy development activities are not a significant threat. However, given scenarios such as Dry Creek Basin, if the level of energy development activities should increase, current regulations and policies do not provide adequate regulatory protection to prevent oil and gas development from becoming a threat to this subpopulation.

As stated previously, Gunnison sage-grouse are considered a BLM Sensitive Species and therefore receive Special Status Species management considerations. The BLM regulatory authority for grazing management is provided at 43 CFR 4100 (Regulations on Grazing Administration Exclusive of Alaska). Livestock grazing permits and leases contain terms and conditions determined by BLM to be appropriate to achieve management and resource condition objectives on the public lands and other lands administered by BLM, and to ensure that habitats are, or are making significant progress toward being, restored or maintained for BLM special status species (43 CFR 4180.1(d)). The State or regional standards for grazing administration must address habitat for endangered, threatened, proposed, candidate, or special status species, and habitat quality for native plant and animal populations and communities (43 CFR 4180.2(d)(4) and (5)). The guidelines must address restoring, maintaining, or enhancing habitats of BLM special status species to promote their conservation, as well as maintaining or promoting the physical and biological conditions to sustain native populations and communities (43 CFR 4180.2(e)(9) and (10). The BLM is required to take appropriate action not later than the start of the next grazing year upon determining that existing grazing practices or levels of grazing use are significant factors in failing to achieve the standards and conform with the guidelines (43 CFR 4180.2(c)).

The BLM agreed to work with their resource advisory councils to expand the rangeland health standards required under 43 CFR 4180 so that there are public land health standards relevant to all ecosystems, not just rangelands, and that they apply to all BLM actions, not just livestock grazing (BLM Manual 180.06.A). Both Colorado and Utah have resource advisory councils. Within the Gunnison Basin population, 16 percent of the BLM and USFS allotment management plans in occupied habitat currently have incorporated Gunnison sage-grouse habitat objectives (USFWS, 2010c, entire). Rangewide, of the offices providing information specific to allotment management plans, only 24 percent of 148 BLM and USFS grazing allotments have thus far incorporated Gunnison sage-grouse habitat objectives into the allotment management plans or in permit renewals. Land health objectives were being met in 37 of the 80 (46 percent) BLM active allotments for which data were reported. Land Health Assessments (LHAs) were not conducted in an additional 20 allotments.

The BLM Gunnison Field Office conducted Gunnison sage-grouse habitat assessments in two major occupied habitat locations in the Gunnison Basin population quantifying vegetation structural characteristics and plant species diversity. Data were collected and compared to Gunnison sage-grouse Structural Habitat Guidelines (GSRSC, 2005, Appendix H) during optimal growing conditions in these two major occupied areas. Guidelines for sage cover, grass cover, forb cover, sagebrush height, grass height, and forb height were met in 45, 30, 25, 75, 81, and 39 percent, respectively, of 97 transects (BLM 2009, pp. 31-32). Using the results of the two assessments along with results from LHAs, habitat conditions are not being adequately managed to meet the life history requirements of Gunnison sage-grouse in the majority of the Gunnison Basin. Only 40 percent of the allotments in the San Miguel population were meeting LHA objectives. This data suggests that regulatory mechanisms applied within livestock grazing permits and leases are not being implemented such that they ensure that habitats within two of the largest Gunnison sage-grouse populations are making significant progress toward being restored or maintained for Gunnison sage-grouse.

USFS

The USFS manages 10 percent of the occupied Gunnison sage-grouse habitat (Table 1). Management of National Forest System lands is guided principally by the National Forest Management Act (NFMA) (16 U.S.C. 1600-1614, August 17, 1974, as amended). The NFMA specifies that all National Forests must have a Land and Resource Management Plan (LRMP) (16 U.S.C. 1600) to guide and set standards for all natural resource management activities on each National Forest or National Grassland. The NFMA requires USFS to incorporate standards and guidelines into LRMPs (16 U.S.C. 1600). USFS conducts NEPA analysis on its LRMPs, which include provisions to manage plant and animal communities for diversity, based on the suitability and capability of the specific land area in order to meet overall multiple-use objectives. The USFS planning process is similar to that of BLM.

The Gunnison sage-grouse is a USFS sensitive species in both Region 2 (Colorado) and Region 4 (Utah). USFS policy provides direction to analyze potential impacts of proposed management activities to sensitive species in a biological evaluation. The forests within the range of sage-grouse provide important seasonal habitats for the species, particularly the Grand Mesa, Uncompahgre, and Gunnison (GMUG) National Forests. The 1991 Amended Land and Resource Management Plan for the GMUG National Forests has not directly incorporated Gunnison sage-grouse conservation measures or habitat objectives. The Regional Forester signed the RCP and as such has agreed to follow and implement those recommendations. Three of the 34 grazing allotments in occupied grouse habitat have incorporated Gunnison sage-grouse habitat objectives. To date USFS has not deferred or withdrawn oil and gas leasing in occupied habitat, but sage-grouse conservation measures can be included at the "Application for Permit to Drill" stage. The BLM, which regulates oil and gas leases on USFS lands, has the authority to defer leases.

However, the only population within USFS lands that is in areas of high or even medium potential for oil and gas reserves is the San Miguel Basin, and USFS lands only make up 1.4 percent of that population (GSRSC 2005, D-8). While consideration as a sensitive species and following the recommendations contained in the Gunnison sage-grouse Rangewide Conservation Plan (GSRSC 2005, entire) can provide some conservation benefits, they are voluntary in nature. Considering the aforementioned, the USFS has minimal regulatory authority that has been implemented to provide for the long-term conservation of Gunnison sage-grouse and its habitat.

NPS

The NPS manages two percent of occupied Gunnison sage-grouse habitat (Table 1), which means that there is little opportunity for the agency to affect range-wide conservation of the species. The NPS Organic Act (39 Stat. 535; 16 U.S.C. 1, 2, 3, and 4) states that NPS will administer areas under their jurisdiction "by such means and measures as conform to the fundamental purpose of said parks, monuments, and reservations, which purpose is to conserve the scenery and the natural and historical objects and the wild life therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations." Lands in the Black Canyon of the Gunnison National Park and the Curecanti National Recreation Area include portions of occupied habitat of the Crawford and Gunnison Basin populations. The 1993 Black Canyon of the Gunnison Resource Management Plan (NPS 1993, entire) and the 1995 Curecanti National Recreation Area Resource Management Plan (NPS 1995, entire) do not identify any specific conservation measures for Gunnison sage-grouse. However, these Resource Management Plans are outdated and will be replaced with Resource Stewardship Strategies, which will be developed in the next five to seven years. In the mean time, NPS ability to actively manage for species of special concern is not limited by the scope of their management plans.

NPS completed a Fire Management Plan in 2006 (NPS 2006, entire). Both prescribed fire and fire use (allowing wildfires to burn) are identified as a suitable use in Gunnison sage-grouse habitat. However, Gunnison sage-grouse habitat is identified as a Category C area, meaning that while fire is a desirable component of the ecosystem, ecological constraints must be observed. For Gunnison sage-grouse, constraints include limitation of acreage burned per year and limitation of percent of project polygons burned. The NPS is currently following conservation measures in the local conservation plans and the RCP (Stahlnecker 2010, pers. comm.).

In most cases, implementation of NPS fire management policies should result in minimal adverse effects since emphasis is placed on activities that will minimize, or ideally benefit, impacts to Gunnison sage-grouse habitat. Overall, implementation of NPS regulations should minimize impacts to Gunnison sage-grouse. Certain activities, such as human recreation activities occurring within occupied habitat, may have adverse effects, although we believe the limited nature of such activities on NPS lands would limit their impacts on the species and thus not be considered a threat to Gunnison sage-grouse. Grazing management activities on NPS lands are governed by BLM regulations and their implementation.

Summary of Factor D

Gunnison sage-grouse conservation has been addressed in some local, State, and Federal plans, laws, regulations, and policies. Gunnison County has implemented regulatory authority over development within their area of jurisdiction, for which they are to be highly commended. No other counties within the range of the species have implemented such regulations. While regulations implemented in Gunnison County have minimized some impacts, it has not curtailed the habitat loss, fragmentation, and degradation occurring within the County's jurisidictional boundary. Due to the limited scope and applicability of these regulations throughout the range of the species and within all populations, the current local land use or development planning regulations do not provide adequate regulatory authority to protect sage-grouse from development or other harmful land uses that result in habitat loss, degradation, and fragmentation. The CDOW and UDWR have implemented and continue to pursue conservation easements in Colorado and Utah, respectively, to conserve Gunnison sage-grouse habitat and meet the species' needs. These easements provide protection for the species where they occur, but do not cover enough of the landscape to provide for long-term conservation of the species. State wildlife regulations provide protection for individual Gunnison sage-grouse from direct mortality due to hunting but do not protect its habitat from the main threat of loss and fragmentation. Our assessment of the implementation of regulations and associated stipulations guiding exurban development indicates that current regulatory measures do not adequately ameliorate impacts to sage-grouse and its habitat.

Energy development is only considered a threat in the Dry Creek Basin subpopulation of the San Miguel population. For the BLM and USFS, RMPs and LRMPs are mechanisms through which adequate and enforceable protections for Gunnison sage-grouse could be implemented. However, the extent to which appropriate measures to reduce or eliminate threats to sage-grouse resulting from the various activites the agencies manage have been incorporated into those planning documents, or are being implemented, vary across the range. As evidenced by the discussion above, and the ongoing threats described under Factor A, BLM and the USFS are not fully implementing the regulatory mechanisms available to conserve Gunnison sage-grouse and their habitats on their lands.

We have evaluated the best available scientific information on the adequacy of regulatory mechanisms to address threats to Gunnison sage-grouse and its habitats. While 54 percent of Gunnison sage-grouse habitat is managed by Federal agencies, these lands are interspersed with private lands, which do not have adequate regulatory mechanisms to ameliorate the further loss and fragmentation of habitat in all populations. This interspersion of private lands throughout Federal and other public lands extends the negative influence of those activities beyond the actual 41 percent of occupied habitat that private lands overlay. While we are unable to quantify the extent of the impacts on Federal lands resulting from activities on private lands, we have determined that the inadequacy of regulatory mechanisms on private lands as they pertain to human infrastructure development and the inadequate implementation of Federal authorities on some Federal lands pose a significant threat to the species throughout its range. Further, the threat of inadequate regulatory mechanisms is expected to continue or even increase in the future.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Other factors potentially affecting the Gunnison sage-grouse's continued existence include genetic risks, drought, recreational activities, pesticides and herbicides, and contaminants.

Genetics and Small Population Size

Small populations face three primary genetic risks: inbreeding depression; loss of genetic variation; and accumulation of new mutations. Inbreeding can have individual and population consequences by either increasing the phenotypic expression of recessive, deleterious alleles (the expression of harmful genes through the physical appearance) or by reducing the overall fitness of individuals in the population (GSRSC 2005, p.109 and references therein). At the species level, Gunnison sage-grouse have low levels of genetic diversity particularly when compared to greater sage-grouse (Oyler-McCance *et al.* 2005, p. 635). There is no consensus regarding how large a population must be in order to prevent inbreeding depression. However, the San Miguel Basin Gunnison sage-grouse effective population size was below the level at which inbreeding depression has been observed to occur (Stiver *et al.* 2008, p. 479). Lowered hatching success is a well documented correlate of inbreeding in wild bird populations (Stiver *et al.* 2008, p. 479 and references therein). Stiver *et al.* (2008, p. 479) suggested the observed lowered hatching success rate of Gunnison sage-grouse in their study may be caused by inbreeding depression. Similarities of hatchability rates exist among other bird species that had undergone genetic bottlenecks. The application of the same procedures of effective population size estimation as used for the San Miguel Basin to the other Gunnison sage-grouse populations indicated that all populations other than the Gunnison Basin population may have population sizes low enough to induce inbreeding depression; and all populations could be losing adaptive potential (Stiver *et al.* 2008, p. 479).

Population structure of Gunnison sage-grouse was investigated using mitochondrial DNA sequence (mtDNA, maternally inherited DNA located in cellular organelles called mitochondria) and nuclear microsatellite data from seven geographic areas (Cerro Summit–Cimarron–Sims Mesa, Crawford, Gunnison Basin, Curecanti area of the Gunnison Basin, Monticello–Dove Creek, Pĩnon Mesa, and San Miguel Basin) (Oyler-McCance *et al.* 2005, entire). The Cerro Summit–Cimarron–Sims Mesa population was not included in the analysis due to inadequate sample sizes. The Poncha Pass population also was not included as it is composed of individuals transplanted from Gunnison Basin. Oyler-McCance *et al.* (2005, entire) found that levels of genetic diversity were highest in the Gunnison Basin, which consistently had more alleles and most of the alleles present in other populations. All other populations had much lower levels of diversity.

The lower diversity levels are linked to small population sizes and a high degree of geographic isolation. Collectively, the smaller populations contain 24 percent of the genetic diversity of the species. Individually, each of the small populations may not be important genetically to the survival of the species, but collectively it is likely that 24 percent of the genetic diversity is important to future rangewide survival of the species. Some of the genetic makeup contained within the smaller populations (with the potential exception of the Poncha Pass population since it consists of birds from the Gunnison Basin) may be critical to maintaining adaptability in the face of issues such as climate change or other environmental change. All populations sampled were found to be genetically discrete units (Oyler-McCance *et al.* 2005, p. 635), so the loss of any of them would result in a decrease in genetic diversity of the species. In addition, multiple populations across a broad geographic area provide insurance against a single catastrophic event (such as the effects of a significant drought even), and the aggregate number of individuals across all populations increases the probability of demographic persistence and preservation of overall genetic diversity by providing an important genetic reservoir (GSRSC 2005, p. 179). Consequently, the loss of any one population would have a negative effect on the species as a whole.

Historically, the Monticello–Dove Creek, San Miguel, Crawford, and Pĩnon Mesa populations were larger and were connected through more contiguous areas of sagebrush habitat. A 20 percent loss of habitat and 37 percent fragmentation of sagebrush habitat was documented in southwestern Colorado between the late 1950s and the early 1990s (Oyler-McCance *et al.* 2001, p.), which led to the current isolation of these populations and is consistent with the documented low amounts of gene flow and isolation by distance (Oyler-McCance *et al.* 2005, p. 635). However, Oyler-McCance *et al.* (2005, p. 636) noted that a few individuals in their analysis appeared to have the genetic characteristics of a population other than their own, suggesting they were dispersers from a different population. Two probable dispersers were individuals moving from San Miguel into Monticello–Dove Creek and Crawford. The San Miguel population itself appeared to have a mixture of individuals with differing probabilities of belonging to different clusters. This information suggests that the San Miguel population may act as a conduit of gene flow among the satellite populations surrounding the larger Gunnison Basin population. Additionally, another potential disperser into Crawford was found from the Gunnison Basin (Oyler-McCance *et al.* 2005, p. 636). This result is not surprising given their close geographic proximity.

Effective population size (Ne) is an important parameter in conservation biology. It is defined as the size of an idealized population of breeding adults that would experience the same rate of (1) loss of heterozygosity (the amount and number of different genes within individuals in a population), (2) change in the average inbreeding coefficient (a calculation of the amount of breeding by closely related individuals), or (3) change in variance in allele (one member if a pair or series of genes occupying a specific position in a specific chromosome) frequency through genetic drift (the fluctuation in gene frequency occurring in an isolated population) as the actual population. The effective size of a population is often much less than its actual size or number of individuals. As effective population size decreases, the rate of loss of allelic diversity via genetic drift increases. Two consequences of this loss of genetic diversity, reduced fitness through inbreeding depression and reduced response to sustained directional selection (''adaptive potential''), are thought to elevate extinction risk (Stiver *et al.*, 2008, p. 472 and references therein). While no consensus exists on the population size needed to retain a level of genetic diversity that maximizes evolutionary potential (i.e., the ability to adapt to local changes), up to 5,000 greater sage-grouse may be necessary to maintain an effective population size of 500 birds (Aldridge and Brigham, 2003, p. 30). Other recent recommendations also suggest populations of at least 5,000 individuals to deal with evolutionary and demographic constraints (Trail *et al.* 2009, in press, p. 3, and references therein). While the persistence of wild populations is usually influenced more by ecological rather than by genetic effects, once they are reduced in size, genetic factors become increasingly important (Lande 1995, p. 318).

The CDOW contracted for a population viability analysis (PVA) for the Gunnison sage-grouse (GSRSC 2005, Appendix G). The purpose of the Gunnison sage-grouse PVA was to assist

the CDOW in evaluating the relative risk of extinction for each population under the conditions at that time (i.e., the risk of extinction if nothing changed), to estimate relative extinction probabilities and loss of genetic diversity over time for various population sizes, and to determine the sensitivity of Gunnison sage-grouse population growth rates to various demographic parameters (GSRSC 2005, p. 169). The PVA was used as a tool to predict the relative, not absolute or precise, probability of extinction for the different populations under various management scenarios based on information available at that time and with the understanding that no data were available to determine how demographic rates would be affected by habitat loss or fragmentation. The analysis indicated that small populations (< 50 birds) are at a serious risk of extinction within the next 50 years (assuming some degree of consistency of environmental influences in sage-grouse demography). In contrast, populations in excess of 500 birds had an extinction risk of less than 5 percent within the same time period. These results suggested that the Gunnison Basin population is likely to persist long term in the absence of threats acting on it. In the absence of intervention, the Cerro Summit–Cimarron–Sims Mesa and Poncha Pass populations and the Dove Creek group of the Monticello–Dove Creek population were likely to become extirpated (GSRSC 2005, pp. 168-179). Based on 2009 population estimates and an overall declining population trend, the same three populations may soon be extirpated. Additionally, Gunnison sage-grouse estimates in the Crawford and Pĩnon Mesa populations have declined by over 50 percent since the PVA was conducted (Table 2), so they too are likely trending towards extirpation. The San Miguel population has declined by 40 percent since 2004, so cumulative factors may be combining to cause its future extirpation also.

The lack of large expanses of sagebrush habitat required by Gunnison sage-grouse in at least six of the seven Gunnison sage-grouse populations (as discussed in Factor A), combined with the results of the PVA and current population trends suggest that at least five, and most likely six, of the seven Gunnison sage-grouse populations are at high risk of extirpation. The loss of genetic diversity from the extirpation of the aforementioned populations would result in a loss of genetic diversity of the species as a whole and thus contribute to decreased functionality of these remaining populations in maintaining viability and adaptability, as well as the contribution of these populations to connectivity and the continued existence of the entire species.

Six of the seven Gunnison sage-grouse populations may have effective sizes low enough to induce inbreeding depression and all seven could be losing adaptive potential, with the assumption that the five populations smaller than the San Miguel population are exhibiting similar demography to the San Miguel population (Stiver *et al*. 2008, p. 479) and thus trending towards extirpation. Stiver *et al*. (2008, p. 479) suggested that long-term persistence of the six smaller populations would require translocations to supplement genetic diversity. The only population currently providing individuals to be translocated is the Gunnison Basin population, but because of substantial population declines such as those observed between the 2001 and 2004 lek counts (Stiver *et al*., 2008, p. 479), significant questions arise as to whether this population would be able to sustain the loss of individuals required by translocations. Lek counts, and consequently population estimates, especially in the San Miguel Basin and Gunnison Basin populations, have undergone substantial declines (Table 2) since peaks observed in the annual 2004 and 2005 counts, thus making inbreeding depression even more likely to be occurring within all populations except the Gunnison Basin. While we recognize that sage-grouse population sizes are cyclical, and that there are concerns about the statistical reliability of lek counts and the resulting population estimates (CDOW 2009a, pp. 1-3), we nonetheless believe that the overall declining trends of 6 of the 7 Gunnison sage-grouse populations, and for the species as a whole, are such that they are having a significant impact on the species' ability to persist.

In summary, the declines in estimates of grouse numbers since 2005 are likely to contribute to even lower levels of genetic diversity and higher levels of inbreeding depression than previously considered, thus making the species as a whole less adaptable to environmental variables and more vulnerable to extirpation. Based on the information presented above, we have determined that genetic risks related to the small population size of Gunnison sage-grouse are a threat to the species now and in the foreseeable future.

Drought

Drought is a common occurrence throughout the range of the Gunnison and greater sage-grouse (Braun 1998, p. 148) and is considered a universal ecological driver across the Great Plains (Knopf 1996, p.147). Infrequent, severe drought may cause local extinctions of annual forbs and grasses that have invaded stands of perennial species, and recolonization of these areas by native species may be slow (Tilman and El Haddi 1992, p. 263). Drought reduces vegetation cover (Milton *et al.* 1994, p. 75; Connelly *et al.* 2004, p. 7-18), potentially resulting in increased soil erosion and subsequent reduced soil depths, decreased water infiltration, and reduced water storage capacity. Drought also can exacerbate other natural events such as defoliation of sagebrush by insects. For example, approximately 2,544 km^2 (982 mi^2) of sagebrush shrublands died in Utah in 2003 as a result of drought and infestations with the *Aroga* (webworm) moth (Connelly *et al.* 2004, p. 5-11). Sage-grouse are affected by drought through the loss of vegetative habitat components, reduced insect production (Connelly and Braun 1997, p. 9), and potential increased risk of virus infections, such as the West Nile virus. These habitat component losses can result in declining sage-grouse populations due to increased nest predation and early brood mortality associated with decreased nest cover and food availability (Braun 1998, p. 149; Moynahan *et al.* 2007, p. 1781).

Greater sage-grouse populations declined during the 1930s period of drought (Patterson 1952, pp. 68-69; Braun 1998, p. 148). Drought conditions in the late 1980s and early 1990s also coincided with a period when sage-grouse populations were at historically low levels (Connelly and Braun 1997, p. 8). Although drought has been a consistent and natural part of the sagebrush-steppe ecosystem, drought impacts on sage-grouse can be exacerbated when combined with other habitat impacts, such as human developments, that reduce cover and food (Braun 1998, p. 148).

Aldridge *et al.* (2008, p. 992) found that the number of severe droughts from 1950 to 2003 had a weak negative effect on patterns of greater sage-grouse persistence. However, they cautioned that drought may have a greater influence on future sage-grouse populations as temperatures rise over the next 50 years, and synergistic effects of other threats affect habitat quality (Aldridge *et al.* 2008, p. 992). Populations on the periphery of the range may suffer extirpation during a severe and prolonged drought (Wisdom *et al.* in press, p. 22).

Gunnison sage-grouse are capable of enduring moderate or severe, but relatively short-term, drought as observed from persistence of the

populations during drought conditions from 1999-2003 throughout much of the range. The drought that began by at least 2001 and was most severe in 2002 had varying impacts on Gunnison sage-grouse habitat and is discussed in detail in our April 18, 2006, finding (71 FR 19954). Habitat appeared to be negatively affected by drought across a broad area of the Gunnison sage-grouse's range. However, the reduction of sagebrush density in some areas, allowing for greater herbaceous growth and stimulating the onset of sagebrush seed crops may have been beneficial to sagebrush habitats over the long term. Six of the seven grouse populations (except for the Gunnison Basin population) have decreased in number since counts were conducted during the drought year of 2002 (Table 2). Data are not available to scientifically determine if the declines are due to the drought alone. The current status of the various populations throughout the species' range make it highly susceptible to stochastic factors such as drought, particularly when it is acting in conjunction with other factors such as habitat fragmentation, small population size, predation, and low genetic diversity. We believe that the available information is too speculative to conclude that drought alone is a threat to the species at this time; however, based on rapid species decline in drought years, it is likely that drought exacerbates other known threats and thus is an indirect threat to the species.

Recreation

Studies have determined that nonconsumptive recreational activities can degrade wildlife resources, water, and the land by distributing refuse, disturbing and displacing wildlife, increasing animal mortality, and simplifying plant communities (Boyle and Samson 1985, pp. 110-112). Sage-grouse response to disturbance may be influenced by the type of activity, recreationist behavior, predictability of activity, frequency and magnitude, timing, and activity location (Knight and Cole 1995, p. 71). We have not located any published literature concerning measured direct effects of recreational activities on Gunnison or greater sage-grouse, but can infer potential impacts on Gunnison sage-grouse from studies on related species and from research on nonrecreational activities. Baydack and Hein (1987, p. 537) reported displacement of male sharp-tailed grouse at leks from human presence resulting in loss of reproductive opportunity during the disturbance period. Female sharp-tailed grouse were observed at undisturbed leks while absent from disturbed leks during the same time period (Baydack and Hein 1987, p. 537). Disturbance of incubating female sage-grouse could cause displacement from nests, increased predator risk, or loss of nests. Disruption of sage-grouse during vulnerable periods at leks, or during nesting or early brood rearing could affect reproduction or survival (Baydack and Hein 1987, pp. 537-538).

Recreational use of off-highway vehicles (OHVs) is one of the fastest-growing outdoor activities. In the western United States, greater than 27 percent of the human population used OHVs for recreational activities between 1999 and 2004 (Knick *et al.*, in press, p. 19). Knick *et al.* (in press, p. 1) reported that widespread motorized access for recreation facilitated the spread of predators adapted to humans and the spread of invasive plants. Any high-frequency human activity along established corridors can affect wildlife through habitat loss and fragmentation (Knick *et al.* in press, p. 25). The effects of OHV use on sagebrush and sage-grouse have not been directly studied (Knick *et al.* in press, p. 25). However, local working groups considered recreational uses, such as off-road vehicle use and biking, to be a risk factor in many areas.

Recreation from OHVs, hikers, mountain bikes, campers, snowmobiles, bird watchers, and other sources has affected many parts of the range, especially portions of the Gunnison Basin and Pĩnon Mesa population (BLM 2005a, p. 14; BLM 2005d, p. 4; BLM 2009, p. 36). These activities can result in abandonment of lekking activities and nest sites, energy expenditure reducing survival, and greater exposure to predators (GSRSC 2005).

Recreation is a significant use on lands managed by BLM (Connelly *et al.* 2004, p. 7-26). Recreational activities within the Gunnison Basin are widespread, occur during all seasons of the year, and have expanded as more people move to the area or come to recreate (BLM 2009, pp. 36-37). Four wheel drive, OHV, motorcycle, and other means of mechanized travel have been increasing rapidly. The number of annual OHV registrations in Colorado increased from 12,000 in 1991 to 131,000 in 2007 (BLM 2009, p. 37). Recreational activities are recognized as a direct and indirect threat to the Gunnison sage-grouse and their habitat (BLM 2009, p. 36). The Grand Mesa, Uncompaghre, and Gunnison (GMUG) National Forest is the fourth most visited National Forest in the Rocky Mountain Region of the USFS (Region 2) (Kocis *et al.*, 2004 in Draft Environmental Impact Statement for Gunnison Basin Federal Lands Travel Management (2009, p. 137)). The GMUG is the second most heavily visited National Forest on the western slope of Colorado (DEIS Gunnison Basin Federal Lands Travel Management 2009, p. 137). However, it is unknown what percentage of the visits occur within Gunnison sage-grouse habitat on the Gunnison Ranger District ((DEIS Gunnison Basin Federal Lands Travel Management 2009, p. 137). With human populations expected to increase in towns and cities within and adjacent to the Gunnison Basin and nearby populations (see Factor A), we believe the impacts to Gunnison sage-grouse from recreational use will continue to increase.

The BLM and Gunnison County have 38 closure points within the Basin from March 15 to May 15 each year (BLM 2009, p. 40). While road closures may be violated in a small number of situations, we believe that road closures are having a beneficial effect on Gunnison sage-grouse through avoidance and/or minimization of impacts during the breeding season.

Dispersed camping occurs at a low level on public lands in all of the populations, particularly during the hunting seasons for other species. However, we have no information indicating that these camping activities are adversely affecting Gunnison sage-grouse.

Domestic dogs accompanying recreationists or associated with residences can disturb, harass, displace, or kill Gunnison sage-grouse. Authors of many wildlife disturbance studies concluded that dogs with people, dogs on leash, or loose dogs provoked the most pronounced disturbance reactions from their study animals (Sime 1999 and references within). The primary consequences of dogs being off leash is harassment, which can lead to physiological stress as well as the separation of adult and young birds, or flushing incubating birds from their nest. However, we have no data indicating that this activity is adversely affecting Gunnison sage-grouse population numbers such that it can be considered a rangewide or population-level threat.

Recreational activities as discussed above do not singularly pose a significant threat to Gunnison sage-grouse now or are expected to do so in the foreseeable future. However, there may be certain situations where recreational activities are impacting local concentrations of Gunnison sage-grouse, especially in areas where habitat is already fragmented such as in the six

small populations and in certain areas within the Gunnison Basin.

Pesticides and Herbicides

Insects are an important component of sage-grouse chick and juvenile diets (GSRSC 2005, p.132 and references therein). Insects, especially ants (Hymenoptera) and beetles (Coleoptera), can comprise a major proportion of the diet of juvenile sage-grouse and are important components of early brood-rearing habitats (GSRSC 2005, p. 132 and references therein). Most pesticide applications are not directed at control of ants and beetles. Pesticides are used primarily to control insects causing damage to cultivated crops on private lands and to control grasshoppers (Orthoptera) and Mormon crickets (*Mormonius sp.*) on public lands.

Few studies have examined the effects of pesticides to sage-grouse, but at least two have documented direct mortality of greater sage-grouse from use of these chemicals. Greater sage-grouse died as a result of ingestion of alfalfa sprayed with organophosphorus insecticides (Blus *et al.* 1989, p. 1142; Blus and Connelly 1998, p. 23). In this case, a field of alfalfa was sprayed with methamidophos and dimethoate when approximately 200 greater sage-grouse were present; 63 of these sage-grouse were later found dead, presumably as a result of pesticide exposure (Blus *et al.* 1989; p. 1142, Blus and Connelly 1998, p. 23). Both methamidophos and dimethoate remain registered for use in the United States (Christiansen and Tate in press, p. 21), but we found no further records of sage-grouse mortalities from their use. In 1950, rangelands treated with toxaphene and chlordane bait to control grasshoppers in Wyoming resulted in game bird mortality of 23.4 percent (Christian and Tate in press, p. 20). Forty-five greater sage-grouse deaths were recorded, 11 of which were most likely related to the pesticide (Christiansen and Tate in press, p. 20, and references therein). Greater sage-grouse who succumbed to vehicle collisions and mowing machines in the same area also were likely compromised from pesticide ingestion (Christian and Tate in press, p. 20). Neither of these chemicals has been registered for grasshopper control since the early 1980s (Christiansen and Tate in press, p. 20, and references therein).

Infestations of Russian wheat aphids (*Diuraphis noxia*) have occurred in Gunnison sage-grouse occupied range in Colorado and Utah (GSRSC 2005, p. 132). Disulfoton, a systemic organophosphate extremely toxic to wildlife, was routinely applied to over 400,000 ha (million ac) of winter wheat crops to control the aphids during the late 1980s. We have no data indicating there were any adverse effects to Gunnison sage-grouse (GSRSC 2005, p. 132). More recently, an infestation of army cutworms (*Euxoa auxiliaries*) occurred in Gunnison sage-grouse habitat along the Utah-Colorado State line. Thousands of ha (thousands of ac) of winter wheat and alfalfa fields were sprayed with insecticides such as permethrin by private landowners to control them (GSRSC 2005, p. 132) but again, we have no data indicating any adverse effects to Gunnison sage-grouse.

Game birds that ingested sublethal levels of pesticides have been observed exhibiting abnormal behavior that may lead to a greater risk of predation (Dahlen and Haugen 1954, p. 477; McEwen and Brown 1966, p. 609; Blus *et al.* 1989, p. 1141). McEwen and Brown (1966, p. 689) reported that wild sharp-tailed grouse poisoned by malathion and dieldrin exhibited depression, dullness, slowed reactions, irregular flight, and uncoordinated walking. Although no research has explicitly studied the indirect levels of mortality from sublethal doses of pesticides (e.g., predation of impaired birds), it has been assumed to be the reason for mortality among some study birds (McEwen and Brown 1966 p. 609; Blus *et al.* 1989, p. 1142; Connelly and Blus 1991, p. 4). Both Post (1951, p. 383) and Blus *et al.* (1989, p. 1142) located depredated sage-grouse carcasses in areas that had been treated with insecticides. Exposure to these insecticides may have predisposed sage-grouse to predation. Sage-grouse mortalities also were documented in a study where they were exposed to strychnine bait used to control small mammals (Ward *et al.* 1942 as cited in Schroeder *et al.* 1999, p. 16). While we do not have specific information of these effects occurring in Gunnison sage-grouse, we believe the effects observed in greater sage-grouse can be expected if similar situations arise within Gunnison sage-grouse habitat.

Cropland spraying may affect populations that are not adjacent to agricultural areas, given the distances traveled by females with broods from nesting areas to late brood-rearing areas (Knick *et al.* in press, p. 17). The actual footprint of this effect cannot be estimated, because the distances sage-grouse travel to get to irrigated and sprayed fields is unknown (Knick *et al.* in press, p. 17). Similarly, actual mortalities from pesticides may be underestimated if sage-grouse disperse from agricultural areas after exposure.

Much of the research related to pesticides that had either lethal or sublethal effects on greater sage-grouse was conducted on pesticides that have been banned or have had their use further restricted for more than 20 years due to their toxic effects on the environment (e.g., dieldrin). We currently do not have any information to show that the banned pesticides are having negative impacts to sage-grouse populations through either illegal use or residues in the environment. For example, sage-grouse mortalities were documented in a study where they were exposed to strychnine bait used to control small mammals (Ward *et al.* 1942 as cited in Schroeder *et al.* 1999, p. 16). According to the U.S. Environmental Protection Agency (EPA), above-ground uses of strychnine were prohibited in 1988 and those uses remain temporarily cancelled today. We do not know when, or if, above-ground uses will be permitted to resume. Currently, strychnine is registered for use only below-ground as a bait application to control pocket gophers (*Thomomys* sp.; EPA 1996, p. 4). Therefore, the current legal use of strychnine baits is unlikely to present a significant exposure risk to sage-grouse. No information on illegal use, if it occurs, is available. We have no other information regarding mortalities or sublethal effects of strychnine or other banned pesticides on sage-grouse.

Although a reduction in insect population levels resulting from insecticide application can potentially affect nesting sage-grouse females and chicks (Willis *et al.* 1993, p. 40; Schroeder *et al.* 1999, p. 16), there is no information as to whether insecticides are impacting survivorship or productivity of the Gunnison sage-grouse.

Herbicide applications can kill sagebrush and forbs important as food sources for sage-grouse (Carr 1968 *in* Call and Maser 1985, p. 14). The greatest impact resulting from a reduction of either forbs or insect populations is to nesting females and chicks due to the loss of potential protein sources that are critical for successful egg production and chick nutrition (Johnson and Boyce 1991, p. 90; Schroeder *et al.* 1999, p. 16). A comparison of applied levels of herbicides with toxicity studies of grouse, chickens, and other gamebirds (Carr 1968, *in* Call and Maser 1985, p. 15) concluded that herbicides applied at recommended rates should not result in sage-grouse poisonings.

Use of insecticides to control mosquitoes is infrequent and probably does not have detrimental effects on sage-grouse. Available insecticides that kill adult mosquitoes include synthetic pyrethroids such as permethrin, which

are applied at very low concentrations and have very low vertebrate toxicity (Rose 2004). Organophosphates such as malathion have been used at very low rates to kill adult mosquitoes for decades, and are judged relatively safe for vertebrates (Rose 2004).

In summary, historically insecticides have been shown to result in direct mortality of individuals, and also can reduce the availability of food sources, which in turn could contribute to mortality of sage-grouse. Despite the potential effects of pesticides, we could find no information to indicate that the use of these chemicals, at current levels, negatively affects Gunnison sage-grouse population numbers. Schroeder *et al.*'s (1999, p. 16) literature review found that the loss of insects can have significant impacts on nesting females and chicks, but those impacts were not detailed. Many of the pesticides that have been shown to have an effect on sage-grouse have been banned in the United States for more than 20 years. We currently do not have any information to show that either the illegal use of banned pesticides or residues in the environment are presently having negative impacts to sage-grouse populations. While the reduction in insect availability via insecticide application has not been documented to affect overall population numbers in sage-grouse, we believe that insect reduction, because of its importance to chick production and survival, could be having as yet undetected negative impacts in populations with low population numbers. There is no information available to indicate that either herbicide or insecticide applications pose a threat to the species now or in the foreseeable future.

Contaminants

Gunnison sage-grouse exposure to various types of environmental contaminants may potentially occur as a result of agricultural and rangeland management practices, mining, energy development and pipeline operations, and transportation of materials along highways and railroads.

We expect that the number of sage-grouse occurring in the immediate vicinity of wastewater pits associated with energy development would be small due to the small amount of energy development within the species' range, the typically intense human activity in these areas, the lack of cover around the pits, and the fact that sage-grouse do not require free water. Most bird mortalities recorded in association with wastewater pits are water-dependent species (e.g., waterfowl), whereas dead ground-dwelling birds (such as the sage-grouse) are rarely found at such sites (Domenici 2008, pers. comm.). However, if the wastewater pits are not appropriately screened, sage-grouse may have access to them and could ingest water and become oiled while pursing insects. If these birds then return to sagebrush cover and die, their carcasses are unlikely to be found as only the pits are surveyed.

A few gas and oil pipelines occur within the San Miguel population. Exposure to oil or gas from pipeline spills or leaks could cause mortalities or morbidity to Gunnison sage-grouse. Similarly, given the network of highways and railroad lines that occur throughout the range of the Gunnison sage-grouse, there is some potential for exposure to contaminants resulting from spills or leaks of hazardous materials being conveyed along these transportation corridors. We found no documented occurrences of impacts to Gunnison sage-grouse from such spills, and we do not expect they are a significant source of mortality and a threat to the species because these types of spills occur infrequently and may involve only a small area within the occupied range of the species.

Summary of Factor E

Although genetic consequences of low Gunnison sage-grouse population numbers have not been definitively detected to date, the results from Stiver *et al.* (2008, p. 479) suggest that six of the seven populations may have effective sizes low enough to induce inbreeding depression and all seven could be losing adaptive potential. While some of these consequences may be ameliorated by translocations, we believe the long-term viability of Gunnison sage-grouse is compromised by this situation, particularly when combined with threats discussed under other Factors, and we have determined that genetics risks related to the small population size of Gunnison sage-grouse are a threat to the species now and in the foreseeable future.

While sage-grouse have evolved with drought, population numbers suggest that drought is at least correlated with, and potentially an underlying cause of, the declines. Although we cannot determine whether drought alone is a threat to the species, we believe it is an indirect threat exacerbating other threat factors such as predation or habitat fragmentation. Based on the available information, insecticides are being used infrequently enough and in accordance with manufacturer labeling such that they are not adversely affecting populations of the Gunnison sage-grouse. The most likely impact of pesticides on Gunnison sage-grouse is the reduction of insect prey items. However, we could find no information to indicate that use of pesticides, in accordance with their label instructions, is a threat to Gunnison sage-grouse.

Thus, based on the best scientific and commercial data available, we have concluded that other natural or manmade factors are a significant threat to the Gunnison sage-grouse.

Finding

We have carefully assessed the best scientific and commercial information available regarding the present and future threats to the Gunnison sage-grouse. We have reviewed the information available in our files, information received during the comment period, and other published and unpublished information, and consulted with recognized Gunnison-sage grouse and sagebrush habitat experts. On the basis of the best scientific and commercial information available, we find that listing of the Gunnison sage-grouse is warranted throughout all of its range.

Gunnison sage-grouse, a sagebrush obligate, are a landscape-scale species requiring large, contiguous areas of sagebrush for long-term persistence. Gunnison sage-grouse occur in seven isolated and fragmented populations, primarily in southwestern Colorado, with a small portion of its range extending into southeastern Utah. Populations have been declining since the 1960s, with the Gunnison Basin population the only relatively stable population. Six of the seven remaining populations are now small enough to be vulnerable to extirpation (Stiver *et al.* 2008, p. 479). Specific issues identified under Factors A, C, D, and E are threats to the Gunnison sage-grouse. These threats are exacerbated by small population sizes, the isolated and fragmented nature of the remaining sagebrush habitat, and the potential effects of climate change.

Current and future direct and functional loss of habitat due to residential and road development in all populations (as discussed in Factor A) is the principal threat to the Gunnison sage-grouse. Other threats from human infrastructure such as fences and powerlines (as discussed in Factor A) may not individually threaten the Gunnison sage-grouse; however, the cumulative presence of these features, particularly when considered with residential and road development, do constitute a threat to the continued existence of the Gunnison sage-grouse as they collectively contribute to habitat loss and fragmentation. These impacts

exacerbate the fragmentation that has already occurred in Gunnison sage-grouse habitat from past agricultural conversion and residential development. Gunnison sage-grouse are sensitive to these forms of habitat fragmentation because they require large areas of contiguous, suitable habitat. Given the increasing human population trends in Gunnison sage-grouse habitat, we expect urban and exurban development and associated roads and infrastructure to continue to expand. Likewise, we expect direct and indirect effects from these activities, including habitat loss, degradation and fragmentation, to increase in sage-grouse habitats.

Invasive species, fire, and climate change (as discussed in Factor A) may not individually threaten the Gunnison sage-grouse; however, the documented synergy among these factors result in a high likelihood that they will threaten the species in the future. Noxious and invasive plant incursions into sagebrush ecosystems, which are facilitated by human activities and fragmentation, are likely to increase wildfire frequencies, further contributing to direct loss of habitat and fragmentation. Climate change may alter the range of invasive plants, intensifying the proliferation of invasive plants to the point that they become a threat to the species. While recent local climatic moderations may have produced some improved habitat quality (increased forb and grass growth providing enhanced grouse productivity and survival). Habitat conservation efforts have been implemented to benefit local habitat conditions, but they have not cumulatively resulted in local population recoveries because unfragmented sagebrush habitats on the scale required that contain the necessary ecological attributes (e.g., connectivity and landscape context) have been lost. Sagebrush habitats are highly fragmented due to anthropogenic impacts, and in most cases are not resilient enough to return to native vegetative states following disturbance from fire, invasive species, and the effects of climate change. We expect these threats to continue and potentially increase in magnitude in the future.

We found no evidence that the threats summarized above, which contribute to habitat loss, degradation and fragmentation will subside within the foreseeable future. Six populations are extremely small and compromised by existing fragmentation. The one remaining relatively contiguous patch of habitat (Gunnison Basin) for the species is somewhat compromised by existing fragmentation. Based on the current and anticipated habitat threats and their cumulative effects as they contribute to the overall fragmentation of Gunnison sage-grouse habitat, we have determined that threats identified under Factor A pose a significant threat to the species throughout its range. We find that the present or threatened destruction, modification, or curtailment of Gunnison sage-grouse habitat is a threat to the species future existence.

We believe that existing and continued landscape fragmentation will increase the effects of predation (discussed in Factor C above) on this species, particularly in the six smaller populations, resulting in a reduction in sage-grouse productivity and abundance in the future. Predation has a strong relationship with anthropogenic factors on the landscape, and human presence on the landscape will continue to increase in the future. We find that predation is a significant threat to the species.

West Nile virus (discussed in Factor C above) is the only disease that currently presents a potential threat to the Gunnison sage-grouse. While we have no evidence of West Nile virus acting on the Gunnison sage-grouse, because of the virus's presence within the species' range and the continued development of anthropogenic water sources in the area, the virus may pose a future threat to the species. We have determined that disease is not currently a threat to the species. However, we anticipate that West Nile virus will persist within the range of Gunnison sage-grouse indefinitely and will be exacerbated by factors such as climate change that could increase ambient temperatures and the presence of the vector on the landscape.

An examination of regulatory mechanisms (discussed in Factor D above) for both the Gunnison sage-grouse and sagebrush habitats revealed that while limited mechanisms exist, they are not broad enough in their potential conservation value throughout the species range, and are not being implemented consistent with our current understanding of the species' biology and reaction to disturbances, to be effective at ameliorating threats. This is particularly true on private lands, which comprise 41 percent of the species' extant range and are highly dispersed throughout all populations. Inadequate regulation of grazing practices on public land is occurring in some locations within the species' range. Public land management agencies should continue to improve habitat conditions to be compatible with Gunnison sage-grouse life-history requirements. Some local conservation efforts are effective and should be continued, but to date have occurred on a scale that is too small to remove threats at a range-wide level. Many conservation efforts lacked sufficient monitoring to demonstrate their overall effectiveness in minimizing or eliminating the primary threat of habitat loss, fragmentation, and degradation. Therefore, we find the existing regulatory mechanisms are ineffective at ameliorating habitat-based threats.

Small population size and genetic factors (discussed in Factor E above) subject at least six of the seven populations to a high risk of extirpation from stochastic events. All populations are currently isolated as documented by low amounts of gene flow (Oyler-McCance *et al.* 2005, p. 635). The loss of connectivity and the concomitant isolation of the populations also increase the species' extinction risk. Fitness and population size are strongly correlated, and smaller populations are more subject to environmental and demographic stochasticity. When coupled with mortality stressors related to human activity and significant fluctuations in annual population size, long-term persistence of small populations is always problematic. Given the species' relatively low rate of growth and strong site fidelity, recovery and repopulation of extirpated, or nearly extirpated areas, will be extremely challenging. Translocation of Gunnison sage-grouse is difficult and to date has not been demonstrated to be successful in maintaining and improving population and species viability. Given the limited number of source individuals, sustainable, successful translocation efforts involving large numbers of individuals are unlikely at this time. Recent captive-rearing efforts by CDOW have provided some optimistic results. Nonetheless, even assuming CDOW captive-rearing and tranlocation efforts prove to be successful in the long-term, the existing condition of the habitat throughout the species' range will need to be improved, before captive rearing and translocation can be relied on to maintain population and species viability.

The existing and continuing loss, degradation, and fragmentation of sage-grouse habitat; extremely small population sizes; occupancy of extremely small, isolated, and fragmented sagebrush areas; increased susceptibility to predation; lack of interconnectivity; low genetic diversity; and the potential for catastrophic stochastic (random) events, combined with the inadequacy of existing regulations to manage habitat loss (either direct or functional), endanger all Gunnison sage-grouse populations

and the species as a whole. Threat factors affecting the Gunnison sage-grouse are summarized in Table 5 below. As required by the Act, we have reviewed and taken into account efforts being made to protect Gunnison sage-grouse. Although some local conservation efforts have been implemented and are effective in small areas, they are not at a scale that is sufficient to ameliorate threats to the species as a whole. Other conservation efforts (such as habitat treatments, establishment of conservation easements, improved grazing practices, additional travel management efforts that benefit Gunnison sage-grouse) are being planned, but there is substantial uncertainty as to whether, where, and when they will be implemented, and whether they will be effective.

TABLE 5. THREAT SUMMARY FOR FACTORS AFFECTING GUNNISON SAGE-GROUSE. A "+" INDICATES HIGHER LEVEL OF THREAT.

Listing Factor	Threat or Impact	Magnitude			Imminence		Species' Response	Foreseeable Future	Overall Threat
		Overall Magnitude	Intensity	Exposure (percent)	Overall Imminence	Likelihood			
A	Conversion to Agriculture	Moderate	Moderate	40%	Non-Imminent	Low	Past conversion contributes to current habitat fragmentation and degradation.	Year 2050[a]	Low
A	Water Development	Low	Low	<20%	Non-Imminent	Low	Past development contributes to habitat fragmentation and degradation	Year 2050	Low
A	Residential Development	High+	High	70%	Imminent	High	Habitat loss, fragmentation and degradation; increased predation	Year 2050	High
A	Fences	Moderate	Low	75%	Imminent	High	Habitat fragmentation and degradation; increased predation; direct mortality	Year 2050	Moderate
A	Roads	High+	High	90%	Imminent	High	Habitat loss, fragmentation and degradation; increased predation; direct mortality	Year 2050	High
A	Powerlines	Moderate	Moderate	60%	Imminent	High	Habitat loss, fragmentation and degradation; increased predation	Year 2050	Moderate+
A	Fire	Low	Low	10%	Non-Imminent	Low	Habitat loss, fragmentation, and degradation	Likely to increase indefinitely with cheatgrass invasion	Low+
A	Invasive Plants	Moderate	Moderate	65%	Imminent	Moderate	Habitat loss, fragmentation, and degradation	Likely to increase indefinitely due to increased human presence and climate change	Moderate+
A	Piñon-Juniper Encroachment	Low	Low	15%	Imminent	Moderate	Habitat fragmentation and degradation; increased predation	Indefinitely	Low
A	Domestic and Wild Ungulate Herbivory	High	Low	85%	Imminent	Moderate	Habitat degradation	Indefinitely	Moderate

TABLE 5. THREAT SUMMARY FOR FACTORS AFFECTING GUNNISON SAGE-GROUSE. A "+" INDICATES HIGHER LEVEL OF THREAT.—Continued

Listing Factor	Threat or Impact	Magnitude			Imminence		Species' Response	Foreseeable Future	Overall Threat
		Overall Magnitude	Intensity	Exposure (percent)	Overall Imminence	Likelihood			
A	Non-renewable Energy Development	Low+	Moderate	10%	Imminent	Low	Habitat fragmentation and degradation; increased predation	Year 2050	Low
A	Renewable Energy Development	Low+	Low+	15%	Non-Imminent	Moderate	Habitat fragmentation and degradation; increased predation	Year 2050	Low
A	Climate Change	Low	Moderate	100%	Imminent	Moderate	Unknown, but could facilitate increase in invasive plants and corresponding increased fire frequency	Climate models predict out to 40 years	Low
B	Hunting	Low	Low	0%	Non-Imminent	Low	None	Year 2050	Low
B	Lek Viewing	Low	Low	10%	Imminent	Moderate	Harassment; avoidance	Year 2050	Low
B	Scientific Research	Low+	Low+	50%	Imminent	Moderate	Harassment; direct mortality	Year 2050	Low
C	Disease	Low	Low	100%	Non-Imminent	Moderate	Direct mortality	Indefinitely	Low
C	Predation	High	Moderate+	90%	Imminent	High	Direct mortality	Indefinitely	Moderate+
D	Inadequacy of Local Laws and Regulations	High	Moderate	50%	Imminent	High	Habitat loss, fragmentation, and degradation	Year 2050	High
D	Inadequacy of State Laws and Regulations	Moderate	High	60%	Imminent	High	Habitat loss, fragmentation, and degradation	Year 2050	Moderate
D	Inadequacy of Federal Laws and Regulations	High	High	75%	Imminent	High	Habitat loss, fragmentation, and degradation	Year 2050	High
E	Genetic Complications	High	Moderate+	70%	Imminent	High	Inbreeding depression; loss of adaptive potential	Indefinitely	High
E	Small Population Size	Moderate+	Moderate+	60%	Imminent	High	Population vulnerability to stochastic events	Indefinitely	Moderate+
E	Drought	Moderate+	High	100%	Imminent	Moderate	Habitat degradation; decline in species reproductive potential	Indefinitely	Moderate
E	Recreation	Low	Low+	50%	Imminent	Moderate	Harassment; avoidance	Year 2050	Low
E	Pesticides and Herbicides	Low	Low	10%	Non-Imminent	Low	Direct mortality; habitat degradation	Year 2050	Low
E	Contaminants	Low	Low	<5%	Non-Imminent	Low	Direct mortality	Year 2050	Low

[a] The foreseeable future date of 2050 was determined for threats or impacts directly related to anthropogenic activities based on the furthest population projection from CWCB (2009, p. 53).

