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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 91

[Document Number AMS–ST–09–0016]

RIN 0581–AC98

Changes in Hourly Fee Rates for Science and Technology Laboratory Services—Fiscal Years 2010–2012

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Agricultural Marketing Service (AMS) is changing the annual standard, appeal, overtime, and holiday hourly fee rates for fiscal years 2010–2012 for Science and Technology (S&T) Laboratory Services in order to recover anticipated laboratory program costs. The Agency is raising these rates to reflect, among other factors, national and locality pay increases for Federal employees and inflation, operating costs, instrumentation and training, equipment maintenance costs, and program and agency administrative overhead costs. The regulations are updated to identify existing S&T facility addresses. This action also includes changes to provide greater clarity of reported test analyses and laboratory determinations.

DATES: Effective April 7, 2010.

FOR FURTHER INFORMATION CONTACT: James V. Falk, Staff Scientist, or Dr. Robert L. Epstein, Deputy Administrator, Science and Technology Programs, Agricultural Marketing Service, United States Department of Agriculture, Mail Stop 0270, 1400 Independence Avenue, SW., Washington, DC 20250–0270, telephone number (202) 720–5231; fax (202) 720–6496, or Internet: *http://www.regulations.gov* or e-mail: *James.falk@ams.usda.gov* or *Robert.epstein@ams.usda.gov.*

SUPPLEMENTARY INFORMATION:

Background

Science and Technology (S&T) Programs has been performing voluntary laboratory services under the Agricultural Marketing Act of 1946 (AMA), as amended (7 U.S.C. 1621–1627), for the AMS commodity programs (Fruit and Vegetable, Cotton and Tobacco, Livestock and Seed, Poultry, and Dairy) and applicable stakeholders in these industries since its inception on August 17, 1988. Before that time, voluntary laboratory testing was provided for on a separate user fee basis under the various AMS commodity programs. The current standard hourly rate of $67.00, the appeal or overtime hourly rate of $78.00 and the holiday hourly rate of $89.00 have been in effect since the March 30, 2007 final rule (72 FR 15011) was published. The standard fee rate for laboratory services will be $78.00 per hour for the remainder of fiscal year 2010, and will increase to $81.00 per hour in fiscal year 2011, and $83.00 per hour in fiscal year 2012. The appeal and overtime hourly fee rate for laboratory services outside the normal business hours will also be adjusted to $93 for the remainder of FY 2010, to $96 in FY 2011, and to $99 in FY 2012. The holiday hourly fee rate for laboratory services during designated federal holidays will be increased to $108 for the rest of FY 2010, to $111 in FY 2011, and to $115 in FY 2012. An increase in the premium hourly rates over the three fiscal years for laboratory services performed on appeal samples, overtime basis, and holidays is also needed since Science and Technology laboratory personnel may be required to work extended hours of service at the time and a half pay or the double hourly pay on legal holidays to accommodate clients. This is due to stakeholder demand for immediate test results. Generally, the processing of all laboratory samples is continuous over a 24/7 timeframe due to the recent introduction of automated devices on several sample process equipment and analytical instruments. The AMA authorizes the Secretary of Agriculture to provide Federal analytical testing services that facilitate domestic marketing and international trade. In addition, consumers may be able to determine the quality and wholesomeness characteristics of a commodity or product through laboratory testing. This allows agricultural products to be assigned official AMS grade designations or to meet specifications. The AMA also requires that reasonable fees be collected from the users of the voluntary services to cover as nearly as possible the costs of maintaining the laboratory programs.

The Agency will recover the actual cost of services for multiple fiscal years (FY 2010 through FY 2012) with the new hourly fee rates covered by this rule. This rule will amend its regulations to identify the updated and existing S&T Programs' facility addresses. It clarifies that results of analyses and laboratory determinations provided by AMS laboratory services apply only to the submitted samples and do not represent the quality; condition or disposition of the lot from which each sample was taken.

Federal salaries with national and locality pay adjustments and choices in benefits are made available on an annual basis by the Office of Personnel Management (OPM). Operational costs include expenses for rents, communications, utilities, medical examinations, safety equipment, sample preparation equipment, training, trash and hazardous waste disposal, travel and transportation costs. There have been certain large capital improvement expenditures in the laboratories in recent years due to unfunded legal mandates. These expenditures include costs for the counter-terrorism Food Emergency Response Network (FERN) and the capital improvements for the Environmental Management Systems (EMS) in accordance with the applicable mandates for Federal laboratories of Executive Order 13423 of January 24, 2007, Strengthening Federal Environmental, Energy, and Transportation Management (72 FR 3919). These capital improvement costs are included in the normal operations of the Science and Technology field service laboratories. In addition, operational costs include expenses for office and laboratory supplies, chemicals, reagents, hazardous waste removal, and a Laboratory Information Management System (LIMS). Infrastructure costs are mainly

laboratory instruments and capital equipment with service and maintenance contracts and replacement spare parts. Infrastructure expenses include consumable supply costs associated directly with the proper operation of analytical instruments and laboratory equipment. Stakeholders demand that AMS provide cost effective and timely product testing requiring modern and sometimes automated instrumentation. These instruments are expensive and undergo equipment capitalization for determining costs. Equipment capitalization is the determined cost per year to replace the equipment after its useful service life has been established. Agency overhead is the pro-rated share, attributable to a particular service, of the agency's management and support costs. Overhead expenditures are allocated across the Agency for each direct hour of laboratory service.

With this rulemaking, there will be essentially three standard hourly fee rate increases established for the basic laboratory services—$67 to $78 per hour or 16.4 percent for the rest of fiscal year 2010, $78 to $81 per hour or 3.8 percent in fiscal year 2011 and $81 to $83 per hour or 2.5 percent in fiscal year 2012. The rate increases for overtime and appeals will be $78 to $93 per hour or 19.2 percent, $93 to $96 per hour or 3.2 percent, and $96 to $99 per hour or 3.1 percent in fiscal years 2010, 2011, and 2012, respectively. The rate increases for legal holiday service will be $89 to $108 per hour or 21.3 percent, $108 to $111 per hour or 2.8 percent, and $111 to $115 per hour or 3.6 percent in fiscal years 2010, 2011, and 2012, respectively. This is a voluntary program and the costs to each user will increase proportionally to their use of laboratory services each fiscal year. The increased fees will cover inflation and national and locality pay raises but will not support any new budgetary initiative. The revised hourly fee rates will apply to voluntary laboratory services that are provided for five types of analytical testing: microbiological, physical, residue chemistry, proximate analysis for composition, and biomolecular (DNA-based) testing. A user fee system, using set hourly rates for three fiscal years, will be established by this rulemaking to ensure that AMS properly recovers its full costs for providing voluntary laboratory services in a timely manner, and that all stakeholders have advance notice of their estimated laboratory fees so that they can make reasonable cost assumptions when formulating their annual budgets.

The largest cost of operations for the AMS laboratory programs is payroll and employee benefits. This obligation is projected to amount to $3,848,000 or 57.6 percent of the total laboratory costs for FY 2010. Recent cross-training of the employees in the laboratories has resulted in the reduction of staff from 67 individuals in FY 2007 to 50 current individuals in FY 2009 as ongoing efforts to limit program costs are implemented. AMS calculated its projected increases in salaries and inflation in fiscal years 2010 through 2012. The estimate for increases in salaries for fiscal year 2009 as the base year and the succeeding years are from the Office of Management and Budget's (OMB) "Federal Pay Raise Assumptions" table. The fiscal year pay adjustments are increased by 3 percent in the following tables of calculated proposed new hourly fee rates for laboratory program services for FY 2010 through FY 2012. The OMB Federal pay rise assumptions (including geographical pay differentials) state that in the development of civilian government personnel costs a yearly percentage (3%) increase shall be used. This information comes from the table, "Federal Pay Raise Assumptions", of the Office of Management and Budget's Fiscal Year 2007 Budget and beyond which is available at *http://www.whitehouse.gov/omb/memoranda/fy2007/m07-02.pdf.*

Inflation for FY 2010 and subsequent years is estimated to be 3.5 percent. In Tables 2 through 10 below a yearly 3.5 percent inflation rate is used in the calculations for hourly fee rate determinations for laboratory program services because the 2007 annual average for the base Consumer Price Index for all Urban Consumers (CPI–U): U.S. city average for service costs is listed as *246.848* in Table 3A. of the referenced website and there is a most recent annual average increase of 3.5% to *255.498* for the CPI–U provided for the change in service costs. This estimate for inflation percent (3.5%) can be obtained from Table 3A, "Consumer Price Index for all Urban Consumers (CPI–U): U.S. city average, detailed expenditure categories", which is available at *http://www.bls.gov/cpi/cpid08av.pdf.*

The Agency will initiate, when necessary, another rulemaking to adjust any fee established, if estimated increases for pay and inflation do not adequately cover the Agency's costs of providing the services. The cost of providing laboratory services includes both direct and not explicit overhead costs. Direct costs include the cost of salaries, employee benefits, operation costs, equipment service and replacements, security, training needs, and infrastructure cost. The Agency is able to estimate the employee benefits attributable to overtime work and has included these in the fee rate calculations.

The current and new fees for standard, appeal, overtime and legal holiday voluntary laboratory services are listed by type of service in Table 1 below. The first increases ranging from 16.4 to 21.3 percent, from the current rates to the fiscal year 2010 rates, are larger than the subsequent 2011 and 2012 fiscal year increases (2.5 to 3.8 percent range) because these are the first amended hourly rate increases since last set on March 30, 2007. Therefore, it includes the actual increases in salaries and inflation that have occurred since that date. It also reflects changes in personnel numbers and the promotions and within-grade pay step increases for General Schedule (GS) salaries granted worthy employees, and new employee position pay costs.

With this action, the AMS will amend its regulations to provide for three annual differing fee increases in one action. Table 1 shows the summary of the current rates and the revised hourly fee rates for fiscal years 2010 through 2012 for the four different types of services (regular laboratory, appeal, overtime, and legal holiday work) that Science and Technology Programs employees perform.

TABLE 1—CURRENT AND NEW HOURLY FEE RATES (PER HOUR) BY TYPE OF SERVICE

Service	Current rate	FY 2010 rate [1]	FY 2011 rate [2]	FY 2012 rate [3]
Laboratory	$67.00	$78.00	$81.00	$83.00
Appeal	78.00	93.00	96.00	99.00
Overtime	78.00	93.00	96.00	99.00
Legal Holiday	89.00	108.00	111.00	115.00

[1 2 3] Hourly values for FY 2010–FY 2012 are rounded off to nearest whole dollar.

With this action, the AMS will amend its regulations to provide for three annual fee increases in one action. In AMS's analysis of projected costs set forth in Tables 2 through 10 below, AMS has identified the basis for the increases in the cost of voluntary hourly fee rates for laboratory services for fiscal year 2010 through fiscal year 2012. These fee increases are essential for the continued sound financial management of the Agency's budget. In order to enhance the transparency of the hourly fee rates in the aforementioned Tables 2 through 10 for fiscal year 2010, fiscal year 2011 and fiscal year 2012, a description is provided of each fee charge category.

TABLE 2—CALCULATIONS FOR THE STANDARD HOURLY RATE FOR LABORATORY PROGRAM SERVICES FOR THE REMAINDER OF FY 2010

Laboratory services	Apportioned fee rate
Base Time:	
Actual FY 2009 Salaries [1] @ $3,029,744	$29.13
FY 2010 Pay Adjustment [2] = [Actual FY 2009 Salaries ($29.13)] × 0.03(3%)	0.87
Benefits [3]	6.99
Operational Costs [4]	22.38
Infrastructure Cost [5]	13.08
Agency Overhead [6]	4.81
FY 2010 Inflation [7] (3.5%) = [Costs excluding infrastructure and payroll = $34.18] × 0.035	1.20
Total Rate Per Hour—Base Time	78.46

[1] Actual cost of FY 2009 salaries ($3,029,744) ÷ (2,080 program hours times 50 program employees) = $29.13 unit cost.
[2] Actual cost of FY 2010 pay adjustment ($90,892) ÷ (2,080 program hours times 50 program employees) = $0.87 unit cost.
[3] Actual cost of benefits ($727,364) ÷ (2,080 program hours times 50 program employees) = $6.99 unit cost.
[4] Actual cost of operational costs ($2,328,000) ÷ (2,080 program hours times 50 program employees) = $22.38 unit cost.
[5] Actual cost of infrastructure ($1,360,000) ÷ (2,080 program hours times 50 program employees) = $13.08 unit cost.
[6] Actual cost of Agency overhead ($500,000) ÷ (2,080 program hours times 50 program employees) = $4.81 unit cost.
[7] Cost of FY 2010 Inflation ($125,000) ÷ (2,080 program hours times 50 program employees) = $1.20 unit cost.

In order to project the hourly fee rates for the laboratory program services for fiscal years 2010 through 2012, the last fiscal year 2009 is used as a base. The total base time hourly fee rate calculation (Table 2) for fiscal year 2010 begins with the actual salaries for fiscal year 2009 ($3,029,744) and adds the fiscal year 2010 projected pay adjustments (3 percent) and the fiscal year 2010 cost of employee benefits ($727,364). Table 2 contains footnotes 1–7 that provide the common mathematical formula used to calculate the apportioned rate for each fee charge category for fiscal year 2010. The formula uses the actual cost or projected cost in dollars for the applicable fiscal year for each individual fee charge category divided by the available program hours (2,080 hours) and further divided by the number of laboratory service program employees (50 people). The formula derives the apportioned fee rate for each fee charge category (salaries with pay adjustment, benefits, operational costs, infrastructure cost, agency overhead and inflation factor at 3.5 percent rate). The same formula that is used in Table 2 and that is indicated in its footnotes is also applied in the other tables to derive each category unit rate with the different actual costs or variable projected costs to be inserted in the formula equation for the applicable fiscal year. See Table 3 through Table 10 below for additional new hourly fee rate calculations for laboratory program services for the remainder of fiscal year 2010 and fiscal years 2011 through 2012 to be rounded off to whole number dollar amounts.

Table 3 through Table 4 shows the calculations of the total standard hourly fee rates to be rounded off to $81 and $83 for fiscal years 2011 through 2012, respectively.

TABLE 3—CALCULATIONS FOR THE STANDARD HOURLY RATE FOR LABORATORY PROGRAM SERVICES FOR FY 2011

Laboratory services	Apportioned fee rate
Base Time:	
Projected FY 2010 Salaries = Actual FY 2009 ($29.13) + FY 2010 Pay Adjustment ($0.87)	$30.00
FY 2011 Pay Adjustment = [FY 2010 Salaries ($30.00)] × 0.03(3%)	0.90
Benefits	6.99
Operational Costs	22.38
Infrastructure Cost	13.08
Agency Overhead	4.81
FY 2010 Inflation (3.5%) = [Costs excluding infrastructure and payroll = $34.18] × 0.035	1.20
FY 2011 Inflation (3.5%) = [Costs excluding infrastructure and payroll = $34.18] × 0.035	1.20
Total Rate Per Hour—Base Time	80.56

TABLE 4—CALCULATIONS FOR THE STANDARD HOURLY RATE FOR LABORATORY PROGRAM SERVICES FOR FY 2012

Laboratory services	Apportioned fee rate
Base Time:	
Projected FY 2011 Salaries = FY 2010 ($30.00) + FY 2011 Pay Adjustment ($0.90)	$30.90

TABLE 4—CALCULATIONS FOR THE STANDARD HOURLY RATE FOR LABORATORY PROGRAM SERVICES FOR FY 2012—Continued

Laboratory services	Apportioned fee rate
FY 2012 Pay Adjustment = [FY 2011 Salaries ($30.90)] × 0.03(3%)	0.93
Benefits	6.99
Operational Costs	22.38
Infrastructure Cost	13.08
Agency Overhead	4.81
FY 2010 Inflation (3.5%) = [Costs excluding infrastructure and payroll = $34.18] × 0.035	1.20
FY 2011 Inflation (3.5%) = [Costs excluding infrastructure and payroll = $34.18] × 0.035	1.20
FY 2012 Inflation (3.5%) = [Costs excluding infrastructure and payroll = $34.18] × 0.035	1.20
Total Rate Per Hour—Base Time	82.69

Table 5 through Table 7 shows the calculations of the total appeal and total overtime hourly fee rates to be rounded off to whole dollar amounts for the remainder of fiscal year 2010 and fiscal years 2011 through 2012. These tables incorporate the differentials in costs associated with the necessity of laboratory personnel to work extended hours of service at the time and a half pay carrying out either overtime or appeal sample testing. Federal employee rates of premium pay are described in part 551 of Title 5 of the Code of Federal Regulations (CFR) for the Office of Personnel Management (OPM). Section 551.512(a) specifies that Federal employees are entitled to receive overtime premium pay, when overtime work is performed, at one and one-half times the employee's hourly rate of basic pay.

TABLE 5—CALCULATIONS FOR THE APPEAL AND OVERTIME HOURLY RATES FOR LABORATORY PROGRAM SERVICES FOR THE REMAINDER OF FY 2010

Laboratory services	Apportioned fee rate
Appeal and Overtime Rates: Projected Salaries @ 1.5 (time and a half)	
FY 2009 Salaries @ 1.5 = [Actual 2009 Salaries ($29.13)] × 1.5	$43.70
FY 2010 Pay Adjustment = FY 2009 Salaries @ 1.5 ($43.70) × 0.03 (3%)	1.31
Benefits	6.99
Operational Costs	22.38
Infrastructure Cost	13.08
Agency Overhead	4.81
FY 2010 Inflation (3.5%) = [Costs excluding infrastructure and payroll = $34.18] × 0.035	1.20
Total Rate Per Hour—Appeal and Overtime	93.47

TABLE 6—CALCULATIONS FOR THE APPEAL AND OVERTIME HOURLY RATES FOR LABORATORY PROGRAM SERVICES FOR FY 2011

Laboratory services	Apportioned fee rate
Appeal and Overtime Rates: Projected Salaries @ 1.5 (time and a half)	
FY 2010 Salaries @ 1.5 = [Actual FY 2009 Salaries ($29.13) + FY 2010 Pay Adjustment ($0.87)] × 1.5	$45.00
FY 2011 Pay Adjustment = FY 2010 Salaries @ 1.5 ($45.00) × 0.03 (3%)	1.35
Benefits	6.99
Operational Costs	22.38
Infrastructure Cost	13.08
Agency Overhead	4.81
FY 2010 Inflation (3.5%)	1.20
FY 2011 Inflation (3.5%) = [Costs excluding infrastructure and payroll = $34.18] × 0.035	1.20
Total Rate Per Hour—Appeal and Overtime	96.01

TABLE 7—CALCULATIONS FOR THE APPEAL AND OVERTIME HOURLY RATES FOR LABORATORY PROGRAM SERVICES FOR FY 2012

Laboratory services	Apportioned fee rate
Appeal and Overtime Rates: Projected Salaries @ 1.5 (time and a half)	
FY 2011 Salaries @ 1.5 = [Projected FY 2010 Salaries ($30.00) + FY 2011 Pay Adjustment ($0.90)] × 1.5	$46.35
FY 2012 Pay Adjustment = FY 2011 Salaries @ 1.5 ($46.35) × 0.03 (3%)	1.39
Benefits	6.99

TABLE 7—CALCULATIONS FOR THE APPEAL AND OVERTIME HOURLY RATES FOR LABORATORY PROGRAM SERVICES FOR FY 2012—Continued

Laboratory services	Apportioned fee rate
Operational Costs	22.38
Infrastructure Cost	13.08
Agency Overhead	4.81
FY 2010 Inflation (3.5%)	1.20
FY 2011 Inflation (3.5%)	1.20
FY 2012 Inflation (3.5%) = [Costs excluding infrastructure and payroll = $34.18] × 0.035	1.20
Total Rate Per Hour—Appeal and Overtime	98.60

Table 8 through Table 10 shows the calculations of the total legal holiday hourly fee rates to be rounded off to whole dollar amounts for the remainder of fiscal year 2010 and fiscal years 2011 through 2012. These tables incorporate the differentials in costs associated with the necessity of laboratory personnel to work extended hours of service at the double hourly pay rate doing sample testing on a Federal holiday or a designated day for the Federal holiday. Accordingly, 5 CFR, part 532, section 532.507(a) specifies that Federal employees are entitled to receive holiday premium pay, which is not overtime work, at double the employee's hourly rate of basic pay.

TABLE 8—CALCULATIONS FOR THE FEDERAL HOLIDAY HOURLY RATE FOR LABORATORY PROGRAM SERVICES FOR THE REMAINDER OF FY 2010

Laboratory services	Apportioned fee rate
Holiday Rate: Projected Salaries @ 2.0 (double time)	
FY 2009 Salaries @ 2.0 = [Actual 2009 Salaries ($29.13)] × 2.0	$58.26
FY 2010 Pay Adjustment = FY 2009 Salaries @ 2.0 ($58.26) × 0.03 (3%)	1.75
Benefits	6.99
Operational Costs	22.38
Infrastructure Cost	13.08
Agency Overhead	4.81
FY 2010 Inflation (3.5%) = [Costs excluding infrastructure and payroll = $34.18] × 0.035	1.20
Total Rate Per Hour—Holidays	108.47

TABLE 9—CALCULATIONS FOR THE FEDERAL HOLIDAY HOURLY RATE FOR LABORATORY PROGRAM SERVICES FOR FY 2011

Laboratory services	Apportioned fee rate
Holiday Rate: Projected Salaries @ 2.0 (double time)	
FY 2010 Salaries @ 2.0 = [Actual FY 2009 Salaries ($29.13) + FY 2010 Pay Adjustment ($0.87)] × 2.0	$60.00
FY 2011 Pay Adjustment = FY 2010 Salaries @ 2.0 ($60.00) × 0.03 (3%)	1.80
Benefits	6.99
Operational Costs	22.38
Infrastructure Cost	13.08
Agency Overhead	4.81
FY 2010 Inflation (3.5%)	1.20
FY 2011 Inflation (3.5%) = [Costs excluding infrastructure and payroll = $34.18] × 0.035	1.20
Total Rate Per Hour—Holidays	111.46

TABLE 10—CALCULATIONS FOR THE FEDERAL HOLIDAY HOURLY RATE FOR LABORATORY PROGRAM SERVICES FOR FY 2012

Laboratory services	Apportioned fee rate
Holiday Rate: Projected Salaries @ 2.0 (double time)	
FY 2011 Salaries @ 2.0 = [Projected FY 2010 Salaries ($30.00) + FY 2011 Pay Adjustment ($0.90)] × 2.0	$61.80
FY 2012 Pay Adjustment = FY 2011 Salaries @ 2.0 ($61.80) × 0.03 (3%)	1.85
Benefits	6.99
Operational Costs	22.38
Infrastructure Cost	13.08
Agency Overhead	4.81
FY 2010 Inflation (3.5%)	1.20

TABLE 10—CALCULATIONS FOR THE FEDERAL HOLIDAY HOURLY RATE FOR LABORATORY PROGRAM SERVICES FOR FY 2012—Continued

Laboratory services	Apportioned fee rate
FY 2011 Inflation (3.5%)	1.20
FY 2012 Inflation (3.5%) = [Costs excluding infrastructure and payroll = $34.18] × 0.035	1.20
Total Rate Per Hour—Holidays	114.51

Proposed Rule and Comments

AMS published a proposed rule on October 26, 2009 (74 FR 54920), stating that it was proposing changing fees for laboratory services for fiscal years 2010 through 2012. AMS provided for a 30 day comment period, ending November 25, 2009. The proposed rule included the required economic analysis for determining the fee schedule and regulatory flexibility analysis. AMS received no comments.

Executive Order 12866

This rule has been determined to be not significant for purposes of Executive Order 12866; and, therefore, has not been reviewed by the Office of Management and Budget (OMB).

Civil Justice Reform (Executive Order 12988)

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. There are no administrative procedures which must be exhausted prior to any judicial challenge to this rule or the application of its provisions.

Regulatory Flexibility Act

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612) AMS has considered the economic impact of this action on small entities and has determined that its implementation will not have a significant economic impact on a substantial number of small businesses. The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions so that small businesses will not be disproportionately burdened. There are 499 current stakeholders who voluntarily use the AMS laboratory services annually. Such users of services include food processors, handlers, growers, government agencies, and exporters. The majority of these firms, organizations, and individuals are small businesses under the criteria established by the Small Business Administration (13 CFR 121.201). The increases in annual hourly fee rates as stated will not significantly affect these small businesses as defined in the RFA because this is a voluntary program and the costs to each user will increase proportionally to their use of laboratory services each fiscal year. Any decision by the current stakeholders to discontinue the use of the AMS laboratory services because of the increased fees will not hinder the food processors or industry members from marketing their products, since stakeholders may contract for services with other government agencies or private laboratories. The AMS laboratory testing programs are voluntary, user fee services, conducted under the authority of the AMA.

The AMA authorizes the Secretary of Agriculture to provide Federal analytical testing services that facilitate marketing and trade with the financial necessity that reasonable fees be collected from the users of the services to cover as nearly as possible the costs of maintaining the programs. AMS regularly reviews its user-fee-supported laboratory service programs to determine if the voluntary fees are adequate and reasonable to cover expenses. The most recent review determined that the existing hourly fee rates, which have been in place since March 30, 2007, will not generate sufficient revenue to recover annual operating costs of laboratory programs and will not maintain adequate end-of-year operating reserve balances in FY 2010, FY 2011, and FY 2012. This decline in revenues is due to lower numbers of samples and a reduction in the number of clients by 312 that is attributable mainly to a shift in usage patterns on the part of applicants for testing services and change to government programs. For example, several federal commodity purchasing programs are now relying heavily on vendor certification rather than government laboratory testing; a larger percentage of aflatoxin analyses and microbiological testing are performed by approved or designated private laboratories; and food and fiber product testing is decreasing due to changing importer country requirements. For analytical purposes, projected collections are based on calculations using an effective date of October 1, 2009 for the new fiscal year 2010 user fees. Without the fee increase in this rule, FY 2010 revenues are projected at $6,421,000; obligations are projected at $6,676,000, for a fiscal year loss of $256,000 and a depleted trust fund to an 8.0 month end-of-year reserve balance of $4,449,000. In fiscal years 2011 and 2012 additional operating losses for the laboratories are projected. If there are no hourly rate changes as reflected in this rule, the FY 2011 and FY 2012 end-of-year reserve balances will decline from $4,449,000 to $3,984,000 (6.9 months operating reserve), and $3,568,000 (6.0 months operating reserve), respectively. However, a minimum operating reserve of 11.1 months or an end-of-year trust fund balance amount of $6,173,000 is needed for FY 2010 based on the current shut down analysis and prior experiences, including the permanent closing of the S&T Midwestern Laboratory in Chicago, Illinois on June 30, 2000. The AMS estimates that the raised hourly fee rates in this rule will yield $1,228,000 overall in additional laboratory testing program revenues during FY 2010. This will increase the end-of-year available capital assets in the trust fund from $4,704,000 or 8.8 months of permitted operations in FY 2009 to $5,677,000 or 10.2 months of permitted operations in FY 2010. By forgoing the purchase of new models of analytical equipment and instruments employing up to date technology to replace aging ones in the laboratories, a $500,000 savings in the costs of operations could take place in FY 2010. This will enable AMS to replenish program reserves to an 11 month level, $6,177,000, for FY 2010 that is called for by Agency policy and prudent financial management. With increased revenue from the hourly rate changes in this rule, program reserves will be maintained at this level in subsequent fiscal years 2011 and 2012.

With this action, the Agency expects to collect $7,649,000 in FY 2010, $7,986,000 in FY 2011, and $8,211,000 in FY 2012 attributable to the increased fee changes, to cover the full cost of routine laboratory services, appeal requests, overtime, and legal holiday

services for Science and Technology customers and other program stakeholders. This action will allow AMS to continue to offer laboratory testing services under the Agricultural Marketing Act of 1946 as amended, to facilitate marketing and allow products to obtain grade designations or meet marketing standards. As such, the program provides a viable option for a wide variety of stakeholders by delivering scientific and analytical support services to the diversified agricultural and food processing community and provides a valuable resource for those businesses and industries that wish to use a USDA shield. By establishing a three year fee increase over FYs 2010, 2011, and 2012 the Agency will help ensure that the fee increases are effective at the beginning of each fiscal year from FY 2011 to FY 2012. This increase over three fiscal years will permit customers and other program stakeholders an opportunity to plan for annual changes in costs of laboratory service and to incorporate them into their budgetary plans.

Finally, this rule will update and identify Science and Technology Programs' existing facility addresses. It will also clarify that test results of analyses and laboratory determinations provided by AMS laboratory program only apply to the submitted samples and do not represent the quality, condition or disposition of the lot from which each sample was taken.

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements that are subject to the Office of Management and Budget (OMB) approval under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). AMS is committed to implementation of the Government Paperwork Elimination Act which provides for the use of information resources to improve the efficiency and effectiveness of governmental operations, including providing the public with the option of submitting information or transacting business electronically to the extent practicable. USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

Unfunded Mandate Analysis

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of UMRA, the Department 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, or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of UMRA generally requires that the Department identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) that impose costs on State, local, or tribal governments or to the private sector of $100 million or more in any one year. Thus, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Comments and Effective Date

A thirty day comment period was provided for interested persons to comment on the proposed rule published in the **Federal Register** (74 FR 54920) regarding changes in user fees for voluntary laboratory testing services. No comments were received by the end of the comment period on November 25, 2009. The existing hourly fee rates have been in place since March 30, 2007. AMS regularly reviews its user-fee-supported programs to determine if the current fees are adequate to cover expenses. The agency is unable to recover the full cost of its present laboratory testing services. With this regulation, AMS is establishing three annual hourly fee rate increases for standard, overtime and appeals, and holiday services for fiscal years 2010–2012. Accordingly, for these reasons, pursuant to 5 U.S.C. 553, and because of initiation of the Federal fiscal year 2010 already, it is found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register.** Therefore, this final rule is effective one day after the date of publication in the **Federal Register.**

List of Subjects in 7 CFR Part 91

Administrative practice and procedure, Agricultural commodities, Laboratories, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, the Agricultural Marketing Service under the authority of 7 U.S.C. 1622, 1624 amends part 91 of Title 7, chapter I, subchapter E, of the Code of Federal Regulations as follows:

PART 91—SERVICES AND GENERAL INFORMATION

■ 1. The authority citation for part 91 continues to read as follows:

Authority: 7 U.S.C. 1622, 1624.

■ 2. Section 91.5 is revised to read as follows:

§ 91.5 Where services are offered.

(a) Services are offered to applicants at the Science and Technology laboratories and facilities as listed below.

(1) *Science and Technology Programs National Science Laboratory.* A variety of proximate for composition, chemical, physical, microbiological and biomolecular (DNA-based) tests and laboratory analyses performed on fruits and vegetables, poultry, dairy and dairy products, juices, fish, vegetative seed and oilseed, honey, meat and meat products, fiber products and processed foods are performed at the Science and Technology Programs (S&T) laboratory located at: USDA, AMS, Science and Technology Programs, National Science Laboratory (NSL), 801 Summit Crossing Place, Suite B, Gastonia, North Carolina 28054–2193.

(2) *Science and Technology (S&T) Programs Science Specialty Laboratories.* The Science specialty laboratories performing aflatoxin and other testing on peanuts, peanut products, dried fruits, grains, edible seeds, tree nuts, shelled corn products, oilseed products, olive oil, vegetable oils, juices, citrus products, and other commodities are located as follows:

(i) USDA, AMS, Science & Technology, Citrus Laboratory, 98 Third Street, SW., Winter Haven, Florida 33880–2905.

(ii) USDA, AMS, Science & Technology, Science Specialty Laboratory, 6567 Chancey Mill Road, Blakely, Georgia 39823–2785.

(3) *Program laboratories.* Laboratory services are available in all areas covered by cooperative agreements providing for this laboratory work and entered on behalf of the Department with cooperating Federal or State laboratory agencies pursuant to authority contained in Act(s) of Congress. Also, services may be provided in other areas not covered by a cooperative agreement if the Administrator determines that it is possible to provide such laboratory services.

(4) *Other alternative laboratories.* Laboratory analyses may be conducted at alternative Science and Technology Programs laboratories and can be reached from any commodity market in which a laboratory facility is located to

the extent laboratory personnel are available.

(5) *The Plant Variety Protection (PVP) Office.* The PVP office and plant examination facility of the Science and Technology programs issues certificates of protection to developers of novel varieties of plants which reproduce sexually. The PVP office is located as follows: USDA, AMS, Science & Technology Programs, Plant Variety Protection Office, National Agricultural Library Building, Room 401, 10301 Baltimore Boulevard, Beltsville, MD 20705–2351.

(6) *Science and Technology Programs headquarters offices.* The examination, licensure, quality assurance reviews, laboratory approval/certification and consultation services are provided by headquarters staff located in Washington, DC. The main headquarters office is located as follow: USDA, AMS, Science and Technology Programs, Office of the Deputy Administrator, Room 1092 South Agriculture Bldg., Mail Stop 0270, 1400 Independence Ave., SW., Washington, DC 20250–0270.

(7) *Statistics Branch Office.* The Statistics Branch office of Science and Technology Programs (S&T) provides statistical services to the Agency and other agencies within the USDA. In addition, the Statistics Branch office generates sample plans and performs consulting services for research studies in joint efforts with or in a leading role with other program areas of AMS or of the USDA. The Statistics Branch office is located as follows: USDA, AMS, S&T Statistics Branch, Room 0603 South Agriculture Bldg., Mail Stop 0223, 1400 Independence Ave., SW., Washington, DC 20250–0223.

(8) *Technical Services Branch Office.* The Technical Services Branch office of Science and Technology (S&T) provides technical support services to all Agency programs and other agencies within the USDA. In addition, the Technical Services Branch office provides certification and approval services of private and State government laboratories as well as oversees quality assurance programs; import and export certification of laboratory tested commodities. The Technical Services Branch mailing address is as follows: USDA, AMS, S&T Technical Services Branch, South Agriculture Bldg., Mail Stop 0272, 1400 Independence Ave., SW., Washington, DC 20250–0272. The Technical Services Branch office is located as follows: USDA, AMS, Science and Technology Technical Services Branch, Room 0604 South Agriculture Bldg., 1400 Independence Ave., SW., Washington, DC 20250.

(9) *Monitoring Programs Office.* Services afforded by the Pesticide Data Program (PDP) and Microbiological Data Program (MDP) are provided by USDA, AMS, Science and Technology Monitoring Programs Office, 8609 Sudley Road, Suite 206, Manassas, VA 20110–8411.

(10) *Pesticide Records Branch Office.* Services afforded by the Federal Pesticide Record Keeping Program for restricted-use pesticides by private certified applicators are provided by USDA, AMS, Science and Technology, Pesticide Records Branch, 8609 Sudley Road, Suite 203, Manassas, VA 20110–8411.

(b) The addresses of the various laboratories and offices appear in the pertinent parts of this subchapter. A prospective applicant may obtain a current listing of addresses and telephone numbers of Science and Technology Programs laboratories, offices, and facilities by addressing an inquiry to the Administrative Officer, Science and Technology Programs, Agricultural Marketing Service, United States Department of Agriculture (USDA), 1400 Independence Ave., SW., Room 0725 South Agriculture Building, Mail Stop 0271, Washington, DC 20250–0271.

■ 3. Sections 91.24 and 91.25 are revised to read as follows:

§ 91.24 Reports of test results.

(a) Results of analyses are provided, in writing, by facsimile, by e-mail or other electronic means to the applicant.

(b) Results of test analyses and laboratory determinations provided by AMS laboratory services only apply to the submitted samples and do not represent the quality, condition or disposition of the lot from which each sample was taken.

(c) Applicants may call the appropriate Science and Technology laboratory for interim or final results prior to issuance of the formal report. The advance results may be telegraphed, e-mailed, telephoned, or sent by facsimile to the applicant. Any additional expense for advance information shall be borne by the requesting party.

(d) A letter report in lieu of an official certificate of analysis may be issued by a laboratory representative when such action appears to be more suitable than a certificate: Provided, that, issuance of such report is approved by the Deputy Administrator.

§ 91.25 Certificate requirements.

Certificates of analysis and other memoranda concerning laboratory service and the reporting of results should have the following requirements:

(a) Certificates of analysis shall be on standard printed forms approved by the Deputy Administrator;

(b) Shall be printed in English;

(c) Shall have results typewritten, computer generated, or handwritten in ink and shall be clearly legible;

(d) Shall show the results of laboratory tests in a uniform, accurate, and concise manner with abbreviations identified on the form;

(e) Shall show the information required by §§ 91.26 through 91.29; and

(f) Show only such other information and statements of fact as are provided in the instructions authorized by the Deputy Administrator.

■ 4. Sections 91.37 through 91.39 are revised to read as follows:

§ 91.37 Standard hourly fee rate for laboratory testing, analysis, and other services.

(a) The standard hourly fee rate in this section for the individual laboratory analyses cover the costs of Science and Technology laboratory services, including issuance of certificates and personnel and overhead costs other than the commodity inspection fees referred to in 7 CFR 52.42 through 52.46, 52.48 through 52.51, 55.510 through 55.530, 55.560 through 55.570, 58.38 through 58.43, 58.45 through 58.46, 70.71 through 70.72, and 70.75 through 70.78. The hourly fee rates in this part 91 apply to all commodity and processed commodity products. The new fiscal year for Science and Technology Programs commences on October 1 of each calendar year. The rate for laboratory services is $78.00 per hour in fiscal year 2010, $81.00 per hour in fiscal year 2011, and $83.00 per hour in fiscal year 2012.

(b) Printed updated schedules of the laboratory testing fees for processed fruits and vegetables (7 CFR part 93), poultry and egg products (7 CFR part 94), and meat and meat products (7 CFR part 98) will be available for distribution to Science and Technology's constituents and stakeholders by the individual Laboratory Directors of Science and Technology laboratories listed in § 91.5. These single test laboratory fee schedules are based upon the applicable hourly fee rate stated in paragraph (a) of this section.

(c) Except as otherwise provided in this section, charges will be made at the applicable hourly rate stated in paragraph (a) of this section for the time required to perform the service. A charge will be made for service pursuant to each request or certificate issued.

(d) When a laboratory test service is provided for AMS by a commercial or State government laboratory, the applicant will be assessed a fee which covers the costs to the Science and Technology program for the service provided.

(e) When Science and Technology staff provides applied and developmental research and training activities for microbiological, physical, chemical, and biomolecular analyses on agricultural commodities the applicant will be charged a fee on a reimbursable cost to AMS basis.

§ 91.38 Additional fees for appeal of analysis.

(a) The applicant for appeal sample testing will be charged a fee at the hourly rate for laboratory service that appears in this paragraph. The new fiscal year for Science and Technology Programs commences on October 1 of each calendar year. The appeal rate for laboratory service is $93.00 per hour in fiscal year 2010, $96.00 per hour in fiscal year 2011, and $99.00 per hour in fiscal year 2012.

(b) The appeal fee will not be waived for any reason if analytical testing was completed in addition to the original analysis.

§ 91.39 Premium hourly fee rates for overtime and legal holiday service.

(a) When analytical testing in a Science and Technology facility requires the services of laboratory personnel beyond their regularly assigned tour of duty on any day or on a day outside the established schedule, such services are considered as overtime work. When analytical testing in a Science and Technology facility requires the services of laboratory personnel on a Federal holiday or a day designated in lieu of such a holiday, such services are considered holiday work. Laboratory analyses initiated at the request of the applicant to be rendered on Federal holidays, and on an overtime basis will be charged fees at hourly rates for laboratory service that appear in this paragraph. The new fiscal year for Science and Technology Programs commences on October 1 of each calendar year. The laboratory analysis rate for overtime service is $93.00 per hour in fiscal year 2010, $96.00 per hour in fiscal year 2011, and $99.00 per hour in fiscal year 2012. The laboratory analysis rate for Federal holiday or designed holiday service is $108.00 per hour in fiscal year 2010, $111.00 per hour in fiscal year 2011, and $115.00 per hour in fiscal year 2012.

(b) Information on legal holidays or what constitutes overtime service at a particular Science and Technology laboratory is available from the Laboratory Director or facility manager.

Dated: April 1, 2010.

Rayne Pegg,

Administrator, Agricultural Marketing Service.

[FR Doc. 2010–7739 Filed 4–5–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. APHIS-2008-0052]

RIN 0579-AD07

Citrus Seed Imports; Citrus Greening and Citrus Variegated Chlorosis

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the regulations governing the importation of nursery stock to prohibit the importation of propagative seed of several Rutaceae (citrus family) genera from certain countries where citrus greening or citrus variegated chlorosis (CVC) is present. We are also requiring propagative seed of these genera imported from all other countries to be accompanied by a phytosanitary certificate with an additional declaration that neither citrus greening nor CVC are known to occur in the country where the seed was produced. Scientific evidence indicates that seed of certain genera of the family Rutaceae may be a pathway for the introduction of those diseases. This action is necessary in order to prevent the introduction or dissemination of citrus greening and CVC into or within the United States.

DATES: This interim rule is effective April 6, 2010. We will consider all comments that we receive on or before June 7, 2010.

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

- Federal eRulemaking Portal: Go to (*http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2008-0052*) to submit or view comments and to view supporting and related materials available electronically.
- Postal Mail/Commercial Delivery: Please send a copy of your comment to Docket No. APHIS-2008-0052, Regulatory Analysis and Development, PPD, APHIS, Station 3A-03.8, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Please state that your comment refers to Docket No. APHIS-2008-0052.

Reading Room: You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690-2817 before coming.

Other Information: Additional information about APHIS and its programs is available on the Internet at (*http://www.aphis.usda.gov*).

FOR FURTHER INFOMATION CONTACT: Dr. Arnold Tschanz, Senior Plant Pathologist, Plant Health Programs, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737-1231; (301) 734-0627.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR part 319, "Foreign Quarantine Notices," prohibit or restrict the importation of certain plants and plant products to prevent the introduction or dissemination of plant pests and noxious weeds into the United States. The regulations in "Subpart-Citrus Canker and Other Citrus Diseases" (§ 319.19) prohibit the importation into the United States of plants and plant parts, except fruit and seeds, of all genera, species, and varieties of the subfamilies Aurantioideae, Rutoideae, and Toddalioideae of the botanical family Rutaceae (citrus) in order to prevent the introduction of citrus canker (*Xanthomonas citri* subsp. *citri*) into areas of the United States.

The regulations contained in "Subpart-Nursery Stock, Plants, Roots, Bulbs, Seeds, and Other Plant Products," §§ 319.37 through 319.37-14 (referred to below as the regulations), restrict, among other things, the importation of seeds for propagation. In this interim rule, we are amending the regulations to prohibit the importation of propagative seed of several Rutaceae genera from certain countries where citrus greening or citrus variegated chlorosis (CVC) is present. We are also requiring propagative seed of these genera imported from all other countries to be accompanied by a phytosanitary certificate with an additional

declaration that neither citrus greening nor CVC are known to occur in the country where the seed was produced. Finally, we are requiring propagative seed of genera that are hosts of citrus greening, but not of CVC, imported from a country in which CVC, but not citrus greening, is known to occur to be accompanied by a phytosanitary certificate with an additional declaration that citrus greening is not known to occur in the country where the seed was produced.

Citrus greening, also known as Huanglongbing disease of citrus, is considered to be one of the most serious citrus diseases in the world. Citrus greening is a bacterial disease caused by strains of the bacterial pathogens "*Candidatus* Liberibacter asiaticus", "*Candidatus* Liberibacter africanus", and "*Candidatus* Liberibacter americanus" that attack the vascular system of host plants. The pathogens are phloem-limited, inhabiting the food-conducting tissue of the host plant, and causes yellow shoots, blotchy mottling and chlorosis, reduced foliage, and tip dieback of citrus plants. Citrus greening greatly reduces production, destroys the economic value of the fruit, and can kill trees. Once a tree is infected, there is no cure for citrus greening. In areas of the world where the disease is endemic, citrus trees decline and die within a few years and may never produce usable fruit. Citrus greening was first detected in the United States in Miami-Dade County, FL, in 2005, and is only known to be present in the United States in the States of Florida and Georgia, Puerto Rico, two parishes in Louisiana, and two counties in South Carolina. We discuss the actions that APHIS has taken to date in response to the presence of citrus greening in the United States later in this document.

CVC is also a highly injurious disease of citrus. Caused by a strain of the bacterium *Xylella fastidiosa*, CVC causes severe chlorosis between veins on the leaves of affected plants. Leaves on affected plants frequently have discoloration of the upper leaf coupled with brown lesions underneath. CVC may reduce plant growth and lead to abnormal flowering and fruit production. CVC is currently not known to occur in the United States.

The introduction of CVC into the United States could result in substantial economic losses. In 2000, the estimated damage caused by CVC in the State of São Paolo, Brazil, the site of the initial outbreak of CVC within the country and the State in which the disease is most prevalent, was approximately $129 million (considering the loss of plants in terminal stages, decrease in production, and disease control costs).[1] Since that time, CVC has continued to cause major losses to citrus production throughout Brazil; these losses have exceeded several million dollars per year.[2]

Emerging evidence suggests that propagative seed of genera that are hosts of citrus greening or CVC can transmit these diseases. First, when seedlings are generated from seed that is taken from plants infected with citrus greening, a small percentage of those seedlings have been found to be infected with citrus greening.[3] Similarly, evidence has suggested that CVC may infect propagative seeds, and cause extensive damage to seed embryos. Moreover, seedlings grown from CVC-infected seed have been shown to transmit CVC experimentally.[4] This is important because the use of seedlings as rootstocks is the standard industry practice for the production of citrus trees, and both disease organisms can be present in infected plants without any visible signs or symptoms for several months or years. Therefore, infected seedlings could go undetected and serve as potential pathways for the diseases for an extended time.

The Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture (USDA) has undertaken measures to control the artificial spread of citrus greening within the United States since its introduction in 2005. The most recent of these are a January 2008 Federal Domestic Quarantine Order that quarantined the entire State of Florida for citrus greening, a June 2008 Federal Domestic Quarantine Order that designated Orleans Parish, LA, as a quarantined area, an October 2008 Federal Domestic Quarantine Order that designated Washington Parish, LA, as a quarantined area, a July 2009 Federal Domestic Quarantine Order that designated the State of Georgia and Beaufort and Charleston Counties, SC, as quarantined areas, and a December 2009 Federal Domestic Quarantine Order designating Puerto Rico as a quarantined area.[5] Host articles, including propagative seed, produced within areas quarantined for citrus greening may only be moved interstate if destined for immediate export.

APHIS has also taken actions to prevent the introduction or dissemination of citrus greening and CVC into or within the United States via the importation of propagative seed. On January 29, 2008, APHIS issued a Federal Import Quarantine Order that prohibited the importation of propagative seeds from certain genera in the family Rutaceae known to be hosts of citrus greening and/or CVC from countries in which one or both of these diseases are known to occur. The Federal Import Quarantine Order also required propagative seeds of known hosts of citrus greening and/or CVC from countries considered free of these diseases to be accompanied at the time of arrival at the first port of entry in the United States by an import permit and a phytosanitary certificate with an additional declaration that the country where the propagative seed was produced is free of citrus greening and CVC.

On October 6, 2009, we updated the Federal Import Quarantine Order to prohibit the importation of seed of hosts of citrus greening from Belize, Cuba, the Dominican Republic, and Mexico, following the detection of citrus greening in those countries. This interim rule amends the regulations to reflect the action taken by APHIS via its Federal Import Quarantine Orders. In addition, based on the detection of citrus greening in Argentina and Jamaica after the October 6, 2009, Federal Import Quarantine Order was issued, we are prohibiting the importation of seed of host genera of citrus greening from those countries, as well.[6]

Nursery stock, plants, and other propagative plant material that can be inspected, treated, or handled to prevent them from spreading plant pests are designated in the regulations as restricted articles. Section 319.37-5 lists restricted articles that may be imported into the United States only if the

[1] Source: Ayres, A. J. 2001. Citrus disease control in Brazil. China/Food and Agricultural Organization (FAO) Citrus Symposium, Beijing, People's Republic of China. FAO Corporate Document repository, (*http://www.fao.org/docrep/003/X6732E/x6732e10.htm*).

[2] Source: Chung, K. R., and L. W. Timmer. 2005. Citrus diseases exotic to Florida: Sweet orange scab (SOS) (EDIS document PP-224). Institute of Food and Agricultural Sciences, University of Florida, Gainesville, FL, USA.

[3] See, e.g., Halbert, Susan and Keremane L. Manjunath. Asian Citrus Psyllids (*Sternorrhyncha: Psyllidae*) and Greening Disease of Citrus: A Literature Review and Assessment of Risk in Florida. Found at (*http://www.bioone.org/doi/pdf/10.1653/0015-4040%282004%29087%5B0330%3AACPSPA%5D2.0.CO%3B2*).

[4] Source: Li, W.B., W.D. Pria, Jr., P.M. Lacava, et al. Presence of *Xylella fastidiosa* in Sweet Orange Fruit and Seeds and Its Transmission to Seedlings. *Phytopathology* (Vol. 93, No. 8) 2003, 953-958.

[5] To view these Federal Orders, go to (*http://www.aphis.usda.gov/plant_health/plant_pest_info/citrus_greening/regs.shtml*). APHIS is currently undertaking rulemaking to codify these Federal Orders.

[6] We are also modifying the October 2009 Federal Order to consider seed of the genera *Toddalia* to be distinct from that of the genera *Vepris*. Emerging evidence suggests that the two genera sometimes have differing genetic histories.

phytosanitary certificate required by § 319.37-4 of the regulations contains an additional declaration that the restricted articles are free of specified plant pests or have been produced in accordance with certain requirements.

We are amending § 319.37-5 by adding a new paragraph (w) that specifies that seed of the genera *Aeglopsis*, *Atalantia*, *Balsamocitrus*, *Bergera*, *Calodendrum*, *Citrofortunella*, *xCitroncirus*, *Citrus*, *Clausena*, *Fortunella*, *Limonia*, *Microcitrus*, *Murraya*, *Poncirus*, *Severinia*, *Swinglea*, *Toddalia*, *Triphasia*, and *Vepris* from Argentina, Bangladesh, Belize, Bhutan, Brazil, Burundi, Cambodia, Cameroon, Central African Republic, China, Comoros, Cuba, the Dominican Republic, Ethiopia, Eritrea, India, Indonesia, Jamaica, Japan, Kenya, Laos, Madagascar, Malawi, Malaysia, Mauritius, Mexico, Myanmar, Nepal, Pakistan, Papua New Guinea, Philippines, Réunion, Rwanda, Saint Helena, Saudi Arabia, Somalia, South Africa, Sri Lanka, Swaziland, Taiwan, Tanzania, Thailand, Timor-Leste, Vietnam, Yemen, and Zimbabwe is prohibited importation into the United States. The paragraph also states that, except for the countries listed in paragraph (x) of the section (discussed immediately below), seed of these genera from all other countries may be imported into the United States only if the phytosanitary certificate required by § 319.37-4 contains an additional declaration that neither citrus greening nor CVC is known to occur in the country where the seed was produced.

All the genera listed in the previous paragraph are known to be hosts of citrus greening, citrus greening is known to exist in all the listed countries, and both citrus greening and CVC are known to exist in Argentina and Brazil. Some citrus species have been shown to be hosts of CVC, and no citrus species has been determined to be immune to CVC. Accordingly, the available scientific evidence has led us to conclude that all *Citrus* species should also be considered hosts of CVC, which is why we have included the requirement for an additional declaration regarding CVC.

Citrus greening is not known to exist in Costa Rica and Paraguay, but CVC is. Therefore, we are prohibiting the importation of seeds of hosts of CVC from those two countries into the United States; seeds that are hosts of citrus greening, but not of CVC, are not prohibited. However, as a risk mitigation measure and in order to establish consistency between our importation requirements for seed from these two countries and our requirements for other countries in which citrus greening is not known to occur, we are adding a new paragraph (x) to § 319.37-5 that states that seed of the genus *Citrus* from Costa Rica and Paraguay is prohibited importation into the United States, but that seed of the genera *Aeglopsis*, *Atalantia*, *Balsamocitrus*, *Bergera*, *Calodendrum*, *Citrofortunella*, *xCitroncirus*, *Clausena*, *Fortunella*, *Limonia*, *Microcitrus*, *Murraya*, *Poncirus*, *Severinia*, *Swinglea*, *Toddalia*, *Triphasia*, and *Vepris* from these two countries may be imported into the United States only if the phytosanitary certificate required by § 319.37-4 contains an additional declaration that citrus greening is not known to occur in the country where the seed was produced.

All seed of the family Rutaceae that is shipped to the United States from countries other than the countries listed earlier is a potential pathway for the introduction of citrus greening or CVC. Accordingly, we are also amending the table in § 319.37-2(a), which lists prohibited articles, or nursery stock, plants, and other propagative material that cannot feasibly be inspected, treated, or handled in a manner that assures us that the articles will not introduce plant pests new to or not known to be widely distributed in the United States. As amended, § 319.37-2(a) prohibits seed of *Aeglopsis*, *Atalantia*, *Balsamocitrus*, *Bergera*, *Calodendrum*, *Citrofortunella*, *Citrus*, *xCitroncirus*, *Clausena*, *Fortunella*, *Limonia*, *Microcitrus*, *Murraya*, *Poncirus*, *Severinia*, *Swinglea*, *Toddalia*, *Triphasia*, and *Vepris* spp. from all countries from being imported into the United States, unless it meets the conditions for importation in § 319.37-5(w) or (x).

Section 319.37-6 lists treatment and other requirements under which seeds of certain genera and species may be imported into the United States from countries and localities in which a plant pest is known to be present. This section currently requires seeds of all *Rutaceae* genera that are imported into the United States from countries in which citrus canker is known to occur to be treated for this disease.

However, Rutaceae species are known to be hosts not only of citrus canker, but also of citrus greening and CVC. Moreover, the countries listed in this section as being affected with citrus canker are also, in certain instances, countries in which citrus greening or CVC is known to occur. Therefore, we are amending this section to clarify that it applies only to countries where citrus canker, but not citrus greening or CVC, is known to exist. Specifically, we are removing any country from the list of countries from which Rutaceae seed may be imported with treatment if it is also listed in the table in § 319.37-2(a) as a country in which either citrus greening or CVC is known to exist.

(Please note: As amended, § 319.37-6 will still allow seed of Rutaceae genera to be imported into the United States from certain countries in which citrus canker is known to exist following treatment, but the importation of all other plant parts of Rutaceae genera from those countries, other than fruit, is prohibited under § 319.19.)

Finally, we are updating the botanical name of citrus canker in § 319.37-6. The name that has been used in the regulations, *Xanthomonas axonopodis*, pv. *citri*, is no longer used by the international taxonomic community. Accordingly, we are amending the regulations in § 319.37-6 to reflect the current nomenclature, *Xanthomonas citri* subsp. *citri*.

Federal Preemption

On May 20, 2009, the President issued a memorandum to the heads of executive departments and agencies on the subject of preemption. The memorandum states that it is the general policy of the Administration that preemption of State law by executive departments and agencies should be undertaken only with full consideration of the legitimate prerogatives of the States and with a sufficient legal basis for preemption. The memorandum further states:

To ensure that executive departments and agencies include statements of preemption in regulations only when such statements have a sufficient legal basis:

- Heads of departments and agencies should not include in regulatory preambles statements that the department or agency intends to preempt State law through the regulation except where preemption provisions are also included in the codified regulation.
- Heads of departments and agencies should not include preemption provisions in codified regulations except where such provisions would be justified under legal principles governing preemption, including the principles outlined in Executive Order 13132.

Since 1996, Executive Order 12988, "Civil Justice Reform," has required agencies to include in each regulation a statement regarding its preemptive effects in regulatory preambles under the heading, "Executive Order 12988."

In compliance with the May 2009 memorandum from the White House,

we are adding preemption provisions to part 319 that would apply to this rule, as well as to the existing regulations in part 319. Part 319 contains regulations that prohibit or restrict the importation of certain plants and plant products to prevent the introduction or dissemination of plant pests and noxious weeds into the United States.

Under section 436 of the Plant Protection Act (7 U.S.C. 7756), a State or political subdivision of a State may not regulate in foreign commerce any plant or plant product in order to control, eradicate, or prevent the introduction or dissemination of a biological control organism, plant pest, or noxious weed within the United States.

Therefore, in accordance with section 436 of the Plant Protection Act, the regulations in part 319 preempt all State and local laws and regulations that are inconsistent with or exceed the regulations in part 319.

Accordingly, in this interim rule, we are adding a new subpart, "Preemption," (§ 319.1), to codify the preemptive effect of the regulations in part 319.

Immediate Action

Immediate action is necessary to amend the regulations to reflect the provisions of the October 6, 2009, Federal Import Quarantine Order issued to prevent the introduction or dissemination of citrus greening and CVC into or within the United States. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this action effective less than 30 days after publication in the **Federal Register**.

We will consider comments we receive during the comment period for this interim rule (see **DATES** above). After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule.

Executive Order 12866 and Regulatory Flexibility Act

This interim rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

We have prepared an initial regulatory flexibility analysis for this action. The analysis identifies nursery operations producing citrus nursery stock for field planting as the small entities most likely to be affected by this action and considers the losses that may occur due to prohibitions on the importation of propagative seed from countries where citrus greening or CVC is known to occur. Based on the information presented in the analysis, we expect that these operations are unlikely to be dependent on seed of those genera, but lack information regarding their size distribution. We invite comment on our initial regulatory flexibility analysis, which is posted with this interim rule on the Regulations.gov Web site (see **ADDRESSES** above for instructions for accessing Regulations.gov) and may be obtained from the person listed under **FOR FURTHER INFORMATION CONTACT**.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this rule have been approved by the Office of Management and Budget (OMB) under OMB control number 0579-0049.

E-Government Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the E-Government Act to promote the use of the Internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes. For information pertinent to E-Government Act compliance related to this rule, please contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851-2908.

List of Subjects in 7 CFR Part 319

Coffee, Cotton, Fruits, Imports, Logs, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

■ Accordingly, we are amending 7 CFR part 319 as follows:

PART 319—FOREIGN QUARANTINE NOTICES

■ 1. The authority citation for part 319 continues to read as follows:

Authority: 7 U.S.C. 450, 7701-7772, and 7781-7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

■ 2. Part 319 is amended by adding a new "Subpart—Preemption," § 319.1, to read as follows:

Subpart—Preemption

Sec.
319.1 Preemption of State and local laws.

Subpart—Preemption

§ 319.1 Preemption of State and local laws.

(a) Under section 436 of the Plant Protection Act (7 U.S.C. 7756), a State or political subdivision of a State may not regulate in foreign commerce any plant or plant product in order to control, eradicate, or prevent the introduction or dissemination of a biological control organism, plant pest, or noxious weed within the United States.

(b) Therefore, in accordance with section 436 of the Plant Protection Act, the regulations in this part preempt all State and local laws that are inconsistent with or exceed the regulations in this part.

■ 3. In § 319.37-2, in the table in paragraph (a), new entries for "*Aeglopsis* spp. seed not meeting the conditions for importation in § 319.37-5(w) or (x)","*Atalantia* spp. seed not meeting the conditions for importation in § 319.37-5(w) or (x)", "*Balsamocitrus* spp. seed not meeting the conditions for importation in § 319.37-5(w) or (x)", "*Bergera* spp. seed not meeting the conditions for importation in § 319.37-5(w) or (x)", "*Calodendrum* spp. seed not meeting the conditions for importation in § 319.37-5(w) or (x)", "*Citrofortunella* spp. seed not meeting the conditions for importation in § 319.37-5(w) or (x)", "*xCitroncirus* spp. seed not meeting the conditions for importation in § 319.37-5(w) or (x)", "*Citrus* spp. seed not meeting the conditions for importation in § 319.37-5(w)", "*Clausena* spp. seed not meeting the conditions for importation in § 319.37-5(w) or (x)", "*Fortunella* spp. seed not meeting the conditions for importation in § 319.37-5(w) or (x)", "*Limonia* spp. seed not meeting the conditions for importation in § 319.37-5(w) or (x)", "*Microcitrus* spp. seed not meeting the conditions for importation in § 319.37-5(w) or (x)", "*Murraya* spp. seed not meeting the conditions for importation in § 319.37-5(w) or (x)", "*Poncirus* spp. seed not meeting the conditions for importation in § 319.37-5(w) or (x)", "*Severinia* spp. seed not meeting the conditions for importation in § 319.37-5(w) or (x)", "*Swinglea* spp. seed not meeting the conditions for

importation in § 319.37-5(w) or (x)", "*Toddalia* spp. seed not meeting the conditions for importation in § 319.37-5(w) or (x)", "*Triphasia* spp. seed not meeting the conditions for importation in § 319.37-5(w) or (x)", and "*Vepris* spp. seed not meeting the conditions for importation in § 319.37-5(w) or (x)" are added, in alphabetical order, to read as follows:

§ 319.37-2 Prohibited articles.

(a) * * *

Prohibited article (includes seeds only if specifically mentioned)	Foreign places from which prohibited	Plant pests existing in the places named and capable of being transported with the prohibited article
* * *	*	* * *
Aeglopsis spp. seed not meeting the conditions for importation in § 319.37-5(w) or (x).	All	*Candidatus* Liberibacter spp. (Huanglongbing disease of citrus, Citrus greening).
* * *	*	* * *
Atalantia spp. seed not meeting the conditions for importation in § 319.37-5(w) or (x).	All	*Candidatus* Liberibacter spp. (Huanglongbing disease of citrus, Citrus greening).
Balsamocitrus spp. seed not meeting the conditions for importation in § 319.37-5(w) or (x).	All	*Candidatus* Liberibacter spp. (Huanglongbing disease of citrus, Citrus greening).
* * *	*	* * *
Bergera spp. seed not meeting the conditions for importation in § 319.37-5(w) or (x).	All	*Candidatus* Liberibacter spp. (Huanglongbing disease of citrus, Citrus greening).
* * *	*	* * *
Calodendrum spp. seed not meeting the conditions for importation in § 319.37-5(w) or (x).	All	*Candidatus* Liberibacter spp. (Huanglongbing disease of citrus, Citrus greening).
* * *	*	* * *
Citrofortunella spp. seed not meeting the conditions for importation in § 319.37-5(w) or (x).	All	*Candidatus* Liberibacter spp. (Huanglongbing disease of citrus, Citrus greening).
xCitroncirus spp. seed not meeting the conditions for importation in § 319.37-5(w) or (x).	All	*Candidatus* Liberibacter spp. (Huanglongbing disease of citrus, Citrus greening).
Citrus spp. seed not meeting the conditions for importation in § 319.37-5(w).	All	*Candidatus* Liberibacter spp. (Huanglongbing disease of citrus, Citrus greening); citrus variegated chlorosis.
Clausena spp. seed not meeting the conditions for importation in § 319.37-5(w) or (x).	All	*Candidatus* Liberibacter spp. (Huanglongbing disease of citrus, Citrus greening).
* * *	*	* * *
Fortunella spp. seed not meeting the conditions for importation in § 319.37-5(w) or (x).	All	*Candidatus* Liberibacter spp. (Huanglongbing disease of citrus, Citrus greening).
* * *	*	* * *
Limonia spp. seed not meeting the conditions for importation in § 319.37-5(w) or (x).	All	*Candidatus* Liberibacter spp. (Huanglongbing disease of citrus, Citrus greening).
* * *	*	* * *
Microcitrus spp. seed not meeting the conditions for importation in § 319.37-5(w) or (x).	All	*Candidatus* Liberibacter spp. (Huanglongbing disease of citrus, Citrus greening).
* * *	*	* * *
Murraya spp. seed not meeting the conditions for importation in § 319.37-5(w) or (x).	All	*Candidatus* Liberibacter spp. (Huanglongbing disease of citrus, Citrus greening).
* * *	*	* * *
Poncirus spp. seed not meeting the conditions for importation in § 319.37-5(w) or (x).	All	*Candidatus* Liberibacter spp. (Huanglongbing disease of citrus, Citrus greening).
* * *	*	* * *
Severinia spp. seed not meeting the conditions for importation in § 319.37-5(w) or (x).	All	*Candidatus* Liberibacter spp. (Huanglongbing disease of citrus, Citrus greening).

Prohibited article (includes seeds only if specifically mentioned)	Foreign places from which prohibited	Plant pests existing in the places named and capable of being transported with the prohibited article
* * *	*	* * *
Swinglea spp. seed not meeting the conditions for importation in § 319.37-5(w) or (x).	All	*Candidatus* Liberibacter spp. (Huanglongbing disease of citrus, Citrus greening).
* * *	*	* * *
Toddalia spp. seed not meeting the conditions for importation in § 319.37-5(w) or (x).	All	*Candidatus* Liberibacter spp. (Huanglongbing disease of citrus, Citrus greening).
* * *	*	* * *
Triphasia spp. seed not meeting the conditions for importation in § 319.37-5(w) or (x).	All	*Candidatus* Liberibacter spp. (Huanglongbing disease of citrus, Citrus greening).
* * *	*	* * *
Vepris spp. seed not meeting the conditions for importation in § 319.37-5(w) or (x).	All	*Candidatus* Liberibacter spp. (Huanglongbing disease of citrus, Citrus greening).
* * *	*	* * *

* * * * *

■ 4. In § 319.37-5, new paragraphs (w) and (x) are added to read as follows:

§ 319.37-5 Special foreign inspection and certification requirements.

* * * * *

(w) Seed of the genera *Aeglopsis*, *Atalantia*, *Balsamocitrus*, *Bergera*, *Calodendrum*, *Citrofortunella*, *xCitroncirus*, *Citrus*, *Clausena*, *Fortunella*, *Limonia*, *Microcitrus*, *Murraya*, *Poncirus*, *Severinia*, *Swinglea*, *Toddalia*, *Triphasia*, and *Vepris* from Argentina, Bangladesh, Belize, Bhutan, Brazil, Burundi, Cambodia, Cameroon, Central African Republic, China, Comoros, Cuba, the Dominican Republic, Ethiopia, Eritrea, India, Indonesia, Jamaica, Japan, Kenya, Laos, Madagascar, Malawi, Malaysia, Mauritius, Mexico, Myanmar, Nepal, Pakistan, Papua New Guinea, Philippines, Réunion, Rwanda, Saint Helena, Saudi Arabia, Somalia, South Africa, Sri Lanka, Swaziland, Taiwan, Tanzania, Thailand, Timor-Leste, Vietnam, Yemen, and Zimbabwe is prohibited importation into the United States. Except for those countries listed in paragraph (x) of this section, seed of these genera from all other countries may be imported into the United States only if the phytosanitary certificate required by § 319.37-4 contains an additional declaration that neither citrus greening nor citrus variegated chlorosis is known to occur in the country where the seed was produced.

(x) Seed of the genus *Citrus* from Costa Rica and Paraguay is prohibited importation into the United States. Seed of the genera *Aeglopsis*, *Balsamocitrus*, *Bergera*, *Calodendrum*, *Citrofortunella*, *xCitroncirus*, *Clausena*, *Fortunella*, *Limonia*, *Microcitrus*, *Murraya*, *Poncirus*, *Severinia*, *Swinglea*, *Toddalia*, *Triphasia*, and *Vepris* from Costa Rica and Paraguay may be imported into the United States only if the phytosanitary certificate required by § 319.37-4 contains an additional declaration that citrus greening is not known to occur in the country where the seed was produced.

* * * * *

■ 5. In § 319.37-6, in paragraph (a), in the table, the entry for "Rutaceae, seeds of all species in the family" is revised to read as follows:

§ 319.37-6 Specific treatment and other requirements.

(a) * * *

Seed/bulb	Country/locality	Pest(s) for which treatment is required
* *	* * *	* *
Rutaceae, seeds of all species in the family.	Afghanistan, Andaman Islands, Caroline Islands, Fiji Islands, Home Island in Cocos (Keeling) Islands, Hong Kong, Ivory Coast, Kampuchea, Korea, Mozambique, Oman, Rodriquez Island, Seychelles, Thursday Island, United Arab Emirates, and Zaire.	*Xanthomonas citri* subsp. *citri* (citrus canker).
* *	* * *	* *

* * * * *

Done in Washington, DC, this 31st day of March 2010.

Gregory Parham,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2010–7736 Filed 4–5–10; 8:45 am]

BILLING CODE 3410–34–S

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0357; Directorate Identifier 2010–CE–017–AD; Amendment 39–16256; AD 2010–08–01]

RIN 2120–AA64

Airworthiness Directives; Aircraft Industries a.s. Model L 23 Super Blanik Gliders

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:

Cracks on the stabilizer elevator inner hinges of seven L 23 SUPERBLANÍK sailplanes have been detected during an inspection.

This condition, if not corrected, could result in no longer retaining the elevator in place and in jamming of the Pilot's elevator control system, and subsequent loss of elevator control.

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

DATES: This AD becomes effective April 26, 2010.

On April 26, 2010, the Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD.

We must receive comments on this AD by May 21, 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: Greg Davison, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4130; fax: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Emergency AD No.: 2010–0037–E, dated March 8, 2010 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

Cracks on the stabilizer elevator inner hinges of seven L 23 SUPERBLANÍK sailplanes have been detected during an inspection.

This condition, if not corrected, could result in no longer retaining the elevator in place and in jamming of the Pilot's elevator control system, and subsequent loss of elevator control.

For the reasons stated above, this Emergency AD requires the inspection of the elevator inner hinges, and the accomplishment of the relevant corrective actions as necessary.

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

Relevant Service Information

Aircraft Industries a.s. has issued Mandatory Bulletin MB No.: L23/052a, dated March 2, 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 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.

This AD is considered an interim action because we are not including the action that you repetitively inspect the elevator inner hinges on the stabilizer at intervals not to exceed every 1,000 hours time-in-service (TIS). The Administrative Procedure Act does not permit the FAA to "bootstrap" a long-term requirement into an urgent safety of flight action where the rule becomes effective at the same time the public has the opportunity to comment. The short-term action and the long-term action are analyzed separately for justification to bypass prior public notice.

After issuing this AD, we may initiate further AD action (notice of proposed rulemaking followed by a final rule) to require that you repetitively inspect the elevator inner hinges on the stabilizer at intervals not to exceed every 1,000 hours TIS. Credit will be given in any subsequent action for the initial inspection done under this AD.

Differences Between This AD and the MCAI or Service Information

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

We might 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 during inspection, cracks have been found on the stabilizer elevator inner hinges of seven Model L 23 Super Blanik gliders. This condition, if not corrected, could result in no longer retaining the elevator in its place and in jamming of the elevator control system and subsequent loss of elevator control. 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–2010–0357; Directorate Identifier 2010–CE–017–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, Incorporation by reference, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2010–08–01 Aircraft Industries a.s.: Amendment 39–16256; Docket No. FAA–2010–0357; Directorate Identifier 2010–CE–017–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective April 26, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Models L 23 Super Blanik gliders, all serial numbers, certificated in any category.

Subject

(d) Air Transport Association of America (ATA) Code 55: Stabilizers.

Reason

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

Cracks on the stabilizer elevator inner hinges of seven L 23 SUPERBLANÍK sailplanes have been detected during an inspection.

This condition, if not corrected, could result in no longer retaining the elevator in place and in jamming of the Pilot's elevator control system, and subsequent loss of elevator control.

For the reasons stated above, this Emergency AD requires the inspection of the elevator inner hinges, and the accomplishment of the relevant corrective actions as necessary.

Actions and Compliance

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

(1) Before further flight as of April 26, 2010 (the effective date of this AD), inspect the elevator inner hinges on the stabilizer in accordance with paragraphs A.1., A.2. and A.4. of Aircraft Industries, a.s. Mandatory Bulletin MB No.: L23/052a, dated March 2, 2010.

(2) If, as a result of the inspection required by paragraph (f)(1) of this AD, you find any elevator inner hinge on the elevator is cracked or damaged, before further flight, replace it in accordance with paragraphs A.3. and A.4. of Aircraft Industries, a.s. Mandatory Bulletin MB No.: L23/052a, dated March 2, 2010.

FAA AD Differences

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

(1) The MCAI and the service information specify that you inspect the elevator inner hinges on the stabilizer, and if you find any elevator inner hinge on the elevator is cracked or damaged, before further flight, replace it. The MCAI also requires you to repetitively inspect the elevator inner hinges on the stabilizer at intervals not to exceed every 1,000 hours time-in-service (TIS).

(2) This AD is considered an interim action because we are not including the mandatory repetitive inspection of the elevator inner hinges on the stabilizer at intervals not to exceed every 1,000 hours TIS. The Administrative Procedure Act does not permit the FAA to "bootstrap" a long-term requirement into an urgent safety of flight action where the rule becomes effective at the same time the public has the opportunity to comment. The short-term action and the long-term action are analyzed separately for justification to bypass prior public notice.

(3) After issuing this AD, we may initiate further AD action (notice of proposed rulemaking followed by a final rule) to require that you repetitively inspect the elevator inner hinges on the stabilizer at intervals not to exceed every 1,000 hours TIS. Credit will be given in any subsequent action for the initial inspection done under this AD.

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: Greg Davison, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4130; 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 EASA Emergency AD No.: 2010–0037–E, dated March 8, 2010, and Aircraft Industries, a.s. Mandatory Bulletin MB No.: L23/052a, dated March 2, 2010, for related information.

Material Incorporated by Reference

(i) You must use Aircraft Industries, a.s. Mandatory Bulletin MB No.: L23/052a, dated March 2, 2010, to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact Aircraft Industries, a.s.—Na záhonech1177, 686 04 Kunovice, Czech Republic; telephone: +420 572 817 660; fax: +420 572 816 112; E-mail: *ots@let.cz*; Internet: *www.let.cz.*

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

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

Issued in Kansas City, Missouri, on March 29, 2010.

Steven R. Thompson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–7591 Filed 4–5–10; 8:45 am]

BILLING CODE 4910–13–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 190

RIN 3038–AC94

Account Class

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rules.

SUMMARY: The Commodity Futures Trading Commission (the "Commission") is amending its regulations (the "Regulations")[1] to create a sixth and separate "account class,"[2] applicable only to the bankruptcy of a commodity broker that is a futures commission merchant ("FCM"), for positions in cleared over-the-counter ("OTC") derivatives (and money, securities, and/or other property margining, guaranteeing, or securing such positions).

Further, the Commission is amending the Regulations to codify the appropriate allocation, in a bankruptcy of any commodity broker, of positions in commodity contracts of one account class (and the money, securities, and/or other property margining, guaranteeing, or securing such positions), which, pursuant to an order issued by the Commission under Section 4d of the Commodity Exchange Act (the "Act"),[3] are commingled with positions in commodity contracts of the futures account class (and the money, securities, and/or other property margining, guaranteeing, or securing such positions).

DATES: *Effective Date:* The final rules are effective as of May 6, 2010.

FOR FURTHER INFORMATION CONTACT: Robert B. Wasserman, Associate Director, Division of Clearing and Intermediary Oversight, 202–418–5092, *rwasserman@cftc.gov;* or Nancy Schnabel, Special Counsel, Division of Clearing and Intermediary Oversight, 202–418–5344, *nschnabel@cftc.gov;* Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.

SUPPLEMENTARY INFORMATION:

I. Background

On August 13, 2009, the Commission published a Notice of Proposed Rulemaking, which contained the following three proposals (the "Notice").[4] First, the Notice proposed amending Regulation 190.01(a), as well as adding new Regulation 190.01(oo), to create a sixth and separate account class, applicable only to the bankruptcy of a commodity broker that is an FCM, for positions in "cleared OTC derivatives" (and money, securities, and/or other property margining, guaranteeing, or securing such positions).[5] Second, the Notice proposed further amending Regulation 190.01(a) to codify the appropriate allocation, in a bankruptcy of any commodity broker, of positions in commodity contracts of one account class (and relevant collateral), which, pursuant to an order issued by the Commission under Section 4d of the Act[6] (a "Section 4d Order"), are commingled with positions in commodity contracts of the futures account class (and relevant collateral). Third, the Notice proposed making certain conforming amendments to Regulation 190.07(b)(2)(viii) and Form 4 (Proof of Claim) in Appendix A to Regulation Part 190 (Bankruptcy Forms).

Although, as mentioned above, the Notice proposed creating a new account class for positions in cleared OTC derivatives (and relevant collateral), the Notice declined to propose substantive requirements, applicable prior to the bankruptcy of a commodity broker that is an FCM, for the treatment of such positions (and relevant collateral). Rather, the Notice stated that "the Commission proposes to define 'cleared OTC derivatives' in such a manner as to specify the sources from which such substantive requirements may

[1] The regulations of the Commission can be found at 17 CFR Chapter 1.

[2] In general, the concept of "account class" governs the manner in which the trustee calculates the net equity (*i.e.,* claims against the estate) and the allowed net equity (*i.e., pro rata* share of the estate) for each customer of a commodity broker in bankruptcy.

[3] The Act can be found at 7 U.S.C. 1–23.

[4] 74 FR 40794 (August 13, 2009).

[5] The Notice proposed defining "cleared OTC derivatives" as:

Positions in commodity contracts that have not been entered into or traded on a contract market (as such term is defined in § 1.3(h) of this chapter) or on a derivatives transaction execution facility (within the meaning of Section 5a of the Act), but which nevertheless are submitted by a commodity broker that is a futures commission merchant (as such term is defined in § 1.3(p) of this chapter) for clearing by a clearing organization (as such term is defined in this section), along with the money, securities, and/or other property margining, guaranteeing, or securing such positions, which are required to be segregated, in accordance with a rule, regulation, or order issued by the Commission, or which are required to be held in a separate account for cleared OTC derivatives only, in accordance with the rules or bylaws of a clearing organization (as such term is defined in this section).

Id. at 40799.

[6] 7 U.S.C. 6d.

originate."[7] According to the Notice, the rules or bylaws of a DCO constitute one such source.

The public comment period on the Notice ended on September 14, 2009. The Commission received four comments[8] during the comment period: (i) One from an alternative investment industry trade association;[9] (ii) one from a futures industry trade association;[10] (iii) one from the holding company of four designated contract markets (each, a "DCM") and three DCOs;[11] and (iv) one from a DCM.[12]

Collectively, the comments raise the following five concerns with the Notice:

- The Commission may not have authority to promulgate the proposed amendments in the Notice;
- The Commission should make the proposed account class for cleared OTC derivatives applicable to the bankruptcy of a commodity broker that is a DCO, not simply to the bankruptcy of a commodity broker that is an FCM;
- The Commission should change the definition of cleared OTC derivatives in the Notice to better comport with the definition of "cleared-only contracts"[13] in the Interpretative Statement that the Commission issued on September 26, 2008 (the "Statement on Cleared OTC Derivatives");[14]
- The Commission should establish objective standards for issuing Section 4d Orders; and
- The Commission should specify substantive requirements with respect to the treatment of positions in cleared OTC derivatives (and money, securities, and/or other property margining, guaranteeing, or securing such positions), if a DCO requires such positions (and relevant collateral) to be held in a separate account for cleared OTC derivatives.

The Commission will address below each of the five concerns in turn.

II. Concern That the Commission Does Not Have Authority To Promulgate the Proposed Amendments in the Notice

A. Rationale for Concern

Two commenters stated that certain participants in the OTC derivatives markets have questioned the authority of the Commission to promulgate the proposed amendments in the Notice. In support of their respective statements, both commenters referenced the *Report to the Supervisors of the Major OTC Derivatives Dealers on the Proposals of Centralized CDS Clearing Solutions for the Segregation and Portability of Customer CDS Positions and Related Margin,* dated June 30, 2009 (the "Segregation and Portability Report").[15] One commenter quotes from a portion of the Segregation and Portability Report, which states that there exists a "not insignificant" risk that a court administering the bankruptcy of a commodity broker would disagree with the Statement on Cleared OTC Derivatives.[16] In the Statement on Cleared OTC Derivatives, the Commission determined (i) that cleared-only contracts constituted "commodity contracts"[17] within the meaning of Subchapter IV of Chapter 7 of the Bankruptcy Code ("Subchapter IV"),[18] and (ii) that, therefore, customer positions in cleared-only contracts that, pursuant to a Section 4d Order, are commingled with customer positions in futures contracts should be afforded all protections available under Subchapter IV and Regulation Part 190 in the event of the bankruptcy of a commodity broker that is an FCM. For the reasons explained below, the Commission does not believe that the commenters' concerns are well founded.

B. "Commodity Contract" Definition

In both the Statement on Cleared OTC Derivatives and the Notice, the Commission relied on clear statutory authority that the Commodity Futures Modernization Act of 2000 (the "CFMA")[19] introduced in the Act and in Subchapter IV to conclude that cleared OTC derivatives are "commodity contracts" within the meaning of Section 761(4)(A) of the Bankruptcy Code.[20] The CFMA created the opportunity for OTC derivatives to be cleared.[21] The CFMA also extended Subchapter IV to cleared OTC derivatives. Section 761(4)(A) of the Bankruptcy Code defines "commodity contract," with respect to an FCM, as a "contract for the purchase or sale of a commodity for future delivery on, or subject to the rules of, a contract market

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[7] 74 FR at 40796.

[8] For purposes of this release, a comment letter is referenced by (i) its author, (ii) its file number (as shown in the comment file associated with the Notice on the Commission's Web site), and (iii) the page (if applicable). The comment file associated with the Notice is available at *http://www.cftc.gov/lawandregulation/federalregister/federalregistercomments/2009/09-009.html.*

[9] The Managed Funds Association (representing the global alternative investment industry) ("MFA") (CL01).

[10] The Futures Industry Association (representing the commodity futures and options industry) ("FIA") (CL02).

[11] The CME Group, Inc. (the holding company for: (i) The Chicago Mercantile Exchange Inc. ("CME") and CME Clearing, a division of CME; (ii) the Board of Trade of the City of Chicago, Inc. and its clearing house; (iii) the New York Mercantile Exchange, Inc. and its clearing house; and (iv) the Commodity Exchange, Inc.) ("The CME Group") (CL03).

[12] ELX Futures, L.P. ("ELX") (CL04).

[13] In the Statement on Cleared OTC Derivatives, the Commission defined "cleared-only contracts" as those contracts that "although not executed or traded on a Designated Contract Market or a Derivatives Transaction Execution Facility, are subsequently submitted for clearing through a Futures Commission Merchant * * * to a Derivatives Clearing Organization." 73 FR 65514 (November 4, 2008).

[14] *Id.*

[15] The Segregation and Portability Report is available at *http://www.newyorkfed.org/newsevents/news/markets/2009/an090713.html.*

According to the MFA, the Segregation and Portability Report states that "there is uncertainty as to the proposition that cleared OTC derivatives contracts constitute 'commodity contracts', thereby receiving account class protections under the [Act] and the Bankruptcy Code." *See* MFA CL01 at 3.

According to the FIA, the Segregation and Portability Report "concludes that there are reasonable arguments that cleared OTC derivatives may be viewed as 'commodity contracts' for purposes of Subchapter IV and Part 190. However, *'the risk of a contrary conclusion is not insignificant.'* [Emphasis supplied.]" *See* FIA CL02 at 6.

[16] *Id.* The FIA also quotes from another portion of the Segregation and Portability Report, which states:

We believe there is a significant possibility (in a worst-case scenario) that the proposition that cleared [credit default swap] contracts constitute "commodity contracts" within the meaning of the Bankruptcy Code may be challenged * * * In addition, we also believe that any challenge to the proposition that [credit default swaps] constitute "commodity contracts" would likely result in significant delay for customers seeking the return of margin through the insolvent FCM.

Id.

To properly contextualize these expressed concerns, the Commission makes two observations.

First, while the Segregation and Portability Report repeatedly makes portentous statements concerning the "not insignificant" risk that a court might find that cleared-only contracts (as the Statement on Cleared OTC Derivatives defines such term) are not commodity contracts, the Segregation and Portability Report cites neither to statutory language nor to case law that might be relied upon to support such a conclusion. Indeed, the Report fails to specify any analytical basis for its concerns.

Second, the Segregation and Portability Report's discussion of timing concerns in this context is somewhat incongruous, given that the report contains the following description of its own scope:

We do not principally focus on timing issues in this Report—*e.g., when* customers will be able to recover their margin. Although we note certain instances in which timing concerns may be particularly relevant, our primary focus is on *whether* customers will be able to recover their margin. Timing issues are critical to the analysis of any CCP's customer protection framework. However, we do not focus on them in this Report because of their inherently complex and unpredictable nature.

See the Segregation and Portability Report at 3. In any event, the prosaic observation that the conclusions of the Statement on Cleared OTC Derivatives may be the subject of a challenge, and that such a challenge might take time to resolve, provides no reason for rejecting the proposals contained in the Notice that are based on those conclusions.

[17] 11 U.S.C. 761(4)(A).

[18] 11 U.S.C. Chapter 7, Subchapter IV.

[19] Appendix E of Public Law 106–554, 114 Stat. 2763 (2000).

[20] *See supra* note 17.

[21] *See, e.g.,* Sections 2(d), (e), and (g) of the Act (7 U.S.C. 2(d), (e), (g)).

or board of trade." [22] Section 112(c)(6) of the CFMA amended the definition of "contract market" in Section 761(7) of the Bankruptcy Code to include reference to a "registered entity." [23] It also amended Section 761(8) of the Bankruptcy Code to incorporate by reference the definition of "registered entity" in the Act.[24] Section 1a(29) of the Act defines a "registered entity" to include "(iii) a derivatives clearing organization registered under Section 5b * * *".[25]

Therefore, the Commission believes that the CFMA permitted cleared OTC derivatives, which are subject to the rules of a DCO, to become "commodity contracts," with respect to an FCM, within the meaning of Section 761(4) of the Bankruptcy Code.[26] The Commission further believes that a court administering the bankruptcy of an FCM would consider the abovementioned CFMA interpretation to be a "reasonable" "construction of a statutory scheme" that the Commission has been "entrusted to administer" under *Chevron U.S.A. Inc.* v. *Natural Resources Defense Council, Inc., et al.,* 467 U.S. 837, 844 (1984).[27] Indeed, the Segregation and Portability Report states: "Ultimately, we believe a court is likely to conclude that [credit default swaps] are 'commodity contracts' (on account of which [credit default swap] clearing customers are 'customers' within the meaning of the Bankruptcy Code) * * *".[28]

C. Support for Legislative Changes

One commenter notes that the Commission proposed to Congress on August 17, 2009 certain amendments to the Bankruptcy Code that would achieve the same effect as the amendments proposed in the Notice. The commenter then speculated that the Commission may have been motivated to make such proposal because it believed that it otherwise lacks authority to promulgate the proposed amendments in the Notice.[29] Such speculation is mistaken. As stated above, the Commission believes that cleared OTC derivatives are "commodity contracts" within the meaning of Section 761(4)(A) of the Bankruptcy Code.[30] The commenter references proposals that Chairman Gary Gensler made to Congress. These proposals included the abovementioned amendments to the Bankruptcy Code in order to clarify the status of swaps, in the context of the improvements to regulation of over-the-counter derivatives markets that the Administration proposed [31] and other, more extensive changes to the Bankruptcy Code. The proposal that Congress make explicit what the CFMA left implicit does not mean that the interpretation of the existing statute that the Commission has advanced is not reasonable.[32]

III. Recommendation That the Commission Extend the Application of the Proposed Account Class for Cleared OTC Derivatives

One commenter recommends that the Commission extend the application of the account class for cleared OTC derivatives, as proposed in the Notice, to the bankruptcy of a commodity broker that is a DCO, rather than limit such application to the bankruptcy of a commodity broker that is an FCM. That commenter argues that the absence of such an extension would cause confusion, in the event of a DCO bankruptcy, regarding the treatment of the money, securities, and/or other property that the DCO holds to margin, guarantee, or secure positions in cleared OTC derivatives belonging to customers of DCO members.[33]

While sympathetic to these arguments, the Commission continues to believe that a DCO bankruptcy would be *sui generis.*[34] Therefore, the

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[22] *See supra* note 17.

[23] 11 U.S.C. 761(7).

[24] 11 U.S.C. 761(8).

[25] 7 U.S.C. 1a(29).

[26] *See supra* note 17.

[27] As mentioned above, "account class" governs the manner in which the trustee calculates the net equity (*i.e.,* claims against the estate) and the allowed net equity (*i.e., pro rata* share of the estate) for each customer of a commodity broker in bankruptcy. As the NPRM states, "[t]he Commission is empowered by Section 20 of the Commodity Exchange Act * * * (i) to define the 'net equity' of a customer of a commodity broker in bankruptcy, and (ii) to prescribe, by rule or regulation, the procedures for calculating such 'net equity.'" *See 74 FR at 40795.* The Commission is exercising its powers under Section 20 of the Act in determining whether cleared OTC derivatives could, with respect to an FCM that is a commodity broker, constitute a sixth and separate account class. The plain language of the Bankruptcy Code recognizes the authority of the Commission to make such determination. For example, Section 761(17) of the Bankruptcy Code subjects the definition of "net equity," in the case of a commodity broker, to such "rules and regulations as the Commission promulgates under the Act." Moreover, the legislative history of the 1978 amendments to the Bankruptcy Code supports the authority of the Commission. *Cf.* H.R. Rep. No. 95–595 (1977) (stating that "a final distinction [between Subchapter III of Title 7 of the Bankruptcy Code (11 U.S.C., Title 7, Subchapter III) and Subchapter IV] concerns the creation of a rule-making power in the Commodity Futures Trading Commission to carry out the provisions * * * The bill contains such a rule-making power with respect to * * * net equity * * * The rule-making power was requested by the CFTC and is appropriate in light of the germinal state of regulation in this area").

[28] The Segregation and Portability Report does note that "this outcome is not at all certain." *See* the Segregation and Portability Report at 35. However, the Segregation and Portability Report also observes that, in the event that a court administering the bankruptcy of a commodity broker disagrees with the determination of the Commission that cleared-only contracts (as the Statement on Cleared OTC Derivatives defines such term) constitute "commodity contracts" under Subchapter IV, "if the [commodity broker] segregates assets solely for the cleared [credit default swap] customers, then the cleared [credit default swap] customers' interest in those assets may be superior to any interest of the commodities customers or unsecured creditors of the [commodity broker] * * *". *See* the Segregation and Portability Report at 37. Therefore, the Segregation and Portability Report appears to imply that the creation, in the event of the bankruptcy of a commodity broker that is an FCM, of a separate account class for customer positions in cleared OTC derivatives (and money, securities, and/or other property margining, guaranteeing, or securing such positions), as the Notice proposed, may benefit customers, even if a court does not accord such positions (and relevant collateral) full protection under Subchapter IV and Regulation Part 190.

[29] As mentioned above, according to the FIA, the Segregation and Portability Report "concludes that there are reasonable arguments that cleared OTC derivatives may be viewed as 'commodity contracts' for purposes of Subchapter IV and Part 190. However, *'the risk of a contrary conclusion is not insignificant.'* [Emphasis supplied.]" The FIA then further observes:

The Commission may have reached the same conclusion. In its August 17, 2009 recommendations to Congress, the Commission has proposed amendments to the Bankruptcy Code that amend the definition of a "contract market" to remove the reference to "registered entity," which is currently the Commission's basis for finding that cleared-only derivatives contracts are "commodity contracts" under the Bankruptcy Code. Instead, the Commission recommends that the definition of a "commodity contract" be amended to include a "swap that is submitted to a derivatives clearing organization for clearing" by a "swap clearer" (as defined). The broad definition of a "swap" in the Bankruptcy Code would encompass all cleared OTC derivatives contracts.

See FIA CL02 at 6–7.

[30] *See supra* note 17.

[31] Such proposals are available at *http://financialstability.gov/docs/regulatoryreform/titleVII.pdf.*

[32] *See United States* v. *Sepulveda,* 115 F.3d 882, 885 (11th Cir. 1997) (quoting *Hawkins* v. *United States,* 30 F.3d 1077, 1082 (9th Cir. 1994)) (stating that "Congress may, however, 'amend a statute to clarify existing law * * *' Thus, an amendment to a statute does not necessarily indicate that the unamended statute meant the opposite." *See also Wesson* v. *United States,* 48 F.3d 894, 900–901 (5th Cir. 1995); *Fowler* v. *Unified School District No. 259, Sedgwick County, Kansas,* 128 F.3d 1431 (10th Cir. 1997)).

[33] Specifically, The CME Group states:

If, as proposed by the Commission, an FCM were to utilize a separate account for customers' cleared OTC derivatives in the absence of a 4d order, the DCO must also maintain a similar account for holding such positions and their accompanying margins. If the cleared OTC derivatives account class will not apply in the unlikely event of a DCO bankruptcy, then it is unclear what account class would apply to the funds in the DCO's separate account for those OTC derivatives that it clears on behalf of its clearing FCMs' customers.

See The CME Group CL03 at 3.

[34] The proposing release to Regulation Part 190 states:

The Commission is proposing that all open commodity contracts, even those in a deliverable

Continued

Commission believes that the best approach, at present, would be to limit the application of the account class for cleared OTC derivatives to the bankruptcy of a commodity broker that is an FCM.

IV. Recommendation That the Commission Change the Proposed Definition of Cleared OTC Derivatives

One commenter recommends that the Commission change the definition of cleared OTC derivatives, as proposed in the Notice,[35] to better comport with the definition of cleared-only contracts in the Statement on Cleared OTC Derivatives.[36] Specifically, the commenter notes that the definition of cleared OTC derivatives proposed in the Notice appears to require that an FCM *actually submit* a contract for clearing. In contrast, the definition of cleared-only contracts in the Statement on Cleared OTC Derivatives only requires that a contract *is submitted through* an FCM for clearing.[37] The commenter states that, if the Commission adopts the recommendation, the Commission would render patent that it "does not intend to prohibit clearing FCMs from authorizing their customers to directly enter their transactions into the clearing system, in order to meet the definition of cleared OTC derivatives, as long as the transactions are cleared through an FCM."[38] The Commission agrees with this commenter, and has modified, in this release, the definition of cleared OTC derivatives proposed in the Notice in accordance with the recommendation from this commenter.

Another commenter poses two questions about the definition of cleared OTC derivatives proposed in the Notice.[39] All such questions appear related to whether the Commission may deem a contract listed for trading on a contract market (as Regulation 1.3(h) defines such term) to have been executed OTC, if such contract fails to reach a certain liquidity threshold on the contract market. The Commission believes that the definition of cleared OTC derivatives, as proposed in the Notice (*i.e.,* proposed Regulation 190.01(oo)), plainly limits such term to contracts that "have not been entered into or traded on a contract market (as such term is defined in § 1.3(h) of this chapter) * * *." Regulation 1.3(h), in turn, defines "contract market" in terms of a board of trade's designation as a DCM, not in terms of the liquidity of any particular contract.

V. Recommendations That the Commission Establish Objective Standards for Section 4d Orders

Two commenters recommend that the Commission propose objective standards for determining which cleared OTC derivatives would be eligible for a Section 4d Order.[40] The first commenter states that "it would be beneficial to DCOs and the Commission if the Commission were to adopt standards that would define the requirements that must be met for a cleared OTC derivative to qualify for 4d treatment."[41] In contrast, the second commenter states that the Commission must propose such objective standards "[i]n order to assure that 'cleared OTC derivatives' customers receive the benefits intended" by the proposed rules contained in the Notice.[42] The second commenter contends that, without such standards, customers with positions (and money, securities, and/or other property margining, guaranteeing, or securing such positions) in the account class for cleared OTC derivatives may argue, in the bankruptcy of a commodity broker that is an FCM, that: (i) Such positions share certain characteristics with positions in the futures account class; and (ii) thus such customers "should have access to the same pool of assets, *i.e.,* the futures account."[43]

The proposed regulations contained in the Notice (*i.e.,* the proposed amendment to Regulation 190.01(a)) unambiguously state that "positions in commodity contracts of one account class (and the money, securities, and/or other property margining, guaranteeing, or securing such positions)" would be treated, in the bankruptcy of any commodity broker, "as being held in the futures account class" only if, "*pursuant to a Commission order,*" such positions are "commingled with positions in commodity contracts of the futures account class (and the money, securities, and/or other property margining, guaranteeing, or securing such positions)."[44] Pursuant to that plain language, in the bankruptcy of a commodity broker, the decisive factor as to whether a position in a cleared OTC derivative contract (and relevant collateral) would be treated as belonging to the futures account class is whether the Commission *has* issued a Section 4d Order covering such contract, not whether the Commission *should have* or *could have* issued such a Section 4d Order.[45]

It is outside the purview of this release to propose objective standards for determining which cleared OTC derivative contracts would be eligible

position, be liquidated in the event of a clearing organization bankruptcy because it would be highly unlikely that an exchange could maintain a properly functioning futures market in the event of the collapse of its clearing organization. The Commission has proposed no other rules with respect to the operation of clearing organization debtors * * * Because the bankruptcy of a clearing organization would be unique, the Commission is not proposing a general rule in this regard. The potential for disruption of the Markets, and of the nation's economy as a whole, in the case of a clearing organization bankruptcy, together with the desirability of the Commission's active participation in developing a means of meeting such an emergency, has disposed the Commission to take a case-by-case approach with respect to clearing organizations.

See 46 FR 57535, 57545 (November 24, 1981).

[35] *See supra* note 5.

[36] *See supra* note 13.

[37] *See* The CME Group CL03 at 5.

[38] *Id.*

[39] Specifically, ELX asks:

• "What constitutes a 'cleared only' contract? If an OTC derivative is offered for exchange trading (thus losing the moniker OTC derivative) but fails to trade, or trades fewer than 100 contracts per day, is it considered cleared only?"

• "How much time will a contract be given to reach a liquidity threshold before being deemed 'cleared only' and required to be placed in a new account class?"

See ELX CL04 at 2.

[40] A Section 4d Order would permit positions in a cleared OTC derivative (and relevant collateral) to be included in the futures account class rather than another account class (*e.g.,* the account class for cleared OTC derivatives).

[41] *See* The CME Group CL03 at 7.

[42] *See* FIA CL02 at 3.

[43] *Id.* at 3–5.

[44] 74 FR at 40798–99.

[45] To enhance clarity on this point, the reference in the definition of cleared OTC derivatives, as proposed in the Notice, to positions (and relevant collateral) that are "segregated * * * in accordance with a rule, regulation, or order issued by the Commission," *see id.* at 40799, has been changed in this release to a reference to positions (and relevant collateral) that are "segregated or set aside * * * in accordance with a rule, regulation, or order issued by the Commission." Also, Regulation 190.01(a), as proposed in the Notice, has been changed to include the following emphasized language: "*Provided, further,* that, if positions in commodity contracts *that would otherwise belong to* one account class (and the money, securities, and/or other property margining, guaranteeing, or securing such positions), are, pursuant to a Commission order, commingled with positions in commodity contracts of the futures account class (and the money, securities, and/or other property margining, guaranteeing, or securing such positions), then the former positions (and the relevant money, securities, and/or other property) shall be treated, for purposes of this part, as being held in an account of the futures account class."

In making the abovementioned changes, the Commission intends to remove any possible doubt that:

• OTC derivatives subject to a Section 4d Order (including from inception) are "cleared OTC derivatives" within the meaning of Regulation 190.01(oo), but that such derivatives shall be treated, pursuant to Regulation 190.01(a), as belonging to the futures account class and not the cleared OTC derivative account class; and

• OTC derivatives not subject to a Section 4d Order may become "cleared OTC derivatives" within the meaning of Regulation 190.01(oo), but that such derivatives shall be treated, pursuant to Regulation 190.01(a), as belonging to the cleared OTC derivative account class and not the futures account class.

for a Section 4d Order. For the abovementioned reasons, such standards are not necessary to effectuate the purposes of the proposed rules contained in the Notice (including the proposed amendment to Regulation 190.01(a)).[46]

A third commenter poses questions pertaining to the operation of the futures account class after the Commission establishes a separate account class for cleared OTC derivatives.[47] In answer to such questions, the Commission makes the following three observations. First, the Commission will continue to review petitions for Section 4d Orders and will approve such petitions in appropriate cases. Second, the only effect of this release on contracts (and relevant collateral) that, pursuant to a previously issued Section 4d Order, are permitted to be commingled with contracts (and relevant collateral) of the futures account class, is to codify the Statement on Cleared OTC Derivatives and the Interpretative Statement that the Commission issued on November 30, 2004 (the "Statement on Commingling Foreign Futures Positions"),[48] which, in each case, provides that such contracts (and relevant collateral) are to be treated as part of the futures account class. This release does not in any way vitiate any previously issued Section 4d Order. Finally, in the absence of an appropriate order, the Commission does not intend to permit positions in the futures account class and positions in the separate account class for cleared OTC derivatives to be margined as a single portfolio.

VI. Recommendation That the Commission Establish Rules for the Treatment of Positions in Cleared OTC Derivatives (and Relevant Collateral)

In the Notice, the Commission stated that it "[did] not intend to specify substantive requirements for the treatment of cleared OTC derivatives (and the money, securities, and/or other property margining, guaranteeing, or securing such derivatives). Rather, the Commission propose[d] to define 'cleared OTC derivatives' in such a manner as to specify the sources from which such substantive requirements may originate." As the Notice indicates, a DCO rule or bylaw constitutes one possible source for such substantive requirements. Because different DCOs may adopt different substantive requirements, such DCOs may afford varying levels of protection to positions in cleared OTC derivatives (and relevant collateral).[49]

Two commenters disagree with such approach. They recommend that the Commission specify substantive requirements with respect to the treatment of positions in cleared OTC derivatives (and relevant collateral), if the DCO requires such positions (and relevant collateral) to be held in a separate account for cleared OTC derivatives.[50] One commenter observes:

> Depending on how much the requirements for cleared OTC derivatives accounts vary among DCOs, FCMs could find themselves in the position of having to maintain multiple cleared OTC derivatives accounts with respect to different DCOs. Moreover, under the Commission proposal, all cleared OTC derivatives accounts are considered to be part of the same account class, even if the accounts relate to multiple DCOs with varying requirements for such accounts. Therefore, the available funds in the cleared OTC derivatives account class could be diluted for customers of a bankrupt FCM who hold OTC derivatives cleared by a DCO with more stringent requirements because the account class also contains the margins of customers who hold OTC derivatives cleared by a DCO with less stringent requirements.[51]

The Commission does not disagree with the recommendations of the two commenters, and has directed staff to recommend for the Commission's consideration proposals that would impose substantive requirements with respect to the treatment of positions in cleared OTC derivatives (and relevant collateral).

The Commission has decided to promulgate the final rules contained in this release, without waiting to propose the abovementioned requirements, because the Commission believes that it is important, in light of recent market events (including disruptions in global credit markets), to enhance certainty, as soon as possible, with respect to the protections available under Subchapter IV and Regulation Part 190 to positions in cleared OTC derivatives (and relevant collateral), however the FCM and the DCO treat such collateral. Moreover, the Commission believes that it is important to enhance certainty, as soon as possible, regarding the treatment, in a bankruptcy of any commodity broker, of customers with positions (and relevant collateral) subject to a Section 4d Order. Therefore, for the avoidance of doubt, the Commission clarifies that, after the final rules become effective, a position in an OTC derivative (and relevant collateral) that a customer clears through an FCM with a DCO, which position (and collateral) is not subject to a Section 4d Order, would be considered part of the cleared OTC derivative account class, as soon as, but only after, a DCO rule or bylaw that requires such positions (and relevant collateral) to be held in a separate account for cleared OTC derivatives becomes effective, either through self-certification or approval by the Commission.[52] Such rule or bylaw need not specify any particular treatment of such positions (and relevant collateral) at this time in order for such positions to be considered within the OTC derivative account class.

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[46] As the Notice states: "The Commission is proposing [to create an account class for cleared OTC derivatives] at this time because of increased interest among DCOs in clearing OTC derivatives, and the need to enhance certainty regarding the treatment of cleared OTC derivatives in the bankruptcy of a commodity broker in bankruptcy." 74 FR at 40796.

[47] Specifically, ELX asks:

- "[W]hether the DCO will be permitted to cross margin the new account class envisioned by the Proposed Rules against related products in different account classes * * *"
- "Will 4d exemptions still be granted after the new account class is created?"
- "What will be the status of previously granted 4d exemptions, and will they be grandfathered or required to be transferred into the new account class?"

ELX CL04 at 2.

[48] The Statement on Cleared OTC Derivatives can be found at 73 FR 65514 (November 4, 2008). The Statement on Commingling Foreign Futures Positions can be found at 69 FR 69510 (November 30, 2004).

[49] As The CME Group accurately observed, the proposed definition of "cleared OTC derivatives" in the Notice would permit, for example, "one DCO [to] model its rule on the requirements for 4d segregated accounts which limit the instruments in which such funds may be invested to those set forth in Regulation 1.25," and "another DCO [to] use Regulation 30.7 requirements as its guide, and choose not to specify permissible investments." The CME Group CL03 at 6.

[50] FIA states: "In adopting these standards, the Commission should also provide guidance regarding the treatment of funds deposited to margin 'cleared OTC derivatives.'" FIA CL02 at 4.

In addition, The CME Group states:

> Given that the Commission's goal is to ensure that customers clearing OTC derivatives receive bankruptcy protection, and in the interest of providing consistency in the safeguards for OTC customer positions and margins, the Commission should define the minimum requirements that must apply to cleared OTC derivatives accounts for transactions that are cleared through any DCO with respect to those areas that the Commission has already addressed for 4d accounts, including permitted investments, recordkeeping, and acknowledgement letters. The CME Group CL03 at 6–7.

[51] *See* The CME Group CL03 at 6.

[52] *See* Regulations 40.5 and 40.6 (17 CFR 40.5, 40.6).

VII. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA") [53] requires Federal agencies, in promulgating regulations, to consider the impact of those regulations on small businesses. The final rules promulgated in this release will affect only FCMs and DCOs. The Commission has previously established certain definitions of "small entities" to be used by the Commission in evaluating the impact of its regulations in accordance with the RFA.[54] The Commission has previously determined that FCMs [55] and DCOs [56] are not small entities for the purpose of the RFA. Accordingly, pursuant to 5 U.S.C. 605(b), the Chairman, on behalf of the Commission, certifies that the final rules promulgated herein will not have a significant impact on a substantial number of small entities.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 ("PRA") [57] imposes certain requirements on Federal agencies in connection with their conducting or sponsoring any "collection of information" as defined by the PRA. The final rules promulgated in this release do not require the new collection of information on the part of DCOs or FCMs. Accordingly, for purposes of the PRA, the Commission certifies that the final rules promulgated in this release would not impose any new reporting or recordkeeping requirements.

C. Cost-Benefit Analysis

Section 15(a) of the Act requires that the Commission, before promulgating a regulation under the Act or issuing an order, consider the costs and benefits of its action. By its terms, Section 15(a) of the Act does not require the Commission to quantify the costs and benefits of a new regulation or determine whether the benefits of the regulation outweigh its costs. Rather, Section 15(a) of the Act simply requires the Commission to "consider the costs and benefits" of its action.

Section 15(a) of the Act further specifies that costs and benefits shall be evaluated in light of the following considerations: (1) Protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. Accordingly, the Commission could, in its discretion, give greater weight to any one of the five considerations and could determine that, notwithstanding its costs, a particular regulation was necessary or appropriate to protect the public interest or to effectuate any of the provisions or to accomplish any of the purposes of the Act.

The Commission has evaluated the costs and benefits of the final rules promulgated in this release in light of (i) the comments that it has received on the Notice and (ii) the specific considerations identified in Section 15(a) of the Act, as follows:

1. Protection of Market Participants and the Public

The final rules promulgated in this release would benefit FCMs and DCOs, as well as customers of the futures and options markets, by providing greater certainty, (i) in a bankruptcy of a commodity broker that is an FCM, regarding the treatment of cleared OTC derivatives, and (ii) in a bankruptcy of any commodity broker, regarding the allocation of positions in commodity contracts (and relevant money, securities, and/or other property) of one account class that are commingled in an FCM or DCO account, pursuant to a Section 4d Order, with positions in commodity contracts (and relevant money, securities, and/or other property) of the futures account class.

2. Efficiency and Competition

The final rules promulgated in this release are not expected to have an effect on efficiency or competition.

3. Financial Integrity of Futures Markets and Price Discovery

The final rules promulgated in this release would enhance the protection, in the bankruptcy of a commodity broker that is an FCM, of customers with positions in cleared OTC derivatives by providing an account class in which to hold such positions (and relevant money, securities, and/or other property). Further, the final rules would enhance certainty regarding the treatment, in a bankruptcy of any commodity broker, of customers with positions (and relevant money, securities, and/or other property) subject to a Section 4d Order, by removing concerns regarding whether the Statement on Cleared OTC Derivatives, as well as the Statement on Commingling Foreign Futures Positions, would be limited to the specific factual patterns addressed therein. Thus, the final rules would contribute to the financial integrity of the futures and options markets as a whole.