Listing factors include: (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 have carefully assessed the best scientific and commercial information available regarding the present and future threats to the Gunnison sage-grouse. We have reviewed petitions, information available in our files, and other published and unpublished information, and consulted with recognized Gunnison sage-grouse and greater sage-grouse experts. We have considered and taken into account efforts being made to conserve protect the species. On the basis of the best scientific and commercial information available, we find that listing of the Gunnison sage-grouse is warranted throughout all of its range. However, listing the Gunnison sage-grouse is precluded by higher priority listing actions at this time, as discussed in the **Preclusion and Expeditious Progress** section below.

Listing Priority Number

The Service adopted guidelines on September 21, 1983 (48 FR 43098), to establish a rational system for utilizing available resources for the highest priority species when adding species to the Lists of Endangered or Threatened Wildlife and Plants or reclassifying species listed as threatened to endangered status. These guidelines, titled "Endangered and Threatened Species Listing and Recovery Priority Guidelines" address the immediacy and magnitude of threats, and the level of taxonomic distinctiveness by assigning priority in descending order to monotypic genera (genus with one species), full species, and subspecies (or equivalently, distinct population segments of vertebrates).

As a result of our analysis of the best available scientific and commercial information, we assigned the Gunnison sage-grouse an LPN of 2 based on our finding that the species faces threats that are of high magnitude and are imminent. These threats include the present or threatened destruction, modification, or curtailment of its habitat; predation; the inadequacy of existing regulatory mechanisms; and other natural or man-made factors affecting its continued existence. Our rationale for assigning the Gunnison sage-grouse an LPN 2 is outlined below.

Under the Service's LPN Guidance, the magnitude of threat is the first criterion we look at when establishing a listing priority. The guidance indicates that species with the highest magnitude of threat are those species facing the greatest threats to their continued existence. These species receive the highest listing priority. We consider the threats that the Gunnison sage-grouse faces to be high in magnitude because the major threats (exurban development, inadequacy of regulatory mechanisms, genetic issues, roads) occur throughout all of the species range. Based on an evaluation of biotic, abiotic, and anthropogenic factors, no strongholds are believed to exist for Gunnison sage-grouse (Wisdom *et al.*, in press, entire). All seven populations are experiencing habitat degradation and fragmentation due to exurban development and roads. Six of the seven populations of Gunnison sage-grouse currently contain so little occupied habitat that continued degradation and fragmentation will place their continued existence in question. The remaining population (Gunnison Basin) is so interspersed with development and roads that it is likely to degrade and fragment the habitat (Aldridge and Saher, in press, entire). We believe it is not functional for a species that requires large expanses of sagebrush. Six of the seven populations of Gunnison sage-grouse have population sizes low enough to induce inbreeding depression, and all seven may be losing their adaptive potential (Stiver 2008, p. 479). Predation is exerting a strong influence on all populations, but especially the six smaller populations. Invasive weeds are likely to exert a strong influence on all populations in the future. Adequate regulations are not in place at the local, State, or Federal level to adequately minimize the threat of habitat degradation and fragmentation resulting from exurban development. Regulatory mechanisms are not being appropriately implemented such that land use practices result in habitat conditions that adequately support the life-history needs of the species. Adequate regulations are also not in place to ameliorate the threats resulting from predation, genetic issues, or invasive weeds. Due to the impacts resulting from the issues described above and the current small population sizes and habitat areas, impacts from other stressors such as fences, recreation, grazing, powerlines, and drought/weather are likely acting cumulatively to further decrease the likelihood of at least the six small populations, and potentially all seven, persisting into the future. We believe the ability of all remaining populations and habitat areas to retain the attributes required for long-term sustainability of this landscape-scale species are highly diminished indicating that the magnitude of threats is high.

Under our LPN Guidance, the second criterion we consider in assigning a listing priority is the immediacy of threats. This criterion is intended to ensure that the species facing actual, identifiable threats are given priority over those for which threats are only potential or that are intrinsically vulnerable but are not known to be presently facing such threats. We consider the threats imminent because we have factual information that the threats are identifiable and that the species is currently facing them in many portions of its range. These actual, identifiable threats are covered in great detail in Factors A, C, D, and E of this finding and currently include habitat degradation and fragmentation from exurban development and roads, inadequate regulatory mechanisms, genetic issues, predation, invasive plants, and drought/weather. In addition to their current existence, we expect these threats to continue and likely intensify in the foreseeable future.

The third criterion in our LPN guidance is intended to devote resources to those species representing highly distinctive or isolated gene pools as reflected by taxonomy. The Gunnison sage-grouse is a valid taxon at the species level, and therefore receives a higher priority than subspecies or DPSs, but a lower priority than species in a monotypic genus.

We will continue to monitor the threats to the Gunnison sage-grouse, and the species' status on an annual basis, and should the magnitude or the imminence of the threats change, we will re-visit our assessment of LPN.

Currently, work on a proposed listing determination for the Gunnison sage-grouse is precluded by work on higher priority listing actions with absolute statutory, court-ordered, or court-approved deadlines and final listing determinations for those species that were proposed for listing with funds from FY 2009. Additionally, remaining listing funding from FY 2010 has been directed to work on listing determinations for species at significantly greater risk of extinction than the Gunnison sage-grouse faces. Because of the large number of high-priority species, we further ranked the candidate species with an LPN of 2. The resulting "Top 40" list of candidate species have the highest priority to receive funding to work on a proposed

listing determination (see the **Preclusion and Expeditious Progress** section below). This work includes all the actions listed in the tables below under expeditious progress.

Preclusion and Expeditious Progress

Preclusion is a function of the listing priority of a species in relation to the resources that are available and competing demands for those resources. Thus, in any given fiscal year (FY), multiple factors dictate whether it will be possible to undertake work on a proposed listing regulation or whether promulgation of such a proposal is warranted but precluded by higher-priority listing actions.

The resources available for listing actions are determined through the annual Congressional appropriations process. The appropriation for the Service Listing Program is available to support work involving the following listing actions: Proposed and final listing rules; 90–day and 12–month findings on petitions to add species to the Lists of Endangered and Threatened Wildlife and Plants (Lists) or to change the status of a species from threatened to endangered; annual determinations on prior "warranted but precluded" petition findings as required under section 4(b)(3)(C)(i) of the Act; critical habitat petition findings; proposed and final rules designating critical habitat; and litigation-related, administrative, and program-management functions (including preparing and allocating budgets, responding to Congressional and public inquiries, and conducting public outreach regarding listing and critical habitat). The work involved in preparing various listing documents can be extensive and may include, but is not limited to: Gathering and assessing the best scientific and commercial data available and conducting analyses used as the basis for our decisions; writing and publishing documents; and obtaining, reviewing, and evaluating public comments and peer review comments on proposed rules and incorporating relevant information into final rules. The number of listing actions that we can undertake in a given year also is influenced by the complexity of those listing actions; that is, more complex actions generally are more costly. The median cost for preparing and publishing a 90–day finding is $39, 276; for a 12–month finding, $100,690; for a proposed rule with critical habitat, $345,000; and for a final listing rule with critical habitat, the median cost is $305,000.

We cannot spend more than is appropriated for the Listing Program without violating the Anti-Deficiency Act (see 31 U.S.C. 1341(a)(1)(A)). In addition, in FY 1998 and for each fiscal year since then, Congress has placed a statutory cap on funds which may be expended for the Listing Program, equal to the amount expressly appropriated for that purpose in that fiscal year. This cap was designed to prevent funds appropriated for other functions under the Act (for example, recovery funds for removing species from the Lists), or for other Service programs, from being used for Listing Program actions (see House Report 105-163, 105th Congress, 1st Session, July 1, 1997).

Since FY 2002, the Service's budget has included a critical habitat subcap to ensure that some funds are available for other work in the Listing Program ("The critical habitat designation subcap will ensure that some funding is available to address other listing activities" (House Report No. 107 - 103, 107th Congress, 1st Session, June 19, 2001)). In FY 2002 and each year until FY 2006, the Service has had to use virtually the entire critical habitat subcap to address court-mandated designations of critical habitat, and consequently none of the critical habitat subcap funds have been available for other listing activities. In FY 2007, we were able to use some of the critical habitat subcap funds to fund proposed listing determinations for high-priority candidate species. In FY 2009, while we were unable to use any of the critical habitat subcap funds to fund proposed listing determinations, we did use some of this money to fund the critical habitat portion of some proposed listing determinations so that the proposed listing determination and proposed critical habitat designation could be combined into one rule, thereby being more efficient in our work. In FY 2010, we are using some of the critical habitat subcap funds to fund actions with statutory deadlines.

Thus, through the listing cap, the critical habitat subcap, and the amount of funds needed to address court-mandated critical habitat designations, Congress and the courts have in effect determined the amount of money available for other listing activities. Therefore, the funds in the listing cap, other than those needed to address court-mandated critical habitat for already listed species, set the limits on our determinations of preclusion and expeditious progress.

Congress also recognized that the availability of resources was the key element in deciding, when making a 12–month petition finding, whether we would prepare and issue a listing proposal or instead make a "warranted but precluded" finding for a given species. The Conference Report accompanying Public Law 97-304, which established the current statutory deadlines and the warranted-but-precluded finding, states (in a discussion on 90–day petition findings that by its own terms also covers 12–month findings) that the deadlines were "not intended to allow the Secretary to delay commencing the rulemaking process for any reason other than that the existence of pending or imminent proposals to list species subject to a greater degree of threat would make allocation of resources to such a petition [that is, for a lower-ranking species] unwise."

In FY 2010, expeditious progress is that amount of work that can be achieved with $10,471,000, which is the amount of money that Congress appropriated for the Listing Program (that is, the portion of the Listing Program funding not related to critical habitat designations for species that are already listed). However these funds are not enough to fully fund all our court-ordered and statutory listing actions in FY 2010, so we are using $1,114,417 of our critical habitat subcap funds in order to work on all of our required petition findings and listing determinations. This brings the total amount of funds we have for listing actions in FY 2010 to $11,585,417. Our process is to make our determinations of preclusion on a nationwide basis to ensure that the species most in need of listing will be addressed first and also because we allocate our listing budget on a nationwide basis. The $11,585,417 is being used to fund work in the following categories: compliance with court orders and court-approved settlement agreements requiring that petition findings or listing determinations be completed by a specific date; section 4 (of the Act) listing actions with absolute statutory deadlines; essential litigation-related, administrative, and listing program-management functions; and high-priority listing actions for some of our candidate species. In 2009, the responsibility for listing foreign species under the Act was transferred from the Division of Scientific Authority, International Affairs Program, to the Endangered Species Program. Starting in FY 2010, a portion of our funding is being used to work on the actions described above as they apply to listing actions for foreign species. This has the potential to further reduce funding available for domestic listing actions. Although there are currently no foreign species issues included in our high-priority listing actions at this time, many actions have statutory or court-

approved settlement deadlines, thus increasing their priority. The allocations for each specific listing action are identified in the Service's FY 2010 Allocation Table (part of our administrative record).

Based on our September 21, 1983, guidance for assigning an LPN for each candidate species (48 FR 43098), we have a significant number of species with a LPN of 2. Using this guidance, we assign each candidate an LPN of 1 to 12, depending on the magnitude of threats (high vs. moderate to low), immediacy of threats (imminent or nonimminent), and taxonomic status of the species (in order of priority: monotypic genus (a species that is the sole member of a genus); species; or part of a species (subspecies, distinct population segment, or significant portion of the range)). The lower the listing priority number, the higher the listing priority (that is, a species with an LPN of 1 would have the highest listing priority). Because of the large number of high-priority species, we have further ranked the candidate species with an LPN of 2 by using the following extinction-risk type criteria: International Union for the Conservation of Nature and Natural Resources (IUCN) Red list status/rank, Heritage rank (provided by NatureServe), Heritage threat rank (provided by NatureServe), and species currently with fewer than 50 individuals, or 4 or fewer populations. Those species with the highest IUCN rank (critically endangered), the highest Heritage rank (G1), the highest Heritage threat rank (substantial, imminent threats), and currently with fewer than 50 individuals, or fewer than 4 populations, originally comprised a group of approximately 40 candidate species ("Top 40"). These 40 candidate species have had the highest priority to receive funding to work on a proposed listing determination. As we work on proposed and final listing rules for those 40 candidates, we apply the ranking criteria to the next group of candidates with an LPN of 2 and 3 to determine the next set of highest priority candidate species.

To be more efficient in our listing process, 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, available staff resources are also a factor in determining high-priority species provided with funding. Finally, proposed rules for reclassification of threatened species to endangered are lower priority, since as listed species, they are already afforded the protection of the Act and implementing regulations.

We assigned the Gunnison sage-grouse an LPN of 2, based on our finding that the species faces immediate and high magnitude threats from the present or threatened destruction, modification, or curtailment of its habitat; predation; the inadequacy of existing regulatory mechanisms; and other natural or man-made factors affecting its continued existence. One or more of the threats discussed above occurs in each known population. These threats are ongoing and, in some cases, considered irreversible. Under our 1983 Guidelines, a "species" facing imminent high-magnitude threats is assigned an LPN of 1, 2, or 3 depending on its taxonomic status. Because the Gunnison sage-grouse is a species, we assigned it an LPN of 2 (the highest category available for a species). Therefore, work on a proposed listing determination for the Gunnison sage-grouse is precluded by work on higher priority candidate species; listing actions with absolute statutory, court ordered, or court-approved deadlines; and final listing determinations for those species that were proposed for listing with funds from previous fiscal years. This work includes all the actions listed in the tables below under expeditious progress.

As explained above, a determination that listing is warranted but precluded must also demonstrate that expeditious progress is being made to add or remove qualified species to and from the Lists of Endangered and Threatened Wildlife and Plants. (Although we do not discuss it in detail here, we are also making expeditious progress in removing species from the Lists under the Recovery program, which is funded by a separate line item in the budget of the Endangered Species Program. As explained above in our description of the statutory cap on Listing Program funds, the Recovery Program funds and actions supported by them cannot be considered in determining expeditious progress made in the Listing Program.) As with our "precluded" finding, expeditious progress in adding qualified species to the Lists is a function of the resources available and the competing demands for those funds. Given that limitation, we find that we are making progress in FY 2010 in the Listing Program. This progress included preparing and publishing the following determinations:

FY 2010 COMPLETED LISTING ACTIONS

Publication Date	Title	Actions	FR Pages
10/08/2009	Listing *Lepidium papilliferum* (Slickspot Peppergrass) as a Threatened Species Throughout Its Range	Final Listing Threatened	74 FR 52013-52064
10/27/2009	90-day Finding on a Petition To List the American Dipper in the Black Hills of South Dakota as Threatened or Endangered	Notice of 90–day Petition Finding, Not substantial	74 FR 55177-55180
10/28/2009	Status Review of Arctic Grayling *(Thymallus arcticus*) in the Upper Missouri River System	Notice of Intent to Conduct Status Review	74 FR 55524-55525
11/03/2009	Listing the British Columbia Distinct Population Segment of the Queen Charlotte Goshawk Under the Endangered Species Act: Proposed rule.	Proposed Listing Threatened	74 FR 56757-56770

FY 2010 COMPLETED LISTING ACTIONS—Continued

Publication Date	Title	Actions	FR Pages
11/03/2009	Listing the Salmon-Crested Cockatoo as Threatened Throughout Its Range with Special Rule	Proposed Listing Threatened	74 FR 56770-56791
11/23/2009	Status Review of Gunnison sage-grouse *(Centrocercus minimus)*	Notice of Intent to Conduct Status Review	74 FR 61100-61102
12/03/2009	12-Month Finding on a Petition to List the Black-tailed Prairie Dog as Threatened or Endangered	Notice of 12–month petition finding, Not warranted	74 FR 63343-63366
12/03/2009	90-Day Finding on a Petition to List Sprague's Pipit as Threatened or Endangered	Notice of 90–day Petition Finding, Substantial	74 FR 63337-63343
12/15/2009	90-Day Finding on Petitions To List Nine Species of Mussels From Texas as Threatened or Endangered With Critical Habitat	Notice of 90–day Petition Finding, Substantial	74 FR 66260-66271
12/16/2009	Partial 90-Day Finding on a Petition to List 475 Species in the Southwestern United States as Threatened or Endangered With Critical Habitat	Notice of 90–day Petition Finding, Not substantial and Subtantial	74 FR 66865-66905
12/17/2009	12–month Finding on a Petition To Change the Final Listing of the Distinct Population Segment of the Canada Lynx To Include New Mexico	Notice of 12–month petition finding, Warranted but precluded	74 FR 66937-66950
1/05/2010	Listing Foreign Bird Species in Peru and Bolivia as Endangered Throughout Their Range	Proposed Listing Endangered	75 FR 605-649
1/05/2010	Listing Six Foreign Birds as Endangered Throughout Their Range	Proposed Listing Endangered	75 FR 286-310
1/05/2010	Withdrawal of Proposed Rule to List Cook's Petrel	Proposed rule, withdrawal	75 FR 310-316
1/05/2010	Final Rule to List the Galapagos Petrel and Heinroth's Shearwater as Threatened Throughout Their Ranges	Final Listing Threatened	75 FR 235-250
1/20/2010	Initiation of Status Review for *Agave eggersiana* and *Solanum conocarpum*	Notice of Intent to Conduct Status Review	75 FR 3190-3191
2/09/2010	12–month Finding on a Petition to List the American Pika as Threatened or Endangered	Notice of 12–month petition finding, Not warranted	75 FR 6437-6471
2/25/2010	12-Month Finding on a Petition To List the Sonoran Desert Population of the Bald Eagle as a Threatened or Endangered Distinct Population Segment	Notice of 12–month petition finding, Not warranted	75 FR 8601-8621
2/25/2010	Withdrawal of Proposed Rule To List the Southwestern Washington/ Columbia River Distinct Population Segment of Coastal Cutthroat Trout *(Oncorhynchus clarki clarki)* as Threatened	Withdrawal of Proposed Rule to List	75 FR 8621-8644
3/18/2010	90-Day Finding on a Petition to List the Berry Cave salamander as Endangered	Notice of 90–day Petition Finding, Substantial	75 FR 13068-13071

FY 2010 COMPLETED LISTING ACTIONS—Continued

Publication Date	Title	Actions	FR Pages
3/23/2010	90-Day Finding on a Petition to List the Southern Hickorynut Mussel (*Obovaria jacksoniana*) as Endangered or Threatened	Notice of 90–day Petition Finding, Not substantial	75 FR 13717-13720
3/23/2010	90-Day Finding on a Petition to List the Striped Newt as Threatened	Notice of 90–day Petition Finding, Substantial	75 FR 13720-13726
3/23/2010	12-Month Findings for Petitions to List the Greater Sage-Grouse (*Centrocercus urophasianus*) as Threatened or Endangered	Notice of 12–month petition finding, Warranted but precluded	75 FR 13910-14014
3/31/2010	12-Month Finding on a Petition to List the Tucson Shovel-Nosed Snake (*Chionactis occipitalis klauberi*) as Threatened or Endangered with Critical Habitat	Notice of 12–month petition finding, Warranted but precluded	75 FR 16050-16065
4/5/2010	90-Day Finding on a Petition To List Thorne's Hairstreak Butterfly as or Endangered	Notice of 90–day Petition Finding, Substantial	75 FR 17062-17070
4/6/2010	12–month Finding on a Petition To List the Mountain Whitefish in the Big Lost River, Idaho, as Endangered or Threatened	Notice of 12–month petition finding, Not warranted	75 FR 17352-17363
4/6/2010	90-Day Finding on a Petition to List a Stonefly (*Isoperla jewetti*) and a Mayfly (*Fallceon eatoni*) as Threatened or Endangered with Critical Habitat	Notice of 90–day Petition Finding, Not substantial	75 FR 17363-17367
4/7/2010	12-Month Finding on a Petition to Reclassify the Delta Smelt From Threatened to Endangered Throughout Its Range	Notice of 12–month petition finding, Warranted but precluded	75 FR 17667-17680
4/13/2010	Determination of Endangered Status for 48 Species on Kauai and Designation of Critical Habitat	Final ListingEndangered	75 FR 18959-19165
4/15/2010	Initiation of Status Review of the North American Wolverine in the Contiguous United States	Notice of Initiation of Status Review	75 FR 19591-19592
4/15/2010	12-Month Finding on a Petition to List the Wyoming Pocket Gopher as Endangered or Threatened with Critical Habitat	Notice of 12–month petition finding, Not warranted	75 FR 19592-19607
4/16/2010	90-Day Finding on a Petition to List a Distinct Population Segment of the Fisher in Its United States Northern Rocky Mountain Range as Endangered or Threatened with Critical Habitat	Notice of 90–day Petition Finding, Substantial	75 FR 19925-19935
4/20/2010	Initiation of Status Review for Sacramento splittail (*Pogonichthys macrolepidotus)*	Notice of Initiation of Status Review	75 FR 20547-20548
4/26/2010	90-Day Finding on a Petition to List the Harlequin Butterfly as Endangered	Notice of 90–day Petition Finding, Substantial	75 FR 21568-21571
4/27/2010	12-Month Finding on a Petition to List Susan's Purse-making Caddisfly (*Ochrotrichia susanae*) as Threatened or Endangered	Notice of 12–month petition finding, Not warranted	75 FR 22012-22025

FY 2010 COMPLETED LISTING ACTIONS—Continued

Publication Date	Title	Actions	FR Pages
4/27/2010	90–day Finding on a Petition to List the Mohave Ground Squirrel as Endangered with Critical Habitat	Notice of 90–day Petition Finding, Substantial	75 FR 22063-22070
5/4/2010	90-Day Finding on a Petition to List Hermes Copper Butterfly as Threatened or Endangered	Notice of 90–day Petition Finding, Substantial	75 FR 23654-23663
6/1/2010	90-Day Finding on a Petition To List *Castanea pumila* var*. ozarkensis*	Notice of 90–day Petition Finding, Substantial	75 FR 30313-30318
6/1/2010	12–month Finding on a Petition to List the White-tailed Prairie Dog as Endangered or Threatened	Notice of 12–month petition finding, Not warranted	75 FR 30338-30363
6/9/2010	90-Day Finding on a Petition To List van Rossem's Gull-billed Tern as Endangered orThreatened.	Notice of 90–day Petition Finding, Substantial	75 FR 32728-32734
6/16/2010	90-Day Finding on Five Petitions to List Seven Species of Hawaiian Yellow-faced Bees as Endangered	Notice of 90–day Petition Finding, Substantial	75 FR 34077-34088
6/22/2010	12-Month Finding on a Petition to List the Least Chub as Threatened or Endangered	Notice of 12–month petition finding, Warranted but precluded	75 FR 35398-35424
6/23/2010	90-Day Finding on a Petition to List the Honduran Emerald Hummingbird as Endangered	Notice of 90–day Petition Finding, Substantial	75 FR 35746-35751
6/23/2010	Listing *Ipomopsis polyantha* (Pagosa Skyrocket) as Endangered Throughout Its Range, and Listing *Penstemon debilis* (Parachute Beardtongue) and *Phacelia submutica* (DeBeque Phacelia) as Threatened Throughout Their Range	Proposed Listing Endangered Proposed Listing Threatened	75 FR 35721-35746
6/24/2010	Listing the Flying Earwig Hawaiian Damselfly and Pacific Hawaiian Damselfly As Endangered Throughout Their Ranges	Final Listing Endangered	75 FR 35990-36012
6/24/2010	Listing the Cumberland Darter, Rush Darter, Yellowcheek Darter, Chucky Madtom, and Laurel Dace as Endangered Throughout Their Ranges	Proposed Listing Endangered	75 FR 36035-36057
6/29/2010	Listing the Mountain Plover as Threatened	Reinstatement of Proposed Listing Threatened	75 FR 37353-37358
7/20/2010	90-Day Finding on a Petition to List *Pinus albicaulis* (Whitebark Pine) as Endangered or Threatened with Critical Habitat	Notice of 90–day Petition Finding, Substantial	75 FR 42033-42040
7/20/2010	12-Month Finding on a Petition to List the Amargosa Toad as Threatened or Endangered	Notice of 12–month petition finding, Not warranted	75 FR 42040-42054
7/20/2010	90-Day Finding on a Petition to List the Giant Palouse Earthworm *(Driloleirus americanus*) as Threatened or Endangered	Notice of 90–day Petition Finding, Substantial	75 FR 42059-42066
7/27/2010	Determination on Listing the Black-Breasted Puffleg as Endangered Throughout its Range; Final Rule	Final Listing Endangered	75 FR 43844-43853

FY 2010 COMPLETED LISTING ACTIONS—Continued

Publication Date	Title	Actions	FR Pages
7/27/2010	Final Rule to List the Medium Tree-Finch *(Camarhynchus pauper)* as Endangered Throughout Its Range	Final Listing Endangered	75 FR 43853-43864
8/3/2010	Determination of Threatened Status for Five Penguin Species	Final ListingThreatened	75 FR 45497- 45527
8/4/2010	90-Day Finding on a Petition To List the Mexican Gray Wolf as an Endangered Subspecies With Critical Habitat	Notice of 90–day Petition Finding, Substantial	75 FR 46894- 46898
8/10/2010	90-Day Finding on a Petition to List *Arctostaphylos franciscana* as Endangered with Critical Habitat	Notice of 90–day Petition Finding, Substantial	75 FR 48294-48298
8/17/2010	Listing Three Foreign Bird Species from Latin America and the Caribbean as Endangered Throughout Their Range	Final Listing Endangered	75 FR 50813-50842
8/17/2010	90-Day Finding on a Petition to List Brian Head Mountainsnail as Endangered or Threatened with Critical Habitat	Notice of 90–day Petition Finding, Not substantial	75 FR 50739-50742
8/24/2010	90-Day Finding on a Petition to List the Oklahoma Grass Pink Orchid as Endangered or Threatened	Notice of 90–day Petition Finding, Substantial	75 FR 51969-51974
9/1/2010	12-Month Finding on a Petition to List the White-Sided Jackrabbit as Threatened or Endangered	Notice of 12–month petition finding, Not warranted	75 FR 53615-53629
9/8/2010	Proposed Rule To List the Ozark Hellbender Salamander as Endangered	Proposed Listing Endangered	75 FR 54561-54579
9/8/2010	Revised 12-Month Finding to List the Upper Missouri River Distinct Population Segment of Arctic Grayling as Endangered or Threatened	Notice of 12–month petition finding, Warranted but precluded	75 FR 54707-54753
9/9/2010	12-Month Finding on a Petition to List the Jemez Mountains Salamander *(Plethodon neomexicanus)* as Endangered or Threatened with Critical Habitat	Notice of 12–month petition finding, Warranted but precluded	75 FR 54822-54845

Our expeditious progress also includes work on listing actions that we funded in FY 2010 but have not yet been completed to date. These actions are listed below. Actions in the top section of the table are being conducted under a deadline set by a court. Actions in the middle section of the table are being conducted to meet statutory timelines, that is, timelines required under the Act. Actions in the bottom section of the table are high-priority listing actions. These actions include work primarily on species with an LPN of 2, and selection of these species is partially based on available staff resources, and when appropriate, include species with a lower priority if they overlap geographically or have the same threats as the species with the high priority. Including these species together in the same proposed rule results in considerable savings in time and funding, as compared to preparing separate proposed rules for each of them in the future.

ACTIONS FUNDED IN FY 2010 BUT NOT YET COMPLETED

Species	Action
Actions Subject to Court Order/Settlement Agreement	
6 Birds from Eurasia	Final listing determination

ACTIONS FUNDED IN FY 2010 BUT NOT YET COMPLETED—Continued

Species	Action
African penguin	Final listing determination
Flat-tailed horned lizard	Final listing determination
Mountain plover[4]	Final listing determination
6 Birds from Peru	Proposed listing determination
Sacramento splittail	12–month petition finding
Pacific walrus	12–month petition finding
Gunnison sage-grouse	12–month petition finding
Wolverine	12–month petition finding
Agave eggergsiana	12–month petition finding
Solanum conocarpum	12–month petition finding
Sprague's pipit	12–month petition finding
Desert tortoise – Sonoran population	12–month petition finding
Pygmy rabbit (rangewide)[1]	12–month petition finding
Thorne's Hairstreak butterfly[3]	12–month petition finding
Hermes copper butterfly[3]	12–month petition finding
Actions with Statutory Deadlines	
Casey's june beetle	Final listing determination
Georgia pigtoe, interrupted rocksnail, and rough hornsnail	Final listing determination
7 Bird species from Brazil	Final listing determination
Southern rockhopper penguin – Campbell Plateau population	Final listing determination
5 Bird species from Colombia and Ecuador	Final listing determination
Queen Charlotte goshawk	Final listing determination
5 species southeast fish (Cumberland darter, rush darter, yellowcheek darter, chucky madtom, and laurel dace)	Final listing determination
Salmon crested cockatoo	Proposed listing determination
CA golden trout	12–month petition finding
Black-footed albatross	12–month petition finding
Mount Charleston blue butterfly	12–month petition finding
Mojave fringe-toed lizard[1]	12–month petition finding
Kokanee – Lake Sammamish population[1]	12–month petition finding
Cactus ferruginous pygmy-owl[1]	12–month petition finding
Northern leopard frog	12–month petition finding
Tehachapi slender salamander	12–month petition finding
Coqui Llanero	12–month petition finding
Dusky tree vole	12–month petition finding
3 MT invertebrates (mist forestfly*(Lednia tumana*), *Oreohelix* sp.3, *Oreohelix* sp. 31) from 206 species petition	12–month petition finding

ACTIONS FUNDED IN FY 2010 BUT NOT YET COMPLETED—Continued

Species	Action
5 UT plants (*Astragalus hamiltonii*, *Eriogonum soredium*, *Lepidium ostleri*, *Penstemon flowersii*, *Trifolium friscanum*) from 206 species petition	12–month petition finding
2 CO plants (*Astragalus microcymbus*, *Astragalus schmolliae*) from 206 species petition	12–month petition finding
5 WY plants (*Abronia ammophila*, *Agrostis* rossiae, *Astragalus proimanthus*, *Boechere (Arabis) pusilla*, *Penstemon gibbensii*) from 206 species petition	12–month petition finding
Leatherside chub (from 206 species petition)	12–month petition finding
Frigid ambersnail (from 206 species petition)	12–month petition finding
Gopher tortoise – eastern population	12–month petition finding
Wrights marsh thistle	12–month petition finding
67 of 475 southwest species	12–month petition finding
Grand Canyon scorpion (from 475 species petition)	12–month petition finding
Anacroneuria wipukupa (a stonefly from 475 species petition)	12–month petition finding
Rattlesnake-master borer moth (from 475 species petition)	12–month petition finding
3 Texas moths (*Ursia furtiva*, *Sphingicampa blanchardi*, *Agapema galbina*) (from 475 species petition)	12–month petition finding
2 Texas shiners (*Cyprinella* sp., *Cyprinella lepida*) (from 475 species petition)	12–month petition finding
3 South Arizona plants (*Erigeron piscaticus*, *Astragalus hypoxylus*, *Amoreuxia gonzalezii*) (from 475 species petition)	12–month petition finding
5 Central Texas mussel species (3 from 474 species petition)	12–month petition finding
14 parrots (foreign species)	12–month petition finding
Berry Cave salamander[1]	12–month petition finding
Striped Newt[1]	12–month petition finding
Fisher – Northern Rocky Mountain Range[1]	12–month petition finding
Mohave Ground Squirrel[1]	12–month petition finding
Puerto Rico Harlequin Butterfly	12–month petition finding
Western gull-billed tern	12–month petition finding
Ozark chinquapin (*Castanea pumila* var. *ozarkensis*)	12–month petition finding
HI yellow-faced bees	12–month petition finding
Giant Palouse earthworm	12–month petition finding
Whitebark pine	12–month petition finding
OK grass pink (*Calopogon oklahomensis*)[1]	12–month petition finding
Southeastern pop snowy plover & wintering pop. of piping plover[1]	90–day petition finding
Eagle Lake trout[1]	90–day petition finding
Smooth-billed ani[1]	90–day petition finding
Bay Springs salamander[1]	90–day petition finding
32 species of snails and slugs[1]	90–day petition finding
42 snail species (Nevada & Utah)	90–day petition finding

ACTIONS FUNDED IN FY 2010 BUT NOT YET COMPLETED—Continued

Species	Action
Red knot *roselaari* subspecies	90–day petition finding
Peary caribou	90–day petition finding
Plains bison	90–day petition finding
Spring Mountains checkerspot butterfly	90–day petition finding
Spring pygmy sunfish	90–day petition finding
Bay skipper	90–day petition finding
Unsilvered fritillary	90–day petition finding
Texas kangaroo rat	90–day petition finding
Spot-tailed earless lizard	90–day petition finding
Eastern small-footed bat	90–day petition finding
Northern long-eared bat	90–day petition finding
Prairie chub	90–day petition finding
10 species of Great Basin butterfly	90–day petition finding
6 sand dune (scarab) beetles	90–day petition finding
Golden-winged warbler	90–day petition finding
Sand-verbena moth	90–day petition finding
404 Southeast species	90–day petition finding
High-Priority Listing Actions[3]	
19 Oahu candidate species[2] (16 plants, 3 damselflies) (15 with LPN = 2, 3 with LPN = 3, 1 with LPN =9)	Proposed listing
19 Maui-Nui candidate species[2] (16 plants, 3 tree snails) (14 with LPN = 2, 2 with LPN = 3, 3 with LPN = 8)	Proposed listing
Dune sagebrush lizard (formerly Sand dune lizard)[3] (LPN = 2)	Proposed listing
2 Arizona springsnails[2] *(Pyrgulopsis bernadina* (LPN = 2), *Pyrgulopsis trivialis* (LPN = 2))	Proposed listing
New Mexico springsnail[2] *(Pyrgulopsis chupaderae* (LPN = 2)	Proposed listing
2 mussels[2] (rayed bean (LPN = 2), snuffbox No LPN)	Proposed listing
2 mussels[2] (sheepnose (LPN = 2), spectaclecase (LPN = 4),)	Proposed listing
Altamaha spinymussel[2] (LPN = 2)	Proposed listing
8 southeast mussels (southern kidneyshell (LPN = 2), round ebonyshell (LPN = 2), Alabama pearlshell (LPN = 2), southern sandshell (LPN = 5), fuzzy pigtoe (LPN = 5), Choctaw bean (LPN = 5), narrow pigtoe (LPN = 5), and tapered pigtoe (LPN = 11))	Proposed listing

[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; also will be funded with FY 2011 funds.

We have endeavored to make our listing actions as efficient and timely as possible, given the requirements of the relevant law and regulations, and constraints relating to workload and personnel. We are continually considering ways to streamline processes or achieve economies of scale, such as by batching related actions together. Given our limited budget for implementing section 4 of the Act, these actions described above collectively constitute expeditious progress.

The Gunnison sage-grouse will be added to the list of candidate species upon publication of this 12–month finding. We will continue to monitor the status of this species as new information becomes available. This review will determine if a change in status is

warranted, including the need to make prompt use of emergency listing procedures.

We intend that any proposed listing action for the Gunnison sage-grouse will be as accurate as possible. Therefore, we will continue to accept additional information and comments from all concerned governmental agencies, the scientific community, industry, or any other interested party concerning this finding.

References Cited

A complete list of references cited is available on the Internet at *http://www.regulations.gov* and upon request from the Western Colorado Ecological Services Field Office (see **ADDRESSES** section).

Author(s)

The primary authors of this notice are the staff members of the Western Colorado Ecological Services Field Office.

Authority

The authority for this section is section 4 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: September 7, 2010

Paul R. Schmidt,

Acting Director, Fish and Wildlife Service.

[FR Doc. 2010–23430 Filed 9–27–10; 8:45 am]

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Federal Register

Tuesday,

September 28, 2010

Part III

Securities and Exchange Commission

17 CFR Parts 229 and 249

Short-Term Borrowings Disclosure; Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 229 and 249

[Release Nos. 33–9143; 34–62932; File No. S7–22–10]

RIN 3235–AK72

Short-Term Borrowings Disclosure

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: We are proposing amendments to enhance the disclosure that registrants provide about short-term borrowings. Specifically, the proposals would require a registrant to provide, in a separately captioned subsection of Management's Discussion and Analysis of Financial Condition and Results of Operations, a comprehensive explanation of its short-term borrowings, including both quantitative and qualitative information. The proposed amendments would be applicable to annual and quarterly reports, proxy or information statements that include financial statements, registration statements under the Securities Exchange Act of 1934, and registration statements under the Securities Act of 1933. We are also proposing conforming amendments to Form 8–K so that the Form would use the terminology contained in the proposed short-term borrowings disclosure requirement.

In a companion release, we are providing interpretive guidance that is intended to improve overall discussion of liquidity and capital resources in Management's Discussion and Analysis of Financial Condition and Results of Operations in order to facilitate understanding by investors of the liquidity and funding risks facing the registrant.

DATES: Comments should be received on or before November 29, 2010.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/proposed.shtml*);
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number S7–22–10 on the subject line; or
- Use the Federal eRulemaking Portal (*http://www.regulations.gov*). Follow the instructions for submitting comments.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number S7–22–10. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/proposed.shtml*). Comments are also available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Christina L. Padden, Attorney Fellow in the Office of Rulemaking, at (202) 551–3430, or Stephanie L. Hunsaker, Associate Chief Accountant, at (202) 551–3400, in the Division of Corporation Finance; or Wesley R. Bricker, Professional Accounting Fellow, Office of the Chief Accountant at (202) 551–5300; U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: We are proposing amendments to Item 303 [1] of Regulation S–K [2] and amendments to Forms 8–K [3] and 20–F [4] under the Securities Exchange Act of 1934 ("Exchange Act").[5]

The proposed amendments include:

- A new disclosure requirement in Management's Discussion and Analysis of Financial Condition and Results of Operations ("MD&A") relating to short-term borrowings that would be designated as Item 303(a)(6) of Regulation S–K;
- Amendments to Item 303(b) of Regulation S–K that would require interim period disclosure of short-term borrowings with the same level of detail as is proposed for annual presentation;
- Conforming amendments to Item 5 of Form 20–F to add short-term borrowings disclosure requirements;
- Conforming amendments to the definition of "direct financial obligations" in Items 2.03 and 2.04 of Form 8–K; and
- Revisions to Item 303 of Regulation S–K and Item 5 of Form 20–F to update the references to United States generally accepted accounting principles ("U.S. GAAP") to reflect the release by the Financial Accounting Standards Board ("FASB") of its FASB Accounting Standards Codification ("FASB Codification").

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I. Background and Summary

Over the past several years, we have provided guidance and have engaged in rulemaking initiatives to improve the presentation of information about funding and liquidity risk.[6] As we have

[1] 17 CFR 229.303.

[2] 17 CFR 229.10 *et al.*

[3] 17 CFR 249.308.

[4] 17 CFR 249.220f.

[5] 15 U.S.C. 78a *et seq.*

[6] *See, e.g.,* Disclosure in Management's Discussion and Analysis About Off-Balance Sheet Arrangements, Contractual Obligations and Contingent Liabilities and Commitments, Release No. 33–8144 (Nov. 4, 2002) [67 FR 68054] (the "OBS Proposing Release"); Disclosure in Management's Discussion and Analysis About Off-Balance Sheet Arrangements, Contractual Obligations and Contingent Liabilities and Commitments, Release

emphasized in past guidance, MD&A disclosure relating to liquidity and capital resources is critical to an assessment of a company's prospects for the future and even the likelihood of its survival.[7] We believe that leverage and liquidity continue to be significant areas of focus for investors,[8] particularly as many failures in the financial crisis arose due to liquidity constraints.[9]

A critical component of a company's liquidity and capital resources is often its access to short-term borrowings for working capital and to fund its operations.[10] Traditional sources of funding, such as trade credit, bank loans, and long-term or medium-term debt instruments, remain important for many types of businesses.[11] However, other short-term financing techniques, including commercial paper, repurchase transactions and securitizations, have become increasingly common among financial institutions and industrial companies alike.[12]

Recent events have shown that these types of arrangements can be impacted, sometimes severely and rapidly, by illiquidity in the markets as a whole.[13] When market liquidity is low, short-term borrowings present increased risks: that financing rates will increase or terms will become unfavorable, that it will be more costly or impossible to roll over short-term borrowings, or for financial institutions, that demand depositors will withdraw funds.[14]

Moreover, short-term financing arrangements can present complex accounting and disclosure issues, even when market conditions are stable.[15] Due to their short-term nature, a company's use of such arrangements can fluctuate materially during a reporting period, which means that presentation of period-end amounts of short-term borrowings alone may not be indicative of that company's funding needs or activities during the period. For example, a bank that routinely enters into repurchase transactions during the quarter might curtail that activity at quarter-end,[16] resulting in a period-end amount of outstanding borrowings that does not necessarily reflect its business operations or related risks. Likewise, a retailer may have significant short-term borrowings during the year to finance inventory that is sold by year-end (and where those short-term borrowings are repaid by year-end). In that case, where the need to finance inventory purchases fluctuates, impacted by the timing and volume of inventory sales, the ability to have access to short-term borrowings may be very important to the company. Therefore, although the financial services sector has been in the spotlight, the issues arising from short-term borrowings are not limited to that sector.[17]

Recent events have suggested that investors could benefit from additional transparency about companies' short-term borrowings, including particularly whether these borrowings vary materially during reporting periods compared to amounts reported at period-end without investor appreciation of those variations.[18] Although current MD&A rules generally require disclosure of a registrant's use of short-term borrowing arrangements and the registrant's exposure to related risks and uncertainties,[19] without a specific

No. 33–8182 (Jan. 28, 2003) [68 FR 5982] (the "OBS Adopting Release") (adopting rules for disclosure in MD&A of off-balance sheet arrangements and aggregate contractual obligations); and Commission Guidance Regarding Management's Discussion and Analysis of Financial Condition and Results of Operations, Release No. 33–8350 (Dec. 19, 2003) [68 FR 75056] (the "2003 Interpretive Release") (providing interpretive guidance on disclosure in MD&A, including liquidity and capital resources).

[7] *See* 2003 Interpretive Release, *supra* note 6, at 75062. *See also* Commission Statement About Management's Discussion and Analysis of Financial Condition and Results of Operations, Release No. 33–8056 (Jan. 22, 2002) [67 FR 3746] (the "2002 Interpretive Release") and the OBS Adopting Release, *supra* note 6.

[8] *See* L. H. Pedersen, *When Everyone Runs for the Exit,* 5 Int'l J. Cent. BankING 177 (2009) ("[t]he global crisis that started in 2007 provides ample evidence of the importance of liquidity risk * * * [t]he crisis spilled over to other credit markets, money markets, convertible bonds, stocks and over-the-counter derivatives."); M. Brunnermeier, *Deciphering the Liquidity and Credit Crunch 2007–2008,* 23 J. Econ. Persp. 77 (2009); M. Brunnermeier & L. Pedersen, *Market Liquidity and Funding Liquidity,* 22 Rev. Fin. Stud. 2201 (2009); R. Huang, *How Committed Are Bank Lines of Credit? Evidence from the Subprime Mortgage Crisis,* (working paper) (Aug. 2010), *available at http://www.phil.frb.org/research-and-data/publications/working-papers/2010/wp10-25.pdf;* P. Strahan *et al., Liquidity Risk Management and Credit Supply in the Financial Crisis,* (working paper) (May 2010), *available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1601992.*

[9] *See, e.g.,* K. Ayotte & D. Steele, *Bankruptcy or Bailouts?,* 35 J. CORP. L. 469 (2010) (discussing illiquidity and insolvency for financial institutions in the context of the recent financial crisis); *When the River Runs Dry,* ECONOMIST, Feb. 11, 2010 ("Many of those clobbered in the crisis were struck down by a sudden lack of cash or funding sources, not because they ran out of capital.").

[10] *See* D. Booth & J. Renier, *Fed Policy in the Financial Crisis: Arresting the Adverse Feedback Loop,* FRBD Economic Letter (Sept. 2009), *available at http://www.dallasfed.org/research/eclett/2009/el0907.html* ("Many businesses were hampered by the squeeze on short-term financing, a key source of working capital needed to prevent deeper reductions in inventories, jobs and wages.").

[11] *See, generally,* B. Becker & V. Ivashina, *Cyclicality of Credit Supply: Firm Level Evidence* (May 2010) (Harvard Working Paper); C. M. James, *Credit Market Conditions and the Use of Bank Lines of Credit,* FRBSF Economic Letter 2009–27 (Aug. 2009), *available at http://www.frbsf.org/publications/economics/letter/2009/el2009-27;* M. Campello *et al., Liquidity Management and Corporate Investment During a Financial Crisis* (July 2010) (working paper) (examining how non-financial companies choose among various sources of liquidity), *available at http://faculty.fuqua.duke.edu/~charvey/Research/Working_Papers/W99_Liquidity_management_and.pdf;* V. Ivashina & D. Scharfstein, *Bank Lending During the Financial Crisis of 2008,* J. FIN. ECON. (forthcoming), *available at* http://ssrn.com/*abstract=1297337* (examining the increase in draw-downs or threats of draw-downs of existing credit lines by commercial and industrial firms and the related impact on bank lending).

[12] *See* S. Sood, *Is the Ride Coming to an End?,* Global Investor, May 1, 2009 ("Treasurers need to look harder at a broader range of funding alternatives, *e.g.,* debt factoring, invoice factoring and trade finance which are essentially forms of collateralized financing"); M. Lemmon *et al., The Use of Asset-backed Securitization and Capital Structure in Industrial Firms: An Empirical Investigation* (May 2010), *available at http://www.fma.org.*

[13] *See* J. Tirole, *Illiquidity and All Its Friends* (Bank for International Settlements, Working Paper No. 303, 2010), *available at http://www.bis.org* ("[t]he recent crisis, we all know, was characterized by massive illiquidity." In addition, "Overall there has been a tremendous increase in the proportion of short-term liabilities in the financial sector"). *See also, e.g.,* P. Eavis, *Lehman's Racy Repo,* WALL ST. J., Mar. 12, 2010 (suggesting that repo financing "is highly vulnerable in times of panic, as the credit crisis showed"); A. Martin *et al., Repo Runs,* FRBNY Staff Report No. 444 (Apr. 2010) (demonstrating that institutions funded by short-term collateralized borrowings are subject to the threat of runs similar to those faced by commercial banks).

[14] *See, e.g.,* Brunnermeier, *supra* note 8, at 79–80; *see also* C. Borio, *Market Distress and Vanishing Liquidity: Anatomy and Policy Options* (Bank for International Settlements, Working Paper No. 158, 2004), *available at http://www.bis.org* ("Under stress, risk management practices, funding liquidity constraints, and in the most severe cases, concerns with counter-party risk become critical.").

[15] *See, e.g.,* the Division of Corporation Finance, Sample Letter Sent to Public Companies Asking for Information Related to Repurchase Agreements, Securities Lending Transactions, or Other Transactions Involving the Transfer of Financial Assets (Mar. 2010) (the "2010 Dear CFO Letter"), *available at http://www.sec.gov/divisions/corpfin/guidance/cforepurchase0310.htm.*

[16] *See* V. Kotomin & D. Winters, *Quarter-End Effects in Banks: Preferred Habitat or Window Dressing?,* 29 J. FIN. RES. 1 (2006); M. Rappaport & T. McGinty, *Banks Trim Debt, Obscuring Risks,* WALL ST. J., May 25, 2010.

[17] *See, e.g.,* W. Dudley, President & CEO, FRBNY, Remarks at the Center for Economic Policy Studies Symposium: More Lessons From the Crisis, (Nov. 13, 2009), *available at http://newyorkfed.org/newsevents/speeches/2009/dud091113.html* (noting "[a] key vulnerability turned out to be the misplaced assumption that securities dealers and others would be able to obtain very large amounts of short-term funding even in times of stress."); J. Lahart, *U.S. Firms Build Up Record Cash Piles,* WALL ST. J., June 10, 2010 ("In the darkest days of late 2008, even large companies faced the threat that they wouldn't be able to do the everyday, short-term borrowing needed to make payrolls and purchase inventory.").

[18] *See, e.g.,* Financial Crisis Inquiry Commission, Hearing on "The Shadow Banking System" (May 5, 2010) (transcript *available at http://www.fcic.gov/hearings/pdfs/2010-0505-Transcript.pdf*).

[19] *See* Item 303(a)(1) and (2) of Regulation S–K and Instruction 5 to paragraph 303(a) [17 CFR 229.303] (noting that liquidity generally shall be

Continued

requirement to disclose information about intra-period short-term borrowings, investors may not have access to sufficient information to understand companies' actual funding needs and financing activities or to evaluate the liquidity risks faced by companies during the reporting period. To address these issues, we are proposing to amend the MD&A requirements to enhance disclosure that registrants provide regarding the use and impact of short-term financing arrangements during each reporting period. The principal aspects of the proposals are outlined below.

First, the proposed amendments would add new disclosure requirements relating to short-term borrowings, similar to the provisions for annual disclosure of short-term borrowings that are currently applicable to bank holding companies in accordance with the disclosure guidance set forth in Industry Guide 3, Statistical Disclosure by Bank Holding Companies ("Guide 3").[20] The proposed amendments would codify the Guide 3 provisions for disclosure of short-term borrowings in Regulation S–K, would require disclosure on an annual and quarterly basis, and would be expanded to apply to all companies that provide MD&A disclosure, not only to financial institutions. If the proposals are adopted, we expect to authorize the Commission's staff to eliminate the corresponding provisions of Guide 3 to avoid redundant disclosure requirements.[21]

Second, we are proposing amendments to the requirements applicable to "foreign private issuers" in the "Operating and Financial Review and Prospects" item in Form 20–F to add short-term borrowings disclosure requirements, which would be substantially similar to the proposed amendments to MD&A, but without the requirement for quarterly reporting since foreign private issuers are not subject to quarterly reporting requirements.

Third, we are proposing conforming amendments to the definition of "direct financial obligations" in Items 2.03 and 2.04 of Form 8–K.

Finally, the proposed amendments would update the references to U.S. GAAP in Item 303 of Regulation S–K and Item 5 of Form 20–F to reflect the FASB Codification.

Over time, to enhance the information provided to investors through MD&A we have supplemented the principles-based disclosure requirements governing MD&A with more detailed and specific MD&A disclosure requirements, such as the contractual obligations table and the off-balance sheet arrangements disclosure requirements.[22] Our proposal to require quantitative and qualitative information about short-term borrowings is similarly designed to enhance investor understanding of a company's financial position and liquidity. We emphasize, however, that the addition of these specific disclosure requirements to MD&A supplements, and is not a substitute for the required discussion and analysis that enables investors to understand the company's business as seen through the eyes of management.[23]

In a companion release, we are providing interpretive guidance that is intended to improve the overall discussion of liquidity and funding in MD&A in order to facilitate understanding by investors of the liquidity and funding risks facing registrants.

II. Discussion of the Proposed Amendments

A. Short-Term Borrowings Disclosure

1. Existing Requirements for Disclosure of Short-Term Borrowings

Existing MD&A requirements call for discussion and analysis of a registrant's liquidity and capital resources. With respect to liquidity, registrants must identify any known trends or any known demands, commitments, events or uncertainties that will result in or that are reasonably likely to result in the registrant's liquidity increasing or decreasing in any material way.[24] Registrants are also required to identify and separately describe internal and external sources of liquidity.[25] With respect to capital resources, a registrant is required to describe any known material trends, favorable or unfavorable, in its capital resources, indicating any expected material changes in the mix and relative cost of such resources.[26] In its discussion of capital resources, a registrant is also required to consider changes between equity, debt and any off-balance sheet financing arrangements.[27] However, other than in connection with this discussion of liquidity and capital resources under Item 303(a)(1) and (2) of Regulation S–K, companies that do not provide Guide 3 disclosure are not subject to any line item requirements for the reporting of specific data regarding short-term borrowing amounts or information about intra-period borrowing levels.

Registrants that are bank holding companies provide statistical disclosures in accordance with the industry guidance set forth in Guide 3.[28] Guide 3 is primarily intended to provide supplemental data to facilitate analysis and to allow for comparisons of sources of income and evaluations of exposures to risk.[29] One of the important provisions of Guide 3 is annual disclosure of average, maximum month-end, and period-end amounts of short-term borrowings.[30] Registrants that follow the provisions of Guide 3 provide three years of annual data, broken out into three categories of short-term borrowings, namely: Federal funds purchased and securities sold under agreements to repurchase, commercial paper, and other short-term borrowings.[31] We believe that this data

discussed on both a long-term and short-term basis); *see also* 2002 Interpretive Release, *supra* note 7 (providing interpretive guidance on MD&A, noting "registrants should consider describing the sources of short-term funding and the circumstances that are reasonably likely to affect those sources of liquidity").

[20] *See* 17 CFR 229.801, Item VII.

[21] Guide 3, as originally promulgated in 1968 under the designations Guide 61 and Guide 3, served as an expression of the policies and practices of the Commission's Division of Corporation Finance in order to assist issuers in the preparation of their registration statements and reports. *See* Guides for Preparation and Filing of Registration Statements, Release No. 33–4936 (Dec. 9, 1968) [33 FR 18617]. In 1982, these guides were redesignated as Securities Act Industry Guide 3 and Exchange Act Industry Guide 3, and were included in the list of industry guides in Items 801 and 802 of Regulation S–K, but were not codified as rules. *See* Rescission of Guides and Redesignation of Industry Guides, Release No. 33–6384 [47 FR 11476], at 11476 ("The list of industry guides has been moved into Regulation S–K, which serves as the central repository of disclosure requirements under the Securities Act and Exchange Act, in order to more effectively put registrants on notice of their existence. These guides remain as an expression of the policies and practices of the Division of Corporation Finance and their status is unaffected by this change.") If the proposed amendments are adopted, the Commission would authorize its staff to amend Guide 3 to eliminate Item VII in its entirety.

[22] *See* Items 303(a)(4) and (5) of Regulation S–K [17 CFR 229.303(a)(4) and (5)].

[23] *See* 2003 Interpretive Release, *supra* note 6, at 75056.

[24] *See* Item 303(a)(1) of Regulation S–K [17 CFR 229.303(a)(1)].

[25] *Id.*

[26] *See* Item 303(a)(2)(ii) of Regulation S–K [17 CFR 229.303(a)(2)].

[27] *Id.*

[28] *See* 17 CFR 229.801. Bank holding companies typically include this disclosure in the MD&A section of their filings.

[29] *See* Proposed Revision of Financial Statement Requirements and Industry Guide Disclosures for Bank Holding Companies, Release No. 33–6417 (July 9, 1982) [47 FR 32158] at 32159.

[30] *See* Item VII of Guide 3.

[31] *Id.* Item VII of Guide 3 calls for the presentation of information for each category of short-term borrowings that is reported in the financial statements pursuant Article 9 of Regulation S–X. Rule 9–03.13(3) of Regulation S–X [17 CFR 210.9–03.13(3)] requires separate balance sheet disclosure of "amounts payable for (1) Federal funds

is useful to show the types of short-term financings constituting a portion of the bank holding company's liquidity profile, as well as to highlight differences between period-end and intra-period short-term financing activity and the overall liquidity risks it faces during the period. Given the utility of this data in analyzing liquidity and funding risks, we are proposing to require all registrants to provide disclosure in their MD&A similar to the short-term borrowings information called for by Guide 3.[32] Further, since liquidity and funding risks can change rapidly over the course of a year, we are proposing to require the information for both annual and interim periods.

We note that, in 1994, in connection with the elimination of various financial statement disclosure schedules, the Commission eliminated a short-term borrowings disclosure requirement for registrants that were not bank holding companies, which was similar to the existing Guide 3 short-term borrowings disclosure guidance.[33] Former Rule 12–10 of Regulation S–X [34] required those registrants to include with their financial statements a schedule of short-term borrowings that disclosed the maximum amount outstanding during the year, the average amount outstanding during the year, and the weighted-average interest rate during the period, with amounts broken out into specified categories of short-term borrowings.[35]

While former Rule 12–10 of Regulation S–X was similar to the short-term borrowing requirements proposed in this release, we believe there are important differences. In proposing to eliminate the schedule, the Commission noted that "the disclosures concerning the registrant's liquidity and capital resources that are required in MD&A would appear to be sufficiently informational to permit elimination of the short-term borrowing schedule." [36] Although we believe that a thorough discussion of liquidity and capital resources under existing MD&A requirements often would provide qualitative information comparable to that elicited by the proposed requirements, we expect that the proposed requirements would serve as a useful framework for the provision of both quantitative and qualitative information about short-term borrowings that would supplement the registrant's discussion of liquidity and capital resources. We also believe that, in contrast to the presentation required in the financial statement schedule that was eliminated in 1994, the information would be more useful to investors if it is provided in MD&A, in tabular form, coupled with a discussion and analysis to provide context for the quantitative data.

Among the primary reasons cited for the repeal of Rule 12–10 were the practical difficulties involved in gathering the data and preparing meaningful disclosure.[37] We note that some of those practical difficulties may be less relevant today because of technological advancements in accounting systems that have become more widely used by companies since 1994. In addition, the requirements proposed today contain a number of features designed to address some of the practical difficulties cited by prior commentators in connection with former Rule 12–10. More importantly, however, recent events suggest that more detailed information about average short-term borrowings would facilitate a better understanding of whether a registrant's period-end figures are indicative of levels during the period. In light of these changes, we believe the balance of factors may have shifted, such that the utility of the disclosure justifies the burden of preparing it.

2. Proposed New Short-Term Borrowings Disclosure in MD&A

Summary of Proposed Requirements

We are proposing to amend our MD&A requirements to include a new section that would provide tabular information about a company's short-term borrowings, as well as a discussion and analysis of those short-term borrowings. We note that the current Guide 3 disclosure of short-term borrowings does not call for a qualitative discussion of the reasons for use by a registrant of the particular types of financing techniques, or of the drivers of differences between average amounts and period-end amounts outstanding for the period. We believe that including a requirement for a narrative explanation together with tabular data would provide important information so that investors can better understand the role of short-term financing and its related risks to the registrant as viewed through the eyes of management.

The proposed amendments would codify in Regulation S–K the Guide 3 provisions for disclosure of short-term borrowings applicable to bank holding companies and would apply to all companies that provide MD&A disclosure, not only to bank holding companies and other financial institutions. If the proposals are adopted, we expect to authorize the Commission's staff to eliminate the corresponding provisions of Guide 3 in their entirety to avoid redundant disclosure requirements for bank holding companies. As proposed, registrants would be required to provide disclosure in MD&A of:

• The amount in each specified category of short-term borrowings at the end of the reporting period and the weighted average interest rate on those borrowings;

• The average amount in each specified category of short-term borrowings for the reporting period and the weighted average interest rate on those borrowings;

• For registrants meeting the proposed definition of "financial company," the maximum daily amount of each specified category of short-term borrowings during the reporting period; and

• For all other registrants, the maximum month-end amount of each specified category short-term borrowings during the reporting period.

We believe that the largest amount of short-term borrowings outstanding during the period is an important data point for assessing the intra-period fluctuation of short-term borrowings and, thus, of liquidity risk. Given the critical nature of liquidity and funding matters to a financial company's business activities, we believe it may be important for an investor to know the maximum amount that a financial company has borrowed in any given period as an indication of its short-term financing needs. We are proposing that financial companies be required to

purchased and securities sold under agreements to repurchase, (2) commercial paper, and (3) other short-term borrowings."

[32] As described below in this release, in codifying the Guide 3 short-term borrowings provisions in Regulation S–K, we are proposing several changes from the existing provisions of Item VII of Guide 3. The changes include: Expanding the categories of short-term borrowings that require disclosure; expanding the applicability to all registrants that are required to provide MD&A disclosure; requiring financial companies to provide disclosure of the daily maximum amount during the period, as well as averages on a daily average basis; requiring a discussion and analysis of short-term borrowings arrangements; and requiring quarterly reporting of short-term borrowings. *See* "Proposed New Short-Term Borrowings Disclosure in MD&A."

[33] *See* Financial Statements of Significant Foreign Equity Investees and Acquired Foreign Businesses of Domestic Issuers and Financial Schedules, Release No. 33–7118 (Dec. 13, 1994) [59 FR 65632].

[34] 17 CFR 210.12–10.

[35] The categories in former Rule 12–10 were amounts payable to: banks for borrowings; factors or other financial institutions for borrowings; and holders of commercial paper.

[36] *See* Financial Statements of Significant Foreign Equity Investees and Acquired Foreign Businesses of Domestic Issuers and Financial Schedules, Release No. 33–7055 (Apr. 19, 1994) [59 FR 21814], at 21818.

[37] *See* Release No. 33–7118, *supra* note 30, at 65635.

disclose the maximum daily amount of short-term borrowings outstanding. Both Guide 3 and former Rule 12–10 called for disclosure of the maximum month-end amounts, which is the standard we are proposing to require for registrants that are not "financial companies." As explained below, we are proposing monthly, rather than daily, maximum amounts for non-financial companies in view of the costs that non-financial companies may encounter in recording daily amounts and the information needs of investors.

Definition of Short-Term Borrowings

Under the proposed rule, "short-term borrowings" would be defined by reference to the various categories of arrangements that comprise the short-term obligations reflected in a registrant's financial statements, and all registrants would be required to present information for each category of short-term borrowings.[38] Specifically, as proposed, "short-term borrowings" would mean amounts payable for short-term obligations that are:

- Federal funds purchased and securities sold under agreements to repurchase;
- Commercial paper;
- Borrowings from banks;
- Borrowings from factors or other financial institutions; and
- Any other short-term borrowings reflected on the registrant's balance sheet.[39]

These categories are derived from the categories of short-term borrowings specified in Guide 3 and Rule 9–03 of Regulation S–X,[40] as well as certain categories of current liabilities set forth in Rule 5–02 of Regulation S–X.[41] Registrants that are bank holding companies and other companies that follow Guide 3 prepare their financial statements in accordance with Article 9 of Regulation S–X and present separate line items for categories of short-term borrowings on the face of their balance sheets under Rule 9–03 of Regulation S–X. Registrants that are commercial or industrial companies prepare their financial statements in accordance with Article 5 of Regulation S–X and present separate categories of current liabilities on the face of their balance sheets under Rule 5–02 of Regulation S–X.[42]

Categories and Disaggregation

Rather than creating different disclosure categories for registrants based solely on existing financial reporting rules applicable to certain types of entities, the proposed requirement draws on the categories from both Rule 9–03 and Rule 5–02 so that a registrant must present each of the categories that is relevant to the types of short-term financing activities it conducts, even if that category is not required to be reported as a separate line item on its balance sheet under Regulation S–X.[43] As a result, for example, registrants currently subject to Guide 3 would need to provide disclosure for the same categories as all other registrants. We believe this approach will result in more meaningful disclosure, since it will elicit more specific information regarding the borrowing methods actually used by the registrant. Foreign private issuers that do not prepare financial statements under U.S. GAAP would be permitted to provide disclosure of categories that correspond to the classifications used for such types of short-term borrowings under the comprehensive set of accounting principles that the company uses to prepare its primary financial statements, so long as the disclosure is provided at a level of detail that satisfies the objective of the disclosure requirement.[44]

The proposed requirements do not include a quantitative threshold for purposes of disaggregating amounts into categories of short-term borrowings. For bank holding companies, this would be a change from existing Guide 3 instructions, which allow categories to be aggregated where they do not exceed 30% of the company's stockholders' equity at the end of the period.[45] On the one hand, including such a threshold could ease the compliance burden for a company where the distinction among categories of short-term borrowings is not material. On the other hand, including such a quantitative threshold could diminish the comparability of information across companies and, more fundamentally, could defeat the objective of specifically highlighting the types of short-term borrowing arrangements that expose registrants to liquidity risks. Accordingly, the allocation of amounts into the various categories is intended to achieve this purpose so that investors can assess the proportionate exposure to the funding risk and market risk inherent in the borrowing arrangements.

In circumstances where aggregate amounts within a category of short-term borrowings are subject to a wide range of interest rates and exchange rates, we note that disclosure of those aggregate amounts may not be comparable or meaningful. For example, a company with operations outside of the United States may have, for a variety of reasons (such as the need to finance its subsidiaries in local currency or as a hedge against an asset denominated in that currency), foreign currency-denominated borrowings that have a significantly higher interest rate than the rate on its dollar-denominated borrowings. Under those circumstances, combining the dollar-denominated borrowings with the foreign currency-denominated borrowings could distort the presentation of the interest rates for the company, causing the combined weighted average interest rate on the

[38] Consistent with the approach taken in Guide 3 and in former Rule 12–10 of Regulation S–X, we propose to define "short-term borrowings" by reference to the amounts payable for various categories of short-term obligations that are typically stated separately on the balance sheet in accordance with Regulation S–X. Under U.S. GAAP, short-term obligations are those that are scheduled to mature within one year after the date of an entity's balance sheet or, for those entities that use the operating cycle concept of working capital, within an entity's operating cycle that is longer than one year. *See* FASB ASC 210–10–20. As such, the proposed definition of short-term borrowings is intended to be a subset of short-term obligations under U.S. GAAP.

[39] This last category is derived from the balance sheet line item in Rule 9–03.13(3) of Regulation S–X [17 CFR 210.9–03.13(3)] for "other short-term borrowings." Amounts that a registrant includes on its balance sheet under a line item for "other short-term borrowings" that do not fall into one of the other proposed categories would be disclosed under this category.

[40] 17 CFR 210.9–03.

[41] Rule 5–02.19(a) of Regulation S–X [17 CFR 210.5–02.19(a)] also requires separate disclosure in the balance sheet of amounts payable to trade creditors, related parties, and underwriters, promoters and employees (other than related parties). Consistent with the approach taken in former Rule 12–10 of Regulation S–X and in existing Guide 3 provisions, we are proposing to define short-term borrowings more narrowly than "current liabilities" or "short-term obligations."

[42] Registrants that are insurance companies follow Article 7 of Regulation S–X, which also incorporates certain standards of Article 5. For example, under Rule 7–03.16(b), insurance companies must include disclosure required by Rule 5–02.19(b), if the aggregate short-term borrowings from banks, factors and other financial institutions and commercial paper issued exceeds five percent of total liabilities. *See* 17 CFR 210.5–02.19(b) and 17 CFR 210.7–03.16(b).

[43] In such circumstances, a registrant should consider whether additional information should be provided to identify the financial statement line items where the period-end short-term borrowings amounts are reported.

[44] *See* proposed Instruction 1 to Item 5.H of Form 20–F. This approach is consistent with the existing Instruction 5 to Item 5 of Form 20–F for issuers that file financial statements that comply with International Financial Reporting Standards ("IFRS") as issued by the International Accounting Standards Board ("IASB"). It is also consistent with the approach taken for tabular disclosure of contractual obligations in Form 20–F for filers that do not use U.S. GAAP.

[45] *See* Instruction to Item VII of Guide 3. If the proposals are adopted, we expect to authorize our staff to eliminate Item VII of Guide 3 in its entirety. In that case, a registrant that provides Guide 3 information would need to follow the proposed Item 303(a)(6) for its short-term borrowings disclosure in MD&A.

borrowings to be much higher than the company would incur to borrow in U.S. dollars alone. This would be particularly true if the borrowings are denominated in the currency of an economy that has experienced high rates of inflation. To address this issue, the proposal would include a requirement to further disaggregate amounts by currency or interest rate to the extent necessary to promote understanding or to prevent aggregate amounts from being misleading. Additional footnote disclosure describing the method for disaggregation is proposed to be required where necessary to an understanding of the data, stating, for example, the timing and exchange rates used for currency translations and any other pertinent data relating to the calculation of the amounts provided.

Requirements for "Financial Companies" and Other Companies

As noted above, the proposed rule would distinguish between registrants that engage in financial activities as their business and all other registrants for purposes of calculating and reporting maximum amounts outstanding and average amounts outstanding during the reporting period. Registrants that are "financial companies" would be required to compile and report data for the maximum daily amounts outstanding (meaning the largest amount outstanding at the end of any day in the reporting period) and the average amounts outstanding during the reporting period computed on a daily average basis (meaning the amount outstanding at the end of each day, averaged over the reporting period). Registrants that are not "financial companies" would be required to report the maximum month-end amounts outstanding (meaning the largest amount outstanding at the end of the last day of any month in the reporting period) and would be required to disclose the basis used for calculating the average amounts reported. These registrants would not be required to present average outstanding amounts computed on a daily average basis, but, under the proposal, the averaging period used must not exceed a month.

For purposes of the proposed requirement, a "financial company" would mean a registrant that, during the relevant reported period, is engaged to a significant extent [46] in the business of lending, deposit-taking, insurance underwriting or providing investment advice, or is a broker or dealer as defined in Section 3 of the Exchange Act,[47] and includes, without limitation, an entity that is, or is the holding company of, a bank, a savings association, an insurance company, a broker, a dealer, a business development company,[48] an investment adviser, a futures commission merchant, a commodity trading advisor, a commodity pool operator, or a mortgage real estate investment trust.[49] Although this non-exclusive list [50] would be provided in the rule as guidance to registrants, the proposed definition itself is intentionally flexible, so that disclosure of maximum daily amount outstanding and the average amount outstanding during the reporting period computed on a daily average basis would be required to be provided by registrants that are engaged to a significant extent in the business of lending, deposit-taking, insurance underwriting, providing investment advice, or are brokers or dealers or any of the other enumerated types of entities, regardless of their nominal industry affiliation, organizational structure or primary regulator.

Some registrants that are engaged in both financial and non-financial businesses may meet the definition of "financial company," such as manufacturing companies that have a subsidiary that provides financing to its customers to purchase its products. For those registrants, the costs involved in providing averages computed on a daily average basis and maximum daily amounts of short-term borrowings may not be justified by the benefit to investors, where only a portion of their activities are financial in nature. To address this, the proposal would provide an instruction that would permit a company to provide separate short-term borrowings disclosure for its financial and non-financial business operations. A company relying on the instruction would be required to provide averages computed on a daily average basis and maximum daily amounts for the short-term borrowings arrangements of its financial operations, and would be permitted to follow the requirements and instructions applicable to non-financial companies for purposes of the short-term borrowings arrangements of its non-financial operations. The instruction would also require the company to provide an explanatory footnote to the table with information to enable readers to understand how the operations were grouped for purposes of the disclosure.

Although investors could benefit from having all registrants provide data for maximum daily amounts and average amounts computed on a daily average basis, we preliminarily believe that it is appropriate to limit these daily requirements to entities that are engaged

[46] We are not proposing a specific threshold or definition of "significant" for this purpose. As described below, we are proposing an instruction that allows a registrant to present the short-term borrowings attributable to any non-financial operations separately using the reporting rules for non-financial companies.

[47] 15 U.S.C. 78c. *See also* proposed Item 303(a)(6)(iv) of Regulation S–K and Item 5.H.4 of Form 20–F.

[48] Business development companies are a category of closed-end investment companies that are not registered under the Investment Company Act of 1940, but are subject to certain provisions of that Act. *See* Section 2(a)(48) and Sections 54–65 of the Investment Company Act of 1940 [15 U.S.C. 80a–2(a)(48) and 80a–53–64].

[49] A mortgage real estate investment trust, or mortgage REIT, is a type of real estate investment trust that invests in mortgages and interests in mortgages. Mortgage REITs typically rely on the exemption from registration under the Investment Company Act of 1940 provided by Section 3(c)(5)(C) of that Act. [15 U.S.C. 80a–3(c)(5)(C)].

[50] We note that the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Pub. L. 111–203) ("Dodd-Frank Act") includes defined terms for "financial institution," "financial company," and "non-bank financial company" which are used in various contexts in that legislation. Our proposed definition of "financial company" is informed by the terms used in the legislation, but is not exactly the same. Because each of those terms has a definition specific to the regulatory purpose of the section of the legislation in which it is used, none is perfectly aligned with the disclosure aim of our proposed requirement. Therefore, in keeping with the over-arching principles-based approach to MD&A requirements, we are proposing a definition of "financial company" based on the types of business activities that expose a company to similar liquidity risks that banks face.

The enumerated examples of entities that would be considered "financial companies" for purposes of the proposed rule are similar to the entities covered by the definition of "financial institution" contained in Sec. 803 of the Dodd-Frank Act, which includes: A depository institution, as defined in Section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813); a branch or agency of a foreign bank, as defined in Section 1(b) of the International Banking Act of 1978 (12 U.S.C. 3101); an organization operating under Section 25 or 25A of the Federal Reserve Act (12 U.S.C. 601–604a and 611 through 631); a credit union, as defined in Section 101 of the Federal Credit Union Act (12 U.S.C. 1752); a broker or dealer, as defined in Section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c); an investment company, as defined in Section 3 of the Investment Company Act of 1940 (15 U.S.C. 80a–3); an insurance company, as defined in Section 2 of the Investment Company Act of 1940 (15 U.S.C. 80a–2); an investment adviser, as defined in Section 202 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2); a futures commission merchant, commodity trading advisor, or commodity pool operator, as defined in Section 1a of the Commodity Exchange Act (7 U.S.C. 1a); and any company engaged in activities that are financial in nature or incidental to a financial activity, as described in Section 4 of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(k)).

In addition, we expect that registrants that meet the existing definition of "bank holding company" in Rule 1–02 of Regulation S–X [17 CFR 210.1–02] would be "financial companies" under the proposed definition.

in activities that are financial in nature. Because of the nature of their business activities, we believe it may be important for an investor to have information about the daily amounts of borrowings of financial companies, particularly where borrowed funds are invested in assets that contribute to their earnings activities. We believe that most banks would be able to track daily short-term borrowings without unreasonable effort or expense, and some companies that engage in financial businesses may already track this type of information for their own risk management purposes.

We expect that many other non-bank companies that engage in these types of activities do not currently track this information on a daily basis, so this proposed requirement could impose significant costs on these entities. On balance, however, we preliminarily believe that the importance of the information in the financial company setting justifies the increased costs. By contrast, for companies that are not financial companies, we are not proposing to require maximum daily amounts or averages calculated on a daily average basis because we preliminarily believe that the information with respect to those issuers is less important to investors than in the context of financial companies, and that the combination of our existing and proposed requirements should provide sufficient information about their use of short-term borrowings. However, we request comment on this issue below.

Narrative Discussion of Short-Term Borrowings

In order to provide context for the short-term borrowings data, we are also proposing to require a narrative discussion of short-term borrowings arrangements.[51] This narrative discussion is not currently included in Guide 3. The topics proposed to be included would be:

- A general description of the short-term borrowings arrangements included in each category (including any key metrics or other factors that could reduce or impair the registrant's ability to borrow under the arrangements and whether there are any collateral posting arrangements) and the business purpose of those arrangements;[52]
- The importance to the registrant of its short-term borrowings arrangements to its liquidity, capital resources, market-risk support, credit-risk support or other benefits;[53]
- The reasons for the maximum amount for the reporting period, including any non-recurring transactions or events, use of proceeds or other information that provides context for the maximum amount; and
- The reasons for any material differences between average short-term borrowings for the reporting period and period-end short-term borrowings.

This proposed short-term borrowings discussion and analysis is intended to highlight short-term financing activities and to complement the other MD&A requirements relating to liquidity and capital resources, but it is not intended to be repetitive of other disclosures relating to liquidity and capital resources. In preparing the short-term borrowings disclosure, we anticipate that a registrant would need to consider its disclosures of cash requirements presented in the contractual obligations table, its disclosures of off-balance sheet arrangements, as well as its other liquidity and capital resources disclosures.[54] For example, the company may have significant payments under operating leases or may have entered into a significant repurchase agreement that is accounted for as a sale that will be settled shortly after the balance sheet date and that are disclosed in the contractual obligations table. To be able to settle these amounts, the company may plan to use existing short-term financing arrangements that will limit its ability to borrow for other purposes, such as making loans or financing inventory, which in turn can impact operations. In this example, the company should discuss these items together and explain the implications. A registrant would need to consider ways to integrate the proposed disclosures, together with disclosures made under existing MD&A requirements, into a clear, comprehensive description of its liquidity profile. For example, a registrant could consider organizing its discussion to address overall liquidity, and then short-term and long-term borrowings and liquidity needs.

As discussed above, we believe investors would benefit from an expanded discussion and analysis about a company's use of short-term borrowings. We believe that disclosure of a company's short-term borrowings data, with a comprehensive discussion of its overall approach to short-term financings and the role of short-term borrowings in the company's funding of its operations and business plan, can provide investors with additional information necessary to better evaluate a registrant's current short-term liquidity profile and potential future trends in its liquidity and funding risks.

Request for Comment

1. Is information about short-term borrowings and intra-period variations in the level of short-term borrowings useful to investors? If so, should we require specific line item disclosure of this information in MD&A, as proposed, or would existing MD&A requirements for disclosure of liquidity and capital resources provide sufficient disclosure about these issues? If a specific MD&A requirement would be appropriate, does the proposed requirement capture the type of information about short-term borrowings that is important to investors? If not, how should we change the proposed requirement? For example, should we require disclosure of the weighted average interest rate on the short-term borrowings, as proposed?

2. Consistent with the approach taken in Guide 3 and in former Rule 12–10 of Regulation S–X, we propose to define "short-term borrowings" by reference to the amounts payable for various categories of short-term obligations that are typically reflected as short-term obligations on the balance sheet and stated as separate line items in accordance with Regulation S–X. Is the proposed definition sufficiently clear? If not, what changes should be made to the proposed definition? For example, should the definition refer to "short-term obligations" as defined in U.S. GAAP?[55] In connection with any response, please provide information as to the costs associated with the implementation of any changes to the proposed definition.

3. Are the proposed categories of short-term borrowings appropriate? If not, why not, and how should we change the proposed requirement? For example, should we apply different categories to Guide 3 companies as compared to other companies, as was the case when former Rule 12–10 of

[51] *See* proposed Item 303(a)(6)(ii) of Regulation S–K.

[52] A discussion of the business purpose of the arrangements might encompass topics such as the use of proceeds of the borrowings and the reasons for the particular structure of the arrangements.

[53] Similar to the existing requirement in Item 303(a)(4)(i)(B) of Regulation S–K, this proposed requirement is intended to provide investors with an understanding of the importance to the registrant of its short-term borrowings as a financial matter and as they relate to the funding of its operations and to its risk management activities.

[54] *See* Item 303(a)(1) and (a)(2) of Regulation S–K.

[55] *See, e.g.,* FASB ASC 210–10–20 ("Short-term obligations are those that are scheduled to mature within one year after the date of an entity's balance sheet or, for those entities that use the operating cycle concept of working capital described in paragraphs 210–10–45–3 and 210–10–45–7, within an entity's operating cycle that is longer than one year.").

Regulation S–X was in effect? Are the proposed categories appropriately tailored so that companies can monitor and provide the proposed disclosure? In particular, is the category for "any other short-term borrowings reflected on the registrant's balance sheet" too broad? If so, how should it be narrowed? Are there other categories of short-term borrowings that should be broken out? For example, should amounts relating to repurchase arrangements be disaggregated into those that are collateralized by U.S. Treasury securities and those that are collateralized by other assets? If so, please include in your discussion the reasons such information would be meaningful to investors and provide an indication of the costs and burdens associated with providing that level of detail.

4. Is disaggregation by currency or other grouping useful to the understanding of aggregate short-term borrowing amounts? Would the proposed requirement for disaggregation provide an appropriate level of detail? Is it sufficiently clear? Instead, should we prescribe a specified method or threshold for disaggregation? If so, describe it. For example, should we require information to be presented separately by currency where there is a significant amount of borrowings that are not denominated in the company's reporting currency? If so, should we specify a threshold amount (*e.g.,* 5, 15 or 20% of borrowings) and what should that threshold be? Or should the amounts instead be disaggregated into more generalized categories, such as "domestic" and "foreign" borrowings? Please provide details about the costs and benefits of any alternatives to the proposed disaggregation provision, and discuss whether requiring companies to follow a specific disaggregation method would impose practical difficulties on companies (or particular types of companies) when they are gathering and compiling the proposed short-term borrowings disclosure.

5. We note that Guide 3 currently provides a quantitative threshold for separate disclosure of short-term borrowings by category. The proposed short-term borrowings provision does not contain a specific quantitative disclosure threshold for separate disclosure of amounts in the different categories of short-term borrowings. Should we establish a quantitative disclosure threshold for the separate categories of short-term borrowings, such as above a specified percentage of liabilities or stockholders' equity (*e.g.,* 5, 10, 20, 30 or 40%)? If so, how should the threshold be computed? Should this quantitative disclosure threshold apply to all companies?

6. As proposed, "financial companies" would be required to provide the largest daily amount of short-term borrowings. We understand that banks and bank holding companies track this information on a daily basis in connection with the preparation of reports to banking regulators. We also expect that other non-bank companies engaged in financial businesses that would fall within the scope of the proposed requirement do not currently track this type of information on a daily basis. Is this information useful to investors? What are the burdens and costs of requiring registrants that meet the definition of "financial company" but are not banks to meet that requirement?

7. Is the activities-based definition of "financial company" sufficiently clear? Are the activities identified (lending, deposit taking, insurance underwriting, providing investment advice, broker or dealer activities) as part of the definition appropriate, or are they overly-inclusive (or under-inclusive)? Should we provide a definition of the term "significant" as used in the proposed definition? If so, should we provide a numerical, threshold-based definition (*e.g.,* 10% of total assets)? If so, what should the threshold be? Should it relate to assets or should it relate to revenues and income? Should we specify certain types of entities in the definition, as proposed? Should other entities be added to or excluded from the definition? If so, please provide details. Are there any circumstances that would cause an entity to come under the proposed definition that should be excluded, and if so, why?

8. Should all registrants that are financial companies be required to provide the maximum daily amount of short-term borrowings, as proposed? Should registrants that are not financial companies be required to provide the maximum daily amount of short-term borrowings, rather than permitting them to provide the maximum month-end amount as is proposed? Do registrants that are not financial companies have systems to track and calculate this information on a daily basis? What are the burdens and costs of requiring companies engaged in non-financial businesses to meet that requirement? Should registrants that are not financial companies be required to disclose each month-end amount rather than the maximum, as proposed? Should registrants also be required to provide the minimum month-end (or daily for financial companies) amount outstanding? What are the burdens and costs of requiring companies to meet those requirements?

9. Is the proposed accommodation for reporting that would allow financial companies to present information about their non-financial businesses on the same basis as other non-financial companies appropriate? Would this address cause concerns for these companies? Is the proposed instruction to implement this accommodation sufficiently clear?

10. Should registrants be required to provide the largest amount of short-term borrowings outstanding *at any time* during the reporting period (meaning intra-day as opposed to close of business)? Would this amount be difficult for registrants to track?

11. As proposed, registrants that are financial companies would be required to provide average amounts outstanding computed on a daily average basis. Should averages computed on a daily average basis be required only for certain companies (for example, bank holding companies, banks, savings associations, broker-dealers)? If so, why and which companies? In this connection, please describe whether financial companies that are not banks typically close their books on a daily basis and whether they have the systems to track and calculate this daily balance information used to compute averages on a daily average basis. What are the burdens and costs for a registrant (that is not a bank) to meet the proposed requirement? Are some types of businesses, such as multi-nationals, disproportionately affected by such costs? If so, please explain why. Is there an alternative requirement for such a business that would still meet the disclosure objective?

12. As proposed, registrants that are not financial companies would be permitted to use a different averaging period, such as weekly or monthly, so long as the period used is not longer than a month. Is it appropriate to allow this type of flexibility given the possibility that longer averaging periods could mask fluctuations? Are certain borrowing practices more likely to be impacted than others, such as overdrafts used as financing? Is there an alternative requirement or instruction that could eliminate this issue while not imposing undue costs and burdens and still meeting the disclosure objective?

13. Should we require a narrative discussion of short-term borrowing arrangements, as proposed? Are the narrative discussion topics useful to investors? Are there other discussion topics that would be useful to investors? If so, what other topics should we require to be discussed? Should we

tailor the disclosure to omit information that may be unimportant to investors? If so, what information, and why, and which registrants would be affected?

14. Do the proposed discussion topics provide enough flexibility to companies to fully and clearly describe their short-term borrowings arrangements?

15. If the proposals are adopted, we expect to authorize our staff to amend Guide 3 to eliminate Item VII in its entirety. Are there any other technical amendments that would be appropriate, such as the elimination of cross-references in other Commission rules or forms, if the staff removes Item VII from Guide 3?

3. Reporting Periods

As proposed, the requirements would be applicable to annual and quarterly reports and registration statements. For annual reports, information would be presented for the three most recent fiscal years and for the fourth quarter. In addition, registrants preparing registration statements with audited full-year financial statements would be required to include short-term borrowings disclosure for the three most recent full fiscal year periods and interim information for any subsequent interim periods, consistent in each case with general MD&A requirements and instructions applicable to the relevant registration statement form requirements. For quarterly reports, information would be presented for the relevant quarter, without a requirement for comparative data. For registrants that are not subject to Guide 3, we are proposing a yearly phase-in of the requirements for comparative annual data until all three years are included in the annual presentation. This is described under the heading "Transition" in this release. Notwithstanding this transitional accommodation, all registrants would be permitted to provide three full years during the transition period.

A principal objective of the proposed disclosure is to provide transparency about intra-period borrowings activity, as a supplement to disclosure of period-end amounts. To achieve this purpose in each reporting period, we are proposing that disclosure in quarterly reports and interim period disclosure in registration statements include short-term borrowings information presented with the same level of detail as would be provided for annual periods.[56]

[56] We are proposing to revise the "Instructions to Paragraph 303(b)" in Item 303 of Regulation S–K to accomplish this change to interim period reporting requirements. The proposed instructions would only apply to disclosure pursuant to Item 303(a)(6). *See* 17 CFR 229.303(b).

Companies would need to include the full presentation of quantitative and qualitative information for short-term borrowings during the interim period, rather than *only* disclosing material changes that have occurred since the previous balance sheet date. In addition, registrants would be required to identify material changes from previously reported disclosures in the discussion and analysis, so that any material changes would be highlighted. This layered approach is intended to enhance transparency of short-term borrowing activities during the specific quarterly period, while still emphasizing material changes so that investors can more easily understand how the exposures have evolved from past reporting periods.

In addition, registrants would be required to provide quarterly short-term borrowings information for the fourth fiscal quarter in their annual report. Because the disclosure is intended to provide additional transparency about a registrant's short-term borrowing practices, including the ability of the registrant to obtain financing to conduct its business, and the costs of that financing, during the year, we believe that short-term borrowings data for the fourth quarter would be useful to investors. As this type of reporting requirement would be a departure from our long-standing approach to the presentation of fourth quarter financial information in MD&A contained in annual reports, we specifically request comment below on this issue, and particularly whether material information as to short-term borrowing activities prior to year-end would be lost without separate quarterly disclosure for the fourth quarter.

As proposed, interim period disclosures would be presented without comparative period data.[57] We believe that this data is most meaningful to show changes from annual borrowing amounts and any intra-period variations from period-end amounts. In addition, because any seasonal trends in the information should generally already be disclosed under existing MD&A requirements, we preliminarily do not believe it is necessary to specifically require prior period comparisons to identify seasonality in borrowing levels. Moreover, other than the presentation of short-term borrowings information for the fourth fiscal quarter, registrants would not be required to include a quarterly breakdown of short-term borrowings information in their annual report. Because quarterly information would be available in Forms 10–Q for all quarters other than the fourth quarter, we do not believe that repeating that quarterly information in the annual report would be useful to investors.

[57] Proposed Instruction 8 to Paragraph 303(b) would require the registrant to include narrative discussion that highlights any material changes from prior periods. In doing so, registrants should consider whether including comparative period data would make the presentation of those material changes more clear.

These interim period requirements would not apply to registrants that are foreign private issuers or smaller reporting companies. In addition, smaller reporting companies would be permitted to disclose two fiscal years rather than three, in accordance with existing disclosure accommodations for small entities. For a discussion of the treatment of these types of entities, *see* the discussion under "Treatment of Foreign Private Issuers and Smaller Reporting Companies" in this release.

Request for Comment

16. Are the proposed reporting periods appropriate? Should we require annual short-term borrowings information in annual reports, as proposed? Should annual reports instead include a quarterly breakdown of short-term borrowings information? Should annual reports include quarterly information for the fourth fiscal quarter in addition to annual information, as proposed? For example, would disclosure of information for the fourth fiscal quarter be necessary to highlight any efforts to reduce borrowings at year-end, below the levels prevailing throughout the fourth fiscal quarter? Is the presentation of this information for the fourth fiscal quarter, in isolation without corresponding quarterly financial statements and MD&A for that period, potentially misleading? If so, what additional information should be required? Should quarterly reports be required to include quarterly information, as proposed? Should registration statements be required to include annual and interim information, as proposed? In each case, explain the reasons for requiring the applicable reporting periods and provide information as to whether investors would find the information useful. Please also include details about additional costs involved.

17. Should we require quarterly disclosure at the same level of detail as annual period disclosure, as proposed? Does the proposed presentation provide information that is useful to investors? Describe in detail the costs and benefits of providing full (rather than material changes) interim period disclosures of the proposed short-term borrowings information. Instead, should we require quarterly reports to include disclosure

of material changes only? If so, why? How would disclosure of material changes address the issue of transparency of intra-period borrowings?

18. For annual periods, should we require, as proposed, three years of comparative data? Or would data for the current year, without historical comparison periods, provide investors with adequate information? Describe in detail the costs and benefits of providing comparative period disclosures in this context.

19. Is the proposed disclosure for the current interim period sufficient, or should we also require comparative period data? If so, which comparative periods would be most useful? Explain how prior period comparisons would be useful to investors; for example, would prior period comparisons be needed to identify seasonality in borrowing levels? If so, instead of requiring comparative data, should we specifically require companies to qualitatively describe trends or seasonality in borrowing levels? Describe in detail the costs and benefits of providing comparative period disclosures in this context.

20. Should we require year-to-date information in addition to quarterly information for interim periods? Would year-to-date information be useful to investors? Describe in detail the costs and benefits of providing year-to-date information in this context.

4. Application of Safe Harbors for Forward-Looking Statements

In some instances, the disclosure provided in response to the proposed short-term borrowings narrative discussion requirements could include disclosure of forward-looking information.[58] We are not, however, proposing to extend the safe harbor in Item 303(c) of Regulation S–K to include disclosures of forward-looking information made pursuant to proposed Item 303(a)(6). This safe harbor was adopted in connection with the adoption of Items 303(a)(4) and (a)(5) and explicitly applies the statutory safe harbors of Sections 27A[59] of the Securities Act and 21E[60] of the Exchange Act to those Items in order to remove possible ambiguity about whether the statutory safe harbors would be available for that information.[61] The disclosure required by Items 303(a)(4) and (a)(5) consists primarily of forward-looking information, and as such, issuers and market participants expressed particular concerns about the application of existing safe harbors to that disclosure.[62] In the proposing release for Item 303(c), we requested comment as to whether the safe harbor in Item 303(c) should be expanded to cover all forward-looking information in MD&A.[63] We declined to adopt such an expansion. We preliminarily believe that the proposed short-term borrowings disclosure requirements, which primarily concern disclosure of historical amounts together with qualitative information about the registrant's use of short-term borrowings, would not present any distinctive issues under the application of the statutory safe harbor, and, accordingly, we are not proposing to provide any specific provision or guidance as to its application to this information. Companies would need to treat forward-looking information disclosed pursuant to proposed Item 303(a)(6) in the same manner as other MD&A disclosure for purposes of the statutory safe harbor. We further note that nothing in the proposed requirements would limit (or expand) the scope of the statutory safe harbor, the safe harbor rules under Securities Act Rule 175 or Exchange Act Rule 3b–6, or Item 303(c) of Regulation S–K.

Request for Comment

21. Is there any need for further guidance from the Commission with respect to the application of either the statutory or the rule-based safe harbors to the information called for by the proposed short-term borrowings disclosure requirement? If so, please provide details as to the potential ambiguity in the application of existing safe harbors. In particular, what information called for by the proposed requirements raises doubt as to the applicability of the statutory safe harbor or the safe harbor rules under Securities Act Rule 175 or Exchange Act Rule 3b-6?

22. Should Item 303(c) of Regulation S–K be revised to also cover forward-looking information disclosed pursuant to the proposed short-term borrowings disclosure requirement?

B. Treatment of Foreign Private Issuers and Smaller Reporting Companies

1. Foreign Private Issuers (Other Than MJDS Filers)

The proposed amendments would apply to foreign private issuers that are not MJDS filers.[64] The existing MD&A-equivalent disclosure requirements in Form 20–F[65] currently mirror the substantive MD&A requirements for U.S. companies, and we believe that our proposed changes to the MD&A requirements for U.S. companies would provide important disclosure to investors that should also be provided by foreign private issuers. Accordingly, we are proposing a new paragraph H under Item 5 (Operational and Financial

[58] *See generally* proposed Item 303(a)(6)(ii)(B), (C) and (D) of Regulation S–K.

[59] 15 U.S.C. 77z–2.

[60] 15 U.S.C. 78u–5.

[61] *See* OBS Adopting Release, *supra* note 6, at 5993.

[62] *See, e.g.,* Letter of Committee on Federal Regulation of Securities of the American Bar Association's Section of Business Law in Response to the OBS Proposing Release, *available at http://www.sec.gov/rules/proposed/s74202.shtml* ("[B]ecause of the inherent predictive nature of disclosures of contingent liabilities and commitments. * * * [W]e are concerned that the failure to include that provision would lead to a negative inference that such disclosure is not covered by the safe harbor.").

In the OBS Adopting Release, the Commission emphasized that notwithstanding the safe harbor provided in Item 303(c) of Regulation S–K, the statutory safe harbor, by its terms, as well as the safe harbor rules under Securities Act Rule 175 [17 CFR 230.175] and Exchange Act Rule 3b–6 [17 CFR 240.3b–6] may be available for the forward-looking disclosure required by Items 303(a)(4) and (5) of Regulation S–K.

[63] *See* OBS Proposing Release, *supra* note 6, at 68065–68066.

[64] The term "MJDS filers" refers to registrants that file reports and registration statements with the Commission in accordance with the requirements of the U.S.-Canadian Multijurisdictional Disclosure System (the "MJDS"). The definition for "foreign private issuer" is contained in Exchange Act Rule 3b–4(c) [17 CFR 240.3b–4(c)]. A foreign private issuer is any foreign issuer other than a foreign government, except for an issuer that has more than 50% of its outstanding voting securities held of record by U.S. residents and any of the following: A majority of its officers and directors are citizens or residents of the United States, more than 50% of its assets are located in the United States, or its business is principally administered in the United States.

[65] Form 20–F is the combined registration statement and annual report form for foreign private issuers under the Exchange Act. It also sets forth disclosure requirements for registration statements filed by foreign private issuers under the Securities Act.

In designing the integrated disclosure regime for foreign private issuers the Commission endeavored to "design a system that parallels the system for domestic issuers but also takes into account the different circumstances of foreign registrants." Integrated Disclosure System for Foreign Private Issuers, Release No. 33–6360 (Nov. 20, 1981) [46 FR 58511]. As such, the requirements of Item 5 of Form 20–F are analogous to those in Item 303 of Regulation S–K. Although the wording is not identical, we interpret Item 5 as requiring the same disclosure as Item 303 of Regulation S–K. *See* Rules, Registration and Annual Report for Foreign Private Issuers, Release No. 34–16371 (Nov. 29, 1979) [44 FR 70132] (adopting Form 20–F and stating that the Commission would consider revisions when MD&A requirements in Regulation S–K were adopted); Integrated Disclosure System for Foreign Private Issuers, Release No. 33–6360 (revising Form 20–F to add requirements consistent with the MD&A requirements in Regulation S–K); International Disclosure Standards, Release No. 33–7745 (Sept. 28, 1999)[64 FR 53900] (adopting revisions to Form 20–F to conform to international disclosure standards endorsed by the International Organization of Securities Commissions in 1998); *see also* OBS Adopting Release, *supra* note 6, at 5992 n. 135.

Review and Prospects) in Form 20–F covering short-term borrowings.

Because foreign private issuers using a comprehensive set of accounting principles other than U.S. GAAP might capture data and prepare their financial statements using different categories of short-term borrowings, we propose to include an instruction to paragraph H that would permit a foreign private issuer to base the categories of short-term borrowings used in the rule on the classifications for such types of short-term borrowings under the comprehensive set of accounting principles which the company uses to prepare its primary financial statements, so long as the disclosure is provided in a level of detail that satisfies the objective of the Item 5.H disclosure requirement.[66] This approach is consistent with the approach to contractual obligations disclosure in Item 5.F, for which foreign private issuers are instructed to base their tabular disclosure on the classifications of obligations used in the generally accepted accounting principles under which the company prepares its primary financial statements.[67] Similarly, in connection with references to FASB pronouncements used in Item 5 of Form 20–F, issuers that file financial statements that comply with IFRS as issued by the IASB are instructed to "provide disclosure that satisfies the objective of Item 5 disclosure requirements."[68] Other than this instruction regarding the categorization of short-term borrowings, the short-term borrowings disclosure requirement proposed for Form 20–F is substantially similar to the proposed provision applicable to U.S. issuers.