4. Sound Risk Management Practices

The final rules promulgated in this release would reinforce the sound risk management practices already required of FCMs and DCOs, by (i) providing an account class, in the bankruptcy of a commodity broker that is an FCM, in which to hold positions in cleared OTC derivatives (and relevant money, securities, and/or other property), and (ii) providing certainty to FCMs and DCOs regarding the allocation between account classes, in a bankruptcy of any commodity broker, of customer positions (and relevant money, securities, and/or other property) subject to a Section 4d Order.

5. Other Public Considerations

Recent market events, including disruptions in global credit markets, render it prudent to enhance certainty regarding the treatment of customer positions (and relevant money, securities, and/or other property) in a commodity broker bankruptcy.

Accordingly, after considering the five factors enumerated in the Act, the Commission has determined to promulgate the final rules as set forth below.

List of Subjects in 17 CFR Part 190

Bankruptcy, Brokers, Commodity futures.

■ For the reasons stated in the preamble, the Commission hereby amends 17 CFR part 190 as follows:

PART 190—BANKRUPTCY

■ 1. The authority citation for part 190 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 4a, 6c, 6d, 6g, 7a, 12, 19, and 24, and 11 U.S.C. 362, 546, 548, 556, and 761–766, unless otherwise noted.

■ 2. In § 190.01, revise paragraph (a) and add paragraph (oo) to read as follows:

§ 190.01 Definitions.

* * * * *

(a) *Account class* means each of the following types of customer accounts which must be recognized as a separate class of account by the trustee: futures accounts, foreign futures accounts, leverage accounts, commodity option accounts, delivery accounts as defined in § 190.05(a)(2), and, only with respect to the bankruptcy of a commodity broker that is a futures commission merchant, cleared OTC derivatives accounts; *Provided, however,* That to the extent that the equity balance, as defined in § 190.07, of a customer in a

[53] 5 U.S.C. 601 *et seq.*

[54] 47 FR 18618 (April 30, 1982).

[55] *Id.* at 18619.

[56] 66 FR 45604, 45609 (August 29, 2001).

[57] 44 U.S.C. 3501–3520.

commodity option, as defined in § 1.3(hh) of this chapter, may be commingled with the equity balance of such customer in any domestic commodity futures contract pursuant to regulations under the Act, the aggregate shall be treated for purposes of this part as being held in a futures account; *Provided, further,* that, if positions in commodity contracts that would otherwise belong to one account class (and the money, securities, and/or other property margining, guaranteeing, or securing such positions), are, pursuant to a Commission order, commingled with positions in commodity contracts of the futures account class (and the money, securities, and/or other property margining, guaranteeing, or securing such positions), then the former positions (and the relevant money, securities, and/or other property) shall be treated, for purposes of this part, as being held in an account of the futures account class.

* * * * *

(oo) *Cleared OTC derivatives* shall mean positions in commodity contracts that have not been entered into or traded on a contract market (as such term is defined in § 1.3(h) of this chapter) or on a derivatives transaction execution facility (within the meaning of Section 5a of the Act), but which nevertheless are submitted through a commodity broker that is a futures commission merchant (as such term is defined in § 1.3(p) of this chapter) for clearing by a clearing organization (as such term is defined in this section), along with the money, securities, and/or other property margining, guaranteeing, or securing such positions, which are required to be segregated or set aside, in accordance with a rule, regulation, or order issued by the Commission, or which are required to be held in a separate account for cleared OTC derivatives only, in accordance with the rules or bylaws of a clearing organization (as such term is defined in this section).

■ 4. In § 190.07, revise paragraph (b)(2)(viii) to read as follows:

§ 190.07 Calculation of allowed net equity.

(b) * * *

(2) * * *

(viii) Subject to paragraph (b)(2)(ix) of this section, the futures accounts, leverage accounts, options accounts, foreign futures accounts, and cleared OTC derivatives accounts of the same person shall not be deemed to be held in separate capacities: *Provided, however,* That such accounts may be aggregated only in accordance with paragraph (b)(3) of this section.

* * * * *

■ 5. Amend "bankruptcy appendix form 4—proof of claim" in Appendix A to Part 190 by revising paragraph a in section III to read as follows:

Appendix A to Part 190—Bankruptcy Forms

* * * * *

bankruptcy appendix form 4—proof of claim

* * * * *

III. * * *

a. Whether the account is a futures, foreign futures, leverage, option (if an option account, specify whether exchange-traded or dealer), "delivery" account, or, only with respect to a bankruptcy of a commodity broker that is a futures commission merchant, a cleared OTC derivatives account. A "delivery" account is one which contains only documents of title, commodities, cash, or other property identified to the claimant and deposited for the purposes of making or taking delivery on a commodity underlying a commodity contract or for payment of the strike price upon exercise of an option.

Issued in Washington, DC, on March 31, 2010, by the Commission.

David A. Stawick,

Secretary of the Commission.

[FR Doc. 2010–7742 Filed 4–5–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 570

[Docket No. 5326–F–02]

RIN 2506–AC28

Section 108 Community Development Loan Guarantee Program: Participation of States as Borrowers Pursuant to Section 222 of the Omnibus Appropriations Act, 2009

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Final rule.

SUMMARY: This final rule follows publication of a July 22, 2009, interim rule that implemented section 222 in Division I of the Omnibus Appropriations Act, 2009. Section 222 authorizes HUD, to the extent of its Fiscal Year (FY) 2009 loan guarantee authority, to provide community development loan guarantees, under section 108 of the Housing and Community Development Act of 1974, to States borrowing on behalf of local governments in nonentitlement areas (governments that do not receive annual Community Development Block Grants (CDBGs) from HUD). Section 108 authorizes HUD to guarantee notes issued by such nonentitlement local governments or their designated public agencies supported by the respective State's pledge of its CDBG funds. Prior to the enactment of section 222, HUD lacked authority to guarantee notes issued by States on behalf of local governments in nonentitlement areas. HUD received a single public comment on the July 22, 2009, interim rule, which expressed support for the interim regulatory amendments. HUD is adopting the interim rule without change.

DATES: *Effective Date:* May 6, 2010.

FOR FURTHER INFORMATION CONTACT: Paul Webster, Director, Financial Management Division, Office of Community Planning and Development, Department of Housing and Urban Development, 451 7th Street, SW., Room 7186, Washington, DC 20410; telephone number 202–708–1871 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

On July 22, 2009, at 74 FR 36384, HUD published an interim rule to implement section 222 in Division I of the Omnibus Appropriations Act, 2009, (Pub. L. 111–8) (2009 Appropriations Act). Section 222 authorizes expanded loan guarantee authority under section 108 of the Housing and Community Development Act of 1974 (HCD Act) for Fiscal Year (FY) 2009.

Section 108 of the HCD Act provides local governments with access to long-term (up to 20-year) fixed-rate loans at relatively low interest rates to finance certain categories of eligible CDBG projects. Historically, section 108 guarantee authority has been limited to units of general local government and their public agencies. States have participated in the section 108 program by supporting loan guarantee applications of local governments in nonentitlement areas (governments that do not receive annual CDBG funds from HUD) and by pledging the State's CDBG allocations to secure the obligations issued by the local governments. However, States have not been able to participate in the program as issuers of obligations. One of the administrative provisions of the 2009 Appropriations Act, section 222, authorizes HUD, to the extent allowed under FY 2009 loan guarantee authority, to provide section 108 community development loan

guarantees to States borrowing on behalf of local governments in nonentitlement areas.

The July 22, 2009, interim rule implemented the expansion of section 108 loan guarantee authority provided by the 2009 Appropriations Act. HUD's authority to issue loan guarantee commitments under section 222 will expire on September 30, 2010 (and could be fully utilized by other borrowers before that date), unless the provision continues to be included in future appropriations acts. The July 22, 2009, interim rule, however, contained language that will continue the applicability of the provisions implementing this new authority, in the event that provisions equivalent to section 222 are included in future appropriations acts. Because the provisions of section 222 expand, rather than replace, existing section 108 authority, HUD will also continue to accept State-supported applications from nonentitlement-area local governments so that they can receive loan guarantee commitments under the HCD Act. Interested readers should refer to the preamble of the July 22, 2009, interim rule for additional background and details regarding the regulatory changes implementing section 222. As provided at 24 CFR 570.711, the additional requirements and alternative application procedures in this rule shall also apply to guarantees of debt obligations under section 108, pursuant to the equivalent authority provided in the 2010 Appropriations Act (Pub. L. 111–117).

II. This Final Rule

This final rule follows publication of the July 22, 2009, interim rule. The public comment period on the interim rule closed on August 21, 2009. HUD received a single public comment, expressing support for the interim regulatory changes and urging HUD to make the changes permanent. HUD is adopting the interim rule without change.

III. Findings and Certifications

Environmental Review

A Finding of No Significant Impact (FONSI) with respect to the environment was made at the interim rule stage in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The Finding of No Significant Impact remains applicable to this final rule and is available for public inspection between the hours of 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW., Room 10276, Washington, DC 20410. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the FONSI by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Information Relay Service at 800–877–8339.

Federalism

Executive Order 13132 (entitled "Federalism") prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on State and local governments and is not required by statute, or the rule preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This rule does not have federalism implications and does not impose substantial direct compliance costs on State and local governments nor preempt State law within the meaning of the Executive Order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments, and on the private sector. This rule does not impose any Federal mandates on any State, local, or Tribal governments, or on the private sector, within the meaning of UMRA.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This final rule adopts, without change, an interim rule that implemented new statutory authority to provide an additional, alternative route for States and their nonentitlement-area local governments to obtain financing for eligible community development projects. Specifically, the final rule authorizes HUD to provide community development loan guarantees to States borrowing on behalf of local governments in nonentitlement areas. Therefore, the primary focus of the regulatory amendments is on the States, which are relatively large jurisdictions. Further, and as detailed in the preamble to the July 22, 2009, interim rule, the regulatory amendments track the language of the authorizing statute to the greatest extent possible. Accordingly, the regulatory text reflects statutorily mandated requirements that HUD does not have discretion to modify. Where HUD has been granted the discretion to elaborate on the statutory requirements, it has built upon the existing requirements for section 108 loan guarantees, which are familiar to States and localities. Moreover, these amendments are technical, and procedural, relating to the distribution of funds to local governments and the procedures to be followed by States in applying for the loan guarantees authorized by the provision. Therefore, it is HUD's determination that these revisions impose no significant economic impact on a substantial number of small entities. Accordingly, undersigned certifies that this rule will not have a significant impact on a substantial number of small entities.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance (CFDA) program number for the State CDBG program is 14.228, and the CDFA program number for the section 108 loan guarantee program is 14.248.

List of Subjects in 24 CFR Part 570

Administrative practice and procedure, American Samoa, Community Development Block Grants, Grant programs—education, Grant programs—housing and community development, Guam, Indians, Loan programs—housing and community development, Low and moderate income housing, Northern Mariana Islands, Pacific Islands Trust Territory, Puerto Rico, Reporting and recordkeeping requirements, Student aid, Virgin Islands.

■ Accordingly, the interim rule amending 24 CFR part 570, which was published at 74 FR 36384 on July 22, 2009, is adopted as a final rule without change.

Dated: March 9, 2010.

Mercedes Márquez,

Assistant Secretary for Community Planning and Development.

[FR Doc. 2010–7767 Filed 4–5–10; 8:45 am]

BILLING CODE 4210–67–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Information Security Oversight Office

32 CFR Part 2004

[FDMS Docket ISOO–09–0001]

RIN 3095–AB63

National Industrial Security Program Directive No. 1

AGENCY: Information Security Oversight Office, NARA.

ACTION: Final rule.

SUMMARY: The Information Security Oversight Office (ISOO), National Archives and Records Administration (NARA), has amended National Industrial Security Program Directive No. 1. This amendment to Directive No. 1 provides guidance to agencies on release of certain classified information (referred to as "proscribed information") to contractors that are owned or under the control of a foreign interest and have had the foreign ownership or control mitigated by an arrangement known as an Special Security Agreement (SSA). To date, there has been no Federal standard across agencies on release of proscribed information to this group. This amendment provides standardization and consistency to the process across the Federal Government, and enables greater efficiency in determining the release of the information as appropriate. This amendment also moves the definitions section to the beginning of the part for easier use, and adds definitions for the terms "Cognizant Security Office (CSO)," "National Interest Determination (NID)," and "Proscribed Information," to accompany the new guidelines. Finally, this amendment makes a minor typographical change to the authority citation to make it more accurate.

DATES: This rule is effective May 6, 2010.

FOR FURTHER INFORMATION CONTACT: William J. Bosanko, Director, ISOO, at 202–357–5250.

SUPPLEMENTARY INFORMATION: As of November 17, 1995, ISOO became a part of NARA and subsequently published Part 2004, National Industrial Program Directive No. 1, pursuant to section 102(b)(1) of E.O. 12829, January 6, 1993 (58 FR 3479), as amended by E.O. 12885, December 14, 1993, (58 FR 65863). The Executive Order established a National Industrial Security Program (NISP) to safeguard Federal Government classified information released to contractors, licensees, and grantees (collectively referred to here as "contractors") of the United States Government. This amendment to Directive No. 1 adds guidelines on release of proscribed information to this category of contractors.

ISOO maintains oversight over E.O. 12958, as amended, and policy oversight over E.O. 12829, as amended, and issuing this amendment fulfills one of the ISOO Director's delegated responsibilities under these Executive Orders. Nothing in Directive No. 1 or this amendment shall be construed to supersede the authority of the Secretary of Energy or the Nuclear Regulatory Commission under the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011, *et seq.*), or the authority of the Director of National Intelligence under the National Security Act of 1947, as amended, E.O. 12333, December 8, 1981, and the Intelligence Reform and Terrorism Prevention Act of 2004.

The interpretive guidance contained in this amendment will only assist agencies to implement E.O. 12829, as amended; users of Directive No. 1 shall refer concurrently to the Executive Order for guidance.

On November 30, 2009, ISOO published a proposed rule in the **Federal Register** (74 FR 62531) for a 60-day public comment period. A correction to the proposed rule was published on January 12, 2010, changing the Federal Docket Management System (FDMS) Docket Number from NARA–09–0005 to ISOO–09–0001 and the RIN from 3095–AB34 to 3095–AB63. These corrections are reflected in this final rule. The proposed rule made the changes as outlined in the Summary above. The public comment period closed on January 29, 2010. In response, ISOO received comments from three entities; a Federal agency, a law firm, and a technological systems design company. All the commenters in general supported the proposed amendments to the rule, but all three also submitted suggested language changes to address perceived clarity problems, subordinate office designees, and concerns regarding deadlines.

All three commenters raised concerns about the use of the word "ordinarily" in proposed § 2004.22, Operational Responsibilities, subparagraphs (c)(1)(iii), (c)(4), (c)(4)(i), and (c)(4)(ii). The proposed provisions set forth 30-day and 60-day deadlines in which Government Contracting Activity (GCA) determinations or NID decisions would "ordinarily" be made. All three commenters stated that the word "ordinarily" was too vague, undercut the deadlines, reduced accountability, and created the risk that the deadlines would be treated as advisory only.

We agree with the commenters and the proposal to remove the term "ordinarily" from these provisions. ISOO has modified the proposed subparagraphs to remove the term "ordinarily" from these provisions in the final rule. This allows for instances in which there is a need to exceed the 30- to 60-day NID timeframe and also requires the GCA to formally advise the CSA if special circumstances apply.

Two of the commenters raised concerns about the definition of a NID contained in § 2004.5(d) and § 2004.22(c). The proposed amendment stated that, in making a NID, the agency will assess whether access to the proscribed information "is consistent with the national security interests of the United States." Both commenters referred to NISPOM section 2–303c(2), in which NID is defined as a determination that access to the proscribed information "shall not harm the national security interests of the United States," rather than "is consistent with." The commenters emphasized that prior to 2006 adoption of the "do no harm" standard in the NISPOM provision, the NID process was tedious, time-consuming, often misinterpreted to require sole-source determinations, and discouraged many contractors from pursuing NIDs. In addition, because this amended rule does not replace or amend NISPOM 2–303c, the commenters were concerned that having a different standard in this rule would create confusion, uneven application of standards, and a return to the pre-2006 period of excessively difficult NID processing.

We respectfully disagree with this comment. The proposed language meets the standards of Executive Order 13526, "Classified National Security Information" (the Order). Specifically, section 1.1(a)(4) of the Order, which states "* * * that the unauthorized disclosure of the information reasonably could be expected to result in damage to the national security * * *." The "do no harm" national security language exceeds the standards set in the Order for originally classifying information, and would create a requirement that is extremely difficult or even impossible to substantiate. Additionally, the current NISPOM guidance concerning NIDs is under revision and ultimately, the requirements for processing NID requests will be consistent with each other in both documents.

One of the commenters included two additional recommendations. First, that § 2004.22(c)(1)(ii) be changed from

"* * * the Cognizant Security Office (CSO) shall notify the GCA of the need for a NID" to "* * * the Cognizant Security Agency, or when delegated, the Cognizant Security Office (CSO) shall * * *." The comment stated that not all CSAs may have established a CSO, and some may want to retain this responsibility centrally. This recommended change would allow for both options and would also keep the language of this provision consistent with the rest of the implementing directive, which is written for the CSA level. We concur with both the recommendation and its rationale, and have amended the rule accordingly.

Second, the commenter recommended that § 2004.22(c)(4)(iii) be changed to read "In such instances the *GCA will provide the CSA or its designee with updates at 30-day intervals.* This CSA, *or its designee,* will, *in turn.* * * *" (commenter recommended language in italics). The commenter's rationale for the proposed change was that it allows the CSA to determine whether it, or a designated CSO, will notify the contractor, for similar reasons to the recommendation in the paragraph above. We concur with both the recommendation and the rationale, and have amended the rule accordingly.

One of the commenters also commented on § 2004.22(c)(4)(iii). The commenter raised concerns that allowing NID determinations to exceed the 30- or 60-day deadlines with only status updates to be provided at 30-day intervals would allow the government the option of not adhering to the amendment's deadlines. The commenter also raised concerns that this option might become the rule, rather than the exception, because there is no "action-forcing mechanism," no required justification for delay, and no sanction. The commenter feared that such delays could drag on for months without stronger language, and recommended that the rule be amended to make clear that extensions of the deadlines will be allowed only in extraordinary cases. In addition, the commenter proposed that, given the damage that delay could cause to the procurement process, delays beyond 60 days should require approval at the Assistant Secretary level.

We respectfully disagree in part with the commenter's recommendations. We believe that acceptance of proposed language above to address concerns about use of the term "ordinarily" addresses a portion of the comment's concern. However, we have also added the following language to the end of § 2004.22(c)(1)(iii) to clarify when an extension of the timeframe is necessary with formal advisement to the CSA: "* * * unless the GCA requires additional time for the NID process due to special circumstances. The GCA shall formally advise the CSA, if special circumstances apply." And we have added the following language to the middle of § 2004.22(c)(4)(iii) for the same purpose: "* * * GCA, in addition to formally notifying the CSA of the special circumstances, per § 2004.22(c)(1)(iii). * * *" We believe that this language is sufficient to address the deadline issue raised in the comment. We also believe that extensions for NIDs should remain under the GCA. The GCA is the legal authority that directs the contract activity with the contractor on behalf of the CSA. The GCA advises the CSA regarding the extension of the deadline, but this advisement could be elevated to a higher level at the agency's discretion. We have therefore not made the recommended changes to the amended rule.

Regulatory Impact

This rule is not a significant regulatory action for the purposes of E.O. 12866. The rule is also not a major rule as defined in 5 U.S.C. Chapter 8, Congressional Review of Agency Rulemaking. As required by the Regulatory Flexibility Act, we certify that the final rule will not have a significant impact on a substantial number of small entities because it applies only to Federal agencies.

List of Subjects in 32 CFR Part 2004

Classified information.

■ For the reasons stated in the preamble, NARA amends Title 32 of the Code of Federal Regulations, part 2004, as follows:

PART 2004—NATIONAL INDUSTRIAL SECURITY PROGRAM DIRECTIVE NO. 1

■ 1. The authority citation for part 2004 is revised to read as follows:

Authority: Executive Order 12829, January 6, 1993, 58 FR 3479, as amended by Executive Order 12885, December 14, 1993, 58 FR 65863.

§ 2004.24 [Redesignated as § 2004.5]

■ 2. Redesignate § 2004.24 as § 2004.5.

■ 3. In the newly redesignated § 2004.5, redesignate paragraph (b) as paragraph (c), and add new paragraphs (b), (d), and (e), to read as follows:

§ 2004.5 Definitions.

* * * * *

(b) "Cognizant Security Office (CSO)" means the organizational entity delegated by the Head of a CSA to administer industrial security on behalf of the CSA.

* * * * *

(d) "National Interest Determination (NID)" means a determination that access to proscribed information is consistent with the national security interests of the United States.

(e) "Proscribed information" means Top Secret; Communications Security, except classified keys used for data transfer; Restricted Data; Special Access Program; or Sensitive Compartmented Information.

■ 4. Amend § 2004.22 by adding new paragraph (c) to read as follows:

§ 2004.22 Operational Responsibilities [202(a)].

* * * * *

(c) *National Interest Determinations (NIDs).* Executive branch departments and agencies shall make a National Interest Determination (NID) before authorizing contractors, cleared or in process for clearance under a Special Security Agreement (SSA), to have access to proscribed information. To make a NID, the agency shall assess whether release of the proscribed information is consistent with the national security interests of the United States.

(1) The requirement for a NID applies to new contracts, including pre-contract activities in which access to proscribed information is required, and to existing contracts when contractors are acquired by foreign interests and an SSA is the proposed foreign ownership, control, or influence mitigation method.

(i) If access to proscribed information is required to complete pre-contract award actions or to perform on a new contract, the Government Contracting Activity (GCA) shall determine if release of the information is consistent with national security interests.

(ii) For contractors that have existing contracts that require access to proscribed information, have been or are in the process of being acquired by foreign interests, and have proposed an SSA to mitigate foreign ownership, the Cognizant Security Agency (CSA), or when delegated, the Cognizant Security Office (CSO) shall notify the GCA of the need for a NID.

(iii) The GCA(s) shall determine, within 30 days, per § 2004.22(c)(4)(i), or 60 days, per § 2004.22(c)(4)(ii), whether release of the proscribed information is consistent with national security interests unless the GCA requires additional time for the NID process due to special circumstances. The GCA shall formally advise the CSA, if special circumstances apply.

(2) In accordance with 10 U.S.C. 2536, DoD and the Department of Energy (DOE) cannot award a contract involving access to proscribed information to a contractor effectively owned or controlled by a foreign government unless a waiver has been issued by the Secretary of Defense or Secretary of Energy.

(3) NIDs may be program-, project-, or contract-specific. For program and project NIDs, a separate NID is not required for each contract. The CSO may require the GCA to identify all contracts covered by the NID. NID decisions shall be made by officials as specified by CSA policy or as designated by the agency head.

(4) NID decisions shall be made within 30 days.

(i) Where no interagency coordination is required because the department or agency owns or controls all of the proscribed information in question, the GCA shall provide a final documented decision to the applicable CSO, with a copy to the contractor, within 30 days of the date of the request for the NID.

(ii) If the proscribed information is owned by, or under the control of, a department or agency other than the GCA (e.g., National Security Agency (NSA) for Communications Security, the Office of the Director of National Intelligence (ODNI) for Sensitive Compartmented Information, and DOE for Restricted Data), the GCA shall provide written notice to that department or agency that its written concurrence is required. Such notice shall be provided within 30 days of being informed by the CSO of the requirement for a NID. The GCA shall provide a final documented decision to the applicable CSO, with a copy to the contractor, within 60 days of the date of the request for the NID.

(iii) If the NID decision is not provided within 30 days, per § 2004.22(c)(4)(i), or 60 days, per § 2004.22(c)(4)(ii), the CSA shall intercede to request the GCA to provide a decision. In such instances, the GCA, in addition to formally notifying the CSA of the special circumstances, per § 2004.22(c)(1)(iii), will provide the CSA or its designee with updates at 30-day intervals. The CSA, or its designee, will, in turn, provide the contractor with updates at 30-day intervals until the NID decision is made.

(5) The CSO shall not delay implementation of an SSA pending completion of a GCA's NID processing, provided there is no indication that a NID will be denied either by the GCA or the owner of the information (i.e., NSA, DOE, or ODNI). However, the contractor shall not have access to additional proscribed information under a new contract until the GCA determines that the release of the information is consistent with national security interests and issues a NID.

(6) The CSO shall not upgrade an existing contractor clearance under an SSA to Top Secret unless an approved NID covering the prospective Top Secret access has been issued.

Dated: March 30, 2010.

William J. Bosanko,

Director, Information Security Oversight Office.

Approved: March 30, 2010.

David S. Ferriero,

Archivist of the United States.

[FR Doc. 2010–7776 Filed 4–5–10; 8:45 am]

BILLING CODE 7515–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2009–0521; FRL–9096–8]

Revisions to the Arizona State Implementation Plan; Pinal County

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing approval of revisions to the Pinal County portion of the Arizona State Implementation Plan (SIP). These revisions were proposed in the **Federal Register** on August 17, 2009 and concern particulate matter (PM) emissions from construction, earthmoving, and related activities, and commercial and residential unpaved parking lots. We are approving these local rules that regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: *Effective Date:* This rule is effective on May 6, 2010.

ADDRESSES: EPA has established docket number EPA–R09–OAR–2009–0521 for this action. The index to the docket is available electronically at *http://www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Jerry Wamsley, EPA Region IX, (415) 947–4111, *wamsley.jerry@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us" and "our" refer to EPA.

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I. Proposed Action
II. Public Comments and EPA Responses
III. EPA Action
IV. Statutory and Executive Order Reviews

I. Proposed Action

On August 17, 2009 (74 FR 41357), EPA proposed to approve into the Arizona SIP the rules listed below.

Local agency	Rule No.	Rule title	Adopted	Submitted
Pinal County	2–8–302	Performance Standards—Hayden PM10 Non-attainment Area	01/07/09	06/12/09
	4–2–020	Fugitive Dust—General	12/04/02	06/12/09
	4–2–030	Fugitive Dust—Definitions	12/04/02	06/12/09
	4–4	PM–10 Non-attainment Area Rules; Dustproofing and Stabilization for Commercial Unpaved Parking, Drive and Working Yards.	06/03/09	06/12/09
	4–5	PM–10 Non-attainment Area Rules; Stabilization for Residential Parking and Drives.	06/03/09	06/12/09
	4–7	Construction Sites in Non-Attainment Areas—Fugitive Dust	06/03/09	06/12/09
	4–9	Test Methods	06/03/09	06/12/09

We proposed to approve these rules because we determined that they complied with the relevant CAA requirements. Our proposed action contains more information on the rules and our evaluation.

II. Public Comments and EPA Responses

EPA's proposed action provided a 30-day public comment period. During this period, we received one inquiry as to how to obtain the Technical Support Document and other electronic files related to the rulemaking. We received no other comments.

III. EPA Action

No comments were submitted that change our assessment that the submitted rules comply with the relevant CAA requirements. Therefore, as authorized in section 110(k)(3) of the Act, EPA is fully approving these rules into the Arizona SIP.

Also, on August 17, 2009, we published an Interim Final Determination staying and deferring CAA section 179 sanctions for Pinal County pending our final action on the rules listed above (see 74 FR 41340). With this final approval action, we find that these rules correct the deficiencies we described in our August 1, 2007 limited disapproval action (see 72 FR 41896). Consequently, all section 179 sanctions and our Federal Implementation Plan obligations under CAA section 110(c) following from our August 1, 2007 limited disapproval are terminated upon the effective date of this final rule action.

IV. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this action:

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

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 7, 2010. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

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

Dated: November 24, 2009.

Laura Yoshii,

Acting Regional Administrator, Region IX.

Editorial Note: This document was received in the Office of the Federal Register on April 1, 2010.

■ Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401 *et seq.*

Subpart D—Arizona

■ 2. Section 52.120 is amended by adding paragraph (c)(145) to read as follows:

§ 52.120 Identification of plan.

* * * * *

(c) * * *

(145) New and amended regulations were submitted on June 12, 2009 by the Governor's designee.

(i) *Incorporation by Reference.*

(A) Pinal County Air Quality Control District.

(1) Rule 2–8–302, "Performance Standards—Hayden PM–10 Non-attainment Area," adopted on January 7, 2009.

(*i*) Pinal County Board of Supervisors, Resolution No. 010709–AQ3, Pinal County Air Quality Control District, "A Resolution of the Board of Supervisors of Pinal County, Adopting Certain Revisions to the Pinal County Air Quality Control District Rules, adopted January 7, 2009; to Wit: Rule 2–8–302 (Performance Standards—Hayden PM10 Nonattainment Area). Rule 4–2–020, "Fugitive Dust—General," amended on December 4, 2002. Rule 4–2–030, "Fugitive Dust—Definitions," amended on December 4, 2002. Chapter 4, Article

4, "PM–10 Non-attainment Area Rules; Dustproofing and Stabilization for Commercial Unpaved Parking, Drive and Working Yards"; Section 4–4–100, "General Provisions," amended on June 3, 2009; Section 4–4–110, "Definitions," amended on June 3, 2009; Section 4–4–120, "Objective Standards," amended on June 3, 2009; Section 4–4–130, "Work Practice Standards," adopted on June 3, 2009; Section 4–4–140, "Recordkeeping and Records Retention," adopted on June 3, 2009. Chapter 4, Article 5, "PM–10 Non-attainment Area Rules; Stabilization for Residential Parking and Drives"; Section 4–5–150, "Stabilization for Residential Parking and Drives; Applicability," amended on June 3, 2009; Section 4–5–160, "Residential Parking Control Requirement," amended on June 3, 2009; Section 4–5–170, "Deferred enforcement date," amended on June 3, 2009. Chapter 4, Article 7, "Construction Sites in Non-Attainment Areas—Fugitive Dust"; Section 4–7–210, "Definitions," adopted on June 3, 2009; Section 4–7–214, "General Provisions," adopted on June 3, 2009; Section 4–7–218, "Applicability; Development Activity," adopted on June 3, 2009; Section 4–7–222, "Owner and/or Operator Liability," adopted on June 3, 2009; Section 4–7–226, "Objective Standards; Sites," adopted on June 3, 2009; Section 4–7–230, "Obligatory Work Practice Standards; Sites," adopted on June 3, 2009; Section 4–7–234, "Nonattainment-Area Dust Permit Program; General Provisions," adopted on June 3, 2009; Section 4–7–238, "Nonattainment Area Site Permits," adopted on June 3, 2009; Section 4–7–242, "Nonattainment Area Block Permits," adopted on June 3, 2009; Section 4–7–246, "Recordkeeping and Records Retention," adopted on June 3, 2009. Chapter 4, Article 9, "Test Methods"; Section 4–9–320, "Test Methods for Stabilization For Unpaved Roads and Unpaved Parking Lots," adopted on June 3, 2009; Section 4–9–340, "Visual Opacity Test Methods," adopted on June 3, 2009.

* * * * *

[FR Doc. 2010–7737 Filed 4–5–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 272

[EPA–R10–RCRA–2009–0868; FRL–9122–8]

Idaho: Incorporation by Reference of Approved State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Resource Conservation and Recovery Act, as amended, (RCRA), allows the Environmental Protection Agency (EPA) to authorize State hazardous waste programs if EPA finds that such programs are equivalent to and consistent with the Federal RCRA program and if such programs provide adequate enforcement of compliance. The regulations are used by EPA to codify its decision to authorize individual State programs and incorporate by reference those provisions of the State statutes and regulations that are subject to EPA's RCRA inspection and enforcement authorities as authorized provisions of the State's program. This direct final rule revises the codification of the authorized Idaho hazardous waste management program and incorporates by reference authorized provisions of the State's statutes and regulations.

DATES: This rule is effective June 7, 2010, unless the EPA receives adverse comment on this regulation by the close of business May 6, 2010. If the EPA receives such comments, EPA will publish a timely withdrawal of this direct final rule in the **Federal Register** informing the public that the rule will not take effect. The Director of the Federal Register approves this incorporation by reference as of June 7, 2010 in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R10–RCRA–2009–0868 by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: hedgpeth.zach@epa.gov.*
- *Mail:* Zach Hedgpeth, U.S. EPA, Region 10, 1200 Sixth Avenue, Suite 900, Mail Stop AWT–122, Seattle, Washington 98101.
- *Hand Delivery:* Zach Hedgpeth, U.S. EPA, Region 10, 1200 Sixth Avenue, Suite 900, Mail Stop AWT–122, Seattle, Washington 98101. Such deliveries are only accepted during the normal business hours of operation; special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R10–RCRA–2009–0868. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the EPA Region 10 Library, 1200 Sixth Avenue, Seattle, Washington 98101. This Docket Facility is open from 9 a.m. to noon, and 1 to 4 p.m. Monday through Friday, excluding legal holidays. The library telephone number is 206–553–1289.

FOR FURTHER INFORMATION CONTACT: Zach Hedgpeth, U.S. EPA, Region 10,

1200 Sixth Avenue, Mail stop WCM–122, Seattle, Washington 98101, e-mail: *hedgpeth.zach@epa.gov*, phone number (206) 553–1217.

SUPPLEMENTARY INFORMATION:

I. Incorporation by Reference

A. What is Codification?

Codification is the process of including the statutes and regulations that comprise the State's authorized hazardous waste management program in the CFR. Section 3006(b) of RCRA, 42 U.S.C. 6926(b), allows the Environmental Protection Agency to authorize State hazardous waste management programs. The State regulations authorized by EPA supplant the Federal regulations concerning the same matter with the result that after authorization EPA enforces the authorized regulations. Infrequently, State statutory language which acts to regulate a matter is also authorized by EPA with the consequence that EPA enforces the authorized statutory provision. EPA does not authorize State enforcement authorities and does not authorize State procedural requirements. EPA codifies the authorized State program in 40 CFR part 272 and incorporates by reference State statutes and regulations that make up the approved program which is Federally enforceable. EPA retains independent enforcement authority pursuant to sections 3007, 3008, 3013 and 7003 of RCRA, 42 U.S.C. 6927, 6928, 6934 and 6973 and any other applicable statutory and regulatory provisions.

This action codifies EPA's authorization of revisions to Idaho's hazardous waste management program. This direct final action codifies the State program in effect at the time EPA authorized revisions to the Idaho hazardous waste management program in a final rule dated December 23, 2008 (73 FR 78647). Notice and an opportunity for comment regarding those revisions to the authorized State program were provided to the public at the time those revisions were proposed. EPA is not reopening its decision to authorize changes to the State's program nor is EPA requesting comment on those revisions.

B. What Is the History of the Authorization and Codification of Idaho's Hazardous Waste Management Program?

Idaho initially received final authorization for its hazardous waste management program effective April 9, 1990 (55 FR 11015). Subsequently, EPA authorized revisions to the State's program effective June 5, 1992 (57 FR 11580), August 10, 1992 (57 FR 24757), June 11, 1995 (60 FR 18549), January 19, 1999 (63 FR 56086), July 1, 2002 (67 FR 44069), March 10, 2004 (69 FR 11322), July 22, 2005 (70 FR 42273), February 26, 2007 (72 FR 8283) and December 23, 2008 (73 FR 78647). EPA first codified Idaho's authorized hazardous waste program effective February 4, 1991 (55 FR 50327), and updated the codification of Idaho's program on June 5, 1992 (57 FR 11580), August 10, 1992 (57 FR 24757), August 24, 1999 (64 FR 34133), March 8, 2005 (70 FR 11132) and April 20, 2006 (71 FR 20341). In this action, EPA is revising subpart N of 40 CFR part 272, to include the most recent authorization revision effective December 23, 2008 (73 FR 78647).

C. What Codification Decisions Have We Made in This Rule?

This action incorporates by reference the authorized revisions to the Idaho hazardous waste program by revising subpart N of 40 CFR part 272. 40 CFR 272.651, previously incorporated by reference Idaho's authorized hazardous waste program, as amended, through 2005. Section 272.651 also referenced the demonstration of adequate enforcement authority, including procedural and enforcement provisions, which provide the legal basis for the State's implementation of the hazardous waste management program. In addition, Section 272.651 referenced the Memorandum of Agreement, the Attorney General's Statement and the Program Description which were evaluated as part of the approval process of the hazardous waste management program in accordance with Subtitle C of RCRA. This action updates those demonstrations of adequate enforcement authority, including procedural and enforcement provisions, which provide the legal basis for the State's implementation of the hazardous waste management program, as well as the Memorandum of Agreement, the Attorney General's Statement and the Program Description, all of which were evaluated as part of the approval process for the program revision effective on December 23, 2008.

D. What Is the Effect of Idaho's Codification on Enforcement?

EPA retains its independent enforcement authority under statutory provisions, including but not limited to, sections 3007, 3008, 3013 and 7003 of RCRA, and any other applicable statutory and regulatory provisions, to undertake inspections and enforcement actions and to issue orders in all authorized States. With respect to enforcement actions, EPA will rely on Federal sanctions, Federal inspection authorities, and Federal procedures rather than the State analogues to these provisions. Therefore, the EPA is not incorporating by reference Idaho's inspection and enforcement authorities nor are those authorities part of Idaho's approved State program which operates in lieu of the Federal program. EPA lists Idaho's authorities for informational purposes, and because EPA considered them in determining the adequacy of Idaho's enforcement authorities. This action revises this listing for informational purposes where these authorities have changed under Idaho's revisions to State law and were considered by EPA in determining the adequacy of Idaho's enforcement authorities. Idaho's authority to inspect and enforce the State's hazardous waste management program requirements continues to operate independently under State law.

E. What State Provisions Are Not Proposed as Part of the Codification?

The public is reminded that some provisions of Idaho's hazardous waste management program are not part of the Federally authorized State program. These non-authorized provisions include:

(1) Provisions that are not part of the RCRA subtitle C program because they are "broader in scope" than RCRA subtitle C (*see* 40 CFR 271.1(i));

(2) Federal rules for which Idaho is not authorized, but which have been incorporated into the State regulations because of the way the State adopted Federal regulations by reference;

(3) State procedural and enforcement authorities which are necessary to establish the ability of the program to enforce compliance but which do not supplant the Federal statutory enforcement and procedural authorities.

State provisions that are "broader in scope" than the Federal program are not incorporated by reference in 40 CFR part 272. For reference and clarity, 40 CFR 272.651(b)(3) lists the Idaho regulatory provisions which are "broader in scope" than the Federal program and which are not part of the authorized program being incorporated by reference. This action updates that list for "broader in scope" provisions EPA identified in the recent authorization of the revision to the State program. While "broader in scope" provisions are not part of the authorized program and cannot be enforced by EPA, the State may enforce such provisions under State law.

F. What Will Be the Effect of the Proposed Codification on Federal HSWA Requirements?

With respect to any requirement(s) pursuant to the Hazardous and Solid Waste Amendments of 1984 (HSWA) for which the State has not yet been authorized and which EPA has identified as taking effect immediately in States with authorized hazardous waste management programs, EPA will enforce those Federal HSWA standards until the State is authorized for those provisions.

This Codification does not effect Federal HSWA requirements for which the State is not authorized. EPA has authority to implement HSWA requirements in all States, including States with authorized hazardous waste management programs, until the States become authorized for such requirements or prohibitions unless EPA has identified the HSWA requirement(s) as an optional or as a less stringent requirement of the Federal Rules program. A HSWA requirement or prohibition, unless identified by EPA as optional or as less stringent, supersedes any less stringent or inconsistent State provision which may have been previously authorized by EPA (50 FR 28702, July 15, 1985).

Some existing State requirements may be similar to the HSWA requirements implemented by EPA. However, until EPA authorizes those State requirements, EPA enforces the HSWA requirements and not the State analogs.

II. Statutory and Executive Order Reviews

This direct final action codifies revisions to the EPA-authorized hazardous waste management program in Idaho pursuant to RCRA section 3006 and imposes no requirements other than those imposed by State law. This action complies with applicable executive orders and statutory provisions as follows:

1. Executive Order 12866

This action is not a "significant regulatory action" under the terms of Executive Order (EO) 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under the EO.

2. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq*. Burden is defined at 5 CFR 1320.3(b). This direct final rule does not establish or modify any information or recordkeeping requirements for the regulated community. EPA has determined that it is not subject to the provisions of the Paperwork Reduction Act.

3. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA), 5 U.S.C. 601 *et seq.,* generally requires Federal agencies to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions. For purposes of assessing the impacts of this direct final rule on small entities, small entity is defined as: (1) A small business, as codified in the Small Business Size Regulations at 13 CFR part 121; (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. EPA has determined that this direct final action will not have a significant impact on small entities because the action will only have the effect of codifying pre-existing authorized requirements under State law. After considering the economic impacts of this action, I certify that this action will not have a significant economic impact on a substantial number of small entities.

4. Unfunded Mandates Reform Act

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for State, local, or Tribal governments or the private sector. This action imposes no new enforceable duty on any State, local or Tribal governments or the private sector. This action contains no regulatory requirements that might significantly or uniquely affect small government entities. Thus, EPA has determined that the requirements of section 203 of the UMRA do not apply to this action.

5. Executive Order 13132: Federalism

This action 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. This action addresses the codification of the authorized State hazardous waste program in Idaho. Codification is the process of including the statutes and regulations that comprise the State's authorized hazardous waste management program in the CFR. Thus, Executive Order 13132 does not apply to this action. Although section 6 of Executive Order 13132 does not apply to this action, EPA did consult with officials of the State of Idaho, Department of Environmental Quality in developing this action.

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

This action does not have Tribal implications, as specified in Executive Order 13175. This action addresses the codification of the authorized State hazardous waste program in Idaho. Codification is the process of including the statutes and regulations that comprise the State's authorized hazardous waste management program in the CFR. Thus, EPA has determined that Executive Order 13175 does not apply to this rule.

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

EPA interprets Executive Order 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 codifies an approved State program into the Code of Federal Regulations (CFR). Codification is the process of including the statutes and regulations that comprise the State's authorized hazardous waste management program in the CFR.

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

This action is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001), because it is not a "significant regulatory action" as defined under Executive Order 12866.

9. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104–113, section 12(d) (15 U.S.C. 272) 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 bodies. The NTTAA directs EPA to provide Congress, through the OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. EPA has determined that this action does not involve "technical standards" as defined by the NTTAA. Therefore EPA is not considering the use of any voluntary consensus standards.

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

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

EPA has determined that this action will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. This action addresses codifying a revision of the authorized hazardous waste program in the State of Idaho. EPA has determined that the action is not subject to Executive Order 12898.

11. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this document and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This action will be effective June 7, 2010.

List of Subjects in 40 CFR Part 272

Environmental protection, Hazardous materials transportation, Hazardous waste, Incorporation by reference, Intergovernmental relations, Water pollution control, Water supply.

Authority: This action is issued under the authority of Sections 2002(a), 3006 and 7004(b) of the Solid Waste and Disposal Act, as amended, 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: March 11, 2010.

Dennis J. McLerran,

Regional Administrator, EPA Region 10.

■ For the reasons set forth in the preamble, EPA amends 40 CFR part 272 as follows:

PART 272—APPROVED STATE HAZARDOUS WASTE MANAGEMENT PROGRAMS

■ 1. The authority citation for part 272 continues to read as follows:

Authority: Secs. 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6912(a), 6926, and 6974(b).

■ 2. Subpart N is amended by revising § 272.651 to read as follows:

§ 272.651 Idaho State-Administered Program: Final Authorization.

(a) Pursuant to section 3006(b) of RCRA, 42 U.S.C. 6926(b), Idaho has final authorization for the following elements as submitted to EPA in Idaho's base program application for final authorization which was approved by EPA effective on April 9, 1990. Subsequent program revision applications were approved effective on June 5, 1992, August 10, 1992, June 11, 1995, January 19, 1999, July 1, 2002, March 10, 2004, July 22, 2005, February 26, 2007 and December 23, 2008.

(b) The State of Idaho has primary responsibility for enforcing its hazardous waste management program. However, EPA retains the authority to exercise its inspection and enforcement authorities in accordance with sections 3007, 3008, 3013, 7003 of RCRA, 42 U.S.C. 6927, 6928, 6934, 6973, and any other applicable statutory and regulatory provisions, regardless of whether the State has taken its own actions, as well as in accordance with other statutory and regulatory provisions.

(c) *State Statutes and Regulations.* (1) The Idaho statutes and regulations cited in this paragraph are incorporated by reference as part of the hazardous waste management program under subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*

(i) 2010 Codification of EPA-Approved Idaho Statutory and Regulatory Requirements Applicable to the Hazardous Waste Management Program, December 2008.

(ii) [Reserved]

(2) EPA considered the following statutes and regulations in evaluating the State program but is not incorporating them herein for enforcement purposes:

(i) Idaho Code (I.C.) containing the General Laws of Idaho Annotated, Title 39, Chapter 44, "Hazardous Waste Management", published in 2002 by the Michie Company, Law Publishers: sections 39–4404; 39–4405 (except 39–4405(8)); 39–4406; 39–4407; 39–4408(4); 39–4409(2) (except first sentence); 39–4409(3); 39–4409(4) (first sentence); 39–4410; 39–4411(1); 39–4411(3); 39–4411(6); 39–4412 through 39–4416; 39–4418; 39–4419; 39–4421; 39–4422; and 39–4423(3)(a) & (b).

(ii) Idaho Code (I.C.) containing the General Laws of Idaho Annotated, Title 39, Chapter 58, "Hazardous Waste Facility Siting Act", published in 2002 by the Michie Company, Law Publishers: sections 39–5804; 39–5809; 39–5810; 39–5813(2); 39–5814; 39–5816; 39–5817; and 39–5818(1).

(iii) Idaho Code (I.C.) containing the General Laws of Idaho Annotated, Volume 2, Title 9, Chapter 3, "Public Writings", published in 1990 by the Michie Company, Law Publishers, Charlottesville, Virginia: sections 9–337(10); 9–337(11); 9–338; 9–339; and 9–344(2).

(iv) 2002 Cumulative Pocket Supplement to the Idaho Code (I.C.), Volume 2, Title 9, Chapter 3, "Public Writing", published in 2002 by the Michie Company, Law Publishers, Charlottesville, Virginia: sections 9–340A, 9–340B, and 9–343.

(v) Idaho Department of Environmental Quality Rules and Regulations, Idaho Administrative Code, IDAPA 58, Title 1, Chapter 5, "Rules and Standards for Hazardous Waste", as published July 2008: sections 58.01.05.000; 58.01.05.356.02 through 58.01.05.356.05; 58.01.05.800; 58.01.05.850; 58.01.05.996; 58.01.05.997; and 58.01.05.999.

(3) The following statutory and regulatory provisions are broader in scope than the Federal program, are not part of the authorized program, are not incorporated by reference, and are not Federally enforceable:

(i) Idaho Code containing the General Laws of Idaho Annotated, Title 39,

Chapter 44, "Hazardous Waste Management", published in 2002 by the Michie Company, Law Publishers: sections 39–4403(6) & (14); 39–4428 and 39–4429.

(ii) 2004 Cumulative Pocket Supplement to the Idaho Code (I.C.), Volume 39, Title 44, "Hazardous Waste Management", published in 2004 by the Michie Company, Law Publishers, Charlottesville, Virginia: section 39–4427.

(iii) Idaho Code containing the General Laws of Idaho Annotated, Title 39, Chapter 58, "Hazardous Waste Siting Act", published in 2002 by the Michie Company, Law Publishers: section 39–5813(3).

(iv) Idaho Department of Environmental Quality Rules and Regulations, Idaho Administrative Code, IDAPA 58, Title 1, Chapter 5, "Rules and Standards for Hazardous Waste", as published July 2008: sections 58.01.05.355; and 58.01.05.500.

(4) *Memorandum of Agreement.* The Memorandum of Agreement between EPA Region 10 and the State of Idaho (IDEQ), signed by the EPA Regional Administrator on August 1, 2001, although not incorporated by reference, is referenced as part of the authorized hazardous waste management program under subtitle C of RCRA, 42 U.S.C. 6921, *et seq.*

(5) *Statement of Legal Authority.* The "Attorney General's Statement for Final Authorization," signed by the Attorney General of Idaho on July 5, 1988, and revisions, supplements and addenda to that Statement, dated July 3, 1989, February 13, 1992, December 29, 1994, September 16, 1996, October 3, 1997, April 6, 2001, September 11, 2002, September 22, 2004, June 13, 2006, September 29, 2006 and June 23, 2008, although not incorporated by reference, are referenced as part of the authorized hazardous waste management program under subtitle C of RCRA, 42 U.S.C. 6921, *et seq.*

(6) *Program Description.* The Program Description and any other materials submitted as part of the original application or as supplements thereto, although not incorporated by reference, are referenced as part of the authorized hazardous waste management program under subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*

■ 3. Appendix A to part 272 is amended by revising the listing for "Idaho" to read as follows:

Appendix A to Part 272—State Requirements

* * * * *

Idaho

(a) The statutory provisions include:

Idaho Code containing the General Laws of Idaho Annotated, Title 39, Chapter 44, "Hazardous Waste Management", 2002: sections 39–4402; 39–4403 (except 39–4403(6) & (14)); 39–4408(1)–(3); 39–4409(1) (except fourth and fifth sentences); 39–4409(2) (only the first sentence); 39–4409(4) (except first sentence); 39–4409(5); 39–4409(6); 39– 4409(7); 39–4409(8); 39–4411(2); 39–4411(4); 39–4411(5); 39–4423 (except 39–4423(3)(a) & (b)); and 39–4424.

Idaho Code containing the General Laws of Idaho Annotated, Title 39, Chapter 58, "Hazardous Waste Facility Siting Act", published in 2002 by the Michie Company, Law Publishers: sections 39–5802; 39–5803; 39–5808; 39–5811; 39–5813(1); and 39–5818(2). Copies of the Idaho statutes that are incorporated by reference are available from Michie Company, Law Publishers, 1 Town Hall Square, Charlottesville, VA 22906–7587.

(b) The regulatory provisions include:

Idaho Department of Environmental Quality Rules and Regulations, Idaho Administrative Code, IDAPA 58, Title 1, Chapter 5, "Rules and Standards for Hazardous Waste", as published on July 2008: sections 58.01.05.001; 58.01.05.002; 58.01.05.003; 58.01.05.004; 58.01.05.005; 58.01.05.006; 58.01.05.007; 58.01.05.008; 58.01.05.009; 58.01.05.010; 58.01.05.011; 58.01.05.012; 58.01.05.013; 58.01.05.014; 58.01.05.015; 58.01.05.016; 58.01.05.018; 58.01.05.356.01; and 58.01.05.998.

* * * * *

[FR Doc. 2010–7647 Filed 4–5–10; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Part 286

RIN 0970–AC40

Temporary Assistance for Needy Families (TANF) Carry-Over Funds

AGENCY: Administration for Children and Families (ACF), Department of Health and Human Services (HHS).

ACTION: Final rule.

SUMMARY: This final rule implements the statutory change to section 404(e) of the Social Security Act as enacted by the American Recovery and Reinvestment Act of 2009. This change allows States, Tribes and Territories to use Temporary Assistance for Needy Families (TANF) program funds carried over from a prior year for any allowable TANF benefit, service or activity. Previously these funds could be used only to provide assistance. This final rule applies to States, local governments, and Tribes that administer the TANF program.

DATES: Effective April 6, 2010, the interim final rule amending 45 CFR part 286 which was published at 74 FR 25161 on May 27, 2009, is adopted as a final rule without change.

FOR FURTHER INFORMATION CONTACT: Robert Shelbourne, Director, Division of State TANF Policy and Acting Director, Division of Tribal TANF Management, Office of Family Assistance, ACF, at (202) 401–5150.

SUPPLEMENTARY INFORMATION:

I. Statutory Authority

Section 417 of the Social Security Act (42 U.S.C. 617) limits the authority of the Federal government to regulate State conduct or enforce the TANF provisions of the Social Security Act, except as expressly provided. We have interpreted this provision to allow us to regulate where Congress has charged HHS with enforcing certain TANF provisions by assessing penalties. Because the improper use of Federal TANF carry-over funds can result in a financial penalty pursuant to 42 U.S.C. 609(a)(1), we have the authority to regulate in this instance.

II. American Recovery and Reinvestment Act of 2009

On February 17, 2009, the President signed the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5), which included a provision to lift the restriction on unspent Federal TANF funds reserved or "carried over" into a succeeding fiscal year. Prior to Public Law 111–5, carry-over funds could only be used to provide assistance (*i.e.,* ongoing basic needs payments, and supportive services such as transportation and child care to families who are not employed). Section 2103 of Division B of Public Law 111–5 amends section 404(e) of the Social Security Act (Act) by allowing States, District of Columbia, the Territories and Tribes to use the carry-over funds for any allowable TANF benefit, service, or activity (such as job skills training or re-training activities, employment counseling services, parental counseling services, teen pregnancy prevention activities, services for victims of domestic violence, after-school programs)—and not just assistance.

III. Response to Public Comment and Regulatory Provisions

The interim final rule was published May 27, 2009, and provided a 60-day comment period. Only one comment was received from an advocacy organization that simply expressed

support for the regulation; thus, no changes have been made to the provisions of the interim final rule in the final rule. As discussed below, section 2103 of Public Law 111–5 requires a change in the Tribal TANF regulation at 45 CFR 286.60. The TANF regulations at 45 CFR Part 263, applicable to States and Territories, require no change.

PART 286—TRIBAL TANF PROVISIONS

Section 286.60: Must Tribes obligate all Tribal Family Assistance Grant funds by the end of the fiscal year in which they are awarded?

Under prior law, section 404(e) of the Act, entitled "Authority to Reserve Certain Amounts for Assistance," allowed States and Indian Tribes operating approved Tribal TANF programs (Tribes) to reserve Federal TANF funds that they receive "for any fiscal year for the purpose of providing, without fiscal year limitation, *assistance* under the State or tribal program funded under this part" (Title IV, Part A of the Act). Based on the reading of this section, we concluded that States and Tribes could only use reserve or "carry-over" funds to provide TANF *assistance,* defined in 45 CFR 260.31 for States and in 45 CFR 286.10 for Tribes, and to pay for the administrative expenses associated with providing the assistance. The statutory wording also precluded States from transferring "carry-over" funds to either the Social Services Block Grant Program (SSBG) under title XX of the Act or the Child Care and Development Block Grant Program (also known as the Child Care Discretionary Fund within the Child Care and Development Fund (CCDF)). (The transfer provision in section 404(d) of the Act does not apply to Tribes.)

Section 2103 of Division B of Public Law 111–5 (American Recovery and Reinvestment Act of 2009) amended section 404(e) of the Social Security Act. The amendment allows States and Tribes to use unspent Federal TANF funds carried over from prior fiscal years "to provide, without fiscal year limitation, any benefit or service that may be provided under the State or tribal program funded under this part." Thus, States and Tribes are no longer restricted to using carry-over TANF funds to provide benefits that specifically meet the definition of *assistance.* States and Tribes may expend carry-over funds for any allowable TANF benefit, service, or activity. Because the amended section 404(e) continues to specify that carry-over funds may only be used "under this part"—*i.e.,* in the TANF program, States may not transfer any carry-over funds to either CCDF or the SSBG program. States may only transfer current year Federal TANF funds (up to the statutory limit) to these programs.

Accordingly, we have amended § 286.60 because the limitation on the use of carry-over funds explicitly appears in this section. We have deleted paragraph (b) which previously read, "A Tribe may expend funds beyond the fiscal year in which awarded only on benefits that meet the definition of assistance at § 286.10 or on the administrative costs directly associated with providing that assistance." This sentence is no longer accurate because the law removes the restriction. We have revised the remaining language to provide that a Tribe may reserve amounts awarded to it, without fiscal year limitation, to provide assistance, benefits, and services in accordance with the requirements under § 286.35 or § 286.40, if applicable.

No change in the regulations related to the State TANF program is necessary, as those regulations speak more broadly to improper uses of TANF funds. Specifically, § 263.11(b) currently states that "We will consider use of funds in violation of * * * sections 404 and 408 and other provisions of the Act * * * to be misuse of funds." This statement is not impacted by the change to section 404(e) of the Act.

IV. Paperwork Reduction Act

There are no information collection activities imposed by this regulation, nor are any existing requirements changed as a result of their promulgation. Therefore, the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) regarding reporting and recordkeeping, do not apply.

V. Regulatory Flexibility Analysis

The Regulatory Flexibility Act (5 U.S.C. 605(b)) requires the Federal government to anticipate and reduce the impact of rules and paperwork requirements on small businesses and other small entities. Small entities are defined in this Act to include small businesses as defined by the Small Business Administration, non-profit organizations that are not dominant in their markets, and small governmental jurisdictions. This rule will affect primarily the 50 States, the District of Columbia, certain Territories, and Indian Tribes operating approved Tribal TANF programs. Therefore, we certify that this rule will not have a significant impact on small entities.

VI. Regulatory Impact Analysis

Executive Order 12866 requires the review of regulations to ensure that they are consistent with the priorities and principles set forth in the Executive Order. The Department has determined that this final rule is consistent with these priorities and principles. This regulation implements a statutory change in the use of Federal TANF block grant funds carried over from a prior fiscal year included in the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5). Further, we certify that this change is not an "economically significant regulatory action" under Section 3(f)(1) of Executive Order 12866. It will not 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. TANF block grant awards remain the same; this change in statute simply allows carry-over funds under the TANF program to be used for broader purposes.

The Department, however, has determined that this rule is significant for the purposes of review under Section 3(f)(4) of Executive Order 12866; accordingly, it was reviewed by the Office of Management and Budget (OMB).

VII. Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that a covered agency prepare a budgetary impact statement before promulgating a 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 $133 million or more in any one year. The Department has determined that this rule would not impose a mandate that will result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of more than $133 million in any one year.

VIII. Congressional Review

This regulation is not a major rule as defined in 5 U.S.C. Chapter 8.

IX. Assessment of Federal Regulation and Policies on Families

Section 654 of the Treasury and General Government Appropriations Act of 1999 requires Federal agencies to determine whether a proposed policy or regulation may negatively affect family well-being. If the agency's

determination is affirmative, then the agency must prepare an impact assessment addressing seven criteria specified in the law.

The Department has determined that this regulation does not negatively affect family well-being. The purpose of the TANF program is to strengthen the economic and social stability of families. This rule lifts the restriction on the use of Federal TANF carry-over funds so that States and Tribes may provide the services that families need to attain and maintain self-sufficiency.

X. Executive Order 13132

Executive Order 13132, Federalism, requires that Federal agencies consult with State and local government officials in the development of regulatory policies with Federalism implications. Consistent with this Executive Order, we solicited comments from State and local government officials on the interim final rule.

XI. List of Subjects in 45 CFR Part 286

Carry-over, Reserve, Prior fiscal years, Federal TANF funds.

(Catalog of Federal Domestic Assistance Program Number 93.558, Temporary Assistance for Needy Families Program)

Dated: November 20, 2009.

Carmen R. Nazario,

Assistant Secretary for Children and Families.

Approved: January 19, 2010.

Kathleen Sebelius,

Secretary, Department of Health and Human Services.

PART 286—TRIBAL TANF PROVISIONS

■ Accordingly, the interim final rule amending 45 CFR part 286 which was published at 74 FR 25161 on May 27, 2009, is adopted as a final rule without change.

[FR Doc. 2010–7530 Filed 4–5–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 0910131363–0087–02]

RIN 0648–XV66

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod for American Fisheries Act Catcher Processors Using Trawl Gear in the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by American Fisheries Act (AFA) trawl catcher processors in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the B season allowance of the 2010 Pacific cod total allowable catch (TAC) specified for AFA trawl catcher processors in the BSAI.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), April 1, 2010, through 1200 hrs, A.l.t., June 10, 2010.

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

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

The B season allowance of the 2010 Pacific cod TAC allocated to AFA trawl catcher processors in the BSAI is 867 metric tons (mt) as established by the final 2010 and 2011 harvest specifications for groundfish in the BSAI (75 FR 11788, March 12, 2010).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS, has determined that the B season allowance of the 2010 Pacific cod TAC allocated to AFA trawl catcher processors in the BSAI will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 100 mt, and is setting aside the remaining 767 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by AFA trawl catcher processors in the BSAI.

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

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of Pacific cod by AFA trawl catcher processors in the BSAI. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of March 31, 2010.

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

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

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

Dated: April 1, 2010.

James P. Burgess,

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

[FR Doc. 2010–7760 Filed 4–1–10; 4:15 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 75, No. 65
Tuesday, April 6, 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.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

RIN 3206–AM09

Prevailing Rate Systems; Nonappropriated Fund Wage and Survey Areas

AGENCY: U.S. Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The U.S. Office of Personnel Management is issuing a proposed rule to correct several minor formatting, spelling, and typographical errors in Appendix D to Subpart B of Part 532—Nonappropriated Fund (NAF) Wage and Survey Areas. This document would also correct editorial or printing errors, inconsistencies, and omissions made in previously published rules. The purpose of this rule is not to make policy changes for Federal Wage System (FWS) NAF employees but rather to ensure Appendix D accurately reflects the correct wage area definitions for NAF employees as recommended by the Federal Prevailing Rate Advisory Committee (FPRAC). FWS NAF employees would not be affected by the corrections in this proposed rule because the lead agency for FWS NAF surveys has followed FPRAC recommended wage area definitions when conducting wage surveys and publishing wage schedules. Appendix D would be reprinted in its entirety.

DATES: We must receive comments on or before May 6, 2010.

ADDRESSES: Send or deliver comments to Jerome D. Mikowicz, Deputy Associate Director for Pay and Leave, Employee Services, U.S. Office of Personnel Management, Room 7H31, 1900 E Street, NW., Washington, DC 20415–8200; e-mail *pay-performance-policy@opm.gov;* or *Fax:* (202) 606–4264.

FOR FURTHER INFORMATION CONTACT: Madeline Gonzalez, (202) 606–2838; e-mail *pay-performance-policy@opm.gov;* or FAX: (202) 606–4264.

SUPPLEMENTARY INFORMATION: The U.S. Office of Personnel Management (OPM) is issuing a proposed rule to make several minor corrections to Appendix D to Subpart B of Part 532—Nonappropriated Fund (NAF) Wage and Survey Areas. The revisions contained in this rule concern formatting, spelling, and typographical errors. This document would also correct editorial or printing errors, inconsistencies, and omissions made in previously published rules. The purpose of this rule is not to make policy changes for Federal Wage System (FWS) NAF employees but rather to ensure Appendix D accurately reflects the correct wage area definitions for NAF employees as recommended by the Federal Prevailing Rate Advisory Committee (FPRAC). FPRAC is the statutory labor-management committee responsible for advising OPM on the administration of the FWS. FWS NAF employees would not be affected by the corrections in this final rule because the lead agency for FWS NAF surveys has followed FPRAC recommended wage area definitions when conducting wage surveys and publishing wage schedules. Appendix D is being reprinted in its entirety.

The NAF wage areas where we would correct editorial or printing errors, inconsistencies, and omissions are listed below.

Yuma, AZ

We would delete Yuma County, AZ, as an area of application county in the Pima, AZ, NAF wage area and add the Yuma NAF wage area as a separate wage area. In an interim rule published in 1991, OPM abolished the Imperial, CA, NAF wage area and added Imperial County, CA, as an area of application county to the Yuma NAF wage area (56 FR 63865). Due to a formatting error, the name of the Yuma NAF wage area was incorrectly printed as if it was an area of application county in the Pima, AZ, NAF wage area instead of the name of its own wage area.

Los Angeles, CA

We would delete Del Norte, Humboldt, and Mendocino Counties, CA, which incorrectly appear as area of application counties in the Los Angeles NAF wage area. These counties were part of the Marin-Sonoma, CA, NAF wage area and should have been deleted when OPM abolished the Marin-Sonoma NAF wage area in an interim rule published in 1995 (60 FR 55174).

Dade, FL

The name of Dade County officially changed to Miami-Dade County in 1997. This proposed rule would update the name of the Dade NAF wage area and of Dade County to reflect the official name.

Burlington, NJ

We would add Cape May and Salem Counties, NJ, as area of application counties in the Burlington NAF wage area. OPM added these counties to the Burlington NAF wage area when we abolished the Philadelphia, PA, NAF wage area in an interim rule published in 1995 (60 FR 57145).

Ocean, NJ

We would delete the Ocean NAF wage area as a separate wage area. OPM abolished the Ocean NAF wage area in an interim rule published in 1995 (60 FR 55423). Ocean County is correctly defined as an area of application county in the Burlington NAF wage area.

Craven, NC

We would delete Onslow County, NC, as an area of application county in the Craven NAF wage area. Onslow County was defined as an area of application county in the Craven NAF wage area until OPM established it as a separate wage area in 1985. This error was never fixed and Onslow County continues to appear as an area of application county in the Craven NAF wage area.

McLennan, TX

We would add the McLennan NAF wage area as a separate wage area. When Appendix D was initially published in the **Federal Register** in 1990, the name of the McLennan NAF wage area was incorrectly printed as if it was an area of application county in the Lubbock, TX, NAF wage area (55 FR 46140). Later in 1990, OPM deleted McLennan County as an area of application county in the Lubbock NAF wage area, but the name of the McLennan NAF wage area was not added (55 FR 52267). Since the name of the McLennan NAF wage area was not added, it appeared as if McLennan County was part of the Lubbock NAF wage area. In an interim rule published in 1997, OPM abolished

the Lubbock NAF wage area (62 FR 28978), and due to the formatting error, the McLennan NAF wage area was also deleted.

Kitsap, WA

We would add Jefferson County, WA, as an area of application county in the Kitsap NAF wage area. OPM added this county to the Kitsap NAF wage area in an interim rule published in 2000 (65 FR 64337).

Regulatory Flexibility Act

I certify that these regulations would not have a significant economic impact on a substantial number of small entities because they would affect only Federal agencies and employees.

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Freedom of information, Government employees, Reporting and recordkeeping requirements, Wages.

U.S. Office of Personnel Management.

John Berry,

Director.

Accordingly, the U.S. Office of Personnel Management is proposing to amend 5 CFR part 532 as follows:

PART 532—PREVAILING RATE SYSTEMS

1. The authority citation for part 532 continues to read as follows:

Authority: 5 U.S.C. 5343, 5346; 532.707 also issued under 5 U.S.C. 552.

2. Revise appendix D to subpart B to read as follows:

Appendix D to Subpart B of Part 532—Nonappropriated Fund Wage and Survey Areas

This appendix lists the wage area definitions for NAF employees. With a few exceptions, each area is defined in terms of county units or independent cities. Each wage area definition consists of:

(1) *Wage area title.* Wage areas usually carry the title of the county or counties surveyed.

(2) *Survey area definition.* Lists each county or independent city in the survey area.

(3) *Area of application definition.* Lists each county or independent city which, in addition to the survey area, is in the area of application.

DEFINITIONS OF WAGE AREAS AND WAGE AREA SURVEY AREAS

ALABAMA

Calhoun

Survey Area

Alabama:
Calhoun

Area of Application. Survey area plus:

Alabama:
Jefferson

Madison

Survey Area

Alabama:
Madison

Area of Application. Survey area plus:

Tennessee:
Coffee
Davidson
Hamilton
Rutherford

Montgomery

Survey Area

Alabama:
Montgomery

Area of Application. Survey area plus:

Alabama:
Dale
Dallas
Macon

ALASKA

Anchorage

Survey Area

Alaska: (borough)
Anchorage

Area of Application. Survey area plus:

Alaska: (boroughs and census areas)
Fairbanks North Star
Juneau
Kenai Peninsula
Ketchikan Gateway
Kodiak Island
Sitka
Southeast Fairbanks
Valdez-Cordova
Yukon-Koyukuk

ARIZONA

Maricopa

Survey Area

Arizona:
Maricopa

Area of Application. Survey area plus:

Arizona:
Coconino
Yavapai

Pima

Survey Area

Arizona:
Pima

Area of Application. Survey area plus:

Arizona:
Cochise

Yuma

Survey Area

Arizona:
Yuma

Area of Application. Survey area plus:

California:
Imperial

ARKANSAS

Pulaski

Survey Area

Arkansas:
Pulaski

Area of Application. Survey area plus:

Arkansas:
Jefferson
Sebastian
Washington

CALIFORNIA

Kern

Survey Area

California:
Kern

Area of Application. Survey area plus:

California:
Fresno
Kings

Los Angeles

Survey Area

California:
Los Angeles

Area of Application. Survey area.

Monterey

Survey Area

California:
Monterey

Area of Application. Survey area plus:

California:
Santa Clara

Orange

Survey Area

California:
Orange

Area of Application. Survey area.

Riverside

Survey Area

California:
Riverside

Area of Application. Survey area.

Sacramento

Survey Area

California:
Sacramento

Area of Application. Survey area plus:

California:
Yuba
Oregon:
Jackson
Klamath

San Bernardino

Survey Area

California:
San Bernardino

Area of Application. Survey area.

San Diego

Survey Area

California:
San Diego

Area of Application. Survey area.

San Joaquin

Survey Area

California:
San Joaquin

Area of Application. Survey area.

Santa Barbara

Survey Area

California:
Santa Barbara

Area of Application. Survey area plus:

California:
San Luis Obispo

Solano

Survey Area

California:
Solano

Area of Application. Survey area plus:

California:
Alameda
Contra Costa
Marin
Napa
San Francisco
Sonoma

Ventura

Survey Area

California:
Ventura

Area of Application. Survey area.

COLORADO

Arapahoe-Denver

Survey Area

Colorado:
Arapahoe
Denver

Area of Application. Survey area plus:

Colorado:
Mesa

El Paso

Survey Area

Colorado:
El Paso

Area of Application. Survey area plus:

Colorado:
Bent
Otero
Pueblo

CONNECTICUT

New London

Survey Area

Connecticut:
New London

Area of Application. Survey area plus:

Connecticut:
New Haven

DELAWARE

Kent

Survey Area

Delaware:
Kent

Area of Application. Survey area plus:

Delaware:
Sussex
Maryland:
Kent

DISTRICT OF COLUMBIA

Washington, DC

Survey Area

District of Columbia:
Washington, DC

Area of Application. Survey area.

FLORIDA

Bay

Survey Area

Florida:
Bay

Area of Application. Survey area.

Brevard

Survey Area

Florida:
Brevard

Area of Application. Survey area.

Duval

Survey Area

Florida:
Duval

Area of Application. Survey area plus:

Florida:
Alachua
Clay
Columbia
Georgia:
Camden

Escambia

Survey Area

Florida:
Escambia

Area of Application. Survey area plus:

Florida:
Santa Rosa

Hillsborough

Survey Area

Florida:
Hillsborough

Area of Application. Survey area plus:

Florida:
Pinellas
Polk

Miami-Dade

Survey Area

Florida:
Miami-Dade

Area of Application. Survey area plus:

Florida:
Palm Beach

Monroe

Survey Area

Florida:
Monroe

Area of Application. Survey area.

Okaloosa

Survey Area

Florida:
Okaloosa

Area of Application. Survey area plus:

Florida:
Walton

Orange

Survey Area

Florida:
Orange

Area of Application. Survey area.

GEORGIA

Chatham

Survey Area

Georgia:
Chatham

Area of Application. Survey area plus:

Georgia:
Glynn
Liberty
South Carolina:
Beaufort

Clayton-Cobb-Fulton

Survey Area

Georgia:
Clayton
Cobb
Fulton

Area of Application. Survey area plus:

Georgia:
Bartow
Clarke
De Kalb

Columbus

Survey Area

Georgia:
Columbus Consolidated Government

Area of Application. Survey area plus:

Georgia:
Chattahoochee

Dougherty

Survey Area

Georgia:
Dougherty

Area of Application. Survey area.

Houston

Survey Area

Georgia:
Houston

Area of Application. Survey area plus:

Georgia:
Laurens

Lowndes

Survey Area

Georgia:
Lowndes

Area of Application. Survey area.

Richmond

Survey Area

Georgia:
Richmond

Area of Application. Survey area plus:

South Carolina:
Aiken

GUAM

Guam

Survey Area

Guam

Area of Application. Survey area.

HAWAII

Honolulu

Survey Area

Hawaii:
Honolulu

Area of Application. Survey area plus:

Hawaii (counties):
Hawaii
Kauai
Maui
Pacific Islands:
Midway Islands
Johnston Atoll
American Samoa

IDAHO

Ada-Elmore

Survey Area

Idaho:
Ada
Elmore

Area of Application. Survey area.

ILLINOIS

Lake

Survey Area

Illinois:
Lake

Area of Application. Survey area plus:

Illinois:
Cook
Rock Island
Vermilion
Iowa:
Johnson
Michigan:
Dickinson
Marquette
Wisconsin:
Dane
Milwaukee

St. Clair

Survey Area

Illinois:
St. Clair

Area of Application. Survey area plus:

Illinois:
Madison
Williamson
Missouri: (cities)
St. Louis
Missouri: (counties)
Jefferson
Pulaski

KANSAS

Leavenworth/Jackson-Johnson

Survey Area

Kansas:
Leavenworth
Missouri:
Jackson
Johnson

Area of Application. Survey area plus:

Kansas:
Shawnee
Missouri:
Boone
Camden
Cass

Sedgwick

Survey Area

Kansas:
Sedgwick

Area of Application. Survey area plus:

Kansas:
Geary
Saline

KENTUCKY

Christian-Montgomery

Survey Area

Kentucky:
Christian
Tennessee:
Montgomery

Area of Application. Survey area.

Hardin-Jefferson

Survey Area

Kentucky:
Hardin
Jefferson

Area of Application. Survey area plus:

Indiana:
Jefferson
Martin
Kentucky:
Fayette
Madison
Warren

LOUISIANA

Bossier-Caddo

Survey Area

Louisiana:
Bossier
Caddo

Area of Application. Survey area plus:

Texas:
Bowie

Orleans

Survey Area

Louisiana:
Orleans

Area of Application. Survey area plus:

Louisiana:
Plaquemines

Rapides

Survey Area

Louisiana:
Rapides

Area of Application. Survey area plus:

Louisiana:
Vernon

MAINE

Cumberland

Survey Area

Maine:
Cumberland

Area of Application. Survey area plus:

Maine:
Aroostook
Hancock
Kennebec
Knox
Penobscot
Sagadahoc
Washington

York

Survey Area

Maine:
York

Area of Application. Survey area plus:

New Hampshire:
Rockingham
Vermont:
Windsor

MARYLAND

Anne Arundel

Survey Area

Maryland:
Anne Arundel

Area of Application. Survey area plus:

Maryland: (cities)
Baltimore
Maryland: (counties)
Baltimore

Charles-St. Mary's

Survey Area

Maryland:
Charles
St. Mary's

Area of Application. Survey area plus:

Maryland:
Calvert
Virginia:
King George

Frederick

Survey Area

Maryland:
Frederick

Area of Application. Survey area plus:

West Virginia:
Berkeley

Harford

Survey Area

Maryland:
Harford

Area of Application. Survey area plus:

Maryland:
Cecil

Montgomery-Prince George's

Survey Area

Maryland:
Montgomery
Prince George's

Area of Application. Survey area.

MASSACHUSETTS

Hampden

Survey Area

Massachusetts:
Hampden

Area of Application. Survey area plus:

Connecticut:
Hartford
Massachusetts:
Hampshire

Middlesex

Survey Area

Massachusetts:
Middlesex

Area of Application. Survey area plus:

Massachusetts:
Norfolk
Plymouth
Suffolk
New Hampshire:
Hillsborough

MICHIGAN

Macomb

Survey Area

Michigan:
Macomb

Area of Application. Survey area plus:

Michigan:
Alpena
Calhoun
Crawford
Grand Traverse
Huron
Iosco
Leelanau
Ottawa
Saginaw
Washtenaw
Wayne
Ohio:
Ottawa

MINNESOTA

Hennepin

Survey Area

Minnesota:

Hennepin

Area of Application. Survey area plus:

Minnesota:
Morrison
Murray
Ramsey
Stearns
St. Louis
Wisconsin:
Juneau
Monroe
Polk

MISSISSIPPI

Harrison

Survey Area

Mississippi:
Harrison

Area of Application. Survey area plus:

Alabama:
Mobile
Mississippi:
Forest
Jackson

Lauderdale

Survey Area

Mississippi:
Lauderdale

Area of Application. Survey area plus:

Mississippi:
Hinds
Rankin
Warren

Lowndes

Survey Area

Mississippi:
Lowndes

Area of Application. Survey area plus:

Alabama:
Tuscaloosa

MONTANA

Cascade

Survey Area

Montana:
Cascade

Area of Application. Survey area plus:

Montana:
Fergus
Flathead
Hill
Lewis and Clark
Valley
Yellowstone

NEBRASKA

Douglas-Sarpy

Survey Area

Nebraska:
Douglas
Sarpy

Area of Application. Survey area plus:

Iowa:
Marion
Polk
Woodbury
Nebraska:
Hall
Lancaster
Saunders
South Dakota:
Minnehaha

NEVADA

Churchill-Washoe

Survey Area

Nevada:
Churchill
Washoe

Area of Application. Survey area plus:

California:
Lassen
Mono
Nevada:
Mineral

Clark

Survey Area

Nevada:
Clark

Area of Application. Survey area.

NEW JERSEY

Burlington

Survey Area

New Jersey:
Burlington

Area of Application. Survey area plus:

Delaware:
New Castle
New Jersey:
Atlantic
Cape May
Ocean
Salem

Monmouth

Survey Area

New Jersey:
Monmouth

Area of Application. Survey area.

Morris

Survey Area

New Jersey:
Morris

Area of Application. Survey area plus:

New Jersey:
Somerset
Pennsylvania:
Monroe

NEW MEXICO

Bernalillo

Survey Area

New Mexico:
Bernalillo

Area of Application. Survey area plus:

New Mexico:
McKinley

Curry

Survey Area

New Mexico:
Curry

Area of Application. Survey area plus:

Texas:
Lubbock
Potter

Dona Ana

Survey Area

New Mexico:
Dona Ana

Area of Application. Survey area plus:

New Mexico:
Chaves
Otero

NEW YORK

Jefferson

Survey Area

New York:
Jefferson

Area of Application. Survey area plus:

New York:
Albany
Oneida
Onondaga
Ontario
Schenectady
Steuben

Kings-Queens

Survey Area

New York:
Kings
Queens

Area of Application. Survey area plus:

New Jersey:
Essex
Hudson
New York:
Bronx
Nassau
New York
Richmond
Suffolk

Niagara

Survey Area

New York:
Niagara

Area of Application. Survey area plus:

New York:
Erie
Genesee
Pennsylvania:
Erie

Orange

Survey Area

New York:
Orange

Area of Application. Survey area plus:

New York:
Dutchess
Westchester

NORTH CAROLINA

Craven

Survey Area

North Carolina:
Craven

Area of Application. Survey area plus:

North Carolina:
Carteret
Dare

Cumberland

Survey Area

North Carolina:
Cumberland

Area of Application. Survey area plus:

North Carolina:
Durham
Rowan

Onslow

Survey Area

North Carolina:
Onslow

Area of Application. Survey area plus:
North Carolina:
New Hanover

Wayne

Survey Area
North Carolina:
Wayne

Area of Application. Survey area plus:
North Carolina:
Halifax

NORTH DAKOTA

Grand Forks

Survey Area
North Dakota:
Grand Forks

Area of Application. Survey area plus:
North Dakota:
Cass
Cavalier
Pembina
Steele

Ward

Survey Area
North Dakota:
Ward

Area of Application. Survey area plus:
North Dakota:
Divide

OHIO

Greene-Montgomery

Survey Area
Ohio:
Greene
Montgomery

Area of Application. Survey area plus:
Indiana:
Allen
Grant
Marion
Miami
Ohio:
Clinton
Franklin
Hamilton
Licking
Ross
West Virginia:
Raleigh
Wayne

OKLAHOMA

Comanche

Survey Area
Oklahoma:
Comanche

Area of Application. Survey area plus:
Oklahoma:
Cotton
Jackson

Oklahoma

Survey Area
Oklahoma:
Oklahoma

Area of Application. Survey area plus:
Oklahoma:
Garfield
Muskogee
Pittsburg

PENNSYLVANIA

Allegheny

Survey Area
Pennsylvania:
Allegheny

Area of Application. Survey area plus:
Ohio:
Cuyahoga
Trumball
Pennsylvania:
Butler
Westmoreland
West Virginia:
Harrison

Cumberland

Survey Area
Pennsylvania:
Cumberland

Area of Application. Survey area plus:
Pennsylvania:
Blair
Franklin

Montgomery

Survey Area
Pennsylvania:
Montgomery

Area of Application. Survey area plus:
Pennsylvania:
Bucks
Chester
Luzerne
Philadelphia

York

Survey Area
Pennsylvania:
York

Area of Application. Survey area plus:
Pennsylvania:
Lebanon

PUERTO RICO

Guaynabo-San Juan

Survey Area
Puerto Rico:
Guaynabo
San Juan

Area of Application. Survey area plus:
Puerto Rico: (municipalities)
Aguadilla
Bayamon
Ceiba
Isabela
Ponce
Salinas
Toa Baja
Vieques
U.S. Virgin Islands:
St. Croix
St. Thomas

RHODE ISLAND

Newport

Survey Area
Rhode Island:
Newport

Area of Application. Survey area plus:
Massachusetts:
Barnstable
Nantucket
Rhode Island:
Providence
Washington

SOUTH CAROLINA

Charleston

Survey Area
South Carolina:
Charleston

Area of Application. Survey area plus:
South Carolina:
Berkeley
Horry

Richland

Survey Area
South Carolina:
Richland

Area of Application. Survey area plus:
North Carolina:
Buncombe
South Carolina:
Sumpter
Tennessee:
Washington

SOUTH DAKOTA

Pennington

Survey Area
South Dakota:
Pennington

Area of Application. Survey area plus:
Montana:
Custer
South Dakota:
Fall River
Meade
Wyoming:
Sheridan

TENNESSEE

Shelby

Survey Area
Tennessee:
Shelby

Area of Application. Survey area plus:
Arkansas:
Mississippi
Missouri:
Butler

TEXAS

Bell

Survey Area
Texas:
Bell

Area of Application. Survey area plus:
Texas:
Burnet
Coryell
Falls

Bexar

Survey Area
Texas:
Bexar

Area of Application. Survey area plus:
Texas:
Comal
Kerr
Travis
Val Verde

Dallas

Survey Area
Texas:
Dallas

Area of Application. Survey area plus:
Texas:
Fannin
Galveston
Harris

El Paso

Survey Area
Texas:
El Paso

Area of Application. Survey area.

McLennan

Survey Area
Texas:
McLennan

Area of Application. Survey area.

Nueces

Survey Area
Texas:
Nueces

Area of Application. Survey area plus:
Texas:
Bee
Calhoun
Kleberg
San Patricio
Webb

Tarrant

Survey Area
Texas:
Tarrant

Area of Application. Survey area plus:
Texas:
Cooke
Palo Pinto

Taylor

Survey Area
Texas:
Taylor

Area of Application. Survey area.

Tom Green

Survey Area
Texas:
Tom Green

Area of Application. Survey area plus:
Texas:
Howard

Wichita

Survey Area
Texas:
Wichita

Area of Application. Survey area.

UTAH

Davis-Salt Lake-Weber

Survey Area
Utah:
Davis
Salt Lake
Weber

Area of Application. Survey area plus:
Utah:
Box Elder
Tooele
Uintah

VIRGINIA

Alexandria-Arlington-Fairfax

Survey Area
Virginia: (cities)
Alexandria
Virginia: (counties)
Arlington
Fairfax

Area of Application. Survey area.

Chesterfield-Richmond

Survey Area
Virginia: (cities)
Richmond
Virginia: (counties)
Chesterfield

Area of Application. Survey area plus:
Virginia: (cities)
Bedford
Charlottesville
Salem
Virginia: (counties)
Caroline
Nottoway
Prince George
West Virginia:
Pendleton

Hampton-Newport News

Survey Area
Virginia: (cities)
Hampton
Newport News

Area of Application. Survey area plus:
Virginia: (cities)
Williamsburg
Virginia: (counties)
York

Norfolk-Portsmouth-Virginia Beach

Survey Area
Virginia: (cities)
Norfolk
Portsmouth
Virginia Beach

Area of Application. Survey area plus:
North Carolina:
Pasquotank
Virginia: (cities)
Chesapeake
Suffolk
Virginia: (counties)
Accomack
Northampton

Prince William

Survey Area
Virginia:
Prince William

Area of Application. Survey area plus:
Virginia:
Fauquier

WASHINGTON

Kitsap

Survey Area
Washington:
Kitsap

Area of Application. Survey area plus:
Washington:
Clallam
Jefferson

Pierce

Survey Area
Washington:
Pierce

Area of Application. Survey area plus:
Oregon:
Clatsop
Coos
Douglas
Multnomah
Tillamook
Washington:
Clark
Grays Harbor

Snohomish

Survey Area
Washington:
Snohomish

Area of Application. Survey area plus:
Washington:
Island
King
Yakima

Spokane

Survey Area
Washington:
Spokane

Area of Application. Survey area plus:
Washington:
Adams
Walla Walla

WYOMING

Laramie

Survey Area
Wyoming:
Laramie

Area of Application. Survey area.

[FR Doc. 2010–7764 Filed 4–5–10; 8:45 am]

BILLING CODE 6325–39–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2010–0083 Airspace Docket No. 10–AAL–5]

Proposed Revocation of Class D and E Airspace; Big Delta, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to revoke Class D and E airspace at Big Delta, AK. This airspace duplicates the controlled airspace for Delta Junction, Alaska, which serves Allen Army Airfield. The duplication makes this action necessary to eliminate possible confusion, and enhance safety and management of Instrument Flight Rules (IFR) operations.

DATES: Comments must be received on or before May 21, 2010.

ADDRESSES: Send comments on the proposal to the Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground

Floor, Room W12–140, Washington, DC 20590–0001. You must identify the docket number FAA–2010–0083/ Airspace Docket No. 10–AAL–5 at the beginning of your comments. You may also submit comments on the Internet at *http://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Manager, Safety, Alaska Flight Service Operations, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2010–0083/Airspace Docket No. 10–AAL–5." The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received, and any final disposition, in person in the Federal Docket Management System Office (see "**ADDRESSES**" section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Alaska Flight Services Information Area Group. Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

This action proposes to amend Title 14 Code of Federal Regulations (14 CFR) part 71 by revoking Class D and E airspace at Big Delta, AK, to remove the discrepancy associated with existing airspace associated with Allen Army Airfield. Big Delta Class D and E airspace was previously associated with Allen Army Airfield, near Delta Junction, Alaska. The last airspace revision for Allen Army Airfield correctly identified the town of Delta Junction, but the Big Delta descriptions were not removed.

The Class D surface areas are published in paragraph 5000 in FAA Order 7400.9T, *Airspace Designations and Reporting Points,* signed August 27, 2009, and effective September 15, 2009, which is incorporated by reference in 14 CFR 71.1. The Class E2 surface areas are published in paragraph 6002 in FAA Order 7400.9T, *Airspace Designations and Reporting Points,* signed August 27, 2009, and effective September 15, 2009, which is incorporated by reference in 14 CFR 71.1. The Class E4 surface areas are published in paragraph 6004 in FAA Order 7400.9T, *Airspace Designations and Reporting Points,* signed August 27, 2009, and effective September 15, 2009, which is incorporated by reference in 14 CFR 71.1. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 in FAA Order 7400.9T, *Airspace Designations and Reporting Points,* signed August 27, 2009, and effective September 15, 2009, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document would be subsequently published in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Because this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, 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 1, section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart 1, section 40103, Sovereignty and use of airspace. Under that section, the FAA is charged with prescribing regulations to ensure the safe and efficient use of the navigable airspace. This regulation is within the scope of that authority because it proposes to revoke duplicate airspace associated with Allen Army Airfield, near Delta Junction, Alaska, and represents the FAA's continuing effort to safely and efficiently use the navigable airspace.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration

proposes to amend 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9T, *Airspace Designations and Reporting Points,* signed August 27, 2009, and effective September 15, 2009, is to be amended as follows:

* * * * *

Paragraph 5000 General.

* * * * *

AAL AK D Big Delta, AK [Removed]

* * * * *

Paragraph 6002 Class E Airspace Designated as Surface Areas.

* * * * *

AAL AK E2 Big Delta, AK [Removed]

* * * * *

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

* * * * *

AAL AK E4 Big Delta, AK [Removed]

* * * * *

Paragraph 6005 Class E Airspace Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

AAL AK E5 Big Delta, AK [Removed]

Issued in Anchorage, AK, on March 9, 2010.

Anthony M. Wylie,

Manager, Alaska Flight Services Information Area Group.

[FR Doc. 2010–7775 Filed 4–5–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 540

[BOP Docket No. 1148–P]

RIN 1120–AB48

Communication Management Units

AGENCY: Bureau of Prisons, Justice.

ACTION: Proposed rule.

SUMMARY: In this document, the Bureau of Prisons (Bureau) proposes to establish and describe Communication Management Units (CMUs) by regulation. CMUs are designed to provide an inmate housing unit environment that enables staff monitoring of all communication between CMU inmates and persons in the community. The ability to monitor such communication is necessary to ensure the safety, security, and orderly operation of correctional facilities, and protect the public. The Bureau currently operates CMUs in two of its facilities. This rule would clarify existing Bureau practices with respect to CMUs.

DATES: Comments are due by June 7, 2010.

ADDRESSES: Written comments should be submitted to the Rules Unit, Office of General Counsel, Bureau of Prisons, 320 First Street, NW., Washington, DC 20534. You may view an electronic version of this regulation at www.regulations.gov. You may also comment by using the *www.regulations.gov* comment form for this regulation. When submitting comments electronically you must include the BOP Docket No. in the subject box.

FOR FURTHER INFORMATION CONTACT: Sarah Qureshi, Office of General Counsel, Bureau of Prisons, phone (202) 307–2105.

SUPPLEMENTARY INFORMATION:

Posting of Public Comments

Please note that all comments received are considered part of the public record and made available for public inspection online at *www.regulations.gov.* Such information includes personal identifying information (such as your name, address, etc.) voluntarily submitted by the commenter.

If you want to submit personal identifying information (such as your name, address, *etc.*) as part of your comment, but do not want it to be posted online, you must include the phrase "PERSONAL IDENTIFYING INFORMATION" in the first paragraph of your comment. You must also locate all the personal identifying information you do not want posted online in the first paragraph of your comment and identify what information you want redacted.

If you want to submit confidential business information as part of your comment but do not want it to be posted online, you must include the phrase "CONFIDENTIAL BUSINESS INFORMATION" in the first paragraph of your comment. You must also prominently identify confidential business information to be redacted within the comment. If a comment has so much confidential business information that it cannot be effectively redacted, all or part of that comment may not be posted on www.regulations.gov.

Personal identifying information identified and located as set forth above will be placed in the agency's public docket file, but not posted online. Confidential business information identified and located as set forth above will not be placed in the public docket file. If you wish to inspect the agency's public docket file in person by appointment, please see the **FOR FURTHER INFORMATION CONTACT** paragraph.

Discussion

This proposed rule codifies and describes the Bureau's procedures for designating inmates to, and limiting communication within, its Communication Management Units (CMU). Currently, the Bureau operates two CMUs, separately located at the Federal Correctional Complex (FCC), Terre Haute, Indiana (established in December 2006), and the United States Penitentiary (USP), Marion, Illinois (established in March 2008).

Current regulatory authority. The Bureau currently has regulatory authority to restrict the communications of high-risk inmates. *See, e.g.* 28 CFR 540.12 (authorizing Wardens to establish and exercise controls to protect individuals, security, discipline, and the good order of the institution); 28 CFR 540.14 (a) (indicating that institution staff shall open and inspect all incoming general correspondence.); 28 CFR 540.100 *et seq.* (authorizing limitations upon an inmate's telephone privileges consistent with ensuring the security or good order of the institution or protection of the public, and authorizing Wardens to establish procedures that enable monitoring of telephone conversations); 28 CFR 540.40, *et seq.* (authorizing Wardens to limit inmate visiting when necessary to ensure the security and good order of the institution).

Purpose of the CMU regulations. The CMU regulations establish specific parameters for Bureau staff when operating CMUs while putting inmates and the public on notice of CMU operation.

The purpose of CMUs is to provide an inmate housing unit environment that enables staff to more effectively monitor communication between CMU inmates

and persons in the community. The CMU concept allows the Bureau to monitor inmates for whom such monitoring and communication limits are necessary, whether due to a terrorist link or otherwise, such as inmates who have previously committed an infraction related to mail tampering from within an institution, or inmates who may be attempting to communicate with past or potential victims. The ability to monitor such communication is necessary to ensure the safety, security, and orderly operation of correctional facilities, and protect the public. The volume, frequency, and methods of CMU inmate contact with persons in the community may be limited as necessary to achieve the goal of total monitoring, consistent with this subpart.

A CMU is a general population housing unit where inmates will ordinarily reside, eat, and participate in educational, recreational, religious, visiting, unit management, and work programming, within the confines of the CMU. Additionally, CMUs may contain a range of cells dedicated to segregated housing of inmates in administrative detention or disciplinary segregation status.

Under this regulation, initial consideration of inmates for CMU designation begins when the Bureau becomes aware of information relevant to the criteria described in § 540.201. The Bureau's Assistant Director, Correctional Programs Division, will then make a determination based on a review of the evidence presented, and a conclusion that the inmate's designation to a CMU is necessary to ensure the safety, security, and orderly operation of correctional facilities, or protect the public.

Upon arrival at the designated CMU, inmates will receive written notice from the Warden of the facility in which the CMU exists. The written notice will explain that designation to a CMU allows greater Bureau staff management of communication with persons in the community through complete monitoring of telephone use, written correspondence, and visiting. The volume, frequency, and methods, of CMU inmate contact with persons in the community may be limited as necessary to achieve the goal of total monitoring, consistent with this subpart. The written notice will also explain that general conditions of confinement in the CMU may be limited as necessary to provide greater management of communications, and that designation to the CMU is not punitive and, by itself, has no effect on the length of the inmate's incarceration. CMU inmates continue to earn sentence credit in accordance with law and Bureau policy.

Through the written notice, inmates will also be informed that designation to the CMU follows the Assistant Director's decision that such placement is necessary for the safe, secure, and orderly operation of Bureau institutions, or protection of the public. The inmate will be provided an explanation of the decision in sufficient detail, unless providing specific information would jeopardize the safety, security, or orderly operation of the facility, or protection of the public.

Continued designation to the CMU will be reviewed regularly by the inmate's Unit Team under circumstances providing the inmate notice and an opportunity to be heard, in accordance with the Bureau's policy on Classification and Program Review of Inmates. The inmate may challenge the CMU designation decision and any aspect of confinement therein, through the Bureau's administrative remedy program. While this regulation may allow for limiting the communication of inmates to whom it is applied, it will not extinguish their monitored communication abilities absent abuse or violations committed by the inmate.

With this regulation, the Bureau seeks, when warranted, on a case-by-case basis, to more effectively monitor communication while still accommodating the rights guaranteed by the First Amendment to petition for redress of grievances. By limiting the communications of these inmates, the Bureau seeks to balance First Amendment rights with its correctional mission.

The proposed regulation would clarify current authority for imposing limits and restrictions on the communications of inmates in the Bureau's custody based on evidence, either from outside sources (such as other federal agencies) or from internal sources (such as intelligence gained through observation of inmates in Bureau custody). Communications would be limited if such evidence indicates, inter alia, a high degree of potential risk to national security.

The approach of this rule will also provide a more effective means to implement a previously-published proposed rule (BOP Docket No. 1135) providing for limiting the communication opportunities of inmates who are: (1) Charged with, convicted of, or detained in relation to an offense under title 18 U.S. C. chapters 113B or 115; or (2) charged with having engaged in, have engaged in, are detained in relation to, or are linked in any way to terrorist-related activity as part of their current or previous offense conduct or conduct while incarcerated.

BOP 1135 contemplated limiting the communications of inmates in a general population prison setting who were identified as having an identifiable link to terrorist-related activity. It is difficult to police inmate communication in the "open" context of a general population setting because it is harder to detect activity such as inmates sending mail under another inmate's name, or using another's PIN number, without constant monitoring.

By physically separating out the properly classified prisoners who need comprehensive monitoring, and involving the Assistant Director of the Bureau's Correctional Programs Division in addition to the Warden in the initial decision to restrict communications, we hope to lessen any adverse impact on the vast majority of the other prisoners not subject to comprehensive monitoring but still only subject to random monitoring.

After taking into consideration any public comment received after publication of this proposed rule, the Bureau will adopt a consolidated final rule.

This regulation, however, will be applied differently from regulations in 28 CFR part 501, which authorize the Attorney General to impose special administrative measures (SAMs). Under 28 CFR part 501, SAMs are imposed after approval by the Attorney General and are generally based on information from the FBI and the U.S. Attorney's Office (USAO), but are typically not based solely on information from internal Bureau of Prisons sources. Unlike 28 CFR part 501, the proposed regulations allow the Bureau to impose communication limits based on evidence from FBI or another federal law enforcement agency, or if Bureau of Prisons information indicates a similar need to impose communication restrictions, evidence which does not rise to the same degree of potential risk to national security or risk of acts of violence or terrorism which would warrant the Attorney General's intervention by issuance of a SAM.

Furthermore, while SAMs have the potential to restrict communication entirely, this regulation delineates a floor of limited communication, beneath which the Bureau cannot restrict unless precipitated by the inmate's violation of imposed limitations, and then only as a disciplinary sanction following due process procedures in 28 CFR part 541.

Also, the comprehensive monitoring provided by the new regulation would lead to greater protection for the public,

since reconstruction of communications from random monitoring may not provide a full scenario if dangerous communications are discovered.

Likewise, there would be greater protection for inmates as a result of the new proposed rule. The initial decision regarding which inmates to more closely monitor is made by the Assistant Director of the Bureau's Correctional Programs Division, who has a broad scope of authority and a global understanding of the security concerns prevalent in the Bureau's correctional setting. In addition, the inmate can challenge this classification-based treatment decision through the Bureau's administrative remedy program. Further, the CMU inmate's regular inmate associates will not be general population inmates. In the new proposed rule, the only inmates being specially monitored are the inmates placed in the CMU.

Further, CMU monitoring would result in a fuller record that would more readily show whether an inmate's use of words may have been taken out of context and whether the inmate might not need to remain under close communications scrutiny.

Another advantage of CMU monitoring is that closer scrutiny and finer monitoring distinctions can be applied or removed in "stages" from the defined CMU inmate population, so that work and leisure opportunities can be adjusted for the population instead of simply excluding them from such opportunities. Also, consolidating high-risk inmates in the CMU would make it more operationally feasible to minimize the adverse consequences such as the communication delay to the monitored inmates, since the marshaling and organizing of resources into a standard approach should make it easier for translators and officials responding to requests for special exceptions to act quickly.

Under the proposed regulation, inmates may be designated to a CMU if:

- The inmate's current offense(s) of conviction, or offense conduct, included association, communication, or involvement, related to international or domestic terrorism;
- The inmate's current offense(s) of conviction, offense conduct, or activity while incarcerated, indicates a propensity to encourage, coordinate, facilitate, or otherwise act in furtherance of, illegal activity through communication with persons in the community;
- The inmate has attempted, or indicates a propensity, to contact victims of the inmate's current offense(s) of conviction;
- The inmate committed a prohibited activity related to misuse/abuse of approved communication methods while incarcerated; or
- There is any other evidence of a potential threat to the safe, secure, and orderly operation of prison facilities, or protection of the public, as a result of the inmate's communication with persons in the community.

One important category of inmates which might be designated to a CMU is inmates whose current offense(s) of conviction, or offense conduct, included association, communication, or involvement, related to international or domestic terrorism. Past behaviors of terrorist inmates provide sufficient grounds to suggest a substantial risk that they may inspire or incite terrorist-related activity, especially if communicated to groups willing to engage in or to provide equipment or logistics to facilitate terrorist-related activity. The potential ramifications of this activity outweigh the inmate's interest in unlimited communication with persons in the community.

Communication related to terrorist-related activity can occur in codes which are difficult to detect and extremely time-consuming to interpret. Inmates involved in such communication, and other persons involved or linked to terrorist-related activities, take on an exalted status with other like-minded individuals. Their communications acquire a special level of inspirational significance for those who are already predisposed to these views, causing a substantial risk that such recipients of their communications will be incited to unlawful terrorist-related activity.

The danger of coded messages from prisoners has been recognized by the courts. *See Turner* v. *Safley,* 482 U.S. 78, 93 (1987) ("In any event, prisoners could easily write in jargon or codes to prevent detection of their real messages."); *United States* v. *Salameh,* 152 F.3d 88, 108 (2nd Cir. 1998) ("Because Ajaj was in jail and his telephone calls were monitored, Ajaj and Yousef spoke in code when discussing the bomb plot."); *United States* v. *Johnson,* 223 F.3d 665, 673 (7th Cir. 2000) ("And we know that anyone who has access to a telephone or is permitted to receive visitors may be able to transmit a lethal message in code."); *United States* v. *Hammoud,* 381 F.3d 316, 334 (4th Cir. 2004) ("A conversation that seems innocuous on one day may later turn out to be of great significance, particularly if the individuals are talking in code."); *United States* v. *Moncivais,* 401 F.3d 751, 757 (6th Cir. 2005) (noting that seemingly nonsensical conversations could be in code and interpreted as indicative of drug dealing activity). Also, an Al Qaeda training manual contains the following advice regarding communications from prison: "Take advantage of visits to communicate with brothers outside prison and exchange information that may be helpful to them in their work outside prison. The importance of mastering the art of hiding messages is self evident here."

There have been cases of imprisoned terrorists communicating with their followers regarding future terrorist activity. For example, after El Sayyid Nosair assassinated Rabbi Kahane, he was placed in Rikers Island, where "he began to receive a steady stream of visitors, most regularly his cousin El-Gabrowny, and also Abouhalima, Salameh, and Ayyad. During these visits, as well as subsequent visits once Nosair was at Attica, Nosair suggested numerous terrorist operations, including the murders of the judge who sentenced him and of Dov Hikind, a New York City Assemblyman, and chided his visitors for doing nothing to further the jihad against the oppressors. Nosair also tape recorded messages while in custody * * *" *United States* v. *Rahman,* 189 F.3d 88, 105–06 (2d Cir. 1999). Imprisoned, Sheikh Abdel Rahman had urged his followers to wage jihad to obtain his release. Violent attacks and murders followed. *United States* v. *Sattar,* 314 F.Supp.2d 279, 288–89 (S.D.N.Y. 2004).

To minimize the risk of terrorist-related communication and other similar dangerous communication to or from inmates in Bureau custody, this regulation clarifies the Bureau's current authority to limit and monitor the communication of CMU inmates to immediate family members, U.S. courts, federal judges, U.S. Attorney's Offices, members of U.S. Congress, the Bureau, other federal law enforcement entities, and the inmate's attorney. The Bureau allows communication with these individuals to help inmates maintain family ties, and protect inmates' access to courts and other government officials in order to raise issues related to their incarceration or their conditions of confinement, while minimizing potential internal or external threats.

Particular consideration has also been given to the ability of CMU inmates to communicate via special mail. Special mail is defined in 28 CFR part 540. For the purposes of CMUs, however, this rule would limit special mail to privileged communication with the inmate's attorney. Correspondence from the correspondents listed in 28 CFR 540.2(c) as "special correspondence,"

other than attorneys. (e.g. President and Vice President of the United States, the Department of Justice, members of Congress, Governors, State legislatures, courts, media etc.) will be treated as "general correspondence" for the purposes of CMUs. There is no frequency or volume limitation on correspondence with an inmate's attorney, unless necessary as a result of the inmate's abuse or violation of these regulations.

To effectively and efficiently allow monitoring and review of the general correspondence communications of CMU inmates, those communications may be limited in frequency and volume as follows:

- Written correspondence may be limited to three pieces of paper, double-sided, once per week to and from a single recipient;
- Telephone communication may be limited to a single completed call per calendar month for up to 15 minutes; and
- Visiting may be limited to one hour each calendar month.

Unless the quantity to be processed becomes unreasonable or the inmate abuses or violates these regulations, there is no frequency or volume limitation on written correspondence with the following entities: U.S. courts, Federal judges, U.S. Attorney's Offices, Members of U.S. Congress, The Bureau of Prisons, other federal law enforcement entities, or, as stated earlier, the inmate's attorney (privileged communications only). Correspondence with these entities is not limited under these regulations in furtherance of inmates' access to courts and their ability to defend in litigation.

By limiting the frequency and volume of the communication to/from inmates identified under this regulation, we will reduce the amount of communication requiring monitoring and review. Reducing the volume of communications will help ensure the Bureau's ability to provide heightened scrutiny in reviewing communications, and thereby increasing both internal security within correctional facilities, and the security of members of the public.

Inmates may incur additional limitations on their communications as the direct result of abusing or violating individualized communication limits imposed under this subsection, but additional limitations will occur only to the extent possible under this regulation and according to the procedures in this subsection. Unmonitored communications with verified attorneys may be limited in the form of monitoring only as provided in 28 CFR part 501 (regarding national security cases and prevention of acts of violence and terrorism) and part 543 (regarding inmate legal activities). Inmates may also be subject to disciplinary action or criminal prosecution for abusing or violating limits imposed under this subsection.

Executive Order 12866

This regulation falls within a category of actions that the Office of Management and Budget (OMB) has determined to constitute "significant regulatory actions" under section 3(f) of Executive Order 12866 and, accordingly, it was reviewed by OMB. The Bureau of Prisons has assessed the costs and benefits of this regulation as required by Executive Order 12866 Section 1(b)(6) and has made a reasoned determination that the benefits of this regulation justify its costs. There will be no new costs associated with this regulation.

Executive Order 13132

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, under Executive Order 13132, we determine that this regulation does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Flexibility Act

The Director of the Bureau of Prisons, under the Regulatory Flexibility Act (5 U.S.C. 605(b)), reviewed this regulation and by approving it certifies that it will not have a significant economic impact upon a substantial number of small entities for the following reasons: This regulation pertains to the correctional management of offenders and immigration detainees committed to the custody of the Attorney General or the Director of the Bureau of Prisons, and its economic impact is limited to the Bureau's appropriated funds.

Unfunded Mandates Reform Act of 1995

This regulation will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This regulation is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This regulation will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

List of Subjects in 28 CFR Part 540

Prisoners.

Harley G. Lappin,

Director, Bureau of Prisons.

Under rulemaking authority vested in the Attorney General in 5 U.S.C 301; 28 U.S.C. 509, 510 and delegated to the Director, Bureau of Prisons in 28 CFR 0.96, we amend 28 CFR part 540 as follows:

SUBCHAPTER C—INSTITUTIONAL MANAGEMENT

PART 540—CONTACT WITH PERSONS IN THE COMMUNITY

1. The authority citation for 28 CFR part 540 continues to read as follows:

Authority: 5 U.S.C. 301, 551, 552a; 18 U.S.C. Chapters 113b and 115, 1791, 3621, 3622, 3624, 4001, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 5006–5024 (Repealed October 12, 1984 as to offenses committed after that date), 5039; 28 U.S.C. 509, 510, 530C(b)(6).

2. Add a new subpart J, to read as follows:

SUBPART J—COMMUNICATION MANAGEMENT HOUSING UNITS

Sec.

540.200 Purpose and scope.
540.201 Designation criteria.
540.202 Designation procedures.
540.203 Written correspondence limitations.
540.204 Telephone communication limitations.
540.205 Visiting limitations.

§ 540.200 Purpose and scope.

(a) *Purpose of this subpart.* This subpart authorizes and defines the Federal Bureau of Prisons' (Bureau) authority to operate, and designate inmates to, Communication Management Housing Units (CMUs) within Bureau facilities.

(b) *CMU.* A CMU is a general population housing unit where inmates

ordinarily reside, eat, and participate in all educational, recreational, religious, visiting, unit management, and work programming, within the confines of the CMU. Additionally, CMUs may contain a range of cells dedicated to segregated housing of inmates in administrative detention or disciplinary segregation status.

(c) *Purpose of CMUs.* The purpose of CMUs is to provide an inmate housing unit environment that enables staff to more effectively monitor communication between CMU inmates and persons in the community. The ability to monitor such communication is necessary to ensure the safety, security, and orderly operation of correctional facilities, and protect the public. The volume, frequency, and methods, of CMU inmate contact with persons in the community may be limited as necessary to achieve the goal of total monitoring, consistent with this subpart.

(d) *Application.* Any inmate (as defined in 28 CFR § 500.1(c)) meeting criteria prescribed by this subpart may be designated to a CMU.

(e) *Relationship to other regulations.* The regulations in this subpart supercede and control to the extent they conflict with, are inconsistent with, or impose greater limitations than the regulations in 28 CFR Part 540, or any other regulations in this chapter, except 28 CFR Part 501.

§ 540.201 Designation criteria.