The reporting periods applicable to U.S. issuers are proposed to also apply to foreign private issuers, except with respect to quarterly reporting. For annual reports on Form 20–F, foreign private issuers would present three years of annual short-term borrowings data, subject to the proposed transition accommodation applicable to all registrants that are not bank holding companies. Foreign private issuers preparing registration statements with audited full-year financial statements would be required to include short-term borrowings disclosure for the three most recent full fiscal year periods and quarterly information for any subsequent interim periods included in the registration statement in accordance with the requirements of the relevant registration statement form. The proposed amendments for U.S. issuers would require quarterly disclosure of short-term borrowings in quarterly reports on Form 10–Q.[69] Foreign private issuers, however, are not required to file quarterly reports with the Commission, and therefore the proposed amendments would not apply to Form 6–K[70] reports submitted by foreign private issuers.[71] Thus, unless a foreign private issuer (other than an MJDS filer) files a Securities Act registration statement that must include interim period financial statements and related MD&A-equivalent disclosure,[72] it would not be required to update its disclosure under proposed Item 5.H of Form 20–F more than annually.

Request for Comment

23. Should we apply the proposed amendments to foreign private issuers' annual reports on Form 20–F, as proposed? Or should we exclude these annual reports from the scope of the amendments? If so, why?

24. Should we apply the proposed amendments to foreign private issuers' registration statements, as proposed? Or should these registration statements be excluded from the scope of the proposed rules? In particular, should we not require the interim period short-term borrowings information to be included in the registration statements of foreign private issuers? If not, why?

25. Should we limit the application of the new disclosure requirements to foreign private issuers that are banks or bank holding companies, or that are financial companies? If so, why?

26. Is the instruction to proposed Item 5.H regarding the categories of short-term borrowings appropriate? Is the instruction clear? If not, how can it be clarified?

2. MJDS Filers

The proposed amendments would not affect MJDS filers. The disclosure provided by Canadian issuers is generally that which is required under Canadian law, and we do not propose to depart from our approach with respect to financial disclosure provided by MJDS filers. Accordingly, we are not proposing to further amend Form 40–F at this time.

Request for Comment

27. Should we amend Form 40–F to include the new short-term borrowings disclosure requirements? If so, why?

3. Smaller Reporting Companies

Smaller reporting companies currently provide disclosure pursuant to Item 303, subject to the special accommodation provided in Item 303(d) that, among other things, permits the exclusion of tabular disclosure of contractual obligations under Item 303(a)(5). The proposed short-term borrowings disclosure requirements would apply to smaller reporting companies, except that quarterly disclosures would not be required unless material changes have occurred during that interim period (as is the case under existing requirements for interim period disclosure) and information for the fourth fiscal quarter would not be required in annual reports. To this end, we propose to amend Item 303(d) to clarify that smaller reporting companies need only provide the proposed Item 303(a)(6) information on an annual basis and, in interim periods, if any material changes have occurred.[73] In addition, for smaller reporting companies providing financial information on net sales and revenues and on income from continuing operations for only two years, only two years of short-term borrowings information would be required, consistent with the scaled MD&A disclosure requirement for smaller reporting companies under existing Item 303(d).

This accommodation for interim period disclosure is intended to balance the practical impact of the disclosure requirement with the need to enhance

[66] *See* proposed Instruction 1 to Item 5.H of Form 20–F.

[67] *See* Instruction 2 to Item 5.F of Form 20–F.

[68] *See* Instruction 5 to Item 5 of Form 20–F.

[69] 17 CFR 249.308a. *See* proposed Instruction 8 to Item 303(b) of Regulation S–K [17 CFR 229.303(b)].

[70] 17 CFR 249.306. A foreign private issuer must furnish under cover of Form 6–K material information that it: Makes public or is required to make public under its home country laws, files or is required to file with a stock exchange on which its securities are traded and which was made public by that exchange under the rules of the stock exchange or distributes or is required to distribute to security holders. In instances where a foreign private issuer is furnishing interim information on short-term borrowings under those circumstances, we would encourage the foreign private issuer to consider providing an update to its annual short-term borrowings disclosure, although it would not be required to do so.

[71] This treatment is consistent with the approach we took when adopting off-balance sheet arrangements and contractual obligations disclosure. *See* OBS Adopting Release, *supra* note 6, at 5992 n. 139.

[72] The proposed amendments would apply to Securities Act registration statements on Forms F–1 [17 CFR 239.31], F–3 [17 CFR 239.33] and F–4 [17 CFR 239.34]. Each of these registration statements references the disclosure requirements in Form 20–F.

[73] Proposed "Instruction 8 to Paragraph 303(b)" would exclude smaller reporting companies from the requirement to provide all the information specified in paragraph (a)(6) in interim periods. As proposed, Item 303(d) would state that smaller reporting companies are only required to provide material changes to the information specified in proposed Item 303(a)(6) in interim periods. The proposed revisions to Item 303(d) would not affect the existing accommodation for disclosure of Item 303(a)(5) information.

disclosure of liquidity risks facing smaller reporting companies. While liquidity risks, particularly those arising from short-term borrowings, are equally important for smaller reporting companies, we also believe that smaller reporting companies are likely to have fewer complex financing alternatives available. Accordingly, we believe that smaller reporting companies would not likely have as many significant changes to the liquidity profile presented in periodic reports as other reporting companies. Thus, we do not believe that the burden of preparing expanded interim period reporting is justified by the incremental information that would be provided compared to that provided under the existing interim updating model applicable to smaller reporting companies.

Request for Comment

28. Does the proposal strike the proper balance between imposing proportional costs and burdens on smaller reporting companies while providing adequate information to investors? Would the proposed new short-term borrowings disclosure be useful to investors in smaller reporting companies? Are there any features of the proposed requirements that would impose unique difficulties or significant costs for smaller reporting companies? If so, how should we change the requirements to reduce those difficulties or costs while still achieving the disclosure objective?

29. Should we provide the proposed exemption for interim period updating to smaller reporting companies? If not, please discuss whether the expanded level of interim period disclosure by smaller reporting companies would be useful to investors and why.

30. Would the gathering of data and preparation of expanded interim period disclosure be burdensome to smaller reporting companies? Could the proposed requirement be structured a different way for smaller reporting entities so as to enable interim period reporting without imposing a significant cost? If so, please provide details of such an alternative.

31. Are the nature of the short-term borrowings and the related risks different for smaller reporting companies such that additional or alternate disclosure would be appropriate? In particular, would the proposed annual requirement for disclosing short-term borrowings information cause a smaller reporting company to collect the same data it would need to collect for interim reporting, such that the expanded level of interim period disclosure proposed for registrants that are not smaller reporting companies would not be unduly burdensome?

C. Leverage Ratio Disclosure Issues

Many observers believe that high leverage at financial institutions, in the U.S. and globally, was a contributing factor to the financial crisis.[74] As a result, investors and market participants are increasingly focused on leverage ratio disclosures, particularly for banks and for non-bank financial institutions.[75] Similarly, we believe that investors may benefit from additional transparency about the capitalization and leverage profile of non-financial companies, particularly for those companies that rely heavily on external financing and credit markets to fund their businesses and future growth.

Under U.S. GAAP, bank holding companies are currently required to disclose certain capital and leverage ratios (calculated in accordance with the requirements of their primary banking regulator) in the financial statements that are included in filings with the Commission.[76] The Commission's staff has observed that some bank holding companies also include disclosure of these ratios in their MD&A presented in annual and quarterly reports. The financial statement disclosure by bank holding companies of their capital and leverage ratios provides to investors some of the same information that banking regulators use to assess a bank's capital adequacy and leverage levels.[77] For U.S. banks and thrifts, the standards applied by the various banking agencies are substantially uniform,[78] which means that the ratios that bank holding companies are required to include in their financial statements filed with the Commission should be calculated using consistent methodology. Consistent with existing disclosure rules, where disclosed ratios are likely to be materially impacted by known events such as short-term borrowings, contractual obligations or off-balance sheet arrangements, or are not otherwise indicative of the registrant's leverage profile, additional disclosure would be required in order to provide an understanding of the registrant's financial condition and prospects.[79]

We are considering whether to extend a leverage ratio disclosure requirement to companies that are not bank holding companies. We understand that, outside the banking industry, a variety of metrics are used to evaluate a company's debt levels and capital adequacy. There does not appear to be a "one-size-fits all" leverage ratio that is used by companies or investors. For example, we understand that financial analysts, credit analysts and other sophisticated users of financial statements tend to apply their own models and calculate their own ratios for use in their analyses of a registrant's financial health, using their own proprietary calculation methods.[80] We also understand that there is not a consensus on how to measure and treat "off-balance sheet" leverage for purposes of calculating leverage or capital ratios. We are requesting comment today as to the scope of a potential disclosure requirement, and importantly, how such a requirement would take into account the differences among metrics and industries while still providing comparability.

Request for Comment

32. Should all types of registrants be required to provide leverage ratio disclosure and discussion? Are there differences among industries or types of businesses that would need to be addressed in such a requirement so that

[74] *See, e.g.,* Financial Stability Board, *Report of the Financial Stability Forum on Addressing Procyclicality in the Financial System* (2009) *available at http://www.financialstabilityboard.org/publications/r_0904a.pdf;* S. Deng, *SIVs, Bank Leverage and Subprime Mortgage Crisis,* (Dec. 2009), *available at http://ssrn.com/abstract=1319431.*

[75] *See, e.g.,* K. D'Hulster, *The Leverage Ratio,* WORLD BANK PUB. POL'Y J. (2009); J. Gabilondo, *Financial Moral Panic! Sarbanes-Oxley, Financier Folk Devils, and Off-Balance Sheet Arrangements,* 36 SETON HALL L. REV. 781 (2006) (proposing that a financial transparency ratio would reduce the public information gap arising from off-balance sheet arrangements); P. M. Hildebrand, Vice-Chairman of the Governing Board of the Swiss National Bank, *Is Basel II Enough? The Benefits of a Leverage Ratio,* London School of Economics Financial Markets Group Lecture, Dec. 15, 2008, *available at http://www.bis.org/review/r081216d.pdf;* Standard & Poor's, *The Basel III Leverage Ratio is a Raw Measure but Could Supplement Risk Based Capital Measures,* April 15, 2010, *available at http://www.bis.org/publ/bcbs165/splr.pdf.*

[76] *See* FASB ASC 942–505–50, *Regulatory Capital Disclosures.* Specifically, bank holding companies must present their required and actual ratios and amounts of Tier 1 leverage, Tier 1 risk based capital, and total risk based capital, (for savings institutions) tangible capital, and (for certain banks and bank holding companies) Tier 3 capital for market risk. Under U.S. GAAP, bank holding companies are required to include this information in the footnotes to their financial statements.

[77] *See* Regulation Y, Appendices A (Risk-Based Capital), B (Leverage Measure) and D (Tier I Leverage Measure) [12 CFR 225].

[78] *See* The Federal Reserve Board *et al., Joint Report: Differences in Capital and Accounting Standards among the Federal Banking and Thrift Agencies* (Feb. 5, 2003) [68 FR 5976].

[79] *See, e.g.,* Item 303(a)(1) of Regulation S–K, and Instructions 1, 2 and 3 to Paragraph 303(a).

[80] *See, e.g.,* P. Kraft, *Rating Agency Adjustment to GAAP Financial Statements and Their Effect on Ratings and Bond Yields* (Nov. 1, 2009) at *http://ssrn.com/abstract=1266381.*

it is meaningful to investors? If so, how should "leverage ratio" be defined in this context? Is comparability across companies and industries important, or is the disclosure more meaningful if it is presented in the context of the particular registrant's business?

33. Rather than extending the leverage ratio disclosure requirement to include all registrants, should we extend it only to other financial institutions or financial services companies? If so, how should the scope of included companies be defined? Would the proposed definition of "financial company" used in proposed Item 303(a)(6) work for this purpose? How should "leverage ratio" be defined in this context? Is there a different metric that would be more useful to investors? Should the ratio include "off-balance sheet" leverage or off-balance sheet equity adjustments? If so, describe how such a ratio would be calculated. What are the costs and benefits of defining a leverage ratio that would be applicable to all registrants? Where relevant, discuss the usefulness of a standardized ratio requirement given that many users of financial statements make their own calculations.

34. Should bank holding companies be required to include the same level of disclosure of leverage and capital ratios for quarterly financial statements as they do for annual financial statements, rather than quarterly reporting of material changes? Should additional disclosures be required to accompany existing ratio disclosure that would make it more meaningful?

D. Technical Amendments Reflecting FASB Codification

On June 30, 2009, the FASB issued FASB Statement of Financial Accounting Standards No. 168, *The FASB Accounting Standards Codification and the Hierarchy of Generally Accepted Accounting Principles—a replacement of FASB Statement No. 162,* to establish the FASB Codification as the source of authoritative non-Commission accounting principles recognized by the FASB to be applied by nongovernmental entities in the preparation of financial statements in conformity with U.S. GAAP. In August 2009, we issued guidance regarding the interpretation of references in the Commission's rules and staff guidance to specific standards under U.S. GAAP in light of the FASB Codification.[81] As noted in that interpretive release, the Commission and its staff intend to embark on a longer term rulemaking and updating initiative to revise comprehensively specific references to specific standards under U.S. GAAP in the Commission's rules and staff guidance. Although we plan to make those comprehensive changes at a later date, we believe it is appropriate, at the same time that we propose to make other amendments to Item 303 of Regulation S–K and Item 5 of Form 20–F, to propose technical amendments to these provisions to reflect the FASB Codification. These proposed technical amendments include:

- Updating the U.S. GAAP references in the definition of "off-balance sheet arrangement" in Item 303(a)(4)(ii) of Regulation S–K and Item 5.E.2 of Form 20–F;
- Updating U.S. GAAP references in the existing definitions of "Long-Term Debt Obligation," "Capital Lease Obligation" and "Operating Lease Obligation" in Item 303(a)(5)(ii) of Regulation S–K; [82] and
- Updating U.S. GAAP references in instructions 8 and 9 of the Instructions to Paragraph 303(a) of Regulation S–K.

As part of our continuing initiative to update the references in the Commission's rules and staff guidance, we believe that these proposed technical amendments would assist registrants in applying the relevant definitions and instructions, without needing to spend time and resources to identify the corresponding FASB provision as contemplated by the interpretive guidance.

Request for Comment

35. Are there any additional revisions to the provisions of Regulation S–K or Form 20–F affected by the proposal that would be necessary or appropriate to reflect the release by the FASB of its FASB codification?

E. Conforming Amendments to Definition of "Direct Financial Obligation" in Form 8–K

We are proposing revisions to the definition of "direct financial obligation" used in Items 2.03 and 2.04 of Form 8–K to conform to the definition of short-term borrowings used in proposed Item 303(a)(6). Specifically, the proposed amendment would revise paragraph (4) of the definition of "direct financial obligation" contained in Item 2.03(c) of Form 8–K.[83]

The current definition of "direct financial obligation" was adopted as part of the 2004 adoption of Items 2.03 and 2.04 of Form 8–K, in connection with updates to Form 8–K to require real-time disclosure of material information regarding changes in a company's financial condition or operations as mandated by Section 409 of the Sarbanes-Oxley Act of 2002.[84] Items 2.03 and 2.04 of Form 8–K are intended to provide real-time disclosure when a company becomes obligated under a direct financial obligation or off-balance sheet arrangement that is material to the company, and upon the triggering of an increase or acceleration of any of those types of transactions where the impact would be material to the company. This real-time disclosure was intended to supplement and align with the requirements for annual and quarterly disclosure of off-balance sheet arrangements and contractual obligations under Items 303(a)(4) and (a)(5) of Regulation S–K. Acknowledging the importance of short-term financing disclosure to an understanding of a company's financial condition and risk profile, we included certain short-term debt obligations in the definition of "direct financial obligations," along with the long-term debt, leases and purchase obligations identified by reference to Item 303(a)(5) of Regulation S–K.

We believe it is appropriate to align the existing reporting requirements for short-term debt obligations under Items 2.03 and 2.04 of Form 8–K with the new proposed definition of short-term borrowings in Item 303(a)(6), in order to continue to provide consistency of disclosure. Accordingly, we are

[81] *See* Commission Guidance Regarding the Financial Accounting Standards Board's Accounting Standards Codification, Release No. 33–9062A (Aug. 19, 2009)[74 FR 42772] (stating that, concurrent with the effective date of the FASB Codification, references in the Commission's rules and staff guidance to specific standards under U.S. GAAP should be understood to mean the corresponding reference in the FASB Codification).

[82] The instructions to Item 5.F (Tabular Disclosure of Contractual Obligations) of Form 20–F direct registrants to provide disclosure of contractual obligations (other than purchase obligations, for which a definition is provided) based on the classifications used in the generally accepted accounting principles under which the registrant prepares its primary financial statements. Accordingly, no update for FASB codification is necessary for Item 5.F of Form 20–F.

[83] Item 2.03(c) defines a "direct financial obligation" as any of the following: (1) a long-term debt obligation, as defined in Item 303(a)(5)(ii)(A) of Regulation S–K [17 CFR 229.303(a)(5)(ii)(A)]; (2) a capital lease obligation, as defined in Item 303(a)(5)(ii)(B) of Regulation S–K [17 CFR 229.303(a)(5)(ii)(B)];(3) an operating lease obligation, as defined in Item 303(a)(5)(ii)(C) of Regulation S–K [17 CFR 229.303(a)(5)(ii)(C)]; or (4) a short-term debt obligation that arises other than in the ordinary course of business. The item defines "short-term debt obligation" as a payment obligation under a borrowing arrangement that is scheduled to mature within one year, or, for those companies that use the operating cycle concept of working capital, within a company's operating cycle that is longer than one year.

[84] Public Law 107–204, 116 Stat. 745 (2002). *See* Additional Form 8–K Disclosure Requirements and Acceleration of Filing Date, Release No. 33–8400 (Mar. 16, 2004) [69 FR 15594].

proposing to amend clause (4) of the definition of direct financial obligation to refer to "a short-term borrowing, as defined in Item 303(a)(6)(iii) of Regulation S–K (17 CFR 229.303(a)(6)(iii) that arises other than in the ordinary course of business."[85] In doing so, however, we propose to retain the existing carve-out in the definition of direct financial obligation for obligations that arise in the ordinary course of business, in order to maintain the focus of Items 2.03 and 2.04 on real-time disclosure of individual transactions that are not routine or "ordinary course" financing transactions. If we were to eliminate the ordinary course of business carve-out in the definition, we do not believe that the level of material information provided would justify the burden on registrants to prepare, and the burden on investors to review and understand, potentially voluminous disclosure about routine transactions. In addition, we believe that the proposed short-term borrowings disclosures in MD&A would provide investors with timely information about fluctuations in short-term borrowings levels and about short-term borrowings practices, such that current reporting on Form 8–K of particular instances of significant fluctuations that arise due to ordinary course transactions would not necessarily provide additional insight to investors. Moreover, a registrant that experiences a material increase in short-term borrowings during a reporting period that is not consistent with past practices would likely need to consider carefully whether the underlying transactions causing the fluctuations fall within the meaning of "ordinary course of business" for purposes of Items 2.03 and 2.04.

Request for Comment

36. Instead of amending the definition of "direct financial obligation" to refer to proposed Item 303(a)(6), should the category of short-term financings included in the definition of "direct financial obligation" for purposes of Items 2.03 and 2.04 of Form 8–K differ from the standard used in proposed Item 303(a)(6)? Describe how the standards should differ and explain why. For example, should we retain the existing reference to "short-term debt obligation" instead?

37. Is the proposed definition of short-term borrowings sufficiently tailored so as to exclude borrowing obligations that arise in the ordinary course of business, so that the carve-out in the definition of direct financial obligation is unnecessary? Should the carve-out for obligations that arise in the ordinary course of business be retained, as proposed? Describe the costs and burdens for companies if the carve-out were eliminated, particularly the burden on management to make an assessment of materiality of each short-term borrowing transaction within the filing timeframe. Is current reporting of routine short-term borrowing transactions that are material to the registrant sufficient? Would the new reporting requirements regarding short-term borrowing practices and average borrowings sufficiently improve reporting on this topic, so that Form 8–K reporting of ordinary course short-term borrowings would be unnecessary? Explain why or why not.

F. Transition

In connection with the proposed short-term borrowings disclosure, we are proposing a transition accommodation for registrants that are not bank holding companies or subject to Guide 3 that would, for purposes of the annual reporting requirement, permit those companies to phase in compliance with the comparable annual period disclosure under proposed Item 303(a)(6). In the initial year of the transition period, these companies would be required to include short-term borrowings information for the most recent fiscal year and permitted to omit information for the two preceding fiscal years. In the second year of the transition period, these companies would be required to include the two most recent fiscal years, and permitted to omit the third preceding fiscal year. In the third year of the transition period, and thereafter, these companies would be required to include disclosure for the each of the three most recent fiscal years as prescribed in proposed Item 303(a)(6)(v). This transition accommodation would not apply to bank holding companies or other companies subject to Guide 3, since those companies already provide this disclosure for the three most recent fiscal years (or two fiscal years for certain smaller bank holding companies).[86]

Request for Comment

38. Is the proposed transition accommodation appropriate? Should we require all companies to present all required periods at the outset?

39. Would the proposed transition accommodation be useful for registrants? Is it sufficiently clear? Should we extend it to cover bank holding companies? If so, why?

40. Are any other transition accommodations necessary for any aspects of the proposed requirements? Would any of the proposed requirements present any particular difficulty or expense that should be addressed by a transition accommodation? If so, please explain what would be needed and why. For example, should we provide a transition period to allow smaller reporting companies and/or non-bank companies time to set up systems to gather the data for the proposed disclosure? If so, what should that period be?

III. General Request for Comment

We request and encourage any interested person to submit comments on any aspect of our proposals, other matters that might have an impact on the amendments, and any suggestions for additional changes. With respect to any comments, we note that they are of greatest assistance to our rulemaking initiative if accompanied by supporting data and analysis of the issues addressed in those comments and by alternatives to our proposals where appropriate.

IV. Paperwork Reduction Act

A. Background

Certain provisions of the proposed amendments contain "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995 (PRA).[87] We are submitting the proposed amendments to the Office of Management and Budget (OMB) for review in accordance with the PRA.[88] The titles for the collection of information are:

(A) "Regulation S–K" (OMB Control No. 3235–0071);[89]

(B) "Form 10–K" (OMB Control No. 3235–0063);

(C) "Form 10–Q" (OMB Control No. 3235–0070);

(D) "Form 8–K" (OMB Control No. 3235–0060);

(E) "Form 20–F" (OMB Control No. 3235–0288);

(F) "Form 10" (OMB Control No. 3235–0064);

[85] *See* proposed revisions to Item 2.03(c)(4) of Form 8–K.

[86] *See* General Instruction 3 of Guide 3.

[87] 44 U.S.C. 3501 *et seq.*

[88] 44 U.S.C. 3507(d) and 5 CFR 1320.11.

[89] The paperwork burden from Regulation S–K and the Industry Guides is imposed through the forms that are subject to the disclosures in Regulation S–K and the Industry Guides and is reflected in the analysis of those forms. To avoid a Paperwork Reduction Act inventory reflecting duplicative burdens, for administrative convenience, we estimate the burdens imposed by each of Regulation S–K and the Industry Guides to be a total of one hour.

(G) "Form S–1" (OMB Control No. 3235–0065);
(H) "Form F–1" (OMB Control No. 3235–0258);
(I) "Form S–4" (OMB Control No. 3235–0324);
(J) "Form F–4" (OMB Control No. 3235–0325);
(K) "Proxy Statements—Regulation 14A (Commission Rules 14a–1 through 14a–15) and Schedule 14A" (OMB Control No. 3235–0059);
(L) "Information Statements—Regulation 14C (Commission Rules 14c–1 through 14c–7) and Schedule 14C" (OMB Control No. 3235–0057); and
(M) "Form N–2" (OMB Control No. 3235–0026).

These regulations, schedules and forms were adopted under the Securities Act and the Exchange Act, and in the case of Form N–2, the Investment Company Act of 1940.[90] They set forth the disclosure requirements for periodic and current reports, registration statements, and proxy and information statements filed by companies to help investors make informed investment and voting decisions. The hours and costs associated with preparing, filing and sending each form or schedule constitute reporting and cost burdens imposed by each collection of information. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

We anticipate that the proposed amendments to Item 303 of Regulation S–K and to Item 5 of Form 20–F would increase existing disclosure burdens for annual reports on Form 10–K and Form 20–F, quarterly reports on Form 10–Q, current reports on Form 8–K, proxy and information statements, and registration statements on Forms 10, S–1, F–1, S–4, F–4 and N–2 by requiring new disclosure and discussion of short-term borrowings to be provided on an annual and interim basis.

At the same time, the proposed technical amendments to Item 303 of Regulation S–K and Item 5.E of Form 20–F that update references to U.S. GAAP to reflect the FASB Codification would not increase existing disclosure burdens for annual reports on Form 10–K and Form 20–F, quarterly reports on Form 10–Q, current reports on Form 8–K, proxy and information statements, and registration statements on Forms 10, S–1, F–1, S–4, F–4 and N–2.

We also estimate that the amendments to the definition of "direct financial obligation" for purposes of disclosure requirements in Items 2.03 and 2.04 of Form 8–K would not increase existing disclosure burdens for filings of Form 8–K. Although we propose to amend the existing definition to conform to the terminology used in the proposed MD&A requirements, we propose to retain the existing carve-out for ordinary course obligations. Thus, we assume that the proposed change in the definition would not substantially change the existing scope of the disclosure requirement, and, therefore, the proposed amendments would not increase the number of Form 8–K filings nor add incremental costs and burdens to the existing disclosure burden under Form 8–K. We solicit comment on whether our assumption is correct, and if not, how to estimate the additional number of Forms 8–K that would be filed pursuant to the proposed amendments to the definition of "direct financial obligation." We note that, based on the number of filings made under Items 2.03 and 2.04 of Form 8–K in 2009, only approximately 4% of all Form 8–K filings would be made in connection with those Items.

Compliance with the proposed amendments would be mandatory. Responses to the information collections would not be kept confidential, and there would be no mandatory retention period for the information disclosed.

B. Burden and Cost Estimates Related to the Proposed Amendments

As discussed below, we have estimated the average number of hours a company would spend preparing and reviewing the proposed disclosure requirements and the average hourly rate for outside professionals. In deriving our estimates, we recognize that some companies would experience costs in excess of those averages in the first year of compliance with the proposed amendments, and some companies may experience less than the average costs. The estimates of reporting and cost burdens provided in this PRA analysis address the time, effort and financial resources necessary to provide the proposed collections of information and are not intended to represent the full economic cost of complying with the proposal.

For purposes of the PRA, we estimate that over a three year period, the average annual incremental paperwork burden for all companies to prepare the disclosure that would be required under the proposals to be approximately 872,458 hours of company personnel time and a cost of approximately $144,061,000 for the services of outside professionals.[91] These estimates include the time and the cost of implementing data gathering systems and disclosure controls and procedures, the time and cost of in-house preparers, review by executive officers, in-house counsel, outside counsel, in-house accounting staff, independent auditors and members of the audit committee, and the time and cost of filing documents and retaining records.

Our methodologies for deriving the burden hour and cost estimates presented in the tables below represent the average burdens for all registrants who are required to provide the disclosure, both large and small. As discussed elsewhere in this release, the time required to prepare the proposed disclosures could vary significantly depending on, among other factors, the nature of the registrant's business, its capital structure, its internal controls and disclosure controls systems, its risk management systems and other applicable regulatory requirements. In addition, the estimates do not distinguish between registrants that are bank holding companies and other registrants. Although bank holding companies and other companies that currently provide Guide 3 disclosure would already collect and disclose on an annual basis some of the information covered by the new requirements, the new requirements are not identical to the provisions of Guide 3. Accordingly, for purposes of these estimates, we assume that bank holding companies would have the same burden as other registrants, although they might not actually incur additional expenses for those portions of the new requirements that are the same as the existing provisions of Guide 3.

Because our estimates assume that 100% of public companies engage in short-term borrowings from time to time, we estimate that the same percentage of companies would be impacted by the proposed disclosure requirements for short-term borrowings.[92] Therefore, for those companies that do not engage in short-term borrowing activities during a reporting period, the incremental burdens and costs may be lower than our estimate. However, because these

[90] 15 U.S.C. 80a–1 *et seq.*

[91] We calculated an annual average over a three-year period because OMB approval of PRA submissions covers a three-year period. For administrative convenience, the presentation of totals related to the paperwork burden hours have been rounded to the nearest whole number. The estimates reflect the burden of collecting and disclosing information under the PRA. Other costs associated with the proposed amendments are discussed in below under "Cost-Benefit Analysis."

[92] We further assume that the proposed amendments would not affect the number of filings.

companies may still need to implement systems and controls to capture short-term borrowings data that is not currently collected, we have assumed that they would share the same average burden and cost estimate. In addition, we assume that the burden hours of the proposed amendments would be comparable to the burden hours related to similar disclosure requirements, such as off-balance sheet arrangements disclosure requirements,[93] contractual obligations disclosure requirements,[94] and requirements for the qualitative and quantitative disclosure of market risk,[95] which call for quantitative and/or qualitative discussion and analysis of financial data.

We derived the estimates by estimating the total amount of time it would take a company to implement systems to capture the data, implement related disclosure controls and procedures, prepare and review the disclosure pursuant to the proposed short-term borrowings requirements. We first estimated the total amount of time it would take a company to prepare and review the proposed disclosure for each form, using the estimates for the comparable disclosure requirements identified above as a starting point. Because we believe that the proposed rules would impose an increased burden on companies in connection with the implementation of data gathering systems and the implementation of related disclosure controls and procedures as compared to those comparable disclosure requirements, we added hours to those estimates, to reflect our best estimate of the additional time needed to implement the new systems.

The tables below illustrate the total incremental annual compliance burden of the collection of information in hours and in cost under the proposed amendments for annual reports, proxy and information statements, quarterly reports and current reports on Form 8–K under the Exchange Act (Table 1) and for registration statements under the Securities Act and Exchange Act (Table 2). There is no change to the estimated burden of the collection of information under Regulation S–K because the burdens that Regulation S–K imposes are reflected in our revised estimates for the forms. The burden estimates were calculated by multiplying the estimated number of annual responses by the estimated average number of hours it would take a company to prepare and review the proposed disclosure requirements. We recognize that some registrants may need to include MD&A disclosure in more than one filing covering the same period, accordingly actual numbers may be lower than our estimates.

We have based our estimated number of annual responses on the actual number of filings during the 2009 fiscal year, with three exceptions. First, we reduced the number of annual responses for Schedules 14A and 14C, based on our belief that only a minimal number of companies that file these schedules would need to prepare MD&A disclosure for the filing, rather than incorporating by reference from a periodic report. Second, we reduced the number of annual responses for Form N–2, based on our estimate of the number of Form N–2 filings made by business development companies in 2009 because only business development companies are required to include MD&A disclosure in a Form N–2.[96] In addition, we recognize that smaller reporting companies would be exempted from "full" interim period reporting in their quarterly reports rather than only reporting material changes on a quarterly basis. To reflect this, we reduced the number of annual responses of Forms 10–Q by our estimate of the number of Forms 10–Q filed by smaller reporting companies.[97]

For Exchange Act reports and proxy and information statements, we estimate that 75% of the burden of preparation is carried by the company internally and that 25% of the burden of preparation is carried by outside professionals retained by the company at an average cost of $400 per hour.[98] For registration statements, we estimate that 25% of the burden of preparation is carried by the company internally and that 75% of the burden of preparation is carried by outside professionals retained by the company at an average cost of $400 per hour. The portion of the burden carried by outside professionals is reflected as a cost, while the portion of the burden carried by the company is reflected in hours.

TABLE 1—INCREMENTAL PAPERWORK BURDEN UNDER THE PROPOSED AMENDMENTS FOR ANNUAL REPORTS, QUARTERLY REPORTS, FORMS 8–K AND PROXY AND INFORMATION STATEMENTS

	Annual responses[99]	Incremental burden hours/form	Total incremental burden hours	75% Company	25% Professional	Professional costs
	(A)	(B)	(C)=(A)*(B)	(D)=(C)*0.75	(E)=(C)*0.25	(F)=(E)*$400
10–K	13,545	40	541,800	406,350	135,450	$54,180,000
20–F	942	30	28,260	7,065	21,195	8,478,000
10–Q	28,841	20	574,840	431,130	143,710	57,484,000
8–K	115,795	0	0	0	0	0
SCH 14A	365	30	10,950	8,212.5	2,737.5	1,095,000
SCH 14C	34	30	1,020	765	255	102,000
Total	159,522	150	1,156,860	853,522.5	303,347.5	121,339,000

[93] OBS Adopting Release, *supra* note 6, at 5994 (which we estimated to be 14.5 hours for annual reports and proxy statements, 16 hours for registration statements and 10 hours for quarterly reports).

[94] OBS Adopting Release, *supra* note 6, at 5994 (which we estimated to be 7.5 hours for annual reports and proxy statements, 8.5 hours for registration statements and 3 hours for quarterly reports).

[95] Disclosure of Accounting Policies for Derivative Financial Instruments and Derivative Commodity Instruments and Disclosure of Qualitative and Quantitative Information About Market Risk Inherent in Derivative Financial Instruments, Other Financial Instruments and Derivative Commodity Instruments, Release No. 33–7386 (Jan. 31, 1997) [62 FR 6044] (which we estimated to be 80 hours total per registrant).

[96] The current estimate of annual responses for Form N–2 is 205. Our best estimate of the total number of Forms N–2 filed in 2009 by business development companies is 29. Accordingly, for purposes of Table 2, we reduced the current estimate of annual responses for Form N–2 (205 Form N–2 filings) to 29 Form N–2 filings.

[97] This adjustment is based on our best estimate of the number of Forms 10–Q filed by smaller reporting companies in 2009.

[98] For Form 20–F, we estimate that 25% of the burden is carried by the company and 75% by outside professionals because we assume that foreign private issuers rely more heavily on outside counsel for preparation of the Form.

TABLE 2—INCREMENTAL PAPERWORK BURDEN UNDER THE PROPOSED AMENDMENTS FOR REGISTRATION STATEMENTS

	Annual responses [100]	Incremental burden hours/form	Total incremental burden hours	25% Company	75% Professional	Professional costs
	(A)	(B)	(C)=(A)*(B)	(D)=(C)*0.25	(E)=(C)*0.75	(F)=(E)*$400
S–1	1,168	35	40,880	10,220	30,660	$12,264,000
F–1	42	35	1,470	367.5	1,102.5	441,000
S–4	619	35	21,665	5,416.25	16,248.75	6,499,500
F–4	68	35	2,380	595	1,785	714,000
10	238	35	8,330	2,082.5	6,247.5	2,499,000
N–2	29	35	1,015	253.75	761.25	304,500
Total	2,164	210	75,740	18,935	56,805	22,722,000

1. Annual Reports and Proxy/ Information Statements

We estimate that the preparation of annual reports currently results in a total annual compliance burden of 21,986,455 hours and an annual cost of outside professionals of $3,591,562,980. We estimate that the preparation of proxy and information statements currently result in a total annual compliance burden of 735,122 hours and an annual cost of outside professionals of $86,608,526.

As set forth in Table 1 above, if the proposals were adopted, we estimate that the incremental cost of outside professionals for annual reports would be approximately $62,658,000 per year and the incremental company burden would be approximately 413,415 hours per year; and, for proxy and information statements, the total incremental cost of outside professionals would be approximately $1,197,000 per year and the incremental company burden would be approximately 8,978 hours per year. For purposes of our submission to the OMB under the PRA, if the proposals were adopted, the total cost of outside professionals for annual reports would be approximately $3,654,220,980 per year and the total company burden would be approximately 22,399,870 hours per year; and the total cost of outside professionals for proxy and information statements would be approximately $87,805,526 per year and the total company burden would be approximately 744,100 hours per year.

2. Quarterly Reports

We estimate that Form 10–Q preparation currently results in a total annual compliance burden of 4,559,793 hours and an annual cost of outside professionals of $607,972,400. As set forth in Table 1 above, if the proposals were adopted, we estimate that the incremental cost of outside professionals for quarterly reports would be approximately $57,484,000 per year and the incremental company burden would be approximately 431,130 hours per year. For purposes of our submission to the OMB under the PRA, if the proposals were adopted, the total cost of outside professionals for quarterly reports would be approximately $665,456,400 per year and the total annual company burden for quarterly reports would be approximately 4,990,923 hours per year.

3. Current Reports on Form 8–K

Form 8–K prescribes information about significant events that a registrant must disclose on a current basis. We are proposing amendments to the definitions used in Items 2.03 and 2.04 of Form 8–K that revise the terminology used, but which we assume would not significantly impact the scope of information required to be disclosed under those items. Accordingly, we estimate that the proposed amendments would not increase the number of current reports filed on Form 8–K nor add incremental costs and burdens to the existing disclosure burden under Form 8–K. If the proposed revisions to Items 2.03 and 2.04 of Form 8–K were adopted, we estimate that, on average, completing and filing a Form 8–K would require the same amount of time currently spent by entities completing the form—approximately 4 hours.

We estimate that Form 8–K preparation currently results in a total annual compliance burden of 493,436 hours and an annual cost of outside professionals of $65,791,500.

4. Registration Statements

We estimate that the preparation of registration statements that would be affected by the proposed amendments currently has a total annual compliance burden of 1,023,273 hours and an annual cost of outside professionals of $1,127,687,401. As set forth in Table 2 above, if the proposals were adopted, we estimate that the incremental cost of outside professionals for registration statements would be approximately $22,722,000 per year and the incremental company burden would be approximately 18,935 hours per year. For purposes of our submission to the OMB under the PRA, if the proposals were adopted, the total cost of outside professionals for registration statements would be approximately $1,150,409,401 per year and the total company burden would be approximately 1,042,208 hours per year.

C. Request for Comment

Pursuant to 44 U.S.C. 3506(c)(2)(B), we request comment in order to:

- Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the Commission, including whether the information would have practical utility;
- Evaluate the accuracy of our estimates of the burden of the proposed collections of information;
- Determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected;
- Evaluate whether there are ways to minimize the burden of the collections of information on those who respond, including through the use of automated collection techniques or other forms of information technology; and
- Evaluate whether the proposed amendments would have any effects on any other collections of information not previously identified in this section.

Any member of the public may direct to us any comments concerning the accuracy of these burden estimates and any suggestions for reducing the burdens. Persons who desire to submit comments on the collection of

[99] Except as described above, the number of responses reflected in the table equals the actual number of forms and schedules filed with the Commission during the 2009 fiscal year.

[100] Except as described above, the number of responses reflected in the table equals the actual number of forms filed with the Commission during the 2009 fiscal year.

information requirements should direct their comments to the OMB, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and send a copy of the comments to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090, with reference to File No. S7–22–10. Requests for materials submitted to the OMB by us with regard to these collections of information should be in writing, refer to File No. S7–22–10 and be submitted to the Securities and Exchange Commission, Office of Investor Education and Advocacy, 100 F Street, NE., Washington, DC 20549–0213. Because the OMB is required to make a decision concerning the collections of information between 30 and 60 days after publication, your comments are best assured of having their full effect if the OMB receives them within 30 days of publication.

V. Cost-Benefit Analysis

A. Introduction and Objectives of Proposals

We are proposing amendments to enhance the disclosure that companies provide about short-term borrowings in order to provide more useful disclosure to investors about liquidity and short-term financings and to enhance investor understanding of issuers' liquidity. The proposed amendments are intended to improve disclosure by expanding and supplementing existing requirements.

First, the proposals would require a registrant to provide a comprehensive explanation of its short-term borrowings, including both quantitative and qualitative information. In addition, we are proposing conforming amendments to Form 8–K so that the Form uses the terminology contained in the proposed short-term borrowings disclosure requirement. Finally, we are making technical amendments to Item 303 of Regulation S–K to revise references to U.S. GAAP to reflect the FASB Codification.

The proposals seek to improve transparency of a company's short-term borrowings in order to provide investors with comprehensive information about a company's liquidity profile and demands on capital resources in each reporting period. The proposals also aim to clarify existing MD&A requirements in these areas to assist registrants in preparing disclosure that is meaningful, useful and clear. Ultimately, the proposals are expected to enhance the ability of investors to make informed investment decisions and to allocate capital on a more efficient basis.

We considered alternative regulatory approaches for achieving these objectives, including providing further interpretive guidance on existing MD&A disclosure requirements and encouraging companies to voluntarily provide quantitative and qualitative information on short-term borrowings where material to their financial condition. Although some public companies are voluntarily providing more detailed information as to short-term financings in their MD&A, we have observed that some companies generally do not provided investors with the desired level of detail in their disclosure absent a specific disclosure requirement or guidance, such as Guide 3. To elicit more detailed and comparable disclosures regarding a company's short-term borrowings activities in each reporting period as part of its overall liquidity profile, we are proposing mandated disclosure of short-term borrowings to complement existing MD&A disclosures.

B. Benefits

The proposed disclosures would benefit investors by informing them about the fluctuations in short-term borrowings during the reporting period. Information about the variability of borrowing levels and variations in types of borrowing activities over the course of the reporting period should enable investors to better understand the ability of a registrant to obtain the financing it needs to conduct its business operations and the costs of that financing, and how those may vary during the reporting period. The transparency of the financial statements should increase because investors would be able to learn more about the amount of financial risk taken by the company, its liquidity and capital resources, and the amount of capital deployed in earning activities by the company on an on-going basis during the year, including at quarter-ends. The proposed narrative discussion of the short-term borrowings arrangements, including the importance of those arrangements to the registrant in terms of its liquidity and capital resources, should provide investors with insight into the magnitude of the registrant's short-term borrowing activities, the specific material impact of the short-term borrowing arrangements on the registrant, and the factors that could affect its ability to continue to use those short-term borrowing arrangements.

The proposed disclosures would inform investors about the amount of financial risk taken by the company.[101] For some businesses, short-term borrowings may decrease or increase at quarter- and year-ends due to innate fluctuations in cash flow obligations. In other cases, management may be deliberately reducing short-term debt at period ends.[102] Regardless of the cause, period-end financial statements could be less informative regarding the financial risks taken by companies *during* the period. The proposed disclosures should add transparency to the ongoing risks taken by companies. These disclosures should also help facilitate a more accurate understanding of a company's liquidity and capital resources.

The proposed disclosures should also inform investors about the amount of capital deployed in earning activities by a company and thus help evaluate its overall source of profitability. Investors should benefit from knowing whether the period-end balance sheet fully reflects all intra-period activities and assets. The disclosure should also enable more accurate comparisons between companies that engage in a pattern of borrowing and those that do not.

Thus, the new disclosures should enhance transparency and competition especially in industries where short-term borrowing practices are common. Similar disclosure requirements exist in a more limited fashion for banks and bank holding companies under applicable banking regulations.[103] Therefore, bank regulators find this information to be useful in monitoring the risk of these institutions.[104]

[101] K. Kelly *et al., Big Banks Move To Mask Risk Levels—Quarter-End Loan Figures Sit 42% Below Peak, Then Rise as New Period Progresses,* Wall St. J., Apr. 9, 2010; and M. Rappaport & T. McGinty, *supra* note 16 (reporting that "the practice, known as end-of-quarter 'window dressing' on Wall Street, suggests that the banks are carrying more risk most of the time than their investors or customers can easily see. This activity has accelerated since 2008 * * *".).

[102] M. Griffiths & D. Winters, *The Turn of the Year in Money Markets: Tests of the Risk-Shifting Window Dressing and Preferred Habitat Hypotheses,* J. BUS, 2005, vol. 78, no. 4.; M. Griffiths & D. Winters, *On a Preferred Habitat for Liquidity at the Turn-of-the-Year: Evidence From the Term-Repo Market,* 12 J. FIN. SERV. RES. 1, 1997; V. Kotomin & D. Winters, *Quarter-End Effects in Banks: Preferred Habitat or Window Dressing?,* 29 J. FIN. SERV. RES. 1, 2006.

[103] Banks and bank holding companies report the quarterly average for Federal funds sold and securities purchased under agreements to resell (FFIEC 031 and 041 Schedule RC–K, and FR Y–9C Schedule HC–K).

[104] *See e.g.,* Board of Governors of the Federal Reserve System, Announcement of Board Approval Under Delegated Authority and Submission to OMB, (March. 18, 2006) [71 FR 11194]. ("The FR Y–9 family of reports historically has been, and

Continued

The proposed amendments are likely to increase transparency. Therefore, information asymmetry and information risk would be lower and investors should demand a lower risk premium and rate of return.[105] Thus, the proposed disclosures would help reduce cost of capital and improve capital allocation and formation in the overall economy.

C. Costs

The proposals to require short-term borrowings disclosure on an annual and quarterly basis are new. In connection with the new disclosure requirements, registrants would be required to incur additional direct costs to which they were previously not subject, and could incur indirect costs as well. Because the proposed requirements require additional disclosures that are not currently provided in connection with Guide 3 compliance, bank holding companies would also incur additional direct and indirect costs to which they were previously not subject. Furthermore, as noted in our PRA analysis, we estimate that registrants would incur higher costs in the initial reporting periods than would be incurred in ongoing reporting periods.

We estimate that the proposals would impose new disclosure requirements on approximately 10,380 public companies.[106] We estimate that the collection of information and the preparation of the disclosure would involve multiple parties, including in-house preparers, senior management, in-house accounting staff, in-house counsel, information technology personnel, outside counsel, outside auditors and audit committee members. For purposes of our PRA analysis, we estimated that company personnel would spend approximately 872,204 hours per year (84 hours per company) to prepare, review and file the proposed disclosure. We also estimated that companies would spend approximately $143,756,500 ($13,849 per company) on outside professionals to comply with the proposed requirements.

We believe that the proposed amendments could increase the costs for some companies to collect the information necessary to prepare the disclosure. We also believe that the proposed amendments will impose different costs for companies, depending on whether they are bank-holding companies that currently provide Guide 3 information, financial companies as defined in the proposed rule, non-financial companies, or smaller reporting companies, as described below. Although management must already consider short-term borrowing information as it prepares its financial statements and MD&A under existing requirements, the proposed amendments could impose significant incremental costs for the collection and calculation of data, particularly in connection with the registrant's initial compliance.

In particular, this disclosure requires the production of new data for companies that are not already reporting this type of data voluntarily or to their primary regulators. In some industries, companies may readily have access to this information in their systems while others may not be producing it on a daily basis as would be required for financial companies under the proposals. For example, insurance companies may find it difficult to produce daily balances for each day that is necessary for the average and maximum short-term borrowing disclosures applicable to them. In addition, companies that are not financial companies under the proposed definition, particularly those with multi-national operations, may not currently be producing the data necessary for the monthly average and maximum short-term borrowings disclosures, and they may be faced with complex calculation issues when gathering the data from multiple jurisdictions. For many companies, the costs of data production may be high.

For bank holding companies currently subject to Guide 3, costs will likely arise primarily from the preparation of incremental disclosure in MD&A (*i.e.,* the proposed requirements for maximum daily amounts instead of maximum monthly amounts and the proposed narrative discussion of short-term borrowings arrangements) as well as quarterly reporting of this information (rather than on an annual basis alone). These bank holding companies already report to the Commission average short-term borrowings data computed based on daily averages on an annual basis, pursuant to Item VII of Guide 3. Of the approximately 10,380 public companies, we estimate that approximately 800 are bank holding companies.

For registrants that meet the proposed definition of "financial company" but that are not bank holding companies, such as insurance companies, broker-dealers, business development companies, and financing companies, the costs imposed could be substantial because, as requirements that are newly applicable to these entities, costs would likely include implementing or adjusting data gathering systems to capture daily balance information, implementing new disclosure controls and procedures, time spent by internal accounting staff to compile the data, as well as the preparation of narrative disclosure. As a portion of these costs would arise from data collection, the costs of compliance in the initial reporting period would likely be higher because systems may need to be implemented or adjusted. We estimate that, in addition to the approximately 800 bank holding companies, approximately 700 registrants would meet the proposed definition of "financial company."

Registrants that do not meet the definition of "financial companies" could have lower costs than those registrants that are financial companies, because they would not be required to compile data based on daily balances. Again, the requirements would be newly applicable, and could require these registrants to incur costs to implement or adjust data gathering systems to capture month-end balance information, the implementation of new disclosure controls and procedures, time spent by internal accounting staff to compile the data, as well as preparation of narrative disclosure. For companies that do not currently close their books on a monthly basis, the costs of gathering the data would likely be higher than those that do, because monthly balances would not be readily available from existing books and records systems. The implementation or adjustment of data gathering systems would likely cause costs to be higher for these companies in the initial compliance period. We estimate that the number of registrants that are not financial companies and that are not smaller reporting companies, is approximately 7,640.

continues to be, the primary source of financial information on [bank holding companies] between on-site inspections. Financial information from these reports is used to detect emerging financial problems, to review performance and conduct pre-inspection analysis, to monitor and evaluate capital adequacy, to evaluate [bank holding company] mergers and acquisitions, and to analyze a [bank holding company's] overall financial condition to ensure safe and sound operations.").

[105] *See* D. Easley & M. O'Hara, *Information and the Cost of Capital,* 59 J. Fin. 1553 (2004) (arguing that the information composition between public and non-public information affects the cost of capital because investors demand a higher return from their investments when they face asymmetric information); R. Lambert *et al., Accounting Information, Disclosure, and the Cost of Capital,* 45 J. ACCT. RES. 385 (2007) (deriving conditions under which an increase in information quality leads to an unambiguous decline in the cost of capital).

[106] We estimate that all registrants who filed annual reports in 2009 would be required to provide the proposed disclosures.

For smaller reporting companies, the proposed requirements would also be newly applicable, and costs incurred would be similar to those applicable to large reporting companies, except that, as proposed, smaller reporting companies would only be required to provide two years of annual short-term borrowings information, rather than three years, and would not be required to provide quarterly disclosure on the same level of detail as annual disclosure. Accordingly, in addition to the costs to prepare and review the disclosure, smaller reporting companies that do not currently track the data needed to compile the short-term borrowings disclosure or that do not currently close their books on a monthly basis, would incur costs to implement or adjust data collection systems and disclosure controls and procedures. On the other hand, small entities without such systems would be more likely to engage in financing activities that are less complex, where the compilation and calculation of such data would not raise significant burdens. In addition, the cost estimates set forth in our PRA analysis may be lower for a small entity to the extent its costs for personnel and outside professionals are lower than our assumed amounts. As discussed elsewhere in this release, we estimate that there are approximately 1,240 smaller reporting companies.

In addition, registrants that are not smaller reporting companies could incur increased costs in connection with the preparation of their quarterly reports, as the amendments call for disclosure in quarterly reports at the same level of detail as in annual reports. To provide this increased level of detail, registrants may need to alter their existing disclosure controls and procedures for quarterly reporting. For purposes of our PRA analysis, we estimated that company personnel would spend approximately 18 additional hours per year to prepare, review and file the proposed disclosure in Form 10–Q. We estimate that approximately 8,200 registrants (based on our estimated number of annual report filers, less smaller reporting companies and foreign private issuers) would be subject to the requirement to provide quarterly disclosure at the same level of detail as in annual reports.

Companies may also be faced with indirect costs arising from the amendments. For example, companies may need to consider the impact of the amendments on their financing plans, to the extent the gathering of data and preparation of disclosure imposes significant time burdens. Specifically, companies could decide to delay registered offerings or conduct unregistered offerings if they are unable to gather data and prepare the new disclosures without significant time and expense. This indirect cost should decrease over time, as companies implement disclosure controls and procedures to comply with the new disclosures. In other cases, companies may alter their short-term borrowings activities in response to the proposed disclosure, in order to avoid incurring the cost of compliance, and in doing so could incur transaction costs or opportunity costs that they would not face without a mandatory disclosure requirement.

In certain cases, mandatory required disclosure requirements can have adverse effects for companies and their shareholders if the disclosures reveal confidential information and trade secrets of a company. In the case of the proposed short-term borrowings, however, such indirect costs should be minimal due to the non-proprietary nature of short-term borrowings. There is some possibility that a company's competitors could be able to *infer* proprietary or sensitive information about a company's business operations or strategy from disclosure about short-term borrowings arrangements. If this were the case, it could disproportionately impact companies that meet the proposed definition of "financial company," to the extent that amounts calculated based on daily balance information provide a more accurate basis for such inferences. We preliminarily believe that the likelihood of this impact is low.

D. Request for Comment

We request data to quantify the costs and the value of the benefits described above. We seek estimates of these costs and benefits, as well as any costs and benefits not already defined, that may result from the adoption of these proposed amendments. We also request qualitative feedback on the nature of the benefits and costs described above and any benefits and costs we may have overlooked.

VI. Consideration of Impact on the Economy, Burden on Competition, and Promotion of Efficiency, Competition, and Capital Formation

Section 23(a)(2) of the Exchange Act requires us,[107] when adopting rules under the Exchange Act, to consider the impact that any new rule would have on competition. In addition, Section 23(a)(2) prohibits us from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

Section 2(b) of the Securities Act[108] and Section 3(f) of the Exchange Act[109] require us, when engaging in rulemaking where we are required to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.

The proposed amendments are intended to enhance disclosure in MD&A relating to registrants' liquidity profile in each reporting period by highlighting and expanding disclosure requirements for short-term borrowings. The proposed amendments to Form 8–K, which would conform the disclosure requirements in the Form to the proposed amendments to Regulation S–K, are intended to continue to provide real-time disclosure in connection with these topics.

The proposed amendments may increase the usefulness of MD&A. The ability of users of financial information to understand registrants' financial statements and to determine the existence of trends in borrowing and funding activity is expected to improve as a result of the disclosure of average and maximum short-term borrowings during each reporting period.

The proposed amendments also should increase the efficiency of U.S. capital markets by providing investors with additional and more timely information about registrants' borrowing and funding activities, including borrowing activities that are not apparent on the face of period-end financial statements and exposures to market and funding liquidity risks. This information could be used by investors in allocating capital across companies, and toward companies where the risk incentives appear better aligned with an investor's appetite for risk. Furthermore, these reductions in the asymmetry of information between registrants and investors could reduce registrants' cost of capital as investors may demand a lower risk premium when they have access to more information.[110]

In certain cases, mandatory required disclosure requirements can have adverse effects for companies and their shareholders if the disclosures reveal confidential information and trade secrets of a company. In the case of the proposed short-term borrowings,

[107] 15 U.S.C. 78w(a)(2).

[108] 15 U.S.C. 77b(b).

[109] 15 U.S.C. 78c(f).

[110] *See* D. Easley & M. O'Hara, *supra* note 98, and R. Lambert *et al., supra* note 98.

however, such indirect costs should be minimal due to the non-proprietary nature of short-term borrowings. There is some possibility that a company's competitors could be able to *infer* proprietary or sensitive information about a company's business operations or strategy from disclosure about short-term borrowings arrangements. If this were the case, it could disproportionately impact companies that meet the proposed definition of "financial company," to the extent that amounts calculated based on daily balance information provide a more accurate basis for such inferences. We preliminarily believe that the likelihood of this impact is low.

We request comment on whether the proposed amendments would promote efficiency, competition, and capital formation or have an impact or burden on competition. Commentators are requested to provide empirical data and other factual support for their view to the extent possible.

VII. Small Business Regulatory Enforcement Fairness Act

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)[111] we solicit data to determine whether the proposed rule amendments constitute a "major" rule. Under SBREFA, a rule is considered "major" where, if adopted, it results or is likely to result in:

- An annual effect on the economy of $100 million or more (either in the form of an increase or a decrease);
- A major increase in costs or prices for consumers or individual industries; or
- Significant adverse effects on competition, investment or innovation.

Commentators should provide empirical data on (a) the potential annual effect on the economy; (b) any increase in costs or prices for consumers or individual industries; and (c) any potential effect on competition, investment or innovation.

VIII. Initial Regulatory Flexibility Act Analysis

This Initial Regulatory Flexibility Analysis (IRFA) has been prepared in accordance with the Regulatory Flexibility Act.[112] It relates to proposed revisions to the rules and forms under the Securities Act and Exchange Act to enhance disclosure that registrants provide in MD&A regarding short-term borrowings.

[111] Public Law 104–121, tit. II, 110 Stat. 857 (1996).

[112] 5 U.S.C. 603.

A. Reasons for, and Objectives of, the Proposed Action

The proposed amendments are intended to enhance disclosure in MD&A relating to registrants' liquidity profile by highlighting and expanding disclosure requirements for short-term borrowings. The proposed amendments to Form 8–K, which would conform the disclosure requirements in the Form to the proposed amendments to Regulation S–K, are intended to continue to provide real-time disclosure in connection with these topics. These amendments are being proposed to increase transparency in the presentation of registrants' borrowing and funding activities and exposure to liquidity risks in connection with that activity. This increased transparency in areas of increasing importance to investors is intended to maintain investor confidence in the full and fair disclosure required of all registrants.

B. Legal Basis

We are proposing the amendments pursuant to Sections 6, 7, 10, 19(a) and 28 of the Securities Act and Sections 12, 13, 14, 15(d), 23(a) and 36 of the Exchange Act.

C. Small Entities Subject to the Proposed Action

The proposed amendments would affect some companies that are small entities. The Regulatory Flexibility Act defines "small entity" to mean "small business," "small organization," or "small governmental jurisdiction." [113] The Commission's rules define "small business" and "small organization" for purposes of the Regulatory Flexibility Act for each of the types of entities regulated by the Commission. Securities Act Rule 157 [114] and Exchange Act Rule 0–10(a) [115] define a company, other than an investment company, to be a "small business" or "small organization" if it had total assets of $5 million or less on the last day of its most recent fiscal year. We estimate that there are approximately 1,240 companies that may be considered small entities.[116] The proposed amendments would affect small entities that (i) have a class of securities that are registered under Section 12 of the Exchange Act, or are required to file reports under Section 15(d) of the Exchange Act and (ii) are required to provide MD&A disclosure under applicable rules and forms or disclosure under Items 2.03 and 2.04 of Form 8–K. In addition, the proposals also would affect small entities that file, or have filed, a registration statement (that is required to include MD&A disclosure under the applicable rules and forms) that has not yet become effective under the Securities Act and that has not been withdrawn.

The data underlying the proposed short-term borrowing disclosures should be available from a company's books and records, although it may not currently be collected on month-end basis or daily basis, as proposed in the rule. As discussed in our PRA analysis, we believe that the collection and calculation of short-term borrowing data in the form proposed may have a cost impact on registrants, including small entities, that do not currently maintain information technology systems for the collection of the required data. On the other hand, small entities without such systems would be more likely to engage in financing activities that are less complex, where the compilation and calculation of such data would not raise significant burdens. In addition, the cost estimates set forth in our PRA analysis may be lower for a small entity to the extent its costs for personnel and outside professionals are lower than our assumed amounts.

We are proposing an accommodation for smaller reporting companies, such that expanded disclosures of short-term borrowings would not be required for interim periods and annual period data would only be required for two years rather than three years.

D. Reporting, Recordkeeping, and Other Compliance Requirements

The proposed amendments are intended to enhance disclosure about short-term borrowings. These proposals would require a small entity to:

- Provide, in a separately captioned subsection of MD&A, a comprehensive explanation of its short-term borrowings, including both quantitative and qualitative information; and
- Use a revised definition of "direct financial obligation" for purposes of disclosure requirements in Items 2.03 and 2.04 of Form 8–K.

These proposed amendments largely would apply to both large and small entities equally, except that smaller reporting companies would benefit from the proposed exclusion from expanded interim reporting of short-term borrowings and would provide two

[113] 5 U.S.C. 601(6).

[114] 17 CFR 230.157.

[115] 17 CFR 240.0–10(a).

[116] This includes approximately 30 business development companies that are small entities. For purposes of the Regulatory Flexibility Act, an investment company (including a business development company) is a small entity if it, together with other investment companies in the same group of related investment companies, has net assets of $50 million or less as of the end of its most recent fiscal year. 17 CFR 270.0–10(a).

years of annual data rather than three. As noted above, the proposed short-term borrowings disclosure should be available from a company's books and records and tracked with existing internal controls without a significant incremental burden imposed on small entities, except to the extent that it doesn't track the data on a monthly basis.

E. Duplicative, Overlapping, or Conflicting Federal Rules

We believe the proposed amendments would not duplicate, overlap, or conflict with other Federal rules. The proposed new requirements for short-term borrowings disclosures provide specific, additional information that would be complementary to existing MD&A requirements.

F. Significant Alternatives

The Regulatory Flexibility Act directs us to consider alternatives that would accomplish our stated objectives, while minimizing any significant adverse impact on small entities. In connection with the proposed disclosure amendments, we considered the following alternatives:

• Establishing different compliance or reporting requirements or timetables that take into account the resources available to small entities;

• Clarifying, consolidating or simplifying compliance and reporting requirements under the rules for small entities;

• Using performance rather than design standards; and

• Exempting small entities from all or part of the requirements.

Currently, small entities are subject to the same MD&A requirements as larger registrants under Item 303 of Regulation S–K, except that smaller reporting companies are permitted to exclude information as to their contractual obligations.[117] The proposed amendments would not alter the exclusions applicable to smaller reporting companies, except, as discussed above, an additional exclusion would be provided for smaller reporting companies so that they would not need to provide the proposed expanded interim period disclosures of short-term borrowings and would be permitted to provide two years of annual data instead of three years. The remaining proposed disclosure requirements would apply to small entities to the same extent as larger registrants, and would require clear, straightforward disclosure about short-term borrowings.

Except for the exclusions noted above, we are not proposing to change existing alternative reporting requirements under Item 303 of Regulation S–K, or establish additional different compliance requirements or an exemption from coverage of the proposed amendments for small entities. The proposed amendments would provide investors with greater transparency into the liquidity profile of registrants, by highlighting short-term borrowings. With potentially fewer financing options available to small entities, information about critical funding risks and future commitments is important to investors in the context of small entities as it is in the context of larger entities. Therefore, we do not believe it is appropriate to develop separate requirements for small entities that would involve clarification, consolidation, or simplification of the proposed disclosure requirements, other than the proposed exclusions discussed above. We do not believe that these proposed disclosures would create a significant new burden for small entities, and, we believe that uniform, comparable disclosures across all companies would be beneficial for investors and the markets.

We have used design standards and performance standards in connection with the proposed amendments. We rely on design standards for two reasons. First, based on our past experience, we believe that the proposed requirements would result in disclosure that is more useful to investors than if there were specific, enumerated informational requirements. The proposed requirements are intended to elicit more comprehensive and clear disclosure, while still affording registrants the ability to tailor the disclosure to reflect their specific activities and to provide the information that is most important in the context of their specific business. Second, the proposed amendments would promote consistent disclosure among all companies, providing information that is increasingly important to investors. Our existing MD&A requirements are largely performance standards, designed to elicit disclosure unique to the particular company.

Finally, we believe that requiring additional short-term borrowings information in MD&A is the most effective way to elicit the disclosure both for small entities. MD&A's existing emphasis on liquidity and capital resources, as well as identification of significant uncertainties and events, makes the placement of the disclosure as part of MD&A an appropriate choice. Because the proposed disclosure of short-term borrowings is intended to supplement the discussions of liquidity and capital resources already required to be provided by smaller reporting companies under existing rules, we believe the inclusion of the proposed requirements in MD&A would reduce redundant disclosure requirements and promote investors' understanding of this important and, at times highly complex, information.

We seek comment on whether we should exempt small entities from any of the proposed amendments or scale the proposed disclosure requirements to reflect the characteristics of small entities and the needs of their investors.

G. Solicitation of Comments

We encourage the submission of comments with respect to any aspect of this Initial Regulatory Flexibility Analysis. In particular, we request comments regarding:

• How the proposed amendments can achieve their objective while lowering the burden on small entities;

• The number of small entities that may be affected by the proposed amendments;

• The existence or nature of the potential impact of the proposed amendments on small entities discussed in the analysis; and

• How to quantify the impact of the proposed amendments.

Respondents are asked to describe the nature of any impact and provide empirical data supporting the extent of the impact. Such comments will be considered in the preparation of the Final Regulatory Flexibility Analysis, if the proposed rule amendments are adopted, and will be placed in the same public file as comments on the proposed amendments themselves.

IX. Statutory Authority and Text of the Proposed Amendments

The amendments contained in this release are being proposed under the authority set forth in Sections 6, 7, 10, 19(a) and 28 of the Securities Act and Sections 12, 13, 14, 15(d), 23(a) and 36 of the Exchange Act.

List of Subjects in 17 CFR Parts 229 and 249

Reporting and recordkeeping requirements, Securities.

Text of the Proposed Amendments

For the reasons set out in the preamble, the Commission proposes to

[117] Item 303(d) of Regulation S–K provides an exclusion for smaller reporting companies from the requirements of Item 303(a)(5), and permits smaller reporting companies to provide, if they meet specified conditions, only two fiscal years of information on the impact of inflation and changing prices pursuant to Item 303(a)(3)(iv).

amend Title 17, Chapter II, of the Code of Federal Regulations as follows:

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S–K

1. The authority citation for Part 229 continues to read in part as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z–2, 77z–3, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77nnn, 77sss, 78c, 78i, 78j, 78l, 78m, 78n, 78o, 78u–5, 78w, 78*ll,* 78mm, 80a–8, 80a–9, 80a–20, 80a–29, 80a–30, 80a–31(c), 80a–37, 80a–38(a), 80a–39, 80b–11, and 7201 *et seq.;* and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

2. Amend Section 229.303 by:

a. Removing the phrase "paragraphs (a)(1) through (5) of this Item" and adding in its place "paragraphs (a)(1) through (a)(6) of this Item" in the second sentence of the introductory text of paragraph (a);

b. Revising paragraphs (a)(4)(ii)(A), (a)(4)(ii)(C) and (a)(4)(ii)(D), and (a)(5)(ii)(A), (a)(5)(ii)(B) and (a)(5)(ii)(C);

c. Redesignating the "Instructions to paragraph 303(a) (4)" to directly follow paragraph (a)(4)(ii)(D);

d. Adding a new paragraph (a)(6) directly above the "Instructions to paragraph 303(a)";

e. Revising the fourth sentence of Instruction 8 to paragraph 303(a);

f. Revising Instruction 9 to paragraph 303(a);

g. Adding the phrase ", except as provided in Instruction 8 to paragraph 303(b)" at the end of the first sentence of Instruction 3 of the Instructions to paragraph (b) of Item 303;

h. Adding Instruction 8 to the Instructions to paragraph (b) of Item 303; and

i. Revising paragraph (d).

The revisions and additions read as follows:

§ 229.303 (Item 303) Management's Discussion and Analysis of Financial Condition and Results of Operations.

* * * * *

(a) * * *

(4) * * *

(ii) * * *

(A) Any obligation under a guarantee contract that has any of the characteristics identified in FASB ASC Topic 460, *Guarantees,* paragraph 460–10–15–4, as may be modified or supplemented, and that is not excluded from the initial recognition and measurement provisions of FASB ASC paragraphs 460–10–15–7, 460–10–25–1, and 460–10–30–1;

(B) * * *

(C) Any obligation, including a contingent obligation, under a contract that would be accounted for as a derivative instrument, except that it is both indexed to the registrant's own stock and classified in stockholders' equity in the registrant's statement of financial position, and therefore excluded from the scope of FASB ASC Topic 815, *Derivatives and Hedging,* pursuant to FASB ASC subparagraph 815–15–74(a), as may be modified or supplemented;

(D) Any obligation, including a contingent obligation, arising out of a variable interest (as defined in the FASB ASC Master Glossary, as may be modified or supplemented) in an unconsolidated entity that is held by, and material to, the registrant, where such entity provides financing, liquidity, market risk or credit risk support to, or engages in leasing, hedging or research and development services with, the registrant.

(5) * * *

(ii) * * *

(A) *Long-Term Debt Obligation* means a payment obligation under long-term borrowings referenced in FASB ASC Topic 470, *Debt,* paragraph 470–10–50–1, as may be modified or supplemented.

(B) *Capital Lease Obligation* means a payment obligation under a lease classified as a capital lease pursuant to FASB ASC Topic 840, *Leases,* as may be modified or supplemented.

(C) *Operating Lease Obligation* means a payment obligation under a lease classified as an operating lease and disclosed pursuant to FASB ASC Topic 840, as may be modified or supplemented.

* * * * *

(6) *Short-term Borrowings.* (i) In tabular format, provide for each category of short-term borrowings specified in paragraph (a)(6)(iii) of this Item and for the periods specified in paragraph (a)(6)(v) of this Item:

(A) The average amount outstanding during each reported period and the weighted average interest rate thereon;

(B) The amount outstanding at the end of each reported period and the weighted average interest rate thereon;

(C) (*1*) For registrants that are financial companies, the maximum daily amount outstanding during each reported period or

(*2*) For registrants that are not financial companies, the maximum month-end amount outstanding during each reported period; and

(D) For any of the amounts referred to in paragraphs (a)(6)(i)(A), (B) or (C) of this Item, disaggregate the amounts in the table by currency, interest rate or other meaningful category, to the extent presentation of separate amounts is necessary to promote understanding or to prevent aggregate amounts from being misleading, and include a footnote to the table indicating the method of disaggregation and any other pertinent data relating to the calculation of the amounts presented, including, without limitation, the timing and exchange rates used for currency translations.

(ii) Discuss the registrant's short-term borrowings, including the items specified in paragraphs (a)(6)(ii)(A) through (D) of this Item to the extent necessary to an understanding of such borrowings and the current or future effect on the registrant's financial condition, changes in financial condition, revenues or expenses, results of operations, liquidity, capital expenditures or capital resources:

(A) A general description of the short-term borrowings arrangements included in each category (including any key metrics or other factors that could reduce or impair the company's ability to borrow under any of such arrangements and whether there are any collateral posting arrangements) and the business purpose to the registrant of such short-term borrowings;

(B) The importance to the registrant of such short-term borrowings in respect of its liquidity, capital resources, market-risk support, credit-risk support or other benefits;

(C) The reasons for any material differences between average short-term borrowings and period-end borrowings; and

(D) The reasons for the maximum outstanding amounts in each reported period, including any non-recurring transactions or events, use of proceeds or other information that provides context for the maximum amount.

(iii) As used in this paragraph (a)(6), the term "*short-term borrowings*" includes amounts payable for short-term obligations that are:

(A) Federal funds purchased and securities sold under agreements to repurchase;

(B) Commercial paper;

(C) Borrowings from banks;

(D) Borrowings from factors or other financial institutions; and

(E) Any other short-term borrowings reflected on the registrant's balance sheet.

(iv) As used in this paragraph (a)(6), the term "*financial company*" means a registrant that, during the reported period, is engaged to a significant extent in the business of lending, deposit-taking, insurance underwriting or providing investment advice, or is a

broker or dealer as defined in Section 3 of the Exchange Act (15 U.S.C. 78c), and includes, without limitation, an entity that is, or is the holding company of, a bank, a savings association, an insurance company, a broker, a dealer, a business development company as defined in Section 2(a)(48) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(48)), an investment adviser, a futures commission merchant, a commodity trading advisor, a commodity pool operator, or a mortgage real estate investment trust.

(v) Information required by this paragraph (a)(6) shall be presented for each of the three most recent fiscal years, and, in the case of annual reports filed on Form 10–K (referenced in § 249.310), information for the registrant's fourth fiscal quarter presented in accordance with the requirements for interim periods set forth in Instruction 8 to paragraph (b) of this Item 303; *provided* that a registrant that is a smaller reporting company may provide the information required for each of the two most recent fiscal years in accordance with paragraph (d) of this Item 303 and, in the case of annual reports filed on Form 10–K (referenced in § 249.310), is not required to include information for the fourth fiscal quarter.

Instruction 1 to Paragraph 303(a)(6): Where a registrant meets the definition of financial company, but also has operations that do not involve lending, deposit-taking, insurance underwriting, providing investment advice, or broker or dealer activities, it may present the information specified in Item 303(a)(6)(i) separately for such operations. In doing so, the registrant may disclose averages and maximum amounts for such operations using the rules and instructions applicable to registrants that are not financial companies, provided that it must disclose averages computed on a daily average basis and maximum daily amounts for its operations that fall within the definition of financial company. For purposes of making this segregation, the registrant should make the distinction assuming the business in question were itself a registrant. Additional information should be presented by footnote to enable readers to understand how the registrant's operations have been grouped for purposes of the disclosure.

Instruction 2 to Paragraph 303(a)(6): For registrants that are financial companies, averages called for by paragraph (a)(6) of this Item are averages computed on a daily average basis (which means the amount outstanding at the end of each day, averaged over the reporting period). For all other registrants, the basis used for calculating the averages must be identified, and the averaging period used must not exceed a month.

Instruction 3 to Paragraph 303(a)(6): As used in this Item 303(a)(6), the maximum daily amount outstanding during a reported period means the largest amount outstanding at the end of any day in the reported period, and the maximum month-end amount outstanding during a reported period means the largest amount outstanding at the end of the last day of any month in the reported period.

Instructions to Paragraph 303(a):

* * * * *

8. * * * However, registrants may elect to voluntarily disclose supplemental information on the effects of changing prices as provided for in FASB ASC Topic 255, *Changing Prices,* or through other supplemental disclosures. * * *

9. Registrants that elect to disclose supplementary information on the effects of changing prices as specified by FASB ASC Topic 255 may combine such explanations with the discussion and analysis required pursuant to this Item or may supply such information separately with appropriate cross-reference.

* * * * *

(b) * * *

Instructions to Paragraph 303(b):

* * * * *

8. Notwithstanding anything to the contrary in this Item 303, a registrant that is not a smaller reporting company must include the disclosure required pursuant to (a)(6) of this Item for each interim period for which financial statements are included or required to be included by Article 3 of Regulation S–X (17 CFR 210.3–01 to 3.18), and for the registrant's fourth fiscal quarter in the case of an annual report filed on Form 10–K (referenced in § 249.310), and must provide an updated discussion and analysis of the information presented. The discussion and analysis should also highlight any material changes from prior periods. For purposes of interim period disclosures of short-term borrowings required by paragraph (a)(6) of this Item, the term "*reported period*" used in paragraph (a)(6) of this Item means the most recent interim period presented or, in the case of an annual report filed on Form 10–K (referenced in § 249.310), the registrant's fourth fiscal quarter.

* * * * *

(d) *Smaller reporting companies.* A smaller reporting company, as defined in § 229.10(f)(1) of this Chapter, may provide the information required in paragraphs (a)(3)(iv) and (a)(6) of this Item for the last two most recent fiscal years of the registrant if it provides financial information on net sales and revenues and on income from continuing operations for only two years. For interim periods, a smaller reporting company is not required to follow Instruction 8 to paragraph 303(b) and, instead, must discuss material changes to the information specified in paragraphs (a)(4) and (a)(6) of this Item from the end of the preceding fiscal year (and, if included, from the corresponding interim balance sheet date of the preceding fiscal year) to the date of the most recent interim balance sheet provided. In the case of an annual report filed on Form 10–K (referenced in § 249.310), a smaller reporting company is not required to provide information for the fourth quarter of the most recent fiscal year.

* * * * *

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

3. The authority citation for part 249 continues to read in part as follows:

Authority: 15 U.S.C. 78a *et seq.* and 7201 *et seq.;* and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

4. Form 8–K (referenced in § 249.308) is amended by:

a. Revising paragraph (c)(4) of Item 2.03; and

b. Removing paragraph (e) of Item 2.03.

The revisions read as follows:

Note: The text of Form 8–K does not, and this amendment will not, appear in the Code of Federal Regulations.

Form 8–K

* * * * *

Item 2.03 Creation of a Direct Financial Obligation or an Obligation Under an Off-Balance Sheet Arrangement of a Registrant

* * * * *

(c)* * *

(4) A short-term borrowing, as defined in Item 303(a)(6)(iii) of Regulation S–K (17 CFR 229.303(a)(6)(iii)), that arises other than in the ordinary course of business.

* * * * *

5. Form 20–F (referenced in § 249.220f) Item 5 is amended by:

a. Revising paragraphs (a) and (d) of Item 5.E.2;

b. Adding Item 5.H; and

c. Adding Instructions to Item 5.H after the "Instructions to Item 5.F".

The revisions and additions read as follows:

Note: The text of Form 20–F does not, and this amendment will not, appear in the Code of Federal Regulations.

Form 20–F

* * * * *

Item 5. Operating and Financial Review and Prospects

* * * * *

E. Off-balance sheet arrangements.

* * * * *

2. * * *

(a) Any obligation under a guarantee contract that has any of the characteristics identified in FASB ASC Topic 460, Guarantees, paragraph 460–10–15–4, as may be modified or supplemented, excluding the types of guarantee contracts described in FASB ASC paragraphs 460–10–15–7, 460–10–25–1, and 460–10–30–1;

(b) * * *

(c) * * *

(d) Any obligation, including a contingent obligation, arising out of a variable interest (as defined in the FASB ASC Master Glossary, as may be modified or supplemented) in an unconsolidated entity that is held by, and material to, the company, where such entity provides financing, liquidity, market risk or credit risk support to, or engages in leasing, hedging or research and development services with, the company.

* * * * *

H. Short-Term Borrowings

1. In tabular format, provide for each category of short-term borrowings specified in Item 5.H.3 of this Form and for the periods specified in Item 5.H.5 of this Form:

(a) The average amount outstanding during each reported period and the weighted average interest rate thereon;

(b) The amount outstanding at the end of each reported period and the weighted average interest rate thereon;

(c)(*i*) For companies that are financial companies, the maximum daily amount outstanding during each reported period or

(*ii*) For companies that are not financial companies, the maximum month-end amount outstanding during each reported period; and

(d) For any of the amounts referred to in (a), (b) or (c) of this Item 5.H.1, disaggregate the amounts in the table by currency, interest rate or other meaningful category, to the extent presentation of separate amounts is necessary to promote understanding or to prevent aggregate amounts from being misleading, and include a footnote to the table indicating the method of disaggregation and any other pertinent data relating to the calculation of the amounts presented, including, without limitation, the timing and exchange rates used for currency translations.

2. Provide a discussion of the company's short-term borrowings, including the items specified in paragraphs (a) through (d) of this Item 5.H.2 to the extent necessary to an understanding of such borrowings and the current or future effect on the company's financial condition, changes in financial condition, revenues or expenses, results of operations, liquidity, capital expenditures or capital resources:

(a) A general description of the short-term borrowings included in each category (including any key metrics or other factors that could reduce or impair the company's ability to borrow under any of such arrangements and whether there are any collateral posting arrangements) and the business purpose to the company of such short-term borrowings;

(b) The importance to the company of such short-term borrowings in respect of its liquidity, capital resources, market-risk support, credit-risk support or other benefits;

(c) The reasons for any material differences between average short-term borrowings and period-end borrowings; and

(d) The reasons for the maximum outstanding amounts in each reported period, including any non-recurring transactions or events, use of proceeds or other information that provides context for the maximum amount.

3. As used in this Item 5.H, the term "*short-term borrowings*" means amounts payable for short-term obligations that are:

(a) Federal funds purchased and securities sold under agreements to repurchase;

(b) Commercial paper;

(c) Borrowings from banks;

(d) Borrowings from factors or other financial institutions; and

(e) Any other short-term borrowings reflected in the company's balance sheet.

4. As used in this Item 5.H, the term "*financial company*" means a company that, during the reported period, is engaged to a significant extent in the business of lending, deposit-taking, insurance underwriting or providing investment advice, or is a broker or dealer as defined in Section 3 of the Exchange Act (15 U.S.C. 78c), and includes, without limitation, an entity that is or is the holding company of, a bank, a savings association, an insurance company, a broker, a dealer, a business development company as defined in Section 2(a)(48) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(48)), an investment adviser, a futures commission merchant, a commodity trading advisor, a commodity pool operator, or a mortgage real estate investment trust.

5. Information required by this Item 5.H shall be presented for each of the three most recent fiscal years.

* * * * *

Instructions to Item 5.H:

1. Notwithstanding Item 5.H.3, the categories of short-term borrowings disclosed pursuant to Item 5.H of this Form may be based on the classifications for such types of short-term borrowings used under the comprehensive set of accounting principles that the company uses to prepare its primary financial statements, so long as the disclosure is provided at a level of detail that satisfies the objective of this Item 5.H disclosure requirement.

2. Where a company meets the definition of financial company, but also has operations that do not involve lending, deposit-taking, insurance underwriting, providing investment advice, or broker or dealer activities, it may present the information specified in Item 5.H.1 of this Form separately for such operations. In doing so, the company may disclose averages and maximum amounts for such operations using the rules and instructions applicable to companies that are not financial companies, provided that it must disclose averages computed on a daily average basis and maximum daily amounts for its operations that fall within the definition of financial company. For purposes of making this segregation, the company should make the distinction assuming the business in question were itself a registrant. Additional information should be presented by footnote to enable readers to understand how the company's operations have been grouped for purposes of the disclosure.

3. For companies that are financial companies, averages called for by this Item 5.H are averages computed on a daily average basis (which means the amount outstanding at the end of each day, averaged over the reporting period). For all other companies, the basis used for calculating the averages must be identified, and the averaging period used must not exceed a month.

4. As used in this Item 5.H, the maximum daily amount outstanding during a reported period means the largest amount outstanding at the end of any day in the reported period, and the maximum month-end amount

outstanding during a reported period means the largest amount outstanding at the end of the last day of any month in the reported period.

* * * * *

Dated: September 17, 2010.

By the Commission.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2010–23743 Filed 9–27–10; 8:45 am]

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September 28, 2010

Part IV

Securities and Exchange Commission

17 CFR Parts 211, 231, and 241

Commission Guidance on Presentation of Liquidity and Capital Resources Disclosures in Management's Discussion and Analysis; Final Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 211, 231, and 241

[Release Nos. 33–9144; 34–62934; FR–83]

Commission Guidance on Presentation of Liquidity and Capital Resources Disclosures in Management's Discussion and Analysis

AGENCY: Securities and Exchange Commission.

ACTION: Interpretation.

SUMMARY: We are providing interpretive guidance that is intended to improve discussion of liquidity and capital resources in Management's Discussion and Analysis of Financial Condition and Results of Operations in order to facilitate understanding by investors of the liquidity and funding risks facing the registrant.

DATES: *Effective Date:* September 28, 2010.

FOR FURTHER INFORMATION CONTACT: Questions about specific filings should be directed to staff members responsible for reviewing the documents the registrant files with the Commission. For general questions about this release, contact Christina L. Padden, Attorney Fellow in the Office of Rulemaking, at (202) 551–3430 or Stephanie L. Hunsaker, Associate Chief Accountant, at (202) 551–3400, in the Division of Corporation Finance; or Wesley R. Bricker, Professional Accounting Fellow, Office of the Chief Accountant at (202) 551–5300; U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549.

SUPPLEMENTARY INFORMATION:

I. Background

Over the past several years, we have provided guidance and have engaged in rulemaking initiatives to improve the presentation of information about funding and liquidity risk.[1] In a companion release, we are proposing amendments to enhance the disclosure that registrants present about short-term borrowings.[2] The proposals in that release would require a registrant to provide, in a separately captioned subsection of Management's Discussion and Analysis of Financial Condition and Results of Operations ("MD&A"), a comprehensive explanation of its short-term borrowings, including both quantitative and qualitative information. The proposed amendments to MD&A would be applicable to annual and quarterly reports, proxy or information statements that include financial statements, registration statements under the Securities Exchange Act of 1934, and registration statements under the Securities Act of 1933. We are also proposing conforming amendments to Form 8–K so that the Form would use the terminology contained in the proposed short-term borrowings disclosure requirement. To further improve the discussion of liquidity and capital resources in MD&A in order to facilitate understanding by investors of the liquidity and funding risks facing the registrant, we are also providing the following guidance with respect to existing MD&A requirements.

II. Guidance on Presentation of Liquidity and Capital Resources Disclosures in Management's Discussion and Analysis

A. Liquidity Disclosure

As discussed in the Proposing Release, companies have expanded the types of funding methods and cash management tools they use. We remind registrants that Item 303(a)(1) of Regulation S–K requires them to "identify and separately describe internal and external sources of liquidity, and briefly discuss any material unused sources of liquidity." Accordingly, as the financing activities undertaken by registrants become more diverse and complex, it is increasingly important that the discussion and analysis of liquidity and capital resources provided by registrants meet the objectives of MD&A disclosure.

In 2003, the Commission issued interpretive guidance relating to MD&A disclosures of liquidity and capital resources, as well as MD&A generally.[3] We encourage registrants to review that guidance when preparing their MD&A, as it covers topics relating to the discussion of cash requirements, cash management, sources and uses of cash, as well as a registrant's debt instruments, guarantees and related covenants, that continue to be relevant to investors.

As we have stated in the past, MD&A requires companies to provide investors with disclosure that facilitates an appreciation of the known trends and uncertainties that have impacted historical results or are reasonably likely to shape future periods.[4] This disclosure should both discuss and analyze the company's business from the perspective of management.[5] In the context of liquidity, Item 303(a)(1) of Regulation S–K requires disclosure of known trends or any known demands, commitments, events or uncertainties that will result in, or that are reasonably likely to result in, the registrant's liquidity increasing or decreasing in any material way.[6] In past guidance, the Commission has highlighted a number of issues for management to consider when identifying trends, demands, commitments, events and uncertainties that require disclosure in MD&A.[7] Some additional important trends and uncertainties relating to liquidity might include, for example, difficulties accessing the debt markets, reliance on commercial paper or other short-term financing arrangements, maturity mismatches between borrowing sources and the assets funded by those sources,

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[1] *See, e.g.,* Commission Statement About Management's Discussion and Analysis of Financial Condition and Results of Operations, Release No. 33–8056 (Jan. 22, 2002) [67 FR 3746]; Disclosure in Management's Discussion and Analysis About Off Balance Sheet Arrangements, Contractual Obligations and Contingent Liabilities and Commitments, Release No. 33–8144 (Nov. 4, 2002) [67 FR 68054]; Disclosure in Management's Discussion and Analysis About Off Balance Sheet Arrangements, Contractual Obligations and Contingent Liabilities and Commitments, Release No. 33–8182 (Jan. 28, 2003) [68 FR 5982] (adopting rules for disclosure in MD&A of off-balance sheet arrangements and aggregate contractual obligations); and Commission Guidance Regarding Management's Discussion and Analysis of Financial Condition and Results of Operations, Release No. 33–8350 (Dec. 19, 2003) [68 FR 75056] (providing interpretive guidance on disclosure in MD&A, including liquidity and capital resources).

[2] *See* Short-Term Borrowings Disclosure, Release No. 33–9143 (the "Proposing Release").

[3] *See* Commission Guidance Regarding Management's Discussion and Analysis of Financial Condition and Results of Operations, Release No. 33–8350 (Dec. 19, 2003) [68 FR 75056] (the "2003 Interpretive Release").

[4] *See* Disclosure in Management's Discussion and Analysis About Off Balance Sheet Arrangements, Contractual Obligations and Contingent Liabilities and Commitments, Release No. 33–8182 (Jan. 28, 2003) [68 FR 5982] (the "OBS Adopting Release"), at 5982 ("MD&A also provides a unique opportunity for management to provide investors with an understanding of its view of the financial performance and condition of the company, an appreciation of what the financial statements show and do not show, as well as important trends and risks that have shaped the past and are reasonably likely to shape the future.").

[5] "MD&A should be a discussion and analysis of a company's business as seen through the eyes of those who manage that business. Management has a unique perspective on its business that only it can present. As such, MD&A should not be a recitation of financial statements in narrative form, or an otherwise uninformative series of technical responses to MD&A requirements, neither of which provides this important management perspective." *See* 2003 Interpretive Release, *supra* note 3, at 75056.

[6] "The scope of the discussion should thus address liquidity in the broadest sense, encompassing internal as well as external sources, current conditions as well as future commitments and known trends, changes in circumstances and uncertainties." *See* Commission Statement About Management's Discussion and Analysis of Financial Condition and Results of Operations, Release No. 33–8056 (Jan. 22, 2002) [67 FR 3746] (the "2002 Interpretive Release"), at 3748 n.11.

[7] *See* 2002 Interpretive Release, *supra* note 5, at 3748.

changes in terms requested by counterparties, changes in the valuation of collateral, and counterparty risk.

In addition, in the context of liquidity and capital resources, if the registrant's financial statements do not adequately convey the registrant's financing arrangements during the period, or the impact of those arrangements on liquidity, because of a known trend, demand, commitment, event or uncertainty, additional narrative disclosure should be considered and may be required to enable an understanding of the amounts depicted in the financial statements. For example, depending on the registrant's circumstances, if borrowings during the reporting period are materially different than the period-end amounts recorded in the financial statements, disclosure about the intra-period variations is required under current rules to facilitate investor understanding of the registrant's liquidity position.

Moreover, the Commission's staff has noted that there may be confusion on the part of registrants about how to address disclosure of certain repurchase agreements that are accounted for as sales, as well as other types of short-term financings that are not otherwise fully captured in period-end balance sheets.[8] Again, disclosure is required in MD&A where a known commitment, event or uncertainty will result in (or is reasonably likely to result in) the registrant's liquidity increasing or decreasing in a material way.[9] The absence of specific references in existing disclosure requirements for off-balance sheet arrangements or contractual obligations to repurchase transactions that are accounted for as sales, or to any other transfers of financial assets that are accounted for as sales, does not relieve registrants from the disclosure requirements of Item 303(a)(1).[10] Further, as stated in the 2002 Interpretive Release, legal opinions regarding "true sale" issues do not obviate the need for registrants to consider whether disclosure is required.[11] In evaluating whether disclosure in MD&A may be required in connection with a repurchase transaction, securities lending transaction, or any other transaction involving the transfer of financial assets with an obligation to repurchase financial assets, that has been accounted for as a sale under applicable accounting standards, the registrant should consider whether the transaction is reasonably likely to result in the use of a material amount of cash or other liquid assets. Disclosure may be required in the discussion of liquidity and capital resources, particularly where the registrant does not otherwise include such information in its off-balance sheet arrangements or its contractual obligations table. A registrant may determine where in its MD&A this information would be most informative based on the type of obligation and potential exposure involved, with an emphasis on providing disclosure that is clear and not misleading.

To provide context for the exposures identified in MD&A, companies should also consider describing cash management and risk management policies that are relevant to an assessment of their financial condition. Banks, in particular, should consider discussing their policies and practices in meeting applicable banking agency guidance on funding and liquidity risk management, or any policies and practices that differ from applicable agency guidance. In addition, a company that maintains or has access to a portfolio of cash and other investments that is a material source of liquidity should consider providing information about the nature and composition of that portfolio, including a description of the assets held and any related market risk, settlement risk or other risk exposure. This could include information about the nature of any limits or restrictions and their effect on the company's ability to use or to access those assets to fund its business operations.

Transparent financial reporting that conveys a complete and understandable picture of a company's financial position reduces uncertainty in our markets. Surprises to investors can be reduced or avoided when a company provides clear and understandable information about known trends, events, demands, commitments and uncertainties, particularly where they are reasonably likely to have a current or future material impact on that company. The economic environment is not static. Circumstances and risks change and, as a result, disclosure about those circumstances and risks must also evolve. As we stated in the 2003 Interpretive Release, if prior disclosure "does not adequately foreshadow subsequent events, or if new information that impacts known trends and uncertainties becomes apparent * * * additional disclosure should be considered and may be required."[12] This principle is equally applicable in the context of liquidity and capital resources disclosure.

B. Leverage Ratio Disclosures

Where a registrant includes capital or leverage ratio disclosure in its filings with the Commission, and there are no regulatory requirements prescribing the calculation of that ratio, or where a registrant includes capital or leverage ratios that are calculated using a methodology that is modified from its prescribed form, we remind registrants of our long-standing approach to disclosure of financial measures and non-financial measures in MD&A. First, the registrant should determine whether the measure is a financial measure. If the measure is not a financial measure, registrants should refer to the guidance we provided in 2003 for disclosures relating to non-financial measures, such

[8] In its 2005 OBS Report, the Commission's staff identified transfers of assets with continuing involvement as one of the principal areas in need of improvement in disclosure of off-balance sheet arrangements. *See* Staff of the U.S. Securities and Exchange Commission, Report and Recommendations Pursuant to Section 401(c) of the Sarbanes-Oxley Act of 2002 On Arrangements with Off-Balance Sheet Implications, Special Purpose Entities and Transparency of Filings by Issuers (June 2005), *available at http://www.sec.gov/news/studies/soxoffbalancerpt.pdf. See also,* the Division of Corporation Finance, Sample Letter Sent to Public Companies Asking for Information Related to Repurchase Agreements, Securities Lending Transactions, or Other Transactions Involving the Transfer of Financial Assets (Mar. 2010), *available at http://www.sec.gov/divisions/corpfin/guidance/cforepurchase0310.htm.,* and the Division of Corporation Finance, Sample Letter Sent to Public Companies That Have Identified Investments in Structured Investment Vehicles, Conduits or Collateralized Debt Obligations (Off-balance Sheet Entities) (Dec. 2007) *available at http://www.sec.gov/divisions/corpfin/guidance/cfoffbalanceltr1207.htm.*

[9] *See* Item 303(a)(1) [17 CFR 229.303(a)(1)].

[10] We also note that, in 1986, the Commission adopted changes to Rule 4–08 of Regulation S–X to require financial statement footnote disclosure of the nature and extent of a registrant's repurchase and reverse repurchase transactions and the degree of risk involved. *See* Disclosure Amendments to Regulation S–X Regarding Repurchase and Reverse Repurchase Agreements, Release No. 33–6621 (Jan. 22, 1986) [51 FR 3765]. These requirements focus on disclosure of risk of loss due to counter-party default. *See* Rule 4–08(m) of Regulation S–X [17 CFR 210.4–08m]. However, the adopting release indicates that the requirements do not affect obligations under MD&A requirements to discuss "any material impact on liquidity or operations and risk resulting from involvement with repurchase and reverse repurchase agreements."

[11] *See* 2002 Interpretive Release, *supra* note 5, at 3749.

[12] *See* 2003 Interpretive Release, *supra* note 3, at 75061, and Management's Discussion and Analysis of Financial Condition and Results of Operations; Certain Investment Company Disclosures, Release No. 33–6835 (May 18, 1989) [54 FR 22427] (the "1989 Interpretive Release"). The 1989 Interpretive Release clarifies that material changes to items disclosed in MD&A in annual reports should be discussed in the quarter in which they occur. The 2003 Interpretive Release states that "there may also be circumstances where an item may not be material in the context of a discussion of annual results of operations but is material in the context of interim results."

as industry metrics or value metrics.[13] If the measure is a financial measure, the registrant should next determine whether the measure falls within the scope of our requirements for non-GAAP financial measures, and if it is, the registrant would need to follow our rules and guidance governing the inclusion of non-GAAP financial measures in filings with the Commission.[14]

In any event, any ratio or measure included in a filing should be accompanied by a clear explanation of the calculation methodology. The explanation would need to clearly articulate the treatment of any inputs that are unusual, infrequent or non-recurring, or that are otherwise adjusted so that the ratio is calculated differently from directly comparable measures. Similar to our guidance for the disclosure of non-financial measures, if the financial measure presented differs from other measures commonly used in the registrant's industry, the registrant would need to consider whether a discussion of those differences or presentation of those measures would be necessary to make the disclosures not misleading. Finally, a registrant would need to consider its reasons for presenting the particular financial measure, and should include disclosure clearly stating why the measure is useful to understanding its financial condition. Where the ratio is being presented in connection with disclosure on debt instruments and related covenants, registrants should also consult our past guidance on disclosure of debt instruments, guarantees and related covenants.[15]

C. Contractual Obligations Table Disclosures

As an aid to understanding other liquidity and capital resources disclosures in MD&A, the contractual obligations tabular disclosure should be prepared with the goal of presenting a meaningful snapshot of cash requirements arising from contractual payment obligations. The Commission's staff has observed that divergent practices have developed in connection with the contractual obligations table disclosure, with registrants drawing different conclusions about the information to be included and the manner of presentation. The requirement itself permits flexibility so that the presentation can reflect company-specific information in a way that is suitable to a registrant's business. Accordingly, registrants are encouraged to develop a presentation method that is clear, understandable and appropriately reflects the categories of obligations that are meaningful in light of its capital structure and business. Registrants should highlight any changes in presentation that are made, so that investors are able to use the information to make comparisons from period to period.

Since the adoption of Item 303(a)(5), registrants and industry groups have raised questions to our staff about how to treat a number of items under the contractual obligations requirement, including: interest payments, repurchase agreements, tax liabilities, synthetic leases, and obligations that arise under off-balance sheet arrangements. In addition, a variety of questions has been raised with our staff in the context of purchase obligations. Because the questions that arise tend to be fact-specific and closely related to a registrant's particular business and circumstances, we have not issued general guidance as to how to treat these items or other questions regarding the presentation of the contractual obligations table. The purpose of the contractual obligations table is to provide aggregated information about contractual obligations and contingent liabilities and commitments in a single location so as to improve transparency of a registrant's short-term and long-term liquidity and capital resources needs and to provide context for investors to assess the relative role of off-balance sheet arrangements;[16] registrants should prepare the disclosure consistent with that objective. Uncertainties about what to include or how to allocate amounts over the periods required in the table should be resolved consistent with the purpose of the disclosure. To that end, footnotes should be used to provide information necessary for an understanding of the timing and amount of the specified contractual obligations, as indicated in the instructions contained in Item 303(a)(5)(i), or, where necessary to promote understanding of the tabular data, additional narrative discussion outside of the table should be considered. Registrants should determine how best to present the information that is relevant to their own business in a manner that is clear, consistent with the purpose of the disclosure and not misleading, and should provide additional disclosure where necessary to explain what the tabular data includes and does not include.[17]

III. Codification Update

The "Codification of Financial Reporting Policies" announced in Financial Reporting Release 1 (April 15, 1982) [47 FR 21028] is updated by adding new Section 501.03.a.i, captioned "Additional Guidance on Presentation of Liquidity and Capital Resources Disclosures" to the Financial Reporting Codification and under that caption including the text in Section II of this release.

The Codification is a separate publication of the Commission. It will not be published in the **Federal Register**/Code of Federal Regulations.

List of Subjects in 17 CFR Parts 211, 231 and 241

Securities.

Amendments to the Code of Federal Regulations

■ For the reasons set forth above, under the authority at Sections 6, 7, 10 and 9(a) of the Securities Act and Sections 12, 13, 14, 15(d) and 23(a) of the Exchange Act, the Commission is amending title 17, chapter II of the Code of Federal Regulations as set forth below:

PART 211—INTERPRETATIONS RELATING TO FINANCIAL REPORTING MATTERS

■ 1. Part 211, subpart A, is amended by adding Release No. FR–83 to the list of interpretive releases as follow:

[13] *See* 2003 Interpretive Release, *supra* note 3, at 75060.

[14] *See* Conditions for Use of Non-GAAP Financial Measures, Release No. 33–8176 (Jan. 22, 2003) [68 FR 4820] and Item 10(e) of Regulation S–K [17 CFR 229.10(e)(5)]. We note that existing rules and guidance governing the inclusion of non-GAAP financial measures in filings with the Commission do not apply to financial measures that are "required to be disclosed by GAAP, Commission rules, or a system of regulation of a government or governmental authority or self-regulatory organization that is applicable to the registrant.