Inmates may be designated to a CMU if evidence of the following criteria exists:

(a) The inmate's current offense(s) of conviction, or offense conduct, included association, communication, or involvement, related to international or domestic terrorism;

(b) The inmate's current offense(s) of conviction, offense conduct, or activity while incarcerated, indicates a propensity to encourage, coordinate, facilitate, or otherwise act in furtherance of, illegal activity through communication with persons in the community;

(c) The inmate has attempted, or indicates a propensity, to contact victims of the inmate's current offense(s) of conviction;

(d) The inmate committed prohibited activity related to misuse/abuse of approved communication methods while incarcerated; or

(e) There is any other evidence of a potential threat to the safe, secure, and orderly operation of prison facilities, or protection of the public, as a result of the inmate's communication with persons in the community.

§ 540.202 Designation procedures.

Inmates may be designated to CMUs only according to the following procedures:

(a) *Initial consideration.* Initial consideration of inmates for CMU designation begins when the Bureau becomes aware of information relevant to the criteria described in § 540.201.

(b) *Assistant Director authority.* The Bureau's Assistant Director, Correctional Programs Division, has authority to approve CMU designations. The Assistant Director's decision must be based on a review of the evidence, and a conclusion that the inmate's designation to a CMU is necessary to ensure the safety, security, and orderly operation of correctional facilities, or protect the public.

(c) *Written notice.* Upon arrival at the designated CMU, inmates will receive written notice from the facility's Warden explaining that:

(1) Designation to a CMU allows greater Bureau staff management of communication with persons in the community through complete monitoring of telephone use, written correspondence, and visiting. The volume, frequency, and methods, of CMU inmate contact with persons in the community may be limited as necessary to achieve the goal of total monitoring, consistent with this subpart;

(2) General conditions of confinement in the CMU may also be limited as necessary to provide greater management of communications;

(3) Designation to the CMU is not punitive and, by itself, has no effect on the length of the inmate's incarceration. CMU inmates continue to earn sentence credit in accordance with law and Bureau policy.

(4) Designation to the CMU follows the Assistant Director's decision that such placement is necessary for the safe, secure, and orderly operation of Bureau institutions, or protection of the public. The inmate will be provided an explanation of the decision in sufficient detail, unless providing specific information would jeopardize the safety, security, and orderly operation of correctional facilities, or protection of the public.

(5) Continued designation to the CMU will be reviewed regularly by the inmate's Unit Team under circumstances providing the inmate notice and an opportunity to be heard, in accordance with the Bureau's policy on Classification and Program Review of Inmates.

(6) The inmate may challenge the CMU designation decision, and any aspect of confinement therein, through the Bureau's administrative remedy program.

§ 540.203 Written correspondence limitations.

(a) *General correspondence.* General written correspondence as defined by Part 540, may be limited to three pieces of paper (not larger than 8.5 x 11 inches), double-sided writing permitted, once per calendar week, to and from a single recipient at the discretion of the Warden, except as stated in (c) below. This correspondence is subject to staff inspection for contraband and for content.

(b) *Special mail.*

(1) Special mail, as defined in Part 540, is limited to privileged communication with the inmate's attorney.

(2) All such correspondence is subject to staff inspection in the inmate's presence for contraband and to ensure its qualification as privileged communication with the inmate's attorney. Inmates may not seal such outgoing mail before giving it to staff for processing. After inspection for contraband, the inmate must then seal the approved outgoing mail material in the presence of staff and immediately give the sealed material to the observing staff for further processing.

(c) *Frequency and volume limitations.* Unless the quantity to be processed becomes unreasonable or the inmate abuses or violates these regulations, there is no frequency or volume limitation on written correspondence with the following entities:

(1) U.S. courts;

(2) Federal judges;

(3) U.S. Attorney's Offices;

(4) Members of U.S. Congress;

(5) The Bureau of Prisons;

(6) Other federal law enforcement entities; or

(7) The inmate's attorney (privileged communications only).

§ 540.204 Telephone communication limitations.

(a) *Monitored telephone communication* may be limited to immediate family members only. The frequency and duration of telephone communication may also be limited to a single connected call per calendar month, lasting no longer than 15 minutes. The Warden may require such communication to be in English, or translated by an approved interpreter.

(b) *Unmonitored telephone communication* is limited to privileged communication with the inmate's attorney. Unmonitored privileged telephone communication with the inmate's attorney is permitted as

necessary in furtherance of active litigation, after establishing that communication with the verified attorney by confidential correspondence or visiting, or monitored telephone use, is not adequate due to an urgent or impending deadline.

§ 540.205 Visiting limitations.

(a) *Regular visiting* may be limited to immediate family members. The frequency and duration of regular visiting may also be limited to a one hour visit each calendar month. The number of visitors permitted during any visit is within the Warden's discretion. Such visits must occur through non-contact visiting facilities.

(1) Regular visits may be simultaneously monitored and recorded, both visually and auditorily, either in person or electronically.

(2) The Warden may require such visits to be conducted in English, or simultaneously translated by an approved interpreter.

(b) *Attorney visiting* is limited to attorney-client privileged communication as provided in Part 540. These visits may be visually, but not auditorily, monitored. Regulations and policies previously established under 28 CFR part 543 are applicable.

(2) For convicted inmates (as defined in 28 CFR part 551), regulations and policies previously established under 28 CFR part 543 are applicable.

[FR Doc. 2010–7728 Filed 4–5–10; 8:45 am]

BILLING CODE 4410–05–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2010–0109]

RIN 1625–AA00

Safety Zone; Big Bay Fourth of July Fireworks, San Diego Bay, San Diego, CA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes establishing a temporary safety zone on the navigable waters of the San Diego Bay in support of the Big Bay July Fourth Show to Benefit the San Diego Armed Services YMCA. This temporary safety zone is necessary to provide for the safety of crew, spectators, and other users and vessels of the waterway. Persons and vessels are prohibited from entering into, transiting through, or anchoring within this temporary safety zone unless authorized by the Captain of the Port or his designated representative.

DATES: Comments and related material must be received by the Coast Guard on or before May 6, 2010. Requests for public meetings must be received by the Coast Guard on or before May 6, 2010.

ADDRESSES: You may submit comments identified by docket number USCG–2010–0109 using any one of the following methods:

(1) Federal eRulemaking Portal: *http://www.regulations.gov.*

(2) *Fax:* 202–493–2251.

(3) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

To avoid duplication, please use only one of these four methods. See the "Public Participation and Request for Comments" portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or e-mail Petty Officer Corey McDonald, Waterways Management, U.S. Coast Guard Sector San Diego, Coast Guard; telephone 619–278–7262, e-mail *Corey.R.McDonald@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided.

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2010–0109), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (via *http://www.regulations.gov*) or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via *www.regulations.gov,* it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* click on the "submit a comment" box, which will then become highlighted in blue. In the "Document Type" drop down menu select "Proposed Rule" and insert "USCG–2010–0109" in the "Keyword" box. Click "Search" then click on the balloon shape in the "Actions" column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* click on the "read comments" box, which will then become highlighted in blue. In the "Keyword" box insert "USCG–2010–0109" and click "Search." Click the "Open Docket Folder" in the "Actions" column. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on

behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one using one of the four methods specified under **ADDRESSES**. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register.**

Background and Purpose

The San Diego Armed Services YMCA is sponsoring the Big Bay July Fourth Fireworks Show, which will include a fireworks presentation originating from four separate fireworks barges and pier. A safety zone is necessary to provide for the safety of the crew, spectators, and other users and vessels of the waterway. The Coast Guard is proposing to establish a temporary safety zone that would encompass all navigable waters within 1,000 feet of each barge and pier during the fireworks event.

Discussion of Proposed Rule

The Coast Guard proposes establishing a safety zone that will be enforced from 8:45 p.m. to 9:30 p.m. on July 4, 2010. This safety zone is necessary to provide for the safety of the crew, spectators, and other users and vessels of the waterway. Persons and vessels would be prohibited from entering into, transiting through, or anchoring within this safety zone unless authorized by the Captain of the Port or his designated representative. The limits of the safety zone would include all navigable waters within 1000 feet of the four fireworks barges and pier. The approximate locations of the barges are:

Shelter Island Barge: 32°42.83′ N, 117°13.20′ W
Harbor Island Barge: 32°43.33′ N, 117°12.00′ W
Embarcadero Barge: 32°43.00′ N, 117°10.80′ W
Seaport Village Barge: 32°42.23′ N, 117°10.05′ W
Imperial Beach Pier: 32°34.77′ N, 117°08.15′ W

Regulatory Analyses

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

Regulatory Planning and Review

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. This determination is based on the small size and brief location of the safety zone. Vessel traffic would be able to pass safely around the safety zone. Vessels will not be allowed to transit through the established safety zone during the specified times unless authorized to do so by the Captain of the Port or his designated representative.

Small Entities

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

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

This proposed rule would affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit through, or anchor within the four areas of San Diego Bay or the Pacific Ocean from 8:45 p.m. to 9:30 p.m. on July 4, 2010.

This safety zone would not have a significant economic impact on a substantial number of small entities for the following reasons. This rule would be in effect for only 45 minutes late in the evening when vessel traffic is low. Vessel traffic could pass safely around the safety zone. Before the effective period, the Coast Guard will publish a local notice to mariners (LNM) and will issue broadcast notice to mariners (BNM) alerts via marine channel 16 VHF before the temporary safety zone is enforced.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Petty Officer Corey McDonald, Waterways Management, U.S. Coast Guard Sector San Diego, Coast Guard at (619) 278–7262. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

eliminate ambiguity, and reduce burden.

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. A preliminary environmental analysis checklist supporting this determination is available in the docket where indicated under **ADDRESSES**. This proposed rule involves establishing a safety zone and is categorically excluded under figure 2–1, paragraph (34)(g), of the Instruction. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. Add a new temporary zone § 165.T11–300 to read as follows:

§ 165.T11–300 Safety Zone; Big Bay Fourth of July Fireworks, San Diego Bay, San Diego, CA.

(a) *Location.* The limits of the safety zone are all navigable waters within 1000 feet of four fireworks barges and pier. The approximate locations are:

Shelter Island Barge: 32°42.83′ N, 117°13.20′ W

Harbor Island Barge: 32°43.33′ N, 117°12.00′ W

Embarcadero Barge: 32°43.00′ N, 117°10.80′ W

Seaport Village Barge: 32°42.23′ N, 117°10.05′ W

Imperial Beach Pier: 32°34.77′ N, 117°08.15′ W

(b) *Enforcement Period.* This section will be enforced from 8:45 p.m. to 9:30 p.m. on July 4, 2010. If the event concludes prior to the scheduled termination time, the Captain of the Port will cease enforcement of this safety zone and will announce that fact via Broadcast Notice to Mariners.

(c) *Definitions.* The following definition applies to this section: *Designated representative,* means any commissioned, warrant, and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, and local, State, and Federal law enforcement vessels who have been authorized to act on the behalf of the Captain of the Port.

(d) *Regulations.* (1) Entry into, transit through or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port of San Diego or his designated on-scene representative.

(2) Mariners requesting permission to transit through the safety zone may request authorization to do so from the Patrol Commander (PATCOM). The PATCOM may be contacted on VHF–FM Channel 16.

(3) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated representative.

(4) Upon being hailed by U.S. Coast Guard patrol personnel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

(5) The Coast Guard may be assisted by other federal, state, or local agencies.

Dated: March 17, 2010.

T.H. Farris,

Captain, U.S. Coast Guard, Captain of the Port San Diego.

[FR Doc. 2010–7691 Filed 4–5–10; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 98

[EPA–HQ–OAR–2009–0923; EPA–HQ–OAR–2009–0926; EPA–HQ–OAR–2009–0927; FRL–9134–2]

RIN 2060–AP99, AP88, AQ00

Public Hearings for the Mandatory Reporting Rule for Greenhouse Gases

AGENCY: Environmental Protection Agency (EPA).

ACTION: Announcement of public hearings.

SUMMARY: The EPA is announcing two public hearings to be held for proposed rules related to mandatory reporting of greenhouse gases, which will be published separately in the **Federal Register.** These proposed rules would

amend the Mandatory Reporting of Greenhouse Gases rule, published on October 30, 2009 by requiring reporting of greenhouse gases from additional industry source categories.

One hearing will be held in Arlington, Virginia (which is in the Washington, DC, area) on April 19, 2010. It will cover the proposed rule "Mandatory Reporting of Greenhouse Gases: Petroleum and Natural Gas Systems" and the proposed rule "Mandatory Reporting of Greenhouse Gases: Injection and Geologic Sequestration of Carbon Dioxide." These two notices will be being published in separate notices of proposed rulemaking.

The other hearing will be held in Washington, DC, on April 20, 2010. It will cover the proposed rule "Mandatory Reporting of Greenhouse Gases: Additional Sources of Fluorinated GHGs," which will be published in a separate notice of proposed rulemaking.

The proposed rules do not require control of greenhouse gases, rather they require only that sources above certain threshold levels monitor and report emissions and carbon dioxide injection and geologic sequestration. The signed notices of proposed rulemaking were posted on the EPA Web site prior to publication in the **Federal Register,** and contained the same public hearing dates presented in this announcement.

DATES: There will be two public hearings. One hearing will be held on April 19, 2010 in Arlington, VA. The other hearing will be on April 20, 2010 in Washington, DC. To obtain information about the public hearings or to register to speak at the hearings, please go to: *http://www.epa.gov/climatechange/emissions/ghgrulemaking.html.* Alternatively, contact Carole Cook at 202–343–9263.

ADDRESSES: The hearings will be held at the following locations:

1. *Arlington:* One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA 22202.

2. *Washington, DC:* Environmental Protection Agency, 1310 L Street NW., Room 152, Washington, DC 20005.

Written comments on the proposed rules may also be submitted to EPA electronically, by mail, by facsimile, or through hand delivery/courier. Please refer to the notices of proposed rulemaking for the addresses and detailed instructions for submitting written comments.

When the proposed rules are published in the **Federal Register,** a complete set of documents related to the proposal will be available for public inspection at the EPA Docket Center, located at 1301 Constitution Avenue, NW., Room 3334, Washington, DC between 8:30 a.m. and 4:30 p.m., Monday through Friday, excluding legal holidays. A reasonable fee may be charged for copying. Documents are also available through the electronic docket system at *http://www.regulations.gov.*

The EPA Web site for the Mandatory Reporting of Greenhouse Gases rulemaking, which includes information about the public hearings and a copy of the signed proposals (which are essentially the same as the proposals that will be published) can be found at: *http://www.epa.gov/climatechange/emissions/ghgrulemaking.html.*

FOR FURTHER INFORMATION CONTACT: Carole Cook, Climate Change Division, Office of Atmospheric Programs (MC–6207J), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 343–9263; fax number: (202) 343–2342; e-mail address: *GHGReportingRule@epa.gov.*

SUPPLEMENTARY INFORMATION: The proposals for which EPA is holding the public hearings will be published separately in the **Federal Register**. Copies of the signed notices of proposed rulemaking, which are essentially the same as the proposal that will be published in the **Federal Register,** has been available since March 23, 2010, on the following Web site: *http://www.epa.gov/climatechange/emissions/ghgrulemaking.html.* The notices on the Web site contain the same public hearing dates, addresses, and registration information presented in this announcement of public hearings.

The public hearings will provide interested parties the opportunity to present data, views, or arguments concerning the proposed rules. The EPA may ask clarifying questions during the oral presentations, but will not respond to the presentations at that time. Written statements and supporting information submitted during the comment period will be considered with the same weight as any oral comments and supporting information presented at the public hearings. Written comments must be received by the last day of the comment period, as specified in the notices of proposed rulemaking.

To obtain information about the public hearings or to register to speak at the hearings, please go to: *http://www.epa.gov/climatechange/emissions/ghgrulemaking.html.* Alternatively, contact Carole Cook at 202–343–9263.

Verbatim transcripts of the hearings and written statements will be included in the rulemaking dockets.

How Can I Get Copies Of This Document, the Proposed Rule, and Other Related Information?

The EPA has established dockets for each action under the following Docket ID Nos: EPA–HQ–OAR–2009–0923 (Petroleum and Natural Gas Systems, proposed 40 CFR part 98, subpart W), EPA–HQ–OAR–2009–0926 (Carbon Dioxide Injection and Geologic Sequestration, proposed 40 CFR part 98, subpart RR), and EPA–HQ–OAR–2009–0927 (Additional Sources of Fluorinated Greenhouse Gases, proposed 40 CFR part 98, subparts I, L, DD, QQ, and SS). The EPA has also developed a Web site for the proposed greenhouse gas reporting rule, including the notice of proposed rulemaking, at the address given above. Please refer to the notice of proposed rulemaking for detailed information on accessing information related to the proposal.

Dated: March 31, 2010.

Brian McLean,

Director, Office of Atmospheric Programs.

[FR Doc. 2010–7738 Filed 4–5–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 272

[EPA–R10–RCRA–2009–0868; FRL–9122–7]

Idaho: Incorporation by Reference of Approved State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to codify in the regulations entitled "Approved State Hazardous Waste Management Programs," Idaho's authorized hazardous waste program. The EPA will incorporate by reference into the Code of Federal Regulations (CFR) those provisions of the State regulations that are authorized and that the EPA will enforce under the Solid Waste Disposal Act, commonly referred to as the Resource Conversation and Recovery Act (RCRA).

DATES: Send written comments by May 6, 2010.

ADDRESSES: Send written comments to Zach Hedgpeth, U.S. EPA, Region 10, 1200 Sixth Avenue, Suite 900, Mail Stop AWT–122, Seattle, Washington 98101. You may also submit comments electronically or through hand delivery/courier; please follow the detailed instructions in the **ADDRESSES** section of the direct final rule which is located in

the Rules section of this **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Zach Hedgpeth, U.S. EPA, Region 10, 1200 Sixth Avenue, Mail stop WCM–122, Seattle, Washington 98101, e-mail: *hedgpeth.zach@epa.gov,* phone number (206) 553–1217.

SUPPLEMENTARY INFORMATION: In the "Rules and Regulations" section of this **Federal Register**, the EPA is codifying and incorporating by reference the State's hazardous waste program as an direct final rule. The EPA did not make a proposal prior to the direct final rule because we believe these actions are not controversial and do not expect comments that oppose them. We have explained the reasons for this codification and incorporation by reference in the preamble to the direct final rule. Unless we get written comments which oppose this incorporation by reference during the comment period, the direct final rule will become effective on the date it establishes, and we will not take further action on this proposal. If we get comments that oppose these actions, we will withdraw the direct final rule and it will not take effect. We will then respond to public comments in a later final rule based on this proposal. You may not have another opportunity for comment. If you want to comment on this action, you must do so at this time. For additional information, please see the direct final rule published in the "Rules and Regulations" section of this **Federal Register**.

Authority: This action is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste and Disposal Act, as amended, 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: March 11, 2010.

Dennis J. McLerran,

Regional Administrator, EPA Region 10.

[FR Doc. 2010–7649 Filed 4–5–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 372

[EPA–HQ–TRI–2010–0006; FRL–9134–1]

RIN 2025–AA28

Addition of National Toxicology Program Carcinogens; Community Right-to-Know Toxic Chemical Release Reporting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to add sixteen chemicals to the list of toxic chemicals subject to reporting under section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA) of 1986 and section 6607 of the Pollution Prevention Act of 1990 (PPA). These sixteen chemicals have been classified by the National Toxicology Program (NTP) in their Report on Carcinogens (RoC) as "reasonably anticipated to be a human carcinogen." EPA believes that these sixteen chemicals meet the EPCRA section 313(d)(2)(B) criteria because they can reasonably be anticipated to cause cancer in humans. As in past chemical reviews, EPA adopted a production volume screen for the development of this proposed rule to screen out those chemicals for which no reports are expected to be submitted. Based on a review of the available production and use information, these sixteen chemicals are expected to be manufactured, processed, or otherwise used in quantities that would exceed the EPCRA section 313 reporting thresholds.

DATES: Comments must be received on or before June 7, 2010.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–TRI–2010–0006, by one of the following methods:

- *www.regulations.gov*: Follow the on-line instructions for submitting comments.
- E-mail: *oei.docket@epa.gov.*
- *Mail:* Office of Environmental Information (OEI) Docket, Environmental Protection Agency, Mail Code: 28221T, 1200 Pennsylvania Ave., NW., Washington, DC 20460
- *Hand Delivery:* EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–TRI–2010–0006. 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 www.regulations.gov or e-mail. The *www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through www.regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, avoid any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the OEI Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. This Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1752.

FOR FURTHER INFORMATION CONTACT: Daniel R. Bushman, Environmental Analysis Division, Office of Information Analysis and Access (2842T), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; *telephone number:* 202–566–0743; *fax number:* 202–566–0677; *e-mail: bushman.daniel@epa.gov*, for specific information on this notice. For general information on EPCRA section 313, contact the Emergency Planning and Community Right-to-Know Hotline, toll free at (800) 424–9346 or (703) 412–9810 in Virginia and Alaska or toll free, TDD (800) 553–7672, *http://www.epa.gov/epaoswer/hotline/.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Notice Apply to Me?

You may be potentially affected by this action if you manufacture, process, or otherwise use any of the chemicals

included in this proposed rule. Potentially affected categories and entities may include, but are not limited to:

Category	Examples of potentially affected entities
Industry	Facilities included in the following NAICS manufacturing codes (corresponding to SIC codes 20 through 39): 311*, 312*, 313*, 314*, 315*, 316, 321, 322, 323*, 324, 325*, 326*, 327, 331, 332, 333, 334*, 335*, 336, 337*, 339*, 111998*, 211112*, 212324*, 212325*, 212393*, 212399*, 488390*, 511110, 511120, 511130, 511140*, 511191, 511199, 512220, 512230*, 519130*, 541712*, or 811490*. * Exceptions and/or limitations exist for these NAICS codes. Facilities included in the following NAICS codes (corresponding to SIC codes other than SIC codes 20 through 39): 212111, 212112, 212113 (correspond to SIC 12, Coal Mining (except 1241)); or 212221, 212222, 212231, 212234, 212299 (correspond to SIC 10, Metal Mining (except 1011, 1081, and 1094)); or 221111, 221112, 221113, 221119, 221121, 221122, 221330 (Limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce) (correspond to SIC 4911, 4931, and 4939, Electric Utilities); or 424690, 425110, 425120 (Limited to facilities previously classified in SIC 5169, Chemicals and Allied Products, Not Elsewhere Classified); or 424710 (corresponds to SIC 5171, Petroleum Bulk Terminals and Plants); or 562112 (Limited to facilities primarily engaged in solvent recovery services on a contract or fee basis (previously classified under SIC 7389, Business Services, NEC)); or 562211, 562212, 562213, 562219, 562920 (Limited to facilities regulated under the Resource Conservation and Recovery Act, subtitle C, 42 U.S.C. 6921 *et seq.*) (correspond to SIC 4953, Refuse Systems).
Federal Government	Federal facilities.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Some of the entities listed in the table have exemptions and/or limitations regarding coverage, and other types of entities not listed in the table could also be affected. To determine whether your facility would be affected by this action, you should carefully examine the applicability criteria in part 372 subpart B of Title 40 of the Code of Federal Regulations. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding "**FOR FURTHER INFORMATION CONTACT**" section.

B. How Should I Submit CBI to the Agency?

Do not submit CBI information to EPA through *www.regulations.gov* or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

II. Introduction

Section 313 of EPCRA, 42 U.S.C. 11023, requires certain facilities that manufacture, process, or otherwise use listed toxic chemicals in amounts above reporting threshold levels to report their environmental releases and other waste management quantities of such chemicals annually. These facilities must also report pollution prevention and recycling data for such chemicals, pursuant to section 6607 of the PPA, 42 U.S.C. 13106. Congress established an initial list of toxic chemicals that comprised more than 300 chemicals and 20 chemical categories.

EPCRA section 313(d) authorizes EPA to add or delete chemicals from the list and sets criteria for these actions. EPCRA section 313(d)(2) states that EPA may add a chemical to the list if any of the listing criteria in Section 313(d)(2) are met. Therefore, to add a chemical, EPA must demonstrate that at least one criterion is met, but need not determine whether any other criterion is met. Conversely, to remove a chemical from the list, EPCRA section 313(d)(3) dictates that EPA must demonstrate that none of the listing criteria in Section 313(d)(2) are met. The EPCRA section 313(d)(2) criteria are:

(A) The chemical is known to cause or can reasonably be anticipated to cause significant adverse acute human health effects at concentration levels that are reasonably likely to exist beyond facility site boundaries as a result of continuous, or frequently recurring, releases.

(B) The chemical is known to cause or can reasonably be anticipated to cause in humans—

(i) Cancer or teratogenic effects, or

(ii) Serious or irreversible—

(I) Reproductive dysfunctions,

(II) Neurological disorders,

(III) Heritable genetic mutations, or

(IV) Other chronic health effects.

(C) The chemical is known to cause or can be reasonably anticipated to cause, because of

(i) Its toxicity,

(ii) Its toxicity and persistence in the environment, or

(iii) Its toxicity and tendency to bioaccumulate in the environment, a significant adverse effect on the environment of sufficient seriousness, in the judgment of the Administrator, to warrant reporting under this section.

EPA often refers to the section 313(d)(2)(A) criterion as the "acute human health effects criterion;" the section 313(d)(2)(B) criterion as the "chronic human health effects criterion;" and the section 313(d)(2)(C) criterion as the "environmental effects criterion."

EPA has published in the **Federal Register** of November 30, 1994 (59 FR 61432) a statement clarifying its interpretation of the section 313(d)(2) and (d)(3) criteria for modifying the section 313 list of toxic chemicals.

III. Background Information

A. What is the NTP and the Report on Carcinogens?

The National Toxicology Program (NTP) is an interagency program within the Department of Health and Human Services (DHHS) headquartered at the National Institute of Environmental Health Sciences (NIEHS) of the National Institutes of Health (NIH). The mission of the NTP is to evaluate chemicals of public health concern by developing and applying tools of modern toxicology and molecular biology. The NTP

program maintains an objective, science-based approach in dealing with critical issues in toxicology and is committed to using the best science available to prioritize, design, conduct, and interpret its studies. The mission of the NTP includes the evaluation of chemicals for their potential to cause cancer in humans.

As part of their cancer evaluation work, the NTP periodically publishes a Report on Carcinogens (RoC) document. The RoC was mandated by the U.S. Congress, as part of the Public Health Service Act (Section 301(b)(4), as amended). The NTP describes the RoC as an informational scientific and public health document that identifies and discusses agents, substances, mixtures, or exposure circumstances that may pose a hazard to human health by virtue of their carcinogenicity. The NTP RoC serves as a meaningful and useful compilation of data on (1) the carcinogenicity (ability to cause cancer), genotoxicity (ability to damage genes), and biologic mechanisms (modes of action in the body) of the RoC-listed substances in humans and/or in animals, (2) the potential for human exposure to these substances, and (3) the regulations and guidelines promulgated by Federal agencies to limit exposures to RoC-listed substances. The NTP RoC is published periodically, with the most recently published 11th RoC having been released on January 31, 2005. The 11th RoC contains the NTP cancer classifications from the most recent chemical evaluations as well as the classifications from previous versions of the RoC.

B. What are the NTP cancer classifications and criteria?

The NTP RoC classifies chemicals as either "known to be a human carcinogen" or "reasonably anticipated to be a human carcinogen." The criteria that the NTP uses to list an agent, substance, mixture, or exposure circumstance under each classification in the RoC (Ref. 1) are as follows:

"*Known To Be Human Carcinogen:*
There is sufficient evidence of carcinogenicity from studies in humans*, which indicates a causal relationship between exposure to the agent, substance, or mixture, and human cancer.

Reasonably Anticipated To Be Human Carcinogen:
There is limited evidence of carcinogenicity from studies in humans*, which indicates that causal interpretation is credible, but that alternative explanations, such as chance, bias, or confounding factors, could not adequately be excluded,
or
there is sufficient evidence of carcinogenicity from studies in experimental animals, which indicates there is an increased incidence of malignant and/or a combination of malignant and benign tumors (1) in multiple species or at multiple tissue sites, or (2) by multiple routes of exposure, or (3) to an unusual degree with regard to incidence, site, or type of tumor, or age at onset,
or
there is less than sufficient evidence of carcinogenicity in humans or laboratory animals; however, the agent, substance, or mixture belongs to a well-defined, structurally related class of substances whose members are listed in a previous Report on Carcinogens as either known to be a human carcinogen or reasonably anticipated to be a human carcinogen, or there is convincing relevant information that the agent acts through mechanisms indicating it would likely cause cancer in humans. Conclusions regarding carcinogenicity in humans or experimental animals are based on scientific judgment, with consideration given to all relevant information. Relevant information includes, but is not limited to, dose response, route of exposure, chemical structure, metabolism, pharmacokinetics, sensitive sub-populations, genetic effects, or other data relating to mechanism of action or factors that may be unique to a given substance. For example, there may be substances for which there is evidence of carcinogenicity in laboratory animals, but there are compelling data indicating that the agent acts through mechanisms which do not operate in humans and would therefore not reasonably be anticipated to cause cancer in humans.

* This evidence can include traditional cancer epidemiology studies, data from clinical studies, and/or data derived from the study of tissues or cells from humans exposed to the substance in question that can be useful for evaluating whether a relevant cancer mechanism is operating in people."

The NTP classifications for the potential for a chemical to cause cancer are very similar to the EPCRA section 313(d)(2)(B) statutory criteria for listing a chemical on the list of toxic chemicals subject to reporting under EPCRA section 313: "(B) The chemical is known to cause or can reasonably be anticipated to cause in humans— (i) cancer * * * " The specific data used by the NTP to classify a chemical as "Known To Be Human Carcinogen" or "Reasonably Anticipated To Be Human Carcinogen" are consistent with data used by EPA to evaluate chemicals for their potential to cause cancer and classify chemicals as either "Carcinogenic to Humans" or "Likely to Be Carcinogenic to Humans" (Ref. 2).

C. What is the review process for the RoC?

Specific details of the nomination and review process for the development of the 11th RoC are described in the introduction to the 11th RoC (Ref. 1). In general, the RoC review process includes evaluations by scientists from the NTP, other Federal health research and regulatory agencies (including EPA), and nongovernmental institutions. The RoC review process includes external peer review and several opportunities for public comment. For the 11th RoC, two Federal scientific review groups, the NIEHS/NTP Review Committee for the Report on Carcinogens RG1 and the NTP Executive Committee Interagency Working Group for the Report on Carcinogens RG2, evaluated the classification recommendations. An EPA representative was a member of the RG2 committee. These reviews were followed by a third independent external scientific peer review by a standing subcommittee of the NTP Board of Scientific Counselors (the RoC Subcommittee). During the entire process there were three opportunities for public comment. The Director of the NTP received for review all of the recommendations of the review groups, the opinion of the NTP Executive Committee, and all public comments. After evaluating this information and any other relevant information the NTP Director developed recommendations to the Secretary, DHHS regarding whether and/or how to classify nominations in the RoC. The final draft of the RoC was prepared by the NTP based on the NTP Director's recommendations and was submitted it to the Secretary, DHHS, for review and approval. Once approved, the Secretary submitted RoC to the U. S. Congress as a final document. Submittal of the RoC to Congress constituted publication of the report, at which time it became available to the public.

IV. EPA's Review of the 11th RoC

A. How did EPA select the NTP RoC chemicals being proposed for addition?

The most recent version of the NTP RoC that EPA previously reviewed for

possible additions to the EPCRA section 313 list was the 6th RoC (January 12, 1994, 59 FR 1788). Each new version of the RoC adds newly classified chemicals to the existing list. EPA's present review of the 11th RoC identified 81 chemicals that are not on the EPCRA section list, 54 of which were previously reviewed for listing when EPA reviewed the 6th RoC. Those previous reviews concluded that the 54 chemicals that were not proposed for addition would not be manufactured, processed, or otherwise used at levels that exceed the EPCRA section 313 reporting thresholds. For this review EPA only considered the 27 chemicals that had been added to the RoC since the 6th RoC was published and thus had not been previously reviewed for listing. Of the 27 chemicals, EPA determined that 12 are manufactured, processed, or otherwise used in quantities sufficient to exceed reporting thresholds for at least one facility (Ref. 3). In addition, 4 chemicals are included for addition to the polycyclic aromatic compounds category.

Section 313(d)(2) of EPCRA provides EPA the discretion to add chemicals to the TRI list when there is sufficient evidence to establish any of the listing criteria. EPA can add a chemical that meets one criterion regardless of its production volume. But as in past chemical reviews (*e.g.,* January 12, 1994, 59 FR 1788), EPA adopted a production volume screen for the development of this proposed rule to screen out those chemicals for which no reports are expected to be submitted. If chemicals that did not meet the production volume screen were listed, there would be an economic burden for firms that would have to determine that they did not exceed the reporting threshold. Yet as no reports would be filed, there would be no information to the public on these chemicals. EPA feels it is appropriate at this time to focus on chemicals for which reports are likely to be filed.

EPA reviewed the NTP 11th RoC chemical profiles and supporting materials for each chemical being proposed for listing in this rule (Ref. 4). Given the extensive scientific reviews conducted by the NTP for their RoC documents, EPA's review focused on ensuring that there were no inconsistencies with how the Agency would consider the available data. EPA found no inconsistencies and agrees with the hazard conclusions of the NTP 11th RoC for each of the chemicals included in this proposed rule.

B. What technical data supports the NTP RoC classifications and EPA's proposed additions to the EPCRA section 313 list?

This section presents the data that supported the NTP 11th RoC classifications of each chemical now being proposed for inclusion on the EPCRA section 313 list and why EPA believes the data support the addition of these chemicals to the EPCRA section 313 list. The NTP chemical profiles, the NTP chemical background documents, and the references cited within each of the portions of the NTP 11th RoC chemical profiles quoted here, are all included in the docket for this rulemaking. While they are contained in the docket and are part of the rulemaking record, the references within the quotations cited from the NTP 11th RoC profile documents in this section are not included in the list of references in Unit VI. of this Federal Register notice. The full citations for the references contained in the quotations can be found in the NTP 11th RoC profile documents cited for each chemical.

1. *1-Amino-2,4-Dibromoanthraquinone* (CAS No. 81–49–2) (Refs. NTP Profile/Background document (Refs. 5 and 6)). The NTP has classified 1-amino-2,4-dibromoanthraquinone as "reasonably anticipated to be a human carcinogen." The classification is based on sufficient evidence of carcinogenicity in experimental animals. The NTP substance profile for 1-amino-2,4-dibromoanthraquinone (Ref. 5) included the following summary information of the evidence of carcinogenicity:

"Carcinogenicity

1-Amino-2,4-dibromoanthraquinone (ADBAQ) is *reasonably anticipated to be a human carcinogen* based on sufficient evidence from studies in experimental animals. Orally administered ADBAQ significantly increased the incidences of benign and/or malignant tumors at multiple tissue sites in two species of animals. ADBAQ caused benign and malignant liver tumors in rats and mice of both sexes; tumors of the large intestine, kidney, and urinary bladder in male and female rats; and tumors of the forestomach and lung in male and female mice (NTP 1996).

Two cohort studies evaluated the risk of cancer among workers in plants manufacturing anthraquinone dyes; however, it is not known whether workers were exposed specifically to ADBAQ (Gardiner *et al.* 1982, Delzell *et al.* 1989). Some evidence suggests that anthraquinone dye workers may have an increased risk of cancer. Significant excesses of esophageal and prostate cancer occurred among workers in some areas of a Scottish anthraquinone dyestuffs plant, and excesses of lung and central nervous system cancer occurred among workers at a New Jersey anthraquinone dye and epichlorohydrin plant (Barbone *et al.* 1992, 1994, Sathiakumar and Delzell 2000). Nevertheless, estimates of risk in all studies were based on small numbers of cancer deaths, and workers may have been exposed to other carcinogens.

Additional Information Relevant to Carcinogenicity

Evaluation of ADBAQ's genetic effects has been hindered by ADBAQ's limited solubility. ADBAQ caused mutations in some strains of bacteria but not in rodent cells, which were tested at lower concentrations (Haworth *et al.* 1983, NTP 1996). In mammalian cells, ADBAQ induced chromosomal aberrations (changes in chromosome structure or number) and sister chromatid exchange; however, the results varied between laboratories and between trials at the same laboratory (Loveday *et al.* 1990, NTP 1996). Point mutations in the *ras* proto-oncogene (a gene potentially associated with cancer) occurred at a higher frequency in forestomach and lung tumors from the two-year carcinogenicity study of ADBAQ-exposed mice than in spontaneous tumors from control mice not exposed to ADBAQ. The predominant types of mutations were A to T transversions and A to G transitions, suggesting that ADBAQ or its metabolites target adenine bases in the ras proto-oncogene (Hayashi *et al.* 2001).

ADBAQ is rapidly absorbed from the gastrointestinal tract and distributed to most soft tissues. The majority of ADBAQ is metabolized, and both ADBAQ and its metabolites are excreted in the feces and urine. However, the metabolites of ADBAQ have not been identified (NTP 1996). The mechanism by which ADBAQ causes cancer is not known; however, there is no evidence to suggest that mechanisms of tumor induction observed in experimental animals would not occur in humans. Four other anthraquinones (2-aminoanthraquinone, 1-amino-2-methylanthraquinone, danthron [1,8-dihydroxyanthraquinone], and disperse blue 1) are listed in the Report on Carcinogens as *reasonably anticipated to be human carcinogens.*"

EPA has reviewed the NTP assessment for 1-amino-2,4-dibromoanthraquinone and agrees that

1-amino-2,4-dibromoanthraquinone can reasonably be anticipated to cause cancer in humans. EPA believes that the evidence is sufficient for listing 1-amino-2,4-dibromoanthraquinone on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available carcinogenicity data for this chemical.

2. 2,2-*bis(Bromomethyl)-1,3-propanediol* (CAS No. 3296–90–0) (Refs. NTP Profile/Background document (Refs. 7 and 8)). The NTP has classified 2,2-bis(bromomethyl)-1,3-propanediol as "reasonably anticipated to be a human carcinogen." The classification is based on sufficient evidence of carcinogenicity in experimental animals. The NTP substance profile for 2,2-bis(bromomethyl)-1,3-propanediol (Ref. 7) included the following summary information of the evidence of carcinogenicity:

Carcinogenicity

The flame retardant 2,2-bis(bromomethyl)-1,3-propanediol, technical grade (BBMP), is *reasonably anticipated to be a human carcinogen* based on sufficient evidence of carcinogenicity from studies in experimental animals which indicates there is increased incidence of malignant tumor formation at multiple tissue sites in rats and mice. Two year dietary studies of BBMP in F344 rats showed significantly increased incidences of neoplasms of the skin, subcutaneous tissue, mammary gland, Zymbal gland, oral cavity, esophagus, forestomach, small and large intestines, mesothelium, urinary bladder, lung, thyroid gland, and seminal vesicle and in the incidence of mononuclear cell leukemia in males, and an increase in the incidence of neoplasms of the oral cavity, esophagus, mammary gland, and thyroid gland in females. Similar studies in B6C3F1 mice found increased incidences of neoplasms of the harderian gland, lung, and kidney in males and neoplasms of the harderian gland, lung, and subcutaneous tissue in females (NTP 1996, Dunnick *et al.* 1997).

A study in which BBMP was administered in the feed to male F344 rats for three months, followed by maintenance on a control diet for up to two years, found neoplasms at the same sites as in the two-year study of male F344 rats described above. However, this study found higher incidences of neoplasms of the oral cavity, forestomach, small intestine, large intestine, lung, Zymbal gland, thyroid gland, and mesothelium than did the two-year study; these neoplasms were considered to be related to BBMP exposure (NTP 1996, Dunnick *et al.* 1997).

No published case reports or epidemiological studies of human cancer and exposure to BBMP were found (IARC 2000).

Additional Information Relevant to Carcinogenicity

BBMP has been shown to be mutagenic in bacterial and mammalian test systems, under special conditions. BBMP is mutagenic in *Salmonella typhimurium* strains TA100 and TA1535 only when tested in the presence of metabolic activation (30% S9 liver homogenate from induced hamsters) (Zeiger *et al.* 1992). In cultured Chinese hamster ovary cells, BBMP induces chromosomal aberrations only in the presence of metabolic activation, and it does not induce sister chromatid exchange with or without activation. Male and female mice exposed to BBMP under various conditions showed significant increases in the frequency of micronucleated erythrocytes (NTP 1996).

No available data suggest that mechanisms thought to account for BBMP's induction of tumors in experimental animals would not also operate in humans."

EPA has reviewed the NTP assessment for 2,2-bis(bromomethyl)-1,3-propanediol and agrees that 2,2-bis(bromomethyl)-1,3-propanediol can reasonably be anticipated to cause cancer in humans. EPA believes that the evidence is sufficient for listing 2,2-bis(bromomethyl)-1,3-propanediol on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available carcinogenicity data for this chemical.

3. *Furan* (CAS No. 110–00–9) (Refs. NTP Profile/Background document (Refs. 9 and 10)). The NTP has classified furan as "reasonably anticipated to be a human carcinogen." The classification is based on sufficient evidence of carcinogenicity in experimental animals. The NTP substance profile for furan (Ref. 9) included the following summary information of the evidence of carcinogenicity:

"Carcinogenicity

Furan is *reasonably anticipated to be a human carcinogen* based on sufficient evidence of malignant tumor formation at multiple tissue sites in multiple species of experimental animals (IARC 1995).

When administered by gavage, furan induced an increase in the incidence of hepatic cholangiocarcinoma, hepatocellular adenoma, hepatocellular carcinoma, and mononuclear cell leukemia in male and female F344/N rats treated for up to 2 years (NTP 1993). Gavage administration of furan to male F344 rats for 9, 12, or 13 months resulted in high incidences of cholangiocarcinoma by 16 months after cessation of treatment (Maronpot *et al.* 1991, Elmore and Sirica 1993). When administered by gavage, furan induced a dose-dependent increase in the incidence of hepatocellular adenoma and carcinoma and benign pheochromocytoma in male and female $B6C3F_1$ mice treated up to 2 years (NTP 1993).

No adequate human studies of the relationship between exposure to furan and human cancer have been reported.

Additional Information Relevant to Carcinogenicity

In bacteria, furan induced gene mutations in *Salmonella typhimurium* strain TA100 (Lee *et al.* 1994) and in *E. coli* containing bacteriophage T7 (Ronto *et al.* 1992), but not in S. *typhimurium strains* TA98 (Lee *et al.* 1994), TA1535, or TA1537 (Mortelmans *et al.* 1986). In *Drosophila melanogaster,* it did not induce gene mutations (Foureman *et al.* 1994). In mammalian *in vitro* systems, it induced gene mutations in mouse lymphoma cells (McGregor *et al.* 1988), DNA damage in Chinese hamster ovary (CHO) cells (NTP 1993), and chromosomal damage in CHO cells with an exogenous metabolic activation system (NTP 1993, IARC 1995), but it did not induce DNA damage in mouse or rat hepatocytes (Wilson *et al.* 1992, NTP 1993). In mammalian *in vivo* systems, furan induced chromosomal aberrations in bone marrow of $B6C3F_1$ mice (NTP 1993), but did not induce DNA damage in bone marrow or hepatocytes of $B6C3F_1$ mice (Wilson *et al.* 1992, NTP 1993) or hepatocytes of F344/CrIBr rats (Wilson *et al.* 1992).

A current hypothesis for the mechanism of furan-induced carcinogenesis is metabolic activation of furan by cytochrome P450 to a reactive and cytotoxic intermediate that stimulates cell replication, increasing the likelihood of tumor induction (Chen *et al.* 1995, Kedderis *et al.* 1993). The postulated reactive metabolite is *cis*-2-butene-1,4-dial, which was recently characterized as a furan metabolite by Chen *et al.* (1995). This reactive metabolite probably explains furan's binding reactivity with proteins both *in vitro* (uninduced and induced F344 male rat liver microsomes) and in vivo (F344 male rat liver protein) in biological systems (Burka *et al.* 1991, Parmar and Burka 1993). Furan metabolites may react with DNA, but Burka *et al.* (1991) did not detect any

radiotracer in DNA from livers of rats treated with [^{14}C]furan.

No data were available that would suggest that the mechanisms thought to account for tumor induction by furan in experimental animals would not also operate in humans."

EPA has reviewed the NTP cancer assessment for furan and agrees that furan can reasonably be anticipated to cause cancer in humans. EPA believes that the evidence is sufficient for listing furan on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available carcinogenicity data for this chemical.

4. *Glycidol* (CAS No. 556–52–5) (Ref. NTP Profile/NTP study (Refs. 11 and 12)). The NTP has classified glycidol as "reasonably anticipated to be a human carcinogen." The classification is based on sufficient evidence of carcinogenicity in experimental animals. The NTP substance profile for glycidol (Ref. 11) included the following summary information of the evidence of carcinogenicity:

"Carcinogenicity

Glycidol is *reasonably anticipated to be a human carcinogen* based on sufficient evidence of carcinogenicity in experimental animals (NTP 1990, IARC 2000). Two-year studies were conducted with mice and rats that were administered glycidol by gavage. Male rats showed increased incidences of mesotheliomas of the tunica vaginalis, fibroadenomas of the mammary gland, gliomas of the brain, and neoplasms of the forestomach, intestine, skin, Zymbal gland, and thyroid gland. Female rats had increased incidences of fibroadenomas and adenocarcinomas of the mammary gland, gliomas of the brain, neoplasms of the oral mucosa, forestomach, clitoral gland, and thyroid gland, and leukemia. Male B6C3F$_1$ mice had increased incidences of neoplasms of the harderian gland, forestomach, skin, liver, and lung. Female B6C3F$_1$ mice had increased incidences of neoplasms of the harderian gland, mammary gland, uterus, subcutaneous tissue, and skin. Other neoplasms that may be related to the administration of glycidol were fibrosarcomas of the glandular stomach in female rats and carcinomas of the urinary bladder and sarcomas of the epididymis in male mice (NTP 1990).

No adequate human studies of the relationship between exposure to glycidol and human cancer have been reported (IARC 2000)."

EPA has reviewed the NTP cancer assessment for glycidol and agrees that glycidol can reasonably be anticipated to cause cancer in humans. EPA believes that the evidence is sufficient for listing glycidol on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available carcinogenicity data for this chemical.

5. *Isoprene* (CAS No. 78–79–5) (Refs. NTP Profile/Background document (Refs. 13 and 14)). The NTP has classified isoprene as "reasonably anticipated to be a human carcinogen." The classification is based on sufficient evidence of carcinogenicity in experimental animals. The NTP substance profile for isoprene (Ref. 13) included the following summary information of the evidence of carcinogenicity:

Carcinogenicity

Isoprene is *reasonably anticipated to be a human carcinogen* based on sufficient evidence of tumor formation at multiple organ sites in multiple species of experimental animals (Melnick *et al.* 1994, NTP 1995, 199[9], Placke *et al.* 1996). Inhalation exposure of mice to isoprene vapors induced increased incidences of neoplasms of the lung, liver, harderian gland, forestomach, hematopoietic system, and circulatory system. Inhalation exposure of rats to isoprene vapors induced increased incidences of neoplasms of the mammary gland, kidney, and testis (IARC 1999).

No adequate human studies of the relationship between exposure to isoprene and human cancer have been reported.

Additional Information Relevant to Carcinogenicity

Isoprene is the 2-methyl analog of 1,3-butadiene, an industrial chemical that has been identified as an animal and human carcinogen. Isoprene and butadiene are metabolized to monoepoxide and diepoxide intermediates by liver microsomal cytochrome P450-dependent monooxygenases from several species, including humans. Detoxification of these intermediates may occur by hydrolysis catalyzed by epoxide hydrolase or conjugation with glutathione catalyzed by glutathione-*S*-transferase. The diepoxide intermediates of isoprene and butadiene are mutagenic in *Salmonella typhimurium,* whereas the parent compounds are inactive (Gervasi *et al.* 1985). In mice, isoprene and 1,3-butadiene induced sister chromatid exchanges in bone marrow cells and increased the frequency of micronucleated erythrocytes in peripheral blood (Tice *et al.* 1987, Tice *et al.* 1988). Common sites of neoplasm induction by isoprene and butadiene include the mammary gland and testis in rats, and the liver, lung, harderian gland, forestomach, and circulatory system in mice (NTP 199[9]). Lung and harderian gland neoplasms induced by isoprene in mice had a high frequency of unique K-*ras* mutations (A to T transversions at codon 61) (Hong *et al.* 1997).

No data were available that would suggest that mechanisms thought to account for tumor induction by isoprene in experimental animals would not also operate in humans.

EPA has reviewed the NTP cancer assessment for isoprene and agrees that isoprene can reasonably be anticipated to cause cancer in humans. EPA believes that the evidence is sufficient for listing isoprene on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available carcinogenicity data for this chemical.

6. *Methyleugenol* (CAS No. 93–15–2) (Refs. NTP Profile/Background document (Refs. 15 and 16)). The NTP has classified methyleugenol as "reasonably anticipated to be a human carcinogen." The classification is based on sufficient evidence of carcinogenicity in experimental animals. The NTP substance profile for methyleugenol (Ref. 15) included the following summary information of the evidence of carcinogenicity:

Carcinogenicity

Methyleugenol is *reasonably anticipated to be a human carcinogen* based on sufficient evidence of carcinogenicity from studies in experimental animals, which indicates there is an increased incidence of malignant and/or combination of malignant and benign tumors at multiple tissue sites in multiple species of experimental animals. In animal studies, methyleugenol given orally to rats induced liver and stomach tumors in both sexes and kidney, mammary gland, and skin tumors in males. Methyleugenol given orally to mice induced benign and malignant tumors of the liver. Tumors of the stomach in male mice also were considered related to exposure to methyleugenol (NTP [2000]). Earlier studies found that methyleugenol and two similar compounds, the structurally related allylbenzenes, safrole and estragole, induced liver tumors in mice after intraperitoneal injection (IARC 1976, Miller *et al.* 1983). Safrole is listed in the Report on Carcinogens as *reasonably anticipated to be a human carcinogen* and by IARC as *possibly carcinogenic to humans* (Group 2B).

No adequate human studies of the relationship between exposure to

methyleugenol and human cancer were found.

Additional Information Relevant to Carcinogenicity

Mechanistic data indicate that liver tumors induced by methyleugenol and structurally related allylbenzenes result from metabolism of these compounds to DNA-reactive intermediates. Methyleugenol may be bioactivated by three different pathways: (1) Hydroxylation at the 1′ position of the allylic side chain to yield 1′-hydroxymethyleugenol, followed by sulfation of this intermediate to form 1′-hydroxymethyleugenol sulfate, (2) oxidation of the 2′,3′-double bond of the allylic side chain to form methyleugenol-2,3-oxide, and (3) *O*-demethylation followed by spontaneous rearrangement to form eugenol quinone methide. Formation of protein adducts and DNA adducts in the livers of animals (and in cultured human hepatocytes) exposed to allylbenzenes and induction of liver tumors by these compounds in animals have been attributed to activation via the hydroxylation pathway, because similar effects were produced by the 1′-hydroxy metabolites and because these effects were inhibited by pretreatment with sulfotransferase inhibitors (Miller *et al.* 1983, Boberg *et al.* 1983, Randerath *et al.* 1984, Gardner *et al.* 1996, NTP [2000]).

Methyleugenol, safrole, and estragole induce unscheduled DNA synthesis in rat hepatocytes, and their corresponding 1′-hydroxy metabolites are more potent genotoxic agents than are the parent compounds (Howes *et al.* 1990, Chan and Caldwell 1992). Methyleugenol induces morphological transformations in Syrian hamster embryo cells (Kerckaert *et al.* 1996), sister chromatid exchange in Chinese hamster ovary (CHO) cells (NTP [2000]), intrachromosomal recombination in yeast (Schiestl *et al.* 1989), and DNA repair in *Bacillus subtilis* (Sekizawa and Shibamoto 1982). Methyleugenol does not induce mutations in *Salmonella typhimurium* (NTP [2000]) or *Escherichia coli* (Sekizawa and Shibamoto 1982), chromosomal aberrations in CHO cells (NTP [2000]), or micronucleated erythrocytes in peripheral blood of mice (NTP [2000]). A higher frequency of β-*catenin* mutations was observed in liver tumors from mice treated with methyleugenol than in spontaneous liver tumors from control mice (Devereux *et al.* 1999). Methyleugenol's lack of mutagenicity in bacteria may be due to the need for sulfation in the metabolic activation of methyleugenol to its ultimate mutagenic or carcinogenic form.

EPA has reviewed the NTP cancer assessment for methyleugenol and agrees that methyleugenol can reasonably be anticipated to cause cancer in humans. EPA believes that the evidence is sufficient for listing methyleugenol on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available carcinogenicity data for this chemical.

7. *Nitroarenes (selected)* (Refs. NTP Profile. (Ref. 17)). The NTP has classified five nitroarenes as "reasonably anticipated to be a human carcinogen." The five nitroarenes are: 1,6-Dinitropyrene, 1,8-Dinitropyrene, 6-Nitrochrysene, 1-Nitropyrene, and 4-Nitropyrene. 1-Nitropyrene is already on the EPCRA section 313 list under the polycyclic aromatic compounds (PACs) category (November 30, 1994, 59 FR 61485). All of the members of the PACs category are listed based on concerns for their carcinogenicity and were listed as a category because they are structurally similar and induce a similar toxic effect (cancer) (November 30, 1994, 59 FR 61463). Since the four other nitroarenes are PACs and are being proposed for listing based on a concern for carcinogenicity they are being proposed for addition to the PACs category, and not for individual listing.

The PACs category is one of several categories of chemicals of special concern for which reporting is triggered at lowered thresholds. 40 CFR 372.28(a)(2). The special concern for the PACs category members is that they are persistent, bioaccumulative, and toxic (PBT) chemicals. More specifically, it is the persistence and bioaccumulative properties of these chemicals that led EPA to lower reporting thresholds (October 29, 1999, 64 FR 58666). The persistence and bioaccumulation data for the four nitroarenes addressed in this proposal follows the individual summaries of the cancer data for each chemical. In addition to the data for the nitroarenes, there is a discussion of the PBT criteria and how it was applied to the PACs category.

a. *1,6-Dinitropyrene* (CAS No. 42397–64–8) (Refs. NTP Profile/Background document (Refs. 17 and 18)). The NTP has classified 1,6-dinitropyrene as "reasonably anticipated to be a human carcinogen." The classification is based on sufficient evidence of carcinogenicity in experimental animals. The NTP substance profile for 1,6-dinitropyrene (Ref. 17) included the following summary information of the evidence of carcinogenicity:

"Carcinogenicity

1,6-Dinitropyrene is *reasonably anticipated to be a human carcinogen* based on sufficient evidence of malignant tumor formation in multiple species of experimental animals, at multiple sites and by multiple routes of exposure (IARC 1989).

When administered by subcutaneous injections, 1,6-dinitropyrene induced injection-site sarcomas in male mice and male and female rats, and leukemia in female rats (Tokiwa *et al.* 1984, Ohgaki *et al.* 1985, Imaida *et al.* 1995). Intraperitoneal injections of 1,6-dinitropyrene caused an increased incidence of liver-cell tumors in male mice (Wislocki *et al.* 1986) and induced sarcomas of the peritoneal cavity in female rats (Imaida *et al.* 1991). In two studies, squamous cell carcinomas of the lung were induced in male rats receiving 1,6-dinitropyrene by intrapulmonary injection (Maeda *et al.* 1986, Iwagawa *et al.* 1989). The incidences of myeloid leukemia and lung adenocarcinomas were significantly increased in male and female hamsters receiving 1,6-dinitropyrene by intratracheal instillation (Takayama *et al.* 1985). 1,6-Dinitropyrene induced carcinoma of the pituitary gland in an oral study of short-term duration in rats (Imaida *et al.* 1991).

No adequate data were available to evaluate the carcinogenicity of 1,6-dinitropyrene in humans.

Additional Information Relevant to Carcinogenicity

Intratracheal administration of 1,6-dinitropyrene to rats previously inoculated to de-epithelialized trachea with an immortalized bronchial cell line, caused tumors when the tracheas were then implanted subcutaneously into nude mice (Iizasa *et al.* 1993). 1,6-Dinitropyrene is genotoxic in a wide variety of assays in bacteria and mammalian cells including human cells. 1,6-Dinitropyrene also demonstrates evidence of cell transformation activity *in vitro* in rat tracheal epithelial cells. Metabolic pathways leading to mutagenic and clastogenic metabolites and DNA adducts of 1,6-dinitropyrene have been described (IARC 1989).

No data were available that would suggest that the mechanisms thought to account for tumor induction by 1,6-dinitropyrene in experimental animals would not also operate in humans."

EPA has reviewed the NTP cancer assessment for 1,6-dinitropyrene and agrees that 1,6-dinitropyrene can reasonably be anticipated to cause

cancer in humans. EPA believes that the evidence is sufficient for listing 1,6-dinitropyrene in the PACs category on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available carcinogenicity data for this chemical.

b. *1,8-Dinitropyrene* (CAS No. 42397–65–9) (Refs. NTP Profile/Background document (Refs. 17 and 18)). The National Toxicology Program has classified 1,8-dinitropyrene as "reasonably anticipated to be a human carcinogen." The classification is based on sufficient evidence of carcinogenicity in experimental animals. The NTP substance profile for 1,8-dinitropyrene (Ref. 17) included the following summary information of the evidence of carcinogenicity:

"Carcinogenicity

1,8-Dinitropyrene is *reasonably anticipated to be a human carcinogen* based on sufficient evidence of malignant tumor formation in multiple species of experimental animals, at multiple sites, and by multiple routes of exposure (IARC 1989). When administered by subcutaneous injections, 1,8-dinitropyrene induced injection-site sarcomas in male mice and male and female rats, and leukemia in female rats (Imaida *et al.* 1995, Ohgaki *et al.* 1984, 1985, Otofuji *et al.* 1987). Intraperitoneal injections of 1,8-dinitropyrene induced sarcomas of the peritoneal cavity, leukemia, and mammary adenocarcinoma in female rats (Imaida *et al.* 1991, 1995). The incidences of mammary tumors, including adenocarcinomas, were increased in female rats receiving 1,8-dinitropyrene by gavage (Imaida *et al.* 1991, IARC 1989).

No adequate data were available to evaluate the carcinogenicity of 1,8-dinitropyrene in humans.

Additional Information Relevant to Carcinogenicity

1,8-Dinitropyrene is genotoxic in a wide variety of assays in bacteria and mammalian cells demonstrating evidence of cell transformation activity *in vitro,* and metabolic pathways leading to mutagenic and clastogenic metabolites and DNA adducts have been described (IARC 1989).

No data were available that would suggest that the mechanisms thought to account for tumor induction of 1,8-dinitropyrene in experimental animals would not also operate in humans."

EPA has reviewed the NTP cancer assessment for 1,8-dinitropyrene and agrees that 1,8-dinitropyrene can reasonably be anticipated to cause cancer in humans. EPA believes that the evidence is sufficient for listing 1,8-dinitropyrene in the PACs category on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available carcinogenicity data for this chemical.

c. *6-Nitrochrysene* (CAS No. 7496–02–8) (Refs. NTP Profile/Background document (Refs. 17 and 19)). The National Toxicology Program has classified 6-nitrochrysene as "reasonably anticipated to be a human carcinogen." The classification is based on sufficient evidence of carcinogenicity in experimental animals. The NTP substance profile for 6-nitrochrysene (Ref. 17) included the following summary information of the evidence of carcinogenicity:

"Carcinogenicity

6-Nitrochrysene is *reasonably anticipated to be a human carcinogen* based on sufficient evidence of carcinogenicity at multiple sites in multiple species of experimental animals (IARC 1989). In seven studies, when administered by intraperitoneal injection, 6-nitrochrysene caused lung tumors in male and female mice and also induced liver tumors in female and/or male mice in three of these studies and malignant lymphoma in one study (Busby *et al.* 1985, 1989, El-Bayoumy *et al.* 1992, Li *et al.* 1994, Fu *et al.* 1994, Imaida *et al.* 1992, Wislocki *et al.* 1986). Dysplastic and/or adenomatous lesions of the colon were increased in male and female rats, and colon adenocarcinomas were increased in male rats receiving 6-nitrochrysene by intraperitoneal injection (Imaida *et al.* 1992). Mammary fibroadenoma, adenocarcinoma, and spindle cell sarcomas were increased in female rats receiving 6-nitrochrysene by injection into the mammary gland (El-Bayoumy *et al.* 1993).

No data were available to evaluate the carcinogenicity of 6-nitrochrysene in humans.

Additional Information Relevant to Carcinogenicity

6-Nitrochrysene induced skin tumors, mainly papillomas, in a dermal initiation-promotion study in which 6-nitrochrysene was used as the initiator, followed by promotion with a phorbol ester (El-Bayoumy *et al.* 1982). It also caused lung and forestomach tumors when given by intraperitoneal injection to transgenic mice carrying a human hybrid c- Ha-*ras* gene (Ogawa *et al.* 1996). 6-Nitrochrysene is genotoxic in several assays in bacteria and mammalian cells and induces cell transformation in finite lifespan cells *in vitro.* Metabolic pathways leading to mutagenic and clastogenic metabolites and DNA adducts have been described (IARC 1989). The presence of 6-nitrochrysene- DNA adducts in tumor target tissue supports the possibility that tumors induced by this chemical are at least in part a result of chemical-induced DNA damage. No data were available that would suggest that the mechanisms thought to account for tumor induction by 6-nitrochrysene in experimental animals would not also operate in humans."

EPA has reviewed the NTP cancer assessment for 6-nitrochrysene and agrees that 6-nitrochrysene can reasonably be anticipated to cause cancer in humans. EPA believes that the evidence is sufficient for listing 6-nitrochrysene in the PACs category on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available carcinogenicity data for this chemical.

d. *4-Nitropyrene* (CAS No. 57835–92–4) (Refs. NTP Profile/Background document (Refs. 17 and 20)). The National Toxicology Program has classified 4-nitropyrene as "reasonably anticipated to be a human carcinogen." The classification is based on sufficient evidence of carcinogenicity in experimental animals. The NTP substance profile for 4-nitropyrene (Ref. 17) included the following summary information of the evidence of carcinogenicity:

"Carcinogenicity

4-Nitropyrene is *reasonably anticipated to be a human carcinogen* based on sufficient evidence of malignant tumor formation at multiple tissue sites in multiple species of experimental animals (IARC 1989). Intraperitoneal injections of 4-nitropyrene caused an increased incidence of liver tumors in male mice, lung tumors in male and female mice (Wislocki *et al.* 1986), and mammary adenocarcinomas in female rats (Imaida *et al.* 1991). When administered by subcutaneous injections, 4-nitropyrene induced sarcomas at the injection site, and increased incidences of mammary adenocarcinomas, leukemia, and tumors of the Zymbal gland in female rats (Imaida *et al.* 1995, IARC 1989). In two studies, female rats receiving mammary gland injections of 4-nitropyrene showed an increased incidence of mammary tumors (Imaida *et al.* 1991, El-Bayoumy *et al.* 1993).

No data were available to evaluate the carcinogenicity of 4-nitropyrene in humans.

Additional Information Relevant to Carcinogenicity

Although not as reactive or potent as some of the mononitro- or dinitropyrenes, 4-nitropyrene is genotoxic in bacterial cells and induces cell transformation in BALB cells *in vitro.* Metabolic pathways for 4-nitropyrene, leading to mutagenic and likely DNA adducts, have also been described (IARC 1989).

No data were available that would suggest that the mechanisms thought to account for tumor induction by 4-nitropyrene in experimental animals would not also operate in humans."

EPA has reviewed the NTP cancer assessment for 4-nitropyrene and agrees that 4-nitropyrene can reasonably be anticipated to cause cancer in humans. EPA believes that the evidence is sufficient for listing 4-nitropyrene in the PACs category on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available carcinogenicity data for this chemical.

e. *Nitroarene persistence and bioaccumulation data.* The above four nitroarenes are being proposed for addition to the PACs category, the members of which have been classified as PBT chemicals with lower reporting thresholds (October 29, 1999, 64 FR 58666). For purposes of EPCRA section 313 reporting, EPA established persistence half-life criteria for PBT chemicals of 2 months in water/sediment and soil and 2-days in air, and established bioaccumulation criteria for PBT chemicals as a bioconcentration factor (BCF) or bioaccumulation factor (BAF) of 1,000 or higher. Chemicals meeting the PBT criteria were assigned 100 pound reporting thresholds. With regards to setting the EPCRA section 313 reporting thresholds, EPA set lower reporting thresholds (10 pounds) for those PBT chemicals with persistence half-lifes of 6 months or more in water/sediment or soil and with BCF or BAF values of 5,000 or higher, these chemicals were considered highly PBT chemicals. At the time of the lowering of the thresholds for the PACs category, the persistence and bioaccumulation data for the current members in the category showed variation in these characteristics (October 29, 1999, 64 FR 58713). The PACs persistence data included air half-lifes of 2 hours to 4 days, surface water half-lifes of 79 days to 44 years, and soil half-lifes of 20 days to 14.6 years. The PACs bioaccumulation data ranged from BCFs of 800 to 31,440. EPA determined that while there was variation in the persistence and bioaccumulation data for the members of the PACs category, the best way to report these chemicals was as one single category (October 29, 1999, 64 FR 58725). While much of the persistence and bioaccumulation data for the PACs chemicals exceeded what EPA classified as highly persistent and bioaccumulative for setting reporting thresholds, EPA decided not to assign the PACs category the lower 10 pound reporting threshold because of the variability of the persistence and bioaccumulation data across members of the category (October 29, 1999, 64 FR 58726).

Since little data is available on the persistence of the four nitroarenes being proposed for listing, the data for 1-nitropyrene, a member of the PACs category, was used to estimate the persistence properties of the four nitroarenes (Ref. 21). 1-nitropyrene is a structural isomer of 4-nitropyrene and very close chemical analog of the other nitroarenes. The persistence data for 1-nitropyrene cited in the PBT chemical rule included air half lives of 10 hours to 4 days and surface water half lives of 16 to 44 years (October 29, 1999, 64 FR 58713). Based on EPA's assessment (Ref. 21), the four nitroarenes are expected to have similar persistence properties due to structural similarities and comparability of the available data.

Most of the bioaccumulation data for the members of the PACs category were calculated using a regression-derived equation (Ref. 22). The regression equation used to estimate the BCF values for the PACs category members for PBT chemical rule was: log BCF = 0.77 log Kow − 0.70 + correction factor. The estimated BCF value for 1-nitropyrene cited in the PBT rule was 908 (Ref. 22). The most recent equations for BCF calculations use the equation: log BCF = 0.6598 log Kow − 0.333 + correction factor (Ref. 21). The results using results both equations to calculate BCF values for the four nitroarenes are as follows: The calculated BCF values for 1,6- and 1,8-dinitropyrene ranged from 480–660, for 6-nitrochrysene they ranged from 1600 to 2600, and for 4-nitropyrene they ranged from 630–910 (Ref. 21).

EPA believes that the persistence and bioaccumulation data for the four nitroarenes is sufficiently similar to that for the current members of the PACs category that they should be included in the PACs category with the current 100 pound category reporting threshold.

8. *o-Nitroanisole* (CAS No. 91–23–6) (Refs. NTP Profile/Background document (Refs. 23 and 24)). The National Toxicology Program has classified o-nitroanisole as "reasonably anticipated to be a human carcinogen." The classification is based on sufficient evidence of carcinogenicity in experimental animals. The NTP substance profile for o-nitroanisole (Ref. 23) included the following summary information of the evidence of carcinogenicity:

"Carcinogenicity

o-Nitroanisole is *reasonably anticipated to be a human carcinogen* based on sufficient evidence of malignant tumor formation at multiple tissue sites in multiple species of experimental animals (NTP 1993).

When administered in the diet to male and female rats, o-nitroanisole induced increased incidences of mononuclear cell leukemia and neoplasms of the urinary bladder, kidney, and large intestine. When administered in the diet to mice, *o*-nitroanisole induced increased incidences of benign and malignant hepatocellular neoplasms in males and increased incidences of hepatocellular adenomas in females.

No adequate human studies of the relationship between exposure to o-nitroanisole and human cancer have been reported (IARC 1996).

Additional Information Relevant to Carcinogenicity

o-Nitroanisole is genotoxic in a wide variety of bacteria and mammalian cellular assays, and mutagenic and carcinogenic metabolites have been described (NTP 1993, IARC 1996).

No data were available that would suggest that the mechanisms thought to account for tumor induction by *o*-nitroanisole in experimental animals would not also operate in humans."

EPA has reviewed the NTP cancer assessment for o-nitroanisole and agrees that o-nitroanisole can reasonably be anticipated to cause cancer in humans. EPA believes that the evidence is sufficient for listing o-nitroanisole on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available carcinogenicity data for this chemical.

9. *Nitromethane* (CAS No. 75–52–5) (Refs. NTP Profile/Background document (Refs. 25 and 26)). The National Toxicology Program has classified nitromethane as "reasonably anticipated to be a human carcinogen." The classification is based on sufficient evidence of carcinogenicity in experimental animals. The NTP substance profile for nitromethane (Ref. 25) included the following summary information of the evidence of carcinogenicity:

"Carcinogenicity

Nitromethane is *reasonably anticipated to be a human carcinogen* based on sufficient evidence of carcinogenicity in experimental animals. When administered by inhalation, nitromethane significantly increased the combined incidences of benign and malignant tumors at three tissue sites in mice and at a different tissue site in rats. In mice, nitromethane caused harderian gland and lung tumors in both sexes and liver tumors in females. In rats, nitromethane caused mammary gland tumors in female F344/N rats but did not cause any increased tumors in Long-Evans rats (exposed to lower levels) (NTP 1997). The International Agency for Research on Cancer (2000) also has concluded that there was sufficient evidence for the carcinogenicity of nitromethane in experimental animals.

No studies evaluating the carcinogenicity of nitromethane in humans were found in the published literature.

Additional Information Relevant to Carcinogenicity

The mechanism by which nitromethane causes cancer is not known. Nitromethane did not cause mutations in bacteria and does not appear to cause genetic damage in mammalian test systems. In cultured mammalian cells, nitromethane did not cause chromosomal aberrations (changes in chromosome structure or number), sister chromatid exchange, or micronucleus formation (a sign of chromosome damage or loss). Inhalation exposure of mice to nitromethane did not cause micronucleus formation in the erythrocytes (red blood cells), in either bone marrow or peripheral (circulating) blood (IARC 2000). In cultured Syrian hamster embryo cells, nitromethane induced cell transformation (a step in tumor formation) (Kerckaert *et al.* 1996, NTP 2002).

Nitromethane appears to be absorbed by inhalation; the available data suggest that dermal absorption is negligible. Metabolism of nitromethane by experimental animals *in vivo* has not been characterized. Metabolism of nitromethane by liver microsomes from Fischer 344 rats resulted in formation of only trace amounts of formaldehyde (IARC 2000)."

EPA has reviewed the NTP cancer assessment for nitromethane and agrees that nitromethane can reasonably be anticipated to cause cancer in humans. EPA believes that the evidence is sufficient for listing nitromethane on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available carcinogenicity data for this chemical.

10. *Phenolphthalein* (CAS No. 77–09–8) (Refs. NTP Profile/Background document (Refs. 27 and 28)). The National Toxicology Program has classified phenolphthalein as "reasonably anticipated to be a human carcinogen." The classification is based on sufficient evidence of carcinogenicity in experimental animals. The NTP substance profile for phenolphthalein (Ref. 27) included the following summary information of the evidence of carcinogenicity:

"Carcinogenicity

Phenolphthalein is *reasonably anticipated to be a human carcinogen* based on sufficient evidence of increased incidence of malignant and/or combination of malignant and benign tumors in multiple tissue sites and in multiple species (IARC 2000). In a two-year $B6C3F_1$ mouse carcinogenicity study, NTP (1996) concluded that phenolphthalein, administered in feed, induced significant increases in the incidence of histiocytic sarcoma and lymphomas of thymic origin in males and females and malignant lymphoma (all types) and benign ovarian sex cord stromal tumors in females. In the corresponding Fischer 344 rat dietary carcinogenicity study, phenolphthalein induced significant increases in the incidence of benign pheochromocytoma of the adrenal medulla in males and females and renal tubule adenoma in males (NTP 1996). In a 6-month dietary study with female heterozygous *p*53-deficient transgenic mice, phenolphthalein induced a significant increase in the incidence of malignant lymphoma of thymic origin (Dunnick *et al.* 1997).

A few epidemiological studies have investigated the association between the use of phenolphthalein-containing laxatives and colon cancer or adenomatous colorectal polyps. No consistent association was found. Cancers at other sites have not been investigated in humans (IARC 2000).

Additional Information Relevant to Carcinogenicity

The malignant thymic lymphomas induced by phenolphthalein in female heterozygous *p*53-deficient transgenic mice exhibited a loss of the normal *p*53 allele, suggesting the involvement of a mutagenic mechanism in tumor induction and/or progression (Dunnick *et al.* 1997).

Phenolphthalein causes enhanced oxygen radical production in *in vitro* systems. *In vivo,* reduction of phenoxyl radicals could allow reformation of phenolphthalein, establishing a futile cycle of oxidation and reduction, thereby generating more free radical species. Thus, phenolphthalein may be a significant source of oxidative stress in physiological systems.

Although negative for mutagenicity and DNA damage in bacteria, phenolphthalein exhibits genetic activity in several *in vitro* and *in vivo* mammalian assays. Phenolphthalein was positive for the induction of chromosomal aberrations in cultured Chinese hamster ovary cells in the presence of metabolic activation and induced *hprt* gene mutations, chromosomal aberrations, and morphological transformation in Syrian hamster embryo cells. Phenolphthalein was also positive for the induction of micronucleated erythrocytes in mice following multiple, but not single, treatments administered by gavage or dosed feed. Phenolphthalein also induced micronuclei in female heterozygous *p*53-deficient transgenic mice exposed via dosed feed for 26 weeks. Abnormal sperm were induced in male mice, but not male rats, treated with phenolphthalein via dosed feed for 13 weeks. Phenolphthalein was negative for Na/K ATPase gene mutations and aneuploidy in Syrian hamster embryo cells.

No data were available that would suggest that the mechanisms thought to account for tumor induction by phenolphthalein in experimental animals would not also operate in humans. Phenolphthalein causes oxidative stress and also demonstrates the capability to alter tumor suppressor gene pathways, which are both mechanisms believed to be involved in human cancer."

EPA has reviewed the NTP cancer assessment for phenolphthalein and agrees that phenolphthalein can reasonably be anticipated to cause cancer in humans. EPA believes that the evidence is sufficient for listing phenolphthalein on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available carcinogenicity data for this chemical.

11. *Tetrafluoroethylene* (CAS No. 116–14–3) (Refs. NTP Profile/Background document (Refs. 29 and 30)). The National Toxicology Program has classified tetrafluoroethylene as "reasonably anticipated to be a human carcinogen." The classification is based on sufficient evidence of carcinogenicity in experimental animals. The NTP substance profile for tetrafluoroethylene (Ref. 29) included the following summary information of the evidence of carcinogenicity:

"Carcinogenicity

Tetrafluoroethylene (TFE) is *reasonably anticipated to be a human carcinogen* based on sufficient evidence of malignant tumor formation at multiple sites in multiple species of experimental animals (NTP 1997). When administered by inhalation to F344 rats, TFE induced renal tubule neoplasms, hepatocellular neoplasms, liver hemangiosarcoma, and mononuclear cell leukemia. When administered by inhalation to $B6C3F_1$ mice, TFE induced liver hemangiomas and hemangiosarcomas, hepatocellular neoplasms, and histiocytic sarcomas.

No adequate human studies of the relationship between exposure to TFE and human cancer have been reported (IARC 1999).

Additional Information Relevant to Carcinogenicity

In prokaryotic systems, TFE was negative for the induction of gene mutations in *Salmonella typhimurium* with and without S9 activation. In mammalian systems *in vitro,* TFE was also negative for the induction of gene mutations in Chinese hamster ovary cells (HSDB 2001). No increases in the frequency of micronucleated erythrocytes were observed in peripheral blood samples obtained from TFE-exposed mice (NTP 1997).

The frequency of H-ras codon 61 mutations observed in TFE-induced hepatocellular neoplasms (15%) was significantly less than the corresponding frequency (56 to 59%) in spontaneous liver neoplasms of $B6C3F_1$ mice, suggesting that TFE induces liver neoplasms via a *ras*-independent pathway (NTP 1997).

The kidney-specific toxicity and carcinogenicity of TFE is most likely related to the selective uptake and subsequent processing of TFE-glutathione conjugates by renal β-lyase (Miller and Surh 1994, Anders *et al.* 1988). In rats, a TFE cysteine conjugate is bioactivated in the kidney to a difluorothionacetyl fluoride, the putative reactive metabolite for TFE-induced nephrotoxicity (NTP 1997).

No data were available that would suggest that the mechanisms thought to account for tumor induction by TFE in experimental animals would not also operate in humans."

EPA has reviewed the NTP cancer assessment for tetrafluoroethylene and agrees that tetrafluoroethylene can reasonably be anticipated to cause cancer in humans. EPA believes that the evidence is sufficient for listing tetrafluoroethylene on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available carcinogenicity data for this chemical.

12. *Tetranitromethane* (CAS No. 509–14–8) (Refs. NTP Profile/NTP study (Refs. 31 and 32)). The National Toxicology Program has classified tetranitromethane as "reasonably anticipated to be a human carcinogen." The classification is based on sufficient evidence of carcinogenicity in experimental animals. The NTP substance profile for tetranitromethane (Ref. 31) included the following summary information of the evidence of carcinogenicity:

"Carcinogenicity

Tetranitromethane is *reasonably anticipated to be a human carcinogen* based on sufficient evidence of carcinogenicity in experimental animals. Exposure to tetranitromethane in a two-year inhalation bioassay caused a dose-related increase in alveolar/bronchiolar neoplasms to nearly all mice and rats exposed to concentrations of 2 and 5 ppm respectively. The incidences of these neoplasms in lower exposure concentration groups (2 ppm for rats and 0.5 ppm for mice) were 66% and 44% in male and female rats, respectively, and 54% and 48% in male and female mice, respectively (NTP 1990). The majority of animals with alveolar/bronchiolar neoplasms had neoplasms diagnosed as carcinomas, and these neoplasms frequently metastasized to a variety of organs. Squamous cell carcinomas of the lung were also markedly increased in rats exposed to 5 ppm. This particular type of neoplasm has been found in only 3 of approximately 1,600 untreated control male rats and in none of a similar number of untreated female controls (NTP 1990).

No adequate human studies of the relationship between exposure to tetranitromethane and human cancer have been reported (IARC 1996)."

EPA has reviewed the NTP cancer assessment for tetranitromethane and agrees that tetranitromethane can reasonably be anticipated to cause cancer in humans. EPA believes that the evidence is sufficient for listing tetranitromethane on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available carcinogenicity data for this chemical.

13. *Vinyl Fluoride* (CAS No. 75–02–5) (Refs. NTP Profile/Background document (Refs. 33 and 34)). The National Toxicology Program has classified vinyl fluoride as "reasonably anticipated to be a human carcinogen." The classification is based on sufficient evidence of carcinogenicity in experimental animals. The NTP substance profile for vinyl fluoride (Ref. 33) included the following summary information of the evidence of carcinogenicity:

"Carcinogenicity

Vinyl fluoride is *reasonably anticipated to be a human carcinogen* based on sufficient evidence of carcinogenicity in experimental animals. Both male and female rats exposed to vinyl fluoride by inhalation showed increased incidences of hepatic hemangiosarcoma, hepatocellular adenoma or carcinoma, and Zymbal gland carcinoma. Both male and female mice exposed to vinyl fluoride by inhalation showed increased incidences of hepatic hemangiosarcoma, bronchiolar-alveolar adenoma or adenocarcinoma, hepatocellular adenoma, and harderian gland adenoma. Female mice also showed an increased incidence of mammary gland adenocarcinoma (Bogdanffy *et al.* 1995, IARC 1995).

The tumor responses of laboratory animals to vinyl fluoride are similar to their responses to vinyl chloride, a known human carcinogen (IARC 1987), and to vinyl bromide, a probable human carcinogen (IARC 1986). A unique feature of vinyl chloride carcinogenicity is that vinyl chloride induces rare hepatic hemangiosarcomas in experimental animals and is causally associated with excess risk of liver hemangiosarcoma in epidemiological studies of exposed workers. The fact that vinyl fluoride, vinyl chloride, and vinyl bromide all induce rare hemangiosarcomas of the liver in experimental animals and induce the formation of similar DNA adducts suggests a possible common mechanism of carcinogenicity for all three of these chemicals.

No adequate human studies of the relationship between exposure to vinyl fluoride and human cancer were found.

Additional Information Relevant to Carcinogenicity

Vinyl fluoride is mutagenic in *Salmonella typhimurium* with the addition of a rat liver homogenate metabolic activation system. In addition, vinyl fluoride induces gene mutations and chromosomal aberrations in Chinese hamster ovary cells (with metabolic activation), sex-linked recessive lethal mutations in *Drosophila melanogaster,* and micronuclei in bone marrow cells of female mice (IARC 1995).

Vinyl fluoride likely is metabolized in a manner similar to vinyl chloride: Oxidation via cytochrome P450 to fluoroethylene oxide, followed by

rearrangement to 2-fluoroacetaldehyde, which is oxidized to fluoroacetic acid. Human, rat, and mouse liver microsomes metabolize vinyl fluoride at similar rates (Cantoreggi and Keller 1997). Vinyl fluoride metabolites form covalent DNA adducts. Inhalation exposure of rats and mice to vinyl fluoride produced a dose-related increase in the formation of the promutagenic adduct N^2,3-ethenoguanine in their liver DNA (Swenberg *et al.* 1995).

No available data suggest that mechanisms by which vinyl fluoride induces tumors in experimental animals would not also operate in humans."

EPA has reviewed the NTP cancer assessment for vinyl fluoride and agrees that vinyl fluoride can reasonably be anticipated to cause cancer in humans. EPA believes that the evidence is sufficient for listing vinyl fluoride on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available carcinogenicity data for this chemical.

V. Rationale for Listing

The NTP RoC document undergoes significant scientific review and public comment. The NTP review mirrors the review EPA has historically done to assess chemicals for listing under EPCRA section 313 on the basis of carcinogenicity. The conclusions regarding the potential for chemicals in the NTP RoC to cause cancer in humans are based on established sound scientific principles. EPA believes that the NTP RoC is an excellent and reliable source of information on the potential for chemicals covered in the NTP RoC to cause cancer in humans. Based on EPA's review of the data contained in the 11th NTP RoC, EPA has determined that the chemicals in this proposed rule can reasonably be anticipated to cause cancer. Therefore, EPA believes that the evidence is sufficient for listing all of the chemicals in this proposed rule on the EPCRA section 313 toxic chemical list pursuant to EPCRA section 313(d)(2)(B) based on the available carcinogenicity data for these chemicals as presented in the 11th RoC.

EPA considers chemicals that can reasonably be anticipated to cause cancer to have moderately high to high chronic toxicity. EPA does not believe that it is appropriate to consider exposure for chemicals that are moderately high to highly toxic based on a hazard assessment when determining if a chemical can be added for chronic effects pursuant to EPCRA section 313(d)(2)(B) (*see* 59 FR 61440–61442). Therefore, in accordance with EPA's standard policy on the use of exposure assessments (59 FR 61432), EPA does not believe that an exposure assessment is necessary or appropriate for determining whether any of the chemicals in this proposed rule meet the criteria of EPCRA section 313(d)(2)(B).

VI. References

EPA has established an official public docket for this action under Docket ID No. EPA–HQ–TRI–2010–0006. The public docket includes information considered by EPA in developing this action, including the documents listed below, which are electronically or physically located in the docket. In addition, interested parties should consult documents that are referenced in the documents that EPA has placed in the docket, regardless of whether these referenced documents are electronically or physically located in the docket. For assistance in locating documents that are referenced in documents that EPA has placed in the docket, but that are not electronically or physically located in the docket, please consult the person listed in the above **FOR FURTHER INFORMATION CONTACT** section.

1. NTP, 2005. National Toxicology Program. Introduction: Report on Carcinogens, Eleventh Edition. Released January 31, 2005. U.S. Department of Health and Human Services, Public Health Service, National Toxicology Program, Research Triangle Park, NC 27709.

2. USEPA. Guidelines for Carcinogen Risk Assessment. Risk Assessment Forum, U.S. Environmental Protection Agency, Washington, DC, March 2005.

3. USEPA, OEI. Economic Analysis of the Proposed Rule to add 16 Chemicals to the EPCRA Section 313 List of Toxic Chemicals. February 16, 2010.

4. USEPA, OEI. Memorandum from Mark Miller, PhD, Toxicologist, Analytical Support Branch to Nicole Paquette, PhD, Chief, Analytical Support Branch. January 28, 2010. Subject: Review of National Toxicology Program (NTP) Cancer Classification Data for Sixteen Chemicals.

5. NTP, 2005. National Toxicology Program. 11th Report on Carcinogens—1-Amino-2,4-dibromoanthraquinone Substance Profile. Released January 31, 2005. U.S. Department of Health and Human Services, Public Health Service, National Toxicology Program, Research Triangle Park, NC 27709.

6. NTP, 2002. Report on Carcinogens Background Document for 1-Amino-2,4-dibromoanthraquinone. September 19, 2002. Prepared for, U.S. Department of Health and Human Services, Public Health Service, National Toxicology Program, Research Triangle Park, NC 27709. Prepared by, Technology Planning and Management Corporation Canterbury Hall, Suite 310, 4815 Emperor Blvd., Durham, NC 27703. Contract Number N01–ES–85421.

7. NTP, 2005. National Toxicology Program. 11th Report on Carcinogens—2,2-bis(Bromomethyl)-1,3-propanediol Substance Profile. Released January 31, 2005. U.S. Department of Health and Human Services, Public Health Service, National Toxicology Program, Research Triangle Park, NC 27709.

8. NTP. Report on Carcinogens Background Document for 2,2-bis(Bromomethyl)-1,3-propanediol (Technical Grade). Prepared for, U.S. Department of Health and Human Services, Public Health Service, National Toxicology Program, Research Triangle Park, NC 27709. Prepared by, Technology Planning and Management Corporation, Canterbury Hall, Suite 310, 4815 Emperor Blvd., Durham, NC 27703. Contract Number N01–ES–85421.

9. NTP, 2005. National Toxicology Program. 11th Report on Carcinogens—Furan Substance Profile. Released January 31, 2005. U.S. Department of Health and Human Services, Public Health Service, National Toxicology Program, Research Triangle Park, NC 27709.

10. NTP, 1999. National Toxicology Program Report on Carcinogens Background Document for Furan. March 1999. Prepared for, November 18–19, 1996, Meeting of the Report on Carcinogens Subcommittee of the Board of Scientific Counselors. Prepared by, Integrated Laboratory Systems, Research Triangle Park, NC 27709. NIEHS Contract No. N01–ES–25346.

11. NTP, 2005. National Toxicology Program. 11th Report on Carcinogens—Glycidol Substance Profile. Released January 31, 2005. U.S. Department of Health and Human Services, Public Health Service, National Toxicology Program, Research Triangle Park, NC 27709.

12. NTP, 1990. Toxicology and Carcinogenesis Studies of Glycidol (CAS No. 556–52–5) In F344/N Rats and B6C3F1 Mice (Gavage Studies). Technical Report Series No. 374. NIH Publication No. 90–2829, March 1990. National Toxicology Program, Research Triangle Park, NC. 229 pp.

13. NTP, 2005. National Toxicology Program. 11th Report on Carcinogens—Isoprene Substance Profile. Released January 31, 2005. U.S. Department of Health and Human Services, Public Health Service, National Toxicology Program, Research Triangle Park, NC 27709.

14. NTP, 1999. National Toxicology Program Report on Carcinogens Background Document for Isoprene. March 1999. Prepared for, December 2–3, 1998, Meeting of the Report on Carcinogens Subcommittee of the NTP Board of Scientific Counselors. Prepared by, Integrated Laboratory Systems, Research Triangle Park, NC 27709. NIEHS Contract No. N01–ES–25346.

15. NTP, 2005. National Toxicology Program. 11th Report on Carcinogens—Methyleugenol Substance Profile. Released January 31, 2005. U.S. Department of Health and Human Services, Public Health Service, National Toxicology Program, Research Triangle Park, NC 27709.

16. NTP, 2000. Report on Carcinogens Background Document for Methyleugenol. December 13–14, 2000, Meeting of the NTP Board of Scientific Counselors Report on Carcinogens Subcommittee. Prepared for, U.S. Department of Health and Human Services, Public Health Service, National Toxicology Program, Research Triangle Park, NC 27709. Prepared by, Technology Planning and Management Corporation, Canterbury Hall, Suite 310, 4815 Emperor Blvd., Durham, NC 27703. Contract Number N01–ES–85421.

17. NTP, 2005. National Toxicology Program. 11th Report on Carcinogens—Nitroarenes (Selected) Substance Profile. Released January 31, 2005. U.S. Department of Health and Human Services, Public Health Service, National Toxicology Program, Research Triangle Park, NC 27709.

18. NTP, 1999. National Toxicology Program Report on Carcinogens Background Document for 1,6-Dinitropyrene and 1,8-Dinitropyrene. Final March 1999. Prepared for, November 18–19, 1996, Meeting of the Report on Carcinogens Subcommittee of the NTP Board of Scientific Counselors. Prepared by, Integrated Laboratory Systems, Research Triangle Park, NC 27709. NIEHS Contract No. N01–ES–25346.

19. NTP, 1999. National Toxicology Program Report on Carcinogens Background Document for 6-Nitrochrysene. Final March 1999. Prepared for, November 18–19, 1996, Meeting of the Report on Carcinogens Subcommittee of the NTP Board of Scientific Counselors. Prepared by, Integrated Laboratory Systems, Research Triangle Park, NC 27709. NIEHS Contract No. N01–ES–25346.

20. NTP, 1999. National Toxicology Program Report on Carcinogens Background Document for 4-Nitropyrene. Final March 1999. Prepared for, November 18–19, 1996, Meeting of the Report on Carcinogens Subcommittee of the NTP Board of Scientific Counselors. Prepared by, Integrated Laboratory Systems, Research Triangle Park, NC 27709. NIEHS Contract No. N01–ES–25346.

21. USEPA/OEI. Technical Support Document: Bioaccumulation and Persistence Data for Selected Nitroarenes. Office of Environmental Information, Environmental Analysis Division, Analytical Support Branch, November 2009.

22. USEPA/OPPT. Technical Support Document for Determination of Bioaccumulation (BAF) and Bioconcentration (BCF) Values for Persistent Bioaccumulative Toxic (PBT) Chemicals and for Identification of PBT Chemicals. Jerry Smrchek, PhD, Biologist, Existing Chemicals Assessment Branch, Risk Assessment Division. September 1998.

23. NTP, 2005. National Toxicology Program. 11th Report on Carcinogens—o-Nitroanisole Substance Profile. Released January 31, 2005. U.S. Department of Health and Human Services, Public Health Service, National Toxicology Program, Research Triangle Park, NC 27709.

24. NTP, 1999. National Toxicology Program Report on Carcinogens Background Document for o-Nitroanisole. Final March 1999. Prepared for, November 18–19, 1996, Meeting of the Report on Carcinogens Subcommittee of the NTP Board of Scientific Counselors. Prepared by, Integrated Laboratory Systems, Research Triangle Park, NC 27709. NIEHS Contract No. N01–ES–25346.

25. NTP, 2005. National Toxicology Program. 11th Report on Carcinogens—Nitromethane Substance Profile. Released January 31, 2005. U.S. Department of Health and Human Services, Public Health Service, National Toxicology Program, Research Triangle Park, NC 27709.

26. NTP, 2002. Final Report on Carcinogens Background Document for Nitromethane. March 25, 2002. Prepared for, U.S. Department of Health and Human Services, Public Health Service, National Toxicology Program, Research Triangle Park, NC 27709. Prepared by, Technology Planning and Management Corporation, Canterbury Hall, Suite 310, 4815 Emperor Blvd., Durham, NC 27703. Contract Number N01–ES–85421.

27. NTP, 2005. National Toxicology Program. 11th Report on Carcinogens—Phenolphthalein Substance Profile. Released January 31, 2005. U.S. Department of Health and Human Services, Public Health Service, National Toxicology Program, Research Triangle Park, NC 27709.

28. NTP, 1999. National Toxicology Program Report on Carcinogens Background Document for Phenolphthalein. Final March 1999. Prepared for, October 30–31, 1997, Meeting of the Report on Carcinogens Subcommittee of the NTP Board of Scientific Counselors. Prepared by, Integrated Laboratory Systems, Research Triangle Park, NC 27709. NIEHS Contract No. N01–ES–25346.

29. NTP, 2005. National Toxicology Program. 11th Report on Carcinogens—Tetrafluoroethylene Substance Profile. Released January 31, 2005. U.S. Department of Health and Human Services, Public Health Service, National Toxicology Program, Research Triangle Park, NC 27709.

30. NTP, 1999. National Toxicology Program Report on Carcinogens Background Document for Tetrafluoroethylene. Final March 1999. Prepared for, October 30–31, 1997, Meeting of the Report on Carcinogens Subcommittee of the NTP Board of Scientific Counselors. Prepared by, Integrated Laboratory Systems, Research Triangle Park, NC 27709. NIEHS Contract No. N01–ES–25346.

31. NTP, 2005. National Toxicology Program. 11th Report on Carcinogens—Tetranitromethane Substance Profile. Released January 31, 2005. U.S. Department of Health and Human Services, Public Health Service, National Toxicology Program, Research Triangle Park, NC 27709.

32. NTP, 1990. Toxicology and Carcinogenesis Studies of Tetranitromethane (CAS No. 509–14–8) in F344/N Rats and B6C3F1 Mice (Inhalation Studies). Technical Report Series No. 386. NIH Publication No. 90–2841. Research Triangle Park, NC and Bethesda, NC: National Toxicology Program. 207 pp.

33. NTP, 2005. National Toxicology Program. 11th Report on Carcinogens—Vinyl Fluoride Substance Profile. Released January 31, 2005. U.S. Department of Health and Human Services, Public Health Service, National Toxicology Program, Research Triangle Park, NC 27709.

34. NTP. Final Report on Carcinogens Background Document for Vinyl Fluoride. Meeting of the NTP Board of Scientific Counselors Report on Carcinogens Subcommittee. Prepared for, U.S. Department of Health and Human Services, Public Health Service, National Toxicology Program, Research Triangle Park, NC 27709. Prepared by, Technology Planning and Management Corporation, Canterbury Hall, Suite 310,

4815 Emperor Blvd, Durham, NC 27703. Contract Number N01–ES–85421.

VIII. Statutory and Executive Order Reviews Associated With This Action?

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) and is therefore not subject to review under the EO.

B. Paperwork Reduction Act

This proposed rule does not contain any new information collection requirements that require additional approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.* Currently, the facilities subject to the reporting requirements under EPCRA 313 and PPA 6607 may use either the EPA Toxic Chemicals Release Inventory Form R (EPA Form 1B9350–1), or the EPA Toxic Chemicals Release Inventory Form A (EPA Form 1B9350–2). The Form R must be completed if a facility manufactures, processes, or otherwise uses any listed chemical above threshold quantities and meets certain other criteria. For the Form A, EPA established an alternative threshold for facilities with low annual reportable amounts of a listed toxic chemical. A facility that meets the appropriate reporting thresholds, but estimates that the total annual reportable amount of the chemical does not exceed 500 pounds per year, can take advantage of an alternative manufacture, process, or otherwise use threshold of 1 million pounds per year of the chemical, provided that certain conditions are met, and submit the Form A instead of the Form R. In addition, respondents may designate the specific chemical identity of a substance as a trade secret pursuant to EPCRA section 322 42 U.S.C. 11042: 40 CFR part 350.

OMB has approved the reporting and recordkeeping requirements related to Form R, supplier notification, and petitions under OMB Control number 2070–0093 (EPA Information Collection Request (ICR) No. 1363.15); those related to Form A under OMB Control number 2070–0143 (EPA ICR No. 1704.09); and those related to trade secret designations under OMB Control number 2070–0078 (EPA ICR No. 1428). As provided in 5 CFR 1320.5(b) and 1320.6(a), 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 relevant to EPA's regulations are listed in 40 CFR part 9, 48 CFR chapter 15, and displayed on the information collection instruments (*e.g.,* forms, instructions).

For Form R, EPA estimates the industry reporting and recordkeeping burden for collecting this information to average, in the first year, approximately $4,615 per Form R (for a total first year cost of $858,299 based on 16,069 total burden hours). In subsequent years, the burden for collecting this information is estimated to average $1,553 per Form R (for a total cost of $288,902 based on 5,517 total burden hours). These estimates include the time needed to become familiar with the requirement (first year only); review instructions; search existing data sources; gather and maintain the data needed; complete and review the collection information; and transmit or otherwise disclose the information. The actual burden on any facility may be different from this estimate depending on the complexity of the facility's operations and the profile of the releases at the facility. Upon promulgation of a final rule, the Agency may determine that the existing burden estimates in the ICRs need to be amended in order to account for an increase in burden associated with the final action. If so, the Agency will submit an information collection worksheet (ICW) to OMB requesting that the total burden in each ICR be amended, as appropriate.

The Agency would appreciate any comments or information that could be used 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 reasonableness of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. Please submit your comments within 90 days as specified at the beginning of this proposal. Copies of the existing ICRs may be obtained from Rick Westlund, Collection Strategies Division, U.S. Environmental Protection Agency (2822T), 1200 Pennsylvania Ave., NW., Washington, DC 20460 or by calling (202) 566–1672.

C. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The 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 business that is classified as a "small business" by the Small Business Administration 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.

Of the 109 entities estimated to be impacted by this proposed rule, 41 are small businesses. Of the affected small businesses, all 41 have cost impacts of less than 1% in both the first and subsequent years of the rulemaking. No small businesses are projected to have a cost impact of 1% or greater. In the first year, of the 41 estimated cost impacts, there is a maximum impact of 0.616% and a minimum impact of less than 0.001%. Facilities eligible to use Form A (those meeting the appropriate activity threshold which have 500 pounds per year or less of reportable amounts of the chemical) will have a lower burden. No small governments or small organizations are expected to be affected by this action. Thus this rule is not expected to have a significant adverse economic impact on a substantial number of small entities. A more detailed analysis of the impacts on small entities is located in EPA's economic analysis support document (Ref. 3).

After considering the economic impacts of today's rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

This rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. EPA's economic analysis indicates that the total cost of this rule is estimated to be $859,072 in the first year of reporting. Thus, this rule is not subject to the requirements of sections 202 or 205 of UMRA.

This rule is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. Small governments are not subject to the EPCRA section 313 reporting requirements.

E. Executive Order 13132 (Federalism)

This action 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. This action relates to toxic chemical reporting under EPCRA section 313, which primarily affects private sector facilities. Thus, Executive Order 13132 does not apply to this action.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed action from State and local officials.

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 action relates to toxic chemical reporting under EPCRA section 313, which primarily affects private sector facilities. Thus, Executive Order 13175 does not apply to this action. In the spirit of Executive Order 13175, and consistent with EPA policy to promote communications between EPA and Indian Tribal Governments, EPA specifically solicits additional comment on this proposed action from tribal officials.

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

This action is not subject to EO 13045 (62 FR 19885, April 23, 1997) because it is not economically significant as defined in EO 12866, and because the Agency does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. This action relates to toxic chemical reporting under EPCRA section 313, which primarily affects private sector facilities.

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

This action is not subject to Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(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 proposed rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

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

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

EPA has determined that this proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. This proposed rule adds additional chemicals to the EPCRA section 313 reporting requirements. By adding chemicals to the list of toxic chemicals subject to reporting under section 313 of EPCRA, EPA would be providing communities across the United States (including minority populations and low income populations) with access to data which they may use to seek lower exposures and consequently reductions in chemical risks for themselves and their children. This information can also be used by government agencies and others to identify potential problems, set priorities, and take appropriate steps to reduce any potential risks to human health and the environment. Therefore, the informational benefits of the proposed rule will have a positive impact on the human health and environmental impacts of minority populations, low-income populations, and children.

List of Subjects in 40 CFR Part 372

Environmental protection, Community right-to-know, Reporting and recordkeeping requirements, and Toxic chemicals.

Dated: March 31, 2010.

Lisa P. Jackson,

Administrator.

Therefore, it is proposed that 40 CFR part 372 be amended as follows:

PART 372—[AMENDED]

1. The authority citation for part 372 continues to read as follows:

Authority: 42 U.S.C. 11023 and 11048.

§ 372.28 [Amended]

2. In § 372.28, the table in paragraph (a)(2) under the heading "Polycyclic aromatic compounds (PACs): (This category includes only those chemicals listed below)" is amended by adding four new entries in alphabetical order to read as follows:

§ 372.28 Lower thresholds for chemicals of special concern.

(a) * * *

(2) * * *

Category name	Reporting threshold
* * * * *	
Polycyclic aromatic compounds (PACs): (This category includes only those chemicals listed below)	100
* * * * *	
42397–64–8 1,6-Dinitropyrene.	
42397–65–9 1,8-Dinitropyrene.	
* * * * *	
07496–02–8 6-Nitrochrysene.	
* * * * *	
57835–92–4 4-Nitropyrene.	

§ 372.65 [Amended]

3. Section 372.65 is amended as follows:

a. In the table to paragraph (a) by adding new entries in alphabetical order.

b. In the table to paragraph (b) by adding new entries in numerical order.

c. In the table to paragraph (c) under the heading "Polycyclic aromatic compounds (PACs): (This category includes only those chemicals listed below)" by adding four entries in alphabetical order.

§ 372.65 Chemicals and chemical categories to which the part applies.

* * * * *

(a) * * *

Chemical name	CAS No.	Effective date
* * * * * * *		
1-Amino-2,4-dibromoanthraquinone	00081–49–2	1/11
* * * * * * *		
2,2-bis(Bromomethyl)-1,3-propanediol	003296–90–0	1/11
* * * * * * *		
Furan	00110–00–9	1/11
* * * * * * *		
Glycidol	00556–52–5	1/11
* * * * * * *		
Isoprene	00078–79–5	1/11
* * * * * * *		
Methyleugenol	00093–15–2	1/11
* * * * * * *		
o-Nitroanisole	00091–23–6	1/11
* * * * * * *		
Nitromethane	00075–52–5	1/11
* * * * * * *		
Phenolphthalein	00077–09–8	1/11
* * * * * * *		
Tetrafluoroethylene	00116–14–3	1/11
* * * * * * *		
Tetranitromethane	00509–14–8	1/11
* * * * * * *		
Vinyl Fluoride	00075–02–5	1/11
* * * * * * *		

(b) * * *

CAS No.	Chemical name	Effective date
* *	* * * *	
00075–02–5	Vinyl Fluoride	1/11
* *	* * * *	
00075–52–5	Nitromethane	1/11
* *	* * * *	
00077–09–8	Phenolphthalein	1/11

CAS No.	Chemical name	Effective date
* * *	* * *	
00078–79–5	Isoprene	1/11
* * *	* * *	
00081–49–2	1-Amino-2,4-dibromoanthraquinone	1/11
* * *	* * *	
00091–23–6	o-Nitroanisole	1/11
* * *	* * *	
00093–15–2	Methyleugenol	1/11
* * *	* * *	
00110–00–9	Furan	1/11
* * *	* * *	
00116–14–3	Tetrafluoroethylene	1/11
* * *	* * *	
00509–14–8	Tetranitromethane	1/11
* * *	* * *	
00556–52–5	Glycidol	1/11
* * *	* * *	
03296–90–0	2,2-bis(Bromomethyl)-1,3-propanediol	1/11
* * *	* * *	

(c) * * *

Category name	Effective date
* * *	
Polycyclic aromatic compounds (PACs): (This category includes only those chemicals listed below).	
* * *	
42397–64–8 1,6-Dinitropyrene	1/11
42397–65–9 1,8-Dinitropyrene	1/11
* * *	
07496–02–8 6-Nitrochrysene	1/11
* * *	
57835–92–4 4-Nitropyrene	1/11

[FR Doc. 2010–7756 Filed 4–5–10; 8:45 am]
BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 27

[WTB Docket No. 07–293; FCC 10–46]

Operations of Wireless Communications Services in the 2.3 GHz Band

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Federal Communications Commission (Commission) seeks comment on revising the performance requirements for the 2.3 GHz Wireless Communications Service (WCS) band. The Commission is seeking comment on possible revision of the performance requirements (also known as buildout or construction requirements) for the 2.3 GHz WCS band to ensure that that the spectrum is used intensively in the public interest.

DATES: Interested parties may file comments on or before April 21, 2010, and reply comments on or before May 3, 2010. Written comments on the Paperwork Reduction Act proposed information collection requirements must be submitted by the public, Office of Management and Budget (OMB), and other interested parties on or before June 7, 2010.

ADDRESSES: You may submit comments, identified by WTB Docket No. 07–293, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Federal Communications Commission Web site: http://www.fcc.gov/cgb/ecfs.* Follow the instructions for submitting comments.
- *E-mail: ecfs@fcc.gov,* and include the following words in the body of the message, "get form." A sample form and directions will be sent in response.

Include the docket number(s) in the subject line of the message.

• *Mail:* Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

• *Hand delivery/courier:* Federal Communications Commission, Office of the Secretary, 445 12th Street, SW., Room TW–A325, Washington, DC 20554.

• *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by *e-mail: FCC504@fcc.gov* or *phone:* 202–418–0530 or *TTY:* 202–418–0432. All submissions received must include the agency name and docket numbers for this rulemaking, WT Docket No. 07–293. All comments received will be posted without change to *http://www.fcc.gov/cgb/ecfs.*

For detailed instructions for submitting comments and additional information on the rulemaking process, *see* the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Richard Arsenault at (202) 418–0920, or e-mail at *Richard.Arsenault@fcc.gov.* In addition to filing comments with the Secretary, a copy of any comments on the Paperwork Reduction Act information collection requirements contained herein should be submitted to the Federal Communications Commission via e-mail to *PRA@fcc.gov* and to Nicholas A. Fraser, Office of Management and Budget, via e-mail to *Nicholas_A._Fraser@omb.eop.gov* or via fax at 202–395–5167.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Public Notice* (*Public Notice*) in WT Docket No. 07–293, FCC 10–46, adopted on March 26, 2010, and released March 29, 2010. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW., Room CY–A257, Washington, DC 20554, or by downloading the text from the Commission's website at *http://www.fcc.gov/.* The complete text also may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, Suite CY–B402, Washington, DC 20554. Alternative formats are available for people with disabilities (Braille, large print, electronic files, audio format), by sending an e-mail to *FCC504@fcc.gov* or calling the Consumer and Government Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Paperwork Reduction Act of 1995 Analysis

This document contains modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public to comment on the information collection requirements contained in this Public Notice as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due June 7, 2010. In addition, the Commission notes that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), we previously sought specific comment on how the Commission might "further reduce the information collection burden for small business concerns with fewer than 25 employees."

Synopsis of the Public Notice

1. In December 2007, the Commission released a *Notice of Proposed Rulemaking,* 73 FR 2437 (January 15, 2008) (*NPRM*) seeking comment on the possible revision of certain WCS technical rules to facilitate the coexistence of operations in the WCS band (2305–2320 MHz, 2345–2360 MHz) with operations in the adjacent Satellite Digital Audio Radio Service (SDARS) band (2320–2345 MHz). The Commission has sought to develop a record that would enable the provision of innovative broadband services in the 2.3 GHz WCS band and provide licensees increased spectrum rights. The Commission now seeks comment on the performance requirements that would accompany such rule changes.

2. The current construction requirement for all spectrum blocks in the 2.3 GHz WCS band is a substantial service showing at the end of the license term. The Commission seeks comment on whether, if it alters the technical rules for this band, it should also revise the substantial service performance requirements. In order to aid the Commission's consideration of alternative performance requirements for the 2.3 GHz WCS band, the Commission requests that interested parties comment on the following requirements and possible alternatives to the following:

For mobile and point-to-multipoint services, reliable signal coverage to:

• 40% of a license area's population within 30 months; and

• 75% of a license area's population within 60 months.

For point-to-point services, construction and operation of point-to-point links:

• 15 per million persons in a license area within 30 months;

• 30 per million persons in a license area within 60 months; and,

• A minimum payload capacity (megabits/second for a given bandwidth) to ensure that the spectrum is used intensively.