[15] *See* 2003 Interpretive Release, *supra* note 3, at 75064.

[16] *See* OBS Adopting Release, *supra* note 4, at 5990.

[17] As an example, if useful to a clear understanding of the information presented, a registrant might consider separating amounts in the table into those that are reflected on the balance sheet and those arising from off-balance sheet arrangements, particularly where such a distinction helps to tie the information to financial statement disclosure and other MD&A discussion.

Subject	Release No.	Date	Fed. Reg. vol. and page
* * * * * * *			
Commission Guidance on Presentation of Liquidity and Capital Resources Disclosures in Management's Discussion and Analysis.	FR–83	September 17, 2010	75 FR [FR PAGE PAGE NUMBER].

PART 231—INTERPRETATIVE RELEASES RELATING TO THE SECURITIES ACT OF 1933 AND GENERAL RULES AND REGULATIONS THEREUNDER

■ 2. Part 231 is amended by adding Release No. 33–9144 to the list of interpretive releases as follow:

Subject	Release No.	Date	Fed. Reg. vol. and page
* * * * * * *			
Commission Guidance on Presentation of Liquidity and Capital Resources Disclosures in Management's Discussion and Analysis.	33–9144	September 17, 2010	75 FR [FR PAGE PAGE NUMBER].

PART 241—INTERPRETATIVE RELEASES RELATING TO THE SECURITIES EXCHANGE ACT OF 1934 AND GENERAL RULES AND REGULATIONS THEREUNDER

■ 3. Part 241 is amended by adding Release No. 34–62934 to the list of interpretive releases as follow:

Subject	Release No.	Date	Fed. Reg. vol. and page
* * * * * * *			
Commission Guidance on Presentation of Liquidity and Capital Resources Disclosures in Management's Discussion and Analysis.	34–62934	September 17, 2010	75 FR [FR PAGE PAGE NUMBER].

Dated: September 17, 2010.

By the Commission.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2010–23744 Filed 9–27–10; 8:45 am]

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Federal Register

Tuesday,
September 28, 2010

Part V

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 226

Endangered and Threatened Wildlife and Plants: Proposed Rulemaking To Designate Critical Habitat for Black Abalone; Proposed Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 226

[Docket No. 100127045–0120–01]

RIN 0648–AY62

Endangered and Threatened Wildlife and Plants: Proposed Rulemaking To Designate Critical Habitat for Black Abalone

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

ACTION: Proposed rule; request for comments.

SUMMARY: We, the National Marine Fisheries Service (NMFS), propose to designate approximately 390 square kilometers of critical habitat for the endangered black abalone, pursuant to section 4 of the Endangered Species Act (ESA). Specific areas proposed for designation include rocky habitats from the mean higher high water (MHHW) line to a depth of 6 meters (m) within the following areas on the California coast: Del Mar Landing Ecological Reserve to Point Bonita; from the southern point at the mouth of San Francisco Bay to Natural Bridges State Beach; from Pacific Grove to Cayucos; from Montaña de Oro State Park to just south of Government Point; Palos Verdes Peninsula from the Palos Verdes/Torrance border to Los Angeles Harbor; the Farallon Islands; Año Nuevo Island; San Miguel Island; Santa Rosa Island; Santa Cruz Island; Anacapa Island; San Nicolas Island; Santa Barbara Island; Catalina Island; and San Clemente Island. We propose to exclude the following area from designation because the economic benefits of exclusion outweigh the benefits of inclusion, and exclusion will not result in the extinction of the species: rocky habitats within the MHHW line to a depth of 6 m from Corona Del Mar State Beach to Dana Point, California.

DATES: Comments on this proposed rule to designate critical habitat must be received by no later than 5 p.m. Pacific Standard Time on November 29, 2010. A public hearing will be held promptly if any person so requests by November 12, 2010. Notice of the date, location, and time of any such hearing will be published in the **Federal Register** not less than 15 days before the hearing is held.

ADDRESSES: You may submit comments on the proposed rule, identified by RIN 0648–AY62, by any one of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 1–562–980–4027, Attention: Melissa Neuman.
- *Mail:* Submit written information to Chief, Protected Resources Division, Southwest Region, National Marine Fisheries Service, 501 West Ocean Blvd, Suite 4200, Long Beach, CA 90802–4213.

Instructions: All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information. NMFS will accept anonymous comments (please enter N/A in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or PDF file formats only.

Reference materials and supporting documents regarding this proposed designation can be obtained via the Internet at: *http://swr.nmfs.noaa.gov/*, the Federal eRulemaking Portal at: *http://www.regulations.gov*, or by submitting a request to the Assistant Regional Administrator, Protected Resources Division, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213.

FOR FURTHER INFORMATION CONTACT: Melissa Neuman, NMFS, Southwest Region (562) 980–4115, or Marta Nammack, NMFS, Office of Protected Resources (301) 713–1401.

SUPPLEMENTARY INFORMATION:

Background

On January 14, 2009, we determined that the black abalone (*Haliotis cracherodii*) is in danger of extinction throughout all or a significant portion of its range and listed the species as endangered under the ESA (74 FR 1937). Under the ESA, we are responsible for designating critical habitat for all endangered and threatened species (16 U.S.C. 1533). This rule describes the proposed critical habitat designation, including supporting information on black abalone biology, distribution, and habitat use, and the methods used to develop the proposed designation.

We considered various alternatives to the critical habitat designation for black abalone. The alternative of not designating critical habitat for black abalone would impose no economic, national security, or other relevant impacts, but would not provide any conservation benefit to the species. This alternative was considered and rejected because such an approach does not meet the legal requirements of the ESA and would not provide for the conservation of black abalone. The alternative of designating all of the areas considered for designation (i.e., no areas excluded) was also considered and rejected because, for one area, the economic benefits of exclusion outweighed the benefits of designation, and NMFS did not determine that exclusion of this area would significantly impede conservation of the species or result in extinction of the species. The total estimated annualized economic impact associated with the designation of all of the areas considered would be $595,900 to $158,967,500 (discounted at 7 percent) or $562,600 to $144,410,200 (discounted at 3 percent).

An alternative to designating critical habitat within all of the areas considered for designation is the designation of critical habitat within a subset of these areas. Under section 4(b)(2) of the ESA, NMFS must consider the economic impacts, impacts to national security, and other relevant impacts of designating any particular area as critical habitat. NMFS has the discretion to exclude an area from designation as critical habitat if the benefits of exclusion (i.e., the impacts that would be avoided if an area were excluded from the designation) outweigh the benefits of designation (i.e., the conservation benefits to black abalone if an area were designated), so long as exclusion of the area will not result in extinction of the species. Exclusion under section 4(b)(2) of the ESA of one or more of the areas considered for designation would reduce the total impacts of designation. The determination of which units to exclude depends on NMFS' ESA section 4(b)(2) analysis, which is conducted for each area and described in detail in the draft ESA 4(b)(2) report (NMFS, 2010b). Under the preferred alternative we propose to exclude one of the 20 areas considered. The total estimated economic impact associated with this preferred alternative is $582,500 to $155,851,400 (discounted at 7 percent) or $551,800 to $141,300,500 (discounted at 3 percent). We determined that the exclusion of this one area would not significantly impede the conservation of

black abalone nor result in extinction of the species. We selected this as the preferred alternative because it results in a critical habitat designation that provides for the conservation of black abalone while reducing the economic impacts. This alternative also meets the requirements under the ESA and our joint NMFS–U.S. Fish and Wildlife Service (USFWS) regulations concerning critical habitat.

Black Abalone Natural History

General Description

Black abalone (*Haliotis cracherodii,* Leach, 1814) are shallow-living marine gastropods with smooth, circular, and black to slate blue colored shells that have five to nine open respiratory pores sitting flush with the shell's surface. Typically, the shell's interior is white (Haaker *et al.,* 1986), with a poorly defined or no muscle scar (Howorth, 1978). Adults attain a maximum shell length of approximately 20 cm (throughout this notice we use the maximum diameter of the elliptical shell as the index for individual body size). The muscular foot of the black abalone allows the animal to clamp tightly to rocky surfaces without being dislodged by wave action. Locomotion is accomplished by an undulating motion of the foot. A column of shell muscle attaches the body to the shell. The mantle and black epipodium, a sensory structure and extension of the foot which bears lobed tentacles of the same color (Cox, 1960), circle the foot and extend beyond the shell of a healthy black abalone. The internal organs are arranged around the foot and under the shell.

Historical and Current Distribution

Black abalone historically occurred from Crescent City, California, USA, to southern Baja California, Mexico (Geiger, 2004), but today the species' constricted range occurs from Point Arena, California, USA, to Bahia Tortugas, Mexico, and it is rare north of San Francisco, California, USA (Morris *et al.,* 1980), and south of Punta Eugenia, Mexico (P. Raimondi, pers. comm.).

Population Structure

Recent studies have evaluated population structure in black abalone (Hamm and Burton, 2000; Chambers *et al.,* 2006; Gruenthal and Burton, 2008) using various methods. These studies indicate: (1) Minimal gene flow among populations; (2) black abalone populations are composed predominantly of closely related individuals produced by local spawning events; (3) gene flow among island populations is relatively greater than between island and mainland populations; and (4) the overall connectivity among black abalone populations is low and likely reflects limited larval dispersal and a low degree of exchange among populations.

Habitat

Black abalone generally inhabit coastal and offshore island intertidal habitats on exposed rocky shores where bedrock provides deep, protective crevice shelter (Leighton, 2005). These complex surfaces with cracks and crevices in upper and middle intertidal zones may be crucial recruitment habitat and appear to be important for adult survival as well (Leighton, 1959; Leighton and Boolootian, 1963; Douros, 1985, 1987; Miller and Lawrenz-Miller, 1993; VanBlaricom *et al.,* 1993; Haaker *et al.,* 1995). Black abalone range vertically from the high intertidal zone to a depth of 6 m, with most animals found in middle and lower intertidal zones. In highly exposed locations downwind of large offshore kelp beds, the majority of abalone may be found in the high intertidal where drift kelp fragments, a principal food for black abalone, tend to be concentrated by breaking surf.

Movement

Planktonic larval abalone movement is determined primarily by patterns of water movement in nearshore habitats near spawning sites. Larvae may be able to influence movement to some degree by adjusting their vertical position in the water column, but to our knowledge, the ability of black abalone larvae to move in this way has not been documented. Movement behavior of postmetamorphic juvenile black abalone is likewise unknown. Leighton (1959) and Leighton and Boolootian (1963) indicate that black abalone larvae may settle and metamorphose in the upper intertidal zone, using crevices and depressions (including those formed by abrasive action of other intertidal mollusks) as habitat. Leighton and Boolootian (1963) suggest that young black abalone move lower in the intertidal zone as they begin to grow, occupying the undersides of large boulders. To our knowledge there is no published information on direct observations of movement behavior of the smallest (<20 mm) juvenile black abalone in the field. Qualitative (Leighton, 2005; VanBlaricom, unpublished observations) and quantitative (Bergen, 1971; Blecha *et al.,* 1992; VanBlaricom and Ashworth, in preparation; Richards, unpublished observations) studies of movement in black abalone suggest that smaller abalone (<65 mm) move more frequently than larger abalone, movement is more frequent during night hours compared to daylight hours, and larger abalone may remain in the same location for many years.

Diet

Larvae are lecithotrophic (i.e., receive nourishment via an egg yolk) and apparently do not actively feed during their planktonic life stage. From the time of post-larval metamorphosis to a size of about 20 mm, black abalone are highly cryptic, occurring primarily on the undersides of large boulders or in deep narrow crevices in solid rocky substrata. In such locations the primary food sources are thought to be microbial and possibly diatom films (Leighton, 1959; Leighton and Boolootian, 1963; Bergen, 1971) and crustose coralline algae. At roughly 20 mm black abalone move to more open locations, albeit still relatively cryptic, gaining access to both attached macrophytes and to pieces of drift plants cast into the intertidal zone by waves and currents. As black abalone continue to grow, the most commonly observed feeding method is entrapment of drift plant fragments. Webber and Giese (1969), Bergen (1971), Hines and Pearse (1982), and Douros (1987) have confirmed the importance of large kelps in the diet of juvenile and adult black abalone. The primary food species are said to be giant kelp (*Macrocystis pyrifera)* and feather boa kelp (*Egregia menziesii)* in southern California (i.e., south of Point Conception) habitats, and bull kelp (*Nereocystis leutkeana)* in central and northern California habitats.

Reproduction

Black abalone reach reproductive maturity between 3 and 7 years (Smith *et al.,* 2003), have separate sexes, and are "broadcast" spawners. Gametes from both parents are shed into the sea, and fertilization is entirely external. Resulting larvae are minute and defenseless, receive no parental care or protection of any kind, and are subject to a broad array of physical and biological sources of mortality. Species with a broadcast-spawning reproductive strategy are subject to strong selection for maximum fecundity of both sexes. Only through production of large numbers of gametes can broadcast spawners overcome high mortality of gametes and larvae and survive across generations. It is not uncommon for broadcast-spawning marine species, a group including many taxa of fish and invertebrates, to produce millions of eggs or sperm per individual per year.

Broadcast spawners are also subject to other kinds of selection for certain traits associated with reproduction, including spatial and temporal synchrony in spawning and mechanisms that increase probabilities for union of spawned gametes.

Spawning Density

As intertidal organisms on exposed rocky shores, black abalone typically release gametes into environments of extreme turbulence. As a consequence, eggs and sperm must be released from adults in relatively close spatial and temporal proximity in order to have any chance of union and fertilization before rapid dispersal and loss of opportunity. A central problem for conservation of black abalone is the dramatic reduction in densities over the past quarter century in almost the entire geographic range of the species. Reductions in density are so extreme and widespread that considerable attention is now focused on assessment of critical density thresholds for successful reproduction, recruitment, and population sustainability. Critical density thresholds, below which recruitment failure occurs, exist across a broad taxonomic range of marine, broadcast-spawning invertebrates (e.g., sea urchins, sea cucumbers, hard clams, scallops, giant clams, and geoduck clams). Neuman *et al.* (in press) reviewed recruitment patterns in three long-term data sets for black abalone in California, and in each case, recruitment failed when declining population densities fell below 0.34 m^{-2}. Densities in most black abalone populations in Southern California have fallen below the densities noted. Recent evidence suggests that disease-induced increases in the mortality rate of black abalone continue to move northward along the mainland coast of California (e.g., Raimondi *et al.,* 2002; Miner *et al.,* 2006). Thus, the number and geographic scope of populations with densities falling below sustainable levels is expected to increase.

Larval Dispersal, Settlement, and Recruitment

Most abalone larvae drift in the water for a period of about 3–10 days before settlement and metamorphosis (e.g., McShane, 1992). During that short period of time, abalone have limited capacity for dispersal over distances beyond a few kilometers. Indirect methods for assessing larval dispersal in abalone support the conclusion that black abalone exhibit limited larval dispersal (Tegner and Butler, 1985; Prince *et al.,* 1988; Hamm and Burton, 2000; Chambers *et al.,* 2005; Chambers *et al.,* 2006; Gruenthal, 2007).

A sequence of studies and discoveries suggests that availability of crustose coralline algae in appropriate intertidal habitats may be an important settlement cue for larval black abalone, and that the presence of adult black abalone may facilitate larval settlement and metamorphosis because the activities and presence of the abalone promote the maintenance of substantial substratum cover by crustose coralline algae (Morse *et al.,* 1979; Morse and Morse, 1984; Douros, 1985; Trapido- Rosenthal and Morse, 1986; Morse, 1990; Morse, 1992; Miner *et al.,* 2006). Although crustose coralline algae are ubiquitous in rocky benthic habitats along the west coast of North America, a mechanistic understanding of processes that sustain these algal populations has not been established, to our knowledge.

Growth and Longevity

Available data on black abalone growth suggest that young animals reach maximum shell diameters of about 2 cm in their first year, then grow at rates of 1–2 cm per year for the next several years. Growth begins to slow at lengths of about 10 cm, corresponding to an age range of 4–8 years. Beyond this point, growth is less predictable, shell erosion may become a significant factor, and size distributions for older animals may vary according to local conditions. Growth and erosion of shells may come into equilibrium in older black abalone, such that growth can be viewed as facultatively determinant. Maximum recorded shell length for black abalone was listed at 213 mm by Wagner and Abbott (1990). Ault (1985) reported a maximum shell length of black abalone at 215 mm. Leighton (2005) indicated a shell length of 216 mm reported by Owen (unpublished observation). Maximum longevity of black abalone is thought to be 20–30 years.

Mortality

The most important source of black abalone mortality is the disease known as withering syndrome (hereafter WS). Disease transmission and manifestation is intensified when local sea surface temperatures increase by as little as 2.5 °C above ambient sea surface temperatures and remain elevated over a prolonged period of time (i.e., a few months or more) (Friedman *et al.,* 1997; Raimondi *et al.,* 2002; Harley and Rogers-Bennett, 2004; Vilchis *et al.,* 2005). WS is caused by a Rickettsiales-like prokaryotic pathogen of unknown origin that invades digestive epithelial cells and disrupts absorption of digested materials from the gut lumen into the tissues (Gardner *et al.,* 1995). Progressive signs of the disease include pedal atrophy, diminished responsiveness to tactile stimuli, discoloration of the epipodium, and a loss of ability to maintain adhesion to rocky substratum (Raimondi *et al.,* 2002). While population-scale mortality rates due to WS may vary in space and time from near zero to high proportions of local populations, the available evidence suggests that the highest disease-induced mortality events have followed periods of elevated sea surface temperature (e.g., Raimondi *et al.,* 2002). Laboratory studies have demonstrated that elevated water temperature, while not a direct cause of WS, accelerates the mortality of black abalone carrying the pathogen that causes the disease (Friedman *et al.,* 1997). A recent study examined the effects of elevated sea surface temperature on abalone at the individual level, and suggested that warming ocean temperatures are likely to have negative consequences on those species associated with cooler water temperatures and/or particularly susceptible to WS (Vilchis *et al.,* 2005). Although there is no explicitly documented causal link between the persistence of WS and long-term climate change, patterns observed over the past 3 decades suggest that progression of ocean warming associated with large-scale climate change may facilitate further and more prolonged vulnerability of black abalone to the effects of WS. The preponderance of evidence indicates that WS continues to damage the size and sustainability of black abalone populations on a large scale, with little plausible basis for any predictions of reversal except in localized, spatially isolated cases.

Factors such as poaching, reduced genetic diversity, ocean acidification, non-anthropogenic predation (e.g., by octopuses, lobsters, sea stars, fishes, sea otters, and shorebirds) and competition (e.g., with sea urchins), food limitation, environmental pollutants and toxins, and substrate destruction may all impose mortality on black abalone at varying rates, but predicting the relative impacts of each of these factors on the long-term viability of black abalone is difficult without further study. In addition to the aforementioned present-day sources of mortality, commercial and recreational fisheries operating in California until 1993 likely contributed to the species' decline. For more information on historic and present-day factors leading to the decline of black abalone populations, please see the NMFS status review for black abalone

(VanBlaricom *et al.,* 2009), and the proposed and final listing rules for black abalone (71 FR 1986, January 11, 2008; 74 FR 1937, January 14, 2009).

Methods and Criteria Used To Identify Critical Habitat

In accordance with section 4(b)(2) of the ESA and our implementing regulations (50 CFR 424.12(a)), this proposed rule is based on the best scientific information available concerning the present and historical range, habitat, biology, and threats to habitat for black abalone. In preparing this rule, we reviewed and summarized current information on black abalone, including recent biological surveys and reports, peer-reviewed literature, the NMFS status review for black abalone (VanBlaricom *et al.,* 2009), and the proposed and final listing rules for black abalone (71 FR 1986, January 11, 2008; 74 FR 1937, January 14, 2009). To assist with the evaluation of critical habitat, we convened a black abalone critical habitat review team (CHRT), comprised of seven Federal biologists from NMFS, the National Park Service (NPS), US Geological Survey (USGS), Minerals Management Service (hereafter MMS; MMS has been renamed the Bureau of Ocean Energy Management, Regulation, and Enforcement, or BOEMRE, as of June 18, 2010), and the Monterey Bay National Marine Sanctuary with experience in abalone research, monitoring and management. The CHRT used the best available scientific and commercial data and their best professional judgment to: (1) Verify the geographical area occupied by black abalone at the time of listing; (2) identify the physical and biological features essential to the conservation of the species; (3) identify specific areas within the occupied area containing those essential physical and biological features; (4) verify whether the essential features within each specific area may need special management considerations or protection and identify activities that may affect these essential features; (5) evaluate the conservation value of each specific area; and (6) determine if any unoccupied areas are essential to the conservation of black abalone. The CHRT's evaluation and conclusions are described in detail in the following sections, as well as in the draft biological report (NMFS, 2010c).

Physical or Biological Features Essential for Conservation

Joint NMFS–USFWS regulations, at 50 CFR 424.12(b), state that in determining what areas are critical habitat, the agencies "shall consider those physical and biological features that are essential to the conservation of a given species and that may require special management considerations or protection." Features to consider may include, but are not limited to: "(1) Space for individual and population growth, and for normal behavior; (2) Food, water, air, light, minerals, or other nutritional or physiological requirements; (3) Cover or shelter; (4) Sites for breeding, reproduction, rearing of offspring, germination, or seed dispersal; and generally; (5) Habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species." The regulations also require the agencies to "focus on the principal biological or physical constituent elements" (hereafter referred to as "Primary Constituent Elements" or PCEs) within the specific areas considered for designation that are essential to conservation of the species, which "may include, but are not limited to, the following: * * * spawning sites, feeding sites, seasonal wetland or dryland, water quality or quantity, * * * geological formation, vegetation type, tide, and specific soil types."

Based on the best available scientific information, the CHRT identified the following PCEs essential for the conservation of black abalone:

(1) *Rocky substrate.* Suitable rocky substrate includes rocky benches formed from consolidated rock of various geological origins (e.g., igneous, metamorphic, and sedimentary) that contain channels with macro- and micro-crevices or large boulders (greater than or equal to 1 m in diameter) and occur from mean higher high water (MHHW) to a depth of 6 m. All types of relief (high, medium and low; 0.5 to greater than 2 m vertical relief; Wentworth, 1922) support black abalone and complex configurations of rock surfaces likely afford protection from predators, direct impacts of breaking waves, wave-born projectiles, and excessive solar heating during daytime low tides. Most black abalone occupy the middle and lower intertidal zones. In highly exposed locations downwind of large offshore kelp beds, the majority of abalone may be found in the high intertidal where drift kelp fragments tend to be concentrated by breaking surf. Leighton (1959) found evidence for ontogenetic shifts in depth distribution among juvenile abalone on the Palos Verdes Peninsula. Juvenile black abalone (10–30 mm) were found at mid-intertidal depths on undersides of rock providing clear beneath-rock open space while juveniles in the 5–10 mm size range were found at higher intertidal zones in narrow crevices and in depressions abraded into rock surfaces by the intertidal chiton, *Nutallina californica* (Reeve, 1847). Black abalone observed at greater depths (3–6 m) typically were mature adults. California contains approximately 848.5 miles (1365.5 km) of consolidated rocky coastline and 599.3 miles (964.5 km) or 70 percent of it falls within the areas considered in this proposed critical habitat designation.

(2) *Food resources.* Abundant food resources including bacterial and diatom films, crustose coralline algae, and a source of detrital macroalgae, are required for growth and survival of all stages of black abalone. From post-larval metamorphosis to a size of about 20 mm, black abalone consume microbial and possibly diatom films (Leighton, 1959; Leighton and Boolootian, 1963; Bergen, 1971) and crustose coralline algae. At roughly 20 mm black abalone begin feeding on both attached macrophytes and pieces of drift plants cast into the intertidal zone by waves and currents. The primary macroalgae consumed by juvenile and adult black abalone are giant kelp (*Macrocystis pyrifera)* and feather boa kelp (*Egregia menziesii)* in southern California (i.e., south of Point Conception) habitats, and bull kelp (*Nereocystis leutkeana)* in central and northern California habitats (i.e., north of Santa Cruz). Southern sea palm (*Eisenia arborea),* elk kelp (*Pelagophycus porra),* stalked kelp (*Pterygophora californica),* and other brown kelps (*Laminaria sp.)* may also be consumed by black abalone.

(3) *Juvenile settlement habitat.* Rocky intertidal habitat containing crustose coralline algae and crevices or cryptic biogenic structures (e.g., urchins, mussels, chiton holes, conspecifics, anemones) is important for successful larval recruitment and juvenile growth and survival of black abalone less than approximately 25 mm shell length. The presence of adult abalone may facilitate larval settlement and metamorphosis, because adults may: (1) Promote the maintenance of substantial substratum cover by crustose coralline algae by grazing other algal species that could compete with crustose coralline algae; and/or (2) outcompete encrusting sessile invertebrates (e.g., tube worms and tube snails) for space on rocky substrates thereby promoting the growth of crustose coralline algae and settlement of larvae; and/or (3) emit chemical cues necessary to induce larval settlement (Miner *et al.,* 2006; Toonen and Pawlick, 1994). Increasing partial pressure of CO_2 may decrease calcification rates of coralline algae,

thereby reducing their abundance and ultimately affecting the survival of newly settled black abalone (Feely *et al.,* 2004; Hall-Spencer *et al.,* 2008). Laboratory experiments have shown that the presence of pesticides (e.g., dichlorodiphenyltrichloroethane (DDT), 2,4-dichlorophenoxyacetic acid (2,4-D), methoxychlor, dieldrin) interfered with larval settlement of abalone because the chemical cues emitted by coralline algae and its associated diatom films which trigger abalone settlement are blocked (Morse *et al.,* 1979), and the pesticide oxadiazon was found to severely reduce algal growth (Silver and Riley, 2001). We are not aware of additional information regarding processes that mediate crustose coralline algae abundance and solicit the public for more information on this topic.

(4) *Suitable water quality.* Suitable water quality includes temperature, salinity, pH, and other chemical characteristics necessary for normal settlement, growth, behavior, and viability of black abalone. The biogeographical water temperature range of black abalone is from 12 to 25 °C, but they are most abundant in areas where the water temperature ranges from 18 to 22 °C (Hines *et al.,* 1980). There is increased mortality due to WS during periods following elevated sea surface temperature (Raimondi *et al.,* 2002). The CHRT did not consider the presence of the bacteria that causes WS when evaluating the condition of this PCE because it is thought to be present throughout a large portion of the species' current range (greater than 60 percent), including all coastal specific areas south of Monterey County, CA and the Farallon Islands (J. Moore, pers. comm.). Instead the CHRT relied on sea surface temperature information to evaluate water quality in terms of disease virulence, recognizing that elevated sea surface temperatures are correlated with increased rates of WS transmission and manifestation in abalone. Elevated levels of contaminants (e.g., copper, oil, polycyclic aromatic hydrocarbon (PAH) endocrine disrupters, persistent organic compounds (POC)) can cause mortality of black abalone. In 1975, toxic levels of copper in the cooling water effluent of a nuclear power plant near Diablo Canyon, California, were associated with abalone mortalities in a nearshore cove that received significant effluent flows (Shepherd and Breen, 1992; Martin *et al.,* 1977). As mentioned above for the *Juvenile settlement habitat* PCE, laboratory experiments have shown that the presence of some pesticides interfere with larval settlement of abalone (Morse *et al.,* 1979) and severely reduce algal growth (Silver and Riley, 2001). We are not aware of other studies that have established direct and indirect links between currently used pesticides and effects on black abalone habitat quality and solicit the public for more information on this topic. The suitable salinity range for black abalone is from 30 to 35 parts per thousand (ppt), and the suitable pH range is 7.5–8.5. Ocean pH values that are outside of the normal range for seawater (i.e., pH less than 7.5 or greater than 8.5; *http://www.marinebio.net/marinescience/02ocean/swcomposition.htm*) may cause reduced growth and survivorship in abalone as has been observed in other marine gastropods (Shirayama and Thornton, 2005). Specifically, with increasing uptake of atmospheric CO_2 by the ocean, the pH of seawater becomes more acidic, which may decrease calcification rates in marine organisms and result in negative impacts to black abalone in at least two ways: (1) Disrupting an abalone's ability to maintain and grow its protective shell; and/or (2) reducing abundance of coralline algae (and associated diatom films and bacteria), a calcifying organism that may mediate settlement through chemical cues and support and provide food sources for newly settled abalone (Feely *et al.,* 2004; Hall-Spencer *et al.,* 2008).

(5) *Suitable nearshore circulation patterns.* Suitable circulation patterns are those that retain eggs, sperm, fertilized eggs and ready-to-settle larvae enough so that successful fertilization and settlement to suitable habitat can take place. Nearshore circulation patterns are controlled by a variety of factors including wind speed and direction, current speed and direction, tidal fluctuation, geomorphology of the coastline, and bathymetry of subtidal habitats adjacent to the coastline. Anthropogenic activities may also have the capacity to influence nearshore circulation patterns (e.g., intake pipes, sand replenishment, dredging, in water construction, etc.). These factors, in combination with the early life history dynamics of black abalone, may influence retention or dispersal rates of eggs, sperm, fertilized eggs and ready-to-settle larvae (Siegel *et al.,* 2008). Given that black abalone gamete and larval durations are relatively short, larvae have little control over their position in the water column, and ready-to-settle larvae require shallow, intertidal habitat for settlement. Forces that disperse larvae offshore (i.e., by distances on the order of greater than tens of kilometers) may decrease the likelihood that abalone larvae will successfully settle to suitable habitats. However, retention of larvae inshore due to bottom friction and minimal advective flows near kelp beds (the "sticky water" phenomenon; Wolanski and Spagnol, 2000; Zeidberg and Hamner, 2002) may increase the likelihood that larvae will successfully settle to suitable habitats.

Geographical Area Occupied by the Species and Specific Areas Within the Geographical Area Occupied

One of the first steps in the critical habitat designation process is to define the geographical area occupied by the species at the time of listing and to identify specific areas, within this geographically occupied area, that contain at least one PCE that may require special management considerations or protection. In the January 2009 final ESA listing rule, the range of black abalone was defined to extend from Crescent City (Del Norte County, California) to Cape San Lucas, Baja California, Mexico, including all offshore islands. The northern and southern extent of the range was determined based on museum specimens collected more than 10 years prior to the listing of the species (Geiger, 2004). Because this range was based on dated records, and because we cannot designate critical habitat in areas outside of the United States (*see* 50 CFR 424.12(h)), the CHRT reconsidered the scope of the current (i.e., at the time of the final ESA listing) occupied range of black abalone. The CHRT examined data from ongoing monitoring studies along the California coast (Neuman *et al.,* in press) and literature references to determine that, within the United States, the geographical area currently occupied by black abalone extends from the Del Mar Landing Ecological Reserve in Sonoma County, California, to Dana Point, Orange County, California, on the mainland and includes the Farallon Islands, Año Nuevo Island, and all of the California Channel Islands. The CHRT noted that there are pockets of unoccupied habitat within this broader area of occupation (NMFS, 2010c). Within this geographically occupied area, black abalone typically inhabit coastal and offshore island rocky intertidal habitats from MHHW to depths of 6 m (Leighton, 2005). The CHRT then identified "specific areas" within the geographical area occupied by the species that may be eligible for critical habitat designation under the ESA. For an occupied specific area to be eligible for designation it must contain at least one PCE that may require special management considerations or

protection. For each occupied specific area, the CHRT reviewed the available data regarding black abalone presence and verified that each area contained one or more PCE(s) that may require special management considerations or protection. The CHRT determined that for all specific areas, unless otherwise noted, MHHW delineates the landward boundary, and the 6 m bathymetric contour delineates the seaward boundary. The CHRT also agreed to consider naturally occurring geomorphological formations and size (i.e., area) to delineate the northern and southern boundaries of the specific areas. The CHRT intentionally aimed to delineate specific areas of similar sizes in order to minimize biases in the economic cost estimates for the specific areas.

The CHRT scored and rated the relative conservation value of each occupied specific area. Areas rated as "High" were deemed to have a high likelihood of promoting the conservation of the species. Areas rated as "Medium" or "Low" were deemed to have a moderate or low likelihood of promoting the conservation of the species, respectively. The CHRT considered several factors in assigning the conservation value ratings, including the PCEs present, the condition of the PCEs, and the historical, present, and potential future use of the area by black abalone. These factors were scored by the CHRT and summed to generate a total score for each specific area, which was considered in the CHRT's evaluation and assignment of the final conservation value ratings. The draft biological report (NMFS, 2010c; available via our Web site at *http://swr.nmfs.noaa.gov,* via the Federal eRulemaking Web site at *http://www.regulations.gov,* or upon request—see **ADDRESSES**) describes in detail the methods used by the CHRT in their assessment of the specific areas and provides the biological information supporting the CHRT's assessment as well as the final conservation value ratings and justifications. The following paragraphs provide a brief description of the presence and distribution of black abalone within each area, additional detail regarding the CHRT's methods for delineating the specific areas, and the justification for assigning conservation scores. The following paragraphs also provide a brief description of the activities within each area that may threaten the quality of the PCEs, which are discussed in more detail in the *Special Management Considerations or Protection* section below and the draft economic report (NMFS, 2010a). Activities that exacerbate global climate change (most notably fossil fuel combustion, which contributes to an increase in atmospheric CO_2 levels and subsequent sea level rise, sea surface temperature elevation, and ocean acidification) were identified as a concern for all of the specific areas. The Black Abalone Proposed Critical Habitat Designation maps below, as well as the draft biological report (NMFS, 2010c), show the location of each specific area considered for designation.

Specific Area 1. Specific Area 1 includes the rocky intertidal habitat from the Del Mar Landing Ecological Reserve to Bodega Head in Sonoma County, California. Bodega Head is a small peninsula that creates a natural barrier between it and the coastline that lies to the east and south. In addition, the geological origin of Bodega Head differs from that of the coastline to the east and south of it. For these reasons, this location was chosen to delineate the southern boundary of Specific Area 1. Based on the limited historical data available for this area (Geiger 2003, State Water Resources Control Board 1979, J. Sones pers. comm.), black abalone were encountered occasionally in some locations. Black abalone have been present in this area in low numbers since the Partnership for Interdisciplinary Studies of Coastal Oceans (PISCO) began its long-term intertidal sampling program in the early 2000s. Black abalone are currently considered to be rare (i.e., difficult to find with some search effort and rarely seen at sampling sites; J. Sones pers. comm.), and the CHRT expressed uncertainty regarding the area's ability to support early life stages of black abalone because historical and current data are lacking. However, the presence of good to excellent quality rocky substrate (*e.g.,* 87 percent of rocky substrate available is consolidated), food resources, and water quality (Water Quality Control Board, 1979) and fair to good settlement habitat led the CHRT to conclude that the area could support a larger black abalone population comprised of multiple size classes. There are several activities occurring within this area that may threaten the quality of the PCEs including waste-water discharge, agricultural pesticide application and irrigation, construction and operation of tidal and wave energy projects, and activities that exacerbate global climate change (e.g., fossil fuel combustion). This area is at the limit of the species' northern range, which may explain the rarity of black abalone here, but it is also one of the few areas along the California coast that has not yet been affected by WS. The CHRT was of the opinion that the area could support higher densities and multiple size classes of black abalone in the future if habitat changes (e.g., sea surface temperature rise) render it more suitable for promoting population growth. Thus, the CHRT scored the conservation value of this area as "High."

Specific Area 2. Specific Area 2 includes rocky intertidal habitat from Bodega Head in Sonoma County, California, to Point Bonita in Marin County, California. Point Bonita was chosen to delineate the southern boundary of this specific area because it sits at the southern point of the Marin Headlands, the final promontory encountered as one moves south along the coast before reaching the entrance to San Francisco Bay. Historical presence of black abalone within this area is limited, but in locations where black abalone were observed, they were considered rare (Light, 1941; Chan, 1980; S. Allen, pers. comm.). Since the mid-2000s, Point Reyes National Seashore and Golden Gate National Recreation Area staff have observed black abalone at several locations, but their qualitative abundance is considered to be rare (see definition of rare above). This area contains good to excellent quality consolidated rocky substrate (e.g., 71 percent of rocky substrate available is consolidated), food resources, and water quality, and fair to good settlement habitat, but as with Specific Area 1 above, the area is at the limit of the species' northern range, which may explain its rarity. There are several activities occurring within this area that may threaten the quality of the PCEs, including: sand replenishment, waste-water discharge, coastal development, non-native species introduction and management, activities that exacerbate global climate change, and agricultural pesticide application and irrigation. This area is at the limit of the species' northern range, which may explain the rarity of black abalone here, but it is also one of the few areas along the California coast that has not yet been affected by WS. The CHRT was of the opinion that the area could support higher densities and multiple size classes of black abalone in the future if habitat changes (e.g., sea surface temperature rise) render it more suitable for promoting population growth. Thus, the CHRT scored the conservation value of this area as "High."

Specific Area 3. Specific Area 3 includes the rocky intertidal habitat surrounding the Farallon Islands, San Francisco County, California. This area is a group of islands and rocks found in

the Gulf of the Farallones, 27 miles (43 km) west of the entrance to San Francisco Bay and 20 miles (32 km) south of Point Reyes. The islands are a National Wildlife Refuge and are currently managed by the USFWS, in conjunction with the Point Reyes Bird Observatory Conservation Science. The waters surrounding the islands are part of the Gulf of the Farallones National Marine Sanctuary. Historical presence of black abalone in intertidal habitats surrounding the Farallon Islands was noted in the late 1970s (Farallones Research Group, 1979) and again in the early 1990s (E. Ueber, unpublished data). Black abalone have been observed in Specific Area 3 during limited surveys conducted during the past 5 years, and researchers have confirmed that all of the PCEs are present and of good to excellent quality, and adverse impacts due to anthropogenic activities on these isolated islands are relatively low. However, the CHRT expressed concern over the following activities that may affect habitat features important for black abalone conservation and recovery, including: waste-water discharge, agricultural pesticide application and irrigation, and activities that exacerbate global climate change. The CHRT scored the conservation value of this area as "High."

Specific Area 4. Specific Area 4 extends from the land mass framing the southern entrance to San Francisco Bay to Moss Beach, San Mateo County, California, and includes all rocky intertidal habitat within this area. There is limited historical and current information regarding black abalone occurrence and abundance along this stretch of the coast. At the one site where black abalone were noted historically, they were considered to be rare (Light, 1941). PISCO, Point Reyes National Seashore and Golden Gate National Recreation Area researchers found ten individuals within this specific area during limited surveys conducted since 2007. The CHRT considered the PCEs within the area to be of fair to good quality. While the CHRT was uncertain about this area's ability to support early life stages because data are lacking, it was more confident that the area can support the long-term survival of juveniles and adults based on several lines of evidence from historical records (Light, 1941, J. Sones, pers. comm..; M. Wilson, pers. comm.). The CHRT noted that the following activities may threaten the quality of the PCEs within this specific area: Sand replenishment, waste-water discharge, coastal development, agricultural pesticide application and irrigation, non-native species introduction and management, oil and chemical spills and clean-up, and activities that exacerbate global climate change. The CHRT scored the conservation value of this area as "Medium."

Specific Area 5. Specific Area 5 includes rocky intertidal habitat from Moss Beach to Pescadero State Beach, San Mateo County, California. This area was considered separately from Specific Area 4, even though each area alone is smaller in size compared to the majority of the other specific areas. The reasons for separate consideration were that: (1) The CHRT team viewed the PCEs in Specific Area 5 as being of lower quality overall than those contained within Specific Area 4; and (2) the level of certainty the CHRT had in evaluating the conservation value of Specific Area 4 was higher than that for Specific Area 5. The CHRT recognized that all of the PCEs were present in the area and their current quality ranged from poor to good. The CHRT expressed a high degree of uncertainty regarding the area's ability to support early life stages and long-term survival of juveniles and adults because the area has not been adequately studied. Since the species was listed in 2009, only one survey has been conducted by Reyes National Seashore and Golden Gate National Recreation Area researchers. One black abalone was identified during this survey. Waste-water discharge, oil and chemical spills and clean-up, and activities that exacerbate global climate change may compromise the quality of the PCEs within this specific area. The CHRT scored the conservation value of this area as "Medium," recognizing that it lies to the north of areas that have experienced population declines, and thus the habitat in this area may still provide a refuge from the devastating effects of WS.

Specific Area 6. Specific Area 6 includes the rocky intertidal habitat surrounding Año Nuevo Island, San Mateo County, California. The island lies 50 miles (74 km) south of San Francisco Bay and, two hundred years ago, it was connected to the mainland by a narrow peninsula. Today it is separated from the mainland by a channel that grows wider with each winter storm. Año Nuevo Island is managed by the University of California Santa Cruz's Long Marine Laboratory under an agreement with the California Department of Parks and Recreation. The Año Nuevo Island Reserve, including the island and surrounding waters, comprises approximately 25 of the 4,000 acres (10 of 1,600 ha) of the Año Nuevo State Reserve, the rest of which is on the mainland opposite the island. Black abalone were common in intertidal habitats surrounding the island during surveys conducted from 1987–1995, with mean densities ranging from 6–8 per m^2 (Tissot, 2007; VanBlaricom *et al.,* 2009). To our knowledge, the island has not been surveyed for black abalone since that time. The CHRT verified that good to excellent quality rocky substrate, food resources, and water quality, and fair to good settlement habitat exist at Año Nuevo Island, but expressed uncertainty regarding whether the area currently supports early life stages and long-term survival of juveniles and adults. The impact of global climate change on the habitat features important to black abalone was the only concern identified within this specific area. The CHRT scored the conservation value of this area as "High."

Specific Area 7. Specific Area 7 includes the rocky intertidal habitat from Pescadero State Beach, San Mateo County, California, to Natural Bridges State Beach, Santa Cruz County, California. Situated to the north of Monterey Bay, Natural Bridges State Beach marks the last stretch of rocky intertidal habitat before reaching the primarily fine-to medium-grained sand beaches of Monterey Bay (*http://www.sanctuarysimon.org/monterey/sections/beaches/b_overview_map.php*). Historical data are limited, but the information available suggests that black abalone were common at a couple of sites within this specific area in the late 1970s and early 1980s (Water Quality Control Board, 1979; J. Pearse, pers. comm.) and rare at the majority of sites (Water Quality Control Board, 1979; J. Pearse, pers. comm.). PISCO began intertidal black abalone surveys in this area in 1999 and, at that time, qualitative abundance ranged from rare to common, depending on the specific site. Sampling by PISCO within the last 5 years indicates that black abalone are present and common at about 50 percent of the sites within this area, but that abundance may be declining at a few of these sites. At the other sites, black abalone are either present, but rare, or completely absent. The CHRT confirmed that all of the PCEs are present and of good to excellent quality here. PISCO data (Raimondi *et al.,* 2002; Tissot, 2007) provide evidence that the area supports early life stages (i.e., small individuals (< 30mm) are present currently; see definition in NMFS, 2010c) and long-term survival of juveniles and adults (i.e., there is stable or increasing abundance, and multiple

size classes of black abalone evident in length-frequency distributions; see definition in NMFS, 2010c). The CHRT identified the following activities that may threaten the quality of habitat features essential to black abalone within this area: Sand replenishment, waste-water discharge, coastal development, sidecasting (i.e., the piling of excavated dirt on the edge of a ditch or elsewhere in a wetland or other water body because of road maintenance), agricultural pesticide application and irrigation, oil and chemical spills and clean-up, construction and operation of desalination plants, vessel grounding, non-native species introduction and management, kelp harvesting, and activities that exacerbate global climate change. The CHRT scored the conservation value of this area as "High."

Specific Area 8. Specific Area 8 includes rocky intertidal habitats from Pacific Grove to Prewitt Creek, Monterey County, California. Pacific Grove marks the first stretch of rocky intertidal habitat to the south of the fine-to medium-grained sand beaches of Monterey Bay (*http://www.sanctuarysimon.org/monterey/sections/beaches/b_overview_map.php*). In order to keep the size of this area comparable to other specific areas, Prewitt Creek was chosen to delineate its southern boundary. Surveys conducted prior to 2004 indicated that black abalone encompassing a range of sizes were present and common at all of the sampled sites within this area (Water Quality Control Board, 1979; Raimondi *et al.,* 2002; Tissot, 2007). More recent information gathered within the last 5 years by PISCO indicates that black abalone encompassing a range of sizes remain at all sites sampled and are considered common at 93 percent of the sites. The CHRT confirmed that all of the PCEs are present and of good to excellent quality, but may be threatened by waste-water discharge, coastal development, agricultural pesticide application and irrigation, oil and chemical spills and clean-up, construction and operation of desalination plants, kelp harvesting, and activities that exacerbate global climate change. PISCO data (Raimondi *et al.,* 2002; Tissot, 2007) provide evidence that the area supports early life stages and long-term survival of juveniles and adults (see NMFS, 2010c for details). The CHRT scored the conservation value of this area as "High."

Specific Area 9. Specific Area 9 includes rocky intertidal habitats from Prewitt Creek, Monterey County, California to Cayucos, San Luis Obispo County, California. Situated on the northern edge of Estero Bay, Cayucos marks the last stretch of rocky intertidal habitat before reaching the primarily fine-to medium-grained sand beaches of Estero Bay. PISCO and the University of California Santa Cruz (UCSC) established long-term monitoring sites within this area between 1995 and 2008. Surveys conducted prior to 2004 indicated that black abalone of a range of sizes were present and common at all but one of the sites surveyed within this area (Water Quality Control Board, 1979; Raimondi *et al.,* 2002; Tissot, 2007). More recent information gathered by PISCO and UCSC indicates that black abalone of a range of sizes are present at all sites within the area and are commonly found at 57 percent of the sites, occasionally found with some search effort at 14 percent of the sites, and rarely found at 29 percent of the sites. The CHRT confirmed that all of the PCEs are present and of good to excellent quality. The area supports early life stages and long-term survival of juveniles and adults (see NMFS, 2010c for details). However, the CHRT also noted that PISCO researchers have reported recent population declines at 57 percent of the sites sampled within this area and in at least one site, the population decline has been severe. Activities that may threaten the habitat features important for black abalone conservation are: waste-water discharge, agricultural pesticide application and irrigation, oil and chemical spills and clean-up, construction and operation of desalination plants, kelp harvesting, and activities that exacerbate global climate change. The CHRT scored the conservation value of this area as "High."

Specific Area 10. Specific Area 10 includes rocky intertidal habitats from Montaña de Oro State Park in San Luis Obispo County, California, to just south of Government Point, Santa Barbara County, California. Montaña de Oro State Park is the first stretch of rocky intertidal habitat encountered to the south of the sandy beaches of Estero Bay, thus it was chosen to delineate the northern boundary of this specific area. The southern boundary of this area, Government Point, is where the Santa Barbara Channel meets the Pacific Ocean, the mostly north-south trending portion of coast transitions to a mostly east-west trending part of the coast, and a natural division between Southern and Central California occurs. For these reasons, it was chosen as the southern boundary of this specific area. Historical data indicates that black abalone were present at 100 percent of the sites sampled within this specific area and that they were considered to be common at a majority of the sites sampled (Raimondi *et al.,* 2002; Tissot, 2007). PISCO and UCSC established long-term monitoring sites within this area between 1992 and 2007, and, within the last 5 years, population declines have been noted at most locations within this specific area, with local extinction occurring in at least one sampling site. Despite declines in abundance and lack of evidence of recent recruitment in this specific area, the CHRT confirmed that the PCEs range from fair to excellent quality along this stretch of the California coast. The CHRT identified several activities that may threaten the quality of the PCEs within this specific area, including: in-water construction, waste-water discharge, coastal development, agricultural pesticide application and irrigation, construction and operation of power generating and desalination plants, mineral and petroleum exploration and extraction, non-native species introduction and management, kelp harvesting and activities that exacerbate global climate change. The CHRT scored the conservation value of this area as "High."

Specific Area 11. Specific Area 11 includes rocky intertidal habitats surrounding the Palos Verdes Peninsula and extends from the Palos Verdes/Torrance border to Los Angeles Harbor in southwestern Los Angeles County, California. This small peninsula is one of only two areas within Santa Monica Bay that contain intertidal and subtidal rocky substrate suitable for supporting black abalone. The limited extent of rocky intertidal habitat is what defines the northern and southern boundaries of this specific area. Long-term intertidal monitoring on the Peninsula conducted by the California State University Long Beach (CSULB) and the Cabrillo Marine Aquarium began in 1975, and, at that time, densities ranged from 2 to 7 per m^2. Densities declined throughout the 1980s, and by the 1990s black abalone were locally extinct at a majority of sampling sites within the area. Good to high quality rocky substrate and food resources and fair to good settlement habitat persist within this area, which led to the CHRT's conclusion that this area is of "Medium" conservation value. The CHRT recognized that water quality within this area is in poor condition. Unlike the majority of the other areas where significant declines in black abalone abundance have been observed, declines in this area occurred prior to the onset of WS and have been attributed to the combined effects of significant El Niño events and poor

water quality resulting from large-volume domestic sewage discharge by Los Angeles County during the 1950s and 1960s (Leighton, 1959; Cox, 1962; Young, 1964; Miller and Lawrenz-Miller, 1993). From the mid-1970s to 1997, however, improved wastewater treatment processes resulted in an 80 percent reduction in the discharge of total suspended solids from the White Point outfall. That, along with kelp replanting efforts in the 1970s, resulted in a remarkable increase in the kelp canopy from a low of 5 acres (2 hectares) in 1974 to a peak of more than 1,100 acres (445 hectares) in 1989. More recently, erosion and sedimentation have threatened the kelp beds off the Palos Verdes Peninsula. Since 1980, an active landslide at Portuguese Bend on the Palos Verdes Peninsula has supplied more than seven times the suspended solids as the Whites Point outfall (LACSD, 1997). Currently, there is no evidence that this area supports recruitment, and, given the extremely low numbers of juveniles and adults, it is suspected that the area does not support long-term persistence of this population (Miller and Lawrenz-Miller, 1993; J. Kalman and B. Allen, pers. comm.). However, because many of the habitat features important to black abalone are still present and are in fair to excellent condition, the CHRT scored the conservation value of this area as "Medium." The activities that may threaten the habitat features important to the conservation of black abalone are sand replenishment, waste-water management, non-native species introduction and management, kelp harvesting, and activities that exacerbate global climate change.