3. The Commission also seeks comment on whether the Commission should require WCS licensees to fulfill performance requirements for an entire license area and for defined market areas therein. For Major Economic Area (MEA) licenses, the defined market areas would be Economic Areas (EAs), and for Regional Economic Area Grouping (REAG) licenses, the defined market areas would be MEAs. Under this approach, if a licensee fails to meet a performance requirement for an entire license area or for any defined market area, its entire license would terminate automatically. The Commission requests that interested parties comment on the following and possible alternatives to the following:

For mobile and point-to-multipoint services, the license area coverage requirements of 40% and 75% as proposed above and reliable signal coverage to:

• 25% of each defined market area's population within 30 months; and

• 50% of each defined market area's population within 60 months.

For point-to-point services, construction and operation of a minimum number of links as proposed above, and:

• A minimum number of links in defined market areas within 30 and 60 months, respectively. The Commission seeks comment on the minimum number of links it should require for each EA within an MEA, and for each MEA within a REAG.

4. Compliance Procedures. Consistent with § 1.946(d) of the Commission's rules, the Commission proposes that licensees demonstrate compliance with any revised performance requirements by filing a construction notification within 15 days of the relevant benchmark certifying that they have met the applicable performance requirements. Each construction notification should include electronic coverage maps and supporting documentation, which must be truthful and accurate and must not omit material information that is necessary for the Commission to determine compliance with its performance requirements.

5. Electronic coverage maps must clearly and accurately depict the

boundaries of each license area (REAG or MEA) in the licensee's service territory. Further, REAG maps must depict MEA boundaries, and MEA maps must depict EA boundaries. If the licensee's signal does not provide service to the entire license area, the map must clearly and accurately depict the boundaries of the area or areas within each license area not being served. Each licensee also must file supporting documentation certifying the type of service it is providing for each REAG or MEA within its license service territory and the type of technology it is utilizing to provide such service. Supporting documentation must provide the assumptions used to create the coverage maps, including the propagation model and the signal strength necessary to provide service with the licensee's technology.

6. The Commission envisions that when a licensee files its construction notification package, the public will be afforded an opportunity to review and comment on the construction notification, including the licensee's coverage maps and the technical assumptions used to create the maps. If the Commission determines that a licensee has not met the applicable performance benchmarks for a license area, the license will be deemed to have terminated automatically as of the applicable performance benchmark deadline without further Commission action.

I. Procedural Matters

A. Paperwork Reduction Act Analysis

7. The *Public Notice* contains modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. Therefore, it contains a modified "information collection burden for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

B. Initial Regulatory Flexibility Analysis

9. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and requirements proposed in this *Public Notice.* Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *Public Notice.* The Commission will send a copy of the *Public Notice,* including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).

Need for, and Objectives of, the Proposed Rules

10. The primary objective of the *Public Notice* is to consider changes to the rules governing performance requirements (also known as construction or buildout requirements) for the 2.3 GHz Wireless Communications Service (WCS), which may be necessary to promote the rapid deployment of new and innovative wireless services to the American public. Such rule changes are needed because the Commission may ease certain rules governing operations in the 2.3 GHz WCS band and thereby enable the deployment of new services in the band. Thus, appropriate performance rules for WCS are necessary to ensure that the spectrum is rapidly developed in the public interest. In sum, the *Public Notice* is intended to enhance the record on any necessary performance requirements that would ensure WCS licensees maximize spectrum use in the public interest.

Legal Basis for Proposed Rules

11. The proposed action is authorized under Sections 4(i), 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), and 403.

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

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

13. WCS Licensees. The Wireless Communication Service in the 2305–2360 MHz (2.3 GHz) frequency band has flexible rules that permit licensees in this service to provide fixed, mobile, portable, and radiolocation services. Licensees are also permitted to provide satellite digital audio radio services. The SBA rules establish a size standard for "Wireless Telecommunications Carriers," which encompasses business entities engaged in radiotelephone communications employing no more that 1,500 persons. There are currently 155 active WCS licenses held by 10 licensees. Of these, 7 licensees qualify as small entities and hold a total of 50 licenses.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

14. The *Public Notice* seeks to evaluate whether changes to the existing performance requirements for 2.3 GHz WCS licenses may ultimately foster more effective use of the spectrum to better meet the needs of today's consumers. To the extent the Commission's past decisions no longer reflect the best approach regarding performance requirements the *Public Notice* seeks comment on the possibility of making appropriate adjustments that will serve the public interest.

15. The *Public Notice* proposes that licensees demonstrate compliance with any revised performance requirements by filing a construction notification within 15 days of the relevant benchmark certifying that they have met the applicable performance requirements. It proposes that each construction notification should include electronic coverage maps and supporting documentation, which must be truthful and accurate and must not omit material information that is necessary for the Commission to determine compliance with its performance requirements.

16. Further, under the *Public Notice's* proposed compliance procedures, electronic coverage maps must clearly and accurately depict the boundaries of each license area (REAG or MEA) in the licensee's service territory, with REAG maps depicting MEA boundaries, and MEA maps depicting EA boundaries. If the licensee's signal does not provide service to the entire license area, the *Public Notice* provides that the map must clearly and accurately depict the boundaries of the area or areas within each license area not being served. The proposed compliance procedures direct each licensee to file supporting

documentation certifying the type of service it is providing for each REAG or MEA within its license service territory and the type of technology it is utilizing to provide such service. Further, the proposed compliance procedures would require the supporting documentation to provide the assumptions used to create the coverage maps, including the propagation model and the signal strength necessary to provide service with the licensee's technology.

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

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

18. The *Public Notice* specifically invites comments on a range of potential performance requirements and invites interested parties to suggest alternative proposals. At this time, the Commission has not excluded any alternative proposal concerning performance requirements from its consideration, but it would do so in this proceeding if the record indicates that a particular proposal would have a significant and unjustifiable adverse economic impact on small entities.

19. In the *Public Notice,* the Commission discusses possible reporting requirements to ensure that spectrum is used intensively in the public interest. In particular, the Commission is considering a proposal to require licensees to provide additional reports demonstrating the level of service provided to the public. However, the Commission will not consider any alternative that would have a significant and unjustifiable adverse economic impact on small entities.

20. The Commission solicits any alternative proposals that would not incur significant and unjustifiable adverse impact on small entities.

Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

21. None.

List of Subjects in 47 CFR Part 27

Communications common carriers, Radio.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2010–7761 Filed 4–5–10; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[FWS-R1-ES-2009-0043]

[MO 92210-0-0008 B2]

Endangered and Threatened Wildlife and Plants; 12–month Finding on a Petition To List the Mountain Whitefish in the Big Lost River, Idaho, as Endangered or Threatened

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 12–month petition finding.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 12–month finding on a petition to list the mountain whitefish (*Prosopium williamsoni*) in the Big Lost River, Idaho, as endangered or threatened under the Endangered Species Act of 1973, as amended. After review of all available scientific and commercial information, we find that the mountain whitefish in the Big Lost River does not constitute a listable entity under the Act and, therefore, listing is not warranted. However, we ask the public to continue to submit to us any new information that becomes available concerning the taxonomy, biology, ecology, and status of the mountain whitefish in the Big Lost River, and to support cooperative conservation of mountain whitefish within its historical range in the Big Lost River.

DATES: The finding announced in this document was made on April 6, 2010.

ADDRESSES: This finding is available on the Internet at *http://www.fws.gov/idaho*, and also at *http://www.regulations.gov* at Docket No. FWS-R1-ES-2009-0043. 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, Idaho Fish and Wildlife Office, 1387 S. Vinnell Way, Room 368, Boise, ID 83709. Please submit any new information, materials, comments, or questions concerning this finding to the Service at this address.

FOR FURTHER INFORMATION CONTACT: Acting State Supervisor, Idaho Fish and Wildlife Office (see **ADDRESSES**); by telephone at 208-378-5243; and by facsimile at 208-378-5262. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800-877-8339.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(B) of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), requires that, for any petition to revise the Federal Lists of Endangered and Threatened Wildlife and Plants that contains substantial scientific and commercial information indicating that listing the species may be warranted, we make a finding within 12 months of the date of receipt of the petition. In this 12–month finding, we may determine that the petitioned action is either: (1) Not warranted, (2) warranted, or (3) warranted, but immediate proposal of a regulation implementing the petitioned action is precluded by other pending proposals to determine whether species are endangered or threatened , and expeditious progress is being made to add or remove qualified species from the Federal Lists of Endangered and Threatened 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 June 15, 2006, we received a petition from Western Watersheds Project to emergency list as endangered or threatened the population of mountain whitefish in the Big Lost River, Idaho, as a separate species, subspecies, or distinct population segment (DPS) under the Act. The petitioner also requested that we designate critical habitat concurrent with the listing.

In an August 21, 2006, letter to the petitioner, we acknowledged receipt of the petition and explained that we would not be able to address the petition at that time due to other priorities relating to court orders and settlement agreements. We further indicated we had reviewed the petition and determined an emergency listing was not necessary. On October 23, 2007,

we issued a 90–day finding (72 FR 59983), concluding the petition had failed to provide substantial information indicating that listing the Big Lost River population of mountain whitefish may be warranted, based on a lack of information indicating it may be a listable entity under the Act (a species, subspecies, or DPS). On January 25, 2008, Western Watersheds Project filed a complaint challenging the negative 90–day finding. On March 31, 2009, the United States District Court in Idaho found that we had considered information beyond the material in the petition in issuing the negative finding, such that we had effectively begun to conduct a status review (*Western Watersheds Project* v. Dirk Kempthorne, *et al.*, Case No. CV07-409-S-EJL D. Idaho). The Court directed us to proceed directly to a status review and, within 1 year, issue a 12–month finding. We published a notice in the **Federal Register** on August 6, 2009 (74 FR 39268) initiating the status review and requesting new information for mountain whitefish in the Big Lost River, Idaho. The 30–day comment and information period closed on September 8, 2009. This notice constitutes the 12–month finding on the June 14, 2006, petition to list the mountain whitefish in the Big Lost River, Idaho, as endangered or threatened.

Species Information

Species Distribution and Habitat

Mountain whitefish are members of the family Salmonidae (broadly termed "salmonids") and are found in rivers and lakes throughout mountainous areas of western North America in Canada and the United States (Figure 1). In the United States, they occur in the States of Washington, Oregon, Idaho, Wyoming, Montana, Colorado, Utah, Nevada, and California (NatureServe 2009). Mountain whitefish are relatively common and widespread in most river basins in Idaho (AFS 2007, p. 29) and, in general, occur in mainstem river reaches that are greater than 15 meters (m) (49.2 feet (ft)) wide and of low gradient (Maret *et al.* 1997, p. 213; Meyer *et al.* 2009, p. 763). Results of a study by Meyer *et al.* (2009) assessing the environmental factors related to distribution, abundance, and life history characteristics of mountain whitefish in Idaho show mountain whitefish in southern Idaho are abundant, long-lived, and fast growing (at warmer water temperatures) until they reach sexual maturity. The authors also speculate that mountain whitefish are relatively secure in the upper Snake River basin, although little research has been done on the mountain whitefish across the range of the species (Meyer *et al.* 2009, pp. 753, 765).

Although the majority of populations of mountain whitefish occur in riverine environments, some populations are restricted to lakes or isolated sink basins. Mountain whitefish in the Big Lost River reside in a "sink" drainage, which was once part of a large Pleistocene lake system that included Lake Terreton (Link 2003, in Van Kirk *et al.* 2003, p. 6). As Lake Terreton waters receded, the Big Lost River and four adjacent drainages lost their surface connection to the Snake River, resulting in five isolated sink drainages in Idaho. It is estimated mountain whitefish became isolated in the Big Lost River approximately 10,000 years ago (Behnke 2003, cited in Van Kirk *et al.* 2003, p. 8). Other populations of mountain whitefish occur in other sink drainages, such as tributaries in the Lahontan Basin in California and Nevada, and the Bonneville Basin in Utah. Populations in these basins are similar to the population in the Big Lost River in that all are relict populations of mountain whitefish that formerly resided in large Pleistocene lake systems that are now closed basins.

Distribution and Habitat Within the Big Lost River Basin

Mountain whitefish in the Big Lost River are physically isolated from other whitefish populations within the Snake River basin. The Big Lost River originates in the Pioneer, Boulder, Lost River, and White Knob mountain ranges and flows down the Big Lost River Valley eastward onto the Snake River Plain where it terminates at the Big Lost River Sinks (Figure 2). Major tributaries include East Fork, Star Hope Creek, Wildhorse Creek, North Fork, Thousand Springs Creek, Warm Springs Creek, Alder Creek, Pass Creek, and Antelope Creek. Elevations in this area range from 1,459 m (4,787 ft) at the Big Lost River Sinks to 3,859 m (12,661 ft) at the summit of Borah Peak. The climate of the drainage is generally cool and dry. Annual precipitation along the valley floor is about 20 centimeters (cm) (7.8 inches (in)), but increases to over 100 cm (39.4 in) at higher elevations. Vegetation within the basin ranges from sagebrush steppe at lower elevations, to coniferous forests at mid elevations, to alpine at higher elevations. The drainage is comprised primarily of Federal land managed by the U.S. Forest Service (USFS; 42 percent), Bureau of Land Management (BLM; 26 percent), and Department of Energy (DOE; 15 percent), with lesser amounts of private (14 percent) and State (2 percent) lands. The drainage is within portions of Butte and Custer Counties and is sparsely populated, with agriculture being the dominant land use on private lands. Primary uses of Federal land include cattle grazing and recreation (IDFG 2007, p. 7). Historically, mountain whitefish occupied approximately 346.1 kilometers (km) (214 miles (mi)) of habitat in the Big Lost River (Gamett 2009a, p. 5). Recent studies indicate mountain whitefish currently occupy 134.8 km (86.3 mi) of the Big Lost River, with an estimated population of 12,639 adult fish (Garren *et al.* 2009, pp. 5-6). Although it is lower than suspected historical numbers, the current population estimate shows an increase from surveys conducted between 2002 and 2005, when it was estimated that approximately 2,539 adult mountain whitefish occupied 83.3 km (51.8 mi) of habitat in the Big Lost River (Gamett *et al.* 2009, p. 5).

Species Description

Mountain whitefish can reach about 57 cm (22 in) in length at maturity. The general body shape is slender with a somewhat round cross section; body coloration is typically silver on the sides, dusky olive green or blue on the back; and the belly is a dull white (Simpson and Wallace 1982, p. 77). According to Gamett 2009 (personal observations and unpublished data, pp. 8-9), mountain whitefish in the Big Lost River can be distinguished from mountain whitefish in the nearby Pahsimeroi River based on color. Whiteley (2007, pers. comm.) also notes a color difference, and suggests that mountain whitefish in the Big Lost River may also differ in head and body shape as well. None of these suggested differences have been quantified or formally described, however, and Gamett (2009, p. 9) notes the need for further research in this regard.

Age of sexual maturity of mountain whitefish varies, with mountain whitefish in southern Idaho documented to reach sexual maturity at 2 to 3 years (Meyer *et al.* 2009, p. 765), while fish from the Blacks Fork River in Utah were reported to reach sexual maturity at 4 years for males, and 5 to 7 years for females. The species is relatively long-lived; one fish in Utah was aged at 12 years (Wydoski 2001, p. 694), while the oldest fish recorded in the Meyer *et al.* study in Idaho was estimated to be 24 years old (2009, p. 761). Mountain whitefish spawn in the fall, and timing depends on stream temperatures (Simpson and Wallace 1982, p. 77; Wydoski 2001, p. 694). Unlike other salmonids, mountain whitefish are broadcast spawners,

meaning no nest or redd is created, and females scatter eggs and the male fertilizes them (McGinnis 1984, p. 137). Spawning generally occurs at night, with fish broadcasting their eggs and sperm in riffle areas over clean gravel. Eggs incubate throughout the winter months, and hatching typically occurs in March and April. Migrations associated with spawning behavior appear to be highly variable across systems, with some populations migrating into tributaries to spawn, while others move very little (Northcote and Ennis 1994, p. 350). Upon hatching, fry are thought to occupy lateral habitats and low velocity areas. Adult habitat is variable, consisting of shallow riffles, moderate runs, and deep pools during the summer, but primarily deeper pools in the winter (Northcote and Ennis 1994, p. 353).

Mountain whitefish are thought to be opportunistic bottom feeders, consuming whatever is in abundance, including fish eggs during the spawning season (McGinnis 1984, p. 137). They are known to actively feed on both aquatic and terrestrial insects, but may also eat other small fish on occasion (NatureServe 2009).

Taxonomy

The mountain whitefish in the Big Lost River of Idaho are currently recognized as members of the single species *Prosopium williamsoni*, which is considered common and widespread throughout the mountainous western United States northward into Canada (Nelson *et al.* 2004, p. 86; ITIS 2009; NatureServe 2009). Although the State of Idaho does not consider the mountain whitefish occupying the Big Lost River to be either a significant species or a species of concern, they have developed a management plan specific to this population of mountain whitefish (IDFG 2007, pp. 1-32).

Defining a Species Under the Endangered Species Act

Our first step in making a 12–month finding is to establish that the subject under consideration constitutes a "species" as defined under section 3(16) of the Act. Section 3(16) defines "species" to include "any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature" (16 U.S.C. 1532(16)). Our implementing regulations at 50 CFR 424.11 provide further guidance for determining whether a species (as defined in the Act and our regulations at 50 CFR 424.02(k)) is eligible for listing under the Act: "In determining whether a particular taxon or population is a species for the purposes of the Act, the Secretary shall rely on standard taxonomic distinctions and the biological expertise of the Department and the scientific community concerning the relevant taxonomic group" (50 CFR 424.11(a)).

As previously discussed, mountain whitefish in the Big Lost River are classified taxonomically as *Prosopium williamsoni*, the same as other mountain whitefish across the range of the species. Before proceeding further, we must first determine whether the mountain whitefish in the Big Lost River are a separate species, subspecies, or DPS, and thus constitute a potentially listable entity under the Act.

Evaluation of Mountain Whitefish in the Big Lost River as a Species or Subspecies

The petitioner asked us to list the population of mountain whitefish in the Big Lost River, Idaho, as a separate species, subspecies, or DPS. As discussed in the "*Taxonomy*" section above, mountain whitefish in the Big Lost River of Idaho are currently recognized as members of the single species *Prosopium williamsoni*, which is considered common and widespread throughout the mountainous western United States northward into Canada (NatureServe 2009). The American Fisheries Society and the American Society of Ichthyologists and Herpetologists, the scientific authorities with regard to this taxonomic group, do not recognize mountain whitefish in the Big Lost River as a separate species or subspecies (Nelson *et al.* 2004, p. 86). The Integrated Taxonomic Information System, a database maintained by a partnership of Federal agencies to provide scientifically credible taxonomic information, similarly does not recognize mountain whitefish in the Big Lost River as a separate species or subspecies (ITIS 2009). Thus, per our implementing regulations at 50 CFR 424.11, standard taxonomic distinctions and the biological expertise of the scientific community concerning the relevant taxonomic group, the mountain whitefish in the Big Lost River are not recognized as a separate species or subspecies of mountain whitefish.

The petitioner, however, maintained the mountain whitefish in the Big Lost River should be protected as a separate species or subspecies of whitefish "because all genetic analyses demonstrate that it is genetically unique—so much so that the genetic distance observed between Big Lost River mountain whitefish and surrounding populations is at least as large as that seen between other subspecies or even species." We carefully evaluated the petitioner's assertion, which relies primarily on the analysis of molecular genetic data. Because of the complex and highly technical nature of molecular analysis, we consulted with a fisheries genetics expert within the Service to assess the potential significance of the genetics information available to us regarding mountain whitefish in the Big Lost River. Dr. Donald E. Campton, Senior Science Advisor for the U.S. Fish and Wildlife Service's Pacific Region Fisheries Resources Division, and former President of the Genetics Section of the American Fisheries Society, served as our expert on this finding.

No universally accepted definition of species or subspecies exists. In general such classifications are based on multiple lines of evidence that are consistent with the hypothesis that the entity in question is a separate species or subspecies, including factors such as morphology, physiology, behavior, and genetic characteristics (Haig *et al.* 2006, p. 1586). In reviewing an entity as a potential species or subspecies, we consider as many lines of available, reliable evidence as possible. Particularly, in the case of an entity that is being proposed as a new taxonomic treatment and that has not been recognized as such by the relevant scientific community, we bring our biological expertise to bear and require multiple lines of persuasive and credible corroborating evidence to support any such change, in accordance with our regulations at 50 CFR 424.11(a).

Information on the genetics of mountain whitefish in the Big Lost River of Idaho is available from several recent publications, including Whiteley *et al.* (2006), Campbell and Kozfkay (2006), and Miller (2006). In Whiteley *et al.* (2006), the researchers utilized both allozymes and microsatellites to examine the genetic structure of mountain whitefish populations throughout the northwestern United States and British Columbia, plus two populations from western Alberta. Allozymes are forms of enzymes coded for by different alleles at the same genetic locus, and can be distinguished by electrophoresis; microsatellites are repeating sequences of base pairs in the DNA, and are typically used as highly variable genetic markers. Whiteley *et al.* (2006, p. 2778) found that mountain whitefish in this region (all representatives of the species *Prosopium williamsoni*), form three large-scale genetic assemblages based on allozyme data and five large-scale genetic assemblages based on

microsatellite data. The Big Lost River population was included within the resulting Upper Snake River assemblage (Upper Snake) in both scenarios, and is described as the "most genetically divergent" site in that assemblage. While this is an accurate characterization, examination of the data demonstrates that the degree of genetic divergence of mountain whitefish in the Big Lost River from other populations in the Upper Snake genetic assemblage largely reflects the absence of within-population genetic variation in individuals from the Big Lost River and is less than the genetic divergence observed between the Upper Snake and other major assemblages of mountain whitefish (Whiteley *et al.* 2006, Table 1, pp. 2770-2771). In other words, the mountain whitefish in the Big Lost River appear to be divergent largely as a result of the lack of genetic diversity exhibited by this population relative to other populations, not as the result of any unique genetic characteristics. Although the most divergent group within the Upper Snake, Whiteley *et al.* (2006, pp. 2775-2776) found the Big Lost River population still clustered within that major genetic assemblage.

This result is consistent with that reported by another researcher in her study of mitochondrial DNA in mountain whitefish, detailed further below. Miller (2006, p. 30) concludes "the Big Lost River mountain whitefish still group with other populations from the upper Snake River Sub-basin." These results do not suggest that mountain whitefish in the Big Lost River stand out from among all populations of mountain whitefish examined as genetically unique or differentiated to the point that they would be considered a separate species or subspecies. If that were the case, then one would expect the Big Lost River mountain whitefish's level of divergence to be greater than the level of divergence observed between the major genetic groupings, and they would not cluster within a major genetic assemblage.

The analysis of Whiteley *et al.* (2006) shows mountain whitefish populations that are geographically isolated are relatively more distinctive genetically than populations that may experience gene flow between them. Although Whiteley *et al.* (2006, p. 2780) reported little evidence of differentiation among sites within major river basins in general, they note that the Upper Snake (which includes the Big Lost River) and Olympic Peninsula were an exception to this rule, due to the natural restrictions on gene flow in these areas. Whiteley *et al.* (2006, p. 2780) identified low levels of within-population genetic variation (relatively lower levels of genetic diversity) in several physically-isolated populations of mountain whitefish, including not only the Big Lost River, but also the Big Wood River, Bull River, and Thutade Lake. They also noted a higher degree of genetic differentiation in several physically-isolated sites in the region associated with the Upper Snake River assemblage; in addition to the Big Lost River, this pattern was observed at the Henry's Fork and several Bonneville Basin sites (Whiteley *et al.* 2006, p. 2781).

Such results are not unexpected; in fact, this condition is exactly what would be predicted by basic conservation genetics theory for small, isolated populations (Meffe and Carroll 1994, pp. 156-158). These isolated populations are relatively genetically divergent compared to other populations that experience higher levels of gene flow (gene flow or genetic mixing maintains greater levels of genetic diversity or heterogeneity in the population). Such a level of differentiation does not necessarily suggest a subspecies or species-level difference; nor does the ability to detect genetic differences between populations necessarily equate to meaningful biological significance (Hedrick 1999, pp. 316-317). Fish in general, and particularly freshwater salmonids, tend to exhibit a high degree of genetic structuring (Allendorf and Waples 1996, p. 257; Whiteley *et al.* 2006, p. 2783), such that it is not unusual to be able to easily distinguish between populations of the same species based on molecular genetic differences. Yet, if one were to rely solely on the ability to distinguish between fish populations based on genetic differences to identify new subspecies or species, as Haig *et al.* (2006, p. 5, citing Mayden 1999) noted, "every isolated creek and pond could have a unique subspecies or species of fish." This ability to so finely subdivide species based purely on the ability for genetic discrimination between them has led the Service, as described above, to require a more holistic approach to species or subspecies analysis that builds upon multiple lines of evidence, including, where possible, a full suite of morphological, physiological, behavioral, and genetic characteristics, to support a formerly unrecognized taxonomic distinction.

The analysis of the genetic relationships of mountain whitefish by Whiteley *et al.* 2006 does not support the contention that mountain whitefish of the Big Lost River are distinctive or unique genetically when compared to other populations in the Upper Snake River assemblage, or when compared to populations within other assemblages of the species. Rather, the authors point to a high degree of genetic differentiation between many populations of mountain whitefish in the Upper Snake due to the topography of the region, and characterize those populations as "more finely subdivided than elsewhere" (Whiteley *et al.* 2006, p. 2781). The authors also point out that the degree of genetic differentiation observed in mountain whitefish among tributaries within river basins is less than that observed in populations of other salmonids, such as bull trout (*Salvelinus confluentus*) and westslope cutthroat trout (*Oncorhynchus clarki lewisi*) (i.e., bull trout and westslope cutthroat trout show greater levels of genetic differentiation between populations within river basins than do mountain whitefish) (Whiteley *et al.* 2006, p. 2783). Despite this high degree of genetic structuring, it has not been suggested that each individual bull trout or westslope cutthroat trout population be considered as a separate species or subspecies; each genetically differentiable population of bull trout and westslope cutthroat trout is still considered a member of the broader taxon (species or subspecies, respectively). If the mountain whitefish in the Big Lost River were a separate species or subspecies, based on genetic characteristics, one would expect mountain whitefish in the Big Lost River to exhibit greater genetic differentiation than populations of salmonids that are considered members of the same species or subspecies, not less.

Campbell and Kofzkay (2006) used mitochondrial DNA to assess mountain whitefish populations in Idaho, Utah, and Montana, and also specifically to evaluate the origin and divergence of mountain whitefish in the Big Lost River. Their results support the three major genetic assemblages identified by Whiteley *et al.* (2006), which Campbell and Kofzkay (2006, p. 6) describe as the Upper Snake River drainage (upstream of Shoshone Falls) and the Bonneville basin; the Lower Snake River drainage (downstream of Shoshone Falls) including the Pahsimeroi and Salmon Rivers; and the Upper Missouri River. The authors note the pairwise divergence estimates between these major genetic assemblages of mountain whitefish were very high, ranging from 1.31 to 4.56 percent (Campbell and Kofzkay 2006, p. 7). For comparison purposes, they point out that estimates of mitochondrial DNA sequence divergence between two salmonid

subspecies, the westslope cutthroat trout and Yellowstone cutthroat trout (*Oncorhynchus clarkia bouvieri*), range from 1.5 to 1.9 percent (Gyllensten and Wilson 1987, IDGF unpublished data, cited in Campbell and Kofzkay 2006, p. 7). The divergence between the large major assemblages of mountain whitefish may thus be similar to the degree of divergence between recognized subspecies of cutthroat trout.

However, pairwise divergence estimates for mountain whitefish in the Big Lost River are solidly within the range of normal divergence for populations of whitefish within the Upper Snake River assemblage (Campbell and Kofzkay 2006, Figure 3, p. 8). The percent sequence divergence of mountain whitefish from the Big Lost River compared to other populations within the Upper Snake River Basin ranges from 0.33 to 0.49 percent. The levels of sequence divergence between subspecies of cutthroat trout (1.4 to 1.9 percent) and between different species of trout (rainbow trout (*O. mykiss*) and cutthroat trout (4.0 to 4.5 percent) (Campbell and Kozfkay 2006, p. 7) are far higher than that observed between mountain whitefish in the Big Lost River and other populations within the Upper Snake River assemblage (Campbell and Kofzkay 2006, p. 8). According to this study, the genetic distance between mountain whitefish in the Big Lost River and surrounding populations is far less than that observed between these subspecies or species of salmonids. Furthermore, several other populations of mountain whitefish examined by Campbell and Kofzkay (2006, Figure 3, p. 8) exhibited greater levels of divergence from other populations within their assemblage than that exhibited by fish from the Big Lost River (the Boise River populations in the lower Snake River assemblage, for example). Thus, the data of Campbell and Kofzkay (2006) indicate the mountain whitefish in the Big Lost River are not particularly distinctive or unusual in terms of genetic divergence, when compared to other populations of mountain whitefish throughout the range of the species.

Miller (2006) examined the phylogeography of the genus *Prosopium* in western North America, analyzing mitochondrial DNA using the cytochrome b (cytb) and NADH dehyrogenase subunit 2 (ND2) sequences. This analysis included the mountain whitefish *P. williamsoni*, and three taxa found only in Bear Lake on the Utah-Idaho border: the Bear Lake whitefish (*P. abyssicola*), the Bonneville whitefish (*P. spilonotus*), and the Bonneville cisco (*P. gemmifer*). Similar to the other researchers, Miller reported a high amount of genetic structure for mountain whitefish based on drainage basins or sub-basins. Analyses of molecular variance demonstrated between 62.5 and 75.8 percent of the total genetic variation was found between drainage basins or subbasins (Miller 2006, p. 22). Miller's analysis found evidence for multiple populations of mountain whitefish that are geographically isolated and demonstrate little to no gene flow, including populations in the Hoh River, Duchesne River, Big Wood River, Big Lost River, and Coeur d'Alene River (Miller 2006, pp. 22-23).

The nested clade analysis conducted by Miller resulted in somewhat different results for the cytb and ND2 sequences. Analysis based on cytb resulted in the identification of four major clades of *Prosopium*: (1) A Missouri River basin clade; (2) a Bear Lake *Prosopium* clade; (3) a Columbia River subbasin/lower Snake River subbasin/Lahontan Basin clade; and (4) a Bonneville basin/upper Snake River subbasin/Green River basin/Bear Lake *Prosopium* clade (Miller 2006, p. 23). Analysis based on ND2 resulted in two major clades: (1) A Columbia River subbasin/lower Snake River subbasin/Lahontan basin clade, and (2) a Bonneville Basin/upper Snake River subbasin/Green River basin/Missouri River basin/Bear Lake *Prosopium* clade (Miller 2006, p. 23), with the Big Lost River and Missouri River populations representing two divergent subgroups within this latter clade (Miller 2006, Figs. 16a, pp. 130-137, and 16c, pp. 146-149). For both cytb and ND2, she found the haplotypes for the Big Lost River (upper Snake River subbasin), the Big Wood River (lower Snake River subbasin), and the Hoh River (Columbia River subbasin) formed isolated clades (included only haplotypes from their own system, and did not contain haplotypes from outside of their clades) (Miller 2006, p. 24). Miller concluded that these three populations are genetically distinct from other populations within their basins due to their relative isolation. With regard to the Big Lost River population in particular, however, she concludes, "Although distinct from other upper Snake River populations, the Big Lost River mountain whitefish still group with other populations from the upper Snake River Sub-basin" (Miller 2006, p. 30). This result is consistent with that of Whiteley *et al.* 2006 (p. 2778); the mountain whitefish in the Big Lost River are genetically distinctive within their major genetic assemblage, but do not stand out from all other populations when considered in the context of the species across its range.

The petitioner offered additional information in support of the contention that mountain whitefish in the Big Lost River represent a separate species or subspecies; that additional information was a reference to an abstract from an oral presentation made at a meeting of the Idaho Chapter of the American Fisheries Society (Van Kirk *et al.* 2003, p. 13). This abstract, authored by Whiteley and Gamett, refers to "the fixation of a unique allele in the Big Lost River population at one of the microsatellite loci." Data to support this statement were not available to us. If we assume that one microsatellite allele has become fixed in mountain whitefish occupying the Big Lost River, that information does not by itself confer any meaningful genetic significance or biological or ecological importance (e.g., as measured by morphological, physiological, or behavioral traits) because microsatellite alleles are considered selectively neutral, the frequencies of which largely reflect random or stochastic processes (e.g., genetic drift, population bottlenecks, founder effects, mutation rates), rather than selection for traits that confer increased fitness (Ashley and Dow 1994, p. 185). Indeed, the total lack of variability observed in microsatellites sampled for mountain whitefish in the Big Lost River (Whiteley *et al.* 2006, p. 2775) indicates that this population has likely undergone a past population bottleneck relative to other populations, with a subsequent loss of genetic variability and random fixation (e.g., via drift of a unique [or nearly unique] allele) (D. Campton, pers. comm. 2007).

This conclusion is also supported by the work of Miller, who concludes the mountain whitefish in the Big Lost River experienced restricted gene flow (2006, p. 25). Under such conditions, genetic distance may increase quickly, but is not in and of itself indicative of biological significance (Hedrick 1999, pp. 315-316). Genetic isolation and a relatively small population size would predictably lead to the loss of haplotypes that might otherwise be shared with other populations, leading to the ability to distinguish a population as "different." In other words, it is technically possible to differentiate between two such populations on the basis of their genetic characteristics. However, this purely technical ability for genetic discrimination between populations does not necessarily represent any biological or ecological importance. We have no information to indicate that the fixation of any single microsatellite allele in mountain

whitefish in the Big Lost River may, in any way, be biologically important or significant to the taxon as a whole. Such fixed allelic differences between geographically isolated freshwater populations of salmonid fishes are not considered uncommon (Allendorf and Waples 1996, p. 257). Although these allelic differences may allow for the detection of statistically significant differences between populations, and hence the ability to discriminate between them on the basis of their genetic characteristics, as Hedrick (1999, p. 317) notes, the connection between biological and statistical significance may often be weak, and great care must be taken in interpreting statistical significance as the equivalent of biologically meaningful significance.

Mountain whitefish in the Big Lost River do possess unique mitochondrial DNA haplotypes, but the same is true of almost every other mountain whitefish population sampled by Campbell and Kofzkay (2006, Table 1, p. 6) and Miller (2006, Table 3, pp. 51-56, and Table 4, pp. 57-63). The majority of surveyed mountain whitefish populations had unique mitochondrial DNA haplotypes, as does the population in the Big Lost River, and some populations had several. The possession of a population-specific haplotype is, therefore, not unique to the mountain whitefish in the Big Lost River. In addition, the genetic divergence of mountain whitefish in the Big Lost River is not necessarily greater than that observed in other populations. For example, based on the data of Campbell and Kofzkay (2006, Figure 3, p. 8) and Miller (2006, Figure 16, pp. 130-157), the divergence among haplotypes between fish in the Big Lost River and other populations in the Upper Snake River is approximately three times less than the degree of divergence observed among individual mountain whitefish collected from a single population in the Boise River.

In our review of the best available information regarding the degree of genetic divergence of mountain whitefish in the Big Lost River relative to other populations of whitefish, we have determined that many – if not most – populations of mountain whitefish sampled by Campbell and Kozfkay (2006, p. 6) and Miller (2006, pp. 51-63) can be said to be genetically different relative to other populations of the species. Most mitochondrial DNA haplotypes occur in only one population and are not shared between populations, clearly indicating the lack of gene flow among most populations (Campbell and Kofzkay 2006, Table 1, p. 6; Miller 2006, Table 3, pp. 51-56, and Table 4, pp. 57-63). In addition, substantially greater mitochondrial DNA nucleotide diversity exists among individual fish within some populations of mountain whitefish, than exists between mountain whitefish in the Big Lost River and other populations in the Upper Snake River (Campbell and Kofzkay 2006, Figure 3, p. 8; Miller 2006, Figure 16, pp. 130-157). Genetic analyses by both Whiteley *et al.* (2006, pp. 2775-2776) and Miller (2006, p. 30) determined that mountain whitefish in the Big Lost River cluster within the Upper Snake genetic subgroup of *Prosopium williamsoni*. Based on the best available scientific information, we conclude the evidence is not sufficient to support recognition of the mountain whitefish in the Big Lost River as a separate species or subspecies based on the genetic characteristics of the population relative to all other populations of the species *P. williamsoni*.

As we noted earlier, in evaluating whether an entity may potentially represent a heretofore unrecognized species or subspecies, it is important to consider multiple lines of evidence. Haig *et al.* (2006, p. 8) argue that higher levels of confidence can be obtained in classifications based on the concurrence of multiple morphological, molecular, ecological, behavioral, and physiological characters. We therefore considered whether any other characteristics of mountain whitefish in the Big Lost River offer any credible support for the argument that they may be a separate species or subspecies.

The information available to us suggests mountain whitefish in the Big Lost River may exhibit differences in coloration or morphology. This suggestion is based on the personal observations of two researchers, Andrew Whiteley and Bart Gamett. Dr. Whiteley suggested that mountain whitefish from the Big Lost River may differ in color and form, possibly having shorter heads and a different body shape, but stated that these traits have not been quantified and were based only on his personal observations (A. Whiteley 2007a, pers. comm.). Mr. Gamett (2009b, pp. 8-9) also noted that mountain whitefish from the Big Lost River can be readily distinguished from specimens of mountain whitefish found in other drainages (e.g., Pahsimeroi River) based on color; however, this has not been formally described, and is based on personal opinion. Gamett (2009b, p. 9) noted that further research is needed to address this question.

Although mountain whitefish in the Big Lost River may possibly look different, we have no evidence before us to suggest that any differences in color or morphology that may exist are anything other than natural phenotypic variation that is often observed in different populations of fish. Natural variation in characteristics such as body shape in fish is commonly attributable to environmental factors, such as water temperature during development (e.g., Barlow 1961, pp. 105-106). Additionally, many fish exhibit a considerable degree of intraspecific (within the species) variation in morphology, which has been experimentally demonstrated to be the result of phenotypic plasticity in response to the environment, rather than a heritable response to selection (e.g., Mittelbach *et al.* 1999, pp. 111, 126). Head depth is a common plastic trait in fish related to diet (e.g., Day *et al.* 1994, pp. 1723, 1730). We have no information to suggest that any apparent differences in morphology or coloration of the mountain whitefish in the Big Lost River, which have never been quantified or formally described, are in any way biologically meaningful such that they might represent possible differentiation to the degree that subspecies or species recognition might be warranted—that is, whether they might possibly be associated with some fitness advantage or adaptation specific to this population, as opposed to simple local variation in phenotypic traits.

It has been suggested that the mountain whitefish in the Big Lost River are more genetically divergent than currently recognized species of *Prosopium* endemic to Bear Lake (Whiteley 2007b, pers. comm.). In her examination of the three species of *Prosopium* endemic to Bear Lake (*P. abyssicola*, *P. gemmifer*, and *P. spilonotus*), Miller (2006, pp. 31-32) found the mitochondrial DNA data failed to break into discrete clades of their respective species, possibly indicative of ongoing adaptive radiation (i.e., they are still undergoing the process of speciation), ongoing hybridization, or other factors. In this case, although the genetic information does not provide a clear distinction between these three groups, other multiple lines of evidence potentially support the taxonomic distinction between these species, including differences in spawning times, scale counts, and morphology (Miller 2006 and references therein, pp. 2-3, 34). Miller notes that although the three Bear Lake species are not genetically differentiable, the "morphological, ecological, and behavioral differences are real" (Miller 2006, p. 32). However, she also points out that this lack of congruence with the genetic information

does raise some questions regarding the current classification of these species (Miller 2006, p. 35), further reinforcing the point that stronger taxonomic distinctions can be made based on multiple lines of consistent supporting evidence.

By contrast, although mountain whitefish in the Big Lost River may show a greater degree of genetic differentiation from other groups than that observed in the Bear Lake *Prosopium*, we note that any potentially corroborating morphological, ecological, behavioral, or physiological characteristics that might serve as supporting evidence of meaningful phenotypic divergence, such as that used in identifying the three species of Bear Lake *Prosopium*, are lacking for mountain whitefish in the Big Lost River. Most populations of mountain whitefish exhibit a high degree of geographical genetic differentiation throughout their range (Campbell and Kofzkay 2006, Figure 3, p. 8; Whiteley *et al.* 2006, p. 2781), and several of them show a greater degree of genetic differentiation than that exhibited between the three species of Bear Lake *Prosopium* (Miller 2006, Figure 16, pp. 130-157). However, in the absence of any reliable corresponding evidence indicative of local adaptation or phenotypic divergence, we believe there is insufficient support for the recognition of any such population as a new species or subspecies based on this genetic information. Thus we do not find the greater genetic divergence observed in mountain whitefish in the Big Lost River relative to that observed between the Bear Lake *Prosopium* persuasive evidence that mountain whitefish in the Big Lost River should be considered a species or subspecies.

In summary, mountain whitefish occurring in the Big Lost River are not currently recognized by the relevant taxonomic authorities as a species or subspecies (Nelson *et al.* 2004, p. 86; ITIS 2009; NatureServe 2009), and our evaluation of the best available scientific and commercial data does not indicate that mountain whitefish in the Big Lost River represent a distinct species or subspecies relative to other populations of *Prosopium williamsoni*. Available evidence indicates there is a high degree of genetic structuring between many populations of mountain whitefish, and particularly those in the Upper Snake, as is frequently observed between populations of other freshwater salmonids (Allendorf and Waples 1996, p. 257; Miller 2006, p. 25; Whiteley *et al.* 2006, pp. 2781, 2783). Modern molecular techniques allow virtually every population to be distinguished from one another, and almost every population of mountain whitefish surveyed had at least one unique haplotype. Thus every population of mountain whitefish sampled so far could be considered genetically "distinct," including the mountain whitefish in the Big Lost River. As explained above, however, the genetic data before us do not indicate that the mountain whitefish in the Big Lost River are biologically unique or unusual compared to other populations of the species, so as to warrant consideration as a separate species or subspecies.

Furthermore, in reviewing all available information, we found no substantiated evidence of ecological, morphological, physiological, behavioral, or other characteristics that would indicate any adaptive divergence or patterns of adaptation have taken place in mountain whitefish occurring in the Big Lost River, and that might be considered additional evidence of a potentially distinct species or subspecies. We therefore conclude, based on all of the best available scientific and commercial data, that consideration of mountain whitefish in the Big Lost River as a separate species or subspecies is not warranted at this time.

Evaluation of Mountain Whitefish in the Big Lost River as a Distinct Population Segment

To interpret and implement the distinct vertebrate population segment (DPS) provisions of the Act and Congressional guidance, we, in conjunction with the National Marine Fisheries Service (now the National Oceanic and Atmospheric Administration—Fisheries), published the Policy Regarding the Recognition of Distinct Vertebrate Population Segments (DPS Policy) in the **Federal Register** on February 7, 1996 (61 FR 4722). Under the DPS policy, two basic elements are considered in the decision regarding the establishment of a population of a vertebrate species as a possible DPS. We must first determine whether the population qualifies as a DPS; this requires a finding that the population is both: (1) Discrete in relation to the remainder of the species to which it belongs; and (2) biologically and ecologically significant to the species to which it belongs. If the population meets the first two criteria under the DPS policy, we then proceed to the third element in the process, which is to evaluate the population segment's conservation status in relation to the Act's standards for listing as an endangered or threatened species. These three elements are applied similarly for additions to or removals from the Federal Lists of Endangered and Threatened Wildlife and Plants.

In accordance with our DPS Policy, we detail our analysis of whether a vertebrate population segment under consideration for listing may qualify as a DPS. As described above, we first evaluate the population segment's discreteness from the remainder of the species to which it belongs. Under the DPS policy, a population segment of a vertebrate taxon may be considered discrete if it satisfies either one of the following conditions:

(1) It is markedly separated from other populations of the same taxon as a consequence of physical, physiological, ecological, or behavioral factors. Quantitative measures of genetic or morphological discontinuity may provide evidence of this separation.

(2) It is delimited by international governmental boundaries within which differences in control of exploitation, management of habitat, conservation status, or regulatory mechanisms exist that are significant in light of section 4(a)(1)(D) of the Act.

If we determine that a vertebrate population segment is discrete under one or more of the conditions described in the Service's DPS policy, we then consider its biological and ecological significance to the larger taxon to which it belongs, in light of Congressional guidance (see Senate Report 151, 96th Congress, 1st Session) that the authority to list DPSes be used "sparingly" while encouraging the conservation of genetic diversity. In making this determination, we consider available scientific evidence of the discrete population segment's importance to the taxon to which it belongs. Since precise circumstances are likely to vary considerably from case to case, the DPS policy does not describe all the classes of information that might be used in determining the biological and ecological importance of a discrete population. However, the DPS policy describes four possible classes of information that provide evidence of a population segment's biological and ecological importance to the taxon to which it belongs. As specified in the DPS policy (61 FR 4722), this consideration of the population segment's significance may include, but is not limited to, the following:

(1) Persistence of the discrete population segment in an ecological setting unusual or unique to the taxon;

(2) Evidence that loss of the discrete population segment would result in a significant gap in the range of a taxon;

(3) Evidence that the discrete population segment represents the only

surviving natural occurrence of a taxon that may be more abundant elsewhere as an introduced population outside its historic range; or

(4) Evidence that the discrete population segment differs markedly from other populations of the species in its genetic characteristics.

A population segment needs to satisfy only one of these conditions to be considered significant. Furthermore, other information may be used as appropriate to provide evidence for significance.

Discreteness

Our DPS policy states that a population segment of a vertebrate species may be considered discrete if it is markedly separated from other populations of the same taxon as a consequence of physical, physiological, ecological, or behavioral factors. We find that mountain whitefish in the Big Lost River are discrete, since they occur in a closed basin lacking a surface connection to any major river system, and are therefore physically separated from the remainder of the populations in the taxon. We therefore conclude that mountain whitefish in the Big Lost River satisfy the discreteness criterion of the DPS policy.

Significance

Having determined that mountain whitefish in the Big Lost River meet the discreteness criterion, our DPS policy directs us to next consider available scientific evidence of the biological and ecological importance of this discrete population to the remainder of the species to which it belongs. In this case, we evaluate the biological and ecological significance of the mountain whitefish in the Big Lost River relative to mountain whitefish throughout the remainder of their range in the western United States and Canada. A discrete population is considered significant under the DPS policy if it meets one of four of the elements identified in the policy under significance, or can otherwise be reasonably justified as being significant. Here we evaluate the four potential factors suggested by our DPS policy in evaluating significance.

(1) Persistence of the Discrete Population Segment in an Ecological Setting Unusual or Unique to the Taxon

Mountain whitefish in the Big Lost River are found in a closed surface drainage basin. However, as noted earlier, mountain whitefish also occur in isolated populations in sink drainages in the Bonneville Basin in Utah and the Lahontan Basin in California and Nevada. In addition, mountain whitefish also occur in other geographically isolated settings, such as above barrier waterfalls (e.g., Big Wood River, Bull River, Thutade Lake, Henry's Fork; Whiteley *et al.* 2006, pp. 2780-2781) or above saltwater barriers to dispersal, as on the Olympic Peninsula (Whiteley *et al.* 2006, p. 2781). Therefore, the mere fact that these mountain whitefish occupy a physically isolated drainage is not in and of itself unique, unusual, or significant to the species as a whole. Although we acknowledge that Miller (2006, p. 29) describes the Big Lost River as the most unique drainage of the upper Snake River subbasin due to its geological history, we note that this reference is comparing the drainage only within the context of the subbasin in which it occurs, and not to the entire range of mountain whitefish. Miller (2006, p. 2) points out that members of the genus *Prosopium* in western North America "occupy discrete drainage basins most of which have complex geological histories." Residence in a discrete drainage basin with a complex geological history therefore appears to be a general characteristic of the genus.

We have no information indicating that the geological history of the Big Lost River drainage, even if considered unique or unusual, has in any way contributed to a unique or unusual ecological setting, such that the whitefish occurring therein are biologically or ecologically significant to the species as a whole. As noted above, there are other populations of mountain whitefish in closed "sink" drainages within the range of the species. We have no information indicating that the Big Lost River drainage is ecologically unusual or unique in any other way (for example, in terms of unique or unusual prey species, community composition, water chemistry, pathogens, or substrate), apart from its geographic setting, that may serve as an indicator of the biological or ecological importance of the population of mountain whitefish found there in relation to the species as a whole. The one exception is a suggestion that the Big Lost River may be ecologically unusual because historically it lacked other large fish species, such as trout; we discuss this suggestion below.

Gamett (2009b, p. 8) suggests that the Big Lost River may be unusual due to the fact that other than mountain whitefish, the only other large fish native to the river are sculpin, and all other mountain whitefish have evolved in the presence of other large fish such as trout and suckers. He states that all other fish species, including several species of trout, were not introduced into the Big Lost River until the arrival of the first permanent settlers in the late 1800s (Gamett 2009a, pp. 1, 8). We carefully considered the potential ecological or biological significance of this information. If there were some evidence that in the absence of trout or other large fish, mountain whitefish in the Big Lost River had somehow become specialized or otherwise adapted to this particular ecological condition in a way that set them apart from the remainder of the species, this may be of potential biological or ecological importance. There is no information to suggest that mountain whitefish in the Big Lost River became specialized or adapted in this manner. Several species of trout were introduced to the Big Lost River more than 100 years ago, with no apparent effect—behavioral, morphological, or otherwise—on the mountain whitefish population. Mountain whitefish in the Big Lost River have shown none of the responses typical of a native species responding to an unfamiliar invasive species, such as niche displacement or competitive exclusion (Mooney and Cleland 2001, pp. 5446-5451).

We found no information to suggest that mountain whitefish in the Big Lost River had become so specialized following their isolation from the remainder of the taxon that they are now incapable of coexisting with trout. Studies have shown no evidence of competition between nonnative fish and mountain whitefish, and it is considered unlikely that competition has negatively affected mountain whitefish in the Big Lost River, since declines in this mountain whitefish population were only reported relatively recently, and were not observed subsequent to the introduction of trout over 100 years ago (IDFG 2007a, p. 22). Therefore, although the information that mountain whitefish in the Big Lost River were isolated from trout and other potentially predatory or competitive fishes up until approximately 100 years ago is possibly of some biological interest, we have no evidence that it represents any ecological significance of the setting, or has resulted in any unique or unusual adaptations or trait shifts in the mountain whitefish, such that the population of mountain whitefish in the Big Lost River would be considered biologically or ecologically significant to the species throughout its range.

On the basis of an evaluation of the best available scientific information, we have determined that the Big Lost River does not represent an ecological setting that is unusual or unique for mountain whitefish relative to the taxon's range in western North America. Other

populations of mountain whitefish occur in closed drainage basins within the range of the species and other populations of mountain whitefish occur in settings that are physically or geographically isolated (and therefore reproductively isolated) from the remainder of the taxon. Although mountain whitefish may have lived in the Big Lost River since the estimated time of their physical isolation some 10,000 years ago in the absence of trout and other large fish, we have no evidence that this past ecological condition is of any biological or ecological significance. There is no evidence that the introduction of multiple species of trout to the Big Lost River over 100 years ago had any effect on the mountain whitefish population, suggesting that their previous absence had not altered the mountain whitefish's behavior or ecology in any biologically significant ways, or resulted in any locally adapted traits. None of the information available to us indicates that the setting of the Big Lost River is unique or unusual in any other aspect of its ecology; we have no information suggesting the Big Lost River is unusual or unique in any of its ecological characteristics such as water chemistry, temperature, substrate, pathogens, or prey species utilized. We conclude that mountain whitefish occurring in the Big Lost River do not occupy an unusual or unique ecological setting such as to be biologically or ecologically significant to the remainder of the taxon to which they belong. We therefore conclude that mountain whitefish in the Big Lost River do not meet the significance criterion of the DPS policy based on this factor.

(2) Evidence That Loss of the Discrete Population Segment Would Result in a Significant Gap in the Range of a Taxon

Mountain whitefish are found throughout mountainous areas of western North America in the United States and Canada. They are considered common and widely distributed throughout the upper Snake and Missouri rivers to the east and northeast, the lower Snake and Columbia rivers to the west and northwest, and the Bonneville and Lahontan basins to the south and southwest. In southern Idaho alone, the population of mountain whitefish is estimated to be 4.7 ± 1.8 million, based on a study of 119,453 km (74,225 mi) of stream surveys (Meyer *et al.* 2009, p. 760). The population of mountain whitefish in the Big Lost River is estimated to be 12,639 adults, occupying 135 km (83 mi) of stream (Garren *et al.* 2009, p. 6). The fraction of the population and its range represented by the mountain whitefish in the Big Lost River is very small when considered relative to the remainder of the species' range in southern Idaho. When compared to the range of mountain whitefish throughout western North America, we find that the gap in the range that would result from the loss of the single population of mountain whitefish in the Big Lost River of Idaho would not be significant, because it is so very small. We therefore conclude that mountain whitefish in the Big Lost River do not meet the significance criterion of the DPS policy based on this factor.

(3) Evidence That the Discrete Population Segment Represents the Only Surviving Natural Occurrence of a Taxon That May Be More Abundant Elsewhere as an Introduced Population Outside Its Historical Range

This criterion does not apply to mountain whitefish in the Big Lost River because it is not a population segment representing the only surviving natural occurrence of the taxon that may be more abundant elsewhere as an introduced population outside its historical range. We therefore conclude that mountain whitefish in the Big Lost River do not meet the significance criterion of the DPS policy based on this factor.

(4) Evidence That the Discrete Population Segment Differs Markedly from Other Populations of the Species in Its Genetic Characteristics

We evaluated information available to us regarding the genetic characteristics of mountain whitefish in the Big Lost River in our evaluation of this population as a potentially separate species or subspecies (see "*Evaluation of Mountain Whitefish in the Big Lost River as a Species or Subspecies*" above). Our conclusions from this evaluation apply here as well, and we include the above discussion under this factor by reference, although under the DPS policy we measure the evidence against a slightly different standard (potential biological and ecological significance to the species as a whole, as reflected by marked differences in its genetic characteristics). Our evaluation of the best available scientific information, as detailed above, does not support the contention that the genetic characteristics of mountain whitefish in the Big Lost River differ markedly from those of other populations relative to levels of divergence among other populations of mountain whitefish. On the contrary, the information indicates that the genetic distance observed between mountain whitefish in the Big Lost River and surrounding populations is less than that observed between other species or subspecies of salmonids to which it has been compared (Campbell and Kozfkay 2006, p. 7), and is also less than that observed between individual fish within some populations of mountain whitefish in other areas (Miller 2006, Figs. 15 and 16). As detailed above, the evidence indicates the degree of genetic differentiation between mountain whitefish in the Big Lost River and surrounding populations is no greater than that observed between many other populations of mountain whitefish throughout the range of the species (Campbell and Kofzkay 2006, Figure 3, p. 8; Miller 2006, pp. 27-35; Whiteley *et al.* 2006, p. 2781). When measuring this evidence against the DPS standard, we looked for evidence of marked differentiation of mountain whitefish in the Big Lost River when compared to other populations of mountain whitefish throughout the range of the species. We conclude the degree of genetic divergence observed in this population does not rise to the level of significance to the taxon as a whole.

As noted above, the most recent genetic work (Miller 2006, pp. 27-35; Whiteley *et al.* 2006, pp. 2780-2781) indicates there are several physically isolated populations of mountain whitefish that, as expected under a scenario of reduced gene flow, show some divergence from their presumed common populations of origin. Furthermore, the research demonstrates that most populations of mountain whitefish sampled have diverged to the point of possessing unique haplotypes, and other populations of mountain whitefish exhibit a greater degree of genetic divergence than observed in mountain whitefish from the Big Lost River (Campbell and Kozfkay 2006, p. 7). Mountain whitefish, in general, appear to exhibit a high degree of genetic structure between populations, as observed in many species of freshwater fishes (Gyllensten 1985, p. 691; Allendorf and Waples 1996, p. 257; Whiteley *et al.* 2006, p. 2783). More importantly, however, scientific information to indicate that the genetic divergence observed in these populations confers any fitness advantage or otherwise contributes to the biological or ecological importance of this population, in relation to the taxon as a whole, is lacking. Particularly when a population has gone through a presumed bottleneck, as evidenced by the lack of microsatellite DNA variation observed in mountain whitefish in the Big Lost River, the amount of genetic

distance is expected to increase very quickly (Hedrick 1999, p. 315). Such increased distance does not, however, automatically confer biological significance in the absence of any indication of local adaptive differences.

The Service fully supports conserving the mountain whitefish as a component of the native biodiversity of the Big Lost River. However, whether mountain whitefish in the Big Lost River are deserving of conservation in the name of preserving native biodiversity is not the same question as whether the mountain whitefish found in the Big Lost River may qualify as a listable entity under the Act. Additionally, under the "significance" prong of the DPS policy, we are required to apply a different and specific set of criteria. We find that, based on the genetic information available and as detailed in our analysis in the section "*Evaluation of Mountain Whitefish in the Big Lost River as a Species or Subspecies*" above, mountain whitefish in the Big Lost River do not differ markedly from other populations of the species in their genetic characteristics such that they are biologically or ecologically significant to the species as a whole. Rather, all available information indicates the level of genetic differentiation is not unusual for mountain whitefish, when considered in the context of the species across its range. We acknowledge that mountain whitefish in the Big Lost River may be genetically distinguished from other nearby populations, but we do not consider this degree of divergence to be a marked level of differentiation, particularly in light of the fact that other populations of mountain whitefish, such as those in the Boise River (Campbell and Kofzkay 2006, Figure 3. p. 8) and Skokomish River (Miller 2006, Figure 15c, p. 118), show greater degrees of difference.

We conclude mountain whitefish, in general, exhibit a high degree of genetic structure, and the mountain whitefish in the Big Lost River are not any more different or significant to the taxon as a whole than any of several other populations of mountain whitefish throughout the species' range. The current genetic characteristics likely reflect a historical population bottleneck and the overall isolation of the population, and we have no supportable evidence of any corresponding phenotypic divergence that may be biologically meaningful or indicative of local adaptation, such that it should be considered biologically or ecologically significant to the taxon as a whole. With the additional consideration that the authority to list DPSes be used "sparingly," we conclude that mountain whitefish occurring in the Big Lost River do not meet the significance criterion of the DPS policy based on this factor, due to the number of populations rangewide that exhibit similar characteristics.

DPS Conclusion

Our DPS policy directs us to evaluate the significance of a discrete population in the context of its biological and ecological significance to the remainder of the species to which it belongs. Based on an analysis of the best available scientific and commercial data, we conclude that mountain whitefish in the Big Lost River are discrete due to their physical separation from the remainder of the taxon. Mountain whitefish in the Big Lost River do not, however, meet any of the four identified elements in the DPS policy for determining significance, and we have no information suggesting the population could otherwise be reasonably justified as being significant. Because the mountain whitefish occupying the Big Lost River fail to meet our significance criterion for a DPS under our policy, we conclude this discrete population is not significant to the taxon to which it belongs, and therefore does not qualify as a DPS under the Act.

Listable Entity Determination

We have determined that mountain whitefish occurring in the Big Lost River do not constitute a species or subspecies separate from the more widespread *Prosopium williamsoni*. Although the population is considered discrete, the available scientific evidence indicates this population is not biologically or ecologically significant to the species as a whole according to the criteria outlined in our 1996 DPS policy; consequently this population cannot be considered a DPS. We therefore find the mountain whitefish in the Big Lost River do not qualify as a listable entity (species, subspecies, or DPS) under section 3(16) of the Act. Because we found that the population segment does not meet the significance element and therefore does not qualify as a DPS under the Service's DPS policy, we will not proceed with an evaluation of the status of the population segment under the Act.

Significant Portion of the Range Analysis

The Act defines an endangered species as one "in danger of extinction throughout all or a significant portion of its range," and a threatened species as one "likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range." Having determined that the mountain whitefish in the Big Lost River is not a listable entity (species, subspecies or DPS) under the Act, we next consider whether the mountain whitefish in the Big Lost River constitutes a significant portion of the species' range and, if so, whether it is in danger of extinction or is likely to become endangered in the foreseeable future. We consider a portion of a species' range to be significant if it is part of the current range of the species and is important to the conservation of the species because it contributes meaningfully to the representation, resiliency, or redundancy of the species. The contribution must be at a level such that its loss would result in a decrease in the ability of the species to persist.

The first step in determining whether a species is endangered or threatened in a significant portion of its range is to identify any portions of the range of the species that warrant further consideration. The range of a species can theoretically be divided into portions in an infinite number of ways. However, there is no purpose to analyzing portions of the range that are not reasonably likely to be significant and endangered or threatened. To identify those portions that warrant further consideration, we determine whether there is substantial information indicating that: (1) The portions may be significant, and (2) the species may be in danger of extinction there or likely to become so within the foreseeable future. In practice, a key part of this analysis is whether the threats are geographically concentrated in some way. If the threats to the species are essentially uniform throughout its range, no portion is likely to warrant further consideration. Moreover, if any concentration of threats applies only to portions of the species' range that are not significant, such portions will not warrant further consideration.

If we identify any portions of a species' range that warrant further consideration, we then determine whether the species is endangered or threatened in these portions of its range. Depending on the biology of the species, its range, and the threats it faces, it may be more efficient in some cases for the Service to address the significance question first, and in others the status question first. Thus, if the Service determines that a portion of the range is not significant, the Service need not determine whether the species is endangered or threatened there; conversely, if the Service determines that the species is not endangered or threatened in a portion of its range, the Service need not determine if that portion is significant. However, if the

Service determines that both a portion of the range of a species is significant and the species is endangered or threatened there, the Service will specify that portion of the range as endangered or threatened under section 4(c)(1) of the Act.

The terms "resiliency," "redundancy," and "representation" are intended to be indicators of the conservation value of portions of the species' range. Resiliency of a species allows the species to recover from periodic disturbance. A species will likely be more resilient if large populations exist in high-quality habitat that is distributed throughout the range of the species in such a way as to capture the environmental variability within the range of the species. It is likely that the larger size of a population will help contribute to the viability of the species. Thus, a portion of the range of a species may make a meaningful contribution to the resiliency of the species if the area is relatively large and contains particularly high-quality habitat or if its location or characteristics make it less susceptible to certain threats than other portions of the range. When evaluating whether or how a portion of the range contributes to resiliency of the species, it may help to evaluate the historical value of the portion and how frequently the portion is used by the species. In addition, the portion may contribute to resiliency for other reasons—for instance, it may contain an important concentration of certain types of habitat that are necessary for the species to carry out its life-history functions, such as breeding, feeding, migration, dispersal, or wintering.

Redundancy of populations may be needed to provide a margin of safety for the species to withstand catastrophic events. This does not mean that any portion that provides redundancy is a significant portion of the range of a species. The idea is to conserve enough areas of the range such that random perturbations in the system act on only a few populations. Therefore, each area must be examined based on whether that area provides an increment of redundancy that is important to the conservation of the species.

Adequate representation insures that the species' adaptive capabilities are conserved. Specifically, the portion should be evaluated to see how it contributes to the genetic diversity of the species. The loss of genetically based diversity may substantially reduce the ability of the species to respond and adapt to future environmental changes. A peripheral population may contribute meaningfully to representation if there is evidence that it provides genetic diversity due to its location on the margin of the species' habitat requirements.

Applying the process described above, we first evaluated whether the population of mountain whitefish occurring in the Big Lost River constitutes a significant portion of the range of the species. As noted earlier, mountain whitefish are found throughout mountainous areas of western North America in Canada and the United States. In the United States, they are known to occur in the States of Washington, Oregon, Idaho, Wyoming, Montana, Colorado, Utah, Nevada, and California (NatureServe 2009). Mountain whitefish are relatively common and widespread in most river basins in Idaho (AFS 2007, p. 29), with stream size documented to be an important factor influencing both the distribution and abundance of mountain whitefish in the upper Snake River basin (Meyer *et al.* 2009, p. 762; Maret *et al.* 1997, p. 213). Within the State of Idaho, mountain whitefish are abundant where they occur. For example, during a recent survey of 2,043 study sites in Idaho across 119,453 km (74,225 mi) of stream in 21 major river drainages in the upper Snake River basin (excluding the Big Lost River), 767 sites in 11 of the 21 river drainages were documented to support mountain whitefish (Meyer *et al.* 2009, p. 760). From this survey the authors also estimated the abundance of mountain whitefish to be 4.7 ± 1.8 million in southern Idaho, occurring mostly in streams wider than 15 m (49 ft) (Meyer *et al.* 2009, p. 764). The current population of mountain whitefish in the Big Lost River is estimated to be 12,639 adults (Garren *et al.* 2009, p. 6) occurring in approximately 135 km (83 mi) of stream. The mountain whitefish population occurring in the Big Lost River thus represents less than 0.5 percent of the total estimated numbers of mountain whitefish in southern Idaho, and occupies approximately 0.1 percent of the stream miles of the survey. Extending this comparison to consider mountain whitefish in the Big Lost River relative to the taxon throughout its range in western North America, the fraction of the species' total population represented by mountain whitefish in the Big Lost River would be extremely small.

Although the majority of mountain whitefish occur in riverine environments, some populations are restricted to lakes or isolated sink basins. The fact that mountain whitefish in the Big Lost River are found in a geographically isolated drainage is not significant to the species as a whole, as other populations of mountain whitefish also occur in physically isolated settings throughout the range of the species, such as the Lahontan Basin in California and Nevada, and the Bonneville Basin in Utah. As described earlier in our DPS analysis, we could not find any information that the Big Lost river drainage is ecologically unusual, unique, or otherwise significant to the species as a whole in any way (for example, in terms of atypical prey species, water chemistry, or substrate). Based on the best available information we have on mountain whitefish, the population that occurs in the Big Lost River does not appear to exist in an unusual or unique ecological setting, or contain a large portion of the habitat or individuals relative to the taxon as a whole. Rather, the Big Lost River appears to constitute an extremely small portion of the species' overall habitat and number of individuals when compared to the Upper Snake River basin population of mountain whitefish, and even more so when compared to mountain whitefish rangewide throughout western North America. We thus do not consider mountain whitefish in the Big Lost River to provide an important component of resiliency to the species as a whole.

In terms of representation, mountain whitefish occurring in the Big Lost River are not recognized as a species or subspecies by the relevant taxonomic authorities, State of Idaho, and others (Nelson *et al.* 2004, p. 86; IDFG 2009; ITIS 2009; NatureServe 2009), and the best available information indicates that the genetic distance observed between mountain whitefish in the Big Lost River and surrounding populations is substantially less than that observed between other species or subspecies of salmonids (Campbell and Kozfkay 2006, p. 7). Likewise, as discussed above, information from the most current genetic assessments of mountain whitefish does not indicate this population is markedly different or unique in terms of its genetic characteristics, any more so than many other populations of mountain whitefish throughout the range of the species. The available evidence indicates that there is a high degree of genetic structuring between populations of mountain whitefish, as is frequently observed in populations of freshwater salmonids (Allendorf and Waples 1996, p. 257; Miller 2006, p. 25; Whiteley *et al.* 2006, p. 2783). The degree of genetic differentiation between mountain whitefish in the Big Lost River and surrounding populations is no greater than that observed between other

populations of mountain whitefish (Campbell and Kozfkay 2006, Figure 3, p. 8; Miller 2006, pp. 22, 29-30; Whiteley *et al.* 2006, p. 2781). We thus do not consider mountain whitefish in the Big Lost River to make a significant contribution to the representation of the species as a whole.

Finally, mountain whitefish in the Big Lost River group with the major genetic assemblage of the Upper Snake River and are most genetically similar to that group. We find it unlikely, however, that mountain whitefish in the Big Lost River would provide any meaningful redundancy to the species if other populations of mountain whitefish in the Upper Snake River basin were to be extirpated by a catastrophic event. The Big Lost River is geographically separated from the Snake River and other streams. It is therefore unlikely that fish in the Big Lost River would be a significant source of mountain whitefish to recolonize streams within the Upper Snake River.

We have determined the mountain whitefish in the Big Lost River do not provide a meaningful contribution to the species as a whole with regard to redundancy, resiliency, and representation of mountain whitefish throughout their range in western North America. Based upon this determination, we find the mountain whitefish in the Big Lost River do not represent a significant portion of the species' range. Having reached this conclusion, we will not further evaluate the status of mountain whitefish in the Big Lost River as a significant portion of the range of the species.

Finding

After a thorough review of the best scientific and commercial information available, we find that listing the mountain whitefish in the Big Lost River of Idaho is not warranted. We have determined the mountain whitefish in the Big Lost River are not a species, subspecies, or DPS as defined by section 3(16) of the Act, and therefore are not eligible for listing. In addition, we have further determined the mountain whitefish in the Big Lost River do not represent a significant portion of the range of the species *Prosopium williamsoni*. We therefore find the mountain whitefish in the Big Lost River are not eligible for the protections of the Act. Consequently, we are not proceeding with an evaluation of the conservation status of mountain whitefish in the Big Lost River relative to the Act's standards for listing as endangered or threatened. This finding concludes our status review and constitutes our final response to the petition.

We strongly support ongoing conservation efforts to restore habitat for the mountain whitefish and other native species residing in the Big Lost River, and to monitor the status, trends, and threats to this native population of fish. We emphasize that our determination that mountain whitefish in the Big Lost River do not constitute a listable entity under the Act should in no way diminish the value of conserving this population as an important component of the natural community. We encourage all interested parties to assist with the management and conservation of mountain whitefish in the Big Lost River basin and to preserve all elements of native biodiversity in this ecosystem.

We request that you submit any new information concerning the status of, or threats to, the mountain whitefish in the Big Lost River basin to our Idaho Fish and Wildlife Office (see **ADDRESSES** section) whenever it becomes available. New information will help us monitor the mountain whitefish in the Big Lost River basin and encourage their conservation.

References Cited

A complete list of all references cited in this document is available on the Internet at *http://www.regulations.gov* and upon request from the Idaho Fish and Wildlife Office (see **ADDRESSES** section).

Authors

The primary authors of this document are staff members of the Idaho Fish and Wildlife Office of the U.S. Fish and Wildlife Service (see **ADDRESSES** section).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended

(16 U.S.C. 1531 *et seq.*).

Dated: March 9, 2010.

Daniel M. Ashe,

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

[FR Doc. 2010–7674 Filed 4–5–10; 8:45 am]

BILLING CODE 4310–55–S

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS-R2-ES-2010-0022]
[MO 92210-0-0008]

Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition to List a Stonefly (*Isoperla jewetti*) and a Mayfly (*Fallceon eatoni*) as Threatened or Endangered with Critical Habitat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90–day petition finding.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 90–day finding on a petition to list a stonefly (*Isoperla jewetti*) and a mayfly (*Fallceon eatoni*) as threatened or endangered under the Endangered Species Act of 1973, as amended. Based on our review, we find that the petition does not present substantial information indicating that listing either of the species may be warranted at this time. However, we ask the public to submit to us any new information that becomes available concerning the status of, or threats to, the stonefly or the mayfly or their habitat at any time.

DATES: The finding announced in this document was made on April 6, 2010.

ADDRESSES: This finding is available on the Internet at *http://www.regulations.gov* at Docket No. FWS-R2-ES-2010-0022. 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, Southwest Regional Ecological Services Office, 500 Gold Avenue SW, Albuquerque, NM 87102. Please submit any new information, materials, comments, or questions concerning this finding to the above address.

FOR FURTHER INFORMATION CONTACT: Nancy Gloman, Assistant Regional Director, Southwest Regional Ecological Services Office; telephone 505/248-6920; facsimile 505/248-6788. 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 Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), requires that we

make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that a petitioned action may be warranted. We base this finding on information provided in the petition, supporting information submitted with the petition, and information otherwise readily available in our files. The Act requires that, to the maximum extent practicable, we make this finding within 90 days of our receipt of the petition, and publish our notice of this finding promptly in the **Federal Register**.

Our standard for substantial information within the Code of Federal Regulations (CFR) with regard to a 90–day petition finding is "that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted" (50 CFR 424.14(b)). If we find that substantial scientific or commercial information was presented, the Act requires that we promptly review the status of the species (status review), which is subsequently summarized in our 12–month finding.

Petition History

On June 25, 2007, we received a formal petition dated June 18, 2007, from Forest Guardians (now WildEarth Guardians), requesting that we, the U.S. Fish and Wildlife Service (Service), do the following: (1) Consider all full species in our Southwest Region ranked as G1 or G1G2 by the organization NatureServe, except those that are currently listed, are proposed for listing, or are candidates for listing; and (2) list each species under the Act as either endangered or threatened with critical habitat. The petition stated that it was incorporating by reference all analyses, references, and documentation provided by NatureServe in its online database at *http://www.natureserve.org/*. The petition clearly identified itself as a petition and included the appropriate identification information, as required in 50 CFR 424.14(a). In a July 11, 2007, letter to petitioner, we acknowledged receipt of the petition and stated that the petition was under review by staff in our Southwest Regional Office.

We received a second petition, dated June 12, 2008, from WildEarth Guardians on June 18, 2008, requesting emergency listing of 32 species under the Act, including this stonefly and mayfly. We provided a response to this petition on July 22, 2008, indicating that we had reviewed the information presented in the petition and the immediacy of possible threats, and had determined that issuing an emergency regulation temporarily listing the species under section 4(b)(7) of the Act was not warranted. We also noted that we would continue to review these species through the petition process.

On March 19, 2008, WildEarth Guardians filed a complaint alleging that the Service failed to comply with its mandatory duty to make a preliminary 90–day finding on the June 18, 2007, petition to list 475 southwestern species. We subsequently published an initial 90–day finding for 270 of the 475 petitioned species on January 6, 2009, concluding that the petition did not present substantial information that listing of those species may be warranted (74 FR 419). The stonefly and mayfly were included in the January 6, 2009, finding with the conclusion that the petition did not present substantial information indicating that listing may be warranted.

On May 26, 2009, and May 12, 2009, WildEarth Guardians filed complaints challenging the negative 90–day findings for the stonefly and mayfly, respectively. We agreed pursuant to a stipulated settlement agreement to reassess the petition with respect to the stonefly and mayfly and issue new 90–day findings. This finding fulfills our obligations under the petition.

Evaluation of Information for this Finding

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations at 50 CFR 424 set forth the procedures for adding a species to, or removing a species from, the Federal Lists of Endangered and Threatened Wildlife and Plants. We determine whether a species is an endangered or threatened species due to one or more of the five factors described in section 4(a)(1) of the Act: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence.

In making this 90–day finding, we evaluated whether information regarding threats to the stonefly and the mayfly, as presented in the June 18, 2007, and June 12, 2008, petitions and other information in our files, is substantial, thereby indicating that the petitioned action may be warranted. Our evaluation of this information is presented below. For each species, we fully evaluated all information available to us through the NatureServe website, information cited in NatureServe, and other information readily available in our files.

We followed regulations at 50 CFR 424.14(b) in evaluating the information presented in the petitions. Paragraph (b)(1) of that section provides that the Service must consider whether the petition has presented substantial information indicating to a reasonable person that the petitioned action may be warranted. To determine that the species may warrant listing as Threatened or Endangered under the Act, as requested by the petitioners, the petition must present substantial information indicating that the species may be at risk of extinction now or in the foreseeable future.

Stonefly (no common name) (*Isoperla jewetti*)

This stonefly is reported from three sites in Texas, Colorado, and New Mexico (NatureServe 2007). The species was originally described from specimens collected in 1939 in El Paso County, Texas (NatureServe 2007). A single specimen was collected in 1938 in Huerfano County, Colorado (NatureServe 2007). NatureServe (2007) notes that no other specimens have been documented from either of these sites, despite repeated survey efforts, although the information cited in NatureServe (2007) only discussed additional survey efforts at the Texas site. Immature specimens were collected at a third site in 1978 and 1980 from the Rio Grande, upstream from Radium Springs, Dona Ana County, New Mexico (Jacobi *et al.* 2005).

The petitioners claim that agriculture is a threat to the stonefly; however, the mechanism of agricultural impact is unclear from the petition and information presented by the petitioner. The petitioners state that the stonefly is threatened by "habitat conversion to agriculture," but provide no citation nor support for this statement. NatureServe (2007) indicates that the El Paso site "has been completely destroyed by agriculture," but again provides no citations nor support for this statement. Szczythoko and Stewart (1979), referenced in NatureServe (2007), indicate that pesticides, often associated with agriculture, were used heavily in irrigation ditches and canals in the area and may have led to extirpation of this population. However, Jacobi *et al.* (2005) indicate more survey work is needed to verify that the El Paso population has in fact been extirpated. Concerning the population near Radium Springs, New Mexico, Jacobi *et al.* (2005) note that the site is in a highly regulated river downstream from concentrated agriculture. Jacobi *et al.*

(2005) provide no additional discussion as to whether they interpret occurrence in a regulated river or proximity to agriculture to be a threat to this species. No information regarding any threats to the site in Colorado was presented.

The petitioners cite the New Mexico Department of Game and Fish's (NMDGF) Comprehensive Wildlife Conservation Strategy for New Mexico. The conservation strategy identifies Species of Greatest Conservation Need (SGCN) and identifies conservation actions intended to conserve the species and their habitats. The conservation strategy states that, "New Mexico's SGCN are species that are indicative of the diversity and health of the State's wildlife that are associated with key habitats, including low and declining populations and species of high recreational, economic, or charismatic value (NMDGF 2005)." The petitioners claim that the stonefly's inclusion in this list of SGCN is evidence that the species meets the definition of a threatened species under the Act. The conservation strategy notes that the specific factors influencing the integrity of this species are "hydrologic modification, streamflow regulations and manipulation, water quality (NMDGF 2005);" however, they provide no citations nor explanation for how these factors may have affected or may be affecting the species or its habitat. In fact, the conservation strategy acknowledges multiple information gaps including that the "life history of most of the SGCN, including distribution, abundance, status and trends, habitat requirements, and movement information is poorly understood (NMDGF 2005)."

In considering what factors (e.g., agricultural impacts, water issues) might constitute threats, we must look beyond the mere exposure of the species to the factor to determine whether the species responds to the factor in a way that may cause actual impacts to the species. If there is exposure to a factor, but no response is observed, or only a positive response is observed, that factor is not considered to be a threat. If there is exposure and the species responds negatively, the factor is considered to be a threat to some degree, and we then attempt to determine how significant a threat it may be. The mere identification of factors that could affect a species negatively is not sufficient to allow us to find that listing under the Act may be appropriate; we interpret the Act to require that the petition include information that these factors are likely operative threats that act on the species to the point that the species may meet the definition of endangered or threatened under the Act. We have determined that the information reviewed concerning agricultural impacts and water issues does not meet the substantial-information standard. We do not consider the assertion of possible extirpation of a historical site due to the past use of pesticides to constitute a current or future threat to the species as a whole, because no information was provided to suggest that the pesticide threat is still affecting the species or is likely to do so in the future. This is particularly so given the conclusory nature of the reference to pesticides (i.e., there was no indication of what agricultural practices the pesticide use was tied to, what pesticides were used, how the pesticides got to the habitat in question, or how they may have affected the species or its habitat). Presentation of some information along these lines would have allowed the Service to evaluate the likelihood that the threat was continuing or was likely to occur in the future. Similarly, we do not consider the information presented concerning water issues to be significant because there is no information to indicate how these factors may be affecting the species and its habitat or are expected to affect the species and its habitat in the future.

Szczythoko and Stewart (1979), cited in NatureServe (2007), note that the stonefly is a rare species. The petitioners assert that, given the restricted known occurrence, a single event (e.g., drought, flood, habitat destruction, pollution, exotic species), could result in extinction. However, in order to determine that there is substantial information that a species may be endangered or threatened, we have to determine that the species actually may be subject to threats (such as the single events listed above). Those threats may be based on environmental or biological factors. In this case, we have no substantial information on threats that we can link to the status of the species in order to make a substantial finding.

When determining whether a species may warrant listing under the Act, it is important to distinguish between the mere presence of threats either now or in the foreseeable future, and the susceptibility of a species to those threats, in order to determine whether those threats may likely impact the species and potentially cause it to be in danger of extinction now or in the foreseeable future. Because rare species may be vulnerable to single event occurrences, as suggested above, it is important to have information on how likely it is such an event may occur (such as referencing historical frequency of that event), whether the specific event might impact the species (for example, whether flooding would actually impact the stonefly), what form that impact would take and by what mechanism it might affect the species (in other words, what specific life history function, habitat requirement, or other need of the species might be impacted and how), and whether the possible impact would likely result in a significant threat to the species (to what extent might the event be a negative impact on the species). In order to determine that there is substantial information that the species may be in danger of extinction now or in the foreseeable future due to the above factors, available information should be specific to the species and should reasonably suggest that these factors may be operative threats that act on the species to the point that it may warrant protection under the Act. Broad statements about a generalized threat to rare species do not constitute substantial information that listing may be warranted. Rather, to raise a substantial question as to whether a species may be threatened with extinction now or in the foreseeable future, information specific to the species and situation (such as life-history characteristics and measures of rarity) should be linked to potential threats. It is not sufficient to say that because a species is rare it is threatened by general stochastic events such as natural catastrophes. There must be some likely stressor acting on the species or its habitat that may affect a species' status such that the species may be threatened now or within the foreseeable future.

Information on a species' rarity is relevant to the conservation status of a species. Generally speaking, a species that has a geographically restricted range is likely to be more susceptible to environmental threats (e.g., fire, flood, drought, human land use), should they occur, than a species that is not rare because one fire or flood could affect a larger total percentage of the range of a rare species than of a widespread species. However, we have no substantial information in this case to evaluate whether any environmental threats are currently acting upon this potentially rare species in a negative way, or are reasonably likely to act on it in the future. Stochastic threats (e.g., catastrophic fire and flood) are unpredictable by nature; however, there must be some information to indicate that the habitats are at least susceptible to catastrophic fire, flood, etc., and that

the species would be negatively affected by those events. The fact that a rare species is potentially vulnerable to stochastic processes does not necessarily mean that it is reasonably likely to experience, or have its status affected by, a given stochastic process within timescales that are meaningful for under the Act.

A species that has always been rare, yet continues to survive, could be well-equipped to continue to exist into the future. Many naturally rare species have persisted for long periods within small geographic areas, and many naturally rare species exhibit traits that allow them to persist despite their small population sizes. Consequently, that fact that a species is rare does not necessarily indicate that it may be in danger of extinction in the foreseeable future.

The petitioner does not provide information to indicate that the range or abundance of the stonefly has been significantly curtailed. In other words, we do not know if the species has always been rare or if it was once more widespread. There are many features of a species' biology, ecology, and habitat that will modify its vulnerability to each threat such as the life history, population structure, geographic location, and characteristics of its local landscape. Whether a given rare species is affected by environmental or biological factors, and the magnitude of the effect of these factors on the species' ability to persist into the foreseeable future, is species- and context-specific. The petitioners have not presented even minimal information about the biology and ecology of the species to indicate that there may be any substantial genetic or demographic impacts to this potentially rare species.

We do not find that rarity alone, without corroborating information regarding threats, meets the substantial information threshold indicating that the species may warrant listing. In the absence of information identifying threats to the species and linking those threats to the rarity of the species, the Service does not consider rarity alone to be a threat. As noted above, a species may be determined to be an endangered or threatened species due to one or more of the five factors used to evaluate threats as described in section 4(a)(1) of the Act. We do not find substantial information regarding threats to the stonefly under any of the five factors.

Based on our evaluation of the information provided in the petition, we have determined that the petition does not present substantial information to indicate that listing the stonefly may be warranted.

Mayfly (no common name) (*Fallceon eatoni*)

This mayfly was originally known from an 1892 collection from northern Sonora, Mexico (McCafferty 2006). No other occurrence was recorded until a single specimen was identified as *Fallceon eatoni* from among various specimens of other species originally collected in Salt River Canyon, Gila County, Arizona in 2005 (McCafferty 2006). An additional occurrence from 1969 was reported recently in Cottonwood Canyon in the San Bernardino Mountains in Riverside County, California (Meyer and McCafferty 2008).

The petitioners discuss Arizona's Comprehensive Wildlife Conservation Strategy (Arizona Game and Fish Department 2005) and claim that the species is threatened by inadequate regulatory mechanisms because the mayfly is not included in the conservation strategy. However, there must first be a potential threat acting on the species that requires adequate regulation in order to claim that regulation of that potential threat is inadequate. We do not consider the information presented concerning inadequate regulatory mechanisms to be substantial information indicating that the mayfly may warrant listing.

The petitioners claim that the mayfly is vulnerable to extinction due to its known occurrence at only one site. The petitioners assert that, given the restricted known occurrence, a single event (e.g., drought, flood, habitat destruction, pollution, exotic species), could result in extinction. McCafferty (2006), cited in NatureServe (2007), notes that, "Because of possible low numbers and restricted distribution, it may be considered a species of environmental concern." However, in our assessment of threats, we consider whether a species might be rare and whether rarity might make it more vulnerable to threats. In order to determine that there is substantial information that a species may be endangered or threatened, we have to determine that the species actually may be subject to threats (such as the single events listed above). Those threats may be based on environmental or biological factors. In this case, we have no substantial information on threats that we can link to the status of the species in order to make a substantial finding.

When determining whether a species may warrant listing under the Act, it is important to distinguish between the mere presence of threats either now or in the foreseeable future, and the susceptibility of a species to those threats, in order to determine whether those threats may likely impact the species and potentially cause it to be in danger of extinction now or in the foreseeable future. Because rare species may be vulnerable to single event occurrences, as suggested above, it is important to have information on how likely it is such an event may occur (such as referencing historical frequency of that event), whether the specific event might impact the species (for example, whether flooding would actually impact the mayfly), what form that impact would take and by what mechanism it might affect the species (in other words, what specific life history function, habitat requirement, or other need of the species might be impacted and how), and whether the possible impact would likely result in a significant threat to the species (to what extent might the event be a negative impact on the species). In order to determine that there is substantial information that the species may be in danger of extinction now or in the foreseeable future due to the above factors, available information should be specific to the species and should reasonably suggest that these factors may be operative threats that act on the species to the point that it may warrant protection under the Act. Broad statements about a generalized threat to rare species do not constitute substantial information that listing may be warranted. Rather, to raise a substantial question as to whether a species may be threatened with extinction now or in the foreseeable future, information specific to the species and situation (such as life-history characteristics and measures of rarity) should be linked to potential threats. It is not sufficient to say that because a species is rare it is threatened by general stochastic events such as natural catastrophes. There must be some likely stressor acting on the species or its habitat that may affect a species' status such that the species may be threatened now or within the foreseeable future.

Information on a species' rarity is relevant to the conservation status of a species because small populations are generally at greater risk of extinction than are large populations. Generally speaking, a species that is rare is likely to be more susceptible to environmental threats (e.g., fire, flood, drought, human land use), should they occur, than a species that is not rare because one fire or flood could affect a larger total percentage of the range of a rare species than of a widespread species. However, we have no substantial information in

this case to evaluate whether any environmental threats are currently acting upon this potentially rare species in a negative way, or are reasonably likely to act on it in the future. Stochastic threats (e.g., catastrophic fire and flood) are unpredictable by nature; however, there must be some information to indicate that the habitats are at least susceptible to catastrophic fire, flood, etc. and that the species would be negatively affected by those events. The fact that a rare species is potentially vulnerable to stochastic processes does not necessarily mean that it is reasonably likely to experience, or have its status affected by, a given stochastic process within timescales that are meaningful under the Act.

A species that has always been rare, yet continues to survive, could be well-equipped to continue to exist into the future. Many naturally rare species have persisted for long periods within small geographic areas, and many naturally rare species exhibit traits that allow them to persist despite their small population sizes. Consequently, the fact that a species is rare does not necessarily indicate that it may be in danger of extinction in the foreseeable future.

The petitioner does not provide information to indicate that the range or abundance of the mayfly has been significantly curtailed. In other words, we do not know if the species has always been rare or if it was once more widespread. There are many features of a species' biology, ecology, and habitat that will modify its vulnerability to each threat such as the life history, population structure, geographic location, and characteristics of its local landscape. Whether a given rare species is affected by environmental or biological factors, and the magnitude of the effect of these factors on the species' ability to persist into the foreseeable future, is species- and context-specific. The petitioners have not presented even minimal information about the biology and ecology of the species to indicate that there may be any substantial genetic or demographic impacts to this potentially rare species.

We do not find that rarity alone, without corroborating information regarding threats, meets the substantial information threshold indicating that the species may warrant listing. In the absence of information identifying threats to the species and linking those threats to the rarity of the species, the Service does not consider rarity alone to be a threat. As noted above, a species may be determined to be an endangered or threatened species due to one or more of the five factors used to evaluate threats as described in section 4(a)(1) of the Act. We do not find substantial information regarding threats to the mayfly under any of the five factors.

Based on our evaluation of the information provided in the petition, we have determined that the petition does not present substantial information to indicate that listing the mayfly may be warranted.

Finding

We reviewed and evaluated information in the petition and the literature cited in the petition that was readily available on the Internet and in local libraries. We also reviewed reliable information readily available in our files. On the basis of our review under section 4(b)(3)(A) of the Act, we have determined that the petition does not present substantial scientific or commercial information indicating that listing may be warranted for the stonefly or for the mayfly.

References Cited

A complete list of references cited is available on the Internet at Docket No. FWS-R2-ES-2010-0020 at *http://www.regulations.gov* and upon request from the Southwest Regional Ecological Services Office (see **ADDRESSES**).

Author

The primary authors of this document are the staff members of the Southwest Regional Ecological Services Offices (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: March 25, 2010.

Jeffrey L. Underwood,

Acting Director, Fish and Wildlife Service.

[FR Doc. 2010–7550 Filed 4–5–10; 8:45 am]

BILLING CODE 4310–55–S

Notices

Federal Register
Vol. 75, No. 65
Tuesday, April 6, 2010

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Information Collection Activity; Comment Request

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended), the Rural Utilities Service (RUS) invites comments on this information collection for which approval from the Office of Management and Budget (OMB) will be requested.

DATES: Comments on this notice must be received by June 7, 2010.

FOR FURTHER INFORMATION CONTACT: Michele Brooks, Director, Program Development and Regulatory Analysis, Rural Utilities Service, 1400 Independence Avenue, SW., STOP 1522, Room 5162 South Building, Washington, DC 20250–1522. Telephone: (202) 690–1078. FAX: (202) 720–8435. E-mail: *michele.brooks@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION: The Office of Management and Budget's (OMB) regulation (5 CFR 1320) implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) requires that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (*see* 5 CFR 1320.8(d)). This notice identifies an information collection that RUS is submitting to OMB for an extension.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to: Michele Brooks, Director, Program Development and Regulatory Analysis, Rural Utilities Service, U.S. Department of Agriculture, STOP 1522, Room 5162 South Building, 1400 Independence Avenue, SW., Washington, DC 20250–1522. FAX: (202) 720–8435.

Title: Assistance to High Energy Cost Rural Communities.

OMB Control Number: 0572–0136.

Type of Request: Revision of a currently approved information collection.

Abstract: The Rural Electrification Act of 1936 (RE Act) (7 U.S.C. 901 *et seq.*) was amended in November 2000 to create a new program to help rural communities with extremely high energy costs (Pub. L. 106–472). Under this new section 19 of the RE Act (7 U.S.C. 918a), the Secretary of Agriculture, through RUS, is authorized to provide financial assistance through the following three funding streams:

• *High Energy Cost Grants and Loans.* RUS may provide grants and loans for energy generation, transmission, and distribution facilities serving communities with average home energy costs in excess of 275 percent of the national average. Many of these communities are in rural Alaska, but there are other eligible areas nationwide. Eligible applicants include persons, State agencies (including Territories), entities organized under State law, and Indian Tribes. Only grant funds have been appropriated to date.

• *Denali Commission Grants and Loans.* RUS may provide grants and loans to the Denali Commission, a Federal agency, for energy generation, transmission, and distribution facilities serving extremely high energy cost rural and remote communities in Alaska. Annual Denali grants are awarded and advanced as soon as funds are available to RUS. The Denali Grants are governed by a Memorandum of Understanding between the two agencies and by individual Grant Agreements. Only grant funds have been appropriated to date.

• *Bulk Fuel Revolving Fund Grants.* RUS may provide grants to State entities in existence as of November 9, 2000, to support revolving loan funds to improve the efficiency of fuel purchases for communities where the fuel cannot be delivered by surface transportation. Only Alaska and a handful of other States are eligible.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 4.32 hours per response.

Respondents: Business or other for-profit, Not-for-profit institutions, State, Local, or Tribal Government.

Estimated Number of Respondents: 112.

Estimated Number of Responses per Respondent: 2.82.

Estimated Total Annual Burden on Respondents: 1,365.

Copies of this information collection can be obtained from Gale Richardson, Program Development and Regulatory Analysis, at (202) 720–0992, FAX: (202) 720–8435. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: March 30, 2010.

Jessica Zufolo,

Deputy Administrator, Rural Utilities Service.

[FR Doc. 2010–7733 Filed 4–5–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS-2009-0088]

Notice of Availability of an Evaluation of the Highly Pathogenic Avian Influenza Status of Czech Republic and Sweden

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of availability and request for comments.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service has prepared an evaluation of the animal health status of the Czech Republic and Sweden relative

to the H5N1 subtype of highly pathogenic avian influenza (HPAI). The evaluation presents our assessment of the HPAI H5N1 detection, control, and eradication measures in place in the Czech Republic and Sweden following the outbreaks of HPAI in Sweden during 2006, and in the Czech Republic during 2007, as well as our assessment of the present status of the Czech Republic and Sweden with respect to HPAI H5N1. We are making this evaluation available to the public for review and comment. If, after the close of the comment period, we can identify no additional risk factors that would indicate that domestic poultry in the Czech Republic and Sweden continue to be affected with HPAI H5N1, we will remove those regions from our list of regions affected with HPAI H5N1.

DATES: We will consider all comments that we receive on or before May 6, 2010.

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

- Federal eRulemaking Portal: Go to (*http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2009-0088*) to submit or view comments and to view supporting and related materials available electronically.
- Postal Mail/Commercial Delivery: Please send two copies of your comment to Docket No. APHIS-2009-0088, Regulatory Analysis and Development, PPD, APHIS, Station 3A-03.8, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Please state that your comment refers to Docket No. APHIS-2009-0088.

Reading Room: You may read any comments that we receive on the evaluations in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690-2817 before coming.

Other Information: Additional information about APHIS and its programs is available on the Internet at (*http://www.aphis.usda.gov*).

FOR FURTHER INFORMATION CONTACT: Dr. Julia Punderson, Senior Staff Veterinarian, Regionalization Evaluation Services-Import, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 38, Riverdale, MD 20737-1231; (301) 734-4356.

SUPPLEMENTARY INFORMATION:

Background

Under the Animal Health Protection Act (7 U.S.C. 8301 *et seq.*), the Animal and Plant Health Inspection Service (APHIS) has the authority to prohibit or restrict the importation into the United States of animals, animal products, and other articles in order to prevent the introduction of diseases and pests into the U.S. livestock and poultry populations.

Highly pathogenic avian influenza (HPAI) is a zoonotic disease of poultry. The H5N1 subtype of HPAI is an extremely infectious and fatal form of the disease. HPAI can strike poultry quickly without any warning signs of infection and, once established, can spread rapidly from flock to flock. HPAI viruses can also be spread by manure, equipment, vehicles, egg flats, crates, and people whose clothing or shoes have come in contact with the virus. HPAI viruses can remain viable at moderate temperatures for long periods in the environment and can survive indefinitely in frozen material. The H5N1 subtype of HPAI has been of particular concern because it has crossed the species barrier and caused disease in humans.

On March 17, 2006, the Swedish Board of Agriculture reported their first case of HPAI H5N1 in domestic poultry to the World Organization of Animal Health (OIE). The outbreak was confirmed in mallard ducks on a game bird breeding farm in the village of Gässhult, Oskarshamn, in Kalmar County, located in an area which had already been under restriction since February 2006 due to the detection of HPAI H5N1 in wild birds. No further reports of the HPAI H5N1 in wild or domestic birds have been reported in Sweden since that time.

On June 22, 2007, the Director of the Department of Animal Health and Welfare in Ministry of Agriculture of the Czech Republic reported the first occurrence of HPAI H5N1 in domestic poultry to the OIE. The outbreak was confirmed in a flock of 6,000 turkeys near Tisova, Usti nad Orlici district, in the Pardubicky Region and then spread to other neighboring commercial poultry farms over the following weeks.

To prevent the introduction of HPAI H5N1 into the United States, APHIS added the regions of the Czech Republic and Sweden where the outbreaks occurred to the list of regions that APHIS considers to be affected with HPAI H5N1.[1] This action resulted in restrictions on the importation of bird, poultry, and birds and poultry products into the United States from those two regions.

We have evaluated the status of HPAI H5N1 in domestic and wild poultry in the Czech Republic and Sweden in light of the actions taken by the Czech and Swedish authorities since the outbreaks. We present the results of our evaluation in a document titled "APHIS' Evaluation of the Status of High Pathogenicity Avian Influenza H5N1 (HPAI H5N1) in the Czech Republic and Sweden" (July 2009), and document our analysis of the risk associated with allowing the importation of birds, poultry, and poultry products from regions of the Czech Republic and Sweden into the United States in the aftermath of the outbreaks.

We based our evaluation of the Czech Republic's and Sweden's HPAI H5N1 status on the following critical factors:

- Each region had been free of outbreaks of the H5N1 subtype in its domestic poultry for at least 3 months as a result of effective control measures taken by a competent veterinary infrastructure;
- HPAI H5N1 was a notifiable disease in each region at the time of the outbreak;
- Each region had an ongoing disease awareness program in place at the time of the outbreak;
- Each region investigated, all notified, and/or suspected occurrences of the disease;
- Each region had an effective surveillance program in place that supported the detection and investigation of outbreaks;
- Diagnostic and laboratory capabilities within each region were both adequate and effective;
- Each region undertook appropriate eradication and control measures and movement restrictions in response to the outbreaks to prevent further spread of disease; and
- In each region, procedures used for repopulation of affected premises included monitoring to demonstrate that HPAI H5N1 had been eradicated from the premises.

Based on these factors, which are consistent with the OIE's recommendations for reinstatement for trade with a country that has experienced an HPAI H5N1 outbreak,[2]

[1] To view the list of regions APHIS considers to be affected with HPAI H5N1, go to (*http://www.aphis.usda.gov/import_export/animals/animal_import/animal_imports_hpai.shtml*).

[2] OIE (2008). Risk Analysis. In, *Terrestrial Animal Health Code,* 17th edition. Paris, World Organization for Animal Health: Chapter 2.2 on Import Risk Analysis; Chapter 10.4 on Avian Influenza. To view the document on the Internet, go to (*http://www.oie.int/eng/normes/mcode/A_summry.htm?e1d11*).

our evaluations concluded that the Czech Republic and Sweden were able to effectively control and eradicate HPAI H5N1 in their respective poultry populations and that the Czech and Swedish authorities have adequate control measures in place to rapidly identify, control, and eradicate the disease should it be reintroduced into their respective countries in either wild birds or domestic poultry. We further concluded that the importation of live birds, poultry carcasses, parts of carcasses, and eggs (other than hatching eggs) of poultry, game birds, or other birds from regions of the Czech Republic and Sweden presents a low risk of introducing HPAI H5N1 into the United States.

We are making the evaluation available for public comment. We will consider all comments that we receive on or before the date listed under the heading **DATES** at the beginning of this notice.

If, after the close of the comment period, APHIS can identify no additional risk factors that would indicate that domestic poultry in regions of the Czech Republic or Sweden continue to be affected with HPAI H5N1, we will remove from the list of regions affected by HPAI H5N1 those regions of the Czech Republic and Sweden that are currently on the list.

The evaluation may be viewed on the Regulations.gov Web site or in our reading room (see **ADDRESSES** above for a link to Regulations.gov and information on the location and hours of the reading room). You may request paper copies of the evaluation by calling or writing to the person listed under **FOR FURTHER INFORMATION CONTACT**. Please refer to the title of the evaluation when requesting copies.

Done in Washington, DC, this 31st day of March 2010.

Gregory Parham

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2010–7734 Filed 4–5–10; 12:01 pm]

BILLING CODE 3410–34–S

DEPARTMENT OF AGRICULTURE

Farm Service Agency

Notice of Funds Availability (NOFA) to Invite Applications for the American Indian and Alaska Native Credit Outreach Initiative

AGENCY: Farm Service Agency, USDA.

ACTION: Notice.

SUMMARY: The Farm Service Agency (FSA) is requesting applications for competitive cooperative agreement funds for Fiscal Year (FY) 2010 for the credit outreach initiative targeted to American Indian and Alaska Native farmers, ranchers, and youth residing primarily on Indian reservations within the contiguous United States and in Alaska. There is $400,000 available in funding for the remainder of FY 2010. FSA will make one award to a successful applicant through a cooperative agreement. FSA requests proposals from eligible nonprofit organizations, land-grant institutions, and federally-recognized Indian tribal governments interested in a competitively-awarded cooperative agreement to create and implement a mechanism that will provide credit outreach and promotion, pre-loan education, and one-on-one loan application preparation assistance to American Indian and Alaska Native farmers, ranchers, and youth. Successful proposals may include other innovative services intended to enhance participation by American Indians and Alaska Natives in specific FSA Agricultural Credit Programs and other relevant credit programs available to American Indian and Alaska Native producers.

DATES: Applications must be completed and submitted to the Agency no later than 5 p.m. eastern time May 6, 2010. Late applications will not be accepted and will be returned to the applicant. Applicants must ensure that the service used to deliver the application can do so by the deadline. Due to security concerns, packages sent to the Agency by mail have been delayed several days or even weeks.

ADDRESSES: Submit applications and other required materials by mail to: Mark Palmer, Director, Office of External Affairs, FSA, United States Department of Agriculture (USDA), STOP 0505, 1400 Independence Avenue, SW., Washington, DC 20250–0511.

FOR FURTHER INFORMATION CONTACT: *For FSA Office of External Affairs or Office of Outreach:* Mark Palmer, (202) 720–9933; email: *mark.palmer@wdc.usda.gov.*

For USDA Office of Tribal Relations: Janie Hipp, (202) 205–2249; e-mail: *janie.hipp@osec.usda.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of Solicitation

This NOFA is being re-released because there was insufficient response to the NOFA published on August 27, 2009 (74 FR 43665–43669). This NOFA has been adjusted to reflect improvements in the American Indian Credit Outreach Initiative Program that ensures it better serves American Indian and Alaska Native producers. Most notable among these improvements is the fact that FSA will now administer the program with advice from USDA Office of Tribal Relations.

This solicitation is issued under 7 U.S.C. 2204b (b)(4), which authorizes the Secretary of Agriculture to enter into cooperative agreements to improve the coordination and effectiveness of Federal programs affecting rural areas. The principal objective of this cooperative agreement is to continue a national outreach program that enables American Indian and Alaska Native farmers, ranchers, and youth located either on Indian reservations or in other regions that have a significant presence of American Indian and Alaska Native farmers, ranchers, and youth in the contiguous United States and Alaska to understand and have access to the various FSA Agriculture Credit Programs.

The USDA Office of Tribal Relations will provide ongoing and concrete assistance and advice in program planning, delivery, and coordination; this will partially satisfy the "significant agency participation" requirement for the cooperative agreement. All program outcomes will be reported to FSA and the USDA Office of Tribal Relations.

Proposal Requirements

All proposed approaches must include a plan for how the project will have the following capabilities in place within three months after acceptance of award:

1. The demonstrated ability to deliver these credit outreach services. This should include demonstrated technical expertise, program familiarity, and technological capability, including the ability to use relevant software programs used for preparing farm business plans. This should also include demonstrated cultural sensitivity and a thorough understanding of the population targeted by the applicant, including a firm grasp of the unique credit challenges faced by the targeted population.

2. A strategic plan with concrete, actionable goals.

3. A tracking system with which to first, document the steps taken by the cooperator to realize these goals, and second, gauge the efficacy and impact of the program. Thus, the cooperator should be able to document, track, and report on their own internal activities, as well as their external results in the targeted population.

Proposals must demonstrate a well-thought out strategic plan for ensuring that American Indian and Alaska Natives have improved access to FSA Agricultural Credit Programs through targeted program education efforts, including targeted educational programs, application training sessions, one-to-one application troubleshooting, general information dissemination, and promotional campaigns.

Applicants who can suggest metrics for gauging the impact of Federal funding and success of their program education campaign will be more competitive. Possible metrics could include, but are not limited to:

- Number of producers who, after receiving assistance from the cooperator, successfully received an FSA loan or loan guarantee,
- Percentage increase in producers on targeted reservation or area receiving FSA credit support,
- Number of attendees at outreach events, and
- Number of attendees at outreach events who subsequently sought services from cooperator related to FSA Agricultural Credit Programs.

Applicants are encouraged to contact the FSA Office of Outreach, the FSA Office of External Affairs, or the USDA Office of Tribal Relations to discuss proposed Outreach strategies or proposed tracking metrics. (See **FOR FURTHER INFORMATION CONTACT** above.)

Background

Today, American Indians and Alaska Natives own and control approximately 66 million acres of agricultural lands held in trust by the United States Government and administered, for the most part, by the Bureau of Indian Affairs (BIA) of the Department of the Interior. Land-based agricultural enterprises are considered the primary source of revenue for most tribes, due in large part to their geographical isolation from any urban type industrial development activities. Thus, protecting this resource and utilizing it effectively are important functions of the elected tribal officials charged with operating or overseeing business activities that take place within reservations.

USDA provides farmers and ranchers technical, financial, and educational resources. American Indian and Alaska Native agricultural producers on reservations have historically been less able to benefit from USDA services than other farmers and ranchers. Since 1987, Congress has enacted Federal laws, such as the recent Food, Conservation, and Energy Act of 2008 (Pub. L. 110–246), (2008 Farm Bill), to address American Indians and Alaska Natives' (and other socially disadvantaged farmers and ranchers) lack of access to USDA's programs and services; this has resulted in beginning to close some of the gaps in access to these programs and services. As positive as these changes are, they have not fully addressed an implementation plan or the funds needed to carry out implementation of sorely needed agribusiness education and direct services to American Indian and Alaska Native reservation and non-reservation farmers and ranchers.

American Indian and Alaska Native agribusinesses, as well as individual American Indians and Alaska Natives, have consistently reported that the primary need in agriculture is access to the capital required to own and operate their own farms or ranches. Therefore, FSA has created and implemented this cooperative funding mechanism to provide credit outreach and other related business management training and assistance services related to FSA's Agricultural Credit Programs, subject to funding, as a way to resolve some of the credit needs of American Indian and Alaska Native agriculture.

Definitions

The following acronym and definitions are applicable to this notice.

Agency or FSA. The United States Department of Agriculture Farm Service Agency.

Farm land. Land used for commercial agriculture crops, poultry and livestock enterprises, or aquaculture.

Federally-Recognized Indian Tribal Government. The governing body or a governmental agency of any Indian tribe, band, nation, or other organized group or community (including any Native village as defined in section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602)) certified by the Secretary of the Interior as eligible for the special programs and services provided through the Bureau of Indian Affairs.

Land Grant Institutions. Any institution that is either:

1. A 1994 Institution, 1890 Institution, or 1862 Institution, (as defined in section 2 of the Agricultural Research, Extension, and Education Reform Act of 1998 (7 U.S.C. 7601));

2. An Indian tribal community college or an Alaska Native cooperative college; or

3. A Hispanic-serving institution (as defined in section 1404 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (7 U.S.C. 3103)).

Non-Profit Organization. Any corporation, trust, association, cooperative, or other organization that:

1. Is operated primarily for scientific, educational, service, charitable, or similar purposes in the public interest;

2. Is not organized primarily for profit; and

3. Is recognized by the Internal Revenue Service as being certified as compliant with 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)).

Recipient Eligibility Requirements

Applicants must either be a non-profit organization, a federally recognized Indian tribe, or a land grant institution as defined above. Applications without sufficient information to determine eligibility will not be considered.

Proposal Preparation

A proposal must contain an original and two copies of the following (Contact Mark Palmer (see **FOR FURTHER INFORMATION CONTACT** above) if you need help getting the forms):

1. Form SF–424, "Application for Federal Assistance."

2. Form SF–424A, "Budget Information—Non-Construction Programs."

3. Form SF–424B, "Assurances—Non-Construction Programs."

4. Table of Contents. For ease of locating information, each proposal must contain a detailed table of contents immediately following the required Federal forms. The table of contents should include page numbers for each component of the proposal. Pagination should begin immediately following the table of contents.

5. Proposal Summary. A summary of the project proposal, not to exceed two pages, that includes the title of the project, a description of the project (including an overarching strategic plan (broad goals) and discrete actionable tasks (specific goals) to be accomplished), the names of the individuals responsible for conducting and completing the tasks, and the expected time frame for completing all tasks.

6. Eligibility. A detailed discussion, not to exceed two pages, describing how the applicant meets the definition of land grant institution, non-profit organization, or federally recognized Indian tribal government. In addition, the applicant must describe all other collaborative organizations that may be involved in the project, the respective role the collaborative organization will play in program delivery. The application must include a signed and dated full description from any collaborative organization describing its proposed role.

7. Proposal Narrative. The narrative portion of the project proposal must be

in a font such as Times New Roman (12 pt.) or comparable font and must include the following:

a. Project Title. The title of the proposed project must be brief, not to exceed 100 characters, yet represent the major thrust of the project.

b. Information Sheet. A separate one page information sheet that lists each of the seven evaluation criteria listed in this notice (see the "Evaluation Criteria and Weights" section below) followed by the page numbers of all relevant material and documentation contained in the proposal that address or support that criteria.

c. Goals and Objectives of the Project. A clear statement of the ultimate goals and objectives of the project must be presented.

d. Evaluation Criteria. Each of the nine evaluation criteria listed in this notice (see the "Evaluation Criteria and Weights" section below) must be addressed specifically and individually by category. These criteria should be in narrative form with any specific supporting documentation attached as addenda and should be placed directly following the proposal narrative. If other materials, including financial statements, will be used to support any evaluation criteria it should also be placed directly following the proposal narrative. The applicant must also propose and delineate significant agency participation in the project. The applicant must also propose and delineate significant agency participation in the project at the local or regional level.

8. DUNS Number. A Dun and Bradstreet Universal Numbering System (DUNS) number is required for entities receiving Federal contracts such as a cooperative agreement under this notice.

Amount of Award

The amount of funds available for the remainder of FY 2010 (through September 30, 2010) is up to $400,000. Expenses incurred in developing applications will be at the applicant's risk.

Number of Awards

Only one cooperative agreement will be awarded.

Eligible Cooperative Agreement Fund Uses

Cooperative agreement funds may be used to cover allowable costs incurred by the recipient and approved by FSA. Allowable costs are governed by 7 CFR parts 3015, 3016, and 3019, as applicable, and applicable Office of Management and Budget Circulars.

Ineligible Fund Uses

Cooperative agreement funds must not be used to:

1. Plan, repair, rehabilitate, acquire, or construct a building or facility (including a processing facility);

2. Purchase, rent, or install fixed equipment, including mobile and other processing equipment;

3. Pay for the preparation of the cooperative agreement application;

4. Pay expenses not directly related to the funded venture (for example, cooperative agreement funds cannot be used to support the organization's general operations);

5. Fund political or lobbying activities;

6. Pay costs incurred prior to receiving the cooperative agreement;

7. Fund any activity prohibited by 7 CFR parts 3015, 3016, and 3019, as applicable; and

8. Fund architectural or engineering design work for a specific physical facility.

Evaluation Criteria, Proposal Review

A merit review panel of USDA employees as selected by the National FSA Office and the USDA Office of Tribal Relations will review applications for eligibility, completeness, and responsiveness to this notice. Incomplete or non-responsive applications will be returned to the applicant and not evaluated further. Applications received beyond the time deadline identified in this notice will not be accepted for review. The proposal will be evaluated using the criteria specified below. Failure to address any one of the criteria will disqualify the application. All proposals must be in compliance with this notice, applicable statutes, and regulations.

Prior to technical examination, a preliminary review will be made by FSA for responsiveness to this notice and completeness. Proposals that do not fall within the solicitation guidelines or are otherwise ineligible will be eliminated from competition. All responsive proposals will be reviewed by a merit review panel of reviewers using the evaluation criteria stated below. The selected USDA employee reviewers will be chosen to provide maximum expertise and objective judgment in the evaluation of proposals. Evaluated proposals will be ranked by the merit review panel, based on the evaluation criteria and weights listed below. Final approval of those proposals will be made by the Administrator of FSA.

Evaluation Criteria and Weights

All responsive proposals will be reviewed based on the following nine criteria:

1. Applicant's Demonstrated Ability to Conduct Program Education and Provide Technical Assistance (20 points). This standard evaluates the degree to which the organization can demonstrate having the requisite experience, qualifications, competency, and availability of personnel and resources needed to provide targeted program education and technical assistance on FSA credit sources, tailored to address the unique challenges faced by American Indian and Alaska Native producers. The applicant should be able to demonstrate its technical capacity for delivering credit outreach services using any acceptable farm business planning and management software, as deemed appropriate. A sufficient explanation must be contained in the application concerning the software used and the applicant's capacity and familiarity with the software program selected.

2. Applicant's Demonstrated Understanding of Constituent Population and Cultural Competency (5 points). This standard evaluates the degree to which the applicant can demonstrate that they understand the unique challenges facing American Indian and Alaska Native producers in such a way that allows the applicant to effectively provide assistance to these producers. Applicants should discuss in their proposal whether they possess the cultural competency needed to be of service to targeted constituent populations and to develop and foster a successful relationship with constituent populations. This standard evaluates the degree to which the proposal contains detailed programs to reach persons identified as American Indian and Alaska Native farmers, ranchers, and youth. The proposal will be evaluated for its potential for encouraging and assisting American Indian or Alaska Native farmers, ranchers, and youth to utilize the various FSA agriculture credit programs.

3. A Strategic Plan Centered around Anticipated and Actual Results for Constituent Population (20 points). This standard evaluates the extent to which the proposal clearly describes its objectives and evidences a high level of feasibility. This criterion relates to the adequacy and soundness of the proposed approach to solve specific problems and evaluates the plan of operation, the timetable, evaluation, and dissemination plans. This area of the application must clearly delineate all

plans for execution during the life of the cooperative agreement; a clear timetable for accomplishing all relevant plans; a specific evaluation plan; and specific dissemination plans. A strategic plan should be provided that specifies discrete, actionable goals. It should propose metrics by which the applicant will measure its own success over the duration of the funding period, such as the number of American Indian and Alaska Native producers aided by applicant who successfully gained FSA credit. This strategic plan should be results oriented, focusing on progress in the economic state of the target population. If the applicant has conducted this or similar programs in previous years, they are required to reflect in their application the numbers of individuals reached in each previous year (in detail, by location, by funding year) and the number of individuals anticipated to be served within the project year for which funds are sought. Applicants should explain how they intend to independently gather this data.

4. Applicant's Ability to Track Internal Activity (15 points). This standard evaluates whether the applicant is able to track the discrete steps taken to realize its mission and explain the system it will use to do so. This includes a tracking system for program education efforts such as seminars or other teaching sessions, number of producers provided with technical assistance, or outreach activities. This tracking system will allow the applicant to effectively evaluate its own strategy and continually evolve the strategy to maximize efficacy. This tracking system should also be used to satisfy the reporting requirement to USDA regarding use of funding.

5. Adequacy of Budget (15 points). This standard evaluates whether the budget is designed to support the pursuit of the concrete, actionable goals enumerated in the strategic plan. This standard also evaluates the accuracy of the proposed budget and the accompanying budget justification. The proposed budget should provide a detailed description of each budget category that includes categorical subtotals as well as a separate budget justification that clearly defines and explains each and every proposed budget line item.

6. Sustainability of Effort (10 points). This standard rewards applicants who make plans that would ensure the sustainability of their effort and their ability to continue to provide American Indian and Alaska Native producers with the crucial services of program education and technical assistance. This includes the extent to which the applicant has, or has plans to, diversify their funding base by working with other USDA Agencies, other Federal Agencies, and non-government funding sources such as foundations or private entities.

7. Detailed Description of Collaborative Partnerships, if any, and Program Recipients (5 points). This standard evaluates the degree to which the proposal reflects partnerships and collaborative initiatives with other agencies or organizations to enhance the quality and effectiveness of the program. Additionally, the areas and number of underserved American Indian and Alaska Native farmers, ranchers, and youth who would benefit from the services offered will be evaluated. Collaborative individuals or organizations must submit a written (signed and dated) letter of collaboration in which all activities the collaborative may engage in with the applicant will be clearly outlined. All relevant personnel who will be involved in the project will be identified by the collaborative entity.

8. Innovative Solutions to Challenges Faced by Targeted Population (5 points). This standard rewards applicants for their ability to propose innovative ways to address the challenges faced by Native American and Alaska Native producers in accessing FSA credit.

9. Overall Quality of the Proposal (5 points). This standard evaluates the degree to which the proposal complies with this notice and is of high quality. Elements considered include adherence to instructions, accuracy and completeness of forms, clarity and organization of ideas, thoroughness and sufficiency of detail in the budget narrative, specificity of allocations between targeted areas if the proposal addresses more than one area, and completeness of vitae for all key personnel associated with the project.

Selection Process

When the merit review panel reviewers have completed their individual evaluations, the panel, based on the individual reviews, will make a recommendation to the Administrator that one responsive proposal be approved for support from available funds. Prior to award, the Administrator reserves the right to negotiate with an applicant whose project is recommended for funding regarding project revisions (for example, change in scope of work or FSA's significant involvement), funding level, or period of support. A proposal may be withdrawn at any time before a final funding decision is made.

Cooperative Agreement Awards

Within the limit of funds available for such purpose, the Administrator will enter into a cooperative agreement with the successful applicant.

When To Submit an Application

The deadline for receipt of all applications is 5 p.m. eastern time May 6, 2010. FSA will not accept any application received after the deadline.

Cooperator Requirements

Cooperators will be required to do the following:

- Sign required Federal assistance forms including:
  - Form AD–1047, Certification Regarding Debarment, Suspension, and Other Responsibility Matters-Primary Covered Transactions;
  - Form AD–1048, Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions;
  - Form AD–1049, Certification Regarding a Drug-Free Workplace Requirements (Grants); and
  - Form RD 400–4, Assurance Agreement (Civil Rights).
- Use Standard Form (SF) 270, Request for Advance or Reimbursement to request payments.
- Submit a SF–269, Financial Status Report, and list expenditures according to agreed upon budget categories on a semi-annual basis. A financial report is due within 45 days after the first half of the project period and another financial report is due within 60 days of the completion of the project.
- Report information for active and pending projects on the Current and Pending Support form.
- Submit periodic performance reports to the FSA Administrator and the USDA Office of Tribal Relations, as requested and agreed upon in the cooperative agreement, that compare accomplishments to the objectives; if established objectives are not met, discuss problems, delays, or other problems that may affect completion of the project; establish objectives for the next reporting period; and discuss compliance with any special conditions on the use of awarded funds.
- Maintain a financial management system that is acceptable to FSA.
- Submit a final project performance report.
- Sign an FSA approved cooperative agreement (an example of which is provided at the end of this notice).

Other Federal Statutes and Regulations That Apply

In addition to the requirements provided in this notice, other Federal statutes and regulations apply to proposals considered for review and to our cooperative agreement award. These include, but are not limited to:

- 7 CFR part 15, subpart A, Nondiscrimination in Federally-Assisted Programs of the Department of Agriculture-Effectuation of Title VI of the Civil Rights Act of 1964;
- 7 CFR part 3015, Uniform Federal Assistance Regulations;
- 7 CFR parts 3016, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, as applicable;
- 7 CFR part 3017, Governmentwide Debarment and Suspension (Non-procurement);
- 7 CFR part 3018, New Restrictions on Lobbying;
- 7 CFR part 3019, Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-profit Organizations, as applicable;
- 7 CFR part 3021, Governmentwide Requirements for Drug-Free Workplace (Financial Assistance); and
- 7 CFR part 3052, Audits of States, Local Governments, and Non-Profit Organizations.

Paperwork Reduction Act

The Paperwork Reduction Act does not apply to this notice because the program does not receive applications from more than 10 persons covered by 5 CFR 1320.3(c).

Signed in Washington, DC, on March 31, 2010.

Jonathan W. Coppess,

Administrator, Farm Service Agency.

United States Department of Agriculture
Farm Service Agency

Cooperative Agreement—American Indian and Alaska Native Outreach Initiative

This Cooperative Agreement (Agreement) dated_____, between _____ (Cooperator), and the United States of America, acting through the Farm Service Agency of the Department of Agriculture (the Agency), for $ _____ in cooperative agreement funds under the program, delineates the agreement of the parties.

Now, therefore, in consideration of the Agreement;

The parties agree that:

1. All the terms and provisions of the notice entitled "Notice of Funds Availability (NOFA) Inviting Applications for the American Indian and Alaska Native Credit Outreach Initiative," published in the **Federal Register** on April 6, 2010 and the application submitted by the Cooperator for this Agreement, including any attachments or amendments, are incorporated and included as part of this Agreement. Any changes to these documents or this Agreement must be approved in writing by the undersigned parties.

2. As a condition of the Agreement, the Cooperator certifies that it is in compliance with, and will comply in the course of the Agreement with, all applicable laws, regulations, Executive Orders, and other generally applicable requirements, including, but not limited to: Those contained in 7 CFR 3015.205(b), which are incorporated into this Agreement by reference, and such other statutory provisions as are specifically contained herein. The Cooperator will comply with title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973, and Executive Order 12250.

3. The provisions of 7 CFR part 3015, Uniform Federal Assistance Regulations, and 7 CFR part 3019, Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations, as applicable, are incorporated herein and made a part hereof by reference.

4. All conditions and provisions of this Agreement will become effective on signature of both parties and will continue until completion of the project, but not later than September 30, ____.

Further, the Cooperator agrees that it will:

1. Not use cooperative agreement funds to plan, repair, rehabilitate, acquire, or construct a building or facility (including a processing facility); or to purchase, rent, or install fixed equipment.

2. Use funds only for the purpose and activities specified in the proposal approved by the Agency including the approved budget. Any uses not provided for in the approved budget must be approved in writing by the Agency in advance of obligation by the Agency.

3. Submit a Standard Form 269, Financial Status Report and list expenditures according to agreed upon budget categories. Reports are due halfway through the period covered by the cooperative agreement, as well as at the end of the period covered.

4. Provide periodic reports as required by the Agency. A financial status report and a project performance report will be required on a quarterly basis. The financial status report must show how cooperative agreement funds have been used to date and project the funds needed and their purposes for the next quarter. A final report may serve as the last semi-annual report. Cooperators must constantly monitor performance to ensure that time schedules are being met and projected goals by time periods are being accomplished. The project performance reports must include the following:

a. A comparison of actual accomplishments to the objectives for that period.

b. Reasons why established objectives were not met, if applicable.

c. Reasons for any problems, delays, or adverse conditions that will affect attainment of overall program objectives, prevent meeting time schedules or objectives, or preclude the attainment of particular objectives during established time periods. This disclosure must be accompanied by a statement of the action taken or planned to resolve the situation.

d. Objectives and timetables established for the next reporting period.

e. The final report will also address, but not be limited to, the following:

i. What have been the most challenging or unexpected aspects of this program? What aspects of the program most need improvement? What would be your plan for that improvement if given the opportunity to change the program in the future?

ii. What advice would you give to other organizations planning a similar program? These should include strengths and limitations of the program. If you had the opportunity, what would you have done differently?

iii. If an innovative approach was used successfully, the Cooperator should describe their program in detail so that other organizations might consider replication in their areas.

5. Provide Financial Management Systems which will include:

a. Records that identify adequately the source and application of funds for cooperative agreement supported activities. Those records must contain information pertaining to grant and cooperative agreement awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays, and income.

b. Effective control over and accountability for all funds, property, and other assets. Cooperator must adequately safeguard all such assets and ensure that they are used solely for authorized purposes.

c. Accounting records supported by source documentation.

6. Retain financial records, supporting documents, statistical records, and all other records pertinent to the cooperative agreement for a period of at least 3 years after closing, except that the records must be retained beyond the 3-year period if audit findings have not been resolved. Microfilm or photocopies or similar methods may be substituted in lieu of original records. The Agency and the Comptroller General of the United States, or any of their duly authorized representatives, must have access to any books, documents, papers, and records of the Cooperator that are pertinent to the specific cooperative agreement program for the purpose of making audits, examinations, excerpts, and transcripts.

7. Not encumber, transfer, or dispose of the equipment or any part thereof, acquired wholly or in part with Agency funds without the written consent of the Agency.

8. Not duplicate other program purposes for which monies have been received, are committed, or are applied to from other sources (public or private).

9. Immediately refund to the Agency, at the end of the Agreement, any balance of unobligated funds received from the Agency.

The Agency agrees that it will:

1. Assist in defraying the project cost by reimbursing or advancing to the Cooperator under this Agreement an amount not to exceed [Funding Amount $XX]. The funds will be reimbursed or advanced in accordance with applicable Federal regulations based on submission to the Agency by the Cooperator of a complete Standard Form 270.

2. Monitor the program as it is being implemented and operated.

3. Evaluate the performance reports submitted by the Cooperator and recommend revisions where necessary.

4. Halt activity, after written notice, if project objectives are not met.

5. Identify USDA points of contact to address program questions.

Authorized and executed this day by:

(Cooperator)

(Title)

UNITED STATES OF AMERICA
FARM SERVICE AGENCY

By:

(Name)

(Title)

[FR Doc. 2010–7729 Filed 4–5–10; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Sanders County Resource Advisory Committee Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act (Pub. L. 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393 & Pub. L. 110–343) the Lolo and Kootenai National Forests' Sanders County Resource Advisory Committee will meet on April 29 at 7 p.m. in Thompson Falls, Montana for a business meeting. The meeting is open to the public.

DATES: April 29, 2010.

ADDRESSES: The meeting will be held at the Thompson Falls Courthouse, 1111 Main Street, Thompson Falls, MT 59873.

FOR FURTHER INFORMATION CONTACT: Randy Hojem, Designated Federal Official (DFO), District Ranger, Plains Ranger District, Lolo National Forest at (406) 826–3821.

SUPPLEMENTARY INFORMATION: Agenda topics include development of new RAC project proposals, reviewing progress on current projects, and receiving public comment. If the meeting location is changed, notice will be posted in the local newspapers, including the Clark Fork Valley Press, and Sanders County Ledger.

Dated: March 25, 2010.

Randy Hojem,

DFO, Plains Ranger District, Lolo National Forest.

[FR Doc. 2010–7522 Filed 4–5–10; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Central Idaho Resource Advisory Committee Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act (Pub. L. 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 110–343), the Salmon-Challis National Forest's Central Idaho Resource Advisory Committee will conduct a business meeting which is open to the public.

DATES: Tuesday, April 20, 2010, beginning at 1 p.m.

ADDRESSES: Salmon-Challis N.F. South Zone Office, Highway 93, Challis, Idaho.

SUPPLEMENTARY INFORMATION: Agenda topics will include review of RAC 2010 projects, approval of RAC project proposals, and other RAC business. The meeting is an open public forum. Some RAC members may attend the meeting by conference call, telephone, or electronically.

FOR FURTHER INFORMATION CONTACT: Frank V. Guzman, Forest Supervisor and Designated Federal Officer, at 208–756–5111.

Dated: March 29, 2010.

Frank V. Guzman,

Forest Supervisor, Salmon-Challis National Forest.

[FR Doc. 2010–7524 Filed 4–5–10; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: National Institute of Standards and Technology (NIST).

Title: A Guide for Preparing and Submitting White Papers to the Technology Innovation Program (TIP).

OMB Control Number: None.

Form Number(s): None.

Type of Request: Regular submission.

Number of Respondents: 100.

Average Hours per Response: 4.

Burden Hours: 400.

Needs and Uses: The guide explains how interested parties can participate in helping to develop new areas for future competitions for the Technology Innovation Program (TIP) by offering ideas in the form of a white paper. TIP will use white papers to shape future competitions. The pertinent ideas, concepts and knowledge offered by stakeholders in these white papers combined with information from a variety of sources, enable TIP to identify and address critical national need and associated societal challenges suitable for TIP investment.

Affected Public: Business or other for-profit organizations; Not-for-profit institutions; Federal government; State, local, or tribal government.

Frequency: Annually.

Respondent's Obligation: Voluntary.

OMB Desk Officer:. Jasmeet Seehra, (202) 395–3123.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Jasmeet Seehra, OMB Desk Officer, FAX number (202) 395–5806, or via the Internet at *Jasmeet_K_Seehra@omb.eop.gov.*

Dated: March 31, 2010.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2010–7661 Filed 4–5–10; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the emergency provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Telecommunications and Information Administration (NTIA).

Title: Broadband Technology Opportunities Program (BTOP): Comprehensive Community Infrastructure, Public Computer Center, and Sustainable Broadband Adoption Applications Requirements.

OMB Control Number: 0660–0031.

Form Number(s): None.

Type of Request: Emergency submission.

Number of Respondents: 750.

Average Hours per Response: 30.

Burden Hours: 22,500.

Needs and Uses: NTIA intends to seek comments from broadband service providers providing services in the proposed funded service areas of the proposed Comprehensive Community Infrastructure (CCI) projects. For at least a 15-day period, NTIA will post an announcement on BroadbandUSA.gov identifying all of the Census block groups or tracts included within the proposed funded service area of any of the CCI applications submitted.

The announcement will provide existing broadband service providers with an opportunity to voluntarily submit to NTIA information about the broadband services that they currently offer in their respective service territories by Census block group or tract. NTIA will provide a template for submissions from service providers. This emergency review and approval will enable NTIA to post the form template and open the comment period.

Affected Public: Business or other for-profit organizations.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Nicholas Fraser, (202) 395–5887.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 7845, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent by April 9, 2010 to Nicholas Fraser, OMB Desk Officer, FAX number (202) 395–7285, or via the Internet at *Nicholas_A._Fraser@omb.eop.gov*.

Dated: April 1, 2010.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2010–7711 Filed 4–5–10; 8:45 am]

BILLING CODE 3510–60–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–851]

Certain Preserved Mushrooms from the People's Republic of China: Amended Final Results Pursuant to Final Court Decision

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On January 5, 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 *Gerber Food (Yunnan) Co., Ltd. and Green Fresh (Zhangzhou) Co., Ltd. v. United States*, Court No. 04–00454 (May 5, 2009) (*Gerber v. United States Remand Order*). This matter arose from a challenge to the Department's final results of administrative review of the antidumping duty order on certain preserved mushrooms from the PRC for the period February 1, 2002, through January 31, 2003. In the remand redetermination, the Department: (1) recalculated the assessment rate for Gerber Food (Yunnan) Co., Ltd. using a rate other than the PRC–wide rate as partial adverse facts available (AFA) with respect to only those sales of subject merchandise made by Gerber during the period of review (POR) which Gerber exported to the United States using the invoices of Green Fresh (Zhangzhou) Co., Ltd. (Green Fresh); and (2) recalculated the assessment rate for Green Fresh based on the data it reported, exclusive of the aforementioned transactions, without resorting to facts available or adverse inferences. As there is now a final and conclusive court decision in this case, the Department is amending the final results of the 2002–2003 administrative review of certain preserved mushrooms from the People's Republic of China (PRC).

EFFECTIVE DATE: April 6, 2010.

FOR FURTHER INFORMATION CONTACT: Brian Smith, AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC, 20230; telephone (202) 482–1766.

SUPPLEMENTARY INFORMATION:

Background

On September 9, 2004, the Department published its final results in the antidumping duty administrative review of certain preserved mushrooms from the PRC covering the POR of February 1, 2002, through January 31, 2003 (fourth administrative review). *See Certain Preserved Mushrooms from the People's Republic of China: Final Results of Sixth Antidumping Duty New Shipper Review and Final Results and Partial Rescission of the Fourth Antidumping Duty Administrative Review*, 69 FR 54635 (September 9, 2004) (*Final Results).*

In the Final Results, the Department applied total adverse facts available (AFA) in calculating the cash deposit and assessment rates for respondent Gerber, and partial AFA in calculating the cash deposit and assessment rates for respondent Green Fresh, pursuant to sections 776(a) and (b) of the Tariff Act of 1930, as amended (the Act). *See Final Results*, 69 FR at 54637–54638. The Department found that Gerber and Green Fresh were involved in a business arrangement/scheme, commencing during the period of the prior (third) administrative review, that resulted in the circumvention of the proper payment of cash deposits on certain

POR entries of subject merchandise made by Gerber. As either total or partial AFA, the Department applied the PRC–wide-rate of 198.63 percent to both companies. Gerber and Green Fresh challenged the Department's resorting to the application of AFA to determine their cash deposit and assessment rates in the Final Results before the CIT.

In light of the CIT's analysis in its decisions in the litigation covering the third administrative review (see *Gerber Food (Yunnan) Co., Ltd. and Green Fresh (Zhangzhou) Co., Ltd. v. United States*, Slip Op. 08–97 (September 16, 2008) (*Gerber v. United States I*), which concerned the same parties and many of the same issues as those in the fourth administrative review, and the factual similarity between the administrative records of the third and fourth administrative reviews, the Government of the United States requested a voluntary remand, which the CIT granted on May 5, 2009. *See Gerber v. United States Remand Order*. Pursuant to this remand order and consistent with the Court's analysis in *Gerber v. United States I*, the Department issued its final results of redetermination on July 24, 2009. *See* Redetermination Pursuant to Court Remand, dated July 24, 2009 (*Remand Redetermination*) (found at http://ia.ita.doc.gov/remands). In this redetermination, the Department recalculated the margin for Gerber using a rate other than the PRC–wide rate as partial AFA with respect to only those sales of subject merchandise made by Gerber during the POR which were exported to the United States using the invoices of Green Fresh. The Department also recalculated the margin for Green Fresh exclusive of the above–mentioned transactions and the application of AFA. *See Remand Determination* at 1, and 4–7. The CIT affirmed this redetermination on January 5, 2010. *See Gerber Food (Yunnan) Co., Ltd. and Green Fresh (Zhangzhou) Co., Ltd. v. United States*, Slip Op. 10–2 (January 5, 2010) at 3.

On January 25, 2010, consistent with the decision of the United States Court of Appeals for the Federal Circuit in *Timken Co. v. United States*, 893 F. 2d 337 (Fed. Cir. 1990), the Department notified the public that the CIT's decision was not in harmony with the Department's final results. *See Certain Preserved Mushrooms from the People's Republic of China: Notice of Court Decision Not in Harmony with Final Results of Administrative Review*, 75 FR 3896 (January 25, 2010). No party appealed the CIT's decision. Because there is now a final and conclusive court decision in this case, the Department is amending the *Final Results*.

Amended Final Results of Review

As the litigation in this case has concluded, we are amending the *Final Results* to reflect the results of our remand redetermination. Specifically, the Department's redetermination resulted in changes to the *Final Results* weighted–average margins for Gerber from 198.63 percent to 22.84 percent, and for Green Fresh from 42.90 percent to 15.83 percent.

Assessment

The Department will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on POR entries of the subject merchandise from Gerber and Green Fresh based on the revised assessment rates calculated by the Department. We intend to issue the assessment instructions to CBP 15 days after the date of publication of these amended final results of review.

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: March 29, 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2010–7758 Filed 4–5–10; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XV19

Endangered and Threatened Species; Initiation of 5–Year Review for Southern Resident Killer Whales

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

ACTION: Notice of initiation of 5–year review; request for information.

SUMMARY: NMFS announces a 5–year review of Southern Resident killer whales (Orcinus orca) under the Endangered Species Act of 1973, as amended (ESA). A 5–year review is a periodic process conducted to ensure that the listing classification of a species is accurate. A 5–year review is based on the best scientific and commercial data available at the time of the review; therefore, we are requesting submission of any such information on Southern Resident killer whales that has become available since their original listing as endangered in November 2005. Based on the results of this 5–year review, we will make the requisite finding under the ESA.

DATES: To allow us adequate time to conduct this review, we must receive your information no later than July 6, 2010. However, we will continue to accept new information about any listed species at any time.

ADDRESSES: Please submit information on Southern Resident killer whales to Lynne Barre, NMFS Northwest Region, 7600 Sand Point Way NE, Seattle, WA 98115. Information may also be submitted via email to orca.plan@noaa.gov. Information received in response to this notice will be available for public inspection by appointment, during normal business hours, at the above address. We will consider all comments and information received during the comment period in preparing a 5–year review.

FOR FURTHER INFORMATION CONTACT: Lynne Barre, Northwest Regional Office, 206–526–4745; or Susan Pultz, Office of Protected Resources, 301–713–1401.

SUPPLEMENTARY INFORMATION: Under the ESA, the U.S. Fish and Wildlife Service maintains a list of endangered and threatened wildlife and plant species at 50 CFR 17.11 (for animals) and 17.12 (for plants). Section 4(c)(2)(A) of the ESA requires that we conduct a review of listed species at least once every five years. On the basis of such reviews under section 4(c)(2)(B), we determine whether or not any species should be removed from the List (delisted), or reclassified from endangered to threatened or from threatened to endangered. Delisting a species must be supported by the best scientific and commercial data available and only considered if such data substantiates that the species is neither endangered nor threatened for one or more of the following reasons: (1) the species is considered extinct; (2) the species is considered to be recovered; and/or (3) the original data available when the species was listed, or the interpretation of such data, were in error. Any change in Federal classification would require a separate rulemaking process. The regulations in 50 CFR 424.21 require that we publish a notice in the **Federal Register** announcing those species currently under active review. This notice announces our active review of the Southern Resident killer whale distinct population segment (DPS) currently listed as endangered (70 FR 69903; November 18, 2005).

Background information on Southern Resident killer whales including the endangered listing, critical habitat designation, recovery planning and

protective regulations is available on the NMFS Northwest Region Web site at *http://www.nwr.noaa.gov/*. Critical habitat was designated in November 2006 (71 FR 69054) and includes 2,560 square miles (6,630 sq km) of marine habitat in Haro Strait and waters around the San Juan Islands, Puget Sound, and the Strait of Juan de Fuca. The final Recovery Plan was released in January 2008 (73 FR 4176), and contains detailed information on status, threats and recovery actions for Southern Residents, including updates since the ESA listing in 2005. Proposed regulations to protect Southern Resident killer whales from vessel effects were released in July 2009 (74 FR 37674).

Determining if a Species is Threatened or Endangered

Section 4(a)(1) of the ESA requires that we determine whether a species is endangered or threatened based on one or more of the five following 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. Section 4(b) also requires that our determination be made on the basis of the best scientific and commercial data available after taking into account those efforts, if any, being made by any State or foreign nation, to protect such species.

Public Solicitation of New Information

To ensure that the 5–year review is complete and based on the best available scientific and commercial information, we are soliciting new information from the public, governmental agencies, Tribes, the scientific community, industry, environmental entities, and any other interested parties concerning the status of Southern Resident killer whales. The 5–year review considers the best scientific and commercial data and all new information that has become available since the listing determination or most recent status review. Categories of requested information include: (1) species biology including, but not limited to, population trends, distribution, abundance, demographics, and genetics; (2) habitat conditions including, but not limited to, amount, distribution, and suitability; (3) conservation measures that have been implemented that benefit the species; (4) status and trends of threats; and (5) other new information, data, or corrections including, but not limited to, taxonomic or nomenclatural changes, identification of erroneous information contained in the List, and improved analytical methods.

Any new information will be considered during the 5–year review and will also be useful in evaluating the ongoing recovery program for Southern Resident killer whales. For example, information on conservation measures will assist in tracking implementation of recovery actions. Habitat information received during the 5–year review process will also be useful in any future consideration of amending the designated critical habitat for Southern Resident killer whales. At the time critical habitat was designated (71 FR 69054; November 26, 2006), we concluded there was insufficient data to identify specific areas in offshore waters in which essential habitat features are found and stated we would consider any new information on coastal and offshore habitats that becomes available.

If you wish to provide information for this 5–year review, you may submit your information and materials to Lynne Barre (see **ADDRESSES** section). Our practice is to make submissions of information, including names and home addresses of respondents, available for public review on the Northwest Regional Web page and in our office during regular business hours. Respondents may request that we withhold a respondent's identity, as allowable by law. If you wish us to withhold your name or address, you must state this request prominently at the beginning of your submission. We will not, however, consider anonymous submissions. To the extent consistent with applicable law, we will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. Information and materials received will be available for public inspection, by appointment, during normal business hours (see **ADDRESSES** section).

Authority: 16 U.S.C. 1531 *et seq.*

Dated: March 30, 2010.

Angela Somma,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2010–7766 Filed 4–5–10; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–831]

Stainless Steel Sheet and Strip in Coils from Taiwan: Notice of Extension of Time Limits for Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: April 6, 2010.

FOR FURTHER INFORMATION CONTACT: Henry Almond, AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–0049.

SUPPLEMENTARY INFORMATION:

Background

On July 1, 2009, the Department of Commerce (the Department) published a notice in the **Federal Register** of opportunity to request administrative review of the antidumping duty order on stainless steel sheet and strip in coils from Taiwan. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 74 FR 31406 (July 1, 2009). On July 28, 2009, Chia Far Industrial Factory Co., Ltd. (Chia Far) requested an administrative review of its entries during the period of review (POR) of July 1, 2008, through June 30, 2009. On July 31, 2009, the petitioners[1] requested a review with respect to Chia Far and 22 additional companies.

On August 25, 2009, the Department published a notice of initiation of administrative review of the antidumping duty order on stainless steel sheet and strip in coils from Taiwan for the POR with respect to 23 companies. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 74 FR 42873 (Aug. 25, 2009).

As explained in the memorandum from the Deputy Assistant Secretary for Import Administration, the Department has exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from

[1] The petitioners in this proceeding are Allegheny Ludlum Corporation, AK Steel Corporation, North American Stainless, United Auto Workers Local 3303, United Steelworkers of America, AFL-CIO/CLC, and Zanesville Armco Independent Organization.

February 5, through February 12, 2010. Thus, all deadlines in this segment of the proceeding have been extended by seven days. Therefore, the preliminary results are currently due no later than April 9, 2010. *See* Memorandum to the Record from Ronald Lorentzen, DAS for Import Administration, regarding "Tolling of Administrative Deadlines As a Result of the Government Closure During the Recent Snowstorm," dated February 12, 2010.

Extension of Time Limit for Preliminary Results

Pursuant to section 751(a)(3)(A) of Tariff Act of 1930, as amended (the Act), the Department shall make a preliminary determination in an administrative review of an antidumping order within 245 days after the last day of the anniversary month of the date of publication of the order. Section 751(a)(3)(A) of the Act further provides, however, that the Department may extend the 245-day period to 365 days if it determines it is not practicable to complete the review within the foregoing time period. We determine that it is not practicable to complete this administrative review within the time limits mandated by section 751(a)(3)(A) of the Act because we require additional time to analyze and verify the data submitted by Chia Far, the sole respondent selected for individual examination. In accordance with section 751(a)(3)(A) of the Act, we have fully extended the deadline for completing the preliminary results until August 7, 2010. Because August 7, 2010, falls on a weekend, the actual due date is now August 9, 2010. The deadline for the final results of the review continues to be 120 days after the publication of the preliminary results.

This notice is published in accordance with sections 751(a)(3)(A) and 777(i) of the Act.

Dated: March 31, 2010.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2010–7759 Filed 4–5–10; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XG18

Identification of Nations Whose Fishing Vessels Are Engaged in Illegal, Unreported, or Unregulated Fishing and/or Bycatch of Protected Living Marine Resources

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

ACTION: Reopening of request for information period.

SUMMARY: NMFS is reopening the request for information in order to provide additional opportunities for interested parties to provide information regarding nations whose vessels are engaged in illegal, unregulated, or unreported (IUU) fishing or bycatch of protected living marine resources (PLMRs). Such information will be reviewed for the purposes of the identification of nations pursuant to the High Seas Driftnet Fishing Moratorium Protection Act (Moratorium Protection Act). On March 5, 2010, NMFS published a request for information, with submissions requested by April 5, 2010. NMFS is now reopening the request for information until April 23, 2010.

DATES: Information should be received on or before April 23, 2010.

ADDRESSES: Information should be submitted to NMFS Office of International Affairs, Attn.: MSRA Information, 1315 East-West Highway, Silver Spring, MD 20910. E-mail address: *IUU.PLMR.INFO@noaa.gov* or fax (301) 713–9106.

FOR FURTHER INFORMATION CONTACT: NMFS Office of International Affairs, e-mail address: *IUU.PLMR.INFO@noaa.gov.*

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006 (MSRA) amended the Moratorium Protection Act (16 U.S.C. 1826d–k) to require actions be taken by the United States to strengthen international fishery management organizations and address IUU fishing and bycatch of PLMRs. Specifically, the Moratorium Protection Act requires the Secretary of Commerce (Secretary) to identify in a biennial report to Congress those nations whose fishing vessels are engaged, or have been engaged at any point during the preceding 2 years, in IUU fishing. In this context, IUU fishing is defined (16 U.S.C. 1826j; 50 CFR 300.200–201) as:

(1) Fishing activities that violate conservation and management measures required under an international fishery management agreement to which the United States is a party, including catch limits or quotas, capacity restrictions, and bycatch reduction requirements;

(2) Overfishing of fish stocks shared by the United States, for which there are no applicable international conservation or management measures or in areas with no applicable international fishery management organization or agreement, that has adverse impacts on such stocks; and

(3) Fishing activity that has an adverse impact on seamounts, hydrothermal vents, and cold water corals located beyond national jurisdiction, for which there are no applicable conservation or management measures or in areas with no applicable international fishery management organization or agreement.

Additionally, the Secretary must identify in the biennial report those nations whose fishing vessels are engaged, or have been engaged during the preceding calendar year, in fishing activities either (1) in waters beyond any national jurisdiction that result in bycatch of a PLMR, or (2) beyond the U.S. exclusive economic zone (EEZ) that result in bycatch of a PLMR shared by the United States. In this context, PLMRs are defined as non-target fish, sea turtles, or marine mammals that are protected under U.S. law or international agreement, including the Marine Mammal Protection Act, the Endangered Species Act, the Shark Finning Prohibition Act, and the Convention on International Trade in Endangered Species of Wild Flora and Fauna. PLMRs do not include species, except sharks, managed under the Magnuson-Stevens Fishery Conservation and Management Act, the Atlantic Tunas Convention Act, or any international fishery management agreement. A list of species considered as PLMRs for this purpose is available online at: *http://www.nmfs.noaa.gov/msa2007/docs/list_of_protected_lmr_act_022610.pdf.*

The first biennial report was submitted to Congress in January 2009 and is available online at *http://www.nmfs.noaa.gov/msa2007/docs/msra_biennial_report_011309.pdf.* The report identified six nations for IUU fishing.

The Moratorium Protection Act also requires the Secretary to establish procedures to certify whether each nation identified in the biennial report is taking appropriate corrective action to

address IUU fishing and/or bycatch of PLMRs by fishing vessels of that nation. If a nation does not receive a positive certification by the Secretary, they could be subject to sanctions under the High Seas Driftnet Fisheries Enforcement Act (Enforcement Act) (16 U.S.C. 1826a). On January 14, 2009, NMFS published a proposed rule to implement both the identification and certification procedures. That proposed rule is available online at *http://www.nmfs.noaa.gov/msa2007/docs/iuu_bycatch_rule011409.pdf.* The rule provides information regarding the identification process how the information solicited here will be used in that process.

In fulfillment of its requirements under the Moratorium Protection Act, NMFS is preparing the second biennial report to Congress, which will identify nations whose fishing vessels are engaged in IUU fishing or fishing practices that result in bycatch of PLMRs. NMFS is soliciting information from the public that could assist in its identification of nations engaged in activities that meet one or more of the three criteria described above for IUU fishing or one or more of the two criteria described above for PLMR bycatch. Information that may prove useful to NMFS includes:

- Documentation (photographs, *etc.*) of IUU activity or PLMR bycatch;
- Fishing vessel records;
- Reports from off-loading facilities, port-side government officials, enforcement agents, military personnel, port inspectors, transshipment vessel workers and fish importers;
- Government vessel registries;
- IUU vessel lists from RFMOs;
- RFMO catch documents and statistical document programs;
- Appropriate certification programs; and
- Reports from governments, international organizations, or nongovernmental organizations.

NMFS will consider all available information, as appropriate, when making a determination whether or not to identify a particular nation in the biennial report to Congress. NMFS is particularly interested in information on IUU fishing activity and bycatch of PLMRs that occurred during 2009–2010. NMFS will consider several criteria when determining whether information is appropriate for use in making identifications, including but not limited to:

- Corroboration of information;
- Whether multiple sources have been able to provide information in support of an identification;
- The methodology used to collect the information;
- Specificity of the information provided; and
- Susceptibility of the information to falsification and alteration; and
- Credibility of the individuals or organization providing the information.

Information should be as specific as possible as this will assist NMFS in its review.

Dated: March 31, 2010.

Rebecca Lent,

Director, Office of International Affairs, National Marine Fisheries Service.

[FR Doc. 2010–7768 Filed 4–5–10; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

[Docket No. PTO–P–2010–0012]

Patents Ombudsman Pilot Program

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Notice.

SUMMARY: The United States Patent and Trademark Office (USPTO) published a notice in the **Federal Register** seeking public comments on a proposed procedure for a Patents Ombudsman Pilot Program. The majority of the written comments from the patent community were positive and supported the implementation of such a program. After considering the written comments, the USPTO has decided to implement the Patents Ombudsman Pilot Program as set forth in this notice for a period of one year. The Patents Ombudsman Pilot Program is intended to provide patent applicants, attorneys and agents with assistance with application-processing issues regarding concerns with advancement of prosecution (*e.g.,* stalled applications). The Patents Ombudsman Pilot Program is not intended to circumvent normal communication between pro se applicants or applicants' representatives and examiners or Supervisory Patent Examiners, and it is not intended to supersede the authority of the examiners or Supervisory Patent Examiners. After the one-year period, the USPTO may extend the pilot program with appropriate modifications based on the feedback from the participants, the effectiveness of the pilot program and the availability of resources.

DATES: *Effective Date:* April 6, 2010.

Duration: The Patents Ombudsman Pilot Program will run for twelve months from its effective date. Therefore, any request under the Patents Ombudsman Pilot Program must be submitted before April 6, 2011.

FOR FURTHER INFORMATION CONTACT: Mindy Fleisher, Special Programs Advisor, Technology Center (TC) 2400, at (571) 272–3365, or Pinchus M. Laufer, Legal Advisor, Office of Patent Legal Administration, Office of the Associate Commissioner for Patent Examination Policy, at (571) 272–7726.

Valencia Martin-Wallace, TC 2400 Director, available at (571) 272–4020, will provide oversight of the Patents Ombudsman Pilot Program.

SUPPLEMENTARY INFORMATION: The majority of patent applications filed with the USPTO proceed through the examination process consistent with established USPTO procedure. However, some patent applicants, attorneys, and agents have expressed that their applications have not proceeded in accordance with established procedure. In some situations, the patent applicants, attorneys, and agents have felt that examination has stalled and that their efforts to move their applications forward through the normal channels have not been effective. Patent applicants, attorneys, and agents have suggested that there be a dedicated resource they can turn to in such instances. These suggestions led the USPTO to consider implementing a Patents Ombudsman Pilot Program and to publish a notice in the **Federal Register** seeking public comments on a proposed procedure. *See Request for Comments on Patents Ombudsman Pilot Program,* 74 FR 55212 (Oct. 27, 2009), 1348 *Off. Gaz. Pat. Office* 418 (Nov. 24, 2009). The USPTO received fifteen written comments from the public, which are available on the USPTO Web site at *http://www.uspto.gov/patents/law/comments/ombudsmancomments.jsp.* The majority of the written comments from the patent community were positive and supported the implementation of such a program. The USPTO considered the written comments and decided to implement the Patents Ombudsman Pilot Program as set forth in this notice for the duration of one year. After the one-year period, the USPTO may extend the pilot program with appropriate modifications based on feedback from the participants, the effectiveness of the pilot program and the availability of resources.

The objectives for the Patents Ombudsman Pilot Program are: (1) To facilitate complaint-handling for pro se applicants and applicant's representatives whose applications have

stalled in the examination process; (2) to track complaints to ensure each is handled within ten business days; (3) to provide feedback and early warning alerts to USPTO management regarding training needs based on complaint trends; and (4) to build a database of frequently asked questions accessible to the public that tracks commonly seen problems and effective resolutions. The entire Patent Examining Corps and other Patents operation units (*e.g.,* Office of Patent Application Processing) will be included in the program. While the USPTO realizes the role of the ombudsman in the Patents Ombudsman Pilot Program as set forth in this notice does not fall within the "classic" definition of the term "ombudsman," the USPTO notes that many Federal agencies have established ombudsman-like complaint-handling offices and this pilot program is in line with that type of office. Furthermore, the USPTO published a notice proposing a Patents Ombudsman Pilot Program and had many discussions with the stakeholders regarding the program. Therefore, the USPTO decided to continue to use the term "ombudsman" in the pilot program to avoid confusion. Additionally, the USPTO will continue to work with the Coalition of Federal Ombudsmen to ensure that the USPTO's program will meet the intended goals.

The Patents Ombudsman Pilot Program is intended to provide patent applicants, attorneys and agents with assistance with application-processing issues, particularly concerns with advancement of prosecution. The program is to be used by applicants who believe that their applications have stalled in the examination process. Specifically, the program is intended for those applications in which the normal process has gone awry, and after all other avenues have been used but failed to provide the needed assistance. The ombudsman may be contacted for an application-processing issue that applicant has been unable to resolve using USPTO's existing processes (*e.g.,* the examiner that does not appear to address a new argument or amendment, and the applicant cannot reach the examiner and Supervisory Patent Examiner after a reasonable period of time). Other examples of situations where it is appropriate to contact an Ombudsman will be provided on the USPTO Web site at *http://www.uspto.gov/patents/ombudsman.jsp.*

The Patents Ombudsman Pilot Program, however, cannot be used as an alternative forum for resolution of disagreements between the applicant and a USPTO official that are currently resolved via appeal, petition or other procedures (*e.g.,* a request for pre-appeal brief conference). The program cannot be used to circumvent the examination process and normal communication between pro se applicants or applicants' representatives, and examiners, Supervisory Patent Examiners, or TC Directors, with respect to their applications. Furthermore, the program cannot be used to supersede the authority of the USPTO deciding official but rather to help ensure that applications proceed through the established process in a timely fashion. In particular, the role of the ombudsman will not usurp the function of the examiner, Supervisory Patent Examiner, or TC Director, such as participating in any interviews or any pre-appeal or appeal conferences.

In addition, the USPTO has various customer services mechanisms already in place and the Patents Ombudsman Pilot Program is not intended to replace those mechanisms. Specifically, the program should not be used for routine status inquiries or other routine matters. Applicants are encouraged to check the status of their applications using the Private Patent Application Information Retrieval (PAIR) system, or contact the various help desks for assistance (*e.g.,* the Patents Electronic Business Center (EBC) for any assistance on electronic filings), rather than contacting the ombudsman. *See* Manual of Patent Examining Procedure (MPEP) § 203.08 for more information on status inquiries. Contact information for various organizations is available on the USPTO Web site at *http://www.uspto.gov/patents/ombudsman.jsp.* Applicants may receive faster assistance by going to the point of contact in the USPTO that routinely resolves the relevant issue.

In order to participate in the Patents Ombudsman Pilot Program, pro se applicants or applicants' representatives must fill an electronic form on the USPTO Web site at *http://www.uspto.gov/patents/ombudsman.jsp* to provide their name and phone number and select the ombudsman for the patent organization (*e.g.,* TC 2400) in which they are seeking assistance. Once a participant accesses the program via the USPTO Web site, the participant will immediately receive a system generated e-mail response noting that the inquiry was received. The participant should expect a telephone call from the ombudsman within one business day to proceed with the inquiry. A person seeking assistance in an application through the Patents Ombudsman Pilot Program must have the authority to represent the application. Therefore, third parties and individuals represented by a patent attorney or agent may not participate in the program.

The ombudsman in the appropriate organization will call the pro se applicant or applicants' representative within one business day to obtain a full description of the issue. During the initial telephone call, the participant may request that the communication with the ombudsman not be forwarded to the deciding official (*e.g.,* the Examiner). This will permit participants to provide feedback and early warning alerts to USPTO management regarding training needs based on complaint trends. Once the full description is obtained, the ombudsman will create a record in a database. The record in the database will be solely limited to the contact information and a general description of the issue at a generic level that does not require it to be made part of the application record.

All requests for assistance made to the pilot program will be tracked in the database to: (1) Ensure that all requests for assistance are addressed; (2) identify and use trends to develop targeted training for employees as appropriate; and (3) enhance customer service. The ombudsman will be regularly monitoring the database to look for trends within his/her own area, and the senior management team managing the program will be looking at the database for overall trends. These trends will be reported to senior management and used to develop future initiatives as appropriate. The TC Director who is overseeing the Patents Ombudsman Pilot Program, Valencia Martin-Wallace, will also periodically review reports of the suggestions, comments and complaints to look for trends regarding similar issues and implement appropriate changes to resolve these issues.

The Patents Ombudsman Pilot Program is staffed by senior supervisors and TC staff, including Supervisory Patent Examiners, Training Quality Assurance Specialists, and subject matter experts. Unless participant requests that the issue raised with the ombudsman not be forwarded to the deciding official, the ombudsman will forward the issue to an official in the appropriate organization that is best suited to resolve the issue (*e.g.,* Technical Support Staff, Supervisory Patent Examiner, or TC Director) and ensure that the issue is appropriately addressed. The official in the appropriate organization will notify the participant of the resolution. Any written communication between the official in the appropriate organization and the participant, and any complete

written statement as to the substance of a telephone interview, with regard to the merits of an application will be made of record in the application (*e.g.,* the examiner will complete an Interview Summary form PTOL–413 for any interview where a matter of substance has been discussed during the interview). *See* MPEP § 713.04. Furthermore, any written communication received by the ombudsman regarding the merits of an application will be placed in the application file.

The ombudsman will request that the official send a message back to the ombudsman when the issue has been treated and the participant has been notified of the resolution. In order to gauge the effectiveness of the program, the ombudsman may contact the participant for feedback. It is intended that all issues be considered and treated within ten business days. The ombudsman in each organization will regularly monitor the database to ensure that issues are being treated in a timely manner. In particular, the ombudsman will inquire into instances where five business days have elapsed and there is no indication that the issue has been closed out or is actively in the process of being treated.

The USPTO will evaluate the success of the program by seeking feedback and comments from the participants. The satisfaction level of the participants will be monitored. If a participant is not satisfied with the program, the participant may contact TC 2400 Director, Valencia Martin-Wallace, who is overseeing the Patents Ombudsman Pilot Program. After the one-year period, the USPTO may extend the pilot program with appropriate modifications based on the feedback from the participants, the effectiveness of the pilot program and the availability of resources.

Dated: March 29, 2010.

David J. Kappos,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 2010–7577 Filed 4–5–10; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XQ82

Small Takes of Marine Mammals Incidental to Specified Activities; Russian River Estuary Water Level Management Activities, California

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

ACTION: Notice; issuance of incidental harassment authorization.

SUMMARY: In accordance with the regulations implementing the Marine Mammal Protection Act (MMPA), notification is hereby given that NMFS has issued an Incidental Harassment Authorization (IHA) to the Sonoma County Water Agency (herein after "Agency") to take small numbers of marine mammals, by Level B harassment, incidental to Russian River Estuary (Estuary) water level management and monitoring activities at the mouth of the Russian River, Jenner, CA.

DATES: Effective from April 1, 2010, through March 31, 2011.

ADDRESSES: A copy of the IHA, application and Environmental Assessment (EA) prepared for this action are available by writing to Michael Payne, Chief, Permits, Conservation, and Education Division, Office of Protected Resources (OPR), National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225, by telephoning the contact listed here (**FOR FURTHER INFORMATION CONTACT**) or online at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm*. Documents cited in this notice may be viewed, by appointment, during regular business hours, at the aforementioned address.

FOR FURTHER INFORMATION CONTACT: Jaclyn Daly, Office of Protected Resources, NMFS, (301) 713–2289.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (Secretary) to allow, upon request, the incidental, but not intentional, taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) if certain findings are made and regulations are issued or, if the taking is limited to harassment, notice of a proposed authorization is provided to the public for review.

Authorization for incidental takings may be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for certain subsistence uses, and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such taking are set forth. NMFS has defined "negligible impact" in 50 CFR 216.103 as: "an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival."

Section 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. Section 101(a)(5)(D) establishes a 45–day time limit for NMFS review of an application followed by a 30–day public notice and comment period on any proposed authorizations for the incidental harassment of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny the authorization.

Except with respect to certain activities not pertinent here, the MMPA defines "harassment" as any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

Summary of Request

On September 22, 2009, NMFS received a complete application from the Agency requesting a one-year IHA to take, by Level B harassment, up to 2,861 harbor seals (*Phoca vitulina richardii*), 16 California sea lions (*Zalophus californianus*), and 11 northern elephant seals (*Mirounga angustirostris*) incidental to estuary water level management events and monitoring activities. The management events involve the use of heavy equipment (e.g., bulldozers, excavators) to either (1) excavate a relatively steep, narrow pilot channel directly through the barrier beach which naturally forms at the mouth of the Russian River (the Agency's current breaching method); or (2) excavate and maintain a stable, relatively low velocity lagoon outlet

channel diagonally across the barrier beach. In addition, physical and biological monitoring mandated by the Biological Opinion referenced below would be conducted within the action area to determine, among other things, water quality dynamics and impacts to harbor seals. The purpose of the water level management events is to reduce flooding risk to low-lying residential properties built along the estuary; however, the lagoon outlet channel is also intended to comply with Reasonable and Prudent Alternative (RPA) 2 prescribed NMFS' 2008 Biological Opinion (BiOp) on Water Supply, Flood Control Operations, and Channel Maintenance conducted by the U.S. Army Corps of Engineers, the Sonoma County Water Agency, and the Mendocino County Russian River Flood Control and Water Conservation Improvement District in the Russian River Watershed. The purpose of the RPA is to preserve beach sands and maintain productive rearing habitat for Pacific salmonids listed as threatened or endangered pursuant to statutes of the Endangered Species Act of 1973, as amended (ESA). All estuary water level management events require the use of heavy equipment (e.g., bulldozers, excavators) on Goat Rock State Beach, the location of a large harbor seal colony. The presence of crew and equipment will result in Level B (behavioral) harassment to the aforementioned species. Pinnipeds hauled out on the beach may become alert, move to another area of the beach or upriver, or flush into the water. Hence, an MMPA authorization is warranted.

Specified Activities

On November 12, 2009, NMFS proposed issuance of an IHA to the Agency in the **Federal Register** (74 FR 58248) for the take of marine mammals incidental to Estuary water level management and monitoring activities. A detailed description of the specified activities can be found in that notice, the IHA application, and NMFS' EA. However, since that notice, the Agency has altered its lagoon outlet channel design configuration which will require less consecutive days of work. A summary of the description of each current method (i.e., breaching or lagoon outlet channel creation and maintenance) is provided here.

When ocean waves build up a barrier beach across the river's mouth, the Russian River estuary forms a lagoon that is hydraulically isolated from the marine environment, except for occasional wave overwash. Freshwater inflow from upstream and rain causes this lagoon to slowly gain in volume and depth. Currently, when water levels rise in this lagoon to a point which threatens flooding (4.5 - 7 ft), the Agency will mechanically cut a deep, narrow pilot channel through the barrier beach, usually down the middle of the beach. This process, referred to as "breaching," will cause the lagoon to reconnect to the ocean resulting in a tidal system with a nearly marine salinity of 28 parts per thousand as far upstream as the mouth of Sheephouse Creek. This practice also causes the estuary to become very shallow, subject to water quality dynamics that are neither natural nor optimal for the survival of large numbers of small, juvenile ESA-listed salmonids, and results in 10–20 thousand cubic inches of sand to be blown offshore. The size of the resulting pilot channel varies depending on the height of the sand bar to be breached, the tide level, and the elevation of the estuary at the time of breaching. Typically, breaching will result in a pilot channel approximately 100 ft long by 25 ft wide and 6 to 8 ft deep (Corps and Agency 2004, NMFS 2005).

During ESA Section 7 consultation, NMFS concluded that breaching water management practices, when conducted during salmonid smolting and rearing times, was jeopardizing the continued existence of the threatened Central California Coast (CCC) steelhead (*Oncorhynchus mykiss*) Distinct Population Segment (DPS) and adversely modifying critical habitat for CCC steelhead, endangered California Coast coho salmon (*O. kisutch*), and threatened California Coast Chinook salmon (*O. tshawytscha*). As such, NMFS developed and included an RPA in the aforementioned BiOp requiring the Agency to conserve beach sands and maintain a more viable productive rearing habitat (i.e., deeper, freshwater) for Pacific ESA-listed salmonids. To comply with this RPA, the Agency originally proposed creating a shallow, wide outlet channel, which could require up to four days of heavy machinery work to construct. However, in coordination with NMFS, the Agency has re-evaluated the engineering design of this channel and has developed a configuration which will be more similar to current breaching methods; this design will require no more than two consecutive work days and little maintenance. NMFS has included appropriate mitigation measures in the IHA limiting the number of consecutive work days and allowing for adequate seal recovery periods while still controlling flooding and maintaining vital fish rearing habitat (see Mitigation section below).

The Agency will also conduct physical and biological monitoring to measure changes in the bar and channel elevation, lengths, and widths, as well as flow velocities and observations of the bed structure (to identify bed forms and depth-dependent grain size distribution indicative of armoring) in the channel. The Agency is required by NMFS' 2008 BiOp and other state and federal permits to collect biological, water quality, and physical habitat data in conjunction with estuary management. Fisheries seining and trapping, water quality monitoring, invertebrate/ sediment sampling, and physical habitat measurements require the use of boats and nets in the Estuary. Boating and other RPA-directed monitoring activities occur in the vicinity of river haul outs. Table 2 in the Agency's application describes in detail the monitoring tasks associated with Russian River estuary management plan.

Marine Mammals Affected by the Activity

Marine mammals present within the action area will be disturbed by Agency personnel and equipment on the beach during estuary water level management activities. Historic visual monitoring of harbor seals at the Jenner haulout has been conducted by local residents since 1985, the Agency during breaching events from 1996–2000, and more recently by Seal Watch (a monitoring program formed by volunteers of the Stewards of the Coast and Redwoods). Therefore, extensive data sets of pinniped abundance are available. A complete description of marine mammals affected by the proposed action, including monitoring data summaries, may be found in the proposed IHA **Federal Register** notice (74 FR 58248). In summary, harbor seals are the most abundant marine mammal found at the mouth of the Russian River and use the haulout for resting, pupping, and molting. Pupping season is March 15 - June 30. California sea lions and northern elephant seals are occasionally present and therefore also have the potential to be harassed from water level management and monitoring activities.

Potential Effects of Specified Activities on Marine Mammals

In addition to Seal Watch and local resident seal census data collection, the Agency conducted extensive monitoring during breaching activities from 1996–2000. In all five years of monitoring, no stampedes were recorded; however, most seals will flush off the beach in

response to approaching personnel. Agency crew walk the beach slowly ahead of heavy machinery to avoid major startle responses. The number of seals hauled out on the barrier beach was generally low when it was closed and then quickly increased once the barrier beach was artificially breached (Merritt Smith Consulting, 1997, 1998, 1999, 2000, Sonoma County Water Agency and Merritt Smith Consulting, 2001). Data from Seal Watch and local residents also indicate that seals are less abundant when the barrier beach is closed. Locals speculate that because people can access the beach more readily when the barrier beach is closed; they disturb the seals causing a decline in abundance. However, according to Heckel (1994), the loss of easy access to the haulout and ready escape to the sea when the river mouth is closed may account for the lower number of harbor seals seen at that time. In any case, there are less seals present when the barrier beach is closed, the time when the Agency will begin a water level management event.

Monitoring data indicate that seals react to Agency crew approaching the beach and their equipment in similar manners as they do to beachgoers, kayakers, and unusually loud local traffic from adjacent Hwy 1 (e.g., motorcycles). That is, seals will become alert, flush into the water, or move some distance down the beach from approaching crew and equipment. Seals generally return to the beach within one hour to one day of equipment leaving the beach. Since monitoring began in 1987, there are records of only two stampedes, both of which occurred prior to 1999 when equipment entered the beach before crews. Since 1999, and under the IHA, personnel will slowly walk the beach ahead of equipment, alleviating the risk of stampeding. Agency personnel conducting physical and biological would also abide by these procedures.

As stated previously, the Agency has altered its specified activity such that the configuration of the lagoon outlet channel is more similar to current breaching methods, resulting in less consecutive work days. NMFS expects the immediate impacts from presence of crew and heavy machinery on the beach to continue to be short-term changes in seal behavior (e.g., alertness, flushing). No long-term impacts to haulout use at the Jenner haulout as been identified from current breaching methods. An analysis of variance (ANOVA) test showed no significant difference in average monthly seal counts between 1993–2002 (p= 0.743), despite the Agency breaching the barrier beach since 1995. However, because machinery would not be on the beach for more than 2 consecutive days, impacts will be minimized.

NMFS has included additional mitigation measures for water level management activities during the pupping season in the final IHA. The measures prevent, to the maximum extent possible, avoiding work if young pups are on the beach, reduce the consecutive number of days equipment may work during this time, and establish a "recovery period" between events (see Mitigation and Monitoring below). For these reasons and those explained in the response to comments below, NMFS has determined that the Agency's breaching activities, whatever the outlet design, will result in, at most, short-term Level B (behavioral) harassment.

Effects on Marine Mammal Habitat

In addition to natural breaching, the Agency has mechanically breached the barrier beach at the mouth of the Russian River since 1995. Prior to 1995, artificial breaching was done by the County of Sonoma Public Works Department and by local citizens. The Jenner haulout is currently the largest harbor seal haulout in Sonoma County despite year-round breaching events. The proposed outlet design during the lagoon management period will deviate from the current design (it will be wider and cut diagonally); however, this change in configuration is not expected to impact pinniped use of the haulout as an opening from the lagoon to the ocean will still be created.

Comments and Responses

A notice of receipt and request for public comment on the application and proposed authorization was published on November 12, 2009 (74 FR 58248). During the 30–day public comment period, six members of the public and the Marine Mammal Commission (Commission) provided comments.

Comment 1: Based on its review of the application and **Federal Register** notice, the Marine Mammal Commission (Commission) concurs with NMFS' determination that the proposed activities will result, at most, in the temporary modification of pinniped behavior and will have a negligible impact on the stocks. The Commission's concurrence is contingent upon implementation of the proposed mitigation and monitoring measures described in the proposed IHA notice.

Response: The IHA contains all mitigation and monitoring measures identified in the proposed IHA notice and additional mitigation as described in this notice to further ensure impact to pinnipeds is at the lowest level practical.

Comment 2: The Agency provided four comments clarifying text in the **Federal Register** notice pertaining to: (1) to which organization seal monitoring volunteers belong; (2) a correction on CC Chinook salmon and their critical habitat not being part of the NMFS BiOp jeopardy opinion; (3) information on who breached the barrier beach before the Agency was responsible for this activity; and (4) a single sentence structure correction.

Response: NMFS has noted the information provided in these comments; however, they do not provide any substantial input which will affect NMFS' decision making process and therefore will not be discussed further.

Comment 3: Four members of public expressed concern with the overall health and general management activities of the entire Russian River ecosystem, including, but not limited to, presence and operation of dams upriver, wastewater issues, water diversion practices upriver, that the Russian River should no longer be considered a "naturally" flowing stream due to these and other man made influences, and the presence of a jetty which was constructed by the U.S. Army Corps of Engineers (Corps) nearly seven decades ago near the mouth of the river. Many comments received requested NFMS to consider impacts to the entire ecosystem from issuance of the IHA, not just marine mammals.

Response: An IHA solely authorizes harassment to marine mammals. The permit to actually conduct the activity is distributed by the Corps. For example, if no marine mammals will be harassed by the activity (e.g., no seals were on the beach), the Agency will be able to move forward with the activity and not be in violation of the MMPA. However, because seals are often on the beach, and therefore, there is potential for harassment, an IHA under the MMPA is warranted.

For purposes of issuing an IHA, NMFS must consider the applicant's specified activities and how those activities impact affected marine mammal species and stocks. The activities specified by the Agency are limited to either breaching the barrier beach (i.e., the current practice of creating a deep, narrow cut in the sandbar resulting in a tidally influenced estuary) or creating a lagoon outlet channel (i.e., excavating a channel across the beach allowing the river to flow to the ocean yet minimizing tidal inflow). Both methods use heavy

equipment (e.g., bulldozer or excavator) to reduce flooding to low lying communities adjacent to the estuary in Jenner, CA; presence of crew and equipment on the beach has the potential to harass pinnipeds. In addition, the Agency will conduct biological and physical monitoring of the estuary which may also result in pinniped harassment. NMFS can not make determinations or regulate, through an IHA, any activities not identified in the application (e.g., upriver management activities) or those by persons other than the applicant (e.g., the Corps).

Comment 4: Public comments were received regarding the impact the specified activities will have on non-listed birds and other wildlife and how management activities of the Russian River ecosystem in general (e.g., dams, diversion practices) impair ESA-listed salmon survival. The public considered the specified estuary management activities to be detrimental to these species.

Response: The purpose of the IHA is to issue the Agency authorization to harass marine mammals provided that harassment has a negligible impact on the affected species or stock. The IHA process does not analyze impacts or regulate harassment to species other than marine mammals under NMFS' jurisdiction (e.g., ESA-listed salmon) or those species not under NMFS' jurisdiction (e.g., shorebirds). NMFS notes that the purpose of modifying the Agency's current breaching practice is to enhance and conserve ESA-listed salmonids.

Comment 5: One commenter implied that modifications to the beach from the Agency's lagoon outlet channel creation and maintenance activities will not be small departures from the existing beach and channel topography, as stated in the proposed IHA notice and Agency's application, and that to say so is, among other things, "undocumented and unsupported."

Response: Rather than creating an artificial tidal inlet through the barrier beach by ripping a deep cut through the center of the barrier beach, which happens during current breaching practices, the Agency will maintain river outflow to the sea by constructing a cut which does not allow the lagoon to become tidal; a result consistent with natural processes as observed and documented at unmanaged river mouth estuaries of the California Coast (NMFS 2008). As such, modifications to the barrier beach will indeed be small departures from the existing beach and channel topography at the time of closure.

Comment 6: One commenter provided factual information that the Jenner haulout is not only the largest in Sonoma County, as described in the proposed IHA notice and Agency's application, but also the largest north of Drakes Estero in Marin County and the Eel River in Mendocino County. She also included that local residents, Elaine Twohy and Joe Mortenson, Pt. Reyes National Seashore, and NMFS have conducted seal counts in the area. The commenter went on to note the roles of Seal Watch in monitoring the seals at the Jenner haulout.

Response: NMFS notes these comments. NMFS has been in contact with Ms. Twohy, Mr. Mortenson, and Seal Watch organizers prior to releasing the proposed IHA notice and consulted with them for data throughout the IHA process. The Agency's application and monitoring plan also notes the roles these people and organizations play in monitoring harbor seals and people at the Jenner haulout and summarizes data collected by the persons mentioned in the comment.

Comment 7: One commenter, a Seal Watch volunteer, argued that "stampedes are not as infrequent as stated. In fact they occur often." She justifies this comment with her personal account of watching "total flushing of the haulout due to the presence of people on the beach, kayakers, sail boats, and motor boats approaching too close" and that when Seal Watch is not present, people ignore posted signs warning not to approach too closely. The commenter suggests consulting with Elinor Twohy and her data "will no doubt likewise confirm cases of full abandonment of the haulout."

Response: The commenter inappropriately uses the terms "stampede," "flush," and "full abandonment" interchangeably. For example, all seals may flush into the water, resulting in full abandonment; however, that does not mean the seals stampeded (defined here as a sudden rush of a group of panic-stricken animals into the water which has the potential to result in injury). The commenter suggested consulting Ms. Twohy and her data; however, as described in the application and proposed **Federal Register** notice, the Agency and NMFS did indeed solicit data from Seal Watch and Ms. Towhy to determine if stampeding had occurred from the specified activities. No data sets included information on if a stampede or flush was evident. Data included only date, time, etc., environmental conditions, number of seals on the beach (no pups distinguished), number of people on the beach, and which side of the spit seals were sighted. The Agency; however, did monitor for stampedes and flushing during its breaching events from 1996–2000. No stampedes were recorded. NMFS also consulted with Mr. Mortenson, another local resident who has collected information on seal abundance and behavior at the Jenner and surrounding haulouts since 1987. He indicated that stampedes do not occur in response to anthropogenic disturbance; however, total flushing of all seals on the beach may occur.

Under the IHA, the Agency crew will gradually alert seals to their presence by approaching the breaching site slowly and cautiously on foot ahead of heavy equipment. Crew will also walk the path to the breaching site ahead of the equipment should any seals be hauled-out along the way. These mitigation measures have been voluntarily carried out by the Agency and, as shown in the Agency's 1996–2000 monitoring data, are effective at eliminating stampeding. The Agency will continue to monitor seal behavior, including if a stampede occurs, as defined above, and provide that information to NMFS in a report. Based on previous monitoring data and mitigation measures, NFMS does not anticipate stampeding will occur in response to the Agency's specified activities. Further, Level A harassment (injury), serious injury, or mortality is not authorized in the IHA.

Comment 8: One commenter argued that the statement in the proposed IHA notice such as "…although the Agency's operations may harass pinnipeds present on the beach, it is likely many have left due to the presence of people…" is "especially troubling…because it is impossible to unequivocally state that many seals will have left the beach due to the presence of people…and that abandonment/flushing does not happen on a daily basis." She justifies this argument with "When Seal Watch is present, flushing or stampedes from people walking on the beach are pretty much eliminated and at times when Seal Watch is not present (weekdays), people actually observe the posted warning signs, thus flushing of seals does not occur all the time."

Response: Comments 7 and 8 were supplied by the same member of the public. Therefore, she has supplied two contrary arguments: (1) stampeding/flushing occurs often because of people on the beach, especially when Seal Watch is not present; and (2) people behave appropriately when Seal Watch is not present which reduces flushing events. She also states that presence of Seal Watch volunteers, when present,

reduce flushing by controlling visitors which contradicts her first argument that people flush the seals off the beach "often."

Despite these contrary arguments, NMFS found that Seal Watch, the Agency, and other local residents who monitor seals at the Jenner haulout agree that the presence of people on the beach often cause seals to flush into the water and that fewer seals are present when the barrier beach is not breached. Therefore, it is not unreasonable to assume that some seals on the beach will be displaced by the public, not by the Agency, before a management event.

As described in the application, the numbers of seals potential taken by the specified activities was based the number of construction events and the average number of harbor seals hauled out prior to artificial breaching events. These counts were taken in the early morning hours, before many people came to the beach, by the Agency from 1996–2000. The approach to calculating take numbers assumed all seals will remain on the beach and did not mathematically account for any that may be flushed by people prior to an event. However, because seals are flushed by visitors on the beach, as described by the commenter, take numbers will likely be lower than those proposed as they will not be available for disturbance by the Agency. NMFS can not regulate beachgoers actions in this IHA; however, encourages Seal Watch and local residents to continue and enhance public education on responsible marine mammal viewing practices.

Comment 9: One commenter made available her complete record for the harbor seal site and documentation of disturbance/changes due to "natural (barrier) or man-made activities showing before and after photographs of the disturbance." She also stated that "the hefty influence of natural and man-made interference at the seal site (and rookery) cannot be overridden."

Response: The data to which the commenter refers demonstrate that when a barrier beach naturally forms at the mouth of the Russian River, seal abundance on the beach declines. However, after the Agency conducts its breaching activities, seal numbers rapidly increase. This trend has also been confirmed by the Agency who conducted monitoring from 1996–2000. Hence, this data clearly show the actions of the Agency are resulting in more seals hauling out on Goat Rock State Beach. Therefore, based on this data, NMFS has determined that the specified activities, as described in the application, will continue to provide a resting, pupping, and molting site for harbor seals and potentially other pinniped species.

Comment 10: Numerous comments were received regarding the difference in length of time between current breaching practices (1 day) and lagoon outlet channel creation and maintenance (originally proposed as a maximum of 4 days) and its impact on seals. Specifically, one commenter was concerned that because lagoon creation and maintenance has yet to occur, and due to multiple day activity, "comparing the occasional artificial breaching activities, which to date for the most part occur on one day, to four solid days of machinery and personnel on the beach for hours digging the outlet channel is not reasonable, realistic, or an honest comparison. The impacts will in no way be similar." In general, the public was concerned that multiple days of heavy machinery on the beach during the pupping season may result in long-term abandonment of the seals from the Jenner haulout.

Response: NMFS disagrees that that impacts to seals from lagoon outlet channel creation and maintenance will in no way be similar to be breaching events. As described in the Description of the Specified Activity section above, the source of disturbance from both breaching and lagoon outlet channel creation is the same: presence of crew and operation of heavy equipment such as bulldozers and excavators at or near the Jenner haulout. It is expected for all events, no matter the design of the cut, most seals will flush into the water due to presence of crew and equipment on the beach and return when the Agency has left the site. Some seals may move to other areas of the beach or upriver away from equipment. Seals return within minutes to one day once machinery leaves the beach, as they have done so for years; therefore there is no data to suggest seals will exhibit "long-term abandonment" of the haulout from future water level management events.

Since issuance of the proposed IHA, the Agency, in coordination with NMFS Habitat Conservation Office, has redesigned the outlet channel configuration such that the number of work days is reduced from four to two. In addition, the new design of the cut will likely maintain itself more than the Agency's originally proposed shallow cut, reducing the number of follow-up maintenance days.

NMFS has carefully considered the impact of consecutive work days during the pupping season (March 15 - June 30), as seals may be more sensitive to disturbance during this time. To determine how many of these two-day events may be appropriate during the pupping season, NMFS referred to the Agency's historic breaching event record vs. seal census data. Since 1996, the Agency has conducted 1–6 events during the pupping season, annually, with five events conducted during May 2008 alone. NMFS received no public comments asserting that the level of breaching activities currently conducted result in long term disturbance to harbor seals, including pups, or in abandonment of the haulout. Such concern would contradict all available census data as seals are clearly continuing to use the haulout. To address potential concerns for disturbance associated with the duration of human activities included in the Agency's request, NFMS has included a mitigation measure into the IHA which limits the Agency to one 2–day water level management event per week during the pupping season. That is, the Agency must separate events, which may be up to 2 days each, by a one-week "recovery period" where no machinery is present on the beach. Given this measure, no more than 4 events may occur within any given month, a trend similar to previous breaching practices.

At the Jenner haulout, seals are continually subjected to anthropogenic disturbance other than that from the Agency (e.g., kayakers, beachgoers) and have not abandoned use of the haulout. These seals appear to demonstrate some degree of tolerance and habituation to anthropogenic disturbance, as described in Richardson et al. (1995). This lack of long-term demonstrable impact to haulout use is among the important factors in supporting NMFS' negligible impact determination.

Comment 11: Comments were received expressing concerns that the Jenner haulout is a harbor seal nursery and pupping beach (births have been observed here) and that the Agency's action of creating the lagoon outlet channel beginning May 15th could result in negative impacts on mom/pup relationships and pup mortality. For example, one commenter stated "Mother harbor seals are not adapted to defend offspring from land-based dangers and will flush into the water. Pups suddenly flushed off the beach by these activities at such a young and vulnerable time…is problematic and could result in higher mortality among the pups of the colony" and "disturbance by humans or other sources of harassment can disrupt feeding, reduce milk intake and subsequent weight gain by the pup and ultimately threaten the pup's chance of survival after weaning."

Response: The Agency has conducted one-day breaching events during the pupping season for years with five breaching events occurring in the month of March alone in 2008. Based on the best available monitoring data, although seals have been disturbed by equipment during previous breaching events, no measurable negative impact to seals, including pup mortality or abandonment, has been observed after breaching is complete. In fact, these data suggest seals are more abundant on the beach after the barrier beach is breached than when the barrier beach is closed. Because a lagoon outlet channel will also open the barrier beach, allowing water to flow from the Russian River into the ocean, NMFS does not expect that mothers and pups will not utilize the beach due to the configuration of the channel.

Regarding flushing, harbor seal pups are extremely precocious, swimming and diving immediately after birth and throughout the lactation period, unlike most other phocids which normally enter the sea only after weaning (Lawson and Renouff, 1985; Cottrell *et al.*, 2002; Burns *et al.*, 2005). NMFS recognizes the critical bonding time needed between a harbor seal mom and her pup to ensure pup survival and maximize pup health. Harbor seals pups are weened from their mother within approximately 4 weeks; however, the most critical bonding time is immediately (minutes) after birth. Lawson and Renouf (1987) conducted an in-depth study to investigate harbor seal mother/pup bonds in response to natural and anthropogenic disturbance. In summary, they found that a mutual bond is developed within 5 minutes of birth and both the mother and pup play a role in maintaining contact with each other. The study showed a bilateral bond, both on land and in the water, and that mothers will often wait for or return to a pup if it did not follow her. Pups would follow or not move away from their mother as she approached. Most notably, mothers demonstrated overt attention to her pup while in the water and during times of disturbance on the nursery. Increased involvement by the mothers in keeping the pairs together during disturbances became obvious as they will wait for, or return to their young if the pups fell behind.

In additional to incidental harassment, harbor seal pups in California have been the subject of countless research studies resulting in direct, intentional harassment. Research activities often include capture and handling of very young pups and separating pups from their mothers for short periods of time. Scientists report they have disturbed seals during capture, then leave the area within approximately an hour. Seals return to the haul-out site within minutes of the scientists leaving the beach (J. Harvey to M. DeAngelis, pers. comm., Jan. 12), further demonstrating harbor seal pup resilience to disturbance.

Harbor seal mother/pup pairs have a characteristic distribution in the Russian River. There is a continuum, with a gradual, rather than abrupt change in the relative mix of seal age classes along the estuary to the mouth of the river with mom and pups picking out coves upriver, especially north of Haystack Rock, and juveniles and adults being more abundant closer the river mouth (pers. comm., J. Mortenson to M. DeAngelis, December 16). One component of the Agency's monitoring plan is to assess seal numbers at other nearby haulouts to better understand the relationship between upriver haulouts and the Jenner haulout. Because mothers and pups tend to inhabit the upriver haulouts more so than near the mouth of the river, where machinery will work, many pups will not be disturbed by the Agency's action.

Chronic human disturbance may play a role in reduced fitness and survival for any marine or terrestrial animal. Other animals, such as the Pier 39 California sea lions, may be immune or so habituated to people, human presence has little to no noticeable effect on them. Although studies have shown the main factors influencing harbor seal pup birth weight and survival is maternal age and body mass with younger, thinner moms producing more vulnerable pups (Bowen 1993, Coltman, 1998), NMFS considered measures to limit the time machinery is working on the beach to limit repetitive disturbance. As stated above, NMFS has implemented additional mitigation measures which limit the consecutive days machinery may work on the beach (2 days) for an event and establishes a one-week recovery period between events. Further, if a young pup is on the beach where heavy machinery will be used or on the path used to access the breaching location, the event will be delayed until the pup has left the site or the latest day possible to prevent flooding of the low lying residential community while still achieving a lagoon outlet channel. Given that pups are precocious at birth, bonds between mothers and pups are known to form within minutes of birth and other characteristics of mom/pup bonding, and the quick reoccupation time of harbor seals after previous breaching events, NMFS has determined that these mitigation measures will be effective at avoid disruption any mom/pup bonds. Follow-up seal monitoring at the haulout after event activity will provide documentation of seal reoccupation.

Comment 12: Two comments noted when a male elephant seal inhabited the Jenner haulout in 2006 and 2007, it "totally eliminated part of the Jenner colony annual cycle, the winter haulout, and then later the breeding haulout population when he lingered into breeding season." Comments linked impacts from the elephant seal to what will happen if "sustained harassment by earth moving machinery" were to occur. In summary, comments implied that potential impacts to the harbor seal colony should be interpreted from the results of what occurred during the elephant seal occupation and not from what occurs during one day breaching events.

Response: NMFS disagrees that impacts from multiple days of heavy machinery use on the beach will equate or be similar to those impacts caused by the occupation of the male northern elephant seal. The elephant seal in question was continually present at the Jenner haulout from December 26, 2005, to April 5, 2006, and again from the first week of January to the first week of May 2007. The elephant seal was aggressive and attempted to mate with harbor seals, pursing them and killing some, including pups. Agency crew and machinery will disturb nearby animals on the beach; however, they do not present a direct threat as did the elephant seal. Seals and other marine mammals are known to link a stimulus with some degree of known negative consequence and increases responsiveness to that source. For example, seals and whales are known to avoid previously encountered vessels involved in subsistence hunts (Walker, 1949; Ash 1962; Terhune, 1985). Although heavy equipment will initially disturb animals, it is anticipated they will return to the haulout shortly after the Agency has left the beach, as is the trend from previous breaching activities. There is no evidence to suggest long-term abandonment of the haulout would occur from the specified activities.

The commenters are correct that the number of seals on the beach was reduced during the 2007 pupping season due to the presence of the elephant seal; however, seal counts were not reduced during the 2006 pupping season when the elephant seal was present. Moreover, in 2008 (post elephant seal), harbor seal counts were actually higher than counts in 2004 and 2005 (pre elephant seal). For example, Ms. Twohy's data show that during March of 2004 and 2005, the average

monthly seal count was 39 and 42, respectively. In 2006, when the elephant seal was present, the average March count was 75. In 2007, the March average dropped to 1 (no seals were sighted on any day except for one when 33 seals were counted). In 2008, the average March seal count was 135. Therefore, the elephant seal occupation demonstrates harbor seals did not react to the elephant seal in 2006 but left the haulout in 2007. More importantly, the data show evidence of the harbor seals' resilience to chronic sources of disturbance, as evidenced by the reoccupation of the haulout by seals in 2008.

NMFS expects any displacement of seals from the haulout will be limited to the time machinery is working on the beach. As described in the proposed IHA notice and the Agency's application and monitoring plan, seals tend to return to the haulout within one day of breaching activity, an event more closely related to the lagoon outlet channel creation and maintenance than the chronically present, aggressive northern elephant seal. No data is available from nearby coastal haulouts and those upstream to determine if those sites saw an increase in harbor seal abundance. However, due to the reoccupation of the haulout shortly after the northern elephant seal left, it is likely seals were using nearby haulouts. The Agency's monitoring program includes a component in which nearby haulouts will be included in monthly census. NMFS does not consider a redistribution of use from one haulout to another to indicate negative impacts to a population as long as behavior (e.g., social, pupping, molting), fitness, and survival are not affected.

Comment 13: One commenter was concerned about the noise from the machinery and the potential for masking impacts. Specifically, "The heavy equipment is to be put into play on 15 May, when the seals are still assembled for breeding, pupping, and nursing ..loud noise from the equipment may mask the call of harbor seal pups that keep them together with their mothers in the Russian River, if they stay. If driven to the sea without their habitual nursery area, maintaining contact between mother and young will depend on hearing the calls of pups over the sound of the surf. Underwater vibrations from the machinery may impact any mating stations of male harbor seals, who display acoustically underwater."

Response: First, the commenter is mistaken that the Agency is set to begin work on May 15. The Agency is permitted by the Corps to conduct breaching activities year-round as the potential for flooding to the low-lying residential community built along the estuary is ever present. In fact, the majority of past breaching events occurred in winter during times of large storms and wave action. Under the IHA, the Agency is also authorized to harass pinnipeds year-round. Census data do not suggest that years of employing heavy equipment on the beach have had a long-term impact on seals at the Jenner haulout. Second, noise from machinery on the beach is not expected to mask communication efforts as harbor seals will likely flush into the water or move down the beach, reducing in-air noise exposure.

NMFS recognizes that males produce underwater vocalizations as a function of communicating social status and fitness, maintaining underwater territories, or as a direct advertisement to females (Nicholson, 1997). Mothers and pups also call to each other. Sound levels in water from land based sources can be elevated by noise entering through the air-water interface or by vibration. However, noise and vibrations from the machinery on the beach are not expected to interfere with underwater communication. NMFS does not have any data available on underwater noise from bullodzers and excavators working on a beach; however, does have information on in-water noise levels from impact pile driving on land adjacent to the water's edge; pile driving has a much higher sound source level than bulldozing. During the Russian River Geyserville emergency bridge repair project, 24–inch diameter steel piles were driven on land adjacent to water. Sound levels were measured 35 m and 70 m from shore and resulted in noise levels approximately 170 and 160dB, respectively. Noise levels in the water off the Jenner haulout are expected to be much lower than these levels and possibly undetectable because (1) heavy equipment will not work directly adjacent to the water's edge; (2) source levels will be less than that of impact pile driving; (3) the surf break presents a natural source of noise, elevating ambient sound levels in water than upriver; and (4) many seals will remain beyond the surf break except when coming ashore; therefore, any social behaviors will occur beyond this distance, further preventing seals from being exposed to any noise which could interfere with these behaviors. For these reasons, NMFS does not expect noise or vibration from equipment to interfere with underwater seal communication.

Comment 14: One commenter reiterated a sentence in the **Federal Register** notice which explains that the Agency's effort to minimize the amount and frequency of mechanical intervention reduces disturbance to seals, other wildlife, and the public. She protests this statement by saying "no clustering of monitoring activities by boat is proposed as a mitigation measure."

Response: Vessel based monitoring is not related to how frequent machinery operates on the beach. Further, monitoring is not a mitigation measure, as implied by the commenter. Monitoring is conducted to determine take and, if appropriate, implement mitigation (e.g., shut down). NMFS is not requiring vessel-based monitoring because it will not provide information beyond that able to be collected from land. Observers on land are fully capable of monitoring seals on the beach, perhaps more effectively than by boat. More importantly, vessel presence and movement will contribute a noise source in water, potentially resulting in additional harassment of animals at sea.

Comment 15: In general, the public was concerned locals and visitors will see machinery at work on the beach instead of nature.

Response: NMFS acknowledges that seals may become alert or flush off the beach in response to Agency personnel and heavy equipment when they are on the beach. However, as demonstrated from previous events, seals will return within hours to one day of machinery leaving the beach. NMFS' responsibility under section 101(a)(5)(D) of the MMPA is to ensure that activities involving incidental harassment to marine mammals are not having more than a negligible impact to that species or stock. NMFS has thoroughly analyzed impacts from the specified activities and taken full consideration of comments received during the public comment period. As such, NMFS has implemented additional mitigation to ensure the Agency's activities will effect the least practical adverse impact to the affected species.

Comment 15: A comment was received on behalf of the Russian River Watershed Protection Committee regarding the impact of closing the mouth of the river permanently and creating the lagoon in terms of water quality/pollution and its impact on the seals. The comment stated that there are signs of Ludwigia and other nutrient pollutants in the river and "We wonder how toxicity might accumulate and impact the seals if the Estuary is a full time sink for everything happening upstream. We are very concerned about endocrine disruptors in particular and will like to request studies on those

when the Estuary is permanently closed."

Response: The lagoon will not be a "full time sink" as suggested by the commenter, but will maintain a low-velocity flow into the ocean during the lagoon management period or become completely tidal after an event outside of this period. "Permanent closure" or the creation of "permanently closed conditions" is not part of the specified activities. In fact, the primary purpose of the modification to the Agency's current breaching practice is to re-establish and maintain continuous river flow to the ocean during fish rearing times. Therefore, a build up of pollutants and any disruption such pollutants may cause to a seal's endocrine system are not anticipated. Further, the RPA in NMFS' BiOp requires constant and extensive monitoring of water quality conditions throughout the estuary during the lagoon management period.

Comment 16: One commenter argued that there "is no scientific evidence/proof in the [NMFS'] Biological Opinion that the proposed activities are in fact essential to conserving and recovering endangered salmonid species" and implied that to undertake an activity in an attempt to save fish at the expense of eliminating the harbor seal haulout is not acceptable.

Response: For the purpose of issuing an IHA, NMFS must consider the activities as they are proposed. Here, this includes the Agency's method of implementing an RPA in NMFS' BiOp in order to protect ESA-listed salmonids from risk of extinction and avoid adverse impact to their critical habitat. For reasons discussed throughout this document, NMFS has found that, due to the implementation of the mitigation measures described herein, the Agency's estuary management activities on the beach will result in a negligible impact to pinnipeds disturbed by estuary water level management events. Hence, issuance of the IHA is appropriate.

Mitigation Measures

In order to issue an IHA under Section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable adverse impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses. The latter does not apply here as no subsistence hunting takes place in California. The following summarizes mitigation and monitoring measures set forth in the IHA.

Pupping Season (March 15 - June 30)

The following mitigation measures apply only during the pupping season (March 15 - June 30). Due to the precocious nature of pups at birth, formation of harbor seal mother/pup bonds immediately after birth, and resilience to direct disturbance (Lawson and Renouf, 1987; J. Harvey, pers. comm.), NMFS has determined that by one-week old, pups temporarily disturbed from Agency activities will not incur fitness or survival consequences. As in any IHA, taking a marine mammal in a manner not authorized is prohibited and may result in the modification, suspension or revocation of the authorization.

(1) If a pup less than one week old is on the beach where heavy machinery will be used or on the path used to access the work location, the breaching event will be delayed until the pup has left the site or the latest day possible to prevent flooding while still maintaining an outlet channel. Pups less than one week old should be characterized by being up to 15kg, thin for their body length, or an umbilicus or natal pelage is present.

(2) A water level management event may not occur for more than two consecutive days unless flooding threats can not be controlled.

(3) The Agency must maintain a one week (7 day) "no work" period between water level management events (unless flooding is a threat to the low-lying residential community) to allow for adequate disturbance recovery period. During the "no-work" period, equipment must be removed from the beach.

(4) If a marine mammal observer sights any pup that may be considered abandoned, the Agency will ensure that the NMFS stranding response network is called immediately. The Agency will also ensure that observers do not approach or move the pup.

(5) Physical and biological monitoring of the estuary shall not be conducted if a pup less than one week old is present at the monitoring site or on a path to the site.

Year-round

The following mitigation measures apply to all breaching events, no matter the time of year.

(6) Agency crews shall slowly and cautiously approach the haulout ahead of the heavy equipment to minimize the potential for flushes to result in a stampede.

(7) Agency staff shall avoid walking or driving equipment through the seal haulout;

(8) Crews on foot will take caution to approach the haulout slowly and to make an effort to be seen by the seals from a distance, if possible, rather than appearing suddenly at the top of the barrier beach; and

(9) Equipment will be driven slowly on the beach and care will be taken to minimize the number of shut downs and start ups when the equipment is on the beach.

(10) Physical and biological monitoring shall be conducted in a manner which results in the least amount of pinniped harassment practical. During monitoring events, Agency personnel shall approach the haulout slowly and cautiously to avoid severe startle responses.

NMFS has carefully evaluated the applicant's proposed mitigation measures and considered a range of other measures in the context of ensuring that NMFS prescribes the means of affecting the least practicable adverse impact on the affected marine mammal species and stocks and their habitat. Our evaluation of potential measures included consideration of the following factors in relation to one another: (1) the manner in which, and the degree to which, the successful implementation of the measure is expected to minimize adverse impacts to marine mammals, (2) the proven or likely efficacy of the specific measure to minimize adverse impacts as planned; (3) the practicability of the measure for applicant implementation, including consideration of personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity. NMFS finds that the foregoing measures constitute the means of effecting the least practicable impact on harbor seals, California sea lion, and northern elephant seals, paying particular attention impacts on the site value as a rookery, mating ground, and area of similar significance.

Monitoring and Reporting

In order to issue an ITA for an activity, Section 101(a)(5)(D) of the MMPA states that NMFS must set forth "requirements pertaining to the monitoring and reporting of such taking." The MMPA implementing regulations at 50 CFR 216.104 (a)(13) require that requests for IHAs must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on

populations of marine mammals that are expected to be present. In addition, 50 CFR 216.107(a)(3) directs NMFS to include in an IHA requirements for monitoring and reporting incidental take.

The Agency's Russian River Estuary Management Activities Pinniped Monitoring Plan describes the monitoring efforts which the Agency has implemented during previous breaching events. NMFS has modified this plan slightly to account for pinniped take numbers. In summary, monitoring includes the following:

Event Monitoring

The Agency will conduct a pre-water level management event survey one to three days before an event to determine the number of animals on the beach and if any pups are present. If any pups less than one week old are sighted at the breaching site or on a path to the breaching site, breaching activities will be delayed until the pup has left those areas or until flooding is imminent. Monitoring will continue for the duration of the breaching event to determine how many animals have been taken and end one hour after equipment leaves the beach. A post event monitoring survey will also take place the day after an event, weather permitting, to determine seal reoccupation rates. Pinnipeds will be monitored from the overlook on the bluff along Highway 1 adjacent to the haulout with high-powered spotting scopes.

In addition to work days, seal counts will also be conducted twice monthly when no machinery is on the beach to determine if any long terms impacts are occurring at the haulout. On these days, seals will be counted in ½ hour increments starting early in the morning (e.g., dawn) and ending eight hours later, weather permitting. This baseline information will also provide the Agency with details so that they may plan estuary management activities around prime seal haulout times in the future. Census days will be scheduled to capture a low and high tide each in the morning and afternoon.

For all counts, the following information will be recorded from an overlook on a bluff to avoid harassment from the monitoring: (1) seal counts, by species and age class, if possible; (2) behavior; (3) time, source and duration of disturbance; (4) estimated distances between source and seals; (5) weather conditions (e.g., temperature, wind, etc.); and (5) tide levels and estuary water surface elevation. Disturbance behavior will be recorded following Mortenson (2006). In summary, Level 1 indicates an alert reaction where the seal may turn its head towards the disturbance; Level 2 involves movement from short distances to many meters but does not enter water; and a Level 3 reaction includes flight or flushing to the water.

Long Term Monitoring

In addition to monitoring on event days, pinnipeds at the Jenner haulout will be counted twice monthly for the term of the IHA in the same manner as described above. In an attempt to understand possible relationship between use of the Jenner haulout and nearby coastal and river haulouts, several other haulouts in the estuary, which were extensively monitored from 1994–1999, will also be monitored (see Figure 2 in the IHA application for locations of these haulouts). These haulouts include North Jenner and Odin Cove to the north, Pocked Rock, Kabemali, and Rock Point to the south, and Jenner logs, Patty's Rock, and Chalanchawi in the Russian River Estuary. Each of these coastal and river haulouts will be monitored concurrent with monitoring of outlet channel construction and maintenance activities. This will provide an opportunity to qualitatively assess if these haulouts are being used by seals displaced from the Jenner haulout during lagoon outlet channel excavation and maintenance. This monitoring will not provide definitive results that individuals from the Jenner haulout are displaced to the coastal and river haulouts as individual seals will not be marked; however, it will useful to track general trends in haulout use during lagoon outlet channel excavation and maintenance.

Reporting

The Agency will submit an annual report to NMFS 90 days after expiration of the IHA. Should the Agency request a future MMPA incidental take authorization, it will include in its request to NMFS a report summarizing all monitoring activities 120 prior to expiration of the IHA to allow NMFS adequate time to assess documented impacts to marine mammals. The report will include an executive summary, monitoring methodology, tabulation of estuary management events, summary of monitoring results, and discussion of problems noted and proposed remedial measures. The report will also be available to the public on the Agency's website (*http://www.scwa.ca.gov/*).

Negligible Impact and Small Numbers Analysis and Determination

NMFS has defined "negligible impact" in 50 CFR 216.103 as "...an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival."

In determining whether or not authorized incidental take will have a negligible impact on affected species stocks, NMFS considers a number of criteria regarding the impact of the proposed action including, but not limited to, species status; the number, nature, intensity, and duration of Level B harassment authorized; and the significance of the location for marine mammals where takes will occur.

None of the marine mammal species authorized to be taken in the IHA are listed as endangered or threatened under the ESA or depleted under the MMPA. For reasons provided in greater detail in NMFS' November 12, 2009 (74 FR 58248), **Federal Register** notice, water level management activities could result in the harassment of approximately 2,861 harbor seals (approximately 8 percent of the population), 16 California sea lions (approximately 0.006 percent of the population), and 11 northern elephant seals (0.008 percent of the population). The take numbers authorized in the IHA are based on seal census data (an average of monthly counts) collected by the Agency immediately prior to breaching events conducted from 1996–2000. These monthly averages were then multiplied by the number of anticipated events needed during each month. The number of marine mammals authorized to be taken incidental to the Agency's water level management activities is considered small when compared to the population sizes of the affected stocks (34,233; 238,000; and 124,000, respectively).

As stated above, the duration and intensity of harassment, as well as the significance of the habitat where take will occur, are also important factors in NMFS' negligible impact determination. Due to the monitoring efforts by the Agency and local seal watching group, there is are extensive data sets on harbor seal abundance, behavior, and use of the Jenner haulout. As described in the Agency's application, NMFS proposed **Federal Register** notice for this action, and above, harbor seals demonstrate short-term changes in behavior (e.g., alertness, flushing) in response to Agency breaching events. However, seals reoccupy the beach shortly after the Agency leaves the beach. Seals continue to use the Jenner haulout despite daily sources of anthropogenic disturbance from beach visitors and intermittent disturbance from Agency breaching events. There is no significant

difference in average monthly seal counts since 1993 and harbor seals continue to use the haulout site as a nursery. There is also no data demonstrating stampedes occur at the Jenner haulout, thus the potential for injury, serious injury or mortality to pups from this action is unlikely. Finally, the fact that harbor seals pups are precocious at birth and form strong bonds with mom immediately after birth further supports the finding that mom/pup bonds will not be jeopardized due to Agency activities. Monitoring data suggest that previous breaching events have not been the cause of pup abandonment. For these reasons, and the mitigation measures set forth in the IHA, NMFS has determined that no Level A harassment (injury), serious injury or mortality will occur due to Agency activities.

NMFS compared the Agency's previously documented action of breaching the sandbar during one day events intermittently since 1995 to the possible impacts from limited 2–days events. As described above, under the IHA, the Agency would be required to maintain a one-week recovery period between management events, something that had not been implemented before. Although the management event may last 2 days instead of one, NMFS has determined that because seals reoccupy the beach soon after equipment leaves the beach, seals show short- and long-term resilience to chronic disturbance (e.g., daily exposure to non-Agency related human disturbance, the case of the northern elephant seal occupation), and the mitigation and monitoring measures set forth in the IHA, the short-term Level B harassment caused by the Agency's water level management activities will have a negligible impact on harbor seals. California sea lions and northern elephant seals are only occasionally sighted at the haulout, are usually solitary, and do not use the haulout for significant behaviors (e.g., mating); therefore, the short-term Level B harassment caused by the Agency's water level management activities will also have a negligible impact on these species.

Based on the analysis contained herein on the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the mitigation and monitoring measures, NMFS finds that the Agency's water level management events will result in the incidental take of small numbers of marine mammals, by Level B harassment only, and that the total taking will have a negligible impact on the affected species or stocks. There are no relevant subsistence uses of marine mammals implicated by this action; therefore, no impacts to subsistence use will occur.

Endangered Species Act

No ESA-listed marine mammals are known to be present within the action area; therefore, ESA consultation is not required to issue an MMPA authorization for the proposed action. However, as described above and in the proposed IHA notice, the purpose of the modified outlet channel design during the lagoon management period is an RPA in NMFS' BiOp on the Agency's Estuary Management Activities for ESA-listed salmonids.

National Environmental Policy Act

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), as implemented by the regulations published by the Council on Environmental Quality (40 CFR parts 1500–1508), and NOAA Administrative Order 216–6, NMFS has prepared an Environmental Assessment (EA) to consider the direct, indirect and cumulative effects to pinnipeds and other applicable environmental resources resulting from issuance of a one-year IHA and the potential issuance of additional authorization for incidental harassment for the ongoing project. NMFS' EA is separate from but relies upon and incorporates the Corps' 2005 EA prepared for permitting the Agency's breaching activities.

Determination

Based on the description of the specified activity, review of monitoring data, and the required mitigation and monitoring measures described herein, NMFS has determined that the Agency's artificial breaching activities will have a negligible impact on affected pinniped species or stocks and will not have an adverse impact on their habitat. Subsistence use of marine mammals in California does not occur; therefore use of marine mammals for subsistence will not be affected.

As such, NMFS has issued the Agency a one-year IHA. The issuance of this IHA is contingent upon adherence to the previously mentioned mitigation, monitoring, and reporting requirements.

Dated: March 30, 2010.

James H. Lecky,

Director, Office of Protected Resources, National Marine Fisheries Service.

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CONSUMER PRODUCT SAFETY COMMISSION

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Follow-Up Activities for Product-Related Injuries

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: The Consumer Product Safety Commission (CPSC) 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 May 6, 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: CPSC Desk Officer, FAX: 202–395–6974, or e-mailed to *oira_submission@omb.eop.gov*. Written comments should be captioned "Product-Related Injuries." All comments should be identified with the OMB control number 3041–0029. In addition, written comments should also be submitted by mail/hand delivery/courier (for paper, disk, or CD–ROM submissions), preferably in five copies, to: Office of the Secretary, Consumer Product Safety Commission, Room 502, 4330 East-West Highway, Bethesda, MD 20814; telephone (301) 504–7923.

FOR FURTHER INFORMATION CONTACT: Linda L. Glatz, Division of Policy and Planning, Office of Information Technology, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, (301) 504–7671. *lglatz@cpsc.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, the CPSC has submitted the following proposed collection of information to OMB for review and clearance. Follow-up Activities for Product-Related Injuries (OMB Control Number 3041–0029—Extension).

Section 5(a) of the Consumer Product Safety Act, 15 U.S.C. 2054(a), requires the Commission to collect information related to the causes and prevention of death, injury, and illness associated with consumer products. That section also requires the Commission to conduct continuing studies and investigations of deaths, injuries, diseases, other health impairments, and

economic losses resulting from accidents involving consumer products. The Commission obtains information about product-related deaths, injuries, and illnesses from a variety of sources, including newspapers, death certificates, consumer complaints, and medical facilities. In addition, the Commission receives information through its internet Web site through forms reporting on product-related injuries or incidents.

From these sources, the Commission staff selects cases of interest for further investigation by face-to-face or telephone interviews with persons who witnessed or were injured in incidents involving consumer products. On-site investigations are usually made in cases where the Commission staff needs photographs of the incident site, the product involved, or detailed information about the incident. This information can come from face-to-face interviews with persons who were injured or who witnessed the incident, as well as contact with state and local officials, including police, coroners and fire investigators, and others with knowledge of the incident.

The Commission uses this information to support development and improvement of voluntary standards, rulemaking proceedings, information and education campaigns, and administrative and judicial proceedings for enforcement of the statutes, standards, and regulations administered by the Commission. These safety efforts are vitally important to help make consumer products safer and to remove unsafe products from the channels of distribution and from consumers' homes.

The Office of Management and Budget (OMB) approved the collection of information concerning product-related injuries under control number 3041–0029. OMB's most recent extension of approval will expire on April 30, 2010. The Commission has submitted its request for an extension of approval of this collection of information to OMB.

The Commission also operates a surveillance system known as the National Electronic Injury Surveillance System (NEISS) that provides timely data on consumer product-related injuries treated in a statistically valid sample from approximately 100 hospital emergency departments, as well as childhood poisonings in the United States. The NEISS system has been in operation since 1971. The Commission previously has not included NEISS reports under the product-related injuries collection of information because the information obtained from hospital databases are obtained directly through CPSC employees and/or CPSC contractors, and does not involve the solicitation of any information from any individuals. The CPSC employee or contractor collects emergency department records for review which are then coded. The PRA exempts facts or opinions obtained through direct observation by an employee or agent of the sponsoring agency. 5 CFR 1320.3(h)(3). However, because in addition to the reports themselves, further information may need to be obtained which may result in telephone and/or face-to-face communications with individuals, the proposed collection of information under the follow-up activities for product-related injuries now includes the burden hours per year for the NEISS system in addition to the other follow-up activities conducted by the Commission.

In the **Federal Register** of December 1, 2009 (74 FR 62753), the CPSC published a 60-day notice requesting public comment on the proposed collection of information. No comments were received.

Burden Estimates: The NEISS system collects information on consumer-product related injuries from approximately 100 hospitals in the United States. Respondents to NEISS include hospitals that directly report information to NEISS, and hospitals that allow access to a CPSC contractor who collects the data. In FY2008, there were 157 NEISS respondents (total hospitals and CPSC contractors). These NEISS respondents reviewed an estimated 3.4 million emergency department records and reported 371,507 consumer product-related injuries and 5,030 childhood poisoning-related injuries. Based on FY2008 data, the total burden hours to respondents are estimated to be 41,497 hours. The average burden hour per hospital is 415 hours. However, the total burden hour on each hospital varies by the size (small or large) and location (rural or metropolitan) of the hospital. The smallest hospital reported less than 200 cases with a burden of approximately 100 hours, while the largest hospital reported over 16,000 cases with a burden of about 1,300 hours.

The total costs to NEISS respondents based on FY2008 data are estimated to be $1.5 million per year. NEISS respondents enter into contracts with CPSC and are compensated for these costs. The average cost per respondent is estimated to be about $15,000. The average cost per burden hour is estimated to be $36 per hour (including wages and overhead) (Bureau of Labor Statistics, June 2009, Total Compensation Civilian workers, Hospitals). However, the actual cost to each respondent varies due to the type of respondent (hospital versus CPSC contractor), size of hospital, and regional differences in wages and overhead. Therefore, the actual annual cost for any given respondent may vary between $2,600 at a small rural hospital and $75,000 at a large metropolitan hospital which are compensated by the CPSC.

The Commission staff also obtains information about incidents involving consumer products from approximately 17,415 persons annually. The staff conducts face-to-face interviews at incident sites with approximately 915 persons each year. On average, an on-site interview takes approximately 5 hours. The staff will also conduct approximately 3,500 in-depth investigations by telephone. Each in-depth telephone investigation requires approximately 20 minutes. Additionally, the Commission's hotline staff interviews approximately 4,000 persons each year about incidents involving selected consumer products. These interviews take an average of 10 minutes each. Each year, the Commission also receives information from about 9,000 persons who complete forms requesting information about product-related incidents or injuries. These forms appear on the Commission's internet Web site, *http://www.cpsc.gov,* and are printed in the *Consumer Product Safety Review* and other Commission publications. The staff estimates that completion of a form takes about 12 minutes.

The Commission staff estimates that this collection of information imposes a total annual burden of 7,724 hours on all respondents: 4,118 hours for face-to-face interviews; 1,155 hours for in-depth telephone interviews; 661 hours for responses to Hotline interviews; and 1,790 hours for completion of written forms.

The Commission staff estimates the value of the time of respondents to this collection of information at $29.31 per hour (Bureau of Labor Statistics, June 2009, Total Compensation, All workers). At this valuation, the estimated annual cost to the public of this information collection will be approximately $226,390.

The annual cost to the federal government for this collection of information is estimated to be approximately $6.4 million per year. This estimate includes $1.5 million in compensation to NEISS respondents. The estimate also includes approximately $4.9 million for 354 professional staff months to oversee NEISS operation, prepare

questionnaires, interviewer guidelines, and other instruments and instructions used to collect the information, conduct face-to-face and telephone interviews; and evaluate responses obtained from interviews and completed forms. Each staff month is estimated to cost the Commission approximately $13,859. This is based on an average wage rate of $55.97 (the equivalent of a GS–14 Step 5 employee) with an addition 30 percent added for benefits (Bureau of Labor Statistics, June 2009, percentage total benefits for all civilian management, professional, and related employees).

Dated: March 31, 2010.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. 2010–7670 Filed 4–5–10; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement for the "Flood Control, Mississippi River & Tributaries, St. Johns Bayou and New Madrid Floodway, Missouri, First Phase" (SJNM) Project

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent to prepare a DEIS.

SUMMARY: The U.S. Army Corps of Engineers is announcing its intent to prepare a Draft Environmental Impact Statement (DEIS) for the Mississippi River and Tributaries, St. Johns Bayou and New Madrid Floodway, MO Project. The DEIS is being prepared to address and evaluate the environmental, economic and social impacts of alternative plans to provide flood control and develop and discuss locations and methodologies of potential compensatory mitigation. This DEIS will address previous project history, independent external peer reviews, State/Federal agency concerns and will formulate alternatives that manage flood risks in the project area.

FOR FURTHER INFORMATION CONTACT: Mr. Gregg Williams, telephone (901) 544–3852, CEMVM–PB–E, 167 North Main Street B–202, Memphis, TN 38103–1894, e-mail—*Gregg.W.Williams@usace.army.mil.*

SUPPLEMENTARY INFORMATION: The St. Johns Bayou Basin and New Madrid Floodway are located in the Bootheel region of southeast Missouri and include all or portions of the New Madrid, Scott and Mississippi Counties. The basin and floodway are adjacent to the Mississippi River, extending from the vicinity of Commerce, Missouri to New Madrid, Missouri. The basin and floodway are subject to both backwater and interior headwater flooding. Congress authorized the Mississippi River and Tributaries (MR&T) Project to construct the mainline Mississippi River levees. The Birds Point-New Madrid Floodway was part of the 1928 Flood Control Act. A levee closure and outlet structure at New Madrid, Missouri were authorized in the Flood Control Act of 1954 (Pub. L. 780–83) but not constructed. The St. Johns Bayou Basin levee closure, with drainage structure, was authorized in the Flood Control Act of 1946, and subsequently constructed. An EIS for the MR&T and Channel Improvement was filed with the Council on Environmental Quality in July 1976, which addressed the New Madrid Floodway levee closure. The St. Johns Bayou/New Madrid Floodway Project Final Supplemental Environmental Impact Statement (SEIS) was filed with the EPA in July 1982. The current project was authorized for construction by the Water Resources Development Act of 1986 (Pub. L. 99–662), section 401(a). The authorized project is based on the Report of the Chief of Engineers, dated January 4, 1983, which is part of the Phase I General Design Memorandum (GDM) documents prepared in response to section 101(a) of the Water Resources Development Act of 1976 (Pub. L. 94–587). A Revised Supplemental Environmental Impact Statement (RSEIS) was filed in June 2002. The Revised Supplemental Environmental Impact Statement 2 (RSEIS2) was prepared to clarify the record and address concerns related to the calculation of compensatory mitigation for mid-season fishery impacts, hypoxia, cost-benefit analysis, Swampbuster and the applicable discount rate in the economics analysis. The RSEIS2 was filed in March 2006.