Specific Area 12. Specific Area 12 includes rocky intertidal habitats from Corona Del Mar State Beach to Dana Point in Orange County, California. The limited extent of rocky intertidal habitat is what defines the northern and southern boundaries of this specific area. Historical information for this area indicates that black abalone were present along this stretch of coastline, and limited abundance information suggests densities of <1 per m^2 (Tissot, 2007; S. Murray, pers. comm.) in the late 1970s and early 1980s. Thus, there is uncertainty regarding whether these populations were viable at that time. By 1986, local extinction of black abalone at one sampling location within this specific area was reported (Tissot, 2007). The University of California Fullerton began monitoring four sites within this area in 1996, and no black abalone have been observed at these locations within the last 5 years. A putative black abalone was observed at one additional location in January, 2010. The area contains rocky substrate (88 percent of rocky substrate is consolidated) and food resources that are in fair to good condition, but settlement habitat and water quality are in poor to fair condition. Abundance of crustose coralline algae is limited in the rocky intertidal area and the extirpation of abalone from the habitat has resulted in a shift in its biogenic structure, rendering the area less suitable for settling abalone larvae. Water quality may be tainted by waste-water discharge, agricultural pesticide application and irrigation, construction and operation of desalination plants, and changes in the thermal and chemical properties of sea water through global climate change. Food resources within this area may be impacted by kelp harvesting activities. The CHRT scored this area of "Low" conservation value primarily because the quality of the PCEs is relatively low and because black abalone have not been identified at regularly monitored sampling locations within the last five years.

Specific Areas 13–16. Specific Areas 13–16 include the rocky intertidal habitat surrounding the Northern California Channel Islands: San Miguel, Santa Rosa, and Santa Cruz islands in Santa Barbara County, California, and Anacapa Island in Ventura County, California. The Northern Channel Islands lay just off California's southern coast in the Santa Barbara Channel and remain somewhat isolated from mainland anthropogenic impacts. In 1980, Congress designated these islands and approximately 100,000 acres (405 km^2) of submerged land surrounding them as a national park because of their unique natural and cultural resources. This area was augmented by the designation of Channel Islands National Marine Sanctuary later that year. The sanctuary boundaries stretch 6 nautical miles (11 km) offshore, including their interconnecting channels. Channel Islands National Park (CINP) began an intertidal monitoring program on San Miguel, Santa Rosa, and Anacapa islands in the early to mid-1980s, while monitoring on Santa Cruz Island did not begin until 1994. Historically, black abalone were present and common at 76 percent of the sampling locations within these specific areas (Water Quality Control Board, 1979; Water Quality Control Board, 1982; Water Quality Control Board, 1982; B. Douros, pers. comm.; CINP, pers. comm.; Tissot, 2007). Severe population declines began in 1986 and by the 1990s declines in abundance of >99 percent were observed at all of the CINP sampling sites. Within the last 5 years, abundance at most locations remains depressed; however, at a small number of sites abundance has increased and repeated recruitment events have occurred. These areas contain fair to excellent rocky substrate, food resources, settlement habitat and water quality, despite the fact that abundance has declined dramatically since the 1980s. Because these islands are somewhat remote, there is a limited list of activities that may threaten the PCEs in these specific areas and they include: oil and chemical spills and clean-up on Santa Cruz Island; waste-water discharge, agricultural pesticide application and irrigation on Anacapa Island; and kelp harvesting and activities that exacerbate global warming. The CHRT recognized that, although these areas are currently lacking multiple size classes of black abalone, there is evidence of small-scale recovery at a few locations, and, therefore, these areas received "High" conservation value scores.

Specific Areas 17–20. Specific Areas 17–20 include the rocky intertidal habitat surrounding the Southern California Channel Islands: San Nicolas Island in Ventura County, CA, Santa Barbara Island in Santa Barbara County, CA, and Santa Catalina and San Clemente islands in Los Angeles County, California. The Southern Channel Islands are part of the same archipelago that includes the Northern Channel Islands. San Nicolas and San Clemente islands have been owned and operated by the U.S. Navy since the early 1930s. These islands accommodate a variety of Navy training, testing and evaluation activities including naval surface fire support, air-to-ground ordnance delivery operations, special operations, surface weapon launch support, and radar testing. Santa Barbara Island and its surrounding waters out to six nautical miles (11km) were designated part of the CINP and the Channel Islands National Marine Sanctuary in 1980. Since 1972, Santa Catalina Island has been owned primarily by a nonprofit organization, the Catalina Island Conservancy, whose mission is to preserve and conserve the island.

Since 1981, the U. S. Geological Survey (USGS) and the University of Washington (UW) have monitored multiple sites around San Nicolas Island. Black abalone were considered common at all of the sites up until approximately 1993, when mass mortalities due to WS swept through the island (VanBlaricom, 2009). Within the last 5 years, slight increases in

abundance have been observed at 33 percent of the sampled sites and moderate increases in abundance at one site. At 55 percent of the sampled sites, abundance remains low with densities less than 2 percent of their former values prior to population declines. Recent repeated recruitment events have occurred at a few sites as evidenced by the presence of small individuals (<30 mm; VanBlaricom, unpublished data). Thus, this specific area supports early life stages. However, the long-term survival of juveniles and adults is questionable, given that relative abundance levels remain low and evidence of multiple size classes is still lacking at the majority of sampling sites. All of the PCEs are present and are of good to excellent quality, which led the CHRT to score this area as one of "High" conservation value. The CHRT identified the following activities that may compromise the quality of habitat features essential to the conservation of black abalone within this specific area: in-water construction, waste-water management, coastal development, construction and operation of desalination plants, kelp harvesting, and activities that exacerbate global climate change.

CINP began limited sampling at Santa Barbara Island in 1985. At that time black abalone were present on the island, and their qualitative abundance levels ranged from rare to common. Within the last 5 years black abalone have disappeared from one sampling site and remain present, but rare, at another. The CHRT considered the rocky substrate and settlement habitat to be of fair to good quality, food resources to be of poor to fair quality, and water quality to be good to excellent. However, given the lack of evidence of recruitment both historically and currently and very low numbers of juveniles and adults, the CHRT scored the conservation value of this area as "Medium." The only activities that threaten the PCEs and that may require special management on Santa Barbara Island are those that alter the thermal and chemical properties of sea water through global climate change, most notably fossil fuel combustion.

Surveys conducted around Catalina Island in the 1960s, 1970s, and 1980s confirm that black abalone were present at a variety of locations around the island, but size distribution and abundance information are lacking. The PISCO University of California Los Angeles group established two long-term sampling sites in 1982 and 1995, and, since the 1990s, black abalone have not been encountered at these sites. All of the PCEs are present and are in fair to excellent condition. There is a great deal of uncertainty regarding whether the island supports early life stages and the long-term survival of juveniles and adults because data are lacking. The CHRT scored the conservation value of this area as "High," despite uncertainty in the demographic history and current status of populations on Catalina, because the habitat is in good condition and could support black abalone populations in the future. Several activities may compromise the generally good habitat quality surrounding Catalina Island, including in-water construction, waste-water discharge, coastal development, oil and chemical spills and clean-up, construction and operation of desalination plants and tidal and wave energy projects, kelp harvesting and activities that exacerbate global climate change.

San Clemente Island was surveyed by the California Department of Fish and Game from 1988–1993. As late as October 1988, black abalone were present and populations were robust at a number of locations, but by 1990, population declines due to WS were underway (CDFG, 1993). Densities decreased to less than 1 per m² by 1993 (CDFG, 1993). The Department of Defense initiated a San Clemente Island-wide investigation to determine the current extent of remaining black abalone populations on the island in 2008. During 30-minute timed searches at 61 locations that each covered approximately 1500 m² of potential black abalone habitat, ten black abalone (all > 100 mm) were identified and all but two of the animals were solitary individuals (Tierra Data Inc., 2008). All of the PCEs are present and are in good to excellent condition, despite the fact that there is no evidence of recruitment and the island currently does not support long-term survival of adults. In order to protect these high quality PCEs and promote the conservation of black abalone, certain activities may require modification, such as in-water construction, coastal development, kelp harvesting, and activities that exacerbate global climate change. Thus, the CHRT deemed this area as being of "High" conservation value.

Special Management Considerations or Protection

Joint NMFS and USFWS regulations at 50 CFR 424.02(j) define "special management considerations or protection" to mean "any methods or procedures useful in protecting physical and biological features of the environment for the conservation of listed species." The CHRT identified several threats to black abalone PCEs and the areas in which those threats occur. NMFS and the CHRT then determined whether at least one PCE in each specific area may require special management considerations or protection because of a threat or threats. NMFS and the CHRT worked together to identify activities that could be linked to threats, and when possible, identified ways in which activities might be altered in order to protect and improve the quality of black abalone PCEs. These activities are described briefly in the following paragraphs and Table 1. These activities are documented more fully in the draft biological report (NMFS, 2010c) and draft economic report (NMFS, 2010a), which provide a description of the potential effects of each category of activities on the PCEs.

The major categories of habitat-related activities include: (1) Coastal development (e.g., construction or expansion of stormwater outfalls, residential and commercial construction); (2) in-water construction (e.g., coastal armoring, pier construction, jetty or harbor construction, pile driving); (3) sand replenishment or beach nourishment activities; (4) dredging and disposal of dredged material; (5) agricultural activities (e.g., irrigation, livestock farming, pesticide application); (6) National Pollutant Discharge Elimination System (NPDES) activities and activities generating non-point source pollution; (7) sidecasting activities (e.g., the piling of excavated dirt on the edge of a ditch or elsewhere in a wetland or other water body because of road maintenance); (8) oil and chemical spills and clean-up activities; (9) mineral and petroleum exploration or extraction activities; (10) power generation operations involving water withdrawal from and discharge to marine coastal waters; (11) construction and operation of alternative energy hydrokinetic projects (tidal or wave energy projects); (12) construction and operation of desalination plants; (13) construction and operation of liquefied natural gas (LNG) projects; (14) vessel groundings; (15) non-native species introduction and management (from commercial shipping and aquaculture); (16) kelp harvesting activities; and (17) activities that exacerbate global climate change (e.g., fossil fuel combustion).

The draft Biological Report (NMFS 2010a) and draft Economic Analysis Report (NMFS 2010b) provide a description of the potential effects of each category of activities and threats on the PCEs. For example, activities such as in-water construction, coastal development, dredging and disposal, sidecasting, mineral and petroleum

exploration and extraction, and sand replenishment may result in increased sedimentation, erosion, turbidity, or scouring in rocky intertidal habitats and may have adverse impacts on rocky substrate, settlement habitat, food resources, water quality, or nearshore circulation patterns. The construction of proposed energy and desalination projects along the coast would result in increased in-water construction and coastal development. The operation of these energy projects and desalination projects may also increase local water temperatures with the discharge of heated effluent, introduce elevated levels of certain metals or contaminants into the water, or alter nearshore water circulation patterns. The discharge of contaminants from activities such as NPDES activities may affect water quality, food resources (by affecting the algal community), and settlement habitat (by affecting the ability of larvae to settle). Introduction of non-native species may also affect food resources and settlement habitat if these species alter the natural algal communities. Shifts in water temperatures and sea level related to global climate change may also affect black abalone habitat. For example, coastal water temperatures may increase to levels above the optimal range for black abalone, and sea level rise may alter the distribution of rocky intertidal habitats along the California coast.

TABLE 1—SUMMARY OF ACTIVITIES THAT MAY AFFECT BLACK ABALONE PCES, INCLUDING: THE AREA(S) IN WHICH THE ACTIVITY IS LOCATED, THE PCE(S) THE ACTIVITY COULD AFFECT AND THE NATURE OF THAT THREAT, THE ESA SECTION 7 NEXUS FOR THAT ACTIVITY, AND THE POSSIBLE MODIFICATIONS TO THE ACTIVITY DUE TO THE BLACK ABALONE CRITICAL HABITAT DESIGNATION

Activity	Specific areas	PCE and nature of the threat	Section 7 nexus	Possible modification(s) to the activity
Dredging	Unknown. We solicit the public for more information (see "Public Comments Solicited").	*Rocky substrate* PCE—Dredging that does occur near rocky intertidal areas may increase sedimentation into the rocky habitat. A variety of harmful substances, including heavy metals, oil, tributyltin (TBT), polychlorinated biphenyls (PCBs) and pesticides, can be absorbed into the seabed sediments and contaminate them. *Water quality* PCE—Dredging and disposal processes can release contaminants into the water column, affecting water quality, and making them available to be taken up by animals and plants, which could cause morphological or reproductive disorders.	The U.S. Army Corps of Engineers (USACE) issues permits pursuant to Section 404 of the Clean Water Act (CWA), among several others. The USACE must then consult with NMFS under section 7 of the ESA.	Restrictions on the spatial and temporal extent of dredging activities and the deposition of dredge spoil. Requirements to treat (detoxify) dredge spoil.
In-water construction.	10, 17, 19, and 20.	*Rocky substrate* PCE—Increased sedimentation, a side effect of some in-water construction projects, can reduce the quality and/or quantity of rocky substrate. *Food resources* PCE—The presence of in-water structures may affect black abalone habitat by affecting the distribution and abundance of algal species that provide food for abalone or the distribution and abundance of other intertidal invertebrate species.	The USACE issues permits pursuant to Section 10 of the Rivers and Harbors Act of 1899 (RHA) among several others. Although in-water construction projects are commonly unertaken by private or non-Federal parties, in most cases they must obtain a USACE permit. The USACE must then consult with NMFS under section 7 of the ESA.	Bank stabilization measures and more natural erosion control.

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Activity	Specific areas	PCE and nature of the threat	Section 7 nexus	Possible modification(s) to the activity
		Settlement habitat PCE—Changes in algal communities could affect settlement of larval abalone (believed to be influenced by the presence of coralline algae).. *Nearshore circulation pattern* PCE—Nearshore circulation patterns may affect intertidal communities by providing stepping-stones between populations, resulting in range extensions for species with limited dispersal distances. Artificial structures, like breakwaters, may also alter the physical environment by reducing wave action and modifying nearshore circulation and sediment transport.		
Sand replenishment.	2, 4, 7, and 11 ..	*Rocky substrate* PCE—Sand movements could cover up rocky substrate thereby reducing its quality and/or quantity.	The USACE is responsible for administering Section 404 permits under the CWA, which are required for sand replenishment activities.	Monitor the water quality (turbidity) during and after the project. Place a buffer around pertinent areas within critical habitat that sand replenishment projects have to work around. Ensure any dredge discharge pipelines are sited to avoid rocky intertidal habitat. Construct training dikes to help retain the sand at the receiving location, which should minimize movement of sand into the rocky intertidal areas.
NPDES-permitted activities.	1, 2, 3, 4, 5, 7, 8, 9, 10, 11, 12, 16, 17, and 19.	*Food resources* PCE—Sewage outfalls may affect food resources by causing light levels to be reduced to levels too low to support Macrocystis germination and growth. Eutrophication occurs around southern California sewage outfalls where phytoplankton crops and primary production exceed typical levels and approach values characteristic of upwelling periods. *Water quality* PCE—Exposure to heavy metals can affect growth of marine organisms, either promoting or inhibiting growth depending on the combination and concentrations of metals. There is little information on these effects on black abalone, however.	Issuance of CWA permits. State water quality standards are subject to an ESA section 7 consultation between NOAA and the EPA and NOAA can review individual NPDES permit applications for impacts on ESA-listed species.	Where Federal permits are necessary, ensure discharge meets standards other than existing federal standards and regulations (EPA, CWA). Require measures to prevent or respond to a catastrophic event (i.e., using best technology to avoid unnecessary discharges).

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Activity	Specific areas	PCE and nature of the threat	Section 7 nexus	Possible modification(s) to the activity
Coastal development.	2, 4, 7, 8, 10, 17, 19, and 20.	*Rocky substrate* PCE—Increased sediment load that may result from urbanization of the coast and of watersheds (increased transport of fine sediments into the coastal zone by rivers or runoff) can reduce the quality and/or quantity of rocky substrate. For example, in a study on San Nicolas Island, black abalone "dominated areas where rock contours provided a refuge from sand deposition" (Littler *et al.,* 1983, cited in Airoldi, 2003). Overall, there has been little study of the effects of increased sedimentation on rocky shoreline communities (Airoldi, 2003). In addition, construction of coastal armoring is often associated with coastal urban development to protect structures from wave action or prevent erosion (see "in-water construction" in Section 2.1). *Food resources* PCE—Increased sedimentation may also affect feeding by covering up food resources, altering algal communities (including algal communities on the rocky reef and the growth of kelp forests that supply drift algae), and altering invertebrate communities (affecting biological interactions). Ephemeral and turf-forming algae were found to be favored in rocky intertidal areas that experience intermittent inundation (Airoldi, 1998, cited in Thompson *et al.,* 2002). *Settlement habitat* PCE—Increased sedimentation may affect settlement of larvae and propagules by covering up settlement habitat as well as affecting the growth of encrusting coralline algae (see Steneck *et al.,* 1997, cited in Airoldi, 2003), thought to be important for settlement.	The USACE permits construction or expansion of stormwater outfalls, discharge or fill of wetlands, flood control projects, bank stabilization, and in-stream work.	Stormwater pollution prevention plan; permanent stormwater site plan; and stormwater best management practice operations and maintenance.
Sidecasting	7 and 8	*Rocky substrate and settlement habitat* PCEs—Increased likelihood of sediment input into rocky intertidal habitats may reduce its quality and quantity. *Food resources* PCE—Sidecasting may result in possible reductions or changes to food resources. See sedimentation effects as described under "Coastal development", above.	National Marine Sanctuary (NMS) regulations prohibit discharge of materials within its boundaries, as well as outside its boundaries if the material may enter the sanctuary and harm sanctuary resources. However, under certain circumstances, a permit may be obtained from the Monterey Bay National Marine Sanctuary (MBNMS) to allow for a prohibited activity.	Haul away (or store locally) excess material from road maintenance activities, rather than sidecast; place excess material at a stable site at a safe distance from rocky intertidal habitats; and use mulch or vegetation to stabilize the material.

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Activity	Specific areas	PCE and nature of the threat	Section 7 nexus	Possible modification(s) to the activity
Agricultural activities (including pesticide application, irrigation, and livestock farming).	1, 2, 3, 4, 7, 8, 9, 10, 12, and 16.	*Rocky substrate* PCE—Soil erosion from intensive irrigated agriculture or livestock farming of areas adjacent to the coast can cause increased sedimentation thereby reducing the quality and quantity of rocky substrate. *Food resources* PCE—Herbicides are designed to kill plants, thus herbicide contamination of water could have devastating effects on aquatic plants. *Settlement habitat* PCE—Laboratory experiments showed that the presence of pesticides (those examined in the study were DDT, methoxychlor, dieldrin, and 2,4–D) interfered with larval settlement. Presence of pesticides had a much lesser effect on survival of larvae. *Water quality* PCE—Pesticides alter the chemical properties of sea water such that they can interfere with settlement cues emitted by coralline algae and associated diatom films and/or they may inhibit growth of marine algae upon which black abalone depend for food. There is little information on these effects on black abalone or related species, however, especially for pesticides that are currently in use.	*Irrigation*—any water supplier providing water via contract with U.S. Bureau of Reclamation (USBR) or using infrastructure owned or maintained by the USBR is subject to section 7 consultation under ESA. Privately owned diversions may require a Federal permit from USACE under sections 401 or 404 of the CWA. *Pesticide Application*—Environmental Protection Agency (EPA) consultation on the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), pesticide registration program, and NPDES permits for aquatic pesticides. *Livestock farming*—Bureau of Land Management (BLM) and the U.S. Forest Service (USFS).	For irrigated agriculture: conservation crop rotation, underground outlets, land smoothing, structures for water control, subsurface drains, field ditches, mains or laterals, and toxic salt reduction. For pesticides application: restrictions on application of some pesticides within certain distances of streams. For livestock farming: fencing riparian areas; placing salt or mineral supplements to draw cattle away from rivers; total rest of allotments when possible; and frequent monitoring.

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Activity	Specific areas	PCE and nature of the threat	Section 7 nexus	Possible modification(s) to the activity
Oil & chemical spills & clean-up.	4, 5, 7, 8, 9, 12, 15, and 19.	*Rocky substrate and settlement habitat* PCEs—Oil spill clean-up activities may be as destructive, or more destructive, than the oil spill itself. Oil spill clean-up may involve application of toxic dispersants and the use of physical cleaning methods such as the use of high pressure and/or high temperature water to flush out oil which may decrease the quality of rocky substrate and settlement habitat in an area. Oil, oil/dispersant mixtures, and dispersants used in oil spill clean-up may adversely affect grazing mollusks like abalone in rocky intertidal areas, although less-toxic dispersants have been developed in recent years. *Food resources* PCE—The use of dispersants and physical cleaning methods may affect black abalone food resources (algal community). Chemical spills could also affect food resources, if the chemicals kill algae or affect algal growth. *Water quality PCE*—Effects of oil spills vary from no discernable differences to widespread mortality of marine invertebrates over a large area and reduced densities persisting a year after the spill.	Review of oil spill response plan from United States Coast Guard (USCG). Regulations under the Water Pollution Control Act.	Restrict or minimize the use or type of response to oil spills (e.g. boom, dispersants, *in situ* burning) in areas where black abalone habitat exists. Mitigation measures include adoption of oil/chemical spill clean-up protocols and oil/chemical spill prevention plans, more Clean Seas boats as first responders to prevent oil/chemical spills from coming onshore, and relocation of proposed oil/chemical platforms further away from black abalone habitats.
Vessel grounding	8	*Rocky substrate and settlement habitat* PCEs—Vessel grounding can affect the rocky substrate and have substantial effects on the environment, ranging from minor displacement of sediment to catastrophic damage to reefs. Wave activity may also cause the vessel to roll excessively and do more damage to the ocean floor. *Food resources and water quality* PCEs—The risk of invasion by foreign species attached to the ship's hull into a local environment. The wreck of an ocean-going vessel can result in large masses of steel distributed over substantial areas of seabed, particularly in high energy, shallow water environments. The wreckage may be a chronic source of dissolved iron. Elevated levels of iron may affect water quality and result in an increase of opportunistic algae blooms.	The USCG has the authority to respond to all oil and hazardous substance spills in the offshore/coastal zone, while the EPA has the authority to respond in the inland zone.	Best management practices (BMP) for oil spill and debris clean-up to reduce trampling. Education of USCG, NMS biologists, and others involved in clean-up to raise awareness of black abalone.

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Activity	Specific areas	PCE and nature of the threat	Section 7 nexus	Possible modification(s) to the activity
Construction and operation of power plants.	10	*Water quality* PCE—The power plants' use of coastal waters for cooling and subsequently discharging of heated water back into the marine environment may raise water temperatures and introduce contaminants into the water. Elevated water temperatures have been linked to increased virulence of the withering syndrome disease.	The Diablo Canyon Nuclear Power Plant, located in specific area 10, is licensed through the Nuclear Regulatory Commission.	Require cooling of thermal effluent before release to the environment (may require use of different technology). Require treatment of any contaminated waste materials. Modifications associated with permit issued under NPDES (any updates from current early 1990s issuance). Dry cooling systems (not as feasible as wet cooling systems due to greater logistical constraints and total costs). Modifications to cooling water intake flow by season and operational conditions using variable speed pumps/variable frequency drives (benefits depend on the frequency and degree that flow can be reduced without affecting operations). Use of reclaimed water as a source of makeup water for wet cooling towers or as a source for once-through cooling water systems.
Construction and operation of desalination plants.	4, 7, 8, 9, 10, 12, 17, and 19.	*Water quality* PCE—Discharge of hyper-saline water results in increased salinity and fluctuating salinity conditions that may affect sensitive organisms near the outfall. The impacts of brine effluent are generally more severe in rocky substrate than on sandy seafloor habitats. However, more research is needed on the tolerance level of black abalone for different salinities. Other effects of the discharge on water quality include increased turbidity, concentration of organic substances and metals contained in the feed waters, concentration of metals picked up through contact with the plant components, thermal pollution, and decreased oxygen levels. Entrainment and impingement of black abalone larvae may also occur from water intake at desalination plants, but this is primarily a take issue.	A desalination facility may require a Section 404 permit under the CWA from the USACE if it involves placing fill in navigable waters, and a Section 10 permit under the RHA if the proposal involves placing a structure in a navigable waterway.	Potential conservation efforts to mitigate desalination impacts may include the treatment of hyper-saline effluent to ensure that salinity levels are restored to normal values. The costs of treating hyper-saline effluent or finding an alternate manner of brine disposal can vary widely across plants depending on plant capacity and design.

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Activity	Specific areas	PCE and nature of the threat	Section 7 nexus	Possible modification(s) to the activity
Construction and operation of tidal and wave energy projects.	1 and 19	*Rocky substrate* PCE—Impacts on rocky substrate may result from the installation of power lines to transport power to shore. These projects typically involve placement of structures, such as buoys, cables, and turbines, in the water column. *Water quality* PCE—Alternative energy projects may result in reduced wave height by as much as 5 to 13 percent, which may benefit abalone habitat. Effects on wave height would generally only be observed 1–2 km away from the wave energy device. Another concern is the potential for liquids used in the system to leak or be accidentally spilled, resulting in release of toxic fluids. Toxins may also be released in the use of biocides to control the growth of marine organisms. The potential effects of coastal wave and tidal energy projects on black abalone habitat are uncertain, because these projects are relatively new and the impacts are very site-specific.	Subject to the Federal Energy Regulatory Commission (FERC) permitting and licensing requirements, as well as requirements under Section 401 of the CWA.	Use of non-toxic fluids instead of toxic fluids. When the project requires the use of power lines, use existing power lines, instead of constructing new ones, and avoid rocky intertidal areas.
Construction and operation of liquefied natural gas (LNG) projects.	Unknown We solicit the public for more information (see "Public Comments Solicited").	*Rocky substrate* PCE—Onshore LNG terminals, construction of breakwaters, jetties, or other shoreline structures and the activities associated with construction (e.g., dredging) may affect black abalone habitat. Offshore LNG terminals involve construction of pipelines to transport LNG onshore and may affect rocky habitat. See sedimentation effects described under "dredging", "in-water construction", and "coastal development". *Food resource and water quality* PCEs—There is an increased potential for oil spills and potential effects on water quality from the presence of vessels transporting and offloading LNG at the terminals.	CWA permits under section 401 (water quality certificate) and/or section 404 (a dredge and fill permit) and Clean Air Act permits under section 502 may be required.	Offshore facilities: In the installation of pipelines, avoid rocky intertidal habitats or use existing pipelines. Onshore siting considerations: Avoid siting LNG projects within or adjacent to rocky intertidal habitats.

TABLE 1—SUMMARY OF ACTIVITIES THAT MAY AFFECT BLACK ABALONE PCES, INCLUDING: THE AREA(S) IN WHICH THE ACTIVITY IS LOCATED, THE PCE(S) THE ACTIVITY COULD AFFECT AND THE NATURE OF THAT THREAT, THE ESA SECTION 7 NEXUS FOR THAT ACTIVITY, AND THE POSSIBLE MODIFICATIONS TO THE ACTIVITY DUE TO THE BLACK ABALONE CRITICAL HABITAT DESIGNATION—Continued

Activity	Specific areas	PCE and nature of the threat	Section 7 nexus	Possible modification(s) to the activity
Mineral and petroleum exploration and extraction.	10	*Rocky substrate* PCE—This activity may result in increased sedimentation into rocky intertidal habitats. See sedimentation effects described under "dredging", "in-water construction", and "coastal development". *Food resources and settlement habitat* PCE—In a laboratory study, water-based drilling muds from an active platform were found to negatively affect the settlement of red abalone larvae on coralline algae, but fertilization and early development were not affected. *Water quality* PCE—The activity may cause an increased risk of oil spills or leaks and increased sedimentation thereby affecting water quality.	The Mineral Management Service (MMS) manages the nation's offshore energy and mineral resources, including oil, gas, and alternative energy sources, as well as sand, gravel and other hard minerals on the outer continental shelf.	Adoption of erosion control measures. Adoption of oil spill clean-up protocols and oil spill prevention plans; more Clean Seas boats as first responders to prevent oil spills from coming onshore; and relocation of proposed oil platforms further away from black abalone habitats.
Non-native species introduction and management.	2, 4, 8, 10, and 11.	*Food resources* PCE—The release of wastewater, sewage, and ballast water from commercial shipping presents a risk to kelp and other macroalgal species because of the potential introduction of exotic species. *Settlement habitat* PCE—Non-native species may displace native organisms by preying on them or out-competing them for resources such as food, space or both. Non-native species may introduce disease-causing organisms and can cause substantial population, community, and habitat changes. Other possible consequences of non-native species introductions could be impacts on flow patterns, sediment and nutrient dynamics, and impacts on native bio-engineering species.	The National Invasive Species Act of 1996 (NISA) and the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 under the USCG.	For commercial shipping: safe (non-contaminated) ballast disposal; rinse anchors and anchor chains when retrieving the anchor to remove organisms and sediments at their place of origin; remove hull fouling organisms from hull, piping, propellers, sea chests, and other submerged portions of a vessel, on a regular basis, and dispose of removed substances in accordance with local, state, and federal law. For aquaculture: inspect aquaculture facilities to prevent non-native species transport in packing materials.
Kelp harvesting	7–20	*Food resources* PCE—Kelp is the primary source of food for black abalone. Kelp is harvested for algin, which is used as a binder, emulsifier, and molding material in a broad range of products, and as a food source in abalone aquaculture operations. The harvest is small, but the kelp grows quickly, and harvest could generate drift (which can potentially be beneficial to black abalone). Potential impacts related to kelp harvesting are unclear.	None	None.

TABLE 1—SUMMARY OF ACTIVITIES THAT MAY AFFECT BLACK ABALONE PCES, INCLUDING: THE AREA(S) IN WHICH THE ACTIVITY IS LOCATED, THE PCE(S) THE ACTIVITY COULD AFFECT AND THE NATURE OF THAT THREAT, THE ESA SECTION 7 NEXUS FOR THAT ACTIVITY, AND THE POSSIBLE MODIFICATIONS TO THE ACTIVITY DUE TO THE BLACK ABALONE CRITICAL HABITAT DESIGNATION—Continued

Activity	Specific areas	PCE and nature of the threat	Section 7 nexus	Possible modification(s) to the activity
Activities leading to global climate change (e.g., fossil fuel combustion).	1–20	Affects all PCEs. There is little information on these effects, however. We solicit the public for more information (see “Public Comments Solicited”). *Water quality* PCE—Sea surface water temperatures that exceed 25°C may increase risks to black abalone. Ocean pH values that are outside of the normal range for seawater (i.e., pH less than 7.5 or greater than 8.5) may cause reduced growth and survivorship in abalone as has been observed in other marine gastropods (Shirayama and Thornton, 2005). *Food resources and settlement habitat* PCE–Increasing partial pressure of carbon dioxide may reduce abundance of coralline algae and thereby affect the survival of newly settled black abalone (Feely *et al.,* 2004; Hall-Spencer *et al.,* 2008).	Uncertain	Uncertain.

Unoccupied Areas

Section 3(5)(A)(ii) of the ESA authorizes the designation of “specific areas outside the geographical area occupied at the time [the species] is listed” if these areas are essential for the conservation of the species. Regulations at 50 CFR 424.12(e) emphasize that the agency “shall designate as critical habitat areas outside the geographical area presently occupied by a species only when a designation limited to its present range would be inadequate to ensure the conservation of the species.” The CHRT identified potential unoccupied areas to consider for designation. These areas represent segments of the California and Oregon coast that contain rocky intertidal habitats that historically supported black abalone and that may support black abalone populations in the future. The CHRT identified the following unoccupied areas: (1) From Cape Arago State Park, Oregon, to Del Mar Landing Ecological Reserve, California; (2) from just south of Government Point to Point Dume State Beach, California; and (3) from Cardiff State Beach in Encinitas, California, to Cabrillo National Monument, California.

In each of these areas, black abalone have not been observed in surveys in the past 5 years. In the area from Cape Arago, Oregon, to the Del Mar Landing Ecological Reserve, California, four museum specimens of black abalone were noted from two survey sites (Geiger, 2004), one specimen was noted from another site where red abalone are considered common (Thompson, 1920), and no data on black abalone were available for the other sites. Black abalone were not observed during rocky intertidal surveys conducted in the 1970s and 1980s at several sites within this area (J. DeMartini, pers. comm.). In the area from just south of Government Point to Point Dume State Beach in California, black abalone were reported as rare at one site (Morin and Harrington, 1979), but have never been observed at the other survey sites. In the area from Cardiff State Beach to Cabrillo National Monument in California, black abalone were noted to be historically present at a few sites (Zedler, 1976, 1978) and rare at one site (California State Water Resources Control Board, 1979).

At this time, the CHRT concluded that the three unoccupied areas may be essential for conservation, but that there is currently insufficient data to conclude that any of the areas are essential for conservation. Therefore, the three presently unoccupied areas were not considered in further analyses. We solicit comments from the public regarding the historical, current, and potential condition of the habitat and of black abalone populations within the unoccupied areas identified above and the importance of these areas to conservation of the species.

Military Lands

Under the Sikes Act of 1997 (Sikes Act) (16 U.S.C. 670a), “each military installation that includes land and water suitable for the conservation and management of natural resources” is required to develop and implement an integrated natural resources management plan (INRMP). An INRMP integrates implementation of the military mission of the installation with stewardship of the natural resources found there. Each INRMP includes: An assessment of the ecological needs on the military installation, including the need to provide for the conservation of listed species; a statement of goals and priorities; a detailed description of management actions to be implemented to provide for these ecological needs; and a monitoring and adaptive management plan. Each INRMP must, to the extent appropriate and applicable, provide for fish and wildlife management, fish and wildlife habitat

enhancement or modification, wetland protection, enhancement, and restoration where necessary to support fish and wildlife and enforcement of applicable natural resource laws. The ESA was amended by the National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108–136) to address the designation of military lands as critical habitat. ESA section 4(a)(3)(B)(i) states: "The Secretary shall not designate as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an integrated natural resources management plan prepared under section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation." The Navy's facilities on San Clemente Island and San Nicolas Island are covered by INRMPs that are currently being revised to address black abalone conservation. If these INRMPs are finalized and determined to provide benefits to black abalone, as described under section 4(a)(3)(B) of the ESA, then the areas would be ineligible for designation and a determination on whether the areas warrant exclusion under section 4(b)(2) of the ESA based on national security impacts would no longer be necessary.

Application of ESA Section 4(b)(2)

Section 4(b)(2) of the ESA requires the Secretary to consider the economic, national security, and any other relevant impacts of designating any particular area as critical habitat. Any particular area may be excluded from critical habitat if the Secretary determines that the benefits of excluding the area outweigh the benefits of designating the area. The Secretary may not exclude a particular area from designation if exclusion will result in the extinction of the species. Because the authority to exclude is discretionary, exclusion is not required for any areas. We propose to exclude one occupied specific area (i.e., Corona Del Mar State Beach to Dana Point, Orange County, CA) from the critical habitat designation because the economic benefits of exclusion outweigh the benefits of designation. The first step in conducting the ESA section 4(b)(2) analysis is to identify the "particular areas" to be analyzed. Where we considered economic impacts and weighed the economic benefits of exclusion against the conservation benefits of designation, we used the same biologically-based "specific areas" we identified in the previous sections pursuant to section 3(5)(A) of the ESA (e.g., Del Mar Landing Ecological Reserve to Bodega Head, Bodega Head to Point Bonita, Farallon Islands, etc.). Delineating the "particular areas" as the same units as the "specific areas" allowed us to most effectively consider the conservation value of the different areas when balancing conservation benefits of designation against economic benefits of exclusion. Delineating particular areas based on impacts on national security or other relevant impact should be based on land ownership or control (e.g., land controlled by the Department of Defense (DOD) within which national security impacts may exist, or Indian lands). We request information on other relevant impacts that should be considered (see "Public Comments Solicited"). The next step in the ESA section 4(b)(2) analysis involves identification of the impacts of designation (i.e., the benefits of designation and the benefits of exclusion). We then weigh the benefits of designation against the benefits of exclusion to identify areas where the benefits of exclusion outweigh the benefits of designation. These steps and the resulting list of areas proposed for exclusion from designation are described in detail in the sections below.

Impacts of Designation

The primary impact of a critical habitat designation stems from the requirement under section 7(a)(2) of the ESA that Federal agencies ensure their actions are not likely to result in the destruction or adverse modification of critical habitat. Determining this impact is complicated by the fact that section 7(a)(2) contains the overlapping requirement that Federal agencies must also ensure their actions are not likely to jeopardize the species' continued existence. One incremental impact of designation is the extent to which Federal agencies modify their actions to ensure their actions are not likely to adversely modify the critical habitat of the species, beyond any modifications they would make because of the listing and the jeopardy requirement. When a modification would be required due to impacts to both the species and critical habitat, the impact of the designation is considered co-extensive with the ESA listing of the species. Additional impacts of designation include state and local protections that may be triggered as a result of the designation and the benefits from educating the public about the importance of each area for species conservation. Thus, the impacts of the designation include conservation impacts for black abalone and its habitat, economic impacts, impacts on national security, and other relevant impacts that may result from the designation and the application of ESA section 7(a)(2).

In determining the impacts of the designation, we focused on the incremental change in Federal agency actions as a result of the critical habitat designation and the adverse modification prohibition, beyond the changes predicted to occur as a result of listing and the jeopardy provision. Following a line of recent court decisions, in particular, *Cape Hatteras Access Preservation Alliance* v. *Norton,* 344 F. Supp. 2d 1080 (D.D.C. 2004)) (*Cape Hatteras*) we analyzed the impact of this proposed regulation based on a comparison of the world with and without the action. Consistent with the *Cape Hatteras* decision, we focus on the potential incremental impacts beyond the impacts that would result from the listing and jeopardy provision. In some instances, however, it was difficult to exclude potential impacts that may already occur under the baseline (i.e., protections already afforded black abalone under its listing or under other Federal, State, and local regulations). Many uncertainties exist with regard to future management actions that may be required due to black abalone critical habitat because of the short consultation history for black abalone and overlap with protections provided under the listing and other existing regulations. Thus, the analysis included some impacts that would have occurred under the baseline regardless of the critical habitat designation. As such, the consideration of impacts cannot be characterized as exclusively incremental impacts of the critical habitat designation (*New Mexico Cattle Growers Association* v. *U.S. Fish and Wildlife Service,* 248 F.3d 1277 (10th Cir. 2001)) (NMCA). Instead, the impacts of the designation are more correctly characterized as black abalone impacts.

Once we determined the impacts of the designation, we then determined the benefits of designation and the benefits of exclusion based on the impacts of the designation. The benefits of designation include the conservation impacts for black abalone and its habitat that result from the critical habitat designation and the application of ESA section 7(a)(2). The benefits of exclusion include the economic impacts, impacts on national security, and other relevant impacts (e.g., impacts on Indian lands) of the designation that would be avoided if a particular area were excluded from the critical habitat designation. The following sections describe how we determined the benefits of designation and the benefits of exclusion and how these benefits were weighed, as required

under section 4(b)(2) of the ESA, to identify particular areas that may be eligible for exclusion from the designation. We also summarize the results of this weighing process and determinations on the areas that may be eligible for exclusion.

Benefits of Designation

The primary benefit of designation is the protection afforded under section 7 of the ESA, requiring all Federal agencies to ensure their actions are not likely to destroy or adversely modify designated critical habitat. This is in addition to the requirement that all Federal agencies ensure their actions are not likely to jeopardize the continued existence of the species. In addition, the designation may provide education and outreach benefits by informing the public about areas and features important to the conservation of black abalone. By delineating areas of high conservation value, the designation may help focus and contribute to conservation efforts for black abalone and their habitats.

The designation of critical habitat has been found to benefit the status and recovery of ESA-listed species. Recent reports by the USFWS indicated that species with critical habitat were more likely to have increased and less likely to have declined than species without critical habitat (Taylor *et al.* 2005). In addition, species with critical habitat were also more likely to have a recovery plan and to have these plans implemented, compared to species without critical habitat (Harvey *et al.,* 2002; Lundquist *et al.* 2002). These benefits may result from the unique, species-specific protections afforded by critical habitat (*e.g.,* enhanced habitat protection, increased public awareness and education of important habitats) that are more comprehensive than other existing regulations (Hagen and Hodges, 2006).

The benefits of designation are not directly comparable to the benefits of exclusion for the purposes of weighing the benefits under conducting the ESA section 4(b)(2) analysis as described below. Ideally, the benefits of designation and benefits of exclusion should be monetized in order to directly compare and weigh them. With sufficient information, it may be possible to monetize the benefits of a critical habitat designation by first quantifying the benefits expected from an ESA section 7 consultation and translating that into dollars. We are not aware, however, of any available data to monetize the benefits of designation (e.g., estimates of the monetary value of the PCEs within areas designated as critical habitat, or of the monetary value of education and outreach benefits). As an alternative approach, we determined the benefits of designation based on the CHRT's biological analysis of the specific areas. We used the CHRT's conservation value ratings (High, Medium, and Low) to represent the qualitative conservation benefits of designation for each of the specific areas considered for designation. In evaluating the conservation value of each specific area, the CHRT focused on the habitat features present in each area, the habitat functions provided by each area, and the importance of protecting the habitat for the overall conservation of the species. The CHRT considered a number of factors to determine the conservation value of each specific area, including: (a) The present condition of the primary constituent elements or PCEs; (b) the level at which the habitat supports recruitment of early life stages, based on the level of recruitment observed at survey sites within the area; and (c) the level at which the habitat supports long-term survival of juvenile and adult black abalone, based on trends in the abundance and size frequencies of black abalone populations observed at survey sites within the area. These conservation value ratings represent the estimated conservation impact to black abalone and its habitat if the area were designated as critical habitat, and thus were used to represent the benefit of designation. The draft Biological Report (NMFS 2010a) provides detailed information on the CHRT's biological analysis and evaluation of each specific area.

Benefits of Exclusion Based on Economic Impacts and Proposed Exclusions

The economic benefits of exclusion are the economic impacts that would be avoided by excluding particular areas from the designation. To determine these economic impacts, we first asked the CHRT to identify activities within each specific area that may affect black abalone and its critical habitat. The 17 categories of activities identified by the CHRT are identified in the *Special Management Considerations and Protections* above. We then considered the range of modifications NMFS might seek in these activities to avoid destroying or adversely modifying black abalone critical habitat. Where possible, we focused on changes beyond those that may be required under the jeopardy provision. Because of the limited consultation history, we relied on information from other section 7 consultations and the CHRT's expertise to determine the types of activities and potential range of changes. For each potential impact, we tried to provide information on whether the impact is more closely associated with adverse modification or with jeopardy, to distinguish the impacts of applying the jeopardy provision versus the adverse modification provision.

While the statute and our agency guidance directs us to identify activities that may affect the habitat features important to black abalone conservation within a specific area in order to determine its eligibility for designation, not all of these activities may be affected by the critical habitat designation (i.e., subject to a section 7 consultation) and sustain an economic impact. It is only those activities with a federal nexus that would sustain an economic impact as a result of the designation. Within the set of activities identified in the *Special Management Considerations and Protections* above, we were only able to estimate economic impacts for a subset of them because of: (1) The limited consultation history; (2) uncertainty in the types of modification that would be required; (3) uncertainty in the number and locations of activities based on currently available data; and (4) the lack of available cost data. The draft economic report analyzes the potential economic impacts to the following categories of activities: (1) Coastal development; (2) in-water construction; (3) sand replenishment or beach nourishment activities; (4) agricultural activities (e.g., irrigation); (5) NPDES activities and activities generating non-point source pollution; (6) sidecasting; (7) oil and chemical spills and clean-up activities; (8) power generation operations involving water withdrawal from and discharge to marine coastal waters; (9) construction and operation of alternative energy hydrokinetic projects (tidal or wave energy projects); and (10) construction and operation of desalination plants. The following activities were discussed qualitatively: Dredging and disposal of dredged material; agricultural pesticide application and livestock farming; mineral and petroleum exploration or extraction; construction and operation of LNG projects; vessel groundings; non-native species introduction and management; kelp harvesting; and activities that lead to global climate change. The economic impacts of the designation on these activities could not be quantified because a federal nexus does not exist (i.e., for kelp harvesting activities) or is uncertain (i.e., for activities that lead to global climate change), or because the potential

economic impacts are uncertain, for the reasons described above. The draft economic report (NMFS, 2010a) provides a more detailed description and analysis of the potential economic impacts to each of these categories of activities.

We had sufficient information to monetize the economic benefits of exclusion, but were not able to monetize the conservation benefits of designation. Thus, to weigh the benefits of designation against the economic benefits of exclusion, we compared the conservation value ratings with economic impact ratings that were based on the mean annualized economic impact estimates (discounted at 7%; see draft economic report (NMFS 2010a) for additional details) for each specific area. To develop the economic impact ratings, we examined the mean annualized economic impacts (discounted at 7 percent) across all of the specific areas. We then divided the economic impacts into four economic impact rating categories corresponding to "Low" ($0 to $100,000), "Medium" (greater than $100,000 to $500,000), "High" (greater than $500,000 to $10 million), and "Very High" (greater than $10 million) economic impact ratings. The four economic impact rating categories were determined by visually inspecting the economic impact values and identifying natural breakpoints in the economic impacts data where the estimated economic impacts experienced a large increase. We then compared these economic impact ratings (representing the benefits of exclusion) with the conservation value ratings (representing the benefits of designation) and applied the following decision rules to identify areas eligible for exclusion based on economic impacts: (1) Areas with a conservation value rating of "High" were eligible for exclusion if the mean annualized economic impact estimate exceeded $10 million (i.e., the economic impact rating was "Very High"); (2) areas with a conservation value rating of "Medium" were eligible for exclusion if the mean annualized economic impact estimate exceeded $500,000 (i.e., the economic impact rating was at least a "High"); and (3) areas with a conservation value rating of "Low" were eligible for exclusion if the mean annualized economic impact estimate exceeded $100,000 (i.e., the economic impact rating was at least a "Medium").

These dollar thresholds should not be interpreted as estimates of the dollar value of High, Medium, or Low conservation value areas. Under the ESA, we are to weigh dissimilar impacts given limited time and information. The statute emphasizes that the decision to exclude is discretionary. Thus, the level at which the economic benefits of exclusion outweigh the conservation benefits of designation is a matter of discretion and depends on the policy context. For critical habitat, the ESA directs us to consider exclusions to avoid high economic impacts, but also requires that the areas designated as critical habitat are sufficient to support the conservation of the species and to avoid extinction. In this policy context, we developed decision rules with dollar thresholds representing the levels at which we believe the economic benefit of exclusion associated with a specific area could outweigh the conservation benefits of designation. These dollar thresholds and decision rules provided a relatively simple process to identify, in a limited amount of time, specific areas warranting consideration for exclusion based on economic impacts.

Based on this analysis, two areas were identified preliminarily as eligible for exclusion. These areas were: (1) Specific area 10, from Montaña de Oro State Park to just south of Government Point; and (2) specific area 12, from Corona Del Mar State Beach to Dana Point. We presented the two areas to the CHRT to help us further characterize the benefits of designation by determining whether excluding any of these areas would significantly impede conservation of black abalone. If exclusion of an area would significantly impede conservation, then the benefits of exclusion would likely not outweigh the benefits of designation for that area. The CHRT considered this question in the context of all of the areas eligible for exclusion as well as the information they had developed in providing the conservation value ratings. If the CHRT determined that exclusion of an area would significantly impede conservation of black abalone, the conservation benefits of designation were increased one level in the weighing process. This necessitated the creation of a Very High conservation value rating. Areas rated as "Very High" were deemed to have a very high likelihood of promoting the conservation of the species.

The CHRT determined, and we concur, that exclusion of specific area 12 (from Corona Del Mar State Beach to Dana Point) would not significantly impede conservation of black abalone and that the economic benefit of exclusion for this area outweighs the conservation benefit of designation. The CHRT based their determinations on the best available data regarding the present condition of the habitat and black abalone populations in the area. The CHRT gave the area a "Low" conservation value, because the current habitat conditions are of lower quality compared to other areas along the coast. While rocky intertidal habitat of good quality occurs within the area, these habitats are patchy and may be affected by sand scour due to the presence of many sandy beaches. In addition, the rocky habitat within the area consists of narrow benches and fewer crevices compared to other areas and has been degraded by the establishment of sandcastle worm (*Phragmatopoma californica*) colonies. There is also little to no coralline algae to provide adequate larval settlement habitat. Low densities of black abalone were observed at a few sites in the area in the 1970s and 1980s. However, no recruitment has been observed and black abalone have been absent from the area except for one black abalone found in January 2010. For these reasons, the CHRT concluded that excluding specific area 12 (from Corona Del Mar State Beach to Dana Point) from the designation would not significantly impede the conservation of black abalone. The high estimated economic impact for this area was primarily due to impacts associated with construction and operation of a proposed desalination plant, which made up about 93% of the mean annualized economic impact estimate of $1,563,500 for this area. The estimated economic impacts to the desalination plant were based on the costs for using alternate methods of brine disposal (i.e., injection wells).