The Corps has determined that a new EIS is required to incorporate additional scientific and engineering data; include the results of intensive independent external peer review of the previous project document, plans and studies; clarify project objectives and plans; and address points raised in the course of legal action.

1. *Proposed Action:* The authorized project for the St. Johns Bayou and New Madrid Floodway Project consists of channel enlargement and improvement in the St. Johns Bayou Basin along the lower 4.5 miles of the St. Johns Bayou, beginning at New Madrid, Missouri, then continuing 8.1 miles along the Birds Point-New Madrid Setback Levee Ditch and ending with 10.8 miles along the St. James Ditch. The first item of work, consisting of selective clearing and snagging, has already been completed along a 4.3-mile reach of the Setback Levee Ditch beginning at the confluence with the St. James Ditch.

The authorized project also includes a 1,000-cubic-foot-per-second (CFS) pumping station for the St. Johns Bayou Basin area, a 1,500-CFS pumping station for the New Madrid Floodway area and a 1,500-foot-closure levee at the southern end of the New Madrid Floodway. The channel enlargement work and both pumping stations are features of the St. Johns Bayou and New Madrid Floodway Project and the levee closure is a feature of the Mississippi River Levee Project.

2. *Alternatives:* Alternatives to manage flood risks in the project area will be considered. Comparisons will be made among the alternative plans, including the "no action" alternative.

3. *Scoping Process:* An intensive public involvement program has been set up to (1) solicit input from individuals and interested parties so that problems, needs and opportunities within the project area can be properly identified and addressed and (2) provide status updates to concerned organizations and the public. Significant issues being analyzed include potential project impacts (negative and positive) to fisheries, water quality, wetlands, waterfowl, shorebirds, endangered species and cultural resources.

Meetings with the local sponsor, public coordination meetings, interagency environmental meetings and public project briefings/presentations will be conducted throughout this process. This notice is being circulated to Federal, State and local environmental resource and regulatory agencies; Indian Tribes; non-governmental organizations; and the general public. This notice of intent (NOI) will serve as a request for scoping input. All interested parties are encouraged to participate in the scoping process. A public scoping meeting will be held on May 11, 2010, at 7 p.m. in the East Prairie Church of God, 322 N. Washington St., East Prairie, MO 63845. It is anticipated that the DEIS will be available for public review during spring 2012. A public meeting will be held during the review period to receive

comments and address questions concerning the draft report.

Thomas P. Smith,

Colonel, Corps of Engineers, District Commander.

[FR Doc. 2010–7720 Filed 4–5–10; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Government-Owned Inventions; Available for Licensing

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The Department of the Navy hereby gives notice of the availability of exclusive or partially exclusive licenses to practice worldwide under the following pending patents. Any license granted shall comply with 35 U.S.C. 209 and 37 CFR part 404. Applications will be evaluated utilizing the following criteria: (1) Ability to manufacture and market the technology; (2) manufacturing and marketing ability; (3) time required to bring technology to market and production rate; (4) royalties; (5) technical capabilities; and (6) small business status.

11/700,970, "Interim dental dressing and restorative material", filed on January 24, 2007, Inventors: Amer Tiba, David Charlton, and James Ragain; 11/726,203, "Method for the detection of target molecules by fluorescence polarization using peptide mimics", filed on March 13, 2007, Inventors: Malford Cullum, Karen O'Connor; 11/789,122, "Recombinant antigens for diagnosis and prevention of murine typhus", filed on April 19, 2007, Inventor: Wei Mei Ching; 11/800,955, "Secreted campylobacter flagella coregulated proteins as immunogens", filed on May 8, 2007, Inventor: Pat Guerry; 11/800,948, "Multifunctional blood substitute (MBS)", filed on May 8, 2007, Inventor: Daniel Freilich; 11/881,498, "Recombinant antigens for diagnosis and prevention of murine typhus (Murine typhus Ompb derived A and K fragments (similar to r56))", filed on July 27, 2007, Inventor: Wei Mei Ching; 11/839,922, "Vascular shunt created from ptfe (polytetrafluoroethylene) or other novel non-coagulative materials", filed on August 16, 2007, Inventor: H.D. Elshire; 11/842,438, "Methods for protecting against lethal infection with bacillus anthracis", filed on August 21, 2007, Inventors: Darrell Galloway and Alfred Mateczun; 11/876,997, "Orientia tsutsugamushi truncated recombinant outer membrane protein (r47 and r57) vaccines diagnostics and therapeutics for scrub typhus and HIV infections", filed on October 23, 2007, Inventors: Wei Mei Ching, Chien Chung Chao, and Hong Ge; 11/982,488, "Induction of an immune response against dengue virus using the prime-boost approach", filed on November 2, 2007, Inventors: Monika Simmons, and Kevin Porter; 11/942,402, "Methods for protection against lethal infection with bacillus anthracis", filed on November 19, 2007, Inventors: Darrell Galloway and Alfred Mateczun; 11/942,343, "Methods for protection against lethal infection with bacillus anthracis", filed on November 19, 2007, Inventors: Darrell Galloway And Alfred Mateczun; 12/001,599, "Identification of antigens for diagnosis and prevention of Q fever (recombinant antigens for the detection of coxiella burnetii)", filed on December 11, 2007, Inventors: Wei Mei Ching and Chien Chung Chao; 12/001,598, "Identification of antigens for diagnosis and prevention of Q fever (recombinant antigens for the detection of coxiella burnetii)," filed on December 11, 2007, Inventors: Wei Mei Ching and Chien Chung Chao; 11/964,982, "Expression and refolding of truncated recombinant major outer membrane protein antigen (R56) of orientia tsutsugamushi and its use in antibody based detection assays and vaccines", filed on December 27, 2007, Inventors: Wei Mei Ching, Gregory Dasch and Daryl Kelly; 11/965,004, "Expression and refolding of truncated recombinant major outer membrane protein antigen (R56) of orientia tsutsugamushi and its use in antibody based detection assays and vaccines," filed on December 28, 2007, Inventors: Wei Mei Ching, Gregory Dasch, and Daryl Kelly; 11/971,433, "Adenoviral vector-based malaria vaccine", filed on January 9, 2008, Inventors: Joseph Bruder, Richter King, Keith Limbach, Denise Doolan, and Tom Richie; 11/988,598, "Adhesin-enterotoxoid chimera vaccine for enterotoxigenic escherichia coli", filed on January 10, 2008, Inventor: Stephen Savarino; 12/028,241, "RF diathermy and faradic muscle stimulation treatment," filed on February 8, 2008, Inventors: James Bingham and Richard Olsen; 12/103,112, "Recycling container (to minimize release of HG vapor) for the collection and temporary storage of mercury contaminated wastes in the dental operatory," filed on April 15, 2008, Inventors: Mark Stone, Ronald Karaway, and Denise Berry; 12/163,412, "Fluorescence polarization instruments and methods for detection of exposure to biological materials by fluorescence polarization immunoassay of saliva or oral fluid", filed on June 27, 2008, Inventors: Malford Cullum, Linda Lininger, Ernest Pederson, Sylvia Schade, and Lloyd Simonson; 12/221,150, "Capsule composition for use as immunogen against campylobacter jejuni", filed on July 25, 2008, Inventors: Pat Guerry and Mario Monteiro; 12/255,861, "Methods for treating HIV infected subjects", filed on October 22, 2008, Inventors: Carl June, Craig Thompson, Gary Nabel, Gary Gray, and Paul Rennert; 12/064,554, "Adenoviral vector-based malaria vaccines", filed on October 27, 2008, Inventors: Joseph Bruder, Imre Kovesdi, Richter King, Duncan Mcvey, Damodar Ettyreddy, Denise Doolan, Daniel Carucci, and Keith Limbach; 12/362,622, "Multifunctional acrylates used as cross-linkers in dental and biomedical self-etch bonding adhesives", filed on January 30, 2009, Inventors: James Ragain, Amer Tiba, and David Charlton; 12/454,038, "Recombinant antigens for diagnosis and prevention of murine typhus", filed on April 27, 2009, Inventor: Wei Mei Ching; 12/454,496, "Dengue virus detection measured by immunocytometry in a dendritic cell surrogate", filed on April 27, 2009, Inventors: Timothy Burgess, Jeffrey Tjaden, Kevin Porter, and Mary Marovich; 12/467,533, "Recombinant chimeric antigens for diagnosis and prevention of scrub typhus", filed on May 18, 2009, Inventors: Wei Mei Ching, and Chien Chung Chao; 12/480,290, "Recombinant antigens for diagnosis and prevention of spotted fever rickettsiae", filed on June 8, 2009, Inventors: Wei Mei Ching and Hua-Wei Chin; 12/522,335, "Adenoviral vector-based malaria vaccines", filed on July 7, 2009, Inventor: Joseph Bruder; 12/501,021, "Composition and method for the induction of immunity against bacillus cereus group bacteria", filed on July 10, 2009, Inventors: Sanghamitra Mukhopadhyay and Timothy Read; 12/569,821, "Functional role of adrenomedullin (AM) and the gene related product (PAMP) in human pathology and physiology", filed on September 29, 2009, Inventors: Frank Cuttitta, Alfredo Martinez, Mac Jean Miller, Edward Unsworth, William Hook, Thomas Walsh, Karen Gray, and Charles Macri; 12/634,119, "CCD contrast enhancement for in vivo oxygenation measurements", filed on December 9, 2009, Inventors: Nicole Crane, Eric Elster, Doug Tadaki, Scott Huffman, and Ira Levin; 12/672,361, "Photoacoustic laser joulemeter utilizing beam deflection technique", filed on February 5, 2010, Inventors: Sahir

Maswadi, Norman Barsalou, Randolph Glickman, and Row Elliott; and their related foreign filings.

DATES: Applications for a non-exclusive, exclusive or partially exclusive license may be submitted at any time from the date of this notice.

ADDRESSES: Submit applications to the Office of Technology Transfer, Naval Medical Research Center, 503 Robert Grant Ave., Silver Spring, MD 20910–7500.

FOR FURTHER INFORMATION CONTACT: Dr. Charles Schlagel, Director, Office of Technology Transfer, Naval Medical Research Center, 503 Robert Grant Ave., Silver Spring, MD 20910–7500, telephone 301–319–7428 or e-mail at: *charles.schlagel@med.navy.mil.*

Dated: March 30, 2010.

A.M. Vallandingham,

Lieutenant Commander, Judge Advocate Generals Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2010–7731 Filed 4–5–10; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Government-Owned Inventions; Available for Licensing

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The inventions listed below are those in which the United States Government as represented by the Secretary of the Navy has an ownership interest and are made available for licensing by the Department of the Navy. U.S. Patent Application Ser. No. 12/383,086 entitled "System and method for controlling the power output of an internal combustion engine" filed on April 13, 2009; U.S. Patent Application Ser. No. 12/383,082 entitled "Submarine mast antenna controller" filed on March 13, 2009; U.S. Patent Application Ser. No. 12/454,483 entitled "Head window potting fixture method" filed on April 30, 2009; U.S. Patent Application Ser. No. 12/383,080 entitled "Multi-element patch antenna and method" filed on March 13, 2009; U.S. Patent Application Ser. No. 12/313,789 entitled "A low-cost energy-efficient amplitude phase-frequency modulator for low power wired and wireless command, control and communication" filed on November 24, 2008; U.S. Patent Application Ser. No. 12/322,959 entitled "An energy efficient method for changing the voltage of a DC source to another voltage in order to supply a load that requires a different voltage" filed on January 26, 2009; U.S. Patent Application Ser. No. 12/714,629 entitled "Uniformly distributed lead zirconate titanate strain sensor" filed on March 1, 2010; U.S. Patent Application Ser. No. 12/462,938 entitled "Three-dimensional tactical display and method for visualizing data with a probability of uncertainty" filed on August 3, 2009; U.S. Patent Application Ser. No. 12/131,472 entitled "Remote blood pressure sensing method and apparatus" filed on June 2, 2008; U.S. Provisional Patent Application Ser. No. 61/255,258 entitled "Non-contact system and method for monitoring a physiological condition" filed on October 27, 2009; U.S. Patent Application Ser. No. 12/460,178 entitled "Disposable chemical sensor for building collapse investigation" filed on July 10, 2009; U.S. Patent Application Ser. No. 12/701,909 entitled "Laser-based method for docking an unmanned underwater vehicle to a submarine" filed on February 8, 2010; U.S. Patent Application Ser. No. 12/566,841 entitled "Thermal wick cooling for vibroacoustic transducers" filed on September 25, 2009; U.S. Patent Application Ser. No. 12/560,528 entitled "Acoustic shotgun system" filed on September 16, 2009; U.S. Patent Application Ser. No. 12/383,433 entitled "Underwater acoustic tracer system" filed on April 13, 2009; U.S. Patent Application Ser. No. 12/386,185 entitled "Deployment system for fiber optic line sensors" filed on March 27, 2009; U.S. Patent Application Ser. No. 12/386,182 entitled "Method and system for interface detection" filed on March 27, 2009; U.S. Patent Application Ser. No. 12/701,007 entitled "Cable fairing attachment" filed on February 5, 2010; U.S. Patent Application Ser. No. 12/383,088 entitled "Shape-control actuated nose shell for multiple speed undersea vehicles" filed on April 13, 2009; U.S. Patent Application Ser. No. 12/683,687 entitled "Acoustically focused optical lens" filed on January 5, 2010; U.S. Patent Application Ser. No. 12/566,852 entitled "Method for displaying intersections and expansions of three dimensional volumes" filed on September 25, 2009; U.S. Patent Application Ser. No. 12/700,987 entitled "Particle characterization via the doppler distribution" filed on February 5, 2010; U.S. Patent Application Ser. No. 12/587,331 entitled "Rigid inflatable bridge" filed on May 17, 2006; U.S. Patent Application Ser. No. 12/454,494 entitled "Towed array deployment system for unmanned surface vehicle" filed on April 30, 2009; U.S. Patent Application Ser. No. 12/562,542 entitled "Biologically-inspired control of stator wakes for blade rate signature reduction" filed on September 18, 2009; U.S. Patent Application Ser. No. 12/560,523 entitled "Water entry system" filed on September 16, 2009; U.S. Patent Application Ser. No. 12/587,327 entitled "Subsurface deployable antenna array" filed on September 25, 2009; U.S. Patent Application Ser. No. 12/646,281 entitled "Supercavitating launch system and method" filed on December 23, 2009; U.S. Patent Application Ser. No. 12/646,318 entitled "Supercavitating projectile tracking system and method" filed on December 23, 2009; U.S. Patent Application Ser. No. 12/699,176 entitled "A towed acoustic source" filed on February 3, 2010; U.S. Patent Application Ser. No. 12/462,061 entitled "Cooling acoustic transducers with heat pipes" filed on July 30, 2009; U.S. Patent Application Ser. No. 12/699,185 entitled "Tow body position measurement method and system" filed on February 3, 2010; U.S. Patent Application Ser. No. 12/383,085 entitled "Low cost inertial measurement unit isolation mount" filed on April 13, 2009; U.S. Patent Application Ser. No. 12/460,907 entitled "Membrane pump for synthetic muscle actuation" filed on September 28, 2009; U.S. Patent Application Ser. No. 12/383,081 entitled "Telescoping cavitator" filed on April 13, 2009; U.S. Patent Application Ser. No. 12/587,330 entitled "Deployable and inflatable hybrid fendering apparatus" filed on September 25, 2009; U.S. Patent Application Ser. No. 12/460,908 entitled "Electronic equipment rack" filed on September 28, 2009; U.S. Patent Application Ser. No. 12/383,084 entitled "Secondary interference mitigation for fiber optic array" filed on March 4, 2009; U.S. Patent Application Ser. No. 12/291,048 entitled "Acceleration strain transducer with increased sensitivity" filed on September 22, 2009; U.S. Patent Application Ser. No. 12/702,529 entitled "Low noise compensator for fiber-optic interferometric sensor systems" filed on February 9, 2010; U.S. Patent Application Ser. No. 12/683,503 entitled "A method and apparatus for underwater environmental energy transfer with a long lead zirconate titanate transducer" filed on January 5, 2010; U.S. Patent Application Ser. No. 12/462,106 entitled "Bentitled "ow riding unmanned water-borne vehicle" filed on July 30, 2009; U.S. Patent Application Ser. No. 12/560,786 entitled "Fuel reformer integration with carbon dioxide scrubbers" filed on September 16, 2009; U.S. Patent Application Ser. No. 12/587,332 entitled "An

autonomous hydrophone position locating and target tracking system" filed on September 30, 2009; U.S. Patent Application Ser. No. 12/587,323 entitled "Power conditioner for microbial fuel cells" filed on September 30, 2009; U.S. Patent Application Ser. No. 12/730,398 entitled "Outboard optical cable sensor system and method" filed on March 24, 2010; U.S. Patent Application Ser. No. 12/651,559 entitled "A method to generate propulsor side forces" filed on January 4, 2010; U.S. Patent Application Ser. No. 12/291,053 entitled "Fiber optic accelerometer mandrel with shear prevention" filed on July 2, 2009; U.S. Patent Application Ser. No. 12/536,157 entitled "Class-specific iterated subspace classifier" filed on August 5, 2009; U.S. Patent Application Ser. No. 12/322,960 entitled "A multi-resolution hidden markov model using class-specific features" filed on January 29, 2009; U.S. Patent Application Ser. No. 12/380,863 entitled "Crimp imbalanced protective fabric" filed on March 4, 2009; U.S. Patent Application Ser. No. 12/728,451 entitled "Tsunami detection system" filed on March 22, 2010; U.S. Patent Application Ser. No. 12/587,328 entitled "Parallel plate antenna" filed on September 30, 2009; U.S. Patent Application Ser. No. 12/587,329 entitled "Compact and stand-alone combined multi-axial and shear test apparatus" filed on September 25, 2009; U.S. Patent Application Ser. No. 12/693,708 entitled "Battery electrolyte-level detector apparatus" filed on January 26, 2010; U.S. Patent Application Ser. No. 12/460,909 entitled "A method for mitigating spatial aliasing" filed on October 15, 2009; U.S. Patent Application Ser. No. 12/386,183 entitled "A method for determining a concentration of hydrogen peroxide" filed on April 10, 2009; U.S. Patent Application Ser. No. 12/386,184 entitled "A method of making a bipolar electrode" filed on April 10, 2009; U.S. Patent Application Ser. No. 12/462,659 entitled "Material with improved adhesion surface" filed on August 6, 2009.

FOR FURTHER INFORMATION CONTACT: Dr. Theresa A. Baus, Head, Technology Partnership Enterprise Office, Naval Undersea Warfare Center Division, Newport, 1176 Howell St., Newport, RI 02841–1703, telephone 401–832–8728, e-mail *Theresa.baus@navy.mil.*

(Authority: 35 U.S.C. 207, 37 CFR Part 404.)

Dated: March 25, 2010.

A.M. Vallandingham,

Lieutenant Commander, Judge Advocate Generals Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2010–7453 Filed 4–5–10; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Government-Owned Inventions; Available for Licensing

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The Department of the Navy hereby gives notice of the availability of exclusive or partially exclusive licenses to practice worldwide under the following issued patents. Any license granted shall comply with 35 U.S.C. 209 and 37 CFR Part 404. Applications will be evaluated utilizing the following criteria: (1) Ability to manufacture and market the technology; (2) manufacturing and marketing ability; (3) time required to bring technology to market and production rate; (4) royalties; (5) technical capabilities; and (6) small business status.

7,182,599, "Method and apparatus for removing mercury and mercury containing particles from dental waste water", Inventors: Jeffrey Gullett, John Kuehne, and Mark Stone, issued February 27, 2007; 7,201,902, "Production of recombinant protein PAP31 for the diagnosis and prevention of bartonella bacilliformis infection", Inventors: Wei Mei Ching, Laura Hendrix, and Jesus Gonzalez, issued April 10, 2007; 7,306,808, "Orientia tsutsugamushi truncated recombinant outer membrane protein (r47 and r57) vaccines diagnostics and therapeutics for scrub typhus and HIV infections", Inventors: Wei Mei Ching, Chien Chung Chao, and Hong Ge, issued December 11, 2007; 7,329,503, "Identification of antigens for diagnosis and prevention of Q fever (recombinant antigens for the detection of coxiella burnetii)", Inventors: Wei Mei Ching, and Chien Chung Chao, issued February 12, 2008; 7,335,477, "Expression and refolding of truncated recombinant major outer membrane protein antigen (r56) of orientia tsutsugamushi and its use in antibody based detection assays and vaccines", Inventors: Wei Mei Ching, Gregory Dasch, and Daryl Kelly, issued February 26, 2008; 7,371,821, "Cloning and expression of the full length 110 KDA antigen of orientia tsutsugamushi to be used as a vaccine component against scrub typhus", Inventors: Wei Mei Ching and Chien Chung Chao, issued May 13, 2008; 7,504,202, "A rapid immunoassay of anthrax protective antigen in vaccine cultures by fluorescence polarization", Inventors: Malford Cullum, Lloyd Simonson, Paul Hine, Chun Shih, Diane Bienek, Sukjoon Park, and James Ragain, issued March 17, 2009; 7,544,778, "Recombinant antigens for diagnosis and prevention of murine typhus", Inventor: Wei Mei Ching, issued June 9, 2009; 7,638,130, "Expression and refolding of truncated recombinant major outer membrane protein antigen (r56) of orientia tsutsugamushi and its use in antibody based detection assays and vaccines", Inventors: Wei Mei Ching, Gregory Dasch, and Daryl Kelly, issued December 29, 2009; 7,649,028, "Interim dental dressing and restorative material", Inventors: Amer Tiba, David Charlton, and James Ragain, issued January 29, 2010; 7,673,746, "Recycling container (to minimize release of Hg vapor) for the collection and temporary storage of mercury contaminated wastes in the dental operatory", Inventors: Mark Stone, Ronald Karaway, and Denise Berry, issued March 9, 2010; and their related foreign filings.

DATES: Applications for a non-exclusive, exclusive or partially exclusive license may be submitted at any time from the date of this notice.

ADDRESSES: Submit applications to the Office of Technology Transfer, Naval Medical Research Center, 503 Robert Grant Ave., Silver Spring, MD 20910–7500.

FOR FURTHER INFORMATION CONTACT: Dr. Charles Schlagel, Director, Office of Technology Transfer, Naval Medical Research Center, 503 Robert Grant Ave., Silver Spring, MD 20910–7500, telephone 301–319–7428 or e-mail at: *charles.schlagel@med.navy.mil.*

Dated: March 30, 2010

A.M. Vallandingham,

Lieutenant Commander, Judge Advocate Generals Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2010–7732 Filed 4–5–10; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Meeting of the Board of Visitors of the Marine Corps University

AGENCY: Department of the Navy, DoD.

ACTION: Notice of open meeting.

SUMMARY: The Board of Visitors of the Marine Corps University (BOV MCU)

will meet to review, develop and provide recommendations on all aspects of the academic and administrative policies of the University; examine all aspects of professional military education operations; and provide such oversight and advice, as is necessary, to facilitate high educational standards and cost effective operations. The Board will be focusing primarily on the internal procedures of the Marine Corps University. All sessions of the meeting will be open to the public.

DATES: The meeting will be held on Friday, April 30, 2010, from 8 a.m. to 4:30 p.m.

ADDRESSES: The meeting will be held at Marine Corps University President's Conference Room (Hooper Room). The address is: 2076 South Street, Quantico, Virginia 22134.

FOR FURTHER INFORMATION CONTACT: Mary Lanzillotta, Executive Secretary, Marine Corps University Board of Visitors, 2076 South Street, Quantico, Virginia 22134, telephone number 703–784–4037.

Dated: March 30, 2010.

A.M. Vallandingham,

Lieutenant Commander, Judge Advocate Generals Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2010–7730 Filed 4–5–10; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF ENERGY

Hydrogen Energy California's Integrated Gasification Combined Cycle Project, Kern County, CA—Notice of Intent To Prepare an Environmental Impact Statement and Notice of Potential Floodplain and Wetlands Involvement

AGENCY: Department of Energy.

ACTION: Notice of intent and notice of potential floodplain and wetlands involvement.

SUMMARY: The U.S. Department of Energy (DOE or the Department) announces its intent to prepare an Environmental Impact Statement (EIS) pursuant to the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), the Council on Environmental Quality's NEPA regulations (40 CFR parts 1500–1508), and DOE's NEPA regulations (10 CFR part 1021) to assess the potential environmental impacts of providing financial assistance for the construction and operation of a project proposed by Hydrogen Energy California LLC (HECA). DOE selected this project for an award of financial assistance through a competitive process under the Clean Coal Power Initiative (CCPI) program.

The project proposed by HECA would demonstrate Integrated Gasification Combined Cycle (IGCC) technology with carbon capture in a new baseload electric generating plant in Kern County, California. The plant would use blends of coal and petroleum coke (petcoke) or petcoke alone as its feedstock, and would demonstrate carbon capture and sequestration on a commercial scale.

The HECA project would gasify the coal and petcoke to produce synthesis gas (syngas), which would then be processed and purified to produce a hydrogen-rich fuel. The hydrogen would be used to power a combustion turbine, generating electricity while minimizing emissions of sulfur dioxide, nitrogen oxides, mercury, and particulates compared to conventional coal-fired power plants. In addition, the project would achieve a carbon dioxide (CO_2) capture efficiency of approximately 90 percent at steady-state operation. The captured CO_2 would be compressed and transported via pipeline to the adjacent Elk Hills Field (owned and operated by Occidental of Elk Hills, Inc.) for injection into deep underground oil and gas reservoirs for enhanced oil recovery (EOR) and geologic sequestration.

The EIS will inform DOE's decision on whether to provide financial assistance under its CCPI Program to the project proposed by HECA, which has an estimated capital cost of $2.3 billion. DOE's financial assistance (or "cost share") would be limited to $308 million, about 11 percent of the project's total cost. DOE's financial assistance is also limited to certain aspects of the power plant, carbon capture, and sequestration. The EIS will evaluate the potential impacts of DOE's proposed action (provision of financial assistance), the project proposed by HECA and any connected actions, and reasonable alternatives to DOE's proposed action. The purposes of this Notice of Intent are to: (1) Inform the public about DOE's proposed action and HECA's proposed project; (2) announce the public scoping meeting; (3) solicit comments for DOE's consideration regarding the scope and content of the EIS; (4) invite those agencies with jurisdiction by law or special expertise to be cooperating agencies in preparation of the EIS; and (5) provide notice that the proposed project may involve potential impacts to floodplains and wetlands.

DOE does not have regulatory jurisdiction over the HECA project. Its decisions are limited to whether and under what circumstances it would provide financial assistance to the project. There are a number of state and federal agencies that do have regulatory authority over the project; one of them is the California Energy Commission (CEC), which is responsible for power plant licensing under the Warren-Alquist Act (Cal. Pub. Res. Code section 25500 *et seq.*). This licensing process, which will consider all relevant environmental aspects of HECA's proposed project and related facilities, is defined by California law, and under state law is certified as fulfilling the requirements of the California Environmental Quality Act (CEQA; Cal. Pub. Res. Code section 21000 *et seq.*). Under this certified process, CEC holds public hearings, makes a final staff assessment, conducts evidentiary hearings, and issues a decision based on the hearing record, which includes the staff's and other parties' assessments. Through this process, the CEC staff will conduct an independent analysis of the proposed project and prepare an independent assessment of its potential environmental impacts, conditions of certification (*e.g.* mitigation measures), and alternatives. The staff will consult with interested Native American tribes and local, regional, state, and federal agencies, and CEC will coordinate its environmental review with other agencies, including the California Department of Oil, Gas and Geothermal Resources (DOGGR). DOE understands that, pursuant to California law and a grant of primacy from the United States Environmental Protection Agency regarding Class II wells under section 1425 of the Safe Drinking Water Act, DOGGR has responsibility for permitting EOR injection and extraction wells, and is likely to have the regulatory lead for the CO_2 sequestration aspects of the proposed project, and would impose permit conditions on these aspects of the project that are needed to ensure the HECA project's compliance with California's requirements regarding CO_2 emissions from power plants.[1]

DOE intends to coordinate its NEPA review of the HECA project with the environmental review conducted by CEC as lead agency under CEQA. It will work closely with CEC throughout its regulatory processes in order to integrate the NEPA and CEQA processes in an efficient and expeditious manner. In particular, DOE will work with CEC

[1] DOE anticipates that, pursuant to Cal. Pub. Res. Code section 21000 *et seq.*, California agencies will impose mitigation measures to address potential impacts and project design elements to verify the sequestration of CO_2 injected for EOR.

on making the environmental analyses conducted for CEC's regulatory processes as useful as possible in DOE's NEPA process.

DATES: DOE invites comments on the proposed scope and content of the EIS from all interested parties. Comments must be received by May 24, 2010, to ensure consideration. DOE will consider scoping comments submitted after this date to the extent practicable. In addition to receiving comments in writing and by telephone, DOE will conduct a public scoping meeting in which agencies, organizations, and individuals are invited to present oral and written comments and suggestions with regard to DOE's proposed action, alternatives, and potential impacts of HECA's project that DOE will consider in the EIS. The scoping meeting will be held in Salon A of the Bakersfield Marriott at the Convention Center, 801 Truxtun Avenue, Bakersfield, California, at 7 p.m. on Wednesday, April 14, 2010. The public is also invited to learn more about the proposed project at an informal session at this location beginning at 5 p.m. Displays and other information about DOE's proposed action and the HECA project will be available, and representatives from DOE and HECA will be present at the informal session to discuss the proposed project, DOE's CCPI program, and the EIS process.

ADDRESSES: Written comments on the scope of the EIS and requests to participate in the public scoping meeting should be addressed to: Dr. R. Paul Detwiler, U.S. Department of Energy, National Energy Technology Laboratory, 626 Cochrans Mill Road, P.O. Box 10940, Pittsburgh, PA 15236–0940. Individuals who would like to provide oral or electronic comments should contact Dr. Detwiler directly by telephone: 412–386–7349; toll-free number: 1–866–269–6493; fax: 412–386–6127; or electronic mail: *heca.eis@netl.doe.gov.*

FOR FURTHER INFORMATION CONTACT: For information about this project or to receive a copy of the draft EIS when it is issued, contact Dr. Detwiler as described above. For general information on the DOE NEPA process, contact Ms. Carol M. Borgstrom, Director, Office of NEPA Policy and Compliance (GC–54), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0103; telephone: 202–586–4600; fax: 202–586–7031; or leave a toll-free message at 1–800–472–2756.

SUPPLEMENTARY INFORMATION:

Background

Since the early 1970s, DOE and its predecessor agencies have pursued research and development programs that include large, technically complex projects in pursuit of innovation in a wide variety of coal technologies through the proof-of-concept stage. However, helping a technology reach the proof-of-concept stage does not ensure its continued development or commercialization. Before a technology can be considered seriously for commercialization, it must be demonstrated at a sufficient scale to prove its reliability and economically competitive performance. The financial risk associated with such large-scale demonstration projects is often too high for the private sector to assume in the absence of strong incentives.

The CCPI program was established in 2002 as a government and private sector partnership to implement the recommendation in President Bush's National Energy Policy to increase investment in clean coal technology. Through cooperative agreements with its private sector partners, the program advances clean coal technologies to commercialization; these technologies often involve combustion improvements, control systems advances, gasifier design, pollution reduction (including greenhouse gas reduction), efficiency increases, fuel processing, and others.

The Congress established criteria for projects receiving financial assistance under this program in Title IV of the Energy Policy Act of 2005 (Pub. L. 109–58) (EPACT 2005). Under this statute, CCPI projects must "advance efficiency, environmental performance, and cost competitiveness well beyond the level of technologies that are in commercial service" (Pub. L. 109–58, section 402(a)). In February 2009, the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5, 123 Stat. 115 (Feb. 17, 2009)) (ARRA) appropriated $3.4 billion to DOE for "Fossil Energy Research and Development;" the Department intends to use a significant portion of these funds to provide financial assistance to CCPI projects.

The CCPI program selects projects for its government-private sector partnerships through an open and competitive process. Potential private sector partners may include developers of technologies, utilities and other energy producers, service corporations, research and development firms, software developers, academia and others. DOE issues funding opportunity announcements that specify the types of projects it is seeking, and invites submission of applications. Applications are reviewed according to the criteria specified in the funding opportunity announcement; these criteria include technical, financial, environmental, and other considerations. DOE selects the projects that demonstrate the most promise when evaluated against these criteria, and enters into a cooperative agreement with the applicant. These agreements set out the project's objectives, the obligations of the parties, and other features of the partnership. Applicants must agree to provide at least 50 percent of their project's cost; for most CCPI projects, the applicant's cost share is much greater.

To date the CCPI program has conducted three rounds of solicitations and project selections. The first round sought projects that would demonstrate advanced technologies for power generation and improvements in plant efficiency, economics, and environmental performance. Round 2 requested applications for projects that would demonstrate improved mercury controls and gasification technology. Round 3, which DOE conducted in two phases, sought projects that would demonstrate advanced coal-based electricity generating technologies which capture and sequester (or put to beneficial use) carbon dioxide emissions. DOE's overarching goal for Round 3 projects was to demonstrate technologies at commercial scale in a commercial setting that would: (1) Operate at 90 percent capture efficiency for CO_2; (2) make progress towards capture and sequestration at less than a 10 percent increase in the cost of electricity for gasification systems and a less than 35 percent increase for combustion and oxycombustion systems; and (3) make progress toward capture and sequestration of 50 percent of the facility's CO_2 output at a scale sufficient to evaluate the full impacts of carbon capture technology on a generating plant's operations, economics and performance. The HECA project was one of two selected in the first phase of Round 3. DOE entered into a cooperative agreement with HECA on September 30, 2009.

Purpose and Need for DOE Action

The purpose and need for DOE action—providing limited financial assistance to HECA's project—are to advance the CCPI program by funding projects that have the best chance of achieving the program's objective as established by the Congress: The commercialization of clean coal technologies that advance efficiency, environmental performance, and cost

competitiveness well beyond the level of technologies that are currently in commercial service.

Site of the Project Proposed by HECA

HECA proposes to construct its IGCC baseload electric generating facility on a site currently used for agriculture in Kern County, California. The 1,101 acre site (473 acres of which would be used for the project and 628 acres for a controlled buffer area) is located in south-central California near the unincorporated community of Tupman, approximately 7 miles west of the city of Bakersfield. The site's topography is characterized by relatively flat, low-lying terrain that slopes very gently from southeast to northwest.

The IGCC facilities would occupy approximately 250 acres (or less than 25 percent) of the site. Most of the remainder of the site would continue to be used for agriculture; some areas would be occupied by new process and potable water pipelines, a transmission line, a natural gas supply pipeline, a CO_2 pipeline, access roads and fuel-handling facilities.

Proposed Generating Plant

The HECA project would demonstrate IGCC and carbon capture technology on a commercial scale in a new power plant consisting of three gasifiers with gas cleanup systems, a gas combustion turbine, a heat recovery steam generator, a steam turbine, and associated facilities.

The plant proposed by HECA would gasify petcoke and coal to produce syngas, which would then be processed and purified to produce a hydrogen-rich fuel. The hydrogen would be used to drive the gas combustion turbine. Hot exhaust gas from the gas combustion turbine would generate steam from water in the heat recovery steam generator to drive the steam turbine; both turbines would generate baseload electricity. At full capacity, the plant would be expected to use about 3,200 tons of feedstock per day (about 1.2 million tons per year). HECA would transport petcoke to the site by truck. Coal would be brought to a nearby railhead and transferred to trucks for delivery to the site.

Combined, the gas combustion and steam turbines would generate approximately 390 MW gross capacity (250 MW net) of low-carbon baseload electricity. This combined-cycle approach of using gas and steam turbines in tandem increases the amount of electricity that can be generated from the feedstock.

The plant would include a system capable of capturing about 90 percent of CO_2 generated during steady-state operation. The CO_2 would be piped offsite for EOR and geologic sequestration in the Elk Hills Field, located approximately 4 miles southwest of the project's location.

The proposed plant would minimize sulfur dioxide, nitrogen oxides, mercury, and particulate emissions as compared to conventional coal-fired power plants. It is expected to remove in excess of 99 percent of the sulfur dioxide produced by the plant and would also control emissions of nitrogen oxides, carbon monoxide, and volatile organic compounds. In addition, over 99 percent of the mercury in the feedstock would be removed and over 99 percent of the particulates in the syngas would be removed using liquid scrubbing.

Solids generated by the gasifiers would be accumulated onsite and made available for appropriate recycling or beneficial use, and if these options are not available, disposed of in accordance with applicable laws. It is anticipated that a significant fraction of the gasification solids with fuel value can be segregated and returned to the gasification process; the solids without fuel value would be beneficially used or properly disposed of. This return of solids with fuel value to the gasification process limits the amount of solids that must be disposed of as waste or beneficially used for another purpose.

In addition to the gasifiers and turbines, the plant's equipment would include stacks, mechanical-draft cooling towers, syngas cleanup facilities, and particulate filtration systems. The height of the tallest proposed stack would be approximately 260 feet above ground. The plant would also require systems for feedstock handling and storage, as well as on-site roads, administration buildings, water and wastewater treatment systems, and management facilities for handling gasification solids.

Proposed Linear Facilities

Linear facilities are the pipelines and electrical lines that transport materials and power to and from the plant. The source of process water for the plant would be brackish groundwater supplied by the Buena Vista Water Storage District; approximately 5 million gallons per day would be required for cooling water makeup, steam cycle makeup, and other processes. The process water pipeline would be approximately 15 miles in length. Potable water for drinking and sanitary use would be supplied by the West Kern Water District, located to the southeast of the site. The potable water line would be approximately 7 miles in length. The project would recycle water and would incorporate zero liquid discharge (ZLD) technology for process and other wastewater from plant operations. Therefore, there would be no industrial wastewater discharge. Sanitary wastewater would be disposed of in an onsite leach field (*e.g.,* a septic system) in accordance with applicable law.

The site of the proposed project is about 8 miles southeast of Pacific Gas & Electric Company's Midway Substation. A 345-kilovolt (kV) transmission line would be constructed to interconnect the project to the grid at this existing substation, and to provide firm transmission service for the plant's output. This transmission line would follow a relatively direct route between the plant and the substation, and therefore would be about 8 miles long. Rights-of-way (ROW) up to 175 feet in width would be required for this new line.

HECA would also construct an approximately 8-mile natural gas supply pipeline extending southeast from the site, and an approximately 4-mile CO_2 pipeline extending from the site to a custody transfer point where Occidental would take possession of the CO_2 and continue its transportation via pipeline to the Elk Hills Field for EOR use and geologic sequestration. The ROW for these underground pipelines would be approximately 50 feet wide.

Proposed Use of CO_2 for EOR and Sequestration

According to HECA's proposal, the project would result in the sequestration of about two million tons of CO_2 per year during the demonstration phase funded in part by DOE; HECA anticipates this rate would continue for the operational life of the power plant. The captured CO_2 would be compressed and transported via pipeline to the Elk Hills Oil Field approximately 4 miles from the power plant. The CO_2 would enable additional domestic oil production, contributing to the nation's energy security.

The EOR process involves the injection and reinjection of CO_2 to reduce the viscosity and enhance other properties of the trapped oil that facilitate its flow through the reservoir, improving extraction. During EOR operations, the pore space left by the extracted oil is occupied by the injected CO_2, sequestering it in the geologic formation. EOR operations would be monitored to ensure the injected CO_2 remains in the formation.

Proposed Project Schedule

The project proposed by HECA includes engineering and design of the generating plant, permitting of the plant and associated facilities, equipment procurement, construction, startup, operations, and demonstration of using the CO_2 for EOR followed by verified sequestration. HECA anticipates that it would take about four years to construct, commission and commence operation of the plant. It plans to start construction by 2012, and commercial operation by 2016. This schedule is contingent upon HECA receiving the necessary regulatory authorizations (which would be preceded by the hearings and others events mandated by the regulatory agencies' procedures) and upon DOE deciding to provide limited financial assistance for the construction and demonstration phases of the project (a decision that would occur after completion of the EIS).

Connected and Cumulative Actions

Under the cooperative agreement between DOE and HECA, DOE would share the costs of the gasifiers, syngas cleanup systems, a combustion turbine, a heat recovery steam generator, a steam turbine, supporting facilities and infrastructure, and a demonstration phase in which the project would use at least 75 percent coal (calculated on a fuel input basis) to generate low-carbon electricity and capture CO_2 for EOR and sequestration.[2] Under this agreement, DOE would not share in the cost of the air separation unit, CO_2 EOR and sequestration facilities, or certain other facilities. Accordingly, the EIS will evaluate the potential impacts of these aspects of HECA's project as connected actions.

DOE will also analyze the cumulative impacts of both the proposed project and any connected actions. The cumulative impacts analysis will include analysis of greenhouse gas emissions and global warming, other air emissions, and other incremental impacts that, when added to past, present, and reasonably foreseeable impacts, may have significant effects on the human environment.

Alternatives

NEPA requires that an EIS evaluate the range of reasonable alternatives to an agency's proposed action. The range of reasonable alternatives encompasses those alternatives that would satisfy the underlying purpose and need for agency action. The purpose and need for DOE action—providing limited financial assistance to the HECA IGCC project—are to advance the CCPI program by selecting projects that have the best chance of achieving the program's objective as established by the Congress: the commercialization of clean coal technologies that advance efficiency, environmental performance, and cost competitiveness well beyond the level of technologies that are currently in service.

DOE's NEPA regulations include a process for identifying and analyzing reasonable alternatives in the context of providing financial assistance through a competitive selection of projects proposed by entities outside the federal government. The range of reasonable alternatives in competitions for grants, loans and other financial support is defined in large part by the range of responsive proposals DOE receives. Unlike projects undertaken by DOE itself, the Department cannot mandate what outside entities propose, where they propose to do it, or how they propose to do it beyond establishing requirements in the funding opportunity announcement that further the program's objectives. DOE's decision is limited to selecting among the applications submitted by project sponsors that meet CCPI's goals.

Recognizing that the range of reasonable alternatives in the context of financial assistance and contracting is in large part determined by the number and nature of the proposals submitted, section 216 of DOE's NEPA regulations requires the Department to prepare an "environmental critique" that assesses the environmental impacts and issues relating to each of the proposals that the DOE selecting official considers for an award. See 10 CFR 1021.216. This official considers these impacts and issues, along with other aspects of the proposals (such as technical merit and financial ability) and the program's objectives, in making awards. DOE prepared a critique of the proposals that were deemed suitable for selection in this round of awards for the CCPI program.

Once DOE selects a project for an award, the range of reasonable alternatives becomes the project as proposed by the applicant, any alternatives still under consideration by the applicant or that are reasonable within the confines of the project as proposed (*e.g.,* the particular location of the generating plant on the 1,101-acre site or the ROWs for linear facilities), and a no action alternative. Regarding the no action alternative, DOE assumes for purposes of the EIS that, if it were to decide to withhold financial assistance from the project, the project would not proceed. DOE currently plans to analyze the project as proposed by HECA (with and without any mitigating conditions that DOE may identify as reasonable and appropriate); alternatives to HECA's proposal that it is still considering (*e.g.,* the ROWs for linear facilities); and the no action alternative.

As noted above, DOE will analyze any "project-specific" alternatives that HECA is still considering such as the location of the facility within the site boundaries, alternative routes for the process water supply pipeline, CO_2 pipeline and transmission line, and other reasonable alternatives that may be suggested during the scoping period.

Under the no action alternative, DOE would not provide funding to HECA. In the absence of financial assistance from DOE, HECA could reasonably pursue two options. It could build the project without DOE funding; the impacts of this option would be essentially the same as those of DOE's proposed action. Or, HECA could choose not to pursue its project, and there would be no impacts from the project. This option would not contribute to the goal of the CCPI program, which is to accelerate commercial deployment of advanced coal technologies that provide the United States with clean, reliable, and affordable energy. However, as required by NEPA, DOE analyzes this option as the no action alternative in order to have a meaningful comparison between the impacts of DOE providing financial assistance and withholding that assistance.

Alternatives considered by HECA in developing its proposed project will be discussed in the EIS. HECA analyzed several alternative sites and determined that the only reasonable site alternative was its proposed site based on, among other things, the presence or absence of sensitive resources; the availability of land; and the site's proximity to the brackish groundwater supply, to electric transmission and natural gas facilities, and to a CO_2 storage reservoir.[3] The EIS will describe HECA's site selection process. However, DOE does not plan to analyze in detail the alternatives sites considered by HECA because HECA is no longer considering these alternatives, they were not part of HECA's proposal, and therefore they are no longer reasonable alternatives.

[2] Because of the requirements of California law, DOE believes that the HECA project would need to continue sequestering CO_2 throughout the operational life of the plant.

[3] HECA initially selected another site; it subsequently decided to move the project when it discovered the existence of sensitive biological resources at the initial site.

Floodplains and Wetlands

The footprint of the proposed electric generating and carbon capture facility would not affect any wetlands or floodplains. Wetland and floodplain impacts, if any, from the construction of pipelines and transmission lines would be avoided by the use of horizontal direction drilling. In the event that the EIS identifies that wetlands or floodplains would be affected by the project (including its linear facilities) or connected actions, DOE will prepare a floodplain and wetland assessment in accordance with its regulations at 10 CFR part 1022 and include the assessment in the EIS.

Preliminary Identification of Environmental Issues

The following environmental issues have been tentatively identified for analysis in the EIS. This list (which was developed from the environmental critique of the proposed project, permit applications that HECA has filed, comments by regulatory agencies on those applications, and information from similar projects) is neither an inclusive nor a predetermined set of potential impacts. This preliminary list is presented to facilitate public comment on the planned scope of the EIS. Additions to or deletions from the list may occur as a result of this scoping process. The preliminary list of potential environmental issues includes:

(1) Atmospheric Resources: Potential air quality impacts resulting from emissions during construction and operation of the proposed HECA project and connected actions (*e.g.,* effects of ground-level concentrations of criteria pollutants and trace metals—including mercury—on surrounding areas, including those of special concern such as Prevention of Significant Deterioration Class I areas). Potential cumulative effects of greenhouse gas emissions.

(2) Water Resources: Potential effects of groundwater withdrawals and water use by the project, including potential impacts resulting from construction and operation of the project, including linear facilities and any connected actions.

(3) Infrastructure and Land Use: Potential effects on existing infrastructure and land uses resulting from the construction and operation of the proposed project and connected actions. For example, potential traffic effects resulting from the proposed project and potential land use impacts of committing farm land to a power plant.

(4) Solid Waste: Pollution prevention and waste management issues, including potential impacts from the generation, treatment, transport, storage, and management of wastes.

(5) Visual: Potential aesthetic impacts of new stacks, mechanical-draft cooling tower, flares, and other structures of the proposed plant, of the linear facilities, and of connected actions.

(6) Floodplain: Potential impacts (*e.g.,* impeding floodwaters, re-directing floodwaters, possible property damage) of siting structures on a floodplain.

(7) Wetlands: Potential effects to wetlands due to construction and operation of the power plant, linear facilities, and connected actions.

(8) Ecological: Potential onsite and offsite impacts to vegetation, terrestrial and aquatic wildlife, threatened and endangered species,[4] and ecologically sensitive habitats due to the construction and operation of the power plant, linear facilities, and connected actions.

(9) Safety and Health: Construction- and operation-related safety, process safety, and management of process chemicals and materials.

(10) Construction: Potential impacts associated with noise, traffic patterns, and construction-related emissions.

(11) Community Impacts: Potential congestion and other impacts to local traffic patterns; socioeconomic impacts on public services and infrastructure (*e.g.,* police protection, schools, and utilities); noise associated with project operation; and environmental justice issues with respect to nearby communities.

(12) Cultural and Archaeological Resources: Potential impacts to such resources from construction of the project and connected actions.

(13) Cumulative Effects: Incremental impacts of the proposed project (*e.g.,* incremental air emissions affecting ambient air quality) that, when added to other past, present, and reasonably foreseeable future actions, including connected actions, may have potentially significant impacts on the environment. This analysis will include potential impacts on climate.

The level of analysis of issues in the EIS will be in accordance with their level of importance. The most detailed analyses are likely to focus on potential impacts to air, water, and ecological resources.

Public Scoping Process

To ensure that all issues related to DOE's Proposed Action and HECA's proposed project are properly evaluated, DOE will conduct an open process to define the scope of the EIS. The public scoping period will end on May 24, 2010. Interested agencies, organizations, and individuals are encouraged to submit comments or suggestions concerning the content of the EIS, issues and impacts that should be addressed, and alternatives that should be considered. Scoping comments should clearly describe specific issues or topics that the EIS should address in order to assist DOE in defining the EIS's scope. Written, e-mailed, faxed, or telephoned comments should be submitted by May 24, 2010 (see **ADDRESSES**).

In addition, DOE will conduct a public scoping meeting in Salon A of the Bakersfield Marriott at the Convention Center, 801 Truxtun Avenue, Bakersfield, California, at 7 p.m. on Wednesday, April 14, 2010. The public is also invited to learn more about the proposed project at an informal session at this location beginning at 5 p.m. DOE requests that anyone who wishes to speak at this public scoping meeting contact Dr. R. Paul Detwiler, by phone, fax, e-mail, or letter (see **ADDRESSES**).

Individuals who do not make advance arrangements to speak may register at the meeting and will be given the opportunity to speak following scheduled speakers. Speakers who need more than five minutes should indicate the length of time desired in their request. Depending on the number of speakers, DOE may need to limit speakers to five-minute presentations initially, but will provide additional opportunities as time permits. Speakers can also provide written material to supplement their presentations. Oral and written comments will be given equal weight.

DOE will begin the formal meeting with an overview of the proposed HECA project. DOE will designate a presiding officer to chair the meeting. The meeting will not be conducted as an evidentiary hearing, and speakers will not be cross-examined. However, speakers may be asked questions to ensure that DOE fully understands their comments or suggestions. The presiding officer will establish the order of speakers and any additional procedures necessary to conduct the meeting.

Issued in Washington, DC, this 30th day of March 2010.

James J. Markowsky,

Assistant Secretary, Office of Fossil Energy.

[FR Doc. 2010–7723 Filed 4–5–10; 8:45 am]

BILLING CODE 6450–01–P

[4] No threatened or endangered species have been identified at the proposed plant site; three listed plant species and eight listed wildlife species may occur in the ROWs of the linear facilities.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12690–004]

Public Utility District No. 1 of Snohomish County, WA; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

March 31, 2010.

On March 2, 2010, the Public Utility District No. 1 of Snohomish County, Washington, 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 Admiralty Inlet Tidal Energy Project to be located in Admiralty Inlet in the northwestern portion of Puget Sound, between the Olympic Peninsula and Whidbey Island, in Jefferson and Island Counties, Washington. 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) Two 32.8-foot-diameter, 500-kilowatt horizontal axis OpenHydro turbines, each mounted on a triangular subsea base; (2) two approximately 820-foot-long service cables transmitting power from the turbines to a trunk cable; (3) an approximately 3,280-foot-long trunk cable, approximately half the length will be buried, corresponding from the 20-meter contour to shore; (4) a cable termination vault; (5) an approximately 265-foot-long buried transmission conduit from the termination vault to the Power Conditioning and Control building (PC&C); (6) a PC&C building; (7) an approximately 460-foot-long, 3.3-kilovolt (kV) power cable bringing power from the PC&C building to the 12-kV Puget Sound Energy grid; and (8) appurtenant facilities.

Applicant Contact: Steven Klein, General Manager, P.O. Box 1107, 2320 California Street, Everett, WA 98206–110; phone: (425) 783–1000.

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 website (*http://www.ferc.gov/docs-filing/ferconline.asp*) under the "eFiling" link. For a simpler method of submitting text only comments, click on "Quick Comment." For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov;* call toll-free at (866) 208–3676; or, for TTY, contact (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and eight copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the "eLibrary" link of Commission's website at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–12690–004) in the docket number field to access the document. For assistance, contact FERC Online Support.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010–7702 Filed 4–5–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 199–218, et al.]

South Carolina Public Service Authority; Notice of Applications for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

March 31, 2010.

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

a. *Application Type:* Amendment of License.

b. *Project Nos.:* 199–218, 199–219, 199–220, 199–221, and 199–222.

c. *Date Filed:* March 26, 2010.

d. *Applicant:* South Carolina Public Service Authority.

e. *Name of Project:* Santee Cooper Hydroelectric Project.

f. *Location:* The project lands proposed for reclassification are in Berkeley and Clarendon counties, South Carolina.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Mr. David L. Evans, Manager, Property Management, P.O. Box 2946101, Moncks Corner, SC 29461, telephone (843) 761–4068.

i. *FERC Contact:* Any questions on this notice should be addressed to Shana High at (202) 502–8674.

j. *Deadline for Filing Comments, Motions to Intervene, and Protest:* May 3, 2010.

Comments, Motions to Intervene, and Protests may be filed electronically via the Internet. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the "e-Filing" link. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and eight copies should be mailed to: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. For more information on how to submit these types of filings, please go to the Commission's Web site located at *http://www.ferc.gov.filing-comments.asp.* Please include the project number (P–199–218, 219, 220, 221, or 222) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

k. *Description of Request:* South Carolina Public Service Authority requests the following five changes in project land classification: Thornley Subdivision in Berkeley County (–218), approximately 42 acres from "Forest Management" to "Residential" to allow expansion of the subdivision; Potato Creek Area in Clarendon County (–219), two acres from "Residential" to "USFWS" for consistency among the lands to be leased by the USFWS; Jack's Creek Area in Clarendon County (–220), approximately 4.57 acres from "Residential Marginal" to "Public Vacation Recreation" to allow expansion of a commercial lease area; Dingle Pond Area in Berkeley County (–221), 3.4 acres from "Forest Management" to "USFWS" to correct a

classification error; and Cross Area in Berkeley County (–222), approximately 15 acres from "Forest Management" to "Public Vacation Recreation" to allow the expansion of Black's Fish Camp, a commercial lease area.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Any filings must bear in all capital letters the title "COMMENTS", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers.

p. *Agency Comments:* Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010–7704 Filed 4–5–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2306–041]

Great Bay Hydro Corporation; Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

March 31, 2010.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Amendment of Erosion Monitoring Plan.

b. *Project No.:* 2306–041.

c. *Date Filed:* March 1, 2010.

d. *Applicant:* Great Bay Hydro Corporation.

e. *Name of Project:* Clyde River Hydroelectric Project.

f. *Location:* The project is located on the Clyde River near Newport, Orleans County, Vermont.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Mr. William C. Rodgers, Director of Marketing, Great Bay Hydro Corporation, 1 New Hampshire Avenue, Suite 207, Portsmouth, New Hampshire 03801; telephone (603) 294–4850.

i. *FERC Contact:* Linda Stewart, telephone (202) 502–6680, and e-mail address *linda.stewart@ferc.gov.*

j. *Deadline for filing comments, motions to intervene, and protests:* May 03, 2010.

Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the "e-filing" link. The Commission strongly encourages electronic filings.

All documents (original and eight copies) filed by paper should be sent to: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please include the project number (P–2306–041) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

k. *Description of Request:* Great Bay Hydro Corporation (licensee) proposes to amend its Erosion Monitoring Plan. Specifically, based upon the 2009 monitoring results and the improvements observed since monitoring and stabilization work began in 2005, the licensee proposes to discontinue erosion monitoring of the river banks from the Newport Nos. 1, 2, 3 Dam to Lake Memphremagog.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Any filings must bear in all capital letters the title "COMMENTS", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers.

p. *Agency Comments:* Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010–7703 Filed 4–5–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13648–000]

Twin Valleys Public Power District; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

March 31, 2010.

On January 4, 2010, and revised March 4, 2010 and March 30, 2010, Twin Valleys Public Power District filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Medicine Creek Dam Hydroelectric Project located on the Medicine Creek in Frontier County, Nebraska. The Medicine Creek dam is owned and operated by the U.S. Bureau of Reclamation (Reclamation). The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of the following: (1) A 100-foot-long, 6-foot-diameter steel penstock directing flows from the existing low-level outlets of Medicine Creek Dam; (2) a powerhouse containing one Kaplan generating unit having an installed capacity of 800 kilowatts, discharging flows into Medicine Creek; (3) 2-mile-long, 12.5-kilovolt transmission line connecting to an existing transmission line owned and operated by Twin Valleys Public Power District; and (4) appurtenant facilities. The proposed project would have an average annual generation of 2.0 gigawatt-hours. Since the dam is operated primarily for irrigation and flood control by Reclamation, the project would operate seasonally using seasonal flows released for irrigation, as well as spring runoffs. The project will be located on 18.3 acres of federal land managed by the Reclamation.

Applicant Contact: James P. Dietz, General Manager, Twin Valleys Public Power District, P.O. Box 160, Cambridge, NE 69022; phone: (308) 697–3315.

FERC Contact: Joseph C. Adamson, 202–502–8085.

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 website (*http://www.ferc.gov/docs-filing/ferconline.asp*) under the "eFiling" link. For a simpler method of submitting text only comments, click on "Quick Comment." For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov;* call toll-free at (866) 208–3676; or, for TTY, contact (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and eight copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the "eLibrary" link of Commission's website at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–13648–000) in the docket number field to access the document. For assistance, contact FERC Online Support.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010–7701 Filed 4–5–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings # 1

March 30, 2010.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–547–001.

Applicants: Golden Spread Electric Cooperative, Inc.

Description: Golden Spread Electric Cooperative, Inc submits revisions to its Wholesale Power Contracts with their Members as First Revised Rate Schedule 23–33 in compliance with FERC's 2/26/10 letter order.

Filed Date: 03/29/2010.

Accession Number: 20100330–0208.

Comment Date: 5 p.m. Eastern Time on Monday, April 19, 2010.

Docket Numbers: ER10–637–001.

Applicants: ISO New England Inc.

Description: ISO New England, Inc *et al.* submits their Operating Agreement in compliance with the Commission's 2/24/10 letter order.

Filed Date: 03/26/2010.

Accession Number: 20100329–0206.

Comment Date: 5 p.m. Eastern Time on Friday, April 16, 2010.

Docket Numbers: ER10–678–003.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc submits Substitute Second Revised Sheet 7 *et al.* to FERC Electric Tariff, Fifth Revised Volume 1 to be effective 3/31/10.

Filed Date: 03/25/2010.

Accession Number: 20100326–0209.

Comment Date: 5 p.m. Eastern Time on Thursday, April 15, 2010.

Docket Numbers: ER10–764–001.

Applicants: Central Maine Power Company.

Description: Central Maine Power Company submits Engineering and Procurement Agreement dated 1/20/09 with Record Hill Wind, LLC designated as Original Service Agreement *etc.*

Filed Date: 03/26/2010.

Accession Number: 20100326–0211.

Comment Date: 5 p.m. Eastern Time on Friday, April 16, 2010.

Docket Numbers: ER10–786–001.

Applicants: Ameren Energy Marketing Company.

Description: Ameren Energy Marketing Company submits an amendment to its 2/22/10 filing.

Filed Date: 03/29/2010.

Accession Number: 20100330–0207.

Comment Date: 5 p.m. Eastern Time on Monday, April 19, 2010.

Docket Numbers: ER10–852–000.
Applicants: Grays Ferry Cogeneration Limited Partnership.
Description: Supplement to Market-Based Rate Application of GRAYS FERRY COGENERATION PARTNERSHIP.
Filed Date: 03/29/2010.
Accession Number: 20100329–5148.
Comment Date: 5 p.m. Eastern Time on Monday, April 19, 2010.

Docket Numbers: ER10–943–000.
Applicants: Bangor Hydro Electric Company.
Description: Bangor Hydro Electric Company submits revised sheets to Attachment P to Schedule 21–BHE of the ISO–New England tariff.
Filed Date: 03/29/2010.
Accession Number: 20100329–0214.
Comment Date: 5 p.m. Eastern Time on Monday, April 19, 2010.

Docket Numbers: ER10–944–000.
Applicants: Xcel Energy Services Inc.
Description: Northern States Power Company submits proposed revisions to the Interconnection and Interchange Agreement with Minnesota Municipal Power Agency *etc.*
Filed Date: 03/29/2010.
Accession Number: 20100329–0215.
Comment Date: 5 p.m. Eastern Time on Monday, April 19, 2010.

Docket Numbers: ER10–945–000.
Applicants: Central Maine Power Company.
Description: Central Maine Power Company submits petitions to terminate the Engineering and Procurement Agreement with Fox Island Electric Cooperative, Inc.
Filed Date: 03/29/2010.
Accession Number: 20100329–0216.
Comment Date: 5 p.m. Eastern Time on Monday, April 19, 2010.

Docket Numbers: ER10–946–000.
Applicants: Central Maine Power Company.
Description: Central Maine Power Company submits petition to terminate the Engineering and Procurement Agreement with TransCanada Maine Wind Development, Inc.
Filed Date: 03/29/2010.
Accession Number: 20100329–0217.
Comment Date: 5 p.m. Eastern Time on Monday, April 19, 2010.

Docket Numbers: ER10–947–000; ER10–948–000; ER10–949–000; ER10–950–000.
Applicants: Westar Energy, Inc.
Description: Westar Energy, Inc submits revised sheets to the Rate Schedules and Tariff *etc.*
Filed Date: 03/29/2010.
Accession Number: 20100329–0222.
Comment Date: 5 p.m. Eastern Time on Monday, April 19, 2010.

Docket Numbers: ER10–951–000.
Applicants: Entergy Services, Inc.
Description: Entergy Operating Companies submits an executed Fourth Revised Network Integration Transmission Service Agreement with Cleco Power LLC.
Filed Date: 03/29/2010.
Accession Number: 20100330–0206.
Comment Date: 5 p.m. Eastern Time on Monday, April 19, 2010.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010–7699 Filed 4–5–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR09–19–002]

Crosstex LIG, LLC; Notice of Compliance Filing

March 31, 2010.

Take notice that on March 4, 2010, Crosstex LIG, LLC., filed its Statement of Operating Conditions in compliance with the February 18, 2010 Letter Order and pursuant to section 284.123(e) of the Commission's regulations. Crosstex LIG, LLC states that it made revisions including incorporating the Settlement terms.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed on or before 5 p.m. Eastern time on the specified comment date. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on Friday, April 9, 2010.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010–7700 Filed 4–5–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR09–33–001]

Kinder Morgan Border Pipeline, LLC; Notice of Compliance Filing

March 31, 2010.

Take notice that on March 15, 2010, and March 17, 2010, Kinder Morgan Border Pipeline, LLC (KM Border), filed revisions to its Statement of Operating Conditions (SOC) in compliance with the February 23, 2010 Letter Order and pursuant to section 284.123(e) of the Commission's regulations. KM Border states that it made revisions to the SOC's table of contents and a filed a statement of rates, as required by the February 23rd Letter Order.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed on or before 5 p.m. Eastern time on the specified comment date. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on Friday, April 9, 2010.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010–7707 Filed 4–5–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AC10–62–000]

Hawthorn Oil Transportation; Notice of Filing

March 31, 2010.

Take notice that on February 12, 2010, Hawthorn Oil Transportation submitted a request for the waiver of the requirement to file the 2009 FERC Form No. 6 Annual Report from December 15, 2009 through December 31, 2009.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: April 13, 2010.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010–7706 Filed 4–5–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER10–426–000]

Stetson Wind II, LLC; Notice of Filing

March 31, 2010.

Take notice that, on March 29, 2010, Stetson Wind II, LLC filed a supplement to its filing in the above captioned docket with information required under the Commission's regulations. Such filing served to reset the filing date in this proceeding.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on April 12, 2010.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010–7705 Filed 4–5–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD09–11–000]

Energy Efficiency of the Natural Gas Infrastructure and Operations Conference; Notice of Public Conference

March 31, 2010.

Take notice that a public conference originally noticed on September 21, 2009 has been rescheduled for May 25, 2010, from approximately 9 a.m. until 4 p.m. Eastern Time, in the Commission Meeting Room on the second floor of the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC. All interested persons may attend; there is neither registration nor a registration fee. Commissioners are expected to participate.

The conference will focus on waste heat recovery efforts as well as other efficiency measures in the natural gas industry.

A free Webcast of this event is available through *http://www.ferc.gov.* Anyone with Internet access who desires to view this event can do so by navigating to the Calendar of Events at *http://www.ferc.gov* and locating this event in the Calendar. The event will contain a link to its Webcast. The Capitol Connection provides technical support for the free Webcasts. It also offers access to this event via television in the Washington, DC area and via phone-bridge for a fee. If you have any questions, visit *http://www.CapitolConnection.org* or call (703) 993–3100.

FERC conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations please send an e-mail to *accessibility@ferc.gov* or call toll free 866–208–3372 (voice) or (202) 208–1659 (TTY), or send a FAX to (202) 208–2106 with the required accommodations. Additional details and the agenda for this conference will be included in a subsequent notice. For more information about the conference, please contact Pamela Romano at (202) 502–6854 (*pamela.romano@ferc.gov*).

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010–7708 Filed 4–5–10; 8:45 am]

BILLING CODE 6717–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than April 21, 2010.

A. Federal Reserve Bank of St. Louis (Glenda Wilson, Community Affairs Officer) 411 Locust Street, St. Louis, Missouri 63166-2034:

1. Southern Missouri Savings Bank Employee Stock Ownership Plan (Rebecca J. Brooks, L. Douglas Bagby, and Samuel H. Smith as trustees), Poplar Bluff, Missouri, to gain control of Southern Missouri Bancorp, Inc., Poplar Bluff, Missouri, and therby acquire shares of Southern Bank, Poplar Bluff Missouri.

Board of Governors of the Federal Reserve System, April 1, 2010.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2010–7752 Filed 4–5–10 8:45 am]

BILLING CODE 6210–01–S

FEDERAL TRADE COMMISSION

[File No. 101 0013]

Service Corporation International and Keystone North America Inc.; Analysis of Agreement Containing Consent Orders 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 April 26, 2010.

ADDRESSES: Interested parties are invited to submit written comments electronically or in paper form. Comments should refer to "SCI-Keystone, File No. 101 0013" 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://public.commentworks.com/ftc/sci/keystonenorthamerica*) and following the instructions on the web-based form.

[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).

To ensure that the Commission considers an electronic comment, you must file it on the web-based form at the weblink: (*https://public.commentworks.com/ftc/sci/keystonenorthamerica*). 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 "SCI-Keystone, File No. 101 0013" 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 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: Jeffrey H. Perry (202-326-2331), Bureau of Competition, 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 March 26, 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

I. INTRODUCTION

The Federal Trade Commission ("Commission") has accepted for public comment, subject to final approval, an Agreement Containing Consent Orders ("Consent Agreement") from Service Corporation International ("SCI") and Keystone North America Inc. ("KNA"). The purpose of the proposed Consent Agreement is to remedy the anticompetitive effects that would otherwise result from SCI's acquisition of KNA. Under the terms of the proposed Consent Agreement, SCI and KNA are required to divest 22 funeral homes in 16 local funeral services markets and four cemeteries in three local cemetery services markets to acquirers who receive the approval of the Commission. The proposed Consent Agreement also requires SCI and KNA to divest all related assets and real property necessary to ensure the buyer(s) of the divested facilities will be able to quickly and fully replicate the competition that would have been eliminated by the acquisition. Finally, the Commission, SCI, and KNA have agreed to an Order to Hold Separate and Maintain Assets ("Hold Separate Order") that requires SCI and KNA to maintain and hold separate the facilities to be divested pending their final divestiture pursuant to the Consent Agreement.

The proposed Consent Agreement has been placed on the public record for thirty days to solicit comments from interested persons. Comments received during this period will become part of the public record. After thirty days, the Commission again will review the proposed Consent Agreement and comments received, and decide whether it should withdraw the Consent Agreement or make it final.

On October 14, 2009, SCI and KNA executed a definitive support agreement pursuant to which SCI agreed to acquire all of the outstanding voting securities of KNA. The Commission's complaint alleges that the proposed acquisition, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, by removing an actual, direct, and substantial competitor from 16 funeral services markets, and three cemetery services markets. The proposed Consent Agreement would remedy the alleged violations by requiring divestitures that will replace the competition that otherwise would be lost in these markets as a result of the acquisition.

II. THE PARTIES

SCI is the largest funeral and cemetery services provider in North America. SCI owns and operates 1,266 funeral homes and 372 cemetery locations worldwide, including 1,073 funeral homes in 43 states and the District of Columbia, and 357 cemeteries in 31 states. SCI's 2009 revenue from all operations totaled approximately $2.05 billion.

KNA is the fifth largest funeral and cemetery services provider in North America. KNA owns and operates 199 funeral homes and 15 cemeteries in the United States and Canada, including 196 funeral homes in 31 states, and 15 cemeteries in seven states. KNA's revenue for the 12 months ending June 30, 2009 totaled approximately $124 million.

III. FUNERAL AND CEMETERY SERVICES

SCI's proposed acquisition of KNA presents substantial antitrust concerns in two relevant product markets: funeral services and cemetery services. Funeral services include all activities relating to the promotion, marketing, sale, and provision of funeral services and goods, including, but not limited to, goods and services used to remove, care for, and prepare bodies for burial, cremation or other final disposition; and goods and services used to arrange, supervise, or conduct funeral ceremonies or final disposition of human remains. Cemetery services include all activities relating to the promotion, marketing, sale, and provision of property, goods and services to provide for the final disposition of human remains in a cemetery, whether by burial, entombment in a mausoleum or crypt,

disposition in a niche, or scattering of cremated remains on the cemetery grounds.

The 16 funeral services markets and three cemetery services markets at issue in this transaction are relatively local in nature. Indeed, data analysis and evidence gathered from market participants indicate that pre-need purchasers of funeral services and cemetery plots, and families making at-need purchases, typically choose a local funeral home or cemetery to make the memorial service, burial, and subsequent visitation more convenient. The 16 funeral services markets are: Yuma, Arizona; Monterey, California; Denver, Colorado; Auburndale/Winter Haven, Florida; Vidalia, Georgia; Bossier City, Louisiana; Lansing, Michigan; East Aurora, New York; Northern Rockland County, New York; Charlotte, North Carolina; Greensboro, North Carolina; Columbia, South Carolina; West Columbia/Lexington, South Carolina; New Tazewell, Tennessee; Lynchburg, Virginia; and Yakima, Washington. The three cemetery services markets are: Yuma, Arizona; Macon, Georgia; and Columbia, South Carolina.

Each of the relevant funeral and cemetery services markets is highly concentrated, and the proposed acquisition would significantly increase market concentration and eliminate substantial, direct competition between two significant funeral and cemetery services providers. Under the Herfindahl-Hirschman Index ("HHI"), which is the standard measure of market concentration under the 1992 Department of Justice and Federal Trade Commission Merger Guidelines, an acquisition is presumed to create or enhance market power or facilitate its exercise if it increases the HHI by more than 100 points and results in a post-acquisition HHI that exceeds 1,800 points. SCI's proposed acquisition of KNA creates market concentration levels well in excess of these thresholds. For funeral services, the post-acquisition HHIs range from 3730 to 8632, and HHI levels will increase by 295 to 4130 points above pre-acquisition levels. The proposed acquisition also will result in SCI controlling between 52 percent and 93 percent market share in each of the affected funeral services markets. With respect to the cemetery services markets, the proposed acquisition will reduce the number of cemetery services providers from five to four in the Columbia, South Carolina and Macon, Georgia areas, and from three to two in Yuma, Arizona.

The anticompetitive implications of such dramatic increases in concentration are buttressed by evidence of intense head-to-head competition that would be eliminated by the proposed acquisition. Consumers have benefitted from the rivalry between SCI and KNA in the form of lower prices, improved products, and better service. Left unremedied, the proposed acquisition likely would cause anticompetitive harm by enabling SCI to profit by unilaterally raising the prices of funeral and cemetery services, as well as reducing its incentive to improve quality and provide better service.

The high levels of concentration also increase the likelihood of competitive harm through coordinated interaction. Transparency in the pricing of funeral services and consumers' selection of funeral homes and cemeteries facilitate the ability of providers to reach and monitor terms of coordination, or alternatively promote tacit forms of collusion. In several funeral and cemetery services markets, coordinated interaction or tacit collusion is likely due to the transparency of important competitive information, high concentration, and few market participants.

New entry is unlikely to deter or counteract the anticompetitive effects of the proposed acquisition. Among other entry barriers, both heritage (the consumer's tendency to use the same funeral services provider for multiple generations) and reputation pose substantial barriers to entrants attempting to establish new funeral service locations, and the availability of suitable land, and local zoning, health, and environmental regulations impact significantly the ability of firms to enter with new cemetery service locations. As a result, new entry sufficient to achieve a significant market impact is unlikely to occur in a timely manner.

IV. THE PROPOSED CONSENT AGREEMENT

The proposed Consent Agreement remedies completely the anticompetitive effects of the acquisition by requiring the divestiture of all of the SCI or KNA assets in each relevant geographic market to a Commission-approved buyer (or buyers) within 90 days of SCI acquiring KNA. Specifically, the proposed Consent Agreement requires the divestiture of 22 funeral services facilities and four cemetery services facilities, as well as related equipment, customer and supply contracts, commercial trade names, and real property in the 19 funeral and cemetery services markets at issue in this transaction. *See* Appendix A for a complete list of the divestiture assets. Each funeral and cemetery services facility to be divested is a stand-alone business, and includes all of the assets necessary for a Commission-approved buyer to independently and effectively operate each facility.

The proposed Consent Agreement contains several provisions designed to ensure that the divestitures are successful. First, the Commission will evaluate the suitability of possible purchasers of the divested assets to ensure that the competitive environment that would have existed but for the transaction is replicated by the required divestitures. If SCI fails to divest the assets within the 90-day time period to a Commission-approved buyer, the Consent Agreement permits the Commission to appoint a trustee to divest the assets. Second, SCI is required to provide transitional services to the Commission-approved buyer. These transitional services will facilitate a smooth transition of the assets to the acquirer, and ensure continued and uninterrupted operation of the assets during the transition. Third, the Consent Agreement requires SCI to remove any contractual impediments that may deter the current managers of the facilities to be divested from accepting offers of employment from any Commission-approved acquirer and to obtain all consents necessary to transfer the required assets. The Agreement also appoints an Interim Monitor, Shaun Martin, to monitor SCI's compliance with the terms of the Agreement. Mr. Martin is well-qualified for this role, having extensive experience managing businesses on a short-term basis. Finally, to ensure that the Commission will have an opportunity to review any attempt by SCI to acquire any funeral or cemetery services asset in any of the 19 geographic markets at issue, the proposed Consent Agreement contains a ten-year prior notice provision.

The Hold Separate Order requires the parties to maintain the viability of the divestiture assets as competitive operations until each facility is transferred to a Commission-approved buyer. Specifically, the parties must maintain the confidentiality of sensitive business information, and take all actions required to prevent the destruction or wasting of the divestiture assets. After SCI acquires KNA, the Hold Separate Order requires that SCI separately hold and maintain the KNA divestiture assets and appoints a Hold Separate Manager to operate these assets pending their divestiture. SCI is also required to separately operate the SCI divestiture assets and the KNA assets that SCI acquires in the same geographic market. Finally, the Hold Separate Order appoints an Interim Monitor to monitor the operation of the separately-

held KNA assets and the parties' compliance with the terms of the Hold Separate Order and the Consent Agreement.

The sole purpose of this analysis is to facilitate public comment on the Consent Agreement. This analysis does not constitute an official interpretation of the Consent Agreement or modify its terms in any way.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 2010–7682 Filed 4–5–10; 11:16 am]

BILLING CODE 6750–01–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0075; Docket 2010–0083; Sequence 15]

Federal Acquisition Regulation; Information Collection; Government Property

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Regulatory Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement concerning Government Property.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before June 7, 2010.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of the collection of information, including suggestions for reducing this burden to the General Services Administration, Regulatory Secretariat (MVCB), 1800 F Street, NW., Room 4041, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Ms. Jeritta Parnell, Procurement Analyst, Contract Policy Branch, GSA (202) 501–4082 or e-mail *jeritta.parnell@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

Property, as used in Part 45, means all property, both real and personal. It includes facilities, material, special tooling, special test equipment, and agency-peculiar property. Government property includes both Government-furnished property and contractor-acquired property.

Contractors are required to establish and maintain a property system that will control, protect, preserve, and maintain all Government property because the contractor is responsible and accountable for all Government property under the provisions of the contract including property located with subcontractors. This clearance covers the following requirements:

(a) FAR 45.606–1 requires a contractor to submit inventory schedules.

(b) FAR 45.606–3(a) requires a contractor to correct and resubmit inventory schedules as necessary.

(c) FAR 52.245–1(f)(1)(ii) requires contractors to receive, record, identify and manage Government property.

(d) FAR 52.245–1(f)(1)(iii) requires contractors to create and maintain records of all Government property accountable to the contract.

(e) FAR 52.245–1(f)(1)(iv) requires contractors to periodically perform, record, and report physical inventories during contract performance.

(f) FAR 52.245–1(f)(1)(vi) requires contractors to have a process to create and provide reports.

(g) FAR 52.245–1(f)(1)(viii) requires contractors to promptly disclose and report Government Property in its possession that is excess to contract performance.

(h) FAR 52.245–1(f)(1)(ix) requires contractors to disclose and report to the Property Administrator the need for replacement and/or capital rehabilitation.

(i) FAR 52.245–1(f)(1)(x) requires contractors to perform and report to the Property Administrator contract property closeout.

(j) FAR 52.245–1(f)(2) requires contractors to establish and maintain source data, particularly in the areas of recognition of acquisitions and dispositions of material and equipment.

(k) FAR 52.245–1(j)(4) requires contractors to submit inventory disposal schedules to the Plant Clearance Officer.

(l) FAR 52.245–9(d) requires a contractor to identify the property for which rental is requested.

B. Annual Reporting Burden

Number of Respondents: 15,100.

Responses per Respondent: 896.71.

Total Responses: 13,540,321.

Average Burden Hours per Response: .46.

Total Burden Hours: 6,226,350.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (MVCB), 1800 F Street, NW., Room 4041, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0075, Government Property, in all correspondence.

Dated: March 29, 2010.

Al Matera,

Director, Acquisition Policy Division.

[FR Doc. 2010–7714 Filed 4–5–10; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30 Day–10–08BG]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–5960 or send an e-mail to *omb@cdc.gov.* Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

Survey of NIOSH Recommended Safety and Health Practices for Coal Mines—NEW—National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Since its establishment in 1970 by the Occupational Safety and Health Act, the National Institute for Occupational Safety and Health (NIOSH) has been at the forefront of research and innovation on methods to help eliminate workplace injuries, illnesses and exposures. At Mine Safety and Health Research laboratories in Pittsburgh, Pennsylvania and Spokane, Washington, NIOSH employs engineers and scientists with experience and expertise in mine safety and health issues. These laboratories and their researchers have gained an international reputation for innovative solutions to many mining safety and health problems.

Although the NIOSH Mining Program widely disseminates and publicizes research results, recommendations, techniques and products that emerge from the work of these laboratories, the agency has limited knowledge about the extent to which their innovations in mine safety and health have been implemented by individual mine operators. This is particularly true of methods and practices that are not mandated by formal regulations. The overarching goal of the proposed survey of NIOSH Recommended Safety and Health Practices for Coal Mines is to gather data from working coal mines on the adoption and implementation of NIOSH practices to mitigate safety and occupational hazards (*e.g.,* explosions, falls of ground). Survey results will provide NIOSH with knowledge about which recommended practices, tools and methods have been most widely embraced by the industry, which have not been adopted, and why. The survey results will provide needed insight from the perspective of mine operators on the practical barriers that may prevent wider adoption of NIOSH recommendations and practices designed to safeguard mine workers.

In the Spring of 2007, NIOSH conducted a pretest of the survey questionnaire with nine underground coal mine operators. The pretest instrument contained 81 questions, including five questions which measured the respondents' impressions of the clarity, burden level and relevance of the survey. The pretest served several important functions, including gaining feedback on the flow of items and their relevance to the respondents' experience, assessing the effectiveness of the questionnaire instructions, and obtaining recommendations for improving the questions. Data captured in the pretest were used to identify areas for questionnaire improvement and recommendations for maximizing the performance of the full survey.

The proposed survey will be based upon a probability sample of approximately 300 of the 675 underground coal mines in the United States. A stratified random sample of mines will be drawn to ensure representativeness on important dimensions such as mine size and region of the country. Sampling a large proportion of the underground coal mines will ensure low rates of sampling error and increase confidence in the resulting survey estimates. Over-sampling some kinds of mines, such as those operating longwall sections, will be necessary to ensure enough cases are available to conduct meaningful analysis of these mine types.

Once the study is completed, NIOSH will provide a copy of the final report to each sampled mining operation, and use the survey data to improve the adoption of important safety and health practices throughout the coal mine industry. There is no cost to respondents other than their time. The total estimated annual burden hours are 142.

ESTIMATED ANNUALIZED BURDEN HOURS

Respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Initial telephone screening contact with coal mines	300	1	5/60
Respondents completing paper survey	144	1	30/60
Respondents completing web survey	96	1	25/60
Non-respondent follow-up	60	1	5/60

Dated: March 29, 2010.

Maryam I. Daneshvar,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2010–7690 Filed 4–5–10; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; Comment Request; Women's Health Initiative Observational Study

SUMMARY: Under the provisions of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the Office of the Director, the National Heart, Lung, and Blood Institute (NHLBI), the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below. This proposed information collection was previously published in the **Federal Register** on January 20, 2010, page 3237 and allowed 60 days for public comment. Two comments were received and appropriate responses were given. The purpose of this notice is to allow an additional 30 days for public comment. The National Institutes of Health 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 current valid OMB control number.

Proposed Collection: Title: Women's Health Initiative (WHI) Observational Study. *Type of Information Collection Request:* REVISION: OMB No. 0925–0414, Expiration date: 05/31/2009. *Need and Use of Information Collection:* This study will be used by the NIH to evaluate risk factors for chronic disease among older women by developing and following a large cohort of postmenopausal women and relating subsequent disease development to baseline assessments of historical, physical, psychosocial, and physiologic characteristics. In addition, the observational study will complement the clinical trial (which has received clinical exemption) and provide additional information on the common causes of frailty, disability and death for postmenopausal women, namely, coronary heart disease, breast and colorectal cancer, and osteoporotic fractures. Continuation of follow-up years for ascertainment of medical

history update forms will provide essential data for outcomes assessment for this population of aging women.

Frequency of Response: Annually. *Affected Public:* Individuals and physicians. *Type of Respondents:* Women, next-of-kin, and physician's office staff. The annual reporting burden is as follows:

ESTIMATE OF ANNUAL HOUR BURDEN

Type of response	Number of respondents	Frequency of response	Average hours per response	Annual hour burden
Observational Study Participants	42,550	1.12	.4155	19,801
Next of Kin[1]	941	1	.083	78
Health Care Providers[1]	8	1	.085	.68
Total	43,499			19,880

[1] Annual burden is placed on health care providers and respondent relatives/informants through requests for information which will help in the compilation of the number and nature of new fatal and nonfatal events.

The annualized cost burden to respondents is estimated at $397,617. There are no Capital Costs, Operating Costs and/or Maintenance Costs to report.

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 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.

Direct Comments to OMB: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, *OIRA_submission@omb.eop.gov* or by fax to 202–395–6974, Attention: Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plan and instruments, contact: Shari Eason Ludlam, Project Officer, Women's Health Initiative Program Office, 6701 Rockledge Drive, 2 Rockledge Centre, Room 9188, MSC 7913, Bethesda, MD 20892–7936, or call non-toll-free number (301) 402–2900 or E-mail your request, including your address to: *ludlams@mail.nih.gov.*

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 30 days of the date of this publication.

Dated: March 23, 2010.

Michael S. Lauer,

Director, Division of Cardiovascular Science, NHLBI, National Institutes of Health.

Dated: March 24, 2010.

Suzanne Freeman,

Chief, FOIA, NHLBI, National Institutes of Health.

[FR Doc. 2010–7741 Filed 4–5–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Cancer Therapy Evaluation Program Intellectual Property Option to Collaborator

AGENCY: National Cancer Institute (NCI), National Institutes of Health (NIH), DHHS.

ACTION: Notice; request for comments.

SUMMARY: The National Cancer Institute, Division of Cancer Treatment and Diagnosis, is seeking comments on a proposed revision to its policy on intellectual property agreements with certain funding recipients, entitled the Cancer Therapy Evaluation Program (CTEP) INTELLECTUAL PROPERTY OPTION. The proposed policy, if finalized, would establish that potential applicants for CTEP funding should include an assurance of agreement with the recommended Intellectual Property Option and Institution Notification if they wish to be considered for funding support to carry out any CTEP-sponsored clinical trial for which CTEP holds the investigational new drug (IND) application.

DATES: Comments must be received by NIH on or before May 6, 2010.

ADDRESSES: The NIH welcomes public comment on the full text of the CTEP IP option, set forth below. Comments should be addressed to: CTEP IP Option Project, *nciipoption@mail.nih.gov.*

FOR FURTHER INFORMATION CONTACT: Jason Vittorio Cristofaro, J.D., PhD, Intellectual Property Advisor, National Cancer Institute/NIH/DHHS, Division of Cancer Treatment and Diagnosis, 31 Center Drive, Room 3A44, Bethesda, MD 20892–2580, telephone 301–594–5318, fax 301–496–0826, e-mail *cristofaroj@mail.nih.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Cancer Therapy Evaluation Program (CTEP) of the National Cancer Institute's (NCI) Division of Cancer Treatment and Diagnosis (DCTD) obtains proprietary "Agents" from biotechnology and pharmaceutical companies (hereinafter "Collaborators") for use in NCI CTEP-supported clinical trials under funding agreements. As part of the arrangement with these Collaborators to use their proprietary Agents and to make funding clinical research possible, Collaborators will often require, as a condition of collaboration, that the NCI CTEP funding recipients receiving the Agent ("Institutions") agree to certain conditions, including the willingness to provide notice of and grant options to certain intellectual property rights arising from research involving the Agent under the scope of an NCI CTEP funding agreement.

The current IP option language is silent as to the disposition of intellectual property developed from data and Agent-treated samples. As a result, both Collaborators and Institutions have claimed an ownership interest in inventions generated from these data and materials. This lack of clarity has become a major impediment in NCI CTEP's ability to obtain proprietary Agents from collaborators for use in CTEP-sponsored clinical studies, which has resulted in delays

and threatens the continuing ability of CTEP to provide proprietary Agents to CTEP-funded investigators. The lack of Agents for these clinical studies would jeopardize NCI CTEP's ability to support these research activities. The proposed revised CTEP IP Option and Institution Notification is intended to offer appropriate incentives and assurance for both Collaborators and Institutions to participate in CTEP-sponsored clinical studies.

This proposed policy was developed with input from a variety of sources including the CTEP-sponsored cooperative groups, other CTEP-sponsored investigators performing early clinical trials, industry representatives who partner with CTEP and the Council on Government Relations (COGR).

II. Proposed Revision to CTEP Intellectual Property Option

The Cancer Therapy Evaluation Program (CTEP) of the National Cancer Institute's (NCI) Division of Cancer Treatment and Diagnosis (DCTD) obtains "Agents" from biotechnology and pharmaceutical companies (hereinafter "Collaborators") through Cooperative Research and Development Agreements ("CRADAs") and other means, for use in NCI-funded research conducted via extramural funding agreements. As part of the arrangement with these Collaborators to use their Agents and to make the collaborative research possible, NCI CTEP would agree not to provide Agents to Institutions unless they provide Collaborators with the IP Options and Institution Notifications described below. The specific terms of the IP Options depend on the types of inventions that arise out of the NCI CTEP funded research (Section A Inventions, Section B Inventions, or Unauthorized Inventions). NCI CTEP is requesting that applicants include assurances of agreement with the terms of the IP Options and Institutional Notification described below in their funding applications to NCI CTEP.

References to "Institution" mean the funding recipient conducting the research described herein. The Intellectual Property Options (IP Options) and Institution Notification described below will apply to inventions arising from research involving the Agent(s) under the scope of an NCI CTEP funding agreement.

A. The IP Option Described in This Section A Would Apply to Inventions That Use or Incorporate the Agent(s) and That are Conceived or First Actually Reduced to Practice Pursuant to NCI CTEP–Funded Clinical or Non-Clinical Studies Utilizing the Agent(s) ("Section A Inventions")

Institution agrees to grant to Collaborator(s): (i) A royalty-free, worldwide, nonexclusive license for commercial purposes; and (ii) a time limited first option to negotiate an exclusive, or co-exclusive, if applicable, worldwide, royalty bearing license for commercial purposes, including the right to grant sub licenses, subject to any rights of the Government of the United States of America, on terms to be negotiated in good faith by the Collaborator(s) and Institution. If Collaborator accepts the nonexclusive commercial license, the Collaborator agrees to pay all out of pocket patent prosecution and maintenance costs which will be pro-rated and divided equally among all licensees. If Collaborator obtains an exclusive commercial license, in addition to any other agreed upon licensing arrangements such as royalties and due diligence requirements, the Collaborator agrees to pay all out of pocket patent prosecution and maintenance costs. Collaborator(s) will notify Institution, in writing, if it is interested in obtaining a commercial license to any Section A Invention within three (3) months of Collaborator's receipt of a patent application or six (6) months of receipt of an invention report notification of such Section A Invention. In the event that Collaborator fails to so notify Institution, or elects not to obtain an exclusive license, then Collaborator's option expires with respect to that Section A Invention, and Institution will be free to dispose of its interests in accordance with its policies. If Institution and Collaborator fail to reach agreement within ninety (90) days, (or such additional period as Collaborator and Institution may agree) on the terms for an exclusive license for a particular Section A Invention, then for a period of three (3) months thereafter Institution agrees not to offer to license the Section A Invention to any third party on materially better terms than those last offered to Collaborator without first offering such terms to Collaborator, in which case Collaborator will have a period of thirty (30) days in which to accept or reject the offer. If Collaborator elects to negotiate an exclusive commercial license to a Section A Invention, then Institution agrees to file and prosecute patent application(s) diligently and in a timely manner and to give Collaborator an opportunity to comment on the preparation and filing of any such patent application(s). Notwithstanding the above, Institution is under no obligation to file or maintain patent prosecution for any Section A Invention.

For all Section A Inventions, regardless of Collaborator's decision to seek a commercial license, Institution agrees to grant Collaborator a paid-up, nonexclusive, royalty-free, world-wide license for research purposes only. Institution retains the right to make and use any Section A Invention for all non-profit research, including for educational purposes and to permit other educational and non-profit institutions to do so.

B. The IP Option Described in This Section B Would Apply to Inventions That Do Not Use or Incorporate the Agent(s) but That Are Conceived or First Actually Reduced To Practice Pursuant to NCI CTEP Clinical or Non-Clinical Studies Utilizing the Agent(s). It Also Applies to Inventions That Are Conceived or First Actually Reduced To Practice Pursuant to NCI CTEP Studies Utilizing Clinical Data or Specimens From Patients Treated With the Agent (Including Specimens Obtained From NCI CTEP-Funded Tissue Banks) ("Section B Inventions")

Institution agrees to grant to Collaborator(s): (i) A paid-up nonexclusive, nontransferable, royalty-free, world-wide license to all Section B Inventions for research purposes only; (ii) a time-limited first option to negotiate a nonexclusive, exclusive, or co-exclusive, if applicable, world-wide royalty-bearing license for commercial purposes, including the right to grant sub-licenses, subject to any rights of the Government of the United States of America, on terms to be negotiated in good faith by the Collaborator(s) and Institution and (iii) a nonexclusive, royalty-free, world-wide license either to (a.) disclose Section B Inventions to a regulatory authority when seeking marketing authorization of the Agent, or (b.) disclose Section B Inventions on a product insert or other promotional material regarding the Agent after having obtained marketing authorization from a regulatory authority. Collaborator will notify Institution, in writing, of its interest in obtaining an exclusive commercial license to any Section B Invention within one year of Collaborator's receipt of a patent application or eighteen months of receipt of an invention report notifying Collaborator of such Section B Invention(s). In the event that

Collaborator fails to so notify Institution, or elects not to obtain an exclusive license, then Collaborator's option expires with respect to that Section B Invention, and Institution will be free to dispose of its interests in such Section B Invention in accordance with Institution's policies. If Institution and Collaborator fail to reach agreement within ninety (90) days (or such additional period as Collaborator and Institution may agree) on the terms for an exclusive license for a particular Subject B Invention, then for a period of six (6) months thereafter Institution agrees not to offer to license the Section B Invention to any third party on materially better terms than those last offered to Collaborator without first offering such terms to Collaborator, in which case Collaborator will have a period of thirty (30) days in which to accept or reject the offer. Institution retains the right to make and use any Section B Inventions for all non-profit research, including for educational purposes and to permit other educational and non-profit institutions to do so. If Collaborator elects to negotiate an exclusive commercial license to a Section B Invention, then Institution agrees to file and prosecute patent application(s) diligently and in a timely manner and to give Collaborator an opportunity to comment on the preparation and filing of any such patent application(s). Notwithstanding the above, Institution is under no obligation to file or maintain patent prosecution for any Section B Invention.

Inventions arising more than five years after the release of data on the primary end point of the NCI CTEP clinical trial that generated the clinical data and/or specimens will not be subject to the Section B (ii) IP Option.

C. The IP Option Described in This Section C Would Apply to Inventions Made by Institution's Investigator(s) or Any Other Employees or Agents of Institution, Which Are or May Be Patentable or Otherwise Protectable, as a Result of Research Utilizing the Agent(s) Outside the Scope of the NCI CTEP Funding Agreement (Unauthorized Inventions)

Institution agrees, at Collaborator's request and expense, to grant to Collaborator a royalty-free exclusive or co-exclusive license to Unauthorized Inventions.

D. Institution Notification

Institution agrees to promptly notify NCI CTEP (*NCICTEPpubs@mail.nih.gov*) and Collaborator(s) in writing of any Section A Inventions, Section B Inventions, and Unauthorized Inventions upon the earlier of: (i) Any submission of any invention disclosure to Institution of a Section A, Section B, or Unauthorized Invention, or (ii) the filing of any patent applications of a Section A, Section B, or Unauthorized Invention. Institution agrees to provide a copy of either the invention disclosure or the patent application to the Collaborator and to NCI CTEP which will treat it in accordance with 37 CFR part 401. These requirements do not replace any applicable reporting requirements under the Bayh-Dole Act, 35 U.S.C. 200–212, and implementing regulations at 37 CFR part 401.

III. Request for Comments

NCI CTEP is seeking comment not only from NCI CTEP funding recipients, but from the full range of academic, not-for-profit, government, and private sector participants in biomedical research and development. Widespread comment and participation by varied stakeholders in the biomedical research and development enterprise is critical if this language is to be effective in guiding the interactions of NIH funding recipients with external Collaborators in CTEP-funded studies.

Dated: March 30, 2010.

Jeffrey Abrams,

Associate Director, Cancer Therapy Evaluation Program, Division of Cancer Treatment and Diagnosis, NCI, National Institutes of Health.

[FR Doc. 2010–7743 Filed 4–5–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–E–0079]

Determination of Regulatory Review Period for Purposes of Patent Extension; TOVIAZ

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for TOVIAZ and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

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

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 6222, Silver Spring, MD 20993–0002, 301–796–3602.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product TOVIAZ (fesoterodine fumarate). TOVIAZ is indicated for treatment of overactive bladder with symptoms of urge urinary incontinence, urgency, and frequency. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for TOVIAZ (U.S. Patent No. 6,858,650) from Schwarz Pharma AG, and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated September 29, 2009, FDA advised the Patent and Trademark

Office that this human drug product had undergone a regulatory review period and that the approval of TOVIAZ represented the first permitted commercial marketing or use of the product. Thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for TOVIAZ is 2,395 days. Of this time, 1,445 days occurred during the testing phase of the regulatory review period, while 950 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(i)) became effective*: April 13, 2002. FDA has verified the applicant's claim that the date the investigational new drug application became effective was on April 13, 2002.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the act*: March 27, 2006. The applicant claims March 17, 2006, as the date the new drug application (NDA) for TOVIAZ (NDA 22–030) was initially submitted. However, FDA records indicate that NDA 22–030 was submitted on March 27, 2006.

3. *The date the application was approved*: October 31, 2008. FDA has verified the applicant's claim that NDA 22–030 was approved on October 31, 2008.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,155 days of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments and ask for a redetermination by June 7, 2010. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by October 4, 2010. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Division of Dockets Management. Three copies of any mailed information are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: March 22, 2010.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. 2010–7679 Filed 4–5–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–E–0400]

Determination of Regulatory Review Period for Purposes of Patent Extension; FANAPT

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for FANAPT and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

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

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 6222, Silver Spring, MD 20993–0002, 301–796–3602.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product FANAPT (iloperidone). FANAPT is indicated for the acute treatment of schizophrenia in adults. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for FANAPT (U.S. Patent No. RE39,198) from Aventis Holdings Inc., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated September 2, 2009, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of FANAPT represented the first permitted commercial marketing or use of the product. Thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for FANAPT is 6,552 days. Of this time, 5,964 days occurred during the testing phase of the regulatory review period, while 588 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(i)) became effective*: May 31, 1991. FDA has verified the applicant's claim that the date the investigational new drug application became effective was on May 31, 1991.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the act*: September 27, 2007. FDA has verified the applicant's claim that the new drug application (NDA) 22–192 was submitted on September 27, 2007.

3. *The date the application was approved*: May 6, 2009. FDA has verified the applicant's claim that NDA 22–192 was approved on May 6, 2009.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 5 years of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments and ask for a redetermination by June 7, 2010. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by October 4, 2010. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Division of Dockets Management. Three copies of any mailed information are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: March 22, 2010.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. 2010–7678 Filed 4–5–10; 8:45 am]

BILLING CODE 4160–01–S

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: Neuronal Diseases, Cell Death and Regeneration.

Date: April 20–21, 2010.

Time: 12 p.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: Deborah L Lewis, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4183, MSC 7850, Bethesda, MD 20892, 301–408–9129, *lewisdeb@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Cancer Research.

Date: April 21, 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: Eun Ah Cho, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6202, MSC 7804, Bethesda, MD 20892, (301) 451–4467, *choe@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, PAR 10–073: Technology Development for High-Throughput Structural Biology Research Review.

Date: May 5–6, 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: Raymond Jacobson, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5858, MSC 7849, Bethesda, MD 20892, 301–996–7702, *jacobsonrh@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: March 25, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–7342 Filed 4–5–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; "In vitro Assessments for Antimicrobial Activity—Parasites and Vectors".

Date: April 29, 2010.

Time: 12 p.m. to 5 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6700B Rockledge Drive, Room 3248, Bethesda, MD 20817.

Contact Person: Yong Gao, PhD, Scientific Review Officer, Scientific Review Program, DEA/NIAID/NIH/DHHS, Room 3246, 6700B Rockledge Drive, Bethesda, MD 20892–7616, 301–443–8115, *gaol2@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: March 31, 2010.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–7747 Filed 4–5–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Clinical Trial Review Meeting.

Date: May 3, 2010.

Time: 3:30 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: John F. Connaughton, PhD, Chief, Chartered Committees Section, Review Branch, DEA, NIDDK, National Institutes of Health, Room 753, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7797, *connaughtonj@extra.niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: March 31, 2010.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–7746 Filed 4–5–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0001]

Joint Meeting of the Arthritis Advisory Committee and the Drug Safety and Risk Management Advisory Committee; Amendment of Notice

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an amendment to the notice of a joint meeting of the Arthritis Advisory Committee and the Drug Safety and Risk Management Advisory Committee. This meeting was announced in the **Federal Register** of March 8, 2010 (75 FR 10490). The amendment is being made to reflect a change in the *Agenda* portion of the document. There are no other changes.

FOR FURTHER INFORMATION CONTACT: Anuja Patel, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane (for express delivery, 5630 Fishers Lane, rm. 1093), Rockville, MD 20857, 301–827–7001, FAX: 301–827–6776, e-mail: *Anuja.Patel@fda.hhs.gov*, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington DC area), codes 3014512532 and 3014512535. Please call the Information Line for up-to-date information on this meeting.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of March 8, 2010, FDA announced that a joint meeting of the Arthritis Advisory Committee and the Drug Safety and Risk Management Advisory Committee would be held on May 12, 2010. On page 10490, in the second column, the *Agenda* portion of the document is changed to read as follows:

Agenda: The committees will discuss new drug application (NDA) 22–478, naproxcinod 375 milligram capsule, sponsored by NicOx S.A. Naproxcinod is a non-steroidal anti-inflammatory drug (NSAID) product indicated for the treatment of the signs and symptoms of osteoarthritis.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app. 2) and 21 CFR part 14, relating to the advisory committees.

Dated: April 1, 2010.

Jill Hartzler Warner,

Acting Associate Commissioner for Special Medical Programs.

[FR Doc. 2010–7697 Filed 4–5–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0001]

Peripheral and Central Nervous System 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: Peripheral and Central Nervous System 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 June 10, 2010, from 8 a.m. to 5 p.m.

Location: Hilton Washington DC/Silver Spring, The Ballrooms, 8727 Colesville Rd., Silver Spring, MD. The hotel telephone number is 301–589–5200.

Contact Person: Diem-Kieu Ngo, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane (for express delivery, 5630 Fishers Lane, rm. 1093, Rockville, MD 20857, 301–827–7001, FAX: 301–827–6776, e-mail: *diem.ngo@fda.hhs.gov*, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014512543. 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 June 10, 2010, the committee will discuss new drug application (NDA) 22–527, with the

proposed trade name GILENIA (fingolimod hydrochloride) 0.5 milligram (mg) capsules, by Novartis Pharmaceuticals Corp. The proposed indication for this new drug product is treatment of relapsing forms of multiple sclerosis.

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 May 26, 2010. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. Those desiring to make formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before May 18, 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 May 19, 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 Diem-Kieu Ngo 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: April 1, 2010.

Jill Hartzler Warner,

Acting Associate Commissioner for Special Medical Programs.

[FR Doc. 2010–7698 Filed 4–5–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0004]

Memorandum of Understanding Between the Food and Drug Administration, United States Department of Health and Human Services and the National Alliance for Hispanic Health

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is providing notice of a memorandum of understanding (MOU) between the Food and Drug Administration, U.S. Department of Health and Human Services and the National Alliance for Hispanic Health. The purpose of the MOU is to establish the terms for collaboration to enhance the diversity pool of candidates and to promote shared interests in increasing science and public health internship opportunities for socio-economically disadvantaged students.

DATES: The agreement became effective January 21, 2010.

FOR FURTHER INFORMATION CONTACT: Mary C. Hitch, Senior Policy Advisor, Office of External Relations, Food and Drug Administration, 5600 Fishers Lane, rm. 15A07, Rockville, MD 20857, 301–827–4406.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 20.108(c), which states that all written agreements and MOUs between FDA and others shall be published in the **Federal Register**, the agency is publishing notice of this MOU.

Dated: March 29, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

BILLING CODE 4160–01–S

MOU Number: 225-10-0006

Memorandum of Understanding
between
United States Department of Health and Human Services
Food and Drug Administration
and
National Alliance for Hispanic Health

I. Purpose

The Food and Drug Administration, U.S. Department of Health and Human Services, and the National Alliance for Hispanic Health (the Alliance) share interests in promoting scientific progress through exchange of scientific capital in diverse fields of science that affect human and animal health and medicine. Both institutions foresee benefits from scientific and public health orientation for socio-economically disadvantaged students to foster a well-grounded foundation in interdisciplinary science on which scientific learning can grow. This Memorandum of Understanding (MOU) establishes the terms for collaboration to enhance the diversity of the pool of candidates and to promote shared interests in increasing science and public health internship opportunities for socio-economically disadvantaged students.

II. Background

FDA is responsible for protecting the public health by ensuring the safety, efficacy and security of human and veterinary drugs, biological products, medical devices, the United States food supply and cosmetics. FDA is also responsible for advancing the public health by helping to speed innovations that make medical products and foods more effective, safer, and more affordable. FDA also helps the public get accurate, scientific-based information need to use medical products and foods to improve their health.

The Alliance, a nonprofit entity as described in section 501(c)(3) of the Internal Revenue Code of 1968, is the oldest and largest network of Hispanic health and human service providers for the target population. As an umbrella organization, the Alliance represents thousands of healthcare providers across the nation who provide services to more than 15 million health consumers each year. The Alliance is a recognized leader within the United States among Hispanic and socio-economically disadvantaged communities. The Alliance works with diverse organizations such as community-based organizations, foundations, corporations, government agencies, universities, and private industry to carrying out its mission with the objective of improving public health. The Alliance also works with these organizations to support internship opportunities for socio-

economically disadvantaged students to gain exposure to careers in science and public health.

III. Substance of Agreement:

FDA enters this MOU with the Alliance to: 1) Expose socio-economically disadvantaged students to scientific and allied health professions through experiential and educational internship opportunities in science, public health and biomedical sciences in mentored laboratory settings, and 2) Promote student education and matriculation into the science, public health and biomedical science professions to contribute to a diversified pool of candidates for employment opportunities in science and public health.

IV. Resource Obligations

This MOU represents the broad outline of the parties' present intent to enter specific agreements for collaborative efforts between FDA and the Alliance. It does not create binding or enforceable obligations against any party to commit resources. This MOU does not affect or supersede any existing or future agreements or arrangements among the parties. It also does not affect the ability of the parties to enter other agreements or arrangements related to this MOU. This MOU and all associated agreements will be subject to the applicable policies, regulations and statutes affecting FDA, and the Alliance and its members.

V. Further Information:

Citizenship and security clearance: Individuals participating in the MOU will be United States citizens or permanent residents. Individuals participating as interns in the internship program must comply with all applicable federal regulations. FDA officials may obtain information from participating individuals for security clearance or access to FDA facilities and offices. Information obtained may be re-disclosed to other Federal agencies for the above purposes and in fulfillment of official responsibilities to the extent that such disclosure is permitted by law.

Conflict of Interest: Individual interns participating in activities under this MOU who are not U.S. Government employees will be expected to abide by conflict of interest rules and policies as specified by FDA. This may require participants to disclose their financial holdings and those of their spouse and minor children, and may limit their ability to accept gifts and have employment with entities that are substantially regulated by FDA. The parties to the MOU will be advised of any potential conflict so that conflicting assignments can be avoided consistent with the HHS/FDA requirements. If at any time prior to or during the performance of the activities under the MOU, the parties or the program participant believe

that a potential or actual conflict exists, the parties or participant must notify the appropriate authorities within their respective institutions and contact the designated FDA official listed on the MOU so that the necessary action/s can be undertaken. A determination will be made by FDA as to whether a conflict of interest exists and, if so, as to how to resolve or mitigate it. Parties to the MOU will make every effort to avoid activities or relationships that would cause a reasonable person to question the impartiality of their actions.

Nonpublic Information: All participants in this program must recognize that information to which they have access that contains any of the following types of information must be protected from unauthorized disclosure: (1) confidential commercial information, such as the information that would be protected from public disclosure pursuant to Exemption 4 of the Freedom of Information Act (FOIA); (2) personal privacy information, such as the information that would be protected from public disclosure pursuant to Exemption 6 or 7(c) of the FOIA; or (3) information that is otherwise protected from public disclosure by Federal statutes and their implementing regulations (e.g., Trade Secrets Act (18 U.S.C. § 1905), the Privacy Act (5 U.S.C. § 552a), the Freedom of Information Act (5 U.S.C. § 552), the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.), and the Health Insurance Portability and Accountability Act (HIPAA), Pub. L. 104-191).

Liaison Officers:

Mary C. Hitch
Senior Policy Advisor
Office of External Relations
U.S. Food and Drug Administration
5600 Fishers Lane, Room 15A07
Rockville, Maryland 20857
301-827-4406 (Telephone)
301-827-8030 (FAX)

Adolph Falcon
Vice President
National Alliance for Hispanic Health
1501 16th Street, N.W.
Washington, D.C. 20036
202-387-5000

V. Terms, Termination, Modification

This agreement, when accepted by both parties, will have an effective period of performance from date of signature until five year after the date

of signature and may be modified by mutual consent or may be terminated by either party on a 60- day advance written notice to the other.

Approved and Accepted:

NATIONAL ALLIANCE FOR HISPANIC HEALTH

BY: _____ 1/20/10
Signature of authorized representative Date

JANE L. DELGADO, PH.D.
President and Chief Executive Officer
National Alliance for Hispanic Health

UNITED STATES FOOD AND DRUG ADMINISTRATION

BY: _____ 12/27/9
Signature of authorized representative Date

JOSHUA M. SHARFSTEIN, M.D.
Principal Deputy Commissioner of Food and Drugs
Department of Health and Human Services

[FR Doc. 2010–7673 Filed 4–5–10; 8:45 am]
BILLING CODE 4160–01–C

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0004]
[FDA 225–10–0007]

Memorandum of Understanding Between the Food and Drug Administration, United States Department of Health and Human Services and the Association of Minority Health Profession Schools, Inc.

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is providing notice of a memorandum of understanding (MOU) between the FDA, U.S. Department of Health and Human Services and the Association of Minority Health Profession Schools, Inc. The purpose of the MOU is to establish the terms for collaboration to enhance the diversity pool of candidates and to promote shared interests in increasing science and public health internship opportunities for socio-economically disadvantaged students.

DATES: The agreement became effective January 20, 2010.

FOR FURTHER INFORMATION CONTACT: Mary C. Hitch, Senior Policy Advisor, Office of External Relations, Food and Drug Administration, 5600 Fishers Lane, rm. 15A07, Rockville, MD 20857, 301–827–4406

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 20.108(c), which states that all written agreements and MOUs between FDA and others shall be published in the **Federal Register**, the agency is publishing notice of this MOU.

Dated: March 29, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

BILLING CODE 4160–01–S

MOU Number: 225-10-0007

Memorandum of Understanding
between
United States Department of Health and Human Services
Food and Drug Administration
and
Association of Minority Health Profession Schools, Inc.

I. Purpose

The Food and Drug Administration, U.S. Department of Health and Human Services, and the Association of Minority Health Professions Schools, Inc. (AMHPS) share interests in promoting scientific progress through exchange of scientific capital in diverse fields of science that affect human and animal health and medicine. Both institutions foresee benefits from scientific training for academicians and students to foster a well-grounded foundation in interdisciplinary science on which scientific learning can grow. This Memorandum of Understanding (MOU) establishes the terms for collaboration to enhance diversity and to promote shared interests in various science-based academic sabbaticals, fellowships and internships.

II. Background

FDA is responsible for protecting the public health by ensuring the safety, efficacy and security of human and veterinary drugs, biological products, medical devices, the United States food supply and cosmetics. FDA is also responsible for advancing the public health by helping to speed innovations that make medical products and foods more effective, safer, and more affordable. FDA also helps the public get accurate, scientific-based information needed to use medical products and foods to improve their health.

AMHPS is a nonprofit, educational, scientific, advocacy and charitable organization that provides support for professional education, research and community service programs. These programs promote optimum health among minority and disadvantaged populations. AMHPS represents health professional schools in Historically Black Colleges and Universities and Land Grant Colleges with diverse populations – including five schools of pharmacy, four schools of medicine, two schools of dentistry and one school of veterinary medicine.

III. Substance of Agreement:

FDA enters this MOU with AMHPS to:

- Promote student education and matriculation into the health and biomedical science professions;
- Increase outreach to encourage socio-economic disadvantaged student populations and to provide opportunities to expose motivated students to participate in medical, scientific, engineering and allied health professional fellowships, sabbaticals and internships and to gain relevant knowledge, skills and experience in the science and public health at FDA;

- Promote community-based organizations' involvement in sharing public health information from FDA with populations that surround member institutions and those who are affected by health disparities; and,
- Share Web-linked public information such as public health alerts, newsletters and notices.

IV. Resource Obligations

This MOU represents the broad outline of the parties' present intent to enter specific agreements for collaborative efforts between FDA and AMHPS. It does not create binding, enforceable obligations against any party. All initiatives described in this MOU are subject to available resources. This MOU does not affect or supersede any existing or future agreements or arrangements between the parties. It also does not affect the ability of the parties to enter other agreements or arrangements related to this MOU. This MOU and all associated agreements will be subject to the applicable policies, regulations and statutes affecting FDA and AMHPS and its members.

V. Further Information:

Citizenship and Security Clearance: Individuals participating in the MOU will be United States citizens or permanent residents. Regarding the latter, all federal restrictions will be adhered to. Information may be obtained from participants by the agency for security clearance or access to FDA facilities and offices. Information obtained may be re-disclosed to other Federal agencies for the above purposes and in fulfillment of official responsibilities to the extent that such disclosure is permitted by law.

Conflict of Interest: Individual interns participants in activities under this MOU who are not U.S. Government employees will be expected to abide by conflict of interest rules and policies as specified by FDA. This may require participants to disclose their financial holdings and those of their spouse and minor children, and may limit their ability to accept gifts and have employment with entities that are substantially regulated by FDA. The parties to the MOU will be advised of any potential conflict so that conflicting assignments can be avoided consistent with the HHS/FDA requirements. If at any time prior to or during the performance of the activities under the MOU, the parties or the program participant believe that a potential or actual conflict exists, the parties or participant must notify the appropriate authorities within their respective institutions and contact the designated FDA official listed on the MOU so that the necessary action/s can be undertaken. A determination will be made by FDA as to whether a conflict of interest exists and, if so, as to how to resolve or mitigate it. Parties to the MOU will make every effort to avoid activities or relationships that would cause a reasonable person to question the impartiality of their actions.

Nonpublic Information: All participants in this program must recognize that information to which they have access that contains any of the following types of information must be protected from unauthorized disclosure: (1) confidential commercial information, such as the information that would be protected from public disclosure pursuant to Exemption 4 of the Freedom of Information Act (FOIA); (2) personal privacy information, such as the information that would be protected from public disclosure pursuant to Exemption 6 or 7(c) of the FOIA; or (3) information that is otherwise protected from public disclosure by Federal statutes and their implementing regulations (e.g., Trade Secrets Act (18 U.S.C. § 1905), the Privacy Act (5 U.S.C. § 552a), the Freedom of Information Act (5 U.S.C. §

552), the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.), and the Health Insurance Portability and Accountability Act (HIPAA), Pub. L. 104-191).

Liaison Officers:

Mary C. Hitch
Senior Policy Advisor
Office of External Relations
U.S. Food and Drug Administration
5600 Fishers Lane, Room 15A07
Rockville, Maryland 20857
301-827-4406 (Telephone)
301-827-8030 (FAX)

Phyllis R. Champion, M.A.
President and CEO
Association of Minority Health Professions Schools, Inc.
1190 West Druid Hills Drive
Suite T-50
Atlanta, GA 303209
678-904-4332 (Telephone)
678-904-4496 (FAX)

VI. Terms, Termination, Modification

This agreement, when accepted by both parties, will have an effective period of performance from date of signature until five year after the date of signature and may be modified by mutual consent or may be terminated by either party on a 60- day advance written notice to the other.

(Signatures of Authorized Representatives Begin on the Next Page)

Approved and Accepted:

ASSOCIATION OF MINORITY HEALTH PROFESSIONS SCHOOLS, INC.

BY: Phyllis R Champion 1/12/2010
Signature of authorized representative Date

PHYLLIS R. CHAMPION, M.A.
President and CEO
Association of Minority Health Professions Schools, Inc.

BY: 1/12/10
Signature of authorized representative Date

LEO ROUSE, D.D.S.
Chair of the Board of Directors
Association of Minority Health Professions Schools, Inc.

UNITED STATES FOOD AND DRUG ADMINISTRATION

BY: 12/23/9
Signature of authorized representative Date

JOSHUA M. SHARFSTEIN, M.D.
Principal Deputy Commissioner of Food and Drugs
Department of Health and Human Services

[FR Doc. 2010–7677 Filed 4–5–10; 8:45 am]

BILLING CODE 4160–01–C

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Accreditation and Approval of SGS North America, Inc., as a Commercial Gauger and Laboratory

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of accreditation and approval of SGS North America, Inc., as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.12 and 19 CFR 151.13, SGS North America, Inc., 11729 Port Road, Seabrook, TX 77586, has been approved to gauge and accredited to test petroleum and petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquires regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *cbp.labhq@dhs.gov.* Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories.

http://cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/commercial_gaugers/

DATES: The accreditation and approval of SGS North America, Inc., as commercial gauger and laboratory became effective on September 16, 2009. The next triennial inspection date will be scheduled for September 2012.

FOR FURTHER INFORMATION CONTACT: Anthony Malana, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Suite 1500N, Washington, DC 20229, 202–344–1060.

Dated: March 26, 2010.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services.

[FR Doc. 2010–7685 Filed 4–5–10; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Accreditation and Approval of Intertek USA, Inc., as a Commercial Gauger and Laboratory

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of accreditation and approval of Intertek USA, Inc., as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.12 and 19 CFR 151.13, Intertek USA, Inc., 78 Pleasant Ave., South Portland, ME 04106, has been approved to gauge and accredited to test petroleum and petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquires regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *cbp.labhq@dhs.gov.* Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories. *http://cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/commercial_gaugers/.*

DATES: The accreditation and approval of Intertek USA, Inc., as commercial gauger and laboratory became effective on August 18, 2009. The next triennial inspection date will be scheduled for August 2012.

FOR FURTHER INFORMATION CONTACT: Anthony Malana, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Suite 1500N, Washington, DC 20229, 202–344–1060.

Dated: March 26, 2010.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services.

[FR Doc. 2010–7686 Filed 4–5–10; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Notice of Proposed New Information Collection for Focus Groups for Non-use Valuation Survey, Klamath Basin

AGENCY: Office of Policy Analysis, Interior.

ACTION: Notice and request for comments.

SUMMARY: In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of Conservation, Partnerships & Management Policy announces that it has submitted a request for approval of a new information collection to the Office of Management and Budget (OMB), and requests public comments on this submission.

DATES: OMB has up to 60 days to approve or disapprove the information collection request, but may respond after 30 days; therefore, public comments should be submitted to OMB by May 6, 2010, in order to be assured of consideration.

ADDRESSES: Send your written comments by facsimile 202–395–5806 or e-mail (*OIRA_DOCKET@omb.eop.gov*) to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Department of the Interior Desk Officer (1090–NEW). Mail or hand-carry comments to the Department of the Interior, Office of Policy Analysis, Attention: Don Bieniewicz, Mail Stop 3530; 1849 C Street, NW., Washington, DC 20240. If you wish to e-mail comments, the e-mail address is *Donald_Bieniewicz@ios.doi.gov.* Reference "Focus Groups for Klamath non-use value survey" in your e-mail subject line. Include your name and return address in your e-mail message and mark your message for return receipt.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection, please write to Benjamin Simon, Office of Policy Analysis, Mailstop 3530–MIB, U.S. Department of the Interior, Washington, DC 20240 or telephone at 202–208–5978 or by e-mail at *Benjamin_Simon@ios.doi.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

Office of Management and Budget (OMB) regulations at 5 CFR part 1320, which implement the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an

opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)).

The U.S. Department of the Interior (DOI) is requesting approval for a new information collection related to the use of focus groups to pretest the Klamath Nonuse Valuation Survey it is developing.

The Klamath River Basin provides essential habitat for several fish species including Chinook salmon, Coho salmon, Steelhead trout, Pacific lamprey, and Shortnose suckers. Some of these species are important components of ocean and/or in-river harvest, while others are rarely harvested due to fishery regulations, limited availability, and/or listed status under the Endangered Species Act (ESA). In addition to its importance as fish habitat, the Klamath River and its tributaries also provides water to agriculture through the Bureau of Reclamation's Klamath Irrigation Project. Oversubscription of Klamath water has thwarted recovery of depressed fish stocks and led to economic hardship for farming and fishing communities—prompting federal disaster relief for farmers in 2001 and for fishermen in 2006.

In February 2010, the U.S. Government, the States of Oregon and California, the chairmen of the Klamath, Yurok and Karuk Tribes, and the utility company PacifiCorp signed the Klamath Basin Restoration Agreement (KBRA) and the Klamath Hydroelectric Settlement Agreement. These agreements define a set of activities, including the removal of four dams on the Klamath River by 2020, which are designed to restore fisheries and provide water supply certainty in the Basin. The Hydroelectric Settlement Agreement calls for the Secretary to determine whether dam removal will advance restoration of the salmonid fisheries of the Klamath Basin and is in the public interest. In October 2011 the Secretary of the Interior is expected to make a final determination regarding dam removal and the KBRA, contingent on results of an economic analysis that will address benefits, costs and distributional effects of dam removal. An interagency economics team consisting of representatives from DOI agencies including the Fish and Wildlife Service and Bureau of Reclamation, and National Oceanic and Atmospheric Administration (NOAA) National Marine Fisheries Service is responsible for completing the economic analysis that will inform the Secretarial determination.

To comply with the National Environmental Policy Act, an Environmental Impact Statement (EIS) must be prepared. One important area of benefits that needs to be addressed as part of the EIS is "nonuse value." Nonuse values accrue to members of the public who value Klamath Basin improvements regardless of whether they ever consume Klamath fish or visit the Klamath Basin. To measure these values, DOI has contracted with RTI International in Research Triangle Park, NC, to design and implement a nonuse valuation survey of the U.S. public. A key aspect of the survey design process is to use focus groups and cognitive, one-on-one interviews (the cognitive interviews will be addressed in a later ICR). The main objectives of these information collection activities are to ensure that the survey questions and scenarios are presented to respondents in a way that is accurate, easily understood and least burdensome, while at the same time collecting all of the necessary information for estimating nonuse values. Because of the controversy over the agreement in the Klamath Basin, the survey text needs to be neutral and present all sides.

II. Method of Collection

DOI has contracted with RTI International in Research Triangle Park, NC, to pretest the nonuse valuation survey by conducting 4 focus groups. DOI and RTI will use the results of these information collection activities to optimize the design of the survey instrument. The nonuse valuation survey will apply a stated preference conjoint analysis approach. In this approach, respondents are first presented with a choice context—in this case, the opportunity to vote on alternative plans for the future of the Klamath River Basin. The description of the choice context requires an explanation of current (*i.e.,* baseline) conditions including ecological, water quality, and water availability conditions as they currently exist and of possible actions for improving habitat for fish and providing a more natural flow of the river, including dam removal and ecosystem restoration activities. Second, the survey describes the main dimensions (*i.e.,* attributes) over which the different possible actions will vary, including the extent and timing of fish recovery and cost per household. Third, respondents are presented with a series of choice tasks where they are asked to compare and state their preferences for alternative actions, which vary in the previously described dimensions. The focus groups will provide valuable information to address several key questions relating to the survey and, in particular, the conjoint design. First, can respondents fully understand and accept the choice context? If not, how could the information be expanded, revised, reformatted, or reorganized to facilitate understanding of the context or to make the choice context more plausible for respondents. Second, what attributes (*i.e.,* outcomes) of alternative KBRA actions matter most to respondents, and how well do these align with the attributes presented and varied in the conjoint task questions? Third, are the attributes of the alternative actions and the different levels of these attributes described and communicated to respondents in the most meaningful and understandable way? Fourth, which types and combinations of visuals—*i.e.,* maps, graphs, and pictures—are most helpful to respondents for understanding the context and choice tasks? Fifth, to what extent do the answers to the previous questions depend on how far respondents live from the Klamath Basin? How can the survey materials be presented in a way that is meaningful for individuals from across the country who are likely to have very different levels of familiarity with and interest in the Klamath region and its river restoration issues?

Two of the focus groups will be conducted in or near the Klamath Basin—one in Southern Oregon (*e.g.,* Medford or Klamath Falls) and one in Northern California (*e.g.,* Yreka or Redding). The other two focus groups will be conducted in other parts of the country—one in Raleigh, NC, and the other in Minneapolis/St. Paul, MN. Because the survey is intended for the general population of adults in the U.S., the only screening criteria for the focus groups will be to exclude individuals younger than 21 years of age. Otherwise, individuals will be recruited to ensure that a broad mix of sociodemographic characteristics are represented, including sex, age, education, income, race, and rural/urban residence.

Each focus group will have an experienced moderator who will use a moderator guide to conduct the focus group. Each focus group participant will complete a focus group participant worksheet collecting basic demographic information and a consent form.

III. Data

(1) *Title:* Non-use Valuation Survey, Klamath River Dam Removal.

OMB Control Number: 1090–NEW.

Type of Review: Information Collection: New.

Affected Entities: Individuals or households

Estimated Annual Number of Respondents: 141.

Frequency of Response: Focus groups will be one-time collections

(2) Annual reporting and recordkeeping burden:

Estimated Number of Responses Annually: 141.

Estimated Burden per Response: 47 minutes.

Total Annual Reporting: 110 hours.

(3) Description of the need and use of the information: DOI will use the results of these information collection activities (the focus groups) to optimize the design of the survey instrument.

As required under 5 CFR 1320.8(d), a **Federal Register** notice soliciting comments on the collection of information was published on June 9, 2009 (74 FR 27340). No comments were received. This notice provides the public with an additional 30 days in which to comment on the proposed information collection activity.

IV. Request for Comments

The Department of the Interior invites comments on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) The accuracy of the agency's estimate of the burden of the collection and the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(d) Ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other collection techniques or other forms of information technology.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal agency.

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

Dated: March 31, 2010.

Benjamin Simon,

Acting Economics Staff Director, Office of Policy Analysis.

[FR Doc. 2010–7710 Filed 4–5–10; 8:45 am]

BILLING CODE 4310–RK–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–R–2010–N026; 80230–1265–0000–S3]

Hopper Mountain, Bitter Creek, and Blue Ridge National Wildlife Refuges, Kern, San Luis Obispo, Tulare, and Ventura Counties, CA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent to prepare a comprehensive conservation plan and environmental assessment; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), intend to prepare a comprehensive conservation plan (CCP) and environmental assessment (EA) for the Hopper Mountain, Bitter Creek, and Blue Ridge National Wildlife Refuges (NWRs) located in Kern, San Luis Obispo, Tulare, and Ventura counties of California. We provide this notice in compliance with our CCP policy to advise other Federal, State, and local agencies; Tribes; and the public of our intentions, and to obtain suggestions and information on the scope of issues to consider in the planning process.

DATES: To ensure consideration, please send your written comments by May 21, 2010.

ADDRESSES: Send your comments or requests for more information by any of the following methods.

E-mail: fw8plancomments@fws.gov. Include "Hopper CCP" in the subject line of the message.

Fax: Attn: Sandy Osborn, (916) 414–6497.

U.S. Mail: Pacific Southwest Region, Refuge Planning, U.S. Fish and Wildlife Service, 2800 Cottage Way, W–1832, Sacramento, CA 95825.

In-Person Drop-off: You may drop off comments at the Hopper Mountain NWR Complex Headquarters in Ventura, California, during regular business hours; please call (805) 644–5185 for directions.

FOR FURTHER INFORMATION CONTACT: Sandy Osborn, Planning Team Leader, at (916) 414–6503 or Marc Weitzel, Project Leader, at (805) 644–5185 or *fw8plancomments@fws.gov*. Further information may also be found at *http://www.fws.gov/cno/refuges/planning/ccp.cfm*.

SUPPLEMENTARY INFORMATION:

Introduction

With this notice, we initiate our process for developing a CCP for Hopper Mountain, Bitter Creek, and Blue Ridge NWRs in Kern, San Luis Obispo, Tulare, and Ventura Counties, California. This notice complies with our CCP policy to (1) advise other Federal and State agencies, Tribes, and the public of our intention to conduct detailed planning on this refuge and (2) obtain suggestions and information on the scope of issues to consider in the environmental document and during development of the CCP.

Background

The CCP Process

The National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd–668ee) (Administration Act), as amended by the National Wildlife Refuge System Improvement Act of 1997, requires us to develop a CCP for each national wildlife refuge. The purpose for developing a CCP is to provide refuge managers with a 15-year plan for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife management, conservation, legal mandates, and our policies. In addition to outlining broad management direction on conserving wildlife and their habitats, CCPs identify wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation and photography, and environmental education and interpretation where compatible with refuge purposes. We will review and update the CCP at least every 15 years in accordance with the Administration Act.

Each unit of the National Wildlife Refuge System was established for specific purposes. We use these purposes as the foundation for developing and prioritizing the management goals and objectives for each refuge within the National Wildlife Refuge System, and to determine how the public can use each refuge. The planning process is a way for us and the public to evaluate management goals, objectives, and strategies that will ensure the best possible approach to wildlife, plant, and habitat conservation, while providing for wildlife-dependent recreation opportunities that are compatible with each refuge's establishing purposes and the mission of the National Wildlife Refuge System.

Our CCP process provides opportunities for participation by Tribal, State, and local governments; agencies; organizations; and the public. We will be contacting identified

stakeholders and individuals at this time for initial input. If you would like to meet with planning staff or would like to receive periodic updates, please contact us (*see* **ADDRESSES**). We anticipate holding public meetings for initial comments and also when we have identified alternative management scenarios. At this time we encourage comments in the form of issues, concerns, ideas, and suggestions for the future management of Hopper Mountain, Bitter Creek, and Blue Ridge NWRs.

We will conduct the environmental review of this project in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (NEPA) (42 U.S.C. 4321 *et seq.*); NEPA regulations (40 CFR parts 1500–1508); other appropriate Federal laws and regulations; and our policies and procedures for compliance with those laws and regulations.

Hopper Mountain National Wildlife Refuge

Hopper Mountain NWR is in Ventura County, approximately 6 miles north of the community of Fillmore. Hopper Mountain NWR was established in 1974 to protect the endangered California condor, its habitat, and other wildlife resources. The refuge encompasses 2,471 contiguous acres owned in fee title by the U.S. Fish and Wildlife Service. This refuge is currently closed to public use.

Bitter Creek National Wildlife Refuge

Bitter Creek NWR is located approximately 80 miles north of Los Angeles and approximately 10 miles southwest of the community of Maricopa in the arid foothills, primarily in Kern County. The legislatively approved refuge boundary also falls within parts of San Luis Obispo and Ventura Counties. Bitter Creek NWR was established in 1985 to provide safe roosting and foraging habitat for California condors. The refuge encompasses nearly 14,097 acres owned in fee title by the U.S. Fish and Wildlife Service. The Bitter Creek NWR Grassland Habitat Management and Restoration Plan Environmental Assessment and Compatibility Determination is ongoing. This refuge is currently closed to public use.

Blue Ridge National Wildlife Refuge

Blue Ridge NWR is located in central Tulare County in the foothills of the Sierra Nevada Mountains, 11 miles north of Springville and 17.5 miles northeast of Porterville, California. Blue Ridge NWR was established in 1982 to protect critical habitat for the California condor. Blue Ridge NWR encompasses 897 acres owned in fee title by the U.S. Fish and Wildlife Service. This refuge is currently closed to public use.

Scoping: Preliminary Issues, Concerns, and Opportunities

We have identified preliminary issues, concerns, and opportunities that we may address in the CCP. These include: Wildlife management, habitat management, wildlife-dependent recreation, environmental education, and cultural resources. During public scoping, we may identify additional issues.

Public Meetings

We will give the public an opportunity to provide input at public meetings. You can obtain the schedule from the planning team leader or project leader (*see* **FOR FURTHER INFORMATION CONTACT**). You may also submit comments or request a meeting during the planning process by mail, e-mail, or fax (*see* **ADDRESSES**). There will be additional opportunities to provide public input once we have prepared a draft CCP.

Public Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: March 26, 2010.

Ken McDermond,

Acting Regional Director, Pacific Southwest Region, Sacramento, California.

[FR Doc. 2010–7353 Filed 4–5–10; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CACA 048811, LLCAD06000, L51010000.FX0000, LVRWB09B2600]

Notice of Availability of the Draft Environmental Impact Statement/Staff Assessment for the Chevron Energy Solutions/Solar Millennium (CESSM) Blythe Solar Power Plant (BSPP) and Possible California Desert Conservation Area Plan Amendment

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969, as amended, and the Federal Land Policy and Management Act of 1976, as amended, the Bureau of Land Management (BLM) and the California Energy Commission (CEC) have prepared a Draft Environmental Impact Statement (EIS), Draft California Desert Conservation Area (CDCA) Plan Amendment, and Staff Assessment (SA) as a joint environmental analysis document for the CESSM BSPP Project, Riverside County, California, and by this notice are announcing the opening of the comment period.

DATES: To ensure that comments will be considered, the BLM must receive written comments on the Draft EIS/SA and Plan Amendment within 90 days following the date the Environmental Protection Agency publishes its Notice of Availability in the **Federal Register**. The BLM will announce future meetings or hearings and any other public involvement activities at least 15 days in advance through public notices, media releases, and/or mailings.

ADDRESSES: You may submit comments related to the BSPP Project by any of the following methods:

- *E-mail: CAPSSolarBlythe@blm.gov.*
- *Fax:* (760) 833–7199.
- *Mail or other delivery service:*

Allison Shaffer, Project Manager, Palm Springs South Coast Field Office, Bureau of Land Management, 1201 Bird Center Drive, Palm Springs, California 92262.

FOR FURTHER INFORMATION CONTACT: Allison Shaffer, BLM Project Manager at (760) 833–7100.

SUPPLEMENTARY INFORMATION: CESSM has submitted a right-of-way (ROW) application to the BLM for development of the proposed BSPP Project, consisting of four parabolic-trough solar thermal power plants, each of which has a "solar field" comprised of rows of parabolic mirrors focusing solar energy on collector tubes. The tubes carry heated oil to a boiler that sends live steam to a steam turbine. The project would be built in four phases, which are designed to generate in total approximately 968 megawatts (MW) of electricity at full development. The total expected project footprint aggregates approximately 7,030 acres of BLM-managed lands, with the total proposed ROW involving about 9,400 acres. The project site is in Riverside County, California, approximately eight miles west of Blythe, California, three miles north of Highway I–10, and one mile north of the Blythe Regional Airport.

The project also includes an electrical transmission line, natural gas pipeline, and an access road. A new single-circuit 500-kilovolt generation-tie transmission line would be constructed to interconnect to the Desert Southwest/Colorado River substation. Approximately 9.5 miles of this new line would be outside the project area, but is included in the analysis. The new line would occupy approximately 183 acres of public lands, and proposes to utilize a 225-foot wide ROW. This dry-cooled power plant would use approximately 600 acre-feet of water per year for feed water makeup, dust control, domestic uses, and mirror washing. The water would be obtained from on-site water wells.

The BLM's purpose and need for the BSPP project is to respond to CESSM's application under Title V of the Federal Land Policy and Management Act (FLPMA) (43 U.S.C. 1761) for a ROW grant to construct, operate, and decommission a solar thermal facility on public lands in compliance with FLPMA, BLM ROW regulations, and other applicable Federal laws. The BLM will decide whether to grant, grant with modification, or deny a ROW to CESSM for the proposed BSPP project. The BLM is also proposing to amend the CDCA Plan by designating the project area as either available or unavailable for solar energy projects. The CDCA Plan (1980, as amended), while recognizing the potential compatibility of solar generation facilities with other uses on public lands, requires that all sites proposed for power generation or transmission not already identified in the plan be considered through the plan amendment process. If the BLM decides to grant a ROW for this project, the CDCA Plan would be amended as required.

In response to the application received from CESSM, the BLM's proposed action is to authorize the CESSM BSPP project, amend the CDCA Plan to designate the project area as available for solar energy projects, and amend the Plan to provide for the CESSM BSPP project.

In addition to the proposed action, the BLM is analyzing the following action alternatives: A reconfigured, 1,000–MW alternative and a smaller 750–MW alternative, both of which would amend the CDCA Plan to designate the area as available for solar energy projects and approve this project. As required under the National Environmental Policy Act (NEPA), the Draft EIS analyzes a no action alternative that would not require a CDCA Plan amendment. The Draft EIS also analyzes two no project alternatives that reject the project, but amend the CDCA Plan to: (1) Designate the project area as available to future solar energy power generation projects; or (2) designate the project area as unavailable to future solar energy power generation projects. The BLM will take into consideration the provisions of the Energy Policy Act of 2005 and Secretarial Orders 3283 *Enhancing Renewable Energy Development on the Public Lands* and 3285 *Renewable Energy Development by the Department of the Interior* in responding to the BSPP application.

The BLM has entered into a Memorandum of Understanding with the CEC to conduct a joint environmental review of solar thermal projects that are proposed on Federal land managed by the BLM with the CEC as the lead agency preparing the environmental documents. The BLM and CEC have agreed to conduct a joint environmental review of the project in a single combined NEPA/California Environmental Quality Act process and document. The Draft EIS/SA analyzes site-specific impacts of the proposed project on air quality; biological, cultural, water, soil, visual, paleontological, and geological resources; recreation; land use; noise; public health; socioeconomics; and traffic and transportation. The Draft EIS/SA also addresses hazardous materials handling, waste management, worker safety, fire protection, facility design engineering, efficiency, reliability, transmission system engineering, transmission line safety, and nuisance. A Notice of Intent to Prepare an EIS/SA and Proposed Land Use Plan Amendment for the Proposed CESSM BSPP in Riverside County, California was published November 23, 2008 (73 FR 61902). The BLM held one public scoping meeting in Palm Desert, California, on December 11, 2008. The formal scoping period ended December 23, 2009. The CEC held an Informational Hearing, Environmental Scoping Meeting, and Public Site Visit in cooperation with the BLM on January 25, 2010.

Please note that public comments and information submitted including names, street addresses, and e-mail addresses of persons who submit comments will be available for public review and disclosure at the above address during regular business hours (8 a.m. to 4 p.m.), Monday through Friday, except holidays.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: 40 CFR 1506.6 and 1506.10 and 43 CFR 1610.2.

Dated: March 11, 2010.

Karla D. Norris,

Associate Deputy State Director.

[FR Doc. 2010–7666 Filed 4–5–10; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNM915000L14200000.BJ0000]

Notice of Filing of Plats of Survey, New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of filing of Plats of Survey.

SUMMARY: The plats of survey described below are scheduled to be officially filed in the New Mexico State Office, Bureau of Land Management (BLM), Santa Fe, New Mexico, thirty (30) calendar days from the date of this publication.

SUPPLEMENTARY INFORMATION:

New Mexico Principal Meridian, New Mexico (NM):

The plat representing the dependent resurvey and survey in Township 15 North, Range 19 West, of the New Mexico Principal Meridian, accepted March 17, 2010, for Group 1103 NM.

The plat representing the dependent resurvey and survey, in Township 23 North, Range 8 East, of the New Mexico Principal Meridian, accepted February 12, 2010, for Group 1092 NM.

The plat, in two sheets, representing the dependent resurvey and survey, of the San Clemente Grant, accepted January 29, 2010, for Group 1072 NM.

The plat, in two sheets, representing the dependent resurvey and survey, in Township 24 North, Range 11 East, of the New Mexico Principal Meridian, accepted March 10, 2010, for Group 992 NM.

Indian Meridian, Oklahoma (OK):

The plat, in two sheets, representing the dependent resurvey and survey in Township 17 North, Range 12 West, of the Indian Meridian, accepted December 24, 2009, for Group 182 OK.

If a protest against a survey, as shown on any of the above plats is received

prior to the date of official filing, the filing will be stayed pending consideration of the protest. A plat will not be officially filed until the day after all protests have been dismissed and become final or appeals from the dismissal affirmed.

A person or party who wishes to protest against any of these surveys must file a written protest with the New Mexico State Director, Bureau of Land Management, stating that they wish to protest.

A statement of reasons for a protest may be filed with the notice of protest to the State Director, or the statement of reasons must be filed with the State Director within thirty (30) days after the protest is filed.

FOR FURTHER INFORMATION CONTACT: These plats will be available for inspection in the New Mexico State Office, Bureau of Land Management, 301 Dinosaur Trail, Santa Fe, New Mexico. Copies may be obtained from this office upon payment. Contact Marcella Montoya at 505–954–2097, or by e-mail at *Marcella_Montoya@nm.blm.gov,* for assistance.

Stephen W. Beyerlein,

Acting Chief, Branch of Cadastral Survey/ GeoSciences.

[FR Doc. 2010–7712 Filed 4–5–10; 8:45 am]

BILLING CODE 4310–FB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLAK910000 L13100000.DB0000 LXSINSSI0000]

Notice of Public Meeting, North Slope Science Initiative—Science Technical Advisory Panel

AGENCY: Bureau of Land Management, Alaska State Office, North Slope Science Initiative, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, North Slope Science Initiative (NSSI)—Science Technical Advisory Panel (STAP) will meet as indicated below:

DATES: The meeting will be held April 26 and 27, 2010, in Fairbanks, Alaska. On April 26, 2010, the meeting will begin at 9 a.m., at the University of Alaska Fairbanks, International Arctic Research Center, Room 501, Fairbanks, Alaska. Public comments will begin at 3 p.m. On April 27, 2010, the meeting will begin at 9 a.m. at the same location, and will adjourn at noon.

FOR FURTHER INFORMATION CONTACT: John F. Payne, Executive Director, North Slope Science Initiative, AK–910, c/o Bureau of Land Management, 222 W. Seventh Avenue, #13, Anchorage, AK 99513, (907) 271–3431 or e-mail *john_f_payne@blm.gov.*

SUPPLEMENTARY INFORMATION: The NSSI—STAP provides advice and recommendations to the NSSI Oversight Group regarding priority needs for management decisions across the North Slope of Alaska. These priority needs may include recommendations on inventory, monitoring, and research activities that contribute to informed land management decisions. The topics to be discussed at the meeting include:

- Emerging issue summaries from the STAP
- Update on the land cover project
- Update on the project tracking system and database
- NSSI priority issues and projects
- Other topics the Oversight Group or STAP may raise.

All meetings are open to the public. The public may present written comments to the Science Technical Advisory Panel through the Executive Director, North Slope Science Initiative. Each formal meeting will also have time allotted for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation, transportation, or other reasonable accommodations, should contact the Executive Director, North Slope Science Initiative.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: March 30, 2010.

Thomas P. Lonnie,

Alaska State Director.

[FR Doc. 2010–7718 Filed 4–5–10; 8:45 am]

BILLING CODE 1310–JA–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–698]

In the Matter of Certain DC–DC Controllers and Products Containing Same; Notice of Commission Decision Not to Review the Administrative Law Judge's Initial Determination Granting Complainants' Motion To Amend the Complaint and Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's initial determination ("ID") (Order No. 6) granting complainants' motion to amend the complaint and notice of investigation.

FOR FURTHER INFORMATION CONTACT: Sidney A. Rosenzweig, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 708–2532. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on December 29, 2009, based on a complaint filed by Richtek Technology Corp. of Taiwan and Richtek USA, Inc. of San Jose, California. ("Richtek"), alleging a violation of section 337 in the importation, sale for importation, and sale within the United States after importation of certain DC–DC controllers by reason of infringement of certain claims of U.S. Patent Nos. 7,315,190; 6,414,470; and 7,132,717, and by reason of trade secret misappropriation. 75 FR 446 (Jan. 5, 2010). The complaint named as respondents uPI Semiconductor Corp. of Taiwan; Advanced Micro Devices, Inc. of Sunnyvale, California; Sapphire

Technology Ltd. of Hong Kong; Best Data Products Inc. d/b/a Diamond Multimedia, Inc. of Chatsworth, California; and XFX Technology, Inc. of Ontario, California ("XFX").

On February 17, 2010, Richtek moved to amend the complaint and notice of investigation to correct the corporate name of XFX to Eastcom, Inc. d/b/a XFX Technology USA; to add new proposed respondents Micro-Star Int'l Co. Ltd., and MSI Computer Corp.; to add new respondent VisionTek Prods. LLC; and to seek a general exclusion order against downstream products containing the accused uPI chips.

The ALJ granted Richtek's motion in its entirety. Order No. 6 (Mar. 5, 2010). No petitions for review of the ID were filed. The Commission has determined not to review the ID. The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in section 210.42 of the Commission's Rules of Practice and Procedure (19 CFR § 210.42).

By order of the Commission.

Issued: March 31, 2010.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 2010–7680 Filed 4–5–10; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–710]

In the Matter of Certain Personal Data and Mobile Communications Devices and Related Software; 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 March 2, 2010, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Apple Inc., f/k/a Apple Computer, Inc. of Cupertino, California and NeXT Software, Inc. f/k/a NeXT Computer, Inc. of Cupertino, California. The 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 personal data and mobile communications devices and related software by reason of infringement of certain claims of U.S. Patent Nos. 5,481,721; 5,519,867; 5,566,337; 5,929,852; 5,946,647; 5,969,705; 6,275,983; 6,343,263; 5,915,131; and RE39,486. The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainants request that the Commission institute an investigation and, after the investigation, issue an exclusion order and a cease and desist order.

ADDRESSES: The 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: Daniel L. Girdwood, Esq. or Erin D. E. Joffre, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–3409 and (202) 205–2550.

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 (2009).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on March 30, 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 personal data or mobile communications devices or related software that infringe one or more of claims 1–3, 7, 12, and 32 of U.S. Patent No. 5,519,867; claims 1, 3, 7, 8, and 22 of U.S. Patent No. 6,275,983; claims 1, 3, 8–10, 12, 18, 19, 23, and 24 of U.S. Patent No. 5,566,337; claims 1–3 and 7–13 of U.S. Patent No. 5,929,852; claims 1, 3, 6, 8, 10, 13–16, 19, 20, and 22 of U.S. Patent No. 5,946,647; claim 1 of U.S. Patent No. 5,969,705; claims 1–6, 24, 25, 29, and 30 of U.S. Patent No. 6,343,263; claims 1, 3, 4, 6, 7, 9, 10, 15, and 17 of U.S. Patent No. 5,915,131; claims 1–3, 6, 8, 9, 12, and 14–17 of U.S. Patent No. RE39,486; and claims 1–6 and 19–22 of U.S. Patent No. 5,481,721, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) 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 complainants are:

Apple Inc., f/k/a Apple Computer, Inc., 1 Infinite Loop, Cupertino, CA 95014.

NeXT Software, Inc. f/k/a NeXT Computer, Inc., 1 Infinite Loop, Cupertino, CA 95014.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

High Tech Computer Corp. a/k/a HTC Corp., 23 Xinghua Road, Taoyuan 330, Taiwan

HTC America, Inc., 13920 SE Eastgate Way, Suite 400, Bellevue, WA 98005

Exedea, Inc., 5950 Corporate Drive, Houston, TX 77036

(c) The Commission investigative attorneys, parties to this investigation, are Daniel L. Girdwood, Esq. and Erin D. E. Joffre, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Suite 401, Washington, DC 20436; and

(3) 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 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 complaint and the notice of investigation. Extensions of time for submitting responses to the 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 complaint and in this notice may be deemed to constitute a waiver of the

right to appear and contest the allegations of the 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 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.

Issued: March 31, 2010.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 2010–7687 Filed 4–5–10; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–711]

In the Matter of Certain Inkjet Ink Cartridges With Printheads and Components Thereof; 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 March 5, 2010, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Hewlett-Packard Company of Palo Alto, California. A letter supplementing the complaint was filed on March 26, 2010. The 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 inkjet ink cartridges with printheads and components thereof by reason of infringement of certain claims of U.S. Patent Nos. 6,234,598; 6,309,053; 6,398,347; 6,412,917; 6,481,817; and 6,402,279. The 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 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: Mareesa A. Frederick, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2055.

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 (2009).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on March 31, 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 inkjet cartridges with printheads or components thereof that infringe one or more of claims 1–10 of U.S. Patent No. 6,234,598; claims 1–6 and 8–17 of U.S. Patent No. 6,309,053; claims 1–6 and 8–12 of U.S. Patent No. 6,398,347; claims 1–21 of U.S. Patent No. 6,412,917; claims 1–15 of U.S. Patent No. 6,481,817; and claims 9–16 of U.S. Patent No. 6,402,279, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) 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: Hewlett-Packard Company, 3000 Hanover St., Palo Alto, CA 94304.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

MicroJet Technology Co., Ltd., 1F, No. 28, R&D 2nd Rd., Science-Based Industrial Park, Hsinchu City, Taiwan 30076.

Mipo Technology Limited, Rm B 11/F Wong Tze Bldg., 71 Hoi Yuen Rd., Kwun Tong, Kowloon, Hong Kong.

Mipo Science & Technology Co., Ltd., Guangzhou, Rm 3310–3313, Xin Yuan Building, No. 898 North Tianhe Road, Guangzhou, China.

Mextec d/b/a Mipo America Ltd., 3100 NW. 72nd Ave. Ste. 106, Miami, FL 33122, SinoTime Technologies, Inc. d/b/a All Colors, 3100 NW. 72nd Ave. Ste. 106, Miami, FL 33122.

PTC Holding Limited, Room B, 5/F, Mai Tak Industrial Building 221, Wai Yip Street, Kwun Tong, Kowloon, Hong Kong.

(c) The Commission investigative attorney, party to this investigation, is Mareesa A. Frederick, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Suite 401, Washington, DC 20436; and

(3) 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 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 complaint and the notice of investigation. Extensions of time for submitting responses to the 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 complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the 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 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.

Issued: March 31, 2010.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 2010–7688 Filed 4–5–10; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–475 and 731–TA–1177 (Preliminary)]

Certain Aluminum Extrusions From China

AGENCY: United States International Trade Commission.

ACTION: Institution of antidumping and countervailing duty investigations and scheduling of preliminary phase investigations.

SUMMARY: The Commission hereby gives notice of the institution of investigations and commencement of preliminary phase antidumping and countervailing duty investigations Nos. 701–TA–475 and 731–TA–1177 (Preliminary) under sections 703(a) and 733(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a) and 1673b(a)) (the Act) to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from China of certain aluminum extrusions, primarily provided for in subheadings 7604.21.00, 7604.29.10, 7604.29.30, 7604.29.50, and 7608.20.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value and alleged to be subsidized by the Government of China. Unless the Department of Commerce extends the time for initiation pursuant to sections 702(c)(1)(B) or 732(c)(1)(B) of the Act (19 U.S.C. 1671a(c)(1)(B) or 1673a(c)(1)(B)), the Commission must reach a preliminary determination in antidumping and countervailing duty investigations in 45 days, or in this case by Monday, May 17, 2010. The Commission's views are due at Commerce within five business days thereafter, or by Monday, May 24, 2010.

For further information concerning the conduct of these investigations 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 and B (19 CFR part 207).

DATES: Effective Date: March 31, 2010.

FOR FURTHER INFORMATION CONTACT: Russell Duncan (*russell.duncan@usitc.gov,* 202–708–4727), 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 investigations may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background. These investigations are being instituted in response to a petition filed on March 31, 2010, by the Aluminum Extrusions Fair Trade Committee ("Committee") [1] and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union ("USW").

Participation in the investigations and public service list. Persons (other than petitioners) wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in sections 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register.** Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list. Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these investigations available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigations under the APO issued in the investigations, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference. The Commission's Director of Investigations has scheduled a conference in connection with these investigations for 9:30 a.m. on Wednesday, April 21, 2010, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Russell Duncan (*russell.duncan@usitc.gov,* 202–708–4727) not later than Friday, April 16, 2010, to arrange for their appearance. Parties in support of the imposition of antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written submissions. As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before Monday, April 26, 2010, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties may file written testimony in connection with their presentation at the conference no later than three days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Even where electronic filing of a document is permitted, certain documents must also be filed in paper form, as specified in II (C) of the Commission's Handbook on Electronic Filing Procedures, 67 FR 68168, 68173 (November 8, 2002).

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and

[1] The Committee is comprised of the following members: Aerolite Extrusion Company, Younstown, OH; Alexandria Extrusion Company, Alexandria, MN; Benada Aluminum of Florida, Inc., Medley, FL; William L. Bonnell Company, Inc., Newnan, GA; Frontier Aluminum Corporation, Corona, CA; Futura Industries Corporation, Clearfield, UT; Hydro Aluminum North America, Inc., Linthicum, MD; Kaiser Aluminum Corporation, Foothill Ranch, CA; Profile Extrusion Company, Rome, GA; Sapa Extrusions, Inc., Des Plaines, IL; and Western Extrusions Corporation, Carrollton, TX.

a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.12 of the Commission's rules.

Issued: March 31, 2010.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 2010–7683 Filed 4–5–10; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–705]

In the Matter of Certain Notebook Computer Products and Components Thereof; Notice of Commission Decision Not To Review an Initial Determination Correcting the Claims Asserted From U.S. Patent No. 7,156,693 in the Complaint and Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination ("ID") (Order No. 6) issued by the presiding administrative law judge ("ALJ") in the above-referenced investigation correcting the claims asserted from U.S. Patent 7,156,693 ("the '693 patent") in the complaint and notice of investigation.

FOR FURTHER INFORMATION CONTACT: Daniel E. Valencia, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–1999. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on February 24, 2010, based on a complaint filed by Toshiba Corporation of Japan ("Toshiba"). 75 FR 8400. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain notebook computer products and components thereof by reason of infringement of the '693 patent and U.S. Patent No. 5,430,867. The complaint names three respondents.

On March 8, 2010, Toshiba moved to amend the complaint and notice of investigation to correct the claims asserted from the '693 patent. In particular, Toshiba's motion indicates that claim 7 was erroneously identified instead of claim 4. Neither the Commission Investigative Attorney nor any of the respondents opposed this motion.

On March 9, 2010, the ALJ issued the subject ID correcting the claims asserted from the '693 patent to include claims 1, 2, 4, 5, 9, 15–17, and 20–22. No petitions for review of the ID were filed.

The Commission has determined not to review the ALJ's ID.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in section 210.42 of the Commission's Rules of Practice and Procedure (19 CFR 210.42).

Issued: March 31, 2010.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 2010–7681 Filed 4–5–10; 8:45 am]

BILLING CODE 7020–02–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (10–040)]

NASA Advisory Council; Audit, Finance and Analysis Committee; 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 Audit, Finance and Analysis Committee of the NASA Advisory Council.

DATES: Tuesday, April 27, 2010, 9 a.m.–11 a.m. CDT.

ADDRESSES: NASA Johnson Space Center, Gilruth Conference Center, Lonestar Room, 2101 NASA Parkway, Houston, TX 77058.

FOR FURTHER INFORMATION CONTACT: Ms. Charlene Williams, Office of the Chief Financial Officer, National Aeronautics and Space Administration Headquarters, Washington, DC 20546. Phone: 202–358–2183, fax: 202–358–4336.

SUPPLEMENTARY INFORMATION: The agenda for the meeting includes the following topic:

- GAO High Risk List

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.

Dated: March 31, 2010.

P. Diane Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2010–7770 Filed 4–5–10; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (10–039)]

NASA Advisory Council; Commercial Space Committee; 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 Commercial Space Committee of the NASA Advisory Council.

DATES: Monday, April 26, 2010, 1:30 p.m.–6 p.m. CDT.

ADDRESSES: NASA Johnson Space Center, Gilruth Conference Center, 2101 NASA Parkway, Houston, TX 77058.

FOR FURTHER INFORMATION CONTACT: Mr. John Emond, Innovative Partnerships Program, Office of the Chief Technologist, National Aeronautics and Space Administration, Washington, DC, 20546. Phone 202–358–1686, fax: 202–358–3878, *john.l.emond@nasa.gov.*

SUPPLEMENTARY INFORMATION: The agenda for the meeting includes a NASA

Field Center's perspective (Johnson Space Center) on commercial crew and cargo missions. The meeting will also include a deliberative session to integrate the briefings and NASA presentations the committee received concerning commercial cargo and crew missions. 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. Please email Mr. John Emond at *john.l.emond@nasa.gov,* if you plan to attend.

Dated: March 31, 2010.

P. Diane Rausch,

Advisory Committee Management Office, National Aeronautics and Space Administration.

[FR Doc. 2010–7771 Filed 4–5–10; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (10–041)]

NASA Advisory Council; Education and Public Outreach Committee; 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 Education and Public Outreach Committee of the NASA Advisory Council.

DATES: April 26, 2010, 10 a.m.–4 p.m. CDT.

ADDRESSES: This meeting will take place telephonically and via WebEx. Any interested person may contact Ms. Erika G. Vick at (202) 358–2209, to get further information about participating via teleconference and/or WebEx.

FOR FURTHER INFORMATION CONTACT: Ms. Erika G. Vick, Office of Communications, National Aeronautics and Space Administration Headquarters, Washington, DC 20546, (202) 358–2209.

SUPPLEMENTARY INFORMATION: The agenda for the meeting includes the following topics:

- Issues for NASA Communications
- NASA's 2010 Pilot Activities for Middle and High Schools
- Participatory Exploration

It is imperative that these meetings be held on this date to accommodate the scheduling priorities of the key participants.

Dated: April 1, 2010.

P. Diane Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2010–7772 Filed 4–5–10; 8:45 am]

BILLING CODE 7510–13–P

NUCLEAR REGULATORY COMMISSION

[Docket No. NRC–2010–0141]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to the Office of Management and Budget (OMB) and solicitation of public comment.

SUMMARY: The NRC invites public comment about our intention to request the OMB's approval for renewal of an existing information collection that is summarized below. We are required to publish this notice in the **Federal Register** under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* Policy Statement for the "Criteria for Guidance of States and NRC in Discontinuance of NRC Regulatory Authority and Assumption Thereof By States Through Agreement," Maintenance of Existing Agreement State Programs, Request for Information Through the Integrated Materials Performance Evaluation Program (IMPEP) Questionnaire, and Agreement State Participation in IMPEP.

2. *Current OMB approval number:* 3150–0183.

3. *How often the collection is required:* Every four years for completion of the IMPEP questionnaire in preparation for an IMPEP review. One time for new Agreement State applications. Annually for participation by Agreement States in the IMPEP reviews and fulfilling requirements for Agreement States to maintain their programs.

4. *Who is required or asked to report:* All Agreement States (37 Agreement States who have signed Agreements with NRC under Section 274b. of the Atomic Energy Act (Act)) plus one Agreement State applicant.

5. *The number of annual respondents:* 38.

6. *The number of hours needed annually to complete the requirement or request:* 286,693 hours (477 hours to complete the IMPEP questionnaires; 396 hours for participation in IMPEP reviews; 4,300 hours for Agreement State applications; and 281,520 hours (an average of 7,609 hours per respondent) to maintain Agreement State programs).

7. *Abstract:* The States wishing to become Agreement States are requested to provide certain information to the NRC as specified by the Commission's Policy Statement, "Criteria for Guidance of States and NRC in Discontinuance of NRC Regulatory Authority and Assumption Thereof By States Through Agreement." The Agreement States need to ensure that the radiation control program under the Agreement remains adequate and compatible with the requirements of Section 274 of the Act and must maintain certain information. The NRC conducts periodic evaluations through IMPEP to ensure that these programs are compatible with the NRC's program, meet the applicable parts of the Act, and adequate to protect public health and safety.

Submit, by June 7, 2010, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F21, Rockville, Maryland 20852. OMB clearance requests are available at the NRC worldwide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html.* The document will be available on the NRC home page site for 60 days after the signature date of this notice. Comments submitted in writing or in electronic form will be made available for public inspection. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed. Comments submitted should reference Docket No. NRC–2010–0141. You may submit your comments by any of the

following methods. Electronic comments: Go to *http://www.regulations.gov* and search for Docket No. NRC–2010–0141. Mail comments to NRC Clearance Officer, Tremaine Donnell (T–5 F53), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Questions about the information collection requirements may be directed to the NRC Clearance Officer, Tremaine Donnell (T–5 F53), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, by telephone at 301–415–6258, or by e-mail to *INFOCOLLECTS.Resource@NRC.GOV*.

Dated at Rockville, Maryland, this 31st day of March 2010.

For the Nuclear Regulatory Commission.

Tremaine Donnell,

NRC Clearance Officer, Office of Information Services.

[FR Doc. 2010–7721 Filed 4–5–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2010–0145]

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to section 189a. (2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (the Commission or NRC) is publishing this regular biweekly notice. The Act requires the Commission publish notice of any amendments issued, or proposed to be issued and grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from March 11, 2010, to March 24, 2010. The last biweekly notice was published on March 23, 2010 (75 FR 13786).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in Title 10 of the Code of Federal Regulations (10 CFR), Section 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rulemaking and Directives Branch (RDB), TWB–05–B01M, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be faxed to the RDB at 301–492–3446. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland.

Within 60 days after the date of publication of this notice, any person(s) whose interest may be affected by this action may file a request for a hearing and a petition to intervene with respect to issuance of the amendment to the subject facility operating license. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested person(s) should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also identify the specific contentions which the requestor/petitioner seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the requestor/petitioner shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert

opinion which support the contention and on which the requestor/petitioner intends to rely in proving the contention at the hearing. The requestor/petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the requestor/petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the requestor/petitioner to relief. A requestor/petitioner who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule (72 FR 49139, August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least ten (10) days prior to the filing deadline, the participant should contact the Office of the Secretary by e-mail at *hearing.docket@nrc.gov,* or by telephone at (301) 415–1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.* System requirements for accessing the E-Submittal server are detailed in NRC's "Guidance for Electronic Submission," which is available on the agency's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through EIE, users will be required to install a Web browser plug-in from the NRC Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.*

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The E-Filing system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the "Contact Us" link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html,* by e-mail at *MSHD.Resource@nrc.gov,* or by a toll-free call at (866) 672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant

or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at *http://ehd.nrc.gov/EHD_Proceeding/home.asp,* unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

Petitions for leave to intervene must be filed no later than 60 days from the date of publication of this notice. Non-timely filings will not be entertained absent a determination by the presiding officer that the petition or request should be granted or the contentions should be admitted, based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii).

For further details with respect to this license amendment application, see the application for amendment which is available for public inspection at the Commission's PDR, located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the ADAMS Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov*.

Duke Energy Carolinas, LLC, et al., Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of amendment request: October 29, 2009.

Description of amendment request: The amendments would delete a license condition located in each of the unit's Facility Operating Licenses (FOLs) which restricts the maximum fuel rod average burnup. Deletion of this condition would allow the maximum fuel rod average burnup to increase.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

Deletion of the MNS [McGuire Nuclear Station] and CNS [Catawba Nuclear Station] FOL Appendix B conditions currently limiting maximum rod average burnup to 60 GWd/MTU [Gigawatt-day per Metric Ton Uranium] does not add, delete, or modify any MNS or CNS systems, structures, or components (SSCs). The proposed amendment would effectively allow future increases in the MNS and CNS maximum rod average burnup limit up to and including 62 GWd/MTU using existing fuel management methods, analyses, and models that have been reviewed and approved by the NRC [Nuclear Regulatory Commission]. Maximum average rod burnup limits will continue to be maintained within safe and acceptable limits using these fuel management methods and models.

Increasing the MNS and CNS maximum rod average burnup limit does not affect the thermal hydraulic response or the radiological consequences of any previously evaluated accident. The fuel rod design criteria will continue to be met at the maximum burnup limits allowed utilizing the current fuel management, analysis, and evaluation processes. An increase to the maximum rod average burnup limit will not increase the likelihood of a malfunction of nuclear fuel since the fuel currently used at MNS and CNS has been designed to support a maximum rod average burnup up to and including 62 GWd/MTU. Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed amendment would delete MNS and CNS FOL Appendix B conditions which currently limits maximum rod average burnup to 60 GWd/MTU. The proposed amendment would effectively allow future increases in the MNS and CNS maximum rod average burnup limit up to and including 62 GWd/MTU using existing fuel management methods, analyses, and models that have been reviewed and approved by the NRC. The proposed amendment does not change the design function of the nuclear fuel or create any credible new failure mechanisms or malfunctions for the nuclear fuel. Fuel rod design criteria will continue to be met at the maximum burnup limits allowed under the fuel management methods and models that have been previously reviewed and approved by the NRC. Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed amendment would delete a MNS and CNS FOL Appendix B conditions which currently limits maximum rod average burnup to 60 GWd/MTU. The proposed amendment would effectively allow future increases in the MNS and CNS maximum rod average burnup limit up to and including 62 GWd/MTU using existing fuel management methods, analyses, and models that have been reviewed and approved by the NRC. The proposed amendment does not result in altering or exceeding a design basis or safety limit for the plant. All current fuel design criteria will continue to be satisfied, and the safety analysis of record, including evaluations of the radiological consequences of design bases accidents, will remain applicable. Radiological consequences have been evaluated consistent with methodologies approved by the NRC. [Therefore, the proposed amendment does not involve a significant reduction in a margin of safety.]

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Ms. Lisa F. Vaughn, Associate General Counsel and Managing Attorney, Duke Energy Carolinas, LLC, 526 South Church Street, EC07H, Charlotte, NC 28202.

NRC Branch Chief: Gloria Kulesa.

Duke Energy Carolinas, LLC, Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of amendment request: October 29, 2009.

Description of amendment request: The amendments would delete a license condition located in each of the unit's Facility Operating Licenses (FOLs) which restricts the maximum fuel rod average burnup. Deletion of this condition would allow the maximum fuel rod average burnup to increase.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

Deletion of the MNS [McGuire Nuclear Station] and CNS [Catawba Nuclear Station]

FOL Appendix B conditions currently limiting maximum rod average burnup to 60 GWd/MTU [Gigawatt-day per Metric Ton Uranium] does not add, delete, or modify any MNS or CNS systems, structures, or components (SSCs). The proposed amendment would effectively allow future increases in the MNS and CNS maximum rod average burnup limit up to and including 62 GWd/MTU using existing fuel management methods, analyses, and models that have been reviewed and approved by the NRC [Nuclear Regulatory Commission]. Maximum average rod burnup limits will continue to be maintained within safe and acceptable limits using these fuel management methods and models.

Increasing the MNS and CNS maximum rod average burnup limit does not affect the thermal hydraulic response or the radiological consequences of any previously evaluated accident. The fuel rod design criteria will continue to be met at the maximum burnup limits allowed utilizing the current fuel management, analysis, and evaluation processes. An increase to the maximum rod average burnup limit will not increase the likelihood of a malfunction of nuclear fuel since the fuel currently used at MNS and CNS has been designed to support a maximum rod average burnup up to and including 62 GWd/MTU. Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed amendment would delete MNS and CNS FOL Appendix B conditions which currently limits maximum rod average burnup to 60 GWd/MTU. The proposed amendment would effectively allow future increases in the MNS and CNS maximum rod average burnup limit up to and including 62 GWd/MTU using existing fuel management methods, analyses, and models that have been reviewed and approved by the NRC. The proposed amendment does not change the design function of the nuclear fuel or create any credible new failure mechanisms or malfunctions for the nuclear fuel. Fuel rod design criteria will continue to be met at the maximum burnup limits allowed under the fuel management methods and models that have been previously reviewed and approved by the NRC. Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed amendment would delete a MNS and CNS FOL Appendix B conditions which currently limits maximum rod average burnup to 60 GWd/MTU. The proposed amendment would effectively allow future increases in the MNS and CNS maximum rod average burnup limit up to and including 62 GWd/MTU using existing fuel management methods, analyses, and models that have been reviewed and approved by the NRC. The proposed amendment does not result in altering or exceeding a design basis or safety limit for the plant. All current fuel design criteria will continue to be satisfied, and the safety analysis of record, including evaluations of the radiological consequences of design bases accidents, will remain applicable. Radiological consequences have been evaluated consistent with methodologies approved by the NRC. [Therefore, the proposed amendment does not involve a significant reduction in a margin of safety.]

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Ms. Lisa F. Vaughn, Associate General Counsel and Managing Attorney, Duke Energy Carolinas, LLC, 526 South Church Street, EC07H, Charlotte, NC 28202.

NRC Branch Chief: Gloria Kulesa.

Energy Northwest, Docket No. 50–397, Columbia Generating Station, Benton County, Washington

Date of amendment request: February 8, 2010.

Description of amendment request: The proposed amendment would modify Technical Specification (TS) requirements related to TS 3.1.3, "Control Rod Operability," and TS 3.1.5, "Control Rod Scram Accumulators," to be consistent with NUREG–1433, "Standard Technical Specifications General Electric Plants, BWR/4." The proposed amendment also corrects certain typographical errors.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed changes involve an administrative change to LCO [limiting condition for operation] 3.1.3, "Control Rod OPERABILITY," and a simplification in the modeling methodology for scram time analysis in LCO 3.1.5, "Control Rod Scram Accumulators," that continue to ensure that control rod operability requirements for the number and distribution of operable, slow and stuck control rods satisfy scram reactivity rate assumptions used in the plant safety analysis.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes do not involve any physical alteration of the plant (no new or different type of equipment is being installed) and do not involve a change in the design, normal configuration, or basic operation of the plant. The proposed changes do not introduce any new accident initiators. The proposed changes do not involve significant changes in the fundamental methods governing normal plant operation and do not require unusual or uncommon operator actions. The proposed changes provide assurance that the plant will not be operated in a mode or condition that violates the assumptions or initial conditions in the safety analyses and that the systems, structures, and components (SSCs) remain capable of performing their intended safety functions as assumed in the same analyses. Consequently, the response of the plant and the plant operator to postulated events will not be significantly different.

Therefore, the proposed TS change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

Margin of safety is related to confidence in the ability of fission product barriers to perform their intended design functions during and following an accident. The proposed changes address control rod operability and continue to ensure control rod scram time acceptance criteria is satisfied. The scram time test acceptance criteria and control rod operability restrictions are based on industry approved methodology and will continue to ensure control rod scram design functions and reactivity insertion assumptions used in the safety analyses continue to be protected.

Therefore, the proposed changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: William A. Horin, Esq., Winston & Strawn, 1700 K Street, NW., Washington, DC 20006–3817.

NRC Branch Chief: Michael T. Markley.

Entergy Gulf States Louisiana, LLC, and Entergy Operations, Inc., Docket No. 50–458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana

Date of amendment request: January 28, 2010.

Description of amendment request: The proposed license amendment

request modifies the licensee's commitment to Table B–1, "Minimum Staffing Requirements for NRC Licensees for Nuclear Power Plant Emergencies," of NUREG–0654/FEMA–REP–1, Revision 1, "Criteria for Preparation and Evaluation of Radiological Emergency Response Plans and Preparedness in Support of Nuclear Power Plants," dated November 1980. Current Table 13.3–17, "Repair and Corrective Actions," of the Emergency Plan only allows that Electrical or Instrumentation & Control technicians may fill these two positions. This change will allow these two maintenance positions on shift to be filled with any combination of the three maintenance craft disciplines.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Does not involve a significant increase in the probability or consequences of an accident previously evaluated.

No.

The proposed change does not increase the probability or consequences of an accident. The change only impacts the implementation of the Emergency Plan by changing staffing of the Repair and Corrective action functions after an event. It has no impact on plant equipment or the operation of plant equipment and thus has no impact on the probability or consequences of an event. The number of personnel on shift has not been revised from the current Emergency Plan. The repair and corrective action function would continue to be performed by trained personnel because the process, personnel, and equipment involved in implementing the Emergency Plan would complete the same functions as those completed under the existing Emergency Plan, the Plan would continue to ensure adequate protection of public health and safety.

(2) Does not create the possibility of a new or different kind of accident from any accident previously evaluated.

No.

The change only impacts the implementation of the Emergency Plan by changing staffing of the Repair and Corrective action functions after an event. The change does not impact any plant equipment or systems needed to respond to an accident, nor does it involve any analysis of plant accidents. The proposed change does not create a new or different kind of accident from any previously evaluated because this change only impacts emergency response repair functions.

(3) Does not involve a significant reduction in a margin of safety.

No.

The change to the Emergency Plan does not reduce the margin of safety currently provided by the Plan as it maintains the current number of personnel on shift to perform Repair and Corrective action functions. Repair and corrective actions will continue to be performed by trained personnel. Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Joseph A. Aluise, Associate General Council—Nuclear, Entergy Services, Inc., 639 Loyola Avenue, New Orleans, Louisiana 70113.

NRC Branch Chief: Michael T. Markley.

Entergy Nuclear Operations, Inc., Docket No. 50–293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts

Date of amendment request: January 24, 2010.

Description of amendment request: The proposed amendment would revise Technical Specification (TS) Section 1.0, Definitions, TS Section 3.6, Primary System Boundary Specifications 3.6.A, and TS Administrative Controls Section 5.5, to include reference to the Pressure and Temperature Limits Report (PTLR). The PTLR includes revised 34 effective full-power years (EFPY) P–T Curves, neutron fluence, and Adjusted Reference Temperature (ART) values.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change modifies Technical Specifications (TS) Section 1.0 ("Definitions"), Specification 3.6.A.2, and revises 5.0 ("Administrative Controls"), to include section 5.5.9 to include reference to the Pressure and Temperature Limits Report (PTLR). This change adopts the methodology of SIR–05–044–A, "Pressure-Temperature Limits Report Methodology for Boiling Water Reactors," dated April-2007 for preparation of the pressure and temperature curves, and incorporates the guidance of TSTF [Technical Specification Task Force] –419–A ("Revised PTLR Definition and References in ISTS 5.6.6, RCS [reactor coolant system] PTLR"). In an NRC Safety Evaluation [safety evaluation] Report dated February 6, 2007, "the NRC staff has found that SIR–05–044 is acceptable for referencing in licensing applications for General Electric-designed boiling water reactors to the extent," specified and under, the limitations delineated in the TR and in the enclosed final SE." As part of this change, the Pilgrim Pressure and Temperature Limits Report (PTLR) based on the methodology and template provided in SIR–05–044–A is being supplied for review. The pressure and temperature curves utilize the methodology of SIR–05–044–A.

The NRC has established requirements in Appendix G to 10 CFR [Part] 50 in order to protect the integrity of the reactor coolant pressure boundary (RCPB) in nuclear power plants. Additionally, the regulation in 10 CFR Part 50, Appendix H, provides the NRC staff's criteria for the design and implementation of RPV material surveillance programs for operating light water reactors. Implementing this NRC approved methodology does not reduce the ability to protect the reactor coolant pressure boundary as specified in Appendix G, nor will this change increase the probability of malfunction of plant equipment, or the failure of plant structures, systems, or components. Incorporation of the new methodology for calculating P–T curves, and the relocation of the P–T curves from the TS to the PTLR provides an equivalent level of assurance that the RCPB is capable of performing its intended safety functions. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change does not affect the assumed accident performance of the RCPB, nor any plant structure, system, or component previously evaluated. The proposed change does not involve the installation of new equipment, and installed equipment is not being operated in a new or different manner. The change in methodology ensures that the RCPB remains capable of performing its safety functions. No set points are being changed which would alter the dynamic response of plant equipment. Accordingly, no new failure modes are introduced which could introduce the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change does not affect the function of the RCPB or its response during plant transients. There are no changes proposed which alter the set points at which protective actions are initiated, and there is no change to the operability requirements for equipment assumed to operate for accident mitigation. This change adopts the methodology of SIR–05–044–A, "Pressure-Temperature Limits Report Methodology for Boiling Water Reactors," dated April 2007 for preparation of the pressure and temperature curves. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

This change adopts the methodology of SIR–05–044–A, "Pressure-Temperature

Limits Report Methodology for Boiling Water Reactors," dated April 2007 for preparation of the pressure and temperature curves, and incorporates the guidance of TSTF–419–A ("Revise PTLR Definition and References in [Improved Standard Technical Specification] ISTS 5.6.6, RCS PTLR"). In an NRC Safety Evaluation Report dated February 6, 2007, the NRC staff has found that SIR–05–044 is acceptable for referencing in licensing applications for General Electric-designed boiling water reactors."

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. William C. Dennis, Assistant General Counsel, Entergy Nuclear Operations, Inc., 400 Hamilton Avenue, White Plains, NY 10601.

NRC Branch Chief: Nancy Salgado.

Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Operations, Inc., Docket No. 50–271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of amendment request: December 3, 2009.

Description of amendment request: The proposed amendment would revise Technical Specification (TS) to incorporate Standard Technical Specification 3.1.8 "Scram Discharge Volume (SDV) Vent and Drain Valves" and associated Bases of NUREG–1433, Revision 3, "Standard Technical Specifications General Electric Plants, BWR/4," modified to account for plant specific design details.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. The operation of Vermont Yankee Nuclear Power Station (VY) in accordance with the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendment does not impact the operability of any structure, system or component that affects the probability of an accident or that supports mitigation of an accident previously evaluated. The proposed amendment does not affect reactor operations or accident analysis and has no radiological consequences. The operability requirements for accident mitigation systems remain consistent with the licensing and design basis. Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The operation of VY in accordance with the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods governing plant operation. Thus, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. The operation of VY in accordance with the proposed amendment will not involve a significant reduction in a margin of safety.

The proposed change ensures that the safety functions of the SDV vent and drain valves are fulfilled. The isolation function is maintained by valves in the vent and drain lines and by the required action to isolate the affected line. The ability to vent and drain the SDVs is maintained through administrative controls. In addition, the reactor protection system ensures that an SDV will not be filled to the point that it has insufficient volume to accept a full scram. Maintaining the safety functions related to isolation of the SDV and insertion of control rods ensures that the proposed change does not involve a significant reduction in the margin of safety. The proposed amendment does not change the design or function of any component or system. The proposed amendment does not impact any safety limits, safety settings or safety margins. Therefore, operation of VY in accordance with the proposed amendment will not involve a significant reduction in the margin to safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. William C. Dennis, Assistant General Counsel, Entergy Nuclear Operations, Inc., 400 Hamilton Avenue, White Plains, NY 10601.

NRC Branch Chief: Nancy Salgado.

Nine Mile Point Nuclear Station, LLC, (NMPNS) Docket No. 50–410, Nine Mile Point Nuclear Station Unit No. 2 (NMP 2), Oswego County, New York

Date of amendment request: December 9, 2009.

Description of amendment request: The proposed amendment would revise Technical Specification (TS) 3.8.4, "DC Sources—Operating," by removing the Mode restrictions for performance of TS Surveillance Requirements (SRs) 3.8.4.7 and 3.8.4.8 for the Division 3 direct current (DC) electrical power subsystem battery. These surveillances verify that the battery capacity is adequate for the battery to perform its required functions. The proposed amendment would remove these Mode restrictions for the Division 3 battery, thereby allowing performance of SR 3.8.4.7 and SR 3.8.4.8 for the Division 3 battery during Mode 1, 2, or 3 in conjunction with scheduled high pressure core spray (HPCS) system outages. Eliminating the requirement to perform SR 3.8.4.7 and SR 3.8.4.8 during Mode 4 or 5 (cold shutdown or refueling conditions) will provide greater flexibility in scheduling Division 3 battery testing activities by allowing the testing to be performed during non-outage times.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The Division 3 (HPCS) DC electrical power subsystem and its associated emergency loads are accident mitigating features, not accident initiators. Therefore, the proposed TS changes to allow performance of Division 3 battery surveillance testing (service test and the battery performance discharge test) in any plant operating mode will not significantly impact the probability of any previously evaluated accident.

The design and function of plant equipment is not being modified by the proposed amendment. Neither the battery test frequency nor the time that the TSs allow the HPCS system to be inoperable are being revised. Battery testing in accordance with the proposed TS changes will continue to verify that the Division 3 DC electrical power subsystem is capable of performing its required function of providing DC power to HPCS system equipment, consistent with the plant safety analyses. The battery testing period is within the period of time that the HPCS system will already be out of service for a planned system outage. The battery testing does not increase unavailability of the supported HPCS system or represent any change in risk above the current practice of planned system maintenance outages. Any risk associated with the testing of the Division 3 battery will be enveloped by the risk management of the HPCS system outage. In addition, the HPCS system reliability and availability are monitored and evaluated in relationship to Maintenance Rule goals to ensure that total outage times do not degrade operational safety over time.

Testing is limited to only one electrical division of equipment at a time to ensure that design basis requirements are met. Should a fault occur while testing the Division 3 battery, there would be no significant impact on any accident consequences since the other two divisional DC electrical power subsystems and their associated emergency loads would be available to provide the minimum safety functions necessary to shut

down the unit and maintain it in a safe shutdown condition.

Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

No changes are being made to the plant that would introduce any new accident causal mechanisms. Equipment will be operated in the same configuration with the exception of the plant operating mode in which the Division 3 battery surveillance testing is conducted. Performance of these surveillance tests while online will continue to verify operability of the Division 3 battery. The proposed license amendment does not impact any plant systems that are accident initiators and does not adversely impact any accident mitigating systems, since the HPCS system will already be out of service. The battery testing will not increase the out-of-service time for the HPCS system.

Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

Margin of safety is related to confidence in the ability of the fission product barriers (fuel cladding, reactor coolant system, and primary containment) to perform their design functions during and following postulated accidents. The proposed changes to the TS surveillance testing requirements for the Division 3 battery do not affect the operability requirements for the battery, as verification of such operability will continue to be performed as required. Continued verification of operability supports the capability of the Division 3 DC electrical power subsystem to perform its required function of providing DC power to HPCS system equipment, consistent with the plant safety analyses. Consequently, the performance of the fission product barriers will not be adversely impacted by implementation of the proposed amendment. In addition, the proposed changes do not alter setpoints or limits established or assumed by the accident analysis.

The battery testing will be performed when the HPCS system is already out of service for a planned system outage. The battery testing does not increase unavailability of the supported HPCS system or represent any change in risk above the current practice of planned system maintenance outages, as currently allowed by the TS.

Therefore, the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston & Strawn, 1700 K Street, NW., Washington, DC 20006.

NRC Branch Chief: Nancy L. Salgado.

Nine Mile Point Nuclear Station, LLC, (NMPNS) Docket No. 50–410, Nine Mile Point Nuclear Station Unit No. 2 (NMP 2), Oswego County, New York

Date of amendment request: December 18, 2009.

Description of amendment request: The proposed amendment would modify Technical Specifications (TS) requirements for unavailable barriers by adding limiting condition for operation (LCO) 3.0.9. The NRC staff issued a Notice of Opportunity to Comment in the **Federal Register** on June 2, 2006 (71 FR 32145), on possible amendments to revise the plant-specific TSs, including a model safety evaluation and model no significant hazards consideration determination using the consolidated line-item improvement process. The NRC staff subsequently issued a Notice of Availability of the models for referencing in license amendment applications in the **Federal Register** on October 3, 2006 (71 FR 58444). The licensee affirmed the applicability of the model no significant hazards consideration determination in its application dated December 18, 2009.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The proposed change allows a delay time for entering a supported system technical specification (TS) when the inoperability is due solely to an unavailable barrier if risk is assessed and managed. The postulated initiating events which may require a functional barrier are limited to those with low frequencies of occurrence, and the overall TS system safety function would still be available for the majority of anticipated challenges. Therefore, the probability of an accident previously evaluated is not significantly increased, if at all. The consequences of an accident while relying on the allowance provided by proposed LCO 3.0.9 are no different than the consequences of an accident while relying on the TS required actions in effect without the allowance provided by proposed LCO 3.0.9. Therefore, the consequences of an accident previously evaluated are not significantly affected by this change. The addition of a requirement to assess and manage the risk introduced by this change will further minimize possible concerns. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From Any Previously Evaluated

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed). Allowing delay times for entering supported system TS when inoperability is due solely to an unavailable barrier, if risk is assessed and managed, will not introduce new failure modes or effects and will not, in the absence of other unrelated failures, lead to an accident whose consequences exceed the consequences of accidents previously evaluated. The addition of a requirement to assess and manage the risk introduced by this change will further minimize possible concerns. Thus, this change does not create the possibility of a new or different kind of accident from an accident previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety

The proposed change allows a delay time for entering a supported system TS when the inoperability is due solely to an unavailable barrier, if risk is assessed and managed. The postulated initiating events which may require a functional barrier are limited to those with low frequencies of occurrence, and the overall TS system safety function would still be available for the majority of anticipated challenges. The risk impact of the proposed TS changes was assessed following the three-tiered approach recommended in RG [Regulatory Guide] 1.177. A bounding risk assessment was performed to justify the proposed TS changes. This application of LCO 3.0.9 is predicated upon the licensee's performance of a risk assessment and the management of plant risk. The net change to the margin of safety is insignificant as indicated by the anticipated low levels of associated risk (ICCDP [Incremental Conditional Core Damage Probability] and ICLERP [Incremental Conditional Large Early Release Probability]) as shown in Table 1 of Section 3.1.1 in the Safety Evaluation published in the **Federal Register** on October 3, 2006. Therefore, this change does not involve a

significant reduction in a margin of safety.

The NRC staff has reviewed the analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston & Strawn, 1700 K Street, NW., Washington, DC 20006.

NRC Branch Chief: Nancy L. Salgado.

Northern States Power Company—Minnesota, Docket Nos. 50–282 and 50–306, Prairie Island Nuclear Generating Plant, Units 1 and 2, Goodhue County, Minnesota

Date of amendment request: October 27, 2009.

Description of amendment request: The proposed amendment would adopt the Alternative Source Term (AST) methodology, in addition to Technical Specification (TS) changes supported by the AST design basis accident radiological consequences analyses. The proposed amendment would also incorporate Technical Specification Task Force (TSTF)–490, "Deletion of E-Bar Definition and Revision to RCS [reactor coolant system] Specific Activity Tech Spec," Revision 0.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

With this change, Prairie Island Nuclear Generating Plant (PINGP) proposes to implement 10 CFR 50.67, alternative source term methodologies, implement approved industry improved Standard Technical Specification traveler, TSTF–490, and revise TS 3.3.7, "Spent Fuel Pool Special Ventilation System Actuation Instrumentation," TS 3.7.12, "Auxiliary Building Special Ventilation System,"

TS 3.7.13, "Spent Fuel Pool Special Ventilation System," TS 3.9.4, "Containment Penetrations," TS 5.5.9, "Ventilation Filter Testing Program," TS 5.5.14, "Containment Leakage Rate Testing Program," and TS 5.5.16, "Control Room Habitability Program."

Alternative source term (AST) calculations have been performed for PINGP that demonstrate the dose consequences are consistent with the regulatory limits of 10 CFR 50.67 and the guidance of Regulatory Guide (RG) 1.183. The use of the AST methodology changes the regulatory assumptions regarding the analytical treatment of the design basis accidents and has no direct effect on the probability of any accident. AST methods have been utilized in the analysis of the limiting design basis accidents, as follows: loss of coolant accident, fuel handling accident, main steam line break, steam generator tube rupture, control rod ejection accident, and locked rotor accident. The results of the analyses, which include the proposed changes to the Technical Specifications, demonstrate that the dose consequences of these limiting events are within regulatory limits.

Reactor coolant specific activity is not an initiator for any accident previously evaluated. The Completion Time when reactor coolant gross activity is not within limit is not an initiator for any accident previously evaluated. The current variable limit on primary coolant iodine concentration is not an initiator to any accident previously evaluated. As a result, the proposed change does not significantly increase the probability of an accident. The proposed change will limit reactor coolant noble gases to concentrations consistent with the accident analyses. The proposed change to the Completion Time has no impact on the consequences of any design basis accident since the consequences of an accident during the extended Completion Time are the same as the consequences of an accident during the current Completion Time. As a result, the consequences of any accident previously evaluated are not significantly increased.

The Spent Fuel Pool Special Ventilation System is no longer credited for filtration or isolation. The Containment Penetrations TS is being replaced with a TS on Decay Time, which requires that recently irradiated fuel (<50 hours) cannot be handled. The Ventilation Filter Testing Program TS is being revised to reflect changes to filter testing. As a result of these TS changes, the probability or consequences of an accident previously evaluated are not significantly increased.

Based on the above, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

With this change, PINGP proposes to implement 10 CFR 50.67, alternative source term methodologies, implement approved industry improved Standard Technical Specification traveler, TSTF–490, and revise TS 3.3.7, "Spent Fuel Pool Special Ventilation System Actuation Instrumentation," TS 3.7.12, "Auxiliary Building Special Ventilation System," TS 3.7.13, "Spent Fuel Pool Special Ventilation System," TS 3.9.4, "Containment Penetrations," TS 5.5.9, "Ventilation Filter Testing Program," TS 5.5.14, "Containment Leakage Rate Testing Program," and TS 5.5.16, "Control Room Habitability Program."

The AST methodology is not an accident initiator, as it is a method used to estimate resulting accident doses. The proposed operation of plant systems affected by this change does not create the possibility of a new or different kind of accident previously evaluated. Changes that are proposed to plant equipment (ventilation systems) pertain to accident mitigation equipment. The operation or mis-operation of these ventilation systems do not initiate any accidents. The radiological consequence analyses demonstrate that the proposed changes are acceptable. The results of the analyses, which include the proposed changes to the Technical Specifications, demonstrate that the dose consequences of these limiting events are within regulatory limits.

The proposed change in specific activity limits does not alter any physical part of the plant nor does it affect any plant operating parameter. The change does not create the potential of a new or different kind of accident from any accident previously evaluated.

Based on the above, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed change does not involve a significant reduction in the margin of safety.

With this change, PINGP proposes to implement 10 CFR 50.67, alternative source term methodologies, implement approved industry improved Standard Technical Specification traveler, TSTF–490, and revise TS 3.3.7, "Spent Fuel Pool Special Ventilation System Actuation Instrumentation," TS 3.7.12, "Auxiliary Building Special Ventilation System," TS 3.7.13, "Spent Fuel Pool Special Ventilation System," TS 3.9.4, "Containment Penetrations," TS 5.5.9, "Ventilation Filter Testing Program," TS 5.5.14, "Containment Leakage Rate Testing Program," and TS 5.5.16, "Control Room Habitability Program."

The proposed implementation of the AST methodology is consistent with RG 1.183. The radiological consequences of these accidents are within the regulatory acceptance criteria associated with the use of the AST methodology. The doses at the exclusion area and low population zone boundaries and in the control room are consistent with the regulatory limits of 10 CFR 50.67 and the guidance of RG 1.183. The margin of safety for the radiological consequences of these accidents is considered to be that provided by meeting the applicable regulatory limits, which are set at or below 10 CFR 50.67 limits.

The proposed change to revise the limits on noble gas radioactivity in the primary coolant is consistent with the assumptions in the safety analyses and will ensure the monitored values protect the initial assumptions in the safety analyses.

Based on the above, the proposed change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Peter M. Glass, Assistant General Counsel, Xcel Energy

Services, Inc., 414 Nicollet Mall, Minneapolis, MN 55401.

NRC Branch Chief: Robert J. Pascarelli.

Virginia Electric and Power Company, Docket Nos. 50–338 and 50–339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of amendment request: January 29, 2010.

Description of amendment request: The amendments would change an Emergency Action Level (EAL) scheme based on NUREG–0654, "Criteria for Preparation and Evaluation of Radiological Emergency Response Plan and Preparedness in Support of Nuclear Power Plants," to one based on NEI 99–01, "Methodology for Development of Emergency Action Levels," Revision 4. This would change the methodology for deriving selected Notification of Unusual Event values in Table R–1, Gaseous Effluent Monitor Classification Thresholds, and deleting EAL RA2.4 which evaluates abnormal radiation readings at infrequently accessed areas and revise the radiation level threshold values for Reactor Coolant System (RCS) letdown indication.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1:

Does the proposed amendment involve a significant increase in the probability or Consequences of an accident previously evaluated?

Response: No.

These changes affect the North Anna [* * *] Power Station Emergency Action Levels, but do not alter any of the requirements of the Operating License or the Technical Specifications. The proposed changes do not modify any plant equipment and do not impact any failure modes that could lead to an accident. Additionally, the proposed changes have no effect on the consequences of any analyzed accident since the changes do not affect any equipment related to accident mitigation. Based on this discussion, the proposed amendment does not increase the probability or consequence of an accident previously evaluated.

Criterion 2:

Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

These changes affect the North Anna [* * *] Power Station Emergency Action Levels, but do not alter any of the requirements of the Operating License or the Technical Specifications. They do not modify any plant equipment and there is no impact on the capability of the existing equipment to perform their intended functions. No system setpoints are being modified. No new failure modes are introduced by the proposed changes. The proposed amendment does not introduce accident initiator or malfunctions that would cause a new or different kind of accident. Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Criterion 3:

Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

These changes affect the North Anna [* * *] Power Station Emergency Action Levels, but do not alter any of the requirements of the Operating License or the Technical Specifications. The proposed changes do not affect any of the assumptions used in the accident analysis, nor do they affect any operability requirements for equipment important to plant safety. Therefore, the proposed changes will not result in a significant reduction in the margin of safety as defined in the bases for technical specifications covered in this license amendment request. [Therefore, this change does not involve a significant reduction in a margin of safety.]

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Lillian M. Cuoco, Senior Counsel, Dominion Resources Services, Inc., 120 Tredegar Street, RS–2, Richmond, VA 23219.

NRC Branch Chief: Gloria Kulesa.

Virginia Electric and Power Company, Docket Nos. 50–280 and 50–281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia

Date of amendment request: January 27, 2010.

Description of amendment request: The proposed license amendment request would increase each unit's rated power (RP) level from 2546 megawatts thermal (MWt) to 2587 MWt, and make Technical Specifications changes as necessary to support operation at the uprated power level. The proposed change is an increase in RP of approximately 1.6%.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequence of an accident previously evaluated?

Response: No.

The proposed change will increase the Surry Power Station (SPS) Units 1 and 2 rated power (RP) from 2546 megawatts thermal (MWt) to 2587 MWt. Nuclear steam supply system and balance-of-plant systems, components and analyses that could be affected by the proposed change to the RP were evaluated using revised design parameters. The evaluations determined that these structures, systems and components are capable of performing their design function at the proposed uprated RP of 2587 MWt. An evaluation of the accident analyses demonstrates that the applicable analysis acceptance criteria are still met with the proposed changes. Power level is an input assumption to equipment design and accident analyses, but it is not a transient or accident initiator. Accident initiators are not affected by the power uprate, and plant safety barrier challenges are not created by the proposed changes.

The radiological consequences of operation at the uprated power conditions have been assessed. The proposed change to RP does not affect release paths, frequency of release, or the analyzed reactor core fission product inventory for any accidents previously evaluated in the SPS Updated Final Safety Analysis Report. There is a small increase in the reactor coolant activity concentration. Structures, systems and components required to mitigate transients are capable of performing their design functions with the proposed changes, and are thus acceptable. Analyses performed to assess the effects of mass and energy releases remain valid. The assessment of radiological consequences for operation at the proposed power level confirmed that there is not a significant increase for affected events.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

No new accident scenarios, failure mechanisms, or single failures are introduced as a result of any proposed changes. The ultrasonic flow meter (UFM) being installed to facilitate the Measurement Uncertainty Recapture (MUR) power uprate has been analyzed, and system failures will not adversely affect any safety-related system or any structures, systems or components required for transient mitigation. Structures, systems and components previously required for transient mitigation are still capable of fulfilling their intended design functions. The proposed changes have no significant adverse affect on any safety-related structures, systems or components and do not significantly change the performance or integrity of any safety-related system.

The proposed changes do not adversely affect any current system interfaces or create any new interfaces that could result in an accident or malfunction of a different kind than previously evaluated. Operating at an RP of 2587 MWt does not create any new accident initiators or precursors. Credible

malfunctions are bounded by the current accident analyses of record or recent evaluations demonstrating that applicable criteria are still met with the proposed changes.

Therefore, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The margins of safety associated with the power uprate are those pertaining to core thermal power. These include fuel cladding, reactor coolant system pressure boundary, and containment barriers. Core analyses demonstrate that power uprate implementation will continue to meet the current nuclear design basis. Impacts to components associated with the reactor coolant system pressure boundary structural integrity, and factors such as pressure-temperature limits, vessel fluence, and pressurized thermal shock were determined to be bounded by the current analyses.

Systems will continue to operate within their design parameters and remain capable of performing their intended safety functions following implementation of the proposed change. The current SPS safety analyses, and the revised design basis radiological accident dose calculations, bound the power uprate without significantly impacting margins.

Therefore, this change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Lillian M. Cuoco, Esq., Senior Counsel, Dominion Resources Services, Inc., 120 Tredegar St., RS–2, Richmond, VA 23219.

NRC Branch Chief: Gloria Kulesa.

Virginia Electric and Power Company, Docket Nos. 50–280 and 50–281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia

Date of amendment request: January 29, 2010.

Description of amendment request: The amendments would change an Emergency Action Level (EAL) scheme based on NUREG–0654, "Criteria for Preparation and Evaluation of Radiological Emergency Response Plan and Preparedness in Support of Nuclear Power Plants," to one based on NEI 99–01, "Methodology for Development of Emergency Action Levels," Revision 4. This would change the methodology for deriving selected Notification of Unusual Event values in Table R–1, Gaseous Effluent Monitor Classification Thresholds, and deleting EAL RA2.4 which evaluates abnormal radiation readings at infrequently accessed areas.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1:

Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

These changes affect the [* * *] Surry Power Station Emergency Action Levels, but do not alter any of the requirements of the Operating License or the Technical Specifications. The proposed changes do not modify any plant equipment and do not impact any failure modes that could lead to an accident. Additionally, the proposed changes have no effect on the consequences of any analyzed accident since the changes do not affect any equipment related to accident mitigation. Based on this discussion, the proposed amendment does not increase the probability or consequence of an accident previously evaluated.

Criterion 2:

Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

These changes affect the [* * *] Surry Power Station Emergency Action Levels, but do not alter any of the requirements of the Operating License or the Technical Specifications. They do not modify any plant equipment and there is no impact on the capability of the existing equipment to perform their intended functions. No system setpoints are being modified. No new failure modes are introduced by the proposed changes. The proposed amendment does not introduce accident initiator or malfunctions that would cause a new or different kind of accident. Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Criterion 3:

Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

These changes affect [* * *] the Surry Power Station Emergency Action Levels, but do not alter any of the requirements of the Operating License or the Technical Specifications. The proposed changes do not affect any of the assumptions used in the accident analysis, nor do they affect any operability requirements for equipment important to plant safety. Therefore, the proposed changes will not result in a significant reduction in the margin of safety as defined in the bases for technical specifications covered in this license amendment request. [Therefore, this change does not involve a significant reduction in a margin of safety.]

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Lillian M. Cuoco, Senior Counsel, Dominion Resources Services, Inc., 120 Tredegar St., RS–2, Richmond, VA 23219.

NRC Branch Chief: Gloria Kulesa.

Wolf Creek Nuclear Operating Corporation, Docket No. 50–482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: December 16, 2009.

Description of amendment request: The proposed changes would revise Technical Specification (TS) 3.8.4, "DC [Direct Current] Sources—Operating," Surveillance Requirement (SR) 3.8.4.2 and SR 3.8.4.5 to revise the battery connection resistance acceptance criteria for inter-cell connections from ≤ 150E–6 ohms to ≤ 33E–6 ohms and would add connection resistance acceptance criteria for inter-tier connections and inter-bank connection of ≤ 150E–6 ohms.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No

The proposed changes to revise the SR 3.8.4.2 and SR 3.8.4.5 acceptance criteria for battery connection resistance will not challenge the ability of the safety-related batteries to perform their safety function. Appropriate monitoring and maintenance will continue to be performed on the safety related batteries. Current TS testing and monitoring requirements will not be altered.

The proposed change does not involve a physical change to the batteries, nor does it change the safety function of the batteries. The proposed TS revision involves no significant changes to the operation of any systems or components in normal and accident operating conditions and no changes to existing structures, systems or components.

Therefore, this change will not increase the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any previously evaluated?

Response: No

The proposed changes to revise the SR 3.8.4.2 and SR 3.8.4.5 acceptance criteria for battery connection resistance is an increase in conservatism, without a change in system

testing methods, operation, or control. Safety related batteries installed in the plant will be required to meet criteria more restrictive and conservative than current acceptance criteria and standards. The proposed change does not affect the manner in which the batteries are tested and maintained, thus there are no new failure mechanisms for the system.

Therefore, this change will not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No

The margin of safety is established through equipment design, operating parameters, and the setpoints at which automatic actions are initiated. The proposed changes will not adversely affect operation of plant equipment, as the changes being made are more restrictive. These changes will not result in a change to the setpoints at which protective actions are initiated. Sufficient DC capacity to support operation of mitigation equipment is ensured. The changes associated with the new battery maintenance and monitoring program will ensure that the station batteries are maintained in a highly reliable manner. The equipment fed by the DC electrical sources will continue to provide adequate power to safety related loads in accordance with analysis assumptions.

Therefore, this change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jay Silberg, Esq., Pillsbury Winthrop Shaw Pittman LLP, 2300 N Street, N.W., Washington, DC 20037.

NRC Branch Chief: Michael T. Markley.

Previously Published Notices of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Duke Energy Carolinas, LLC, et al., Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of amendment request: October 2, 2008.

Brief description of amendment request: The proposed amendment would revise the Technical Specifications (TS) associated with the verification of ice condenser door operability and TS surveillance requirements 3.6.13.5 and 3.6.13.6.

Date of publication of individual notice in Federal Register: March 8, 2010 (75 FR 10513).

Expiration date of individual notice: Comments April 7, 2010; Hearing May 7, 2010.

Duke Energy Carolinas, LLC, Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of amendment request: October 2, 2008.

Brief description of amendment request: The proposed amendment would revise the Technical Specifications (TS) associated with the verification of ice condenser door operability and TS surveillance requirements 3.6.13.5 and 3.6.13.6.

Date of publication of individual notice in Federal Register: March 8, 2010 (75 FR 10508).

Expiration date of individual notice: Comments April 7, 2010; Hearing May 7, 2010.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.22(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1 (800) 397–4209, (301) 415–4737 or by email to *pdr.resource@nrc.gov*.

Carolina Power and Light Company, Docket No. 50–261, H. B. Robinson Steam Electric Plant, Unit No. 2, Darlington County, South Carolina

Date of application for amendment: June 19, 2009, as supplemented by letter dated October 20, 2009.

Brief description of amendment: The proposed amendment would revise Technical Specification 3.3.1, "Reactor Protection System Instrumentation." The proposed change revises the requirements related to the reactor protection system interlock for the turbine trip input to the reactor protection system.

Date of issuance: March 17, 2010.

Effective date: Effective as of the date of issuance and shall be implemented by the end of Refueling Outage 26.

Amendment No.: 222.

Renewed Facility Operating License No. DPR–23: The amendment revises the technical specifications.

Date of initial notice in Federal Register: January 5, 2010 (75 FR 460).

The Commission's related evaluation of the amendment is contained in a safety evaluation dated March 17, 2010.

Public comments received as to proposed no significant hazards consideration (NSHC): No.

Entergy Operations, Inc., Docket No. 50–313, Arkansas Nuclear One, Unit No. 1 (ANO–1), Pope County, Arkansas

Date of amendment request: March 13, 2008, as supplemented by letter dated February 28, 2010.

Brief description of amendment: The amendment replaced the current ANO–1 Technical Specification 3.4.12, "RCS [Reactor Coolant System] Specific Activity," limit on RCS gross specific activity with a new limit on RCS noble gas specific activity. The noble gas specific activity limit would be based on a new dose equivalent Xe-133 definition that would replace the current E Bar average disintegration energy definition. In addition, the current dose equivalent I–131 definition would be revised to allow the use of additional thyroid dose conversion factors.

Date of issuance: March 18, 2010.

Effective date: As of the date of issuance and shall be implemented within 90 days from the date of issuance.

Amendment No.: 243.

Renewed Facility Operating License No. DPR–51: Amendment revised the Technical Specifications/license.

Date of initial notice in Federal Register: May 6, 2008 (73 FR 25038). The supplemental letter dated February 28, 2010, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 18, 2010.

No significant hazards consideration comments received: No.

Entergy Operations, Inc., Docket No. 50–368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Date of application for amendment: March 2, 2009, as supplemented by letter dated June 24, 2009.

Brief description of amendment: The amendment modified Technical Specification (TS) 3.3.1.1, "Reactor Protective Instrumentation," and TS 3.3.2.1, "Engineered Safety Feature Actuation System Instrumentation," specifically, Table 3.3–1, Table 4.3–1, and Table 3.3–3, to adopt a mode of applicability for the Logarithmic Power Level—High, Pressurizer Pressure—Low, Steam Generator [SG] Pressure—Low, and the SG Differential Pressure and Level Low functions. These changes are consistent with NUREG–1432, Revision 3.0, "Standard Technical Specifications, Combustion Engineering Plants," dated June 2004.

Date of issuance: March 11, 2010.

Effective date: As of the date of issuance and shall be implemented within 90 days from the date of issuance.

Amendment No.: 289.

Renewed Facility Operating License No. NPF–6: Amendment revised the Technical Specifications/license.

Date of initial notice in Federal Register: June 2, 2009 (74 FR 26433). The supplemental letter dated June 24, 2009, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register** on June 2, 2009 (74 FR 26433).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 11, 2010.

No significant hazards consideration comments received: No.

Entergy Operations, Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: October 19, 2009.

Brief description of amendment: The amendment relocated the Waterford 3 Steam Generator Level—High trip requirements from Technical Specification Sections 2.2 and 3/4.3.1 to the Technical Requirements Manual (TRM). This change is consistent with Technical Specification Task Force (TSTF) 410–A, "Relocation of Steam Generator Level—High Trip to the TRM," and Revision 3 of NUREG–1432, "Standard Technical Specifications, Combustion Engineering Plants."

Date of issuance: March 18, 2010.

Effective date: As of the date of issuance and shall be implemented 90 days from the date of issuance.

Amendment No.: 225.

Facility Operating License No. NPF–38: The amendment revised the Facility Operating License and Technical Specifications.

Date of initial notice in Federal Register: December 1, 2009 (74 FR 62834).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 18, 2010.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket Nos. STN 50–456 and STN 50–457, Braidwood Station, Units 1 and 2 (Braidwood), Will County, Illinois

Docket Nos. STN 50–454 and STN 50–455, Byron Station, Unit Nos. 1 and 2 (Byron), Ogle County, Illinois

Date of application for amendment: December 4, 2008, as supplemented by letters dated February 17, 2009; July 27, 2009; December 4, 2009; and January 29, 2010.

Brief description of amendment: The amendments revise Technical Specifications (TSs) 1.1, "Definitions," and 3.4.16, "RCS [Reactor Coolant System] Specific Activity," and Surveillance Requirements 3.4.16.1, 3.4.16.2, and 3.4.16.3. The revisions replace the current TS 3.4.16 limit on RCS gross specific activity with a new limit on RCS noble gas-specific activity. The revisions adopt TS Task Force (TSTF) Change Traveler, TSTF–490, "Deletion of E Bar Definition and Revision to RCS Specific Activity Tech Spec [sic]," Revision 0.

Date of issuance: March 23, 2010.

Effective date: As of the date of issuance and shall be implemented within 90 days.

Amendment Nos.: Braidwood Unit 1–162; Braidwood Unit 2–162; Byron Unit No. 1–167; and Byron Unit No. 2–167.

Facility Operating License Nos. NPF–72, NPF–77, NPF–37, and NPF–66: The amendments revise the TSs and Licenses.

Date of initial notice in Federal Register: January 27, 2009 (74 FR 4771).

The supplemental letters provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the NRC staff's original proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 23, 2010.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket Nos. 50–373 and 50–374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois

Date of application for amendments: March 26, 2009, as supplemented by letter dated October 28, 2009.

Brief description of amendments: The proposed changes would revise Technical Specification 3.5.1, "Emergency Core Cooling Systems (ECCS) Operating," to delete the existing allowance with the Automatic Depressurization System accumulator backup compressed gas system that

currently allows a completion time of 72 hours to restore bottle pressure to ≥ 500 psig.

Date of issuance: March 19, 2010.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment Nos.: 196/183.

Facility Operating License Nos. NPF–11 and NPF–18: The amendments revised the Technical Specifications and License.

Date of initial notice in Federal Register: September 8, 2009 (74 FR 46242). The October 28, 2009 supplement, contained clarifying information and did not change the NRC staff's initial proposed finding of no significant hazards consideration.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 19, 2010.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket No. 50–289, Three Mile Island Nuclear Station, Unit 1 (TMI–1), Dauphin County, Pennsylvania

Date of application for amendment: November 6, 2008, supplemented by letters dated December 11, 2008, July 2, 2009, October 2, 2009, and November 24, 2009.

Brief description of amendment: The amendment replaces the current TMI–1 technical specification limit on Reactor Coolant System (RCS) gross specific activity with a new limit on RCS noble gas specific activity. The noble gas specific activity limit is based on a new dose equivalent Xenon-133 definition that replaces the previous E-Bar average disintegration energy definition. In addition, the dose equivalent Iodine-131 definition has been revised.

Date of issuance: March 11, 2010.

Effective date: As of the date of issuance and shall be implemented within 60 days of issuance.

Amendment No.: 272.

Renewed Facility Operating License No. DPR–50. Amendment revised the license and the technical specifications.

Date of initial notice in Federal Register: March 10, 2009 (74 FR 10309). The supplements dated December 11, 2008, July 2, 2009, October 2, 2009, and November 24, 2009, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the NRC staff's original proposed no significant hazards determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 11, 2010.

No significant hazards consideration comments received: No.

Nebraska Public Power District, Docket No. 50–298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: March 11, 2009, as supplemented by letters dated August 12 and December 21, 2009, and March 5, 2010.

Brief description of amendment: The amendment revised Surveillance Requirements 3.8.4.2 and 3.8.4.5 in Technical Specification Section 3.8.4, "DC [Direct Current] Sources—Operating," by adding a parameter of total battery resistance to the values of battery connection resistance.

Date of issuance: March 18, 2010.

Effective date: As of the date of issuance and shall be implemented within 45 days of issuance.

Amendment No.: 236.

Facility Operating License No. DPR–46: Amendment revised the Facility Operating License and Technical Specifications.

Date of initial notice in Federal Register: May 5, 2009 (74 FR 20752). The supplemental letters dated August 12 and December 21, 2009, and March 5, 2010, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 18, 2010.

No significant hazards consideration comments received: No.

Nine Mile Point Nuclear Station, LLC, Docket No. 50–410, Nine Mile Point Nuclear Station, Unit No. 2 (NMP2), Oswego County, New York

Date of application for amendment: March 30, 2009, as supplemented on November 2, 2009.

Brief description of amendment: The amendment modifies the NMP2 Technical Specification (TS) 3.8.1, "AC Sources—Operating," to remove operating mode restrictions for the performance of certain Surveillance Requirements (SRs) pertaining to the Division 3, High Pressure Core Spray (HPCS) Emergency Diesel Generator (DG). The testing in Modes 1 or 2 were previously prohibited in SR 3.8.1.7, SR 3.8.1.8, and SR 3.8.1.10, and in Modes 1, 2, or 3 in SR 3.8.1.9, SR 3.8.1.11, SR 3.8.1.14, SR 3.8.1.15, and SR 3.8.1.17. The amendment removes these Mode restrictions and allows the above SRs to be performed in any operating mode for the Division 3 DG. The Mode restrictions remain applicable to the other two safety-related (Division 1 and Division 2) DGs.

Date of issuance: March 18, 2010.

Effective date: As of the date of issuance to be implemented within 90 days.

Amendment No.: 133.

Renewed Facility Operating License No. NPF–069: The amendment revises the License and TSs.

Date of initial notice in Federal Register: June 16, 2009 (74 FR 28577).

The supplemental letter dated November 2, 2009, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the Nuclear Regulatory Commission staff's initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 18, 2010.

No significant hazards consideration comments received: No.

Tennessee Valley Authority, Docket Nos. 50–259, 50–260, and 50–296, Browns Ferry Nuclear Plant, Units 1, 2, and 3, Limestone County, Alabama

Date of application for amendments: July 27, 2009.

Description of amendment request: The amendments revised the Technical Specifications to change Surveillance Requirement 3.6.1.3, "Primary Containment Isolation Valves," to eliminate unnecessary local leak rate tests.

Date of issuance: March 22, 2010.

Effective date: Date of issuance, to be implemented within 60 days.

Amendment Nos.: 277, 304, and 263.

Renewed Facility Operating License Nos. DPR–33, DPR–52, and DPR–68: Amendments revised the Operating License and Technical Specifications.

Date of initial notice in Federal Register: October 20, 2009 (74 FR 53781).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 22, 2010.

No significant hazards consideration comments received: No.

Union Electric Company, Docket No. 50–483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of application for amendment: March 20, 2009, as supplemented by letters dated December 10, 2009, and January 19, 2010.

Brief description of amendment: The amendment revised Technical Specification (TS) 5.5.16, "Containment Leakage Rate Testing Program." The revision reflects a one-time extension of

the current containment Type A leak rate test (integrated leak rate test or ILRT) interval requirement of Title 10 of the Code of Federal Regulations (10 CFR) Part 50, Appendix J, "Primary Reactor Containment Leakage Testing for Water-Cooled Power Reactors," Option B, "Performance Based Requirements," from 10 years to 15 years. The amendment allows the next ILRT to be performed no later than October 25, 2014.

Date of issuance: March 17, 2010.

Effective date: As of its date of issuance and shall be implemented within 90 days from the date of issuance.

Amendment No.: 195.

Facility Operating License No. NPF–30: The amendment revised the Operating License and Technical Specifications.

Date of initial notice in Federal Register: August 25, 2009 (74 FR 42931). The supplemental letters dated December 10, 2009, and January 19, 2010, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 17, 2010.

No significant hazards consideration comments received: No.

Dated at Rockville, Maryland, this 25th day of March 2010.

For the Nuclear Regulatory Commission.

Joseph G. Giitter,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2010–7451 Filed 4–5–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–387 and 50–388; NRC–2010–0109]

PPL Susquehanna, LLC.; Susquehanna Steam Electric Station, Units 1 And 2; Correction to Federal Register Notice for Environmental Assessment and Finding of No Significant Impact

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of issuance; correction.

SUMMARY: This document corrects a notice appearing in the **Federal Register** on March 19, 2010 (75 FR 13322), that incorrectly stated the number of exemptions requested by the licensee and the corresponding implementation date. This action is necessary to correct erroneous information.

FOR FURTHER INFORMATION CONTACT: Bhalchandra K. Vaidya, NRR/DORL/PM, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone (301) 415–3308, e-mail: *Bhalchandra.Vaidya@nrc.gov.*

SUPPLEMENTARY INFORMATION:

(1) On page 13322, in the first column, third complete paragraph, lines twelve, thirteen, and fourteen, it reads, "October 29, 2010, for two requirements and until July 31, 2011, for one other requirement. The proposed action, an" and is corrected to read "October 29, 2010, for one requirement and until July 31, 2011, for two other requirements. The proposed action, an."

(2) On page 13322, in the second column, third complete paragraph, lines two, three, and four, it reads, "until October 29, 2010, for two requirements and until July 31, 2011, for one other requirement" and is corrected to read, "until October 29, 2010, for one requirement and until July 31, 2011, for two other requirements."

(3) On page 13322, in the third column, second complete paragraph, last line, it reads, "13926, 13967 (March 27, 2009)]" and is corrected to read, "13926 (March 27, 2009)]."

(4) On page 13322, in the third column, third complete paragraph, lines nine, ten, and eleven, it reads, "October 29, 2010, for two requirements and until July 31, 2011, for one other requirement, would not have any" and is corrected to read, "October 29, 2010, for one requirement and until July 31, 2011, for two other requirements, would not have any".

Dated in Rockville, Maryland this 29th day of March 2010.

For the Nuclear Regulatory Commission.

Bhalchandra K. Vaidya,

Project Manager Plant Licensing Branch 1–1, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2010–7722 Filed 4–5–10; 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 April 5, 12, 19, 26, May 3, 10, 2010.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Week of April 5, 2010

Tuesday, April 6, 2010

9 a.m.

Periodic Briefing on New Reactor Issues—Design Certifications (Public Meeting). (Contact: Amy Snyder, 301–415–6822).

This meeting will be Webcast live at the Web address—*http://www.nrc.gov.*

Thursday, April 8, 2010

9:30 a.m.

Briefing on Regional Programs—Programs, Performance, and Future Plans (Public Meeting). (Contact: Richard Barkley, 610–337–5065).

This meeting will be Webcast live at the Web address—*http://www.nrc.gov.*

Week of April 12, 2010—Tentative

Thursday, April 15, 2010

9:30 a.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 April 19, 2010—Tentative

There are no meetings scheduled for the week of April 19, 2010.

Week of April 26, 2010—Tentative

Thursday, April 29, 2010

9:30 a.m.

Briefing on the Fuel Cycle Oversight Process Revisions (Public Meeting). (Contact: Michael Raddatz, 301–492–3108).

This meeting will be Webcast live at the Web address—*http://www.nrc.gov.*

Week of May 3, 2010—Tentative

Tuesday, May 4, 2010

9:30 a.m.

Briefing on Human Capital and Equal Employment Opportunity (Public Meeting). (Contact: Kristin Davis, 301–415–2673).

This meeting will be Webcast live at the Web address—*http://www.nrc.gov.*

Week of May 10, 2010—Tentative

Tuesday, May 11, 2010

9:30 a.m.

Briefing on Federal State Materials and Environmental Management

Programs (FSME) Programs, Performance, & Future Plans (Public Meeting). (Contact: George Deegan, 301–415–7834).