The CHRT determined, and we concur, that exclusion of specific area 10 (from Montaña de Oro State Park to just south of Government Point) would significantly impede conservation of black abalone. The CHRT gave the area a "High" conservation value in their biological evaluation. Historically, black abalone were considered common at several sites within the area. The populations have since suffered declines due to WS, but continue to persist at several sites. Although the habitat has changed since the decline in abalone (e.g., sea urchins and encrusting invertebrates have moved in to some crevice habitats), the habitat remains of high quality. The CHRT also emphasized the importance of this area in maintaining connectivity between black abalone populations on the north-central California coast and the southern California coast. Therefore, the CHRT determined, and we concur, that the conservation value of this area should be raised by one level (i.e., from High to Very High). In addition, the estimated economic impact for this area is likely

overestimated. The very high economic impact estimate for this area was primarily due to costs associated with the Diablo Canyon Nuclear Power Plant (DCNPP), which made up about 46 percent of the low annualized economic impact estimate and 99 percent of the mean and high annualized economic impact estimate for the area (see NMFS, 2010a for details). These estimated costs were based on the costs required to retrofit the DCNPP with a closed cooling system. However, there are less costly actions that we could not monetize that could be taken to avoid or minimize effects on black abalone habitat, such as restoring habitat in other areas around the DCNPP and conducting biological monitoring of black abalone and its habitat. Thus, the economic benefits of exclusion were not determined to outweigh the conservation benefits of designation for specific area 12 for the following reasons: (a) The area has a Very High conservation value to black abalone and exclusion of this area would significantly impede conservation of the species; and (b) the very high economic impacts are likely overestimated. We solicit comments from the public regarding the estimate of economic impacts to the DCNPP, the effects of the DCNPP on black abalone and its habitat, and the potential modifications that may be required to address these effects (including the feasibility and estimated costs of such modifications; see "Public Comments Solicited"). If information obtained during the public comment period suggests that the very high economic impact estimate for retrofitting the DCNPP is a realistic impact of the designation, we will re-examine our analysis regarding this area and consider other approaches that may allow exclusion of a particular area within this specific area.

In summary, we propose to exclude specific area 12 (from Corona Del Mar State Beach to Dana Point) from the critical habitat designation. Based on the best scientific and commercial data currently available, we have determined that exclusion of this area will not impede the conservation of black abalone, nor will it result in the extinction of the species.

Benefits of Exclusion Based on National Security and Proposed Exclusions

The national security benefits of exclusion are the impacts on national security that would be avoided by excluding particular areas from the designation. We contacted representatives of the DOD to request information on potential national security impacts that may result from the designation of particular areas as critical habitat for black abalone. In a letter dated May 20, 2010 (5090 Ser N40 JJR.cs/0011), representatives of the DOD identified the following particular areas owned or controlled by the U.S. Navy and requested exclusion of these areas from the designation based on potential national security impacts: (1) Naval Auxiliary Landing Field (NALF) San Clemente Island; (2) Outlying Landing Field (OLF) San Nicolas Island; (3) Naval Support Detachment Monterey; (4) Naval Weapons Station Seal Beach; and (5) Naval Base Ventura County (Point Mugu and Port Hueneme).

We determined that the Naval Support Detachment Monterey, Naval Weapons Station Seal Beach, and Naval Base Ventura County do not occur within the specific areas being considered for designation (NMFS, 2010b). Thus, these areas were not included in further analyses. The NALF San Clemente Island and OLF San Nicolas Island do occur within the specific areas being considered for designation and were analyzed for potential exclusion under section 4(b)(2) of the ESA.

The Navy did not provide information about the activities occurring within the OLF San Nicolas Island, but did provide information regarding activities conducted within the NALF San Clemente Island that may be affected by the designation of critical habitat for black abalone. An overview of these activities is provided in the draft ESA section 4(b)(2) report (NMFS, 2010b). More specific information is needed regarding which of the Navy activities may affect black abalone habitat (i.e., rocky intertidal habitat within MHHW to a depth of 6 m), how these activities may be affected by the critical habitat designation, and how these effects may result in impacts on national security. We request additional information from the Navy identifying and describing in detail the activities that may occur in or that may affect the areas being considered for designation (i.e., rocky habitat) and thus trigger consultation under section 7 of the ESA. This information is necessary to assess whether the areas warrant exclusion from the designation based on national security impacts.

At this time, we do not propose to exclude the NALF San Clemente Island or OLF San Nicolas Island from the designation based on national security impacts but will continue to coordinate with the Navy to assess the potential national security impacts. Additional information is also solicited from the public regarding the potential national security impacts of this designation (see "Public Comments Solicited"). After assessing any additional information provided by the DOD as well as by the public, a final determination will be made in the final critical habitat designation. The Navy's facilities on San Clemente Island and San Nicolas Island are covered by INRMPs that are currently being revised to address black abalone conservation. If these INRMPs are finalized and determined to provide benefits to black abalone, as described under section 4(a)(3)(B) of the ESA, then the areas would be ineligible for designation and a determination on whether the areas warrant exclusion under section 4(b)(2) of the ESA based on national security impacts would no longer be necessary. The response summarized above was transmitted to the Navy via a letter from NMFS dated July 9, 2010.

Benefits of Exclusion for Indian Lands and Proposed Exclusions

The only other relevant impacts of the designation identified were potential impacts on Indian lands. The benefits of exclusion for Indian lands are the impacts on Indian lands that would be avoided if particular areas were excluded from the designation. A broad array of activities on Indian lands may trigger ESA section 7 consultations and be affected by the designation of critical habitat. The longstanding and distinctive relationship between the Federal and tribal governments is defined by treaties, statutes, executive orders, judicial decisions, and agreements, which differentiate tribal governments from the other entities that deal with, or are affected by, the Federal government. This relationship has given rise to a special Federal trust responsibility involving the legal responsibilities and obligations of the United States toward Indian Tribes and the application of fiduciary standards of due care with respect to Indian lands, tribal trust resources, and the exercise of tribal rights. Pursuant to these authorities, lands have been retained by Indian Tribes or have been set aside for tribal use. These lands are managed by Indian Tribes in accordance with tribal goals and objectives within the framework of applicable treaties and laws. E.O. 13175 (Consultation and Coordination with Indian Tribal Governments) outlines the responsibilities of the Federal Government in matters affecting tribal interests.

For this proposed critical habitat designation for black abalone, we reviewed maps indicating that none of the specific areas under consideration for designation as critical habitat

overlap with Indian lands. Therefore, no areas were considered for exclusion based on impacts on Indian lands. We solicit information from the public regarding any Indian lands that may overlap with and may warrant exclusion from critical habitat for black abalone (see "Public Comments Solicited"). Indian lands are those defined in the Secretarial Order "American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act" (June 5, 1997) and include: (1) Lands held in trust by the United States for the benefit of any Indian tribe; (2) land held in trust by the United States for any Indian Tribe or individual subject to restrictions by the United States against alienation; (3) fee lands, either within or outside the reservation boundaries, owned by the tribal government; and (4) fee lands within the reservation boundaries owned by individual Indians. Should any Indian lands be identified within the specific areas considered and proposed for designation as black abalone critical habitat, they will be considered for exclusion under section 4(b)(2) of the ESA if the tribe or tribes request exclusion (see "Public Comments Solicited").

Critical Habitat Designation

This rule proposes to designate approximately 390 square kilometers of habitat in California within the geographical area presently occupied by black abalone. These critical habitat areas contain physical or biological features essential to the conservation of the species that may require special management considerations or protection. This rule proposes to exclude from the designation the area from Corona Del Mar State Beach to Dana Point, Orange County, CA. Although we have identified three presently unoccupied areas, we are not proposing any unoccupied areas for designation as critical habitat at this time, because we do not have sufficient information to determine that any of the unoccupied areas are essential to the conservation of the species.

Lateral Extent of Critical Habitat

The lateral extent of the proposed critical habitat designation offshore is defined by the 6 m depth bathymetry contour relative to the line of mean lower low water (MLLW) and shoreward to the MHHW line. The textual descriptions of critical habitat in the section titled "226.220 Critical habitat for the black abalone (*Haliotis cracherodii*)" are the definitive source for determining the critical habitat boundaries. The overview maps provided in the section titled "226.220 Critical habitat for the black abalone (*Haliotis cracherodii*)" are provided for general guidance purposes only and not as a definitive source for determining critical habitat boundaries. As discussed in previous critical habitat designations, human activities that occur outside of designated critical habitat can destroy or adversely modify the essential physical and biological features of these areas. This designation will help to ensure that Federal agencies are aware of the impacts that activities occurring outside of the proposed critical habitat area (e.g., coastal development, activities that exacerbate global warming, agricultural irrigation and pesticide application) may have on black abalone critical habitat.

Effects of Critical Habitat Designation

ESA Section 7 Consultation

Section 7(a)(2) of the ESA requires Federal agencies, including NMFS, to ensure that any action authorized, funded, or carried out by the agency (agency action) does not jeopardize the continued existence of any threatened or endangered species or destroy or adversely modify designated critical habitat. When a species is listed or critical habitat is designated, Federal agencies must consult with NMFS on any agency actions to be conducted in an area where the species is present and that may affect the species or its critical habitat. During the consultation, NMFS evaluates the agency action to determine whether the action may adversely affect listed species or critical habitat and issues its findings in a biological opinion. If NMFS concludes in the biological opinion that the agency action would likely result in the destruction or adverse modification of critical habitat, NMFS would also recommend any reasonable and prudent alternatives to the action. Reasonable and prudent alternatives are defined in 50 CFR 402.02 as alternative actions identified during formal consultation that can be implemented in a manner consistent with the intended purpose of the action, that are consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that would avoid the destruction or adverse modification of critical habitat. Regulations at 50 CFR 402.16 require Federal agencies that have retained discretionary involvement or control over an action, or where such discretionary involvement or control is authorized by law, to reinitiate consultation on previously reviewed actions in instances where: (1) Critical habitat is subsequently designated; or (2) new information or changes to the action may result in effects to critical habitat not previously considered in the biological opinion. Consequently, some Federal agencies may request reinitiation of consultation or conference with NMFS on actions for which formal consultation has been completed, if those actions may affect designated critical habitat. Activities subject to the ESA section 7 consultation process include activities on Federal lands and activities on private or state lands requiring a permit from a Federal agency (e.g., a section 10(a)(1)(B) permit from NMFS) or some other Federal action, including funding (e.g., Federal Highway Administration (FHA) or Federal Emergency Management Agency (FEMA) funding). ESA section 7 consultation would not be required for Federal actions that do not affect listed species or critical habitat nor for actions on non-Federal and private lands that are not federally funded, authorized, or carried out.

Activities Likely To Be Affected

ESA section 4(b)(8) requires, to the maximum extent practicable, in any proposed regulation to designate critical habitat, an evaluation and brief description of those activities (whether public or private) that may adversely modify such habitat or that may be affected by such designation. A wide variety of activities may affect black abalone critical habitat and may be subject to the ESA section 7 consultation process when carried out, funded, or authorized by a Federal agency. The activities most likely to be affected by this critical habitat designation once finalized are: (1) Coastal development; (2) in-water construction; (3) sand replenishment or beach nourishment activities; (4) agricultural activities (e.g., irrigation); (5) NPDES activities and activities generating non-point source pollution; (6) sidecasting; (7) oil and chemical spills and clean-up activities; (8) construction and operation of power plants that take in and discharge water from the ocean; (9) construction and operation of alternative energy hydrokinetic projects (tidal or wave energy projects); and (10) construction and operation of desalination plants. Private entities may also be affected by this critical habitat designation if a Federal permit is required, Federal funding is received, or the entity is involved in or receives benefits from a Federal project. These activities would need to be evaluated with respect to their potential to destroy or adversely modify critical habitat. Changes to the

actions to minimize or avoid destruction or adverse modification of designated critical habitat may result in changes to some activities. Please see the draft economic report (NMFS, 2010a) for more details and examples of changes that may need to occur in order for activities to minimize or avoid destruction or adverse modification of designated critical habitat. Questions regarding whether specific activities would constitute destruction or adverse modification of critical habitat should be directed to NMFS (see **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT**).

Public Comments Solicited

To ensure the final action resulting from this proposal will be as accurate and as effective as possible, we solicit comments and suggestions from the public, other concerned governments and agencies, the scientific community, industry, or any other interested party concerning this proposed rule. Specifically, public comments are sought concerning: (1) The role that ocean acidification plays in reducing growth and survivorship of abalone as has been observed in other marine gastropods (Shirayama and Thornton, 2005); (2) the impact that reduced abundance of coralline algae resulting from increased partial pressure of carbon dioxide (hereafter CO_2) (Feely *et al.,* 2004; Hall-Spencer *et al.,* 2008) has on the survival of newly settled black abalone; (3) the effects that environmental pollutants have on growth, reproduction, and survival of black abalone at varying spatial scales, as has been demonstrated in a few, locally isolated cases (e.g., Diablo Canyon-Martin *et al.,* 1977; Palos Verdes Peninsula-Leighton, 1959; Cox, 1962; Young, 1964; Miller and Lawrenz-Miller, 1993); (4) the impacts that accidentally spilled oil from offshore drilling platforms or various types of commercial vessels and subsequent clean-up operations have on the quality of black abalone habitat; (5) information describing the abundance, distribution, and habitat use of black abalone throughout its current and historical range; (6) information on the identification, location, and quality of physical or biological features which may be essential to the conservation of black abalone; (7) information regarding potential impacts of designating any particular area, including the types of Federal activities that may trigger an ESA section 7 consultation and the possible modifications that may be required of those activities as a result of section 7 consultation; (8) information regarding the benefits of designating any particular area of the proposed critical habitat; (9) information regarding the benefits of excluding particular areas from the critical habitat designation; (10) current or planned activities in the areas proposed for designation and their possible impacts on proposed critical habitat; and (11) any foreseeable economic, national security, tribal, or other relevant impacts resulting from the proposed designations. With regard to Indian lands, we request that the following information be provided to inform our ESA section 4(b)(2) analysis: (1) A map and description of the Indian lands (e.g., location, latitude and longitude coordinates to define the boundaries, extent into waterways); (2) a description of tribal activities that may be affected within the area; (3) a description of past, ongoing, or future conservation measures conducted by the tribes that may protect black abalone habitat within the area; and (4) a point of contact.

We encourage comments on this proposal. You may submit your comments and materials by any one of several methods (see **ADDRESSES**). The proposed rule, maps, references, and other materials relating to this proposal can be found on our Web site at *http://swr.nmfs.noaa.gov,* on the Federal eRulemaking Portal at *http://www.regulations.gov,* or can be made available upon request. We will consider all comments and information received during the comment period for this proposed rule in preparing the final rule.

Public Hearings

Regulations at 50 CFR 424.16(c)(3) require the Secretary to promptly hold at least one public hearing if any person requests one within 45 days of publication of a proposed rule to designate critical habitat. Requests for a public hearing must be made in writing (see **ADDRESSES**) by November 12, 2010. If a public hearing is requested, a notice detailing the specific hearing location and time will be published in the **Federal Register** at least 15 days before the hearing is to be held. Information on specific hearing locations and times will also be posted on our Web site at *http://swr.nmfs.noaa.gov.* These hearings provide the opportunity for interested individuals and parties to give comments, exchange information and opinions, and engage in a constructive dialogue concerning this proposed rule. We encourage the public's involvement in such ESA matters.

Peer Review

On December 16, 2004, the Office of Management and Budget (OMB) issued its Final Information Quality Bulletin for Peer Review (Bulletin). The Bulletin was published in the **Federal Register** on January 14, 2005 (70 FR 2664), and went into effect on June 16, 2005. The primary purpose of the Bulletin is to improve the quality and credibility of scientific information disseminated by the Federal government by requiring peer review of "influential scientific information" and "highly influential scientific information" prior to public dissemination. Influential scientific information is defined as "information the agency reasonably can determine will have or does have a clear and substantial impact on important public policies or private sector decisions." The Bulletin provides agencies broad discretion in determining the appropriate process and level of peer review. Stricter standards were established for the peer review of "highly influential scientific assessments," defined as information whose "dissemination could have a potential impact of more than $500 million in any one year on either the public or private sector or that the dissemination is novel, controversial, or precedent-setting, or has significant interagency interest." The draft biological report and draft economic analysis report supporting this rule proposing to designate critical habitat for the black abalone are considered influential scientific information and subject to peer review. These two reports will each be distributed to three independent peer reviewers for review on or before the publication date of this proposed rule. The peer reviewer comments will be compiled into a peer review report to be made available to the public at the time the black abalone critical habitat designation is finalized.

Required Determinations

Regulatory Planning and Review (E.O. 12866)

This proposed rule has been determined to be significant for purposes of E.O. 12866. A draft economic analysis report and ESA section 4(b)(2) report have been prepared to support the exclusion process under section 4(b)(2) of the ESA and our consideration of alternatives to this rulemaking as required under E.O. 12866. The draft economic analysis report and ESA section 4(b)(2) report are available on the Southwest Region Web site at *http://swr.nmfs.noaa.gov,* on the Federal eRulemaking Web site at *http://www.regulations.gov,* or upon request (see **ADDRESSES**).

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency publishes a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis describing the effects of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions). We have prepared an initial regulatory flexibility analysis (IRFA), which is part of the draft economic analysis report (NMFS, 2010a). This document is available upon request (see **ADDRESSES**), via our Web site at *http://swr.nmfs.noaa.gov,* or via the Federal eRulemaking Web site at *http://www.regulations.gov.*

In summary, the IRFA did not consider all types of small businesses that could be affected by the black abalone critical habitat designation due to lack of information. Impacts to small businesses involved in 10 activities were considered: (1) In-water construction; (2) dredging; (3) NPDES-permitted facilities that discharge water into or adjacent to the coastal marine environment; (4) coastal urban development; (5) agriculture (including pesticide use, irrigation, and livestock farming); (6) oil and chemical spills and clean-up; (7) construction and operation of power plants; (8) construction and operation of tidal and wave energy projects; (9) construction and operation of liquefied natural gas (LNG) projects; and (10) mineral and petroleum exploration and extraction. The IRFA estimates the potential number of small businesses that may be affected by this rule, and the average annualized impact per entity for a given area and activity type. Specifically, based on an examination of the North American Industry Classification System (NAICS), this analysis classifies the potentially affected economic activities into industry sectors and provides an estimate of the number of small businesses affected in each sector based on the applicable NAICS codes.

The specific areas considered for designation as critical habitat, and hence the action area for this rule, span from the Del Mar Landing Ecological Reserve to Dana Point in California, including several offshore islands. Although the areas of concern include marine areas off the coast, the small business analysis is focused on land based areas where most economic activities occur and which could be affected by the designation.

Ideally, this analysis would directly identify the number of small entities that are located within the coastal areas adjacent to the specific areas. However, it is not possible to directly determine the number of firms in each industry sector within these areas because business activity data is maintained at the county level. Therefore, this analysis provides a maximum number of small businesses that could be affected. This number is most likely inflated since all of the identified small businesses are unlikely to be located in close proximity of the specific areas.

After determining the number of small entities, this analysis estimates the impact per entity for each area and industry sector. The following steps were used to provide these estimates: (1) Total impact for every area and activity type is determined based on the results presented in the draft economic report (NMFS, 2010a); (2) the proportion of businesses that are small is calculated for every area for every activity type; (3) the impact to small businesses for every area and activity type is estimated by multiplying the total impacts estimated for all businesses with the proportion of businesses that are determined to be small; and (4) the average impact per small businesses is estimated by taking the ratio of the total estimated impacts to the total number of small businesses.

There is a maximum of 3,671 small businesses involved in activities most likely to be affected by this rule. This is based on the assumption that all small businesses counted across areas and activity types are separate entities. However, it is likely that a particular small business may appear multiple times as being affected by conservation measures for multiple areas and activity types. Hence, total small business estimates across areas and activity types are likely to be overestimated. The potential annualized impacts borne by small entities were highest for specific area 10 (Montaña de Oro State Park to just south of Government Point) with potential costs as high as $75 million. This is mainly due to the impacts on the three facilities that are associated with power plants, which are estimated to be 97.5 percent of the total costs. It is important to note here that these costs area likely overestimated, due to the fact that the modification costs for power plants are based solely on the closed cooling system retrofit. Specific areas 3 (Farallon Islands), 4 (southern point at the mouth of San Francisco Bay to Moss Beach), and 2 (Bodega Head to Point Bonita) have potential annualized small business impacts of about $614,850, $407,050, and $325,300, respectively (NMFS, 2010a).

In accordance with the requirements of the RFA (as amended by SBREFA of 1996) this analysis considered various alternatives to the critical habitat designation for the black abalone. The alternative of not designating critical habitat for the black abalone was considered and rejected because such an approach does not meet the legal requirements of the ESA. We considered the alternative of designating all specific areas (i.e., no areas excluded); however, in one case, the benefits of excluding specific area 12 (Corona Del Mar to Dana Point) outweighed the benefits of including it in the designation. Thus, NMFS also considered the alternative of designating all specific areas, but excluding specific area 12. This alternative helps to reduce the number of small businesses potentially affected from 3,671 to 3,193; however, the total potential annualized economic impact to small businesses ($76,858,250; NMFS, 2010a) remains largely unchanged because the estimated annualized cost borne by small entities associated with specific area 12 was very low ($27,200; NMFS, 2010a) and only accounts for 0.04 percent of the total small business impacts.

E.O. 13211

On May 18, 2001, the President issued an Executive Order on regulations that significantly affect energy supply, distribution, and use. E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking an action expected to lead to the promulgation of a final rule or regulation that is a significant regulatory action under E.O. 12866 and is likely to have a significant adverse effect on the supply, distribution, or use of energy. An energy impacts analysis was prepared under E.O. 13211 and is available as part of the draft economic analysis report. The results of the analysis are summarized here, and more detail is provided in the NMFS draft economic report (NMFS, 2010a).

The Office of Management and Budget provides guidance for implementing this Executive Order, outlining nine outcomes that may constitute "a significant adverse effect" when compared with the regulatory action under consideration: (1) Reductions in crude oil supply in excess of 10,000 barrels per day (bbls); (2) reductions in fuel production in excess of 4,000 bbls; (3) reductions in coal production in excess of 5 million tons per year; (4) reductions in natural gas production in excess of 25 million cubic feet per year; (5) reductions in electricity production

in excess of 1 billion kilowatts-hours per year or in excess of 500 megawatts of installed capacity; (6) increases in energy use required by the regulatory action that exceed the thresholds above; (7) increases in the cost of energy production in excess of one percent; (8) increases in the cost of energy distribution in excess of one percent; or (9) other similarly adverse outcomes.

Of these, the most relevant criteria to this analysis are potential changes in natural gas and electricity production, as well as changes in the cost of energy production. Possible energy impacts may occur as the result of requested project modifications to power plants, tidal and wave energy projects, and LNG facilities. There is currently only one power plant, the Diablo Canyon Nuclear Power Plant (DCNPP), located within an area that could be affected by black abalone critical habitat. Future management and required project modifications for black abalone critical habitat related to power plants include: cooling of thermal effluent before release to the environment, treatment of any contaminated waste materials, retrofitting to a wet cooling system, and modifications associated with permits issued under NPDES. These modifications could affect energy production; however, the potential impact of possible black abalone conservation efforts on the project's energy production and the associated cost is unknown. DCNPP has a production capacity of 2,200 megawatts and therefore, if about half of this capacity is affected by black abalone critical habitat, it would be higher than the 500 megawatts of installed capacity threshold. It is unlikely that any project modifications would have a large impact on the amount of electricity produced. It is more likely that any additional cost of black abalone conservation efforts would be passed on to the consumer in the form of slightly higher energy prices. Without information about the effect of power plants on future electricity prices and more specific information about how recommended conservation measures for black abalone would affect electricity production, this analysis is unable to forecast potential energy impacts resulting from changes to power plants.

The number of future tidal and wave energy projects that will be constructed within the specific areas is unknown. Currently there are no actively-generating wave or tidal energy projects located within the study area. However, four projects have received preliminary permits from the Federal Energy Regulatory Commission (FERC).[1] Future management and required project modifications for black abalone critical habitat related to tidal and wave energy projects are uncertain and could vary widely in scope from project to project. Moreover, because the proposed projects are still in the preliminary stages, the potential impact of possible black abalone conservation efforts on the project's energy production and the associated cost of that energy are unclear. Proposed tidal and wave energy projects within the study area have a combined production capacity of 21 megawatts. It is more likely that any additional cost of black abalone conservation efforts would be passed on to the consumer in the form of slightly higher energy prices. That said, any increase in energy prices as a result of black abalone conservation would have to be balanced against changes in energy price resulting from the development of these projects. That is, the construction of tidal and wave energy projects may result in a general reduction in energy prices in affected areas. Without information about the effect of the tidal and wave projects on future electricity prices and more specific information about recommended conservation measures for black abalone, this analysis is unable to forecast potential energy impacts resulting from changes to tidal and wave energy projects.

Similar to tidal and wave energy projects, the number of future LNG projects that will be built within the specific areas is unknown. Many LNG projects are likely to be abandoned during the development stages for reasons unrelated to black abalone critical habitat. In addition, the potential impact of LNG facilities on black abalone habitat remains uncertain, as is the nature of any project modifications that might be requested to mitigate adverse impacts. Since there are no LNG projects in the development stage, the potential impact of possible black abalone conservation efforts on the project's energy production and the associated cost of that energy are unclear. Project modifications may include biological monitoring, spatial restrictions on project installation, and specific measures to prevent or respond to catastrophes. Out of these project modifications, spatial restrictions on project installation could have effects on energy production. This modification could increase LNG construction costs, which may result in higher natural gas costs. However, the construction of LNG facilities and associated increased energy supplies to consumers aim to generally result in lower energy prices than would have otherwise been expected. Therefore, this analysis is unable to forecast potential energy impacts resulting from changes to LNG projects without specific information about recommended black abalone conservation measures or future forecasts of energy prices that reflect future markets with increased energy supplies from LNG projects.

[1] FERC. Issued and Valid Hydrokinetic Projects Preliminary Permit. Accessed at: *http://www.ferc.gov/industries/hydropower/indus-act/hydrokinetics/permits-issued.xls* on April 5, 2010.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act, NMFS makes the following findings:

(A) This proposed rule would not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, tribal governments, or the private sector and includes both "Federal intergovernmental mandates" and "Federal private sector mandates." These terms are defined in 2 U.S.C. 658(5)–(7). "Federal intergovernmental mandate" includes a regulation that "would impose an enforceable duty upon State, local, or tribal governments" with two exceptions. It excludes "a condition of Federal assistance." It also excludes "a duty arising from participation in a voluntary Federal program," unless the regulation "relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority," if the provision would "increase the stringency of conditions of assistance" or "place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding" and the State, local, or tribal governments "lack authority" to adjust accordingly. "Federal private sector mandate" includes a regulation that "would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance; or (ii) a duty arising from participation in a voluntary Federal program." The designation of critical habitat does not impose an enforceable duty on non-Federal government entities or private parties. The only regulatory effect of a critical habitat designation is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under ESA section 7. Non-Federal entities that receive funding, assistance, or permits from Federal agencies, or otherwise require approval or authorization from a

Federal agency for an action may be indirectly affected by the designation of critical habitat. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply, nor would critical habitat shift the costs of the large entitlement programs listed above to state governments.

(B) Due to the prohibition against take of black abalone both within and outside of the designated areas, we do not anticipate that this proposed rule would significantly or uniquely affect small governments. As such, a Small Government Agency Plan is not required.

Takings

Under E.O. 12630, Federal agencies must consider the effects of their actions on constitutionally protected private property rights and avoid unnecessary takings of property. A taking of property includes actions that result in physical invasion or occupancy of private property, and regulations imposed on private property that substantially affect its value or use. In accordance with E.O. 12630, this proposed rule would not have significant takings implications. A takings implication assessment is not required. The designation of critical habitat affects only Federal agency actions. This proposed rule would not increase or decrease the current restrictions on private property concerning take of black abalone, nor do we expect the critical habitat designation to impose substantial additional burdens on land use or substantially affect property values. Additionally, the critical habitat designation would not preclude the development of Habitat Conservation Plans and issuance of incidental take permits for non-Federal actions. Owners of areas included within the proposed critical habitat designation would continue to have the opportunity to use their property in ways consistent with the survival of endangered black abalone.

Federalism

In accordance with E.O. 13132, we determined that this proposed rule would not have significant Federalism effects and that a Federalism assessment is not required. In keeping with Department of Commerce policies, we request information from, and will coordinate development of this proposed critical habitat designation with, appropriate state resource agencies in California. This designation may have some benefit to state and local resource agencies in that the areas essential to the conservation of the species are more clearly defined, and the PCEs of the habitat necessary for the survival of black abalone are specifically identified. While this designation would not alter where and what non-federally sponsored activities may occur, it may assist local governments in long-range planning.

Civil Justice Reform

In accordance with E.O. 12988, we have determined that this proposed rule would not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the E.O. We are proposing to designate critical habitat in accordance with the provisions of the ESA. This proposed rule uses standard property descriptions and identifies the PCEs within the designated areas to assist the public in understanding the habitat needs of black abalone.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This proposed rule does not contain new or revised information collections that require approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act. This proposed rule would not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations.

National Environmental Policy Act of 1969 (NEPA)

We have determined that an environmental analysis as provided for under the NEPA of 1969 for critical habitat designations made pursuant to the ESA is not required. See *Douglas County* v. *Babbitt,* 48 F.3d 1495 (9th Cir. 1995), cert. denied, 116 S.Ct 698 (1996).

Coastal Zone Management Act of 1972 (CZMA)

The CZMA emphasizes the primacy of state decision-making regarding the coastal zone. Section 307 of the CZMA (16 U.S.C. 1456), called the federal consistency provision, is a major incentive for states to join the national coastal management program and is a powerful tool that states use to manage coastal uses and resources and to facilitate cooperation and coordination with federal agencies.

Federal consistency is the CZMA requirement where federal agency activities that have reasonably foreseeable effects on any land or water use or natural resource of the coastal zone (also referred to as coastal uses or resources and coastal effects) must be consistent to the maximum extent practicable with the enforceable policies of a coastal state's federally approved coastal management program. We have determined that this proposed critical habitat designation is consistent to the maximum extent practicable with the enforceable policies of the approved Coastal Zone Management Program of California. This determination will be submitted for review by the California Coastal Commission.

Government-to-Government Relationship With Tribes

The longstanding and distinctive relationship between the Federal and tribal governments is defined by treaties, statutes, executive orders, judicial decisions, and agreements, which differentiate tribal governments from the other entities that deal with, or are affected by, the Federal government. This relationship has given rise to a special Federal trust responsibility involving the legal responsibilities and obligations of the United States toward Indian Tribes and the application of fiduciary standards of due care with respect to Indian lands, tribal trust resources, and the exercise of tribal rights. Pursuant to these authorities lands have been retained by Indian Tribes or have been set aside for tribal use. These lands are managed by Indian Tribes in accordance with tribal goals and objectives within the framework of applicable treaties and laws. E.O. 13175, Consultation and Coordination with Indian Tribal Governments, outlines the responsibilities of the Federal Government in matters affecting tribal interests. There is a broad array of activities on Indian lands that may trigger ESA section 7 consultations. As described in the section above titled "Exclusions Based on Impacts on Indian Lands," we have not identified any tribal lands that overlap with the proposed critical habitat designation for black abalone.

References Cited

A complete list of all references cited herein is available upon request (see **ADDRESSES** section) or via our Web site at *http://swr.nmfs.noaa.gov.*

List of Subjects in 50 CFR Part 226

Endangered and threatened species.

Dated: September 20, 2010.

Eric C. Schwaab,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, this proposed rule proposes to amend part 226, title 50 of the Code

of Federal Regulations as set forth below:

PART 226—DESIGNATED CRITICAL HABITAT

1. The authority citation of part 226 continues to read as follows:

Authority: 16 U.S.C. 1533.

2. Add § 226.220, to read as follows:

§ 226.220 Critical habitat for black abalone (Haliotis cracherodii).

Critical habitat is designated for black abalone as described in this section. The textual descriptions of critical habitat in this section are the definitive source for determining the critical habitat boundaries. The overview maps are provided for general guidance purposes only and not as a definitive source for determining critical habitat boundaries.

(a) *Critical habitat boundaries.*

(1) *Coastal Marine Areas:* Each coastal marine area below is defined by four latitude and longitude coordinates that set the northern, southern, seaward and shoreward boundaries for the critical habitat designation for black abalone in U.S. coastal marine waters. The northern boundary is the straight line between the northern seaward and shoreward coordinates and the southern boundary is the straight line between the southern seaward and shoreward coordinates. The seaward boundary extends offshore to the 6 m depth bathymetry line (relative to mean lower low water) between the northern seaward and southern seaward coordinates and the shoreward boundary is the line that marks mean higher high water between the northern shoreward and southern shoreward coordinates. Critical habitat only includes rocky intertidal habitats to a depth of 6 m.

(i) *Del Mar Landing Ecological Reserve to Bodega Head, Sonoma County, California:* northern seaward coordinates: 38°44′25.04″ N, 123°30′52.067″ W; northern shoreward coordinates: 38°44′25.948″ N, 123°30′19.175″ W; southern seaward coordinates: 38°18′38.623″ N, 123°4′21.549″ W; southern shoreward coordinates: 38°18′39.478″ N, 123°4′7.573″ W.

(ii) *Bodega Head, Sonoma County, California to Point Bonita, Marin County, California:* northern seaward coordinates: 38°18′38.623″ N, 123°4′21.549″ W; northern shoreward coordinates: 38°18′39.478″ N, 123°4′7.573″ W; southern seaward coordinates: 37°49′3.404″ N, 122°31′56.339″ W; southern shoreward coordinates: 37°49′3.082″ N, 122°31′50.549″ W.

(iii) *South of San Francisco Bay to Moss Beach, San Mateo County, California:* northern seaward coordinates: 37°47′17.078″ N, 122°31′13.59″ W; northern shoreward coordinates: 37°47′17.524″ N, 122°30′21.458″ W; southern seaward coordinates: 37°30′11.763″ N, 122°30′35.06″ W; southern shoreward coordinates: 37°30′12.815″ N, 122°30′2.083″ W.

(iv) *Moss Beach to Pescadero State Beach, San Mateo County, California:* northern seaward coordinates: 37°30′11.763″ N, 122°30′35.06″ W; northern shoreward coordinates: 37°30′12.815″ N, 122°30′2.083″ W; southern seaward coordinates: 37°16′42.635″ N, 122°24′52.453″ W; southern shoreward coordinates: 37°16′45.728″ N, 122°24′32.42″ W.

(v) *Just north of Pescadero State Beach, San Mateo County, California to Natural Bridges State Beach, Santa Cruz County, California:* northern seaward coordinates: 37°16′42.635″ N, 122°24′52.453″ W; northern shoreward coordinates: 37°16′45.728″ N, 122°24′32.42″ W; southern seaward coordinates: 36°57′11.547″ N, 121°58′36.276″ W; southern shoreward coordinates: 36°57′15.208″ N, 121°58′31.424″ W.

(vi) *Pacific Grove to Prewitt Creek, Monterey County, California:* northern seaward coordinates: 36°36′41.16″ N, 121°53′30.453″ W; northern shoreward coordinates: 36°36′41.616″ N, 121°53′47.763″ W; southern seaward coordinates: 35°56′5.324″ N, 121°28′45.131″ W; southern shoreward coordinates: 35°56′6.025″ N, 121°28′34.36″ W.

(vii) *Prewitt Creek, Monterey County, California to Cayucos, San Luis Obispo County, California:* northern seaward coordinates: 35°56′5.324″ N, 121°28′45.131″ W; northern shoreward coordinates: 35°56′6.025″ N, 121°28′34.36″ W; southern seaward coordinates: 35°26′22.887″ N, 120°54′6.264″ W; southern shoreward coordinates: 35°26′23.708″ N, 120°53′39.427″ W.

(viii) *Montaña de Oro State Park in San Luis Obispo County, California to just south of Government Point, Santa Barbara County, California:* northern seaward coordinates: 35°17′15.72″ N, 120°53′30.537″ W; northern shoreward coordinates: 35°17′15.965″ N, 120°52′59.583″ W; southern seaward coordinates: 34°27′12.95″ N, 120°22′10.341″ W; southern shoreward coordinates: 34°27′25.11″ N, 120°22′3.731″ W.

(ix) *Palos Verdes Peninsula extending from the Palos Verdes/Torrance border to Los Angeles Harbor in southwestern Los Angeles County, California:* northern seaward coordinates: 33°48′22.604″ N, 118°24′3.534″ W; northern shoreward coordinates: 33°48′22.268″ N, 118°23′35.504″ W; southern seaward coordinates: 33°42′10.303″ N, 118°16′50.17″ W; southern shoreward coordinates: 33°42′25.816″ N, 118°16′41.059″ W.

(2) *Coastal Islands:* The black abalone critical habitat areas surrounding the coastal islands listed below are defined by a seaward boundary that extends offshore to the 6m depth bathymetry line (relative to mean lower low water), and a shoreward boundary that is the line marking mean higher high water. Critical habitat only includes rocky intertidal habitats to a depth of 6 m.

(i) *Farallon Islands, San Francisco County, California.*

(ii) *Año Nuevo Island, San Mateo County, California.*

(iii) *San Miguel Island, Santa Barbara County, California.*

(iv) *Santa Rosa Island, Santa Barbara County, California.*

(v) *Santa Cruz Island, Santa Barbara County, California.*

(vi) *Anacapa Island, Ventura County, California.*

(vii) *San Nicolas Island, Ventura County, California.*

(viii) *Santa Barbara Island, Santa Barbara County, California.*

(ix) *Santa Catalina Island, Los Angeles County, California.*

(x) *San Clemente Island, Los Angeles County, California.*

(b) *Primary constituent elements.* The primary constituent elements essential for the conservation of the black abalone are:

(1) *Rocky substrate.* Suitable rocky substrate includes rocky benches formed from consolidated rock of various geological origins (e.g., igneous, metamorphic, and sedimentary) that contain channels with macro- and micro-crevices or large boulders (greater than or equal to 1 m in diameter) and occur from mean higher high water (MHHW) to a depth of 6 m. All types of relief (high, medium and low; 0.5 to greater than 2 m vertical relief) support black abalone.

(2) *Food resources.* Abundant food resources including bacterial and diatom films, crustose coralline algae, and a source of detrital macroalgae, are required for growth and survival of all stages of black abalone. The primary macroalgae consumed by juvenile and adult black abalone are giant kelp (*Macrocystis pyrifera)* and feather boa kelp (*Egregia menziesii)* in southern California (i.e., south of Point Conception) habitats, and bull kelp (*Nereocystis leutkeana)* in central and

northern California habitats (i.e., north of Santa Cruz). Southern sea palm (*Eisenia arborea),* elk kelp (*Pelagophycus porra),* stalked kelp (*Pterygophora californica),* and other brown kelps (*Laminaria sp.)* may also be consumed by black abalone.

(3) *Juvenile settlement habitat.* Rocky intertidal habitat containing crustose coralline algae and crevices or cryptic biogenic structures (e.g., urchins, mussels, chiton holes, conspecifics, anemones) is important for successful larval recruitment and juvenile growth and survival of black abalone less than approximately 25 mm shell length. Adult abalone may facilitate larval settlement and metamorphosis by, grazing down algal competitors and thereby promoting the maintenance of substantial substratum cover by crustose coralline algae, outcompeting encrusting sessile invertebrates (e.g., tube worms and tube snails) for space and thereby promoting the maintenance of substantial substratum cover by crustose coralline algae as well as creating space for settling abalone, and emitting chemical cues that may induce settlement of abalone larvae.

(4) *Suitable water quality.* Suitable water quality includes temperature (i.e., tolerance range: 12 to 25 °C, optimal range: 18 to 22 °C), salinity (i.e., 30 to 35 ppt), pH (i.e., 7.5 to 8.5), and other chemical characteristics necessary for normal settlement, growth, behavior, and viability of black abalone.

(5) *Suitable nearshore circulation patterns.* Suitable circulation patterns are those that retain eggs, sperm, fertilized eggs and ready-to-settle larvae within 100 km from shore so that successful fertilization and settlement to shallow intertidal habitat can take place.

(c) Overview maps of black abalone critical habitat follow:

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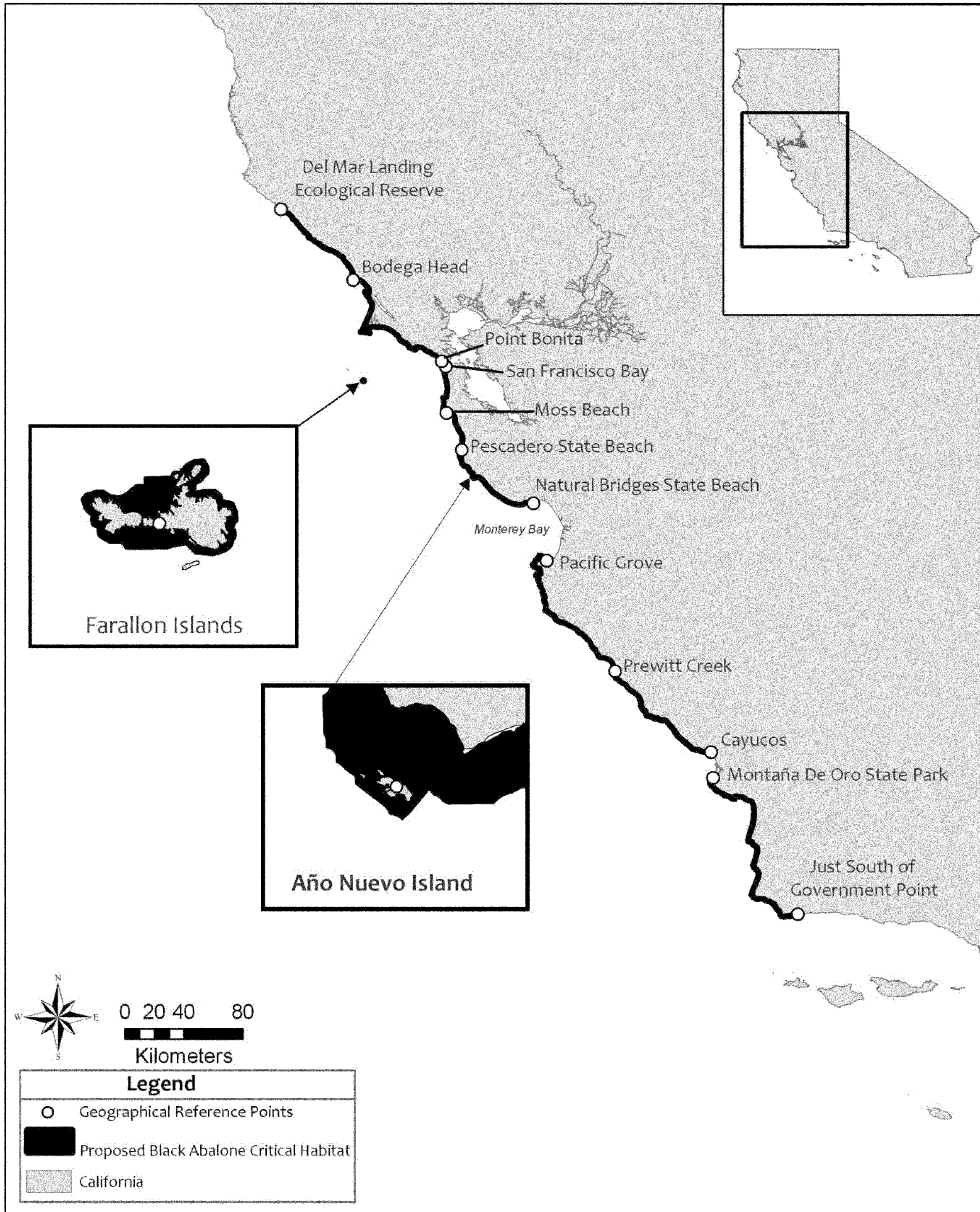
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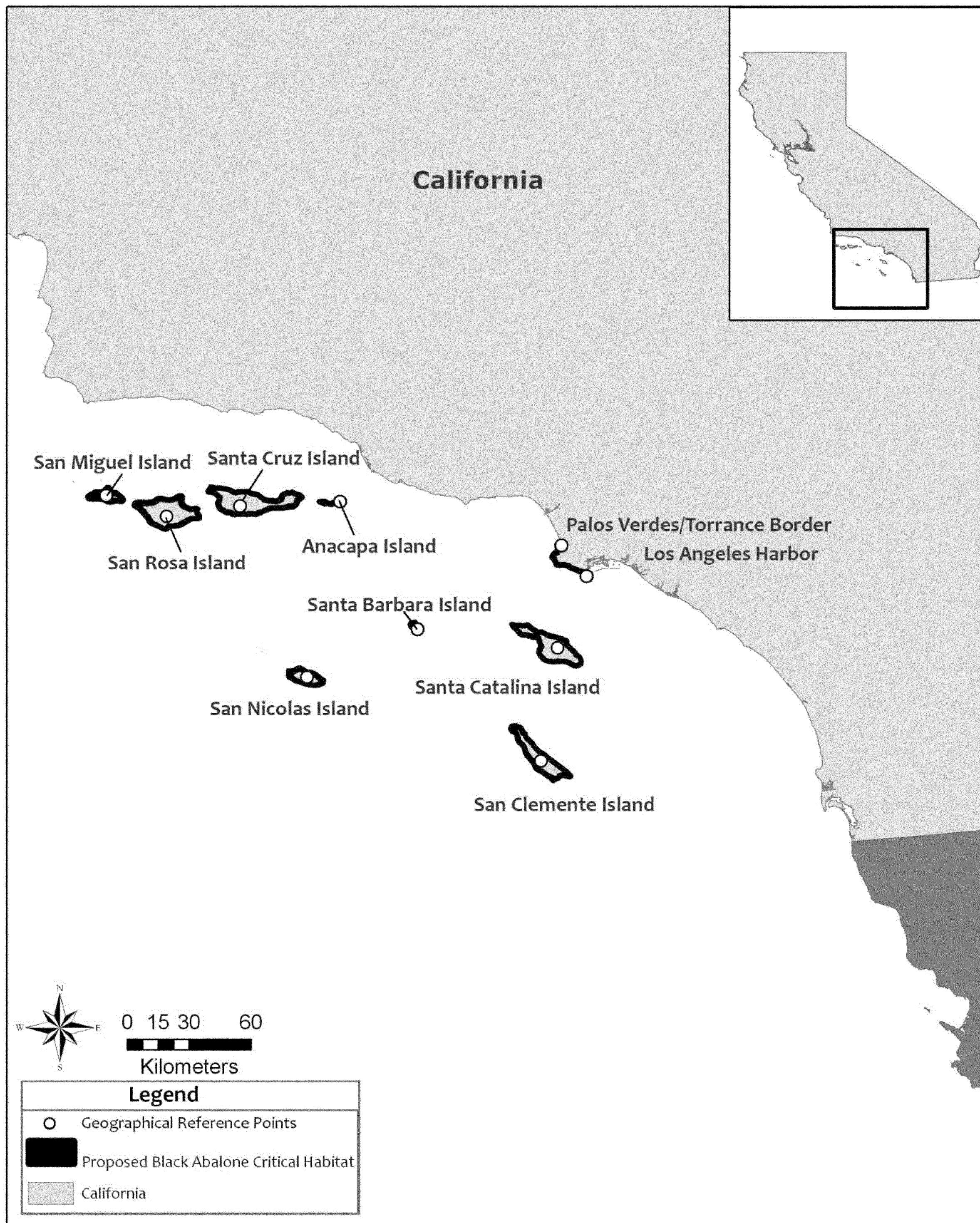
Proposed Black Abalone Critical Habitat
California



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H.R. 511/P.L. 111–231
To authorize the Secretary of Agriculture to terminate certain easements held by the Secretary on land owned by the Village of Caseyville, Illinois, and to terminate associated contractual arrangements with the Village. (Aug. 16, 2010; 124 Stat. 2489)

H.R. 2097/P.L. 111–232
Star-Spangled Banner Commemorative Coin Act (Aug. 16, 2010; 124 Stat. 2490)

H.R. 3509/P.L. 111–233
Agricultural Credit Act of 2010 (Aug. 16, 2010; 124 Stat. 2493)

H.R. 4275/P.L. 111–234
To designate the annex building under construction for the Elbert P. Tuttle United States Court of Appeals Building in Atlanta, Georgia, as the ''John C. Godbold Federal Building''. (Aug. 16, 2010; 124 Stat. 2494)

H.R. 5278/P.L. 111–235
To designate the facility of the United States Postal Service located at 405 West Second Street in Dixon, Illinois, as the ''President Ronald W. Reagan Post Office Building''. (Aug. 16, 2010; 124 Stat. 2495)

H.R. 5395/P.L. 111–236
To designate the facility of the United States Postal Service located at 151 North Maitland Avenue in Maitland, Florida, as the ''Paula Hawkins Post Office Building''. (Aug. 16, 2010; 124 Stat. 2496)

H.R. 5552/P.L. 111–237
Firearms Excise Tax Improvement Act of 2010 (Aug. 16, 2010; 124 Stat. 2497)

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