This meeting will be Webcast live at the Web address—*http://www.nrc.gov.*

* * * * *

*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.

* * * * *

Additional Information

By a vote of 3–0 on March 25, 2010, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that Affirmation of: a. *Entergy Nuclear Generation Company and Entergy Nuclear Operations, Inc.*— (Pilgrim Nuclear Power Station) Review of LBP–07–13 (Ruling on Motion to Dismiss SAMA Contention) b. *Tennessee Valley Authority* (Watts Bar Nuclear Plant, Unit 2), Notice of Appeal, and Brief on Appeal of LBP–09–26 by Sierra Club, Blue Ridge Environmental Defense League, Tennessee Environmental Council, and We the People, Inc. (Dec. 3, 2009) be held on March 26, 2010, with less than one week notice to the public. Both items were affirmed.

* * * * *

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: April 1, 2010.

Richard J. Laufer,

Office of the Secretary.

[FR Doc. 2010–7864 Filed 4–2–10; 4:15 pm]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for OMB Review; Request for Comments On a Revised Information Collection: (OMB Control No. 3206–0140; Forms RI 20–7 and RI 30–3)

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) has submitted to the Office of Management and Budget (OMB) a request for review of a revised information collection. This information collection, "Representative Payee Application" (OMB Control No. 3206–0140; Form RI 20–7), is used by the Civil Service Retirement System (CSRS) and the Federal Employees Retirement System (FERS) to collect information from persons applying to be fiduciaries for annuitants or survivor annuitants who appear to be incapable of handling their own funds or for minor children. "Information Necessary for a Competency Determination" (OMB Control No. 3206–0140; Form RI 30–3), collects medical information regarding the annuitant's competency for OPM's use in evaluating the annuitant's condition.

We estimate 12,480 RI 20–7 forms are completed annually. The form requires approximately 30 minutes for completion. The annual burden is 6,240 hours. Approximately 250 RI 30–3 forms will be completed annually. The form requires approximately 1 hour for completion. The annual burden is 250 hours. The total annual burden is 6,490.

For copies of this proposal, contact Cyrus S. Benson on (202) 606–4808, FAX (202) 606–0910 or via E-mail to *Cyrus.Benson@opm.gov.* Please include a mailing address with your request.

DATES: Comments on this proposal should be received within 30 calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to— James K. Freiert (Acting), Deputy Associate Director, Retirement Operations, Retirement and Benefits, U.S. Office of Personnel Management, 1900 E Street, NW., Room 3305, Washington, DC 20415–3500; and OPM Desk Officer, Office of Information & Regulatory Affairs, Office of Management and Budget, New Executive Office Building, 725 17th Street, NW., Room 10235, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Cyrus S. Benson, Team Leader, Publications Team, Retirement & Benefits/Resource Management, U.S. Office of Personnel Management, 1900 E Street, NW., Room 4H28, Washington, DC 20415, (202) 606–4808.

Office of Personnel Management

John Berry,

Director.

[FR Doc. 2010–7727 Filed 4–5–10; 8:45 am]

BILLING CODE 6325–38–P

POSTAL SERVICE

International Product Change—Global Reseller Expedited Package Contracts

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add Global Reseller Expedited Package Contracts to the Competitive Products List pursuant to 39 U.S.C. 3642.

DATES: April 6, 2010.

FOR FURTHER INFORMATION CONTACT: Margaret M. Falwell, 703–292–3576.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that it has filed with the Postal Regulatory Commission a Request of the United States Postal Service to add Global Reseller Expedited Package Contracts to the Competitive Products List, and Notice of Filing (Under Seal) of Contract and Enabling Governors' Decision. Documents are available at *http://www.prc.gov,* Docket Nos. MC2010–21 and CP2010–36.

Neva R. Watson,

Attorney, Legislative.

[FR Doc. 2010–7762 Filed 4–5–10; 8:45 am]

BILLING CODE 7710–12–P

SMALL BUSINESS ADMINISTRATION

Interest Rates

The Small Business Administration publishes an interest rate called the optional "peg" rate (13 CFR 120.214) on a quarterly basis. This rate is a weighted average cost of money to the government for maturities similar to the average SBA direct loan. This rate may

be used as a base rate for guaranteed fluctuating interest rate SBA loans. This rate will be 4.000 (4) percent for the April–June quarter of FY 2010.

Pursuant to 13 CFR 120.921(b), the maximum legal interest rate for any third party lender's commercial loan which funds any portion of the cost of a 504 project (see 13 CFR 120.801) shall be 6% over the New York Prime rate or, if that exceeds the maximum interest rate permitted by the constitution or laws of a given State, the maximum interest rate will be the rate permitted by the constitution or laws of the given State.

Grady B. Hedgespeth,

Director, Office of Financial Assistance.

[FR Doc. 2010–7716 Filed 4–5–10; 8:45 am]

BILLING CODE P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61805; File No. SR–BX–2010–022]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Price Improvement Period

March 31, 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 March 25, 2010, NASDAQ OMX BX, Inc. (the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the 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 Chapter V, Section 18 (The Price Improvement Period ("PIP")) of the Rules of the Boston Options Exchange Group, LLC ("BOX"). The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room and also on the Exchange's Internet Web site at *http://nasdaqomxbx.cchwallstreet.com/NASDAQOMXBX/Filings/.*

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The PIP currently allows Initiating Participants[3] to enter two-sided orders for execution with the possibility of receiving a price that improves upon the National Best Bid or Offer ("NBBO") ("price improvement"). The customer side of these orders ("PIP Order") is exposed[4] to Options Participants to give them an opportunity to compete for allocations in the PIP by entering orders ("Improvement Orders") at the proposed cross price or better. This provides an opportunity for the PIP Order to receive price improvement. PIP Orders are submitted to BOX with a matching guaranteed contra order ("Primary Improvement Order"), equal to the full size of the PIP Order. The Primary Improvement Order currently must represent a single price ("Single-Priced Primary Improvement Order")[5] that is equal to or better than that of the NBBO at the time of the commencement of the PIP.

The purpose of this proposed rule change is to add an auto-match functionality within the PIP for the Initiating Participant to submit a Primary Improvement Order that will automatically match both the price and size of all competing quotes and orders at any price level achieved during the PIP auction or only up to a designated limit price ("Max Improvement Primary Improvement Order"). Either the Single-Priced Primary Improvement Order or the Max Improvement Primary Improvement Order will designate the PIP auction start price ("PIP Start Price"), which shall be equal to or better than the NBBO at the time of commencement of the PIP. With a Max Improvement Primary Improvement Order the Initiating Participant does not respond at all, but instead must honor the prices set forth by the competing orders, including booked unrelated orders, received from other Options Participants. After the commencement of a PIP, the Initiating Participant would not be able to cancel or modify the Max Improvement Primary Improvement Order. In this case, the Initiating Participant would not have control over the prices at which it receives an allocation at the conclusion of the PIP auction.

Under the proposal, at the conclusion of the PIP, the Max Improvement Primary Improvement Order shall be allocated its full size at each price level where there are competing quotes or orders, except where restricted by any designated max improvement limit price, until a price level is reached where the balance of the PIP Order can be fully executed. Only at such price level will the Initiating Participant retain priority for the greater of one contract or 40% of the remaining size of the PIP Order.

The following example illustrates how the proposed PIP auto-match functionality will operate for the Max Improvement Primary Improvement Order:

At the commencement of the PIP the NBBO is 2.00 (bid)—2.10 (offer). The Initiating Participant submits to the PIP a customer order to sell 155 contracts at $2.01 (''the PIP Order") while simultaneously submitting a guaranteed contra Max Improvement Primary Improvement Order with a PIP Start Price of $2.01 (bid) and a designated max improvement limit price of $2.04 (bid). During the PIP auction the following competing orders were received from Options Participants: PIP Participant A: $2.05 (bid) for 5 contracts (a booked unrelated order); PIP Participant B: $2.03 (bid) for 15 contracts; PIP Participant C: $2.02 (bid) for 10 contracts; and PIP Participant D: $2.01 (bid) for 155 contracts.

The following allocations shall occur at the conclusion of the PIP auction:

- Participant A is allocated 5 contracts at $2.05.
  - Remaining size of PIP Order is 150.
  - Note that Initiating Participant is not allocated any quantity at this price level because it exceeds the Max Improvement Primary Improvement Order designated limit price of $2.04.
- Initiating Participant *and* Participant B are each allocated 15 contracts at $2.03.

[3] Options Participants, both OFPs and Market Makers, who submit PIP Orders for price improvement.

[4] BOX commences a PIP by broadcasting a message to all Options Participants that (1) states that a Primary Improvement Order has been processed; (2) contains information concerning series, size, PIP Start Price and side of the market, and; (3) states when the PIP will conclude ("PIP Broadcast").

[5] Presently, a Single-Priced Submission is the only manner in which an Options Participant may start a PIP.

- Remaining size of PIP Order is 120.
- Initiating Participant *and* Participant C are each allocated 10 contracts at $2.02.
- Remaining size of PIP Order is 100.
- Initiating Participant is allocated 40 contracts at $2.01 (40% of the remaining quantity of 100 contracts) and Participant D is allocated 60 contracts (balance of the remaining quantity of the PIP Order after the Initiating Participant's allocation at this price level).

BOX's PIP allows for broad participation in its competitive auction by all types of market participants (*e.g.* Public Customers, Broker Dealers and Market Makers).[6] All Options Participants are able to receive the PIP Broadcasts and may respond by submitting competing Improvement Orders. All PIP Orders entered into the PIP will continue to be broadly exposed in the auction before the Initiating Participant can execute against the PIP Order via the Max Improvement Primary Improvement Order.

BOX notes that when the Initiating Participant selects the Max Improvement Primary Improvement Order prior to the start of the auction, the available liquidity at improved prices would be automatically doubled and competitive final pricing would be out of the Initiating Participant's control. The Exchange believes that the proposal, if approved, will increase competition in the PIP auction, will provide more options contracts with price improvement and incent Options Participants to initiate more such Max Improvement PIP auctions. Increases in the number of PIP auctions initiated by BOX Options Participants will directly correlate with an increase in the number of customer orders that are provided with the opportunity to receive price improvement over the NBBO.

The Exchange also notes that a similar auto-match function is currently in place on at least one other options exchange.[7]

The Exchange represents that BOX shall provide the Commission with the following data: The percentage of all BOX trades effected through the PIP in which the Initiating Participant has submitted a Max Improvement Primary Improvement Order with a limit price and the percentage without a limit price, and the average amount of price improvement provided to the PIP Order when the Initiating Participant has submitted a Max Improvement Primary Improvement Order with a limit price and the average without a limit price, versus the average amount of price improvement provided to the PIP Order when the Initiating Participant has chosen a Single-Priced Primary Improvement Order.

After effectiveness of the proposal, and at least one week prior to implementation of the rule change, BOXR will issue a regulatory circular to Options Participants. The regulatory circular will inform Options Participants of the implementation date of the Max Improvement function. This will give Options Participants an opportunity to make any necessary modifications to coincide with the implementation date.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,[8] in general, and Section 6(b)(5) of the Act,[9] in particular, in that it is designed 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 for a free and open market and a national market system and, in general, to protect investors and the public interest. In particular, the Exchange believes that the proposal, if approved, will result in double the liquidity available at improved prices with competitive final pricing out of the Initiating Participant's control, thus increasing competition in the PIP auction and providing more options contracts with price improvement. As a result of the increased opportunity for price improvement, the Exchange believes that Options Participants will be incented to initiate more such Max Improvement PIP auctions. Increases in the number of PIP auctions initiated by BOX Options Participants will directly correlate with an increase in the number of customer orders that are provided with the opportunity to receive price improvement over the NBBO.

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 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

The Exchange has neither solicited nor received comments on 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[10] and Rule 19b–4(f)(6) thereunder.[11]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act[12] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)[13] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests that the Commission waive the 30-day operative delay because the changes to the PIP auction will allow immediate increases in the liquidity available at improved prices. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest and designates the proposal operative upon filing.[14]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

[6] The Exchange notes that no changes to the priority of Public Customer Orders within the PIP auction are being proposed.

[7] *See* CBOE Rule 6.74A Automated Improvement Mechanism ("AIM"). *See also* Securities Exchange Act Release No. 53222 (February 3, 2006), 71 FR 7089 (February 10, 2006) (SR–CBOE–2005–60) (Order Granting Approval of Proposed Rule Change and Amendment No. 1 Thereto and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 2 to the Proposed Rule Change Relating to an Automated Improvement Mechanism).

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[12] 17 CFR 240.19b–4(f)(6).

[13] 17 CFR 240.19b–4(f)(6).

[14] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

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–BX–2010–022 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–BX–2010–022. 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,[15] all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 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–2010–022 and should be submitted on or before April 27, 2010.

[15] The text of the proposed rule change is available on the Commission's Web site at *http://www.sec.gov/rules/sro.shtml.*

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–7693 Filed 4–5–10; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61808; File No. SR–FINRA–2010–005]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving Proposed Rule Change To Repeal Incorporated NYSE Rule 405(4) (Common Sales Accounts)

March 31, 2010.

On January 21, 2010, Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act" or "Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change. The proposed rule change was published for comment in the **Federal Register** on February 25, 2010.[3] The Commission received no comments on the proposed rule change.

I. Description of the Proposal

As part of the process of developing a new consolidated rulebook ("Consolidated FINRA Rulebook"),[4] FINRA proposed to repeal NYSE Rule 405(4) (Common Sales Accounts).[5]

NYSE Rule 405(4) (Common Sales Accounts) required proper supervision of registered representatives handling common sales accounts. The rule provided that a member might facilitate the isolated liquidation of securities valued at $1,000 or less registered in the name of an individual who does not have an account, and which are not part of any distribution, through a common sales account set up for the specific purpose of handling such sales. The rule further provided that such sales might be effected on behalf of the customer without requiring the member to send a periodic customer account statement to the individual as otherwise generally required, provided the following conditions were satisfied: (1) The customer was identified as the individual in whose name the securities are registered; (2) the securities were received by the member, at or prior to the time of the entry of the order, in the exact amount to be sold in good delivery form; (3) a confirmation was sent to the customer; (4) all proceeds of such sales were paid out on or immediately following settlement date; and (5) a record was made in the common sales account that includes certain customer-specific information.

FINRA believed that the rule as written might raise potential investor protection concerns. The term "isolated" was not defined.[6] Further, NYSE Rule 405(4) permitted a member to effect sales of securities for customers without expressly requiring prior customer consent and without the need to send periodic account statements to the customer. For these reasons, FINRA proposed to eliminate NYSE Rule 405(4) and not adopt its content into the Consolidated FINRA Rulebook.[7]

[16] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Exchange Act Release No. 61543 (February 18, 2010); 75 FR 8770 (February 25, 2010).

[4] The current FINRA rulebook consists of (1) FINRA Rules; (2) NASD Rules; and (3) rules incorporated from the New York Stock Exchange ("Incorporated NYSE Rules") (together, the NASD Rules and Incorporated NYSE Rules are referred to as the "Transitional Rulebook"). While the NASD Rules generally apply to all FINRA members, the Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE ("Dual Members"). The FINRA Rules apply to all FINRA members, unless such rules have a more limited application by their terms. For more information about the rulebook consolidation process, *see Information Notice,* March 12, 2008 (Rulebook Consolidation Process).

[5] For convenience, the Incorporated NYSE Rules are referred to as the "NYSE Rules."

[6] NYSE Rule 405(4) was adopted by the NYSE in the late 1960s. In 1977, the NYSE proposed amendments to Rule 405(4) to define the term "isolated" to mean "not exceeding five $2,000 transactions during any twelve-month period unless otherwise approved by the NYSE," and to allow unsolicited purchases as well as sales of securities. In late 1977, the SEC instituted proceedings to determine whether to disapprove the proposed rule change and identified the potential grounds for disapproval. *See* Securities Exchange Act Release No. 14143 (November 7, 1977) (Order Instituting Proceedings to Determine Whether Proposed Changes to Rule 405 Should be Disapproved; File No. SR–NYSE–76–34). The SEC expressed concern that "execution of such transactions, and in particular of purchases [as proposed], in the common purchase and sale account may permit opportunities for fraudulent and manipulative acts or practices[.]" In February 1978, the NYSE withdrew the filing. *See* Securities Exchange Act Release No. 14630 (April 3, 1978) (Order Approving Withdrawal of NYSE's Proposed Changes to Rule 405; File No. SR–NYSE–76–34).

[7] FINRA notes that in the event a member may seek permission not to send customer account statements under certain limited circumstances, proposed FINRA Rule 2231, which relates to customer account statements, would authorize FINRA to exempt members from the provisions of such rule, including the requirement to deliver periodic account statements, pursuant to the Rule 9600 Series. *See* Securities Exchange Act Release No. 59921 (May 14, 2009); 74 FR 23912 (May 21, 2009) (Notice of Filing; File No. SR–FINRA–2009–028).

II. Discussion

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 applicable to a national securities association.[8] In particular, the Commission finds that the proposed rule change is consistent with Section 15A(b)(6) of the Act, [9] in that it is designed, among other things, 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 by eliminating a rule that contains terms that are not clearly defined and raises potential investor protection concerns.

III. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities association.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[10] that the proposed rule change (SR–FINRA–2010–010) be and hereby is approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–7695 Filed 4–5–10; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61818; File No. SR–NYSEAmex–2010–18]

Self-Regulatory Organizations; NYSE Amex LLC; Order Granting Accelerated Approval of the Proposed Rule Change Relating to the Designation of a "Professional Customer"

March 31, 2010.

I. Introduction

On February 25, 2010, the NYSE Amex LLC ("NYSE Amex" or the "Exchange") filed with the Securities and Exchange Commission ("Commission") a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder [2] to designate any Customer [3] that places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s) as a "Professional Customer." The proposed rule change was published for comment in the **Federal Register** on March 9, 2010.[4] The Commission did not receive any comments on the proposed rule change. This order approves the proposal on an accelerated basis.

II. Description of NYSE Amex's Proposal

NYSE Amex proposes to adopt a new term, "Professional Customer," which would be defined in NYSE Amex Rule 900.2NY(18A) as a person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). Under the proposal, a Professional Customer would be treated in the same manner as a broker or dealer in securities for purposes of certain execution rules of the Exchange. Specifically, the orders of a Professional Customer generally would be treated in the same manner as a broker-dealer in securities for the purposes of NYSE Amex Rules 900.3NY(j) (Facilitation Order), 904G(f) (FLEX Trading Procedures and Principles—Crossing Limitations), 934NY (Crossing), 934.1NY (Facilitation Cross Transactions), 934.2NY (At-Risk Cross Transactions), 934.3NY (Solicitation), 963NY (Priority and Order Allocation Procedures—Open Outcry), 963.1NY (Complex Order Transactions), 964NY (Display, Priority and Order Allocation—Trading Systems), 964.2NY(b)(1)(iii) (Participation Entitlement of Specialists and e-Specialists), 964.2NY(b)(3)(B) (Allocation of Participation Entitlement Amongst Specialist Pool), 980NY(b) (Electronic Complex Order Trading), Rule 995NY(b) (Prohibited Conduct—Limit Orders) and the Exchange's schedule of fees.

Under the proposal, a Professional Customer would participate in NYSE Amex's allocation process on equal terms with broker-dealers—*i.e.,* Professional Customers would not receive priority over broker-dealers in the allocation of orders on the Exchange. The Exchange states that the proposal would not otherwise affect non-broker-dealer individuals or entities under NYSE Amex rules. All Customer orders, including non-broker-dealer orders included in the definition of "Professional Customers," would continue to be treated equally for purposes of the Exchange's rules concerning away market protection.

The proposal requires ATP holders to indicate whether Customer orders are "Professional Customer" orders.[5] To comply with this requirement, ATP holders would be required to review their customers' activity on at least a quarterly basis to determine whether orders that are not for the account of a broker or dealer should be represented as Customer orders or Professional Customer orders.[6] The Exchange states that it intends to file a separate proposed rule change to adopt fees for professional orders.[7]

III. Commission Findings and Order Granting Approval of the Proposed Rule Change Change

After careful consideration of the proposed rule change, the Commission finds that the proposed rule change is consistent with the Act. Specifically, the Commission finds that the proposed rule change is consistent with Section

[8] In approving the proposed rule change, the Commission has considered the rule change's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[9] 15 U.S.C. 78*o*–3(b)(6).

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Under NYSE Amex rules, "Customer" is defined as "an individual or organization that is not a Broker/Dealer." *See* NYSE Amex Rule 900.2NY(18).

[4] *See* Securities Exchange Act Release No. 61629 (March 2, 2010), 75 FR 10851 (March 9, 2010) ("Notice").

[5] The Exchange intends to require firms to identify Professional Customer orders submitted electronically to the system by identifying them with the number "8" in the customer type field—a mandatory field required for order entry. Manual orders submitted outside the electronic system would be marked with an origin code of "PC." These Professional Customer identifiers would also flow through Exchange systems into audit trail and trade reporting data. *See* Notice, *supra* note 4 at 10852.

[6] Orders for any customer that had an average of more than 390 orders per day during any month of a calendar quarter must be represented as Professional Customer orders for the next calendar quarter. ATP Holders would be required to conduct a quarterly review and make any appropriate changes to the way in which they are representing orders within five business days after the end of each calendar quarter. While members only would be required to review their accounts on a quarterly basis, if during a quarter the Exchange identifies a customer for which orders are being represented as Customer orders but that has averaged more than 390 orders per day during a month, the Exchange would notify the ATP Holder and the ATP Holder would be required to change the manner in which it is representing the customer's orders within five business days. The Exchange confirmed that references to "five days" in footnote 10 of the Notice should be read as "five business days." E-mail from Matthew Vaughn, Counsel, NYSE Euronext to Ronesha Butler, Special Counsel, Division of Trading and Markets, dated March 31, 2010.

[7] *See* Notice, *supra* note 4 at 10852.

6(b)[8] of the Act and the rules thereunder,[9] and in particular with:

Section 6(b)(5) of the Act, which requires that the rules of a national securities exchange, among other things, be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism for 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; [10] and

Section 6(b)(8) of the Act, which requires the rules of an exchange not to impose any burden on competition not necessary or appropriate in furtherance of the Act.[11]

Under the proposed rule change, customers who place orders on the level of frequency specified in proposed NYSE Amex Rule 900.2NY(18A) would be deemed Professional Customers and would no longer receive the priority treatment currently granted to all public customers. The Commission has previously approved similar proposals to give the orders of certain customers, identified as "Professional Orders" [12] or "Professionals",[13] no greater priority than that given to broker-dealer orders.[14] Under the Professional Customer Approval Orders, the orders of public customers that are deemed Professional orders are no longer accorded the priority granted to the orders of all other public customers.[15] While NYSE Amex Rule 900.2NY (18A) differs slightly from the rules adopted in the Professional Customer Approval Orders, the Commission believes that the Exchange's proposed rule change is comparable to rules of the ISE, CBOE and Phlx, which the Commission found to be consistent with the Act.

In the ISE Approval Order, the Commission reviewed the background and history of customer order priority rules on national securities exchanges, and analyzed the role played in the shaping of these rules by various considerations and principles. In this regard, the Commission discussed the requirement of Section 6(b)(5) of the Act that the rules of an exchange be designed to protect investors and the public interest; traditional notions of customer priority in exchange trading; the agency obligations of exchange specialists; and the requirements of Section 11(a) of the Act.[16] In approving the ISE proposal, the Commission articulated its view that priority for public customer orders is not an essential attribute of an exchange,[17] and noted that in the past it has approved trading rules at options exchanges that do not give priority to orders of public customers that are priced no better than the orders of other market participants.[18]

In the ISE Approval Order, the Commission concluded that Section 6(b)(5) of the Act does not require an exchange to treat the orders of public customers who place orders at the frequency of more than 390 orders per day on average identically to the orders of public customers who do not meet that threshold.[19] For the same reason, the Commission believes that the Exchange's proposed rule change is consistent with Section 6(b)(5) of the Act.

The Commission believes that its view with respect to the ISE Approval Order is equally applicable to the NYSE Amex proposal. In this regard, the Commission does not believe that the Act requires that the orders of a public customer or any other market participant be granted priority. Historically, in developing their trading and business models, exchanges have adopted rules, with Commission approval, that grant priority to certain participants over others, in order to attract order flow or to create more competitive markets. However, the Act does not entitle any participant to priority as a right. The requirement of Section 6(b)(8) of the Act that the rules of an exchange not impose an unnecessary or inappropriate burden upon competition does not necessarily mandate that a Professional Customer (as defined in the NYSE Amex proposal) be granted priority at a time that a broker-dealer is not granted the same right. The NYSE Amex proposal simply restores the treatment of persons who would be deemed Professional Customers to a base line where no special priority benefits are granted.[20] Thus, the Commission believes that it is consistent with the Act for the Exchange to amend its rules so that Professional Customer orders, like the orders of broker-dealers, are not granted special priority.[21]

Pursuant to Section 19(b)(2) of the Act,[22] the Commission may not approve any proposed rule change, or amendment thereto, prior to the 30th day after the date of publication of notice of the filing thereof, unless the Commission finds good cause for so doing and publishes its reasons for so finding. The Commission hereby finds good cause for approving the proposed rule change before the 30th day after the date of publication of notice of filing thereof in the **Federal Register.**[23] The Commission did not receive any comments on the proposed rule change. As noted above, the Commission previously found that exchange rules that distinguish between the orders of

[8] 15 U.S.C. 78f(b).

[9] In approving the proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78f(b)(8).

[12] *See* International Securities Exchange, LLC ("ISE") Rule 100 (a)(37C).

[13] *See* Chicago Board Options Exchange, Incorporated ("CBOE") Rule 1.1 (ggg). *See also* NASDAQ OMX PHLX, Inc. ("Phlx") Rule 1000(b)(14).

[14] *See* Securities Exchange Act Release Nos. 59287 (January 23, 2009), 74 FR 5694 (January 30, 2009) ("ISE Approval Order"); 61198 (December 17, 2009), 74 FR 68880 (December 29, 2009) ("CBOE Approval Order"); 61802 (March 30, 2010) ("Phlx Approval Order") (together, the "Professional Customer Approval Orders").

[15] *Id.*

[16] ISE Approval Order, *supra* note 14. For a brief synopsis of the requirements of Section 11(a), *see infra,* note 20.

[17] *See* ISE Approval Order, *supra* note 14, at 5697.

[18] *See* ISE Approval Order, *supra* note 14, at 5697, n. 41–44.

[19] *See* ISE Approval Order, *supra* note 14, at 5697. *See also* CBOE Approval Order and Phlx Approval Order, *supra* note 14.

[20] In its proposal, the Exchange addressed compliance with Section 11(a) of the Act. Section 11(a) prohibits a member of a national securities exchange from effecting transactions on that exchange for its own account, the account of an associated person, or an account over which it or its associated person exercises discretion unless an exception applies. Section 11(a)(1) and the rules thereunder contain a number of exceptions for principal transactions by members and their associated persons, including the exceptions in subparagraph (G) of Section 11(a)(1) and in Rule 11a1–1(T), as well as Rule 11a2–2(T) under the Act. The Exchange represents that the proposal would not affect the availability of the exceptions to Section 11(a) of the Act, including the exceptions in subparagraph (G) of Section 11(a) and in Rules 11a1–1(T) and 11a2–2(T), as are currently available. *See* Notice, *supra* note 4 at 10852.

[21] The Commission notes that certain trading practices that could be affected by the proposed rule change may raise issues outside the scope of its review of the proposal itself. Specifically, any entity that acts as "dealer," as defined in Section 3(a)(5) of the Act, 15 U.S.C. 78c(a)(5), is required to register with the Commission under Section 15 of the Act, 15 U.S.C. 78o, and the rules and regulations thereunder, or qualify for any exception or exemption from registration. Activity that may cause a person to be deemed a dealer includes "'quoting a market in or publishing quotes for securities (other than quotes on one side of the market on a quotations system generally available to non-broker-dealers, such as a retail screen broker for government securities)." *See* Definitions of Terms in and Specific Exemptions for Banks, Savings Associations, and Savings Banks Under Sections 3(a)(4) and 3(a)(5) of the Securities Exchange Act of 1934, Securities Exchange Act Release No. 47364, 68 FR 8686, 8689, note 26 (February 24, 2003) (quoting OTC Derivatives Dealers, Securities Exchange Act Release No. 40594 (October 23, 1998), 63 FR 59362, 59370, note 61 (November 3, 1998)).

[22] 15 U.S.C. 78s(b)(2).

[23] *See* Notice, *supra* note 4.

customers who place orders at the frequency of more than 390 orders per day on average during a calendar month for its own beneficial account(s) and the orders of customers who do not meet that threshold are consistent with the Act.[24] Accordingly, pursuant to Section 19(b)(2) of the Act,[25] the Commission finds good cause to approve the proposed rule change on an accelerated basis.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[26] that the proposed rule change (SR–NYSEAmex–2010–18), be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[27]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–7753 Filed 4–5–10; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61813; File No. SR–NYSEArca–2010–19]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Extending the Pilot Period To Receive Inbound Routes of Equities Orders from Archipelago Securities LLC

March 31, 2010.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the "Act") and Rule 19b–4 thereunder,[2] notice is hereby given that, on March 30, 2010, NYSE Arca, Inc. ("NYSE Arca" 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 self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the pilot period of the Exchange's prior approvals to receive inbound routes of equities orders from Archipelago Securities LLC ("Arca Securities"), an NYSE Arca affiliated ETP Holder. A copy of this filing is available on the Exchange's Web site at *http://www.nyse.com,* at the Exchange's principal office and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Currently, Arca Securities is the approved outbound order routing facility of the Exchange.[3] Arca Securities is also the approved outbound order routing facility of the New York Stock Exchange LLC ("NYSE") and NYSE Amex LLC ("NYSE Amex").[4] The Exchange, through its wholly-owned subsidiary, NYSE Arca Equities, Inc., has also been previously approved to receive inbound routes of equities orders by Arca Securities in its capacity as an order routing facility of NYSE Amex and the NYSE.[5] The Exchange's authority to receive inbound routes of equities orders by Arca Securities is subject to a pilot period ending March 31, 2010.[6] The Exchange hereby seeks to extend the previously approved pilot period (with the attendant obligations and conditions) for an additional 6 months, through September 30, 2010.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)[7] of the Securities Exchange Act of 1934 (the "Act"), in general, and furthers the objectives of Section 6(b)(5)[8] in particular in that it 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 facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. Specifically, the proposed rule change will allow the Exchange to continue receiving inbound routes of equities orders from Arca Securities acting in its capacity as a facility of the NYSE and NYSE Amex, in a manner consistent with prior approvals and established protections. The Exchange believes that extending the previously approved pilot period for six months will permit both the Exchange and the Commission to further assess the impact of the Exchange's authority to receive direct inbound routes of equities orders via Arca Securities (including the attendant obligations and conditions).[9]

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.

[24] *See* Professional Customer Approval Orders, *supra* note 14.

[25] 15 U.S.C. 78s(b)(2).

[26] 15 U.S.C. 78s(b)(2).

[27] 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. 53238 (July 28, 2006), 71 FR 44758 (August 7, 2006) (order approving SR–NYSEArca–2006–13); *see also,* Securities Exchange Act Release No. 52497 (September 22, 2005), 70 FR 56949 (September 29, 2005) (SR–PCX–2005–90); *see also,* Securities Exchange Act Release No. 44983 (October 25, 2001), 66 FR 55225 (November 1, 2001) (SR–PCX–00–25); *see also,* Securities Exchange Act Release No. 58681 (September 29, 2008), 73 FR 58285 (October 6, 2008) (order approving NYSEArca–2008–90).

[4] *See* Securities Exchange Act Release No. 55590 (April 5, 2007), 72 FR 18707 (April 13, 2007) (notice of immediate effectiveness of SR–NYSE–2007–29); *see also,* Securities Exchange Act Release No. 58680 (September 29, 2008), 73 FR 58283 (October 6, 2008) (order approving SR–NYSE–2008–76). *See* Securities Exchange Act Release No. 59009 (November 24, 2008), 73 FR 73363 (December 2, 2008) (order approving SR–NYSEALTR–2008–07); *see also,* Securities Exchange Act Release No. 59473 (February 27, 2009) 74 FR 9853 (March 6, 2009) (order approving SR–NYSEALTR–2009–18).

[5] *See* Securities Exchange Act Release No. 58681 (September 29, 2008), 73 FR 58285 (October 6, 2008) (order approving NYSEArca–2008–90); *see also,* Securities Exchange Act Release No. 59010 (November 24, 2008), 73 FR 73373 (December 2, 2008) (order approving SR–NYSEArca–2008–130).

[6] *See* Securities Exchange Act Release No. 61267 (December 31, 2009), 75 FR 1096 (January 8, 2010) (notice of immediate effectiveness of SR–NYSEArca–2009–115).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] The Exchange is currently analyzing the condition regarding non-public information and system changes in order to better reflect the operation of Arca Securities.

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 rule change does not: (1) Significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[10] and Rule 19b–4(f)(6) thereunder.[11]

A proposed rule change filed under 19b–4(f)(6) normally may not become operative prior to 30 days after the date of filing.[12] However, Rule 19b–4(f)(6)(iii)[13] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay. The Exchange notes that the proposal will allow the Exchange to continue receiving inbound routes of equities orders from Arca Securities, in a manner consistent with prior approvals and established protections, while also permitting the Exchange and the Commission to assess the impact of the pilot.[14] The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver would allow the pilot period to be extended without interruption through September 30, 2010. For this reason, the Commission designates the proposed rule change to be operative upon filing with the Commission.[15]

At any time within 60 days of the filing of such proposed rule change the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2010–19 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–NYSEArca–2010–19. 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 inspection and copying in the Commission's Public Reference Room on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2010–19 and should be submitted on or before April 27, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–7696 Filed 4–5–10; 8:45 am]

BILLING CODE 8011–01–P

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

[12] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6)(iii) requires that a self-regulatory organization submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[13] *Id.*

[14] *See supra* note 9 and accompanying text.

[15] For the 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).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61806; File No. SR–FINRA–2010–013]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify FINRA/Nasdaq Trade Reporting Securities Transaction Credit

March 31, 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 March 26, 2010, Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as "establishing or changing a due, fee or other charge" under Section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to amend FINRA Rule 7610A (Securities Transaction Credit) to modify credits provided to members that use the FINRA/Nasdaq Trade Reporting Facility ("FINRA/Nasdaq TRF").

The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org,* at the principal office of FINRA and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA 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. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Background

The FINRA/Nasdaq TRF is a facility of FINRA that is operated by The NASDAQ OMX Group, Inc. ("NASDAQ OMX"). In connection with the establishment of the FINRA/Nasdaq TRF, FINRA and NASDAQ OMX entered into a limited liability company agreement (the "LLC Agreement"). Under the LLC Agreement, FINRA, the "SRO Member," has sole regulatory responsibility for the FINRA/Nasdaq TRF. NASDAQ OMX, the "Business Member," is primarily responsible for the management of the FINRA/Nasdaq TRF's business affairs, including establishing pricing for use of the FINRA/Nasdaq TRF, to the extent those affairs are not inconsistent with the regulatory and oversight functions of FINRA. Additionally, the Business Member is obligated to pay the cost of regulation and is entitled to the profits and losses, if any, derived from the operation of the FINRA/Nasdaq TRF.

The FINRA/Nasdaq TRF receives revenue for transactions reported to the three tapes [5] from the Consolidated Tape Association and Nasdaq Securities Information Processor (the "Tapes"). Pursuant to Rule 7610A, FINRA members are provided with a fractional share of this revenue based on their "Market Share." [6] Market Share is calculated quarterly for each member based on the transactions attributed to them in each of the three Tapes. Rule 7610A provides four tiers of revenue share: 0%, 50%, 80% and 100%. Eligibility for a tier is based on the percentage of Market Share, and the percentage of Market Share required increases as the tiers of revenue share increase. Currently, the amount of Market Share required to receive an allocation under each tier is different for each Tape. For example, to receive an 80% share of revenue, a member must have 0.15% but less than 0.25% of Market Share if reporting an NYSE security, 0.25% but less than 0.50% if reporting an Amex security, or 0.25% but less than 0.75% if reporting a Nasdaq security.

Proposed Amendments to Credit Schedule

NASDAQ OMX, as the FINRA/Nasdaq TRF Business Member, has determined to amend the Market Share percentages for revenue sharing eligibility applicable to Tapes A and B so that they are consistent with the current levels of Tape C. Accordingly, FINRA is proposing to amend Rule 7610A to reflect the new credit schedule. The following table provides a comparison of the old Market Share tier structure with the proposed new structure:

	Previous tier break point	New tier break point	Revenue share (percent)
Tape A Tier 1	=>0.25%	=>0.75%	100
Tape A Tier 2	<0.25%, =>0.15%	<0.75%, =>0.25%	80
Tape A Tier 3	<0.15%, =>0.10%	<0.25%, =>10%	50
Tape A Tier 4	<0.10%	<0.10%	0
Tape B Tier 1	=>0.50%	=>0.75%	100
Tape B Tier 2	<0.50%, =>0.25%	<0.75%, =>0.25%	80
Tape B Tier 3	<0.25%, =>0.10%	<0.25%, =>0.10%	50
Tape B Tier 4	<0.10%	<0.10%	0
Tape C Tier 1	=>0.75%	=>0.75%	100
Tape C Tier 2	<0.75%, =>0.25%	<0.75%, =>0.25%	80
Tape C Tier 3	<0.25%, =>0.10%	<0.25%, =>0.10%	50
Tape C Tier 4	<0.10%	<0.10%	0

The Business Member notes that the volume and distribution of Market Share among both Tapes A and B have matured so that they more closely resemble the Market Share distribution of Tape C. As such, the Business Member believes that it is appropriate to align the tier structure of Tapes A and B to that of Tape C.

The Business Member has advised FINRA that it believes that the proposed amended credit schedule more equitably allocates the revenue share provided to members for their use of the FINRA/Nasdaq TRF. The proposed rule change will eliminate the differences in allocation, thus rewarding each member consistently for its use of the FINRA/Nasdaq TRF, irrespective of the Tape to which the transaction is reported.

Under the proposed credit schedule, the thresholds for receiving revenue share under the tiers of Tapes A and B have increased. As a consequence, members that have historically qualified to receive revenue share from Tapes A and B may no longer qualify for the same tier, notwithstanding that they have achieved the same level of Market Share. The Business Member believes that this is an appropriate result of aligning Market Share with the revenues received from the Tapes for reporting those transactions.

FINRA has filed the proposed rule change for immediate effectiveness.

[5] Market data is transmitted to three tapes based on the listing venue of the security: New York Stock Exchange securities ("Tape A"), American Stock Exchange and regional exchange securities ("Tape B"), and Nasdaq Stock Market securities ("Tape C"). Tape A and Tape B are generally referred to as the Consolidated Tape.

[6] Rule 7610A defines Market Share as a percentage calculated by dividing the total number of shares represented by trades reported by a FINRA member to the FINRA/Nasdaq TRF during a given calendar quarter by the total number of shares represented by all trades reported to the Consolidated Tape Association or the Nasdaq Securities Information Processor, as applicable, during that quarter. Market Share is calculated separately for each tape.

FINRA is proposing that the operative date of the proposed rule change will be April 1, 2010.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(5) of the Act,[7] which requires, among other things, that FINRA rules provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system that FINRA operates or controls. FINRA believes that the amended credit schedule is fair and provides an equitable allocation of the credits provided to the FINRA/Nasdaq TRF in that it will apply uniformly to all FINRA members that use the FINRA/Nasdaq TRF.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[8] and paragraph (f)(2) of Rule 19b–4 thereunder.[9] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–FINRA–2010–013 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–FINRA–2010–013. 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 the principal office of FINRA. 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 publicly available. All submissions should refer to File Number SR–FINRA–2010–013 and should be submitted on or before April 27, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–7694 Filed 4–5–10; 8:45 am]

BILLING CODE 8011–01–P

[7] 15 U.S.C. 78*o*–3(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A)(ii).

[9] 17 CFR 240.19b–4(f)(2).

[10] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Ex Parte No. 290 (Sub-No. 5) (2010–2)]

Quarterly Rail Cost Adjustment Factor

AGENCY: Surface Transportation Board.

ACTION: Approval of rail cost adjustment factor.

SUMMARY: The Board has approved the second quarter 2010 Rail Cost Adjustment Factor (RCAF) and cost index filed by the Association of American Railroads. The second quarter 2010 RCAF (Unadjusted) is 1.060. The second quarter 2010 RCAF (Adjusted) is 0.477. The second quarter 2010 RCAF–5 is 0.452. As part of its March 30, 2010 submission, AAR asks the Board to "correct the productivity calculation for the period 2003–2007," and requests that the Board recalculate earlier RCAF (Adjusted) and RCAF–5 values that were determined with the 2003–2007 productivity adjustment factor. AAR's additional request will be considered in a separate proceeding.

DATES: *Effective Date:* April 1, 2010.

FOR FURTHER INFORMATION CONTACT: Pedro Ramirez, (202) 245–0333. (Federal Information Relay Service (FIRS) for the hearing impaired: 1–800–877–8339.)

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision, which is available on our Web site *http://www.stb.dot.gov.* Copies of the decision may be purchased by contacting the office of Public Assistance, Governmental Affairs, and Compliance at (202)–245–0235. Assistance for the hearing impaired is available through FIRS at 1–800–877–8339.

This action will not significantly affect either the quality of the human environment or energy conservation.

Pursuant to 5 U.S.C. 605(b), we conclude that our action will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Decided: March 31, 2010.

By the Board, Chairman Elliott, Vice Chairman Mulvey, and Commissioner Nottingham.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2010–7684 Filed 4–5–10; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Key West Bank, Key West, Florida; Notice of Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Federal Deposit Insurance Corporation as sole Receiver for Key West Bank, Key West, Florida, (OTS No. 14929) on March 26, 2010.

Dated: March 30, 2010.

By the Office of Thrift Supervision.

Sandra E. Evans,

Federal Register Liaison.

[FR Doc. 2010–7518 Filed 4–5–10; 8:45 am]

BILLING CODE 6720–01–M

Federal Register

Tuesday,
April 6, 2010

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Salt Creek Tiger Beetle; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS-R6-ES-2007-0014]
[MO 92210-0-0009]

RIN 1018-AT79

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Salt Creek Tiger Beetle

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service/USFWS), designate critical habitat for the Salt Creek tiger beetle (*Cicindela nevadica lincolniana*) under the Endangered Species Act of 1973, as amended (Act). In total, approximately 1,933 acres (ac) (782 hectares (ha)) located in Lancaster and Saunders Counties, Nebraska, fall within the boundaries of the critical habitat designation.

DATES: This rule becomes effective on May 6, 2010.

ADDRESSES: The final rule, final economic analysis, and map of critical habitat are available on the Internet at *http://www.regulations.govand http://www.fws.gov/mountain-prairie/species/invertebrates/saltcreektiger/index.htm*. Supporting documentation we used in preparing this final rule are available for public inspection, by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Nebraska Ecological Services Field Office, 203 West Second Street, Federal Building, 2nd Floor, Grand Island, NE 68801; telephone 308-382-6468; facsimile 308-384-6468.

FOR FURTHER INFORMATION CONTACT: John Cochnar, Acting Field Supervisor, U.S. Fish and Wildlife Service, Nebraska Ecological Services Field Office, telephone 308-382-6468 (see **ADDRESSES** section). If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800-877-8339.

SUPPLEMENTARY INFORMATION:

Background

It is our intent to discuss only those topics directly relevant to the development and designation of critical habitat for the Salt Creek tiger beetle in this final rule. For more information on the biology and ecology of the Salt Creek tiger beetle, refer to the final rule listing the subspecies as endangered that published in the **Federal Register** on October 6, 2005 (70 FR 58335), proposed critical habitat rule published in the **Federal Register** on December 12, 2007 (72 FR 70716), and revised proposed rule published in the **Federal Register** on April 28, 2009 (74 FR 19167).

Subspecies Information

The Salt Creek tiger beetle is an active, ground-dwelling, predatory insect endemic to saline wetlands and streams in the eastern saline wetlands of Lancaster and Saunders Counties, Nebraska. Saline wetlands occur in swales and depressions, and at one time represented approximately 65,065 acres (ac) (26,342 hectares (ha)) within the floodplain of Salt Creek and its tributaries (Gilbert and Stutheit 1994, p. 5). Saline wetlands are characterized by saline soils and halophytes (plants adapted to saline conditions) and are often associated with a saline stream within the Salt Creek basin (LaGrange 1997, p. 19). Saline wetlands usually have a central area that is devoid of vegetation and, when dry, exhibit salt-encrusted mudflats (barren salt flats) (LaGrange 1997, p. 19).

Channel-straightening projects in the early 1900s (Rus *et al.* 2003, p. 2), and residential, commercial, industrial, infrastructure, and agricultural developments resulted in degradation, loss, and fragmentation of saline wetland and stream habitats. These modifications have had a negative impact on the Salt Creek tiger beetle, an insect adapted to saline wetland and stream ecosystems (Ratcliffe and Spomer 2002, p. 5).

As recently as 1994, six populations of Salt Creek tiger beetles were distributed along Oak, Little Salt, and Rock Creeks (Spomer *et al.* 1999, p. 1). Since 1994, half of these populations have been extirpated and the remaining three extant populations are all located along a single waterway: Little Salt Creek (Spomer *et al.* 2004, p. 2). The two largest populations along Little Salt Creek exist within 1 mile (mi) (1.61 kilometer (km)) of each other in an area on the north side of Lincoln, Nebraska, where extensive urban growth and development has already occurred and continues. The proximity of these remaining populations to one another greatly increases the threat of subspecies' extinction because a single stochastic event could cause the loss of these remaining habitats or populations. In 2004, the number of adult Salt Creek tiger beetles declined by 25 percent from 2003 (Spomer *et al.* 2004, pp.1-2). In 2005, only 153 adult Salt Creek tiger beetles were found, a 73 percent decline from 2004, and the lowest count in the past 12 years of surveys (Spomer 2005, pers. comm.). In 2006, 466 Salt Creek tiger beetles were found, representing a 300 percent increase and demonstrating the dynamic nature of annual insect populations (Spomer 2006, pers. comm.). However, in 2007, the population number had declined by approximately half, to 263 adults (Spomer 2007, pers. comm.). In 2008, 165 adult Salt Creek tiger beetles were detected during surveys (Spomer 2008, pers. comm.).

Previous Federal Actions

The final rule to list the Salt Creek tiger beetle as endangered was published in the **Federal Register** on October 6, 2005 (70 FR 58335). We stated that critical habitat was prudent and determinable, however, we did not designate critical habitat at the time of listing because we were in the process of identifying the physical and biological features essential to the conservation of the Salt Creek tiger beetle. We published a proposed rule to designate critical habitat in the **Federal Register** on December 12, 2007 (72 FR 70716). On June 3, 2008, we published a notice in the **Federal Register** to reopen the comment period and announce a public hearing (73 FR 31665). On April 28, 2009, we published a revised proposed rule in the **Federal Register** to include an additional 138 ac (56 ha) as critical habitat and reopened the public comment period (74 FR 19167). We have not yet developed a recovery plan for the Salt Creek tiger beetle.

Summary of Comments and Recommendations

We requested written comments from the public and contacted appropriate Federal, State, and local agencies; scientific organizations; and other interested parties and invited them to comment on the proposed rule, draft environmental assessment, and draft economic analysis (Draft EA) during three comment periods. The first comment period opened on December 12, 2007, the date of publication of the proposed rule (72 FR 70716), and closed on February 11, 2008. We received two requests for a public hearing during this comment period. On June 3, 2008, we reopened the comment period until July 11, 2008, and announced that a public open house and hearing would be held on July 1, 2008, in Lincoln, Nebraska (73 FR 31665). On April 28, 2009, we reopened the comment period until May 28, 2009, and announced our proposal to include an additional 138 ac (56 ha) as critical habitat for the Salt Creek tiger

beetle along Little Salt Creek in Units 1, 2, and 3 (74 FR 19167).

During the first comment period, we received six comment letters directly addressing the proposed critical habitat designation: two from peer reviewers, one from a local government agency, two from private organizations, and one from an individual. During the second comment period, we received seven comment letters directly addressing the proposed critical habitat designation: one from a State agency, one from a peer reviewer, one from a private business, two from private organizations, and two from individuals. We also accepted comments from three peer reviewers between the two comment periods. During the public hearing, five speakers presented their comments relative to the proposed rule to designate critical habitat. During the third comment period, we received one comment letter directly addressing our proposal to include an additional 138 ac (56 ha).

We reviewed all comments we received during all three comment periods and at the public hearing for substantive issues and new information regarding the designation of critical habitat for the Salt Creek tiger beetle. We address these comments in the following summary, and have incorporated them into the final rule as appropriate.

Peer Review

In accordance with our policy published on July 1, 1994 (59 FR 34270), we solicited expert opinions from 10 knowledgeable individuals with scientific and economic expertise with the subspecies, the geographic region in which the subspecies occurs, the economic analysis, and relative conservation biology principles. We received responses from 6 of the 10 peer reviewers.

Peer Reviewer Comments

(1) Comment: One peer reviewer commented that we should include a segment of Little Salt Creek in the critical habitat designation because it contains the largest known population of the Salt Creek tiger beetle.

Our Response: We agree that we should include that segment of Little Salt Creek in the designation, and we have included an additional 138 ac (56 ha) of critical habitat (74 FR 19167) that includes that segment. In recognition of the importance of saline seeps to the Salt Creek tiger beetle, we have included currently occupied segments of Little Salt Creek within the critical habitat units. We solicited comments from the public on the addition of these areas in the **Federal Register** (74 FR 19167).

(2) Comment: One peer reviewer commented that the proposed rule contained no discussion of the role of groundwater in supplying the needed salinity to wetlands which sustain the Salt Creek tiger beetle, nor does the proposed rule use groundwater discharge locations or regional flow conditions to designate critical habitat areas. The peer reviewer also recommended making reference in the proposed rule to the saline recharge area and its influence on saline habitats used by the Salt Creek tiger beetle. The peer reviewer also suggested the inclusion of buffer areas encompassing saline wetlands or implementation of restrictions to limit the amount of freshwater intrusion in saline wetland habitats.

Our Response: We agree with the peer reviewer about the importance of discussing and considering groundwater, salinity, and saline recharge areas and their involvement in maintaining habitat for this subspecies. However, groundwater that supplies the needed salinity to saline wetland habitats, groundwater discharge locations, and regional flow conditions were not used to identify critical habitat areas, because this information is currently not available at the resolution required to identify critical habitat boundaries. We will continue to carefully consider the influence of groundwater discharge during the development of a recovery plan for the Salt Creek tiger beetle.

We also concur with the peer reviewer's comment that buffers provide an important function to prevent excess freshwater and sediment intrusion into saline wetland habitats. Freshwater intrusion is a threat to the habitat; however, a critical habitat designation is not the proper forum for implementing restrictions to prevent freshwater and sediment intrusion that result from impacts outside of the critical habitat boundaries. Site-specific recommendations to address freshwater and sediment intrusion can be developed when the Service reviews proposed Federal actions that may impact saline wetlands and streams within the critical habitat areas. For example, Federal actions that are proposed to occur outside of the boundaries of critical habitat, but could still result in the destruction or adverse modification of critical habitat, would be considered a component of the effects analysis when the Service conducts a review of a proposed Federal action.

(3) Comment: One peer reviewer indicated that he and other biologists familiar with the Salt Creek tiger beetle believed that 15,000 ac (6,070 ha) should be included in the critical habitat designation based on site inspections, geographic information system analyses, soil maps, and an evaluation of the presence of the primary constituent elements at each of these sites. However, the peer reviewer said that we proposed only 1,742 ac (705 ha) as critical habitat in the proposed rule. Five public commenters also stated that the proposed rule falls short of that which is essential for the conservation of the Salt Creek tiger beetle. A peer reviewer questioned our scientific rationale for the decrease in acreage and further pointed out that having multiple critical habitat units in multiple stream systems reduces the risk of extinction.

Our Response: An evaluation completed by a team of biologists identified approximately 15,000 ac (6,070 ha) of habitat that could potentially be critical habitat for the Salt Creek tiger beetle. Critical habitat is defined in section 3(5)(A) of the Act as: (1) The specific areas within the geographical area occupied by a species at the time it is listed in accordance with the Act, on which are found those physical or biological features that are essential to the conservation of the species and which may require special management considerations or protection; and (2) Specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. We are designating all the areas occupied by the subspecies at the time of listing because we determined that they contain the physical and biological features essential to the conservation of the subspecies, and that they require special management considerations and protection. In delineating critical habitat we focused on: (1) Areas known to be occupied that contain the primary constituent elements in the appropriate quantity and spatial arrangement that form the features essential for the conservation of the tiger beetle; or (2) unoccupied areas that are essential to conservation of the Salt Creek tiger beetle.

We determined that most of the 15,000 ac (6,070) do not presently have the ability to support sustainable populations of beetles. For example, we eliminated the Oak Creek, Middle Creek/Haines Branch, Ashland, Upper Salt Creek, and Roca areas from further consideration because these areas contain degraded saline wetlands and

stream segments, and are currently unable to support the Salt Creek tiger beetle. Further, with the exception of Oak Creek, we have no information that the Salt Creek tiger beetle ever inhabited these areas. We also eliminated palustrine (inland wetland lacking flowing water) freshwater wetlands and contiguous stream segments between populations from further consideration because these areas may not presently have the ability to support sustainable populations of beetles. Our evaluation conducted for the proposed rule resulted in the identification of 1,795 ac (727 ha) of habitat that are essential for the conservation of the Salt Creek tiger beetle. Subsequent to further evaluation and based upon the comments received, we now include an additional 138 ac (56 ha) of stream habitat along Little Salt Creek in Units 1, 2, and 3 to encompass occupied habitat, protect saline seeps, and ensure that a movement corridor is maintained for the beetle. This inclusion increases the area of critical habitat to 1,933 ac (782 ha).

We agree that multiple areas should be considered to reduce the risk of extinction that could be conveyed to a single population of the Salt Creek tiger beetle. Ensuring the existence of a potential refugium in a different watershed than the three currently occupied units is essential to the conservation of the subspecies, should an event or series of events threaten the existence of the remaining three populations. Consequently, we have identified a currently unoccupied area on Rock Creek (associated with the Jack Sinn Wildlife Management Area of the Nebraska Game and Parks Commission (NGPC)) as an additional unit for final critical habitat designation. This area was known to be occupied as recently as 1998 (Spomer *et al.* 2001, p. 1) and contains all the features essential to the conservation of the subspecies. We do not include other saline wetlands in the critical habitat designation based on a determination that they are not essential to the conservation of the subspecies, because they do not contain the features essential to the conservation of the subspecies and do not support sustainable populations of the Salt Creek tiger beetle. However, with restoration efforts, these areas could be important for the recovery of the Salt Creek tiger beetle.

(4) Comment: One peer reviewer recommended the inclusion of additional unoccupied areas as critical habitat to augment currently available habitat for the Salt Creek tiger beetle that is under heavy development pressure.

Our Response: We have included an additional 138 ac (56 ha) of habitat along Little Salt Creek in Units 1, 2, and 3 in the critical habitat designation to increase the final designation from 1,795 to 1,933 ac (727 to 782 ha). This additional acreage includes an area along Little Salt Creek currently occupied by the Salt Creek tiger beetle, and currently under heavy development pressure, and protects important saline seep and movement corridor habitats along Little Salt Creek for the subspecies. Regarding the inclusion of unoccupied habitat, see our response to Comment 3 above.

Public Comments

Comments related to the rationale for determining acreage of critical habitat

(5) Comment: One commenter stated that we did not provide scientific rationale for how the proposed designation would allow for the recovery and long-term maintenance of the Salt Creek tiger beetle.

Our Response: Designation of critical habitat in and of itself will likely not ensure the recovery and long-term maintenance of the Salt Creek tiger beetle. Designation of critical habitat; preparation and implementation of a recovery plan; and partnerships with private landowners; State, Federal, and local resource agencies; and city and county entities will support important long-term recovery goals. We believe the final critical habitat designation is adequate in size and distribution to provide for the conservation and recovery of the Salt Creek tiger beetle.

Comments related to inclusion of occupied habitat and movement corridors as critical habitat

(6) Comment: Three commenters pointed out that we did not include all populations of the Salt Creek tiger beetle in the proposed rule, and that proposed critical habitat areas along Little Salt Creek are too fragmented and do not provide corridors for movement of the Salt Creek tiger beetle. Three commenters stated that the proposed rule acreage is inadequate in distribution to provide for the protection of extant populations and recovery of the subspecies.

Our Response: Information we received during the public comment period identified that habitats occupied by the Salt Creek tiger beetle were not included in our proposed critical habitat designation. Consequently, as discussed in our response to Comment 1, we have added another 138 ac (56 ha) to the final critical habitat designation. In regard to the commenter's assertion about fragmentation, this additional area includes an area currently occupied by the Salt Creek tiger beetle that contains important saline seep and movement corridor habitats along Little Salt Creek (Units 1, 2, and 3). Furthermore, the critical habitat designation includes an unoccupied area along Rock Creek (Unit 4) that includes saline seep and movement corridor habitats. We believe that the final critical habitat designation is sufficient in size and distribution to provide for the conservation and recovery of the Salt Creek tiger beetle. We do not include other saline wetlands in the area in the critical habitat designation due to their inability to provide the PCEs in the appropriate quantity and spatial arrangement that form the features essential to the conservation of the subspecies, and to support a sustainable population of the Salt Creek tiger beetle.

(7) Comment: One commenter stated that saline wetlands are dependent on a highly saline source of groundwater that mixes with surface water to create saline wetland complexes. The protection of critical habitat must consider those factors outside of the immediate saline habitat that impact the entire saline wetland.

Our Response: Although groundwater is always recognized as an important factor in the ecology of saline wetlands and streams, little research is currently available to ascertain the influence of groundwater on the saline and stream system. However, we will carefully consider the influence of groundwater during the development of a recovery plan for the Salt Creek tiger beetle. Federal actions that are proposed to occur outside of the boundaries of critical habitat, but could still adversely affect critical habitat through groundwater impacts, can still be considered a component of the effects analysis when we conduct a review of a proposed Federal action to determine whether the proposed action would destroy or adversely modify critical habitat.

(8) Comment: One commenter stated that maps showing critical habitat are unclear and acreage stated in the proposed rule is inconsistent with that stated in the press release.

Our Response: The maps shown in the proposed rule lacked readily identifiable landmarks making identification of critical habitat difficult. In response to this, we prepared maps showing individual property parcels and the proposed critical habitat boundaries and made several sets of these maps available for public review at the public open house and hearing. The area in the proposed rule 1,795 ac

(727 ha) is correct, whereas the area reported in the press release was in error. In recognition of this, we provided the correct acreage during media interviews and during a presentation and informal discussions at the public open house and hearing on July 1, 2008, in Lincoln, Nebraska. This final rule contains the correct area for the designation.

(9) Comment: A commenter suggested we recognize that local government agencies, including the City of Lincoln and the Lower Platte South Natural Resource District, as part of the Saline Wetland Conservation Partnership, own or control 221 ac (89 ha) of proposed critical habitat.

Our Response: We appreciate the suggestion and have made the appropriate addition to Table 1 of this rule.

(10) Comment: One commenter inquired if other areas in Kansas and Oklahoma were available where the Salt Creek tiger beetle could be introduced.

Our Response: The Salt Creek tiger beetle is endemic to the eastern saline wetland complex of Nebraska and survives under a narrow set of habitat characteristics that must include saline and stream habitats, appropriate hydrology, a prey base for adults and larvae, and movement corridors. We are considering possible future reintroductions of the Salt Creek tiger beetle at other saline wetlands in the eastern saline wetland complex of Nebraska. However, we are not considering other States because suitable habitat is not available and they are not known to be part of the historic range of the subspecies.

(11) Comment: One commenter stated the proposed critical habitat does not provide the primary constituent elements (PCEs) needed to support existing populations.

Our Response: In delineating critical habitat, we included areas either known to be occupied and containing the features essential to the conservation of the subspecies, or believed to be unoccupied but determined to be essential to conservation of the subspecies. The critical habitat designation provides the essential features identified as the PCEs in the appropriate quantity and spatial arrangement essential to the conservation of the subspecies. We discuss the PCEs for the Salt Creek tiger beetle in the "*Physical and Biological Features*" section below.

(12) Comment: A commenter requested that we provide written assurances that their private business would not be affected by the critical habitat designation.

Our Response: We cannot provide written assurances that the designation of critical habitat will not affect privately owned businesses because privately owned businesses can receive a Federal permit, funding, or authorization in the future. Critical habitat receives protection under section 7 of the Act through the prohibition against Federal agencies carrying out, funding, or authorizing the destruction or adverse modification of critical habitat. Section 7(a)(2) of the Act requires consultation on Federal actions that may affect critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. The designation of critical habitat does not allow the government or public to access private lands, nor does it require implementation of restoration, recovery, or enhancement measures by private landowners.

Comments related to the economic analysis (EA)

(13) Comment: One peer reviewer stated that the estimated economic impacts of the critical habitat designation are unrealistically high given the lack of actual land sale transaction data used in the evaluation and failure to consider whether the land included in the proposed designation is developable. Additionally, the peer reviewer and two public commenters recommended consideration of environmental amenities in the Draft EA, including flood control and conveyance, benefits to other wildlife species, protection of green space, the development of public recreation areas, the increase in real estate values resulting from proximity to green space, increased revenues to the city in terms of visits by the public for wildlife viewing and outdoor recreation, generally increased recreational and amenity values, and increases in commodity prices.

Our Response: We disagree with the peer reviewer's assertion that the estimated economic impacts of the critical habitat designation are unrealistically high. The Final EA relies upon land value data provided by the Lancaster County Assessor Department. These values are based on parcel market value assessments on comparable sales and its "special value" (i.e., agricultural value) assessments are based on soil types and production capabilities. Therefore, the land values used take into account all characteristics of the land, including any development restrictions.

In regard to accrued environmental amenities or benefits, where sufficient information is available, the Final EA attempts to measure costs imposed on landowners or other users of the resource, less any offsetting gains experienced by these individuals associated with these conservation efforts.

The analysis does not attempt to incorporate broader social and economic net benefits that may result incidentally from species conservation. The primary purpose of the rulemaking is the potential to enhance conservation of the species. As stated in the Draft EA, "[r]ather than rely on economic measures, the Service believes that the direct benefits of the proposed rule are best expressed in biological terms that can be weighed against the expected cost impacts of the rulemaking." Thus, the Service utilizes cost estimates from the economic analysis as one factor against which biological benefits are compared during the weighing process under section 4(b)(2) of the Act. The Service agrees that, to the extent that additional economic and social benefits such as protection of green space and development of public recreation areas, improvement of flood control, and enhanced quality of life, result from conservation measures for the beetle, such improvements could also benefit human communities.

(14) Comment: One commenter stated that the Draft EA assumes critical habitat designation will include a 500-foot wide buffer, and all cropland included in critical habitat will be converted to pasture following critical habitat designation. The commenter pointed out that this assumption is incorrect, because the 500-foot buffer was put into place by the Lincoln-Lancaster County Planning Department, and is not required by the critical habitat designation. Further, the conversion of cropland to pasture is not a requirement of critical habitat, so this land use conversion assumption is not supported. The commenter also suggested the economic analysis should consider existing development restrictions, given that most of the proposed critical habitat is located within the 100- to 500–year floodplain.

Our Response: The Final EA acknowledges some measures that protect the Salt Creek tiger beetle from development impacts, such as the 500-foot wide buffer, were in place prior to the designation of critical habitat, and are not solely for conservation of the subspecies (ENTRIX 2008a, p. 16). The Final EA clearly distinguishes between the "without critical habitat" and "with critical habitat" scenarios in Appendix

F. The "without critical habitat" scenario represents the baseline for the analysis, considering protections already accorded the subspecies, such as those under the Federal listing and other Federal, State, and local regulations. The "with critical habitat" scenario describes the incremental impacts associated specifically with the designation of critical habitat for the subspecies. The incremental conservation efforts and associated impacts are only those expected to occur from the designation of critical habitat for the subspecies. The costs associated with the protection of the saline wetlands, including the 500-foot buffer, are considered baseline impacts (ENTRIX 2008a, p. 21).

Given the federally listed status of the Salt Creek tiger beetle, landowners are likely to take necessary steps to avoid take of the species, to be in compliance with the Act. While all levels of crop cultivation may result in take of the beetle, grazing on pasture lands may result in take only if carried out beyond a certain threshold (i.e., overgrazing) (70 FR 58335, October 6, 2005). Given that the critical habitat mostly consists of saline wetlands and is not considered productive agricultural land, most landowners are likely to use their lands as pasture rather than cropland. Therefore, the Final EA's consideration of this land-use conversion in the economic analysis is reasonable.

In response to the commenter's assertion on development restrictions, the economic analysis relies upon land value data provided by the Lancaster County Assessor Department. These values are based on parcel market value assessments on comparable sales, and the County's "special value" (i.e., agriculture value) assessments are based on soil types and production capabilities (ENTRIX 2008a, p. 19). Therefore, the land values used take into account all characteristics of the land, including any development restrictions.

(15) Comment: One commenter stated that the public was unable to access the draft environmental assessment and Draft EA for review and comment.

Our Response: The proposed rule (72 FR 70716) and the two documents that reopened the comment period (73 FR 31665; 74 FR 19167) indicated that the documentation for the proposed rule, including the Draft EA and draft environmental assessment, was available for public inspection on *http://www.regulations.gov*, or by appointment, during normal business hours, at our Nebraska Ecological Services Field Office. We included a mailing address and phone number for the office for anyone seeking further information.

Summary of Changes from the Proposed Rule

We added another 138 ac (56 ha) of habitat to the original proposal, increasing the final critical habitat from 1,795 to 1,933 ac (727 to 782 ha). This additional area has been determined to contain features essential to the conservation of the subspecies along Little Salt Creek in Units 1, 2, and 3, and includes important saline seep and movement corridor habitats for the subspecies along Little Salt Creek. We are finalizing the following final critical habitat designation in accordance with section 4(b)(2) of the Act.

Critical Habitat

Critical habitat is defined in section 3 of the Act as:

(1) The specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the Act, on which are found those physical or biological features

(a) essential to the conservation of the species and

(b) which may require special management considerations or protection; and

(2) Specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Conservation, as defined under section 3 of the Act, means the use of all methods and procedures that are necessary to bring an endangered or threatened species to the point at which the measures provided under the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

Critical habitat receives protection under section 7 of the Act through the prohibition against Federal agencies carrying out, funding, or authorizing activities that result in the destruction or adverse modification of critical habitat. Section 7(a)(2) of the Act requires consultation on Federal actions that may affect critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation does not allow the government or public to access private lands. Such designation does not require implementation of restoration, recovery, or enhancement measures by non-Federal landowners. Where a landowner seeks or requests Federal agency funding or authorization for an action that may affect a listed species or critical habitat, the consultation requirements of section 7(a)(2) of the Act would apply, but even in the event of a destruction or adverse modification finding, the Federal action agency's and applicant's obligation under section 7(a)(2) of the Act is not to restore or recover the species, but to implement reasonable and prudent alternatives to avoid destruction or adverse modification of critical habitat.

To be included in a critical habitat designation, habitat within the geographical area occupied by the species at the time it was listed must contain the physical and biological features that are essential to the conservation of the species, and will be included only if those features may require special management considerations or protection. Critical habitat designations identify, to the extent known using the best scientific and commercial data available, habitat areas that provide essential life cycle needs of the species (i.e., areas on which are found the physical and biological features laid out in the appropriate quantity and spatial arrangement for the conservation of the species). Under the Act and regulations at 50 CFR 424.12, we can designate critical habitat in areas outside the geographical area occupied by the species at the time of listing as critical habitat only when we determine that the best available scientific data demonstrate that the designation of those areas is essential for the conservation of the species.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific and commercial data available. Further, our Policy on Information Standards Under the Endangered Species Act (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106-554; H.R. 5658)), and our associated Information Quality Guidelines, provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on the best scientific data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data

available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

When we are determining which areas should be designated as critical habitat, our primary source of information is generally the information developed during the listing process for the species. Additional information sources may include the recovery plan for the species, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, or other unpublished materials and expert opinion or personal knowledge.

Habitat is often dynamic, and species may move from one area to another over time. Furthermore, we recognize that critical habitat designated at a particular point in time may not include all of the habitat areas that we may later determine are necessary for the recovery of the species. For these reasons, a critical habitat designation does not signal that habitat outside the designated area is unimportant or may not be required for recovery of the species.

Areas that are important to the conservation of the species, but are outside the critical habitat designation, will continue to be subject to conservation actions implemented by the Service and other Federal agencies under section 7(a)(1) of the Act. They may also be subject to the regulatory protections afforded by the section 7(a)(2) jeopardy standard, as determined on the basis of the best available scientific information at the time of the agency action. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans (HCPs), or other species conservation planning efforts if new information available at the time these planning efforts calls for a different outcome.

Physical and Biological Features

In accordance with sections 3(5)(A)(i) and 4(b)(1)(A) of the Act and the regulations at 50 CFR 424.12, in determining which areas within the geographical area occupied by the species at the time of listing to designate as critical habitat, we consider the physical or biological features essential to the conservation of the species that may require special management considerations or protection. We consider the essential physical or biological features to be the primary constituent elements (PCEs) laid out in the appropriate quantity and spatial arrangement for the conservation of the species. These include, but are not limited to:

(1) Space for individual and population growth and for normal behavior;

(2) Food, water, air, light, minerals, or other nutritional or physiological requirements;

(3) Cover or shelter;

(4) Sites for breeding, reproduction, or rearing (or development) of offspring; and

(5) Habitats that are protected from disturbance or are representative of the historic, geographical, and ecological distributions of a species.

We derive the PCEs required for the Salt Creek tiger beetle from its biological needs as described below and in the proposed rule to designate critical habitat published in the **Federal Register** on December 12, 2007 (70 FR 70716). Additional information can also be found in the final listing rule published in the **Federal Register** on October 6, 2005 (70 FR 58335).

Space for Individual and Population Growth and for Normal Behavior

Space and Dispersal Requirements

Salt Creek tiger beetles require non-vegetated stream banks and mid-channel areas, located adjacent to and between saline stream edges and barren salt flats in saline and freshwater wetlands, to allow movement for thermoregulation, hunting, and dispersal. Salt Creek tiger beetles move between habitats consisting of saline wetlands and streams (Allgeier *et al.* 2003, pp. 6-7), but open salt flats must be separated by a reasonable dispersal distance for the subspecies (Gowan and Knisley 2005, p. 9). Two Salt Creek tiger beetles were documented moving distances of 1,509 and 1,198 feet (ft) (460 and 365 meters (m)), respectively, between a saline stream and saline wetland, through a small assemblage of saline banks, presumably to meet the life requirements described above (Allgeier *et al.* 2003, pp. 6-7). Salt Creek tiger beetles also have been observed moving among salt flats and seeps along saline stream edges, using barren mid-channel and scoured bank habitats (Spomer 2005, pers. comm.; Harms 2003, pers. comm.). Mid-channel habitats and scoured bank lines are created through natural hydrological processes in streams with sufficient flow to cause sediment scour, transport, and redeposition. Salt Creek tiger beetles can disperse from one mid-channel bar to the next, which enables them to move up and down stream courses in response to habitat changes. These short-range movement corridors are necessary to repopulate areas extirpated due to habitat loss or extreme weather events (Murphy *et al.* 1990, pp. 41-51; Fahrig and Merriam 1994, pp. 50-59; Ruggerio *et al.* 1994, pp. 364-372; Noss 2002, pp. 10-19).

The Salt Creek tiger beetle probably has some long-range dispersal capability, an adaptation that has been documented in other tiger beetle species and is thought to enable colonization of transient or well-separated habitat that may be important for long-term species survival (USFWS 1994, p. 15). Although we have no data on long-range dispersal distances, the approximately 14-mi (22-km) separation between previously occupied habitats on Oak and Rock Creeks suggests that the Salt Creek tiger beetle may be capable of some level of aerial dispersal. Other tiger beetle species are capable of long-range dispersal. For example, mark-recapture studies completed for the Northeastern beach tiger beetle (*Cicindela dorsalis*) resulted in the recovery of marked tiger beetles 5 to 12 mi (8 to 19 km) from sites where they were marked (USFWS 1994, p. 15). Puritan tiger beetles (*C. puritana*) are known to have dispersed distances of 25 to 30 mi (40 to 48 km) from known populations (USFWS 1993, p. 12). A population viability analysis for the Puritan tiger beetle in the Chesapeake Bay region also supports the theory that tiger beetles are capable of aerial dispersal (Gowan and Knisley 2005, pp. 8-22). In that analysis, the authors modeled beetle dispersal among subpopulations using data from the Northeastern beach tiger beetle (*C. dorsalis*). They concluded that populations less than 4 mi (6 km) apart tended to exchange individuals, which decreases the risk of extinction by allowing extant subpopulations to repopulate nearby extirpated areas (Gowan and Knisley 2005, p. 11).

We consider both short-range and long-range dispersal distances to be important factors in identifying features and habitats essential for the conservation of the Salt Creek tiger beetle. However, because specific data are not available to precisely define either short-range or long-range dispersal distances for this subspecies, we find that the best available science is Gowan and Knisley's (2005, pp. 8-22) study results, which indicate that Puritan tiger beetle populations separated by less than 4 mi (6 km) can

exchange individuals. We conclude that areas providing suitable habitat, located on more than a single stream, and separated by a maximum of 4 mi (6 km), should be maintained for the subspecies in order to decrease the risk of extinction by allowing extant subpopulations to exchange individuals and to repopulate nearby extirpated areas.

Based on the information above, we identify non-vegetated streambanks and mid-channel areas, located adjacent to and between saline stream edges and barren salt flats in saline and freshwater wetlands, in assemblages that are within 4 mi (6 km) of one another as a PCE for this subspecies.

Food, Water, Air, Light, Minerals, or Other Nutritional or Physiological Requirements

Moist, Barren Salt Flats

Salt Creek tiger beetles require moist, barren salt flats for thermoregulation, reproduction, and foraging. Tiger beetle species are generally habitat-specific because of oviposition (the act of laying eggs) and larval sensitivities to soil moisture, salinity (measured by electroconductivity), composition, and temperature (Pearson 1988, pp. 136-137; Pearson and Cassola 1992, p. 380). In field measurements, Salt Creek tiger beetles were found using areas with a mean soil electroconductivity of 2,504.1 conductivity per meter (mS/m), with a lower confidence limit of 2,016.0 mS/m and an upper confidence limit of 2,992.2 mS/m (Allgeier 2005, p. 72). Field measurements also demonstrate that Salt Creek tiger beetles prefer mean soil moistures of 47.6 percent, with a lower confidence limit of 43.5 percent and an upper confidence limit of 51.7 percent (Allgeier 2005, p. 72). The ability to occupy areas with specific habitat requirements (such as soil salinities and moisture levels) enables Salt Creek tiger beetles to coexist among conspecific or congeneric tiger beetles that have different specific habitat requirements.

These reported soil salinity and moisture preferences are available within saline wetland and stream habitats in the Salt Creek basin. The following discussion provides specific details about saline soils, evaporative processes, and recharge zones required to create and maintain moist, barren salt flats within saline wetlands and streams.

(a) Saline soils—Salmo and Saltillo soils or Lamo, Gibbon-Saltine, Obert, and Zoe soils with Salmo and Saltillo inclusions provide salt in sufficient content to result in the creation of salt barrens (U.S. Department of Agriculture 1980, p. 93). The Salt Creek tiger beetle is found in association with Salmo soils (Allgeier 2005, p. 18), and probably is also found in association with Saltillo soils when barren salt flats are present. Although Salmo and Saltillo soils are known to contain sufficient salt to result in the creation of salt barrens, Salmo soils tend to be better drained than Saltillo soils (NRCS 2009, pp. 3, 6). However, for the purpose of this rule, we will consider both of these classes of soils to be used by the Salt Creek tiger beetle. Soils in stream channels are not mapped because they can take on saline characteristics as they pass through areas with the saline soils described above, or through areas that may have historically contained saline soils (e.g., urban areas where the saline soils were covered over by fill materials and thus not mapped).

(b) Evaporation—The soils identified above must have electroconductivity within the range of 2,016.0 mS/m to 2,992.2 mS/m to be used by the Salt Creek tiger beetle. In addition, the process of evaporation also must occur to create exposed salt on the soil surface, resulting in the formation of barren salt flats. Specifically, evaporation of groundwater (through differential hydraulic pressures) and surface water from the soils listed above results in the creation of a thin salt crust on the soil surface (Schainost 2005, pers. comm.).

(c) Recharge Zone—Freshwater and saline wetlands contiguous with Salt Creek tiger beetle habitat function as a recharge zone for barren salt flats and stream banks by regulating surface water flows that are often charged with sediment and freshwater. Without recharge zones, barren salt flats and stream banks required by Salt Creek tiger beetles do not persist (LaGrange 2005, pers. comm.; Stutheit 2005, pers. comm.). A reduction in salinity concentration can result in the germination of aggressive invasive species such as cattail (*Typha angustifolia*) and reed canarygrass (*Phalaris arundinacea*), which are tolerant of a somewhat reduced salt content. These plant species shade previously open, sunny areas (i.e., barren salt flats and stream banks) required by Salt Creek tiger beetles for thermoregulating, foraging, and ovipositing (Fritz 2001, pers. comm.). Changes in salinity and hydrology may alter the abundance of prey and cause the loss of suitable larval habitat for saline wetland/stream-dependent tiger beetles, including the Salt Creek tiger beetle (Hoback *et al.* 2000, pp. 184-186). Increased vegetative encroachment is the primary factor attributed to the extirpation of several populations of other *Cicindela* species (e.g., *C. abdominals* and *C. debilis*) (Knisley and Hill 1992, pp. 135-142), and is one of the main threats to the endangered Ohlone tiger beetle (*C. ohlone*) (66 FR 0340).

Based on the information above, we identify moist, barren salt flats with appropriate soil characteristics to be a PCE for this subspecies.

Water Availability and Hydrologic Regime

Salt Creek tiger beetles require water to prevent larval desiccation, to maintain moist conditions at larval burrows for breeding and foraging activities, and for drinking (Spomer and Higley 1993, p. 396). Adult Salt Creek tiger beetles are confined to moist, muddy areas within a few meters of wetlands and stream edges, and larval burrows are only found in association with hydrated salt flats located along saline stream edges and saline wetlands (Spomer 2005, pers. comm.). A natural hydrologic regime resulting in annual high flows in saline streams in the early spring and summer is essential to maintain these areas, and to provide groundwater or surface water sources for the Salt Creek tiger beetle. Further, natural elevation changes in groundwater levels are important to hydrate saline wetlands located on the floodplain.

Larvae of the Salt Creek tiger beetle have adapted to elevated flows, inundation, and anaerobic conditions resulting from precipitation events that can occur during the summer (e.g., localized thunderstorms). This adaptation is thought to provide access to limited prey resources in areas where other predacious insects cannot compete; in addition, it may help the Salt Creek tiger beetle avoid parasites and other insect predators (e.g., robberflies) after flows recede (Hoback 2005, pers. comm.). Salt Creek tiger beetle larvae likely plug their burrows and switch from aerobic to anaerobic respiration to avoid short-duration inundation by floods (Spomer 2005, pers. comm.). Although no studies have confirmed these hypotheses, Hoback *et al.* (1998, p. 31) found that larvae of *Cicindela togata*, a tiger beetle found in close association with the Salt Creek tiger beetle, were able to survive without oxygen for an average of 6 days at 25 °C (57 °F). An adaptation to survive without oxygen during floods may allow the Salt Creek tiger beetle to persist along stream systems subject to regular flooding cycles. Brust *et al.* (2005, pp. 11-16) concluded that *C.*

hirticollis is able to survive along river systems subject to regular flooding cycles because its larvae could survive several days of hypoxia, although extended inundation results in decline of the species.

Based on the information above, we identify a natural hydrologic regime resulting in annual high flows in saline streams in the early spring and summer, and natural elevation changes in groundwater levels to hydrate saline wetlands located on the floodplain as a PCE for this subspecies.

Prey Availability

Salt Creek tiger beetles require an abundant and diverse prey base consisting of flying and non-flying invertebrates. Tiger beetles have been observed to eat insects from many orders and families (Larochelle 1974, pp. 21-43). Most common are prey belonging to the orders Coleoptera, Orthoptera, Hemiptera, Hymenoptera, Odonata, Diptera, and Lepidoptera. Ants (Formicidae) are the most commonly observed prey of adult Salt Creek tiger beetles in the field (Allgeier 2005, p. 5). Although adults can prey on a greater diversity of available prey than larvae, both adults and larvae are predators of similar-sized insects. Adults can capture flying insects; larval prey consists only of insects and arthropods living on the soil surface that wander within striking distance of their burrows (Allgeier 2005, p. 5; Spomer 2005, pers. comm.). Typical prey of larval tiger beetles includes dragonflies (Shelford 1908, pp. 157-184; McNamara 1922, pp. 241-246; Smith 1971, p. 80), millipedes (Labonte and Johnson 1988, pp. 53-54), earthworms, and amphibians (Larochelle and Lariviere 2001, pp. 41-122).

Based on the information above, we identify the presence of abundant and diverse flying and non-flying invertebrate prey species as a PCE for this subspecies.

Primary Constituent Elements (PCEs) for the Salt Creek Tiger Beetle

Under the Act and its implementing regulations, we are required to identify the physical and biological features within the geographical area occupied by the Salt Creek tiger beetle at the time of listing, that are essential to the conservation of the subspecies, and which may require special management considerations or protection. The physical and biological features are those PCEs laid out in a specific spatial arrangement and quantity determined to be essential to the conservation of the subspecies. We are designating critical habitat in areas within the geographical area occupied by the subspecies at the time of listing, and continue to be occupied today, and that contain the PCEs in the quantity and spatial arrangement to support life history functions essential for the conservation of the subspecies. We are designating areas outside the geographical area occupied by the subspecies at the time of listing that are not occupied, but are essential to the conservation of the subspecies.

We believe conservation of the Salt Creek tiger beetle is dependent upon multiple factors, including the conservation and management of areas to maintain "normal" ecological functions where existing populations survive and reproduce. The areas designated as critical habitat provide all of the physical or biological features essential for the conservation of the subspecies. Based on the above needs and our current knowledge of the life history, biology, and ecology of the subspecies and the habitat requirements for sustaining the essential life history functions of the subspecies, we have determined the PCEs for the Salt Creek tiger beetle are:

(1) Non-vegetated streambanks and mid-channel areas, located adjacent to and between saline stream edges and barren salt flats in saline and freshwater wetlands, in assemblages that are within 4 mi (6 km) of one another.

(2) Moist, barren salt flats with:

(a) Salmo and Saltillo soils or Lamo, Gibbon-Saltine, Obert, and Zoe soils with Salmo and Saltillo inclusions;

(b) Soil electroconductivity ranging from 2,016.0 mS/m to 2,992.2 mS/m;

(c) Soil moisture ranging from 43.5 percent to 51.7 percent; and

(d) Differential hydraulic pressures that create evaporation and result in exposed salt on soil surfaces.

(3) A natural hydrologic regime resulting in annual high flows in saline streams in the early spring and summer, and natural elevation changes in groundwater levels to hydrate saline wetlands located on the floodplain.

(4) The presence of abundant and diverse flying and non-flying invertebrate prey species belonging to the orders Coleoptera, Orthoptera, Hemiptera, Hymenoptera, Odonata, Diptera, or Lepidoptera.

With this designation of critical habitat, we intend to conserve the physical and biological features that are essential to the conservation of the subspecies, through the identification of the appropriate quantity and spatial arrangement of the PCEs sufficient to support the life history functions of the subspecies. All occupied units designated as critical habitat contain the PCEs in the appropriate quantity and spatial arrangement essential to the conservation of this subspecies and support multiple life processes for the Salt Creek tiger beetle.

Special Management Considerations or Protection

When designating critical habitat, we assess whether the specific areas within the geographical area occupied by the species at the time of listing that contain the physical and biological features essential to the conservation of the species may require special management considerations or protection. Special management is required in these areas to reduce threats. Threats common to all four critical habitat units for the Salt Creek tiger beetle include: (a) Stream channelization and bank armoring; (b) wetland draining and filling (including excessive sedimentation); (c) excessive freshwater input; and (d) overgrazing (70 FR 58335, October 6, 2005). The first three of the above threats are caused primarily by urban development and agricultural practices in the watershed.

Stream channelization and bank armoring projects in the area of all four critical habitat units have resulted in headcutting (a sharp break in the profile of a stream which forms an in-channel scarp called a headcut) and entrenchment (lowering of the stream bed into a restricted channel) of Little Salt and Rock Creeks. These impacts have the effect of lowering the water table in the local area, resulting in the drainage of adjacent saline and freshwater wetlands. The ultimate effect has been the gradual lowering of the water table and subsequent loss of evaporation processes essential for the development of moist, barren salt flats. Stream entrenchment, a direct consequence of stream channelization and bank armoring projects, has resulted in bank sloughing along saline streams. Bank sloughing, in turn, smothers saline seeps and salt flats used by Salt Creek tiger beetles. Bank armoring projects in all four units have resulted in smothered barren salt flats and seeps along saline streams. Stream channelization and bank armoring continue to be significant threats to Salt Creek tiger beetles in all four critical habitat units.

Wetland draining and filling projects, including ditch excavation and drainage tile installation, substantially affect Salt Creek tiger beetle habitat, rendering formerly occupied habitat unusable. In addition, these projects often lead to the conversion of wetlands to other land uses (e.g., hay production or pasture, and urban development), thereby

limiting restoration potential. Saline and freshwater wetlands have been filled as a result of sediment deposits from local runoff events. These deposits contain excessive nutrients, encouraging colonization by aggressive, invasive vegetation that is tolerant of saline conditions (i.e., cattail or reed canarygrass).

Excessive surface water runoff from nearby development has resulted in the dilution of saline wetlands, loss of barren salt flats, and modifications to site hydrological characteristics. Excessive sediment or freshwater runoff can encourage vegetation encroachment on barren salt flats, reducing the long-term viability of the area for Salt Creek tiger beetle use. These impacts have occurred on all four critical habitat units.

Livestock with access to saline streams trample larvae and larval habitat on salt-encrusted soil surfaces associated with barren salt flats and seeps. Livestock continue to pose a significant threat to Salt Creek tiger beetles, primarily because too many animals are often grazed in a given area, and they are not prevented from lingering in stream habitat. Additionally, overgrazing can encourage soil erosion and smothering of larval habitat in saline wetland and saline stream edges. Adverse impacts from excessive livestock grazing have occurred at the Upper Little Salt Creek North and Little Salt Creek—Arbor Lake Units.

Criteria Used To Identify Critical Habitat

As required by section 4(b)(2) of the Act, we use the best scientific and commercial data available in determining within the geographical area occupied at the time of listing the specific areas on which are found the features essential to the conservation of the Salt Creek tiger beetle which may require special management considerations or protection, as well as determining if any specific areas outside the geographical area occupied by the subspecies are essential for the conservation of the Salt Creek tiger beetle. Important sources of information included the available literature and information from biologists with the NGPC and University of Nebraska at Lincoln.

We also have reviewed available information that pertains to the habitat requirements of this subspecies, including material and data from reports submitted during section 7 consultations and by biologists holding section 10(a)(1)(A) recovery permits; research published in peer-reviewed articles and presented in academic theses and agency reports; and regional Geographic Information System coverages.

The Salt Creek tiger beetle has one of the most restricted ranges of any insect in the United States (Spomer and Higley 1993, p. 392), and the habitat currently occupied by the subspecies is highly limited and isolated. Surveys conducted over a 15-year period establish that the Salt Creek tiger beetle is extremely rare, numbering only in the low hundreds, and confined to three small populations along a single drainage (Little Salt Creek) in eastern Nebraska (see the October 6, 2005, final listing rule for more information on population status of the Salt Creek tiger beetle (70 FR 58335)). Because of low population numbers and the limited number of populations, both of which place the subspecies at a high risk of extinction and make it highly susceptible to stochastic events, designated critical habitat includes all three extant populations. The close proximity of the three currently occupied areas on Little Salt Creek (within 4 mi (6.4 km) of each other) increases the risk of extinction of the subspecies due to a single human or natural event. Therefore, it is essential to the conservation of the subspecies to ensure the existence of a potential refugium in a different watershed than the three currently occupied units, should an event or series of events threaten the existence of the remaining three populations.

We have identified a currently unoccupied area on Rock Creek (associated with the Jack Sinn Wildlife Management Area of the NGPC) as an additional unit for critical habitat designation. This area was known to be occupied as recently as 1998, and contains all the PCEs in the appropriate quantity and spatial arrangement essential to the conservation of the subspecies. The Jack Sinn—Rock Creek Unit (Unit 4) is a location where the subspecies can be reintroduced, and where it would not be susceptible to human or natural events that occur on Little Salt Creek. We include this one unoccupied unit per section 3(5)(A)(ii) of the Act, which states that critical habitat means "specific areas outside the geographical area occupied by the species at the time it is listed in accordance with the provisions of section 4 of this Act, upon a determination by the Secretary that such areas are essential for the conservation of the species." We have determined that the Jack Sinn-Rock Creek Unit is essential for the conservation of the subspecies (see the *Unit 4 - Jack Sinn—Rock Creek* description below for discussion of why we find this area to be essential). We did not designate any other unoccupied areas because there are no other unoccupied areas that we have determined to be essential to the conservation of the subspecies.

In determining boundaries of critical habitat units, we applied the following deductive rule set to identify four specific complexes of saline wetlands and streams that provide the features essential to the conservation of the Salt Creek tiger beetle:

(1) As a first step, we used the Resource Categorization Study (RCS), depicted as a Geographic Information System data layer by Gilbert and Stutheit (1994, pp. 1-24), to identify saline wetland complexes within the Salt Creek tiger beetle's historic range. The boundaries of the RCS encompass the Eastern Nebraska Saline Wetland Complex, which is the beetle's historic range.

(2) Within the RCS boundaries, we then identified existing saline wetlands containing the features essential to the conservation of the Salt Creek tiger beetle. This was done by conducting site reconnaissance and reviewing aerial photography.

(3) We also identified saline stream segments flowing through the saline wetlands, as represented by National Hydrography Data and further refined with aerial photography.

(4) We then identified areas currently or recently occupied by the Salt Creek tiger beetle within saline wetland and stream complexes.

When determining critical habitat boundaries within this final rule, we made every effort to avoid including developed areas such as buildings, paved areas, and other structures that lack features essential to the conservation of the Salt Creek tiger beetle. The scale of the maps we prepared under the parameters for publication within the Code of Federal Regulations may not reflect the exclusion of such developed areas. Any such structures and the land under them inadvertently left inside critical habitat boundaries shown on the maps of this final rule have been excluded by text in this final rule and are not designated as critical habitat. Therefore, Federal actions limited to these areas would not trigger section 7 consultation with respect to critical habitat and the requirement of no destruction or adverse modification, unless they may affect the subspecies or features essential to the conservation of the subspecies in adjacent critical habitat. In the future, we will be able to distinguish structures that existed at the time of this critical habitat designation

from structures created since designation by using detailed aerial imagery maps. Detailed aerial imagery maps from the time of critical habitat designation can be compared to future aerial imagery maps or on-the-ground observations to determine structures created since the designation.

Our final designation of critical habitat includes four units—three occupied by the subspecies at the time of listing in 2005 (and currently occupied) and that contain the PCEs in the appropriate quantity and spatial arrangement essential to the conservation of the subspecies, and one area outside of the geographical area occupied at the time of listing (but known to be occupied as recently as 1998) that we have determined to be essential for the conservation of the subspecies.

Final Critical Habitat Designation

We are designating four units as critical habitat for the Salt Creek tiger beetle. The critical habitat areas described below constitute our current and best assessment of areas that meet the definition of critical habitat for the Salt Creek tiger beetle. The four areas designated as critical habitat are: (1) Upper Little Salt Creek North, (2) Little Salt Creek—Arbor Lake, (3) Little Salt Creek—Roper, and (4) Jack Sinn—Rock Creek. Table 1 provides approximate areas (ac/ha), land ownership, and occupancy status of these units determined to meet the definition of critical habitat for the Salt Creek tiger beetle.

TABLE 1. CRITICAL HABITAT UNITS FOR THE SALT CREEK TIGER BEETLE.

Critical Habitat Unit	State Ownership (ac/ha)	Private Ownership (ac/ha)*	Total (ac/ha)	Current Population Status
1. Upper Little Salt Creek North	74/30	253/102	327/132	Occupied at time of listing and currently occupied
2. Little Salt Creek—Arbor Lake	0/0	232/94	232/94	Occupied at time of listing and currently occupied
3. Little Salt Creek—Roper	11/4	335/136	346/140	Occupied at time of listing and currently occupied
4. Jack Sinn—Rock Creek	629/255	399/161	1,028/416	Unoccupied at time of listing and currently unoccupied
TOTAL	714/289	1,219/493	1,933/782	

* This category includes lands owned by the City of Lincoln, Lower Platte South Natural Resources District, and individual private property owners.

We present brief descriptions of all units, and reasons why they meet the definition of critical habitat for the Salt Creek tiger beetle, below.

Unit 1 - Upper Little Salt Creek North, Lancaster County, Nebraska

Unit 1 consists of 327 ac (132 ha) of occupied Salt Creek tiger beetle habitat located approximately 5.5 mi (8.8 km) north of the Interstate 80 and North 27th Street interchange in Lincoln, Nebraska. It is 4.5 mi (7.2 km) upstream from Unit 2 (Little Salt Creek—Arbor Lake). The unit includes 3.1 mi (4.9 km) of Little Salt Creek, and consists of a saline stream and wetland complex extending along the floodplain of Little Salt Creek. The final acreage has increased by 20 ac (8 ha) since the December 12, 2007, proposed critical habitat rule (72 FR 70716), to ensure all areas that are occupied by the Salt Creek tiger beetle are included as critical habitat, and to ensure the inclusion of saline seep and movement corridor habitats along Little Salt Creek. The additional 20 ac (8 ha) were included in the April 28, 2009, revised proposed rule, to include an additional total of 138 ac (56 ha) as critical habitat (74 FR 19167). The unit provides habitat for the third largest existing population of the subspecies. This unit was occupied at the time of listing and contains all of the PCEs in the appropriate quantity and spatial arrangement essential to the conservation of the subspecies. The area is located away from commercial and residential developments associated with the City of Lincoln, Nebraska. Recently, a large parcel of land was acquired in this area by the NGPC. Other large parcels of land within this unit consist of saline wetland and stream complex habitats located along Little Salt Creek, and owned by The Nature Conservancy. Special management is required to address impacts from livestock overgrazing, stream entrenchment resulting from downstream channelization of Little Salt Creek, and ditching used to drain adjacent saline wetlands (70 FR 58335). Bank sloughing in response to stream entrenchment has likely covered over saline habitats located along the banks of Little Salt Creek.

Unit 2 - Little Salt Creek—Arbor Lake, Lancaster County, Nebraska

Unit 2 consists of 232 ac (94 ha) of occupied Salt Creek tiger beetle habitat located approximately 1 mi (1.6 km) north of the Interstate 80 and North 27th Street interchange on the northern city limits of Lincoln, Nebraska. The unit includes 1.53 mi (2.5 km) of Little Salt Creek, and has a large, relatively intact saline wetland and stream complex located within the Little Salt Creek floodplain. The final area has increased by 61 ac (25 ha) since the December 12, 2007, proposed critical habitat rule (72 FR 70716) to ensure all areas that are occupied by the Salt Creek tiger beetle are included as final critical habitat and to ensure the inclusion of saline seep and movement corridor habitats along Little Salt Creek. The additional 61 ac (25 ha) were included in the April 28, 2009, revised proposed rule, to include an additional total of 138 ac (56 ha) as critical habitat (74 FR 19167). This unit provides habitat for the largest population of Salt Creek tiger beetles and contains all of the PCEs in the appropriate quantity and spatial arrangement essential to the conservation of the subspecies. It was occupied at the time of listing. The abundance of Salt Creek tiger beetles in this unit is supported by the large saline wetland and stream complex within the Little Salt Creek floodplain. As such, this unit contains features that are essential to the conservation of the subspecies. Special management is required to reduce surface runoff and sedimentation from adjacent development activities, to reduce bank sloughing, and to address severe channel entrenchment of Little Salt Creek in adjacent saline wetlands (70 FR 58335). Excess freshwater and sediment has smothered saline habitats to the detriment of the Salt Creek tiger beetle. Other threats to the Little Salt Creek—

Arbor Lake Unit include livestock trampling and row crop agriculture (70 FR 58335). Little Salt Creek is severely entrenched in this area, resulting in the loss of several saline wetlands located along the floodplain.

Unit 3 - Little Salt Creek—Roper, Lancaster County, Nebraska

Unit 3 consists of 346 ac (140 ha) of occupied Salt Creek tiger beetle habitat located immediately south of the Interstate 80 and North 27th Street Interchange, north of the confluence of Little Salt and Salt Creeks, and approximately 1 mi (1.6 km) downstream of Unit 2 (Little Salt Creek—Arbor Lake). The unit includes 2.8 mi (4.5 km) of Little Salt Creek, and consists of a saline stream and wetland complex along the floodplain of Little Salt Creek. The final area has increased by 57 ac (23 ha) since the December 12, 2007, proposed critical habitat rule (72 FR 70716), to ensure all areas that are occupied by the Salt Creek tiger beetle are included as final critical habitat, and to ensure the inclusion of saline seep and movement corridor habitats along Little Salt Creek. The additional 57 ac (23 ha) were included in the April 28, 2009, revised proposed rule, to include an additional total of 138 ac (56 ha) as critical habitat (74 FR 19167). Unit 3 contains all of the PCEs in the appropriate quantity and spatial arrangement essential to the conservation of the subspecies and supports the second largest population of Salt Creek tiger beetles. This unit contains features that are essential to the conservation of the subspecies and was occupied at the time of listing. Special management is required to reduce surface water runoff and sediment transport from adjacent development activities, and to reduce channelization, stream entrenchment, and bank sloughing (70 FR 58335).

Unit 4 - Jack Sinn—Rock Creek, Lancaster and Saunders Counties, Nebraska

To reduce the risk of extinction of the Salt Creek tiger beetle, we included an additional critical habitat area along Rock Creek, an area where the Salt Creek tiger beetle has been extirpated. Unit 4 consists of 1,028 ac (416 ha) of unoccupied Salt Creek tiger beetle habitat located approximately 3 mi (5 km) southeast of the City of Ceresco, Nebraska, and east of Highway 77. It is 8.5 mi (13.7 km) upstream from the confluence of Rock and Salt Creeks. Unit 4 includes 10.62 mi (17.1 km) of Rock Creek, and consists of a saline stream and wetland complex along the floodplain of Rock Creek and has been determined to be essential to the conservation of the subspecies. The final area figure for Rock Creek remains a total of 1,028 ac (416 ha).

Because Units 1, 2, and 3 (currently occupied) are all on the same stream, and within close proximity of each other (Units 2 and 3 are separated by less than 1 mi (1.6 km)), the threat of the subspecies' extinction is greatly increased as a result of a natural or manmade event such as a chemical spill, drought, flood, or other event that would affect all three units at the same time. Such an event could cause the loss of remaining populations and render the habitat unsuitable. Local extinctions caused by habitat deterioration and stochastic weather events are frequent for insects, such as the Salt Creek tiger beetle, whose life histories are characterized by short generation time, small body size, high rates of population increase, and high habitat specificity (Murphy *et al.* 1990, pp. 41-51; Ruggerio *et al.* 1994, pp. 364-372). When developing conservation strategies for such species, the scientific community has stressed that greater emphasis should be placed on the maintenance of multiple populations as opposed to just protecting single reservoir populations (Murphy *et al.* 1990, pp. 41-51; Howe *et al.* 1991, pp. 251-253). For example, the recovery plan for the Puritan tiger beetle *(Cicindela puritana)*, a species with a life cycle similar to the Salt Creek tiger beetle, states that multiple metapopulations (consisting of several subpopulations) need to be protected to sustain the species (USFWS 1993, p. 21).

In the case of the Salt Creek tiger beetle, we have determined that establishment of multiple populations on different stream systems would lower overall extinction risk by lowering the risk from catastrophic events on a single stream, and by enabling repopulation following localized extinctions, which is comparable to conservation strategies used for other listed invertebrate species (Murphy *et al.* 1990, pp. 41-51). Our conclusion that populations should be distributed among separate stream systems addresses risks of adverse habitat impacts and weather events on a few populations located in close proximity to each other. Therefore, we have determined that an additional population located on a separate stream is essential to the conservation of the Salt Creek tiger beetle. We further conclude that the currently unoccupied Jack Sinn—Rock Creek Unit is essential for the conservation of the Salt Creek tiger beetle, because it is the site where a reintroduced population would have the best opportunity to survive and grow. The unit is large and contains the PCEs in the appropriate quantity and spatial arrangement essential to the conservation of the subspecies. Furthermore, unlike other areas with extirpated Salt Creek tiger beetle populations, such as those in the Oak Creek drainage where residential and commercial development have made reintroduction of the Salt Creek tiger beetle infeasible, this unit is associated with the Jack Sinn Wildlife Management Area of the NGPC, is located in an area of primarily agricultural activity, and therefore faces fewer threats.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out are not likely to jeopardize the continued existence of a listed species or destroy or adversely modify critical habitat. Decisions by the court of appeals for the Fifth and Ninth Circuits have invalidated our definition of "destruction or adverse modification" (50 CFR 402.02) (see *Gifford Pinchot Task Force* v. *U.S. Fish and Wildlife Service*, 378 F. 3d 1059 (9th Cir. 2004) and *Sierra Club* v. *U.S. Fish and Wildlife Service et al.*, 245 F.3d 434, 442 (5th Cir. 2001)), and we do not rely on this regulatory definition when analyzing whether an action is likely to destroy or adversely modify critical habitat. Under the statutory provisions of the Act, we determine destruction or adverse modification on the basis of whether, with implementation of the proposed Federal action, the affected critical habitat would remain functional (or retain those PCEs that relate to the ability of the area to periodically support the species) to serve its intended conservation role for the species.

If a species is listed or critical habitat is designated, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. As a result of this consultation, we document compliance with the requirements of section 7(a)(2) through our issuance of:

(1) A concurrence letter for Federal actions that may affect, but are not likely to adversely affect, listed species or critical habitat; or

(2) A biological opinion for Federal actions that may affect, and are likely to adversely affect, listed species or critical habitat.

When we issue a biological opinion concluding that a project is likely to jeopardize the continued existence of a listed species or destroy or adversely modify critical habitat, we also provide reasonable and prudent alternatives to the project, if any are identifiable. We define "Reasonable and prudent alternatives" at 50 CFR 402.02 as alternative actions identified during consultation that:

(1) Can be implemented in a manner consistent with the intended purpose of the action,

(2) Can be implemented consistent with the scope of the Federal agency's legal authority and jurisdiction,

(3) Are economically and technologically feasible, and

(4) Would, in the Director's opinion, avoid jeopardizing the continued existence of the listed species or destroying or adversely modifying critical habitat.

Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where a new species is listed or critical habitat is subsequently designated that may be affected and the Federal agency has retained discretionary involvement or control over the action (such discretionary involvement or control over the action is authorized by law). Consequently, Federal agencies may need to request reinitiation of consultation with us on actions for which formal consultation has been completed, if those actions with discretionary involvement or control may affect subsequently listed species or designated critical habitat.

Federal activities that may affect the Salt Creek tiger beetle or its designated critical habitat require section 7 consultation under the Act. Activities on State, Tribal, local, or private lands requiring a Federal permit (such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or a permit from us under section 10 of the Act) or involving some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency) are subject to the section 7 consultation process. Federal actions not affecting listed species or critical habitat, and actions on State, Tribal, local or private lands that are not federally funded, authorized, or permitted, do not require section 7 consultations.

Application of the "Adverse Modification" Standard

The key factor related to the adverse modification determination is whether, with implementation of the proposed Federal action, the affected critical habitat would continue to serve its intended conservation role for the species, or retain those PCEs that relate to the ability of the area to support the species. Activities that may destroy or adversely modify critical habitat are those that alter the PCEs to an extent that appreciably reduces the conservation value of critical habitat for the Salt Creek tiger beetle. As discussed above, the role of critical habitat is to support the life history needs of the species and provide for the conservation of the species.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe, in any proposed or final regulation that designates critical habitat, activities involving a Federal action that may destroy or adversely modify such habitat, or that may be affected by such designation.

Activities that, when carried out, funded, or authorized by a Federal agency, may affect critical habitat and, therefore, should result in consultation for the Salt Creek tiger beetle include, but are not limited to:

(1) Actions that would result in stream channelization and bank armoring. Such activities could include, but would not be limited to, stream channelization and bank armoring projects located in Little Salt and Rock Creeks and their associated tributaries. These activities could result in the loss of moist, barren salt flats through physical smothering, bank sloughing, or hydrological modification along Little Salt and Rock Creeks. Such activities could result in lowering of the water table and the gradual drainage of floodplain saline wetlands. Further, these types of activities could result in modification of the prey base for adult and larval forms of the Salt Creek tiger beetle and elimination of movement corridors necessary to complete life history requirements and to repopulate extirpated areas.

(2) Actions that would result in input of excessive freshwater runoff and sediment into saline streams and wetlands. Such activities could include, but would not be limited to, adjacent commercial, industrial, and residential developments and associated infrastructure, and construction or upgrade of utilities, including storm sewers. Such activities could result in the transport of sediment and freshwater into saline habitats that are required by the Salt Creek tiger beetle. Excessive freshwater and sediment could smother moist, barren salt flats and encourage vegetation growth. Excessive freshwater runoff and sediment could result in the loss of larval habitat through physical scouring or flooding, smothering with sediment, and conversion to a vegetated state.

(3) Actions that would result in wetland drainage and filling. Such activities could include agricultural, commercial, industrial, and residential land uses and infrastructure to support them. The effects of wetland loss would include the loss of: (a) Moist, barren salt flats; (b) the prey base for larval and adults forms of the Salt Creek tiger beetle; (c) the recharge capacity of adjacent wetlands that function to meter surface flows and capture sediment and freshwater runoff; and (d) the ability of the Salt Creek tiger beetle to move among saline streams and wetlands to meet life history requirements.

(4) Actions that would result in trampling and overgrazing by livestock. Such activities could occur as a result of agricultural land uses. Livestock trample moist, barren salt flats, resulting in the destruction of larvae and larval burrows.

Exemptions

Application of Section 4(a)(3) of the Act

The Sikes Act Improvement Act of 1997 (Sikes Act) (16 U.S.C. 670a) required each military installation that includes land and water suitable for the conservation and management of natural resources to complete an integrated natural resources management plan (INRMP) by November 17, 2001. An INRMP integrates implementation of the military mission of the installation with stewardship of the natural resources found on the base. Each INRMP includes:

- An assessment of the ecological needs on the installation, including the need to provide for the conservation of listed species;
- A statement of goals and priorities;
- A detailed description of management actions to be implemented to provide for these ecological needs; and
- A monitoring and adaptive management plan.

Among other things, each INRMP must, to the extent appropriate and

applicable, provide for fish and wildlife management; fish and wildlife habitat enhancement or modification; wetland protection, enhancement, and restoration where necessary to support fish and wildlife; and enforcement of applicable natural resource laws.

The National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108-136) amended the Act to limit areas eligible for designation as critical habitat. Specifically, section 4(a)(3)(B)(i) of the Act (16 U.S.C. 1533(a)(3)(B)(i)) now provides: "The Secretary shall not designate as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an integrated natural resources management plan prepared under section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation."

There are no Department of Defense (DOD) lands with a completed INRMP within the critical habitat designation. Therefore, no lands have been exempted from this critical habitat designation under section 4(a)(3) of the Act.

Exclusions

Application of Section 4(b)(2) of the Act

Section 4(b)(2) of the Act states that the Secretary must designate and revise critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species. In making that determination, the statue on its face, as well as the legislative history are clear that the Secretary has broad discretion regarding which factor(s) to use and how much weight to give to any factor.

Under section 4(b)(2) of the Act, we may exclude an area from designated critical habitat based on economic impacts, impacts on national security, or any other relevant impacts. In considering whether to exclude a particular area from the designation, we must identify the benefits of including the area in the designation, identify the benefits of excluding the area from the designation, and determine whether the benefits of exclusion outweigh the benefits of inclusion. If based on this analysis, we make this determination, then we can exclude the area only if such exclusion would not result in the extinction of the species.

Exclusions Based on National Security Impacts

Under section 4(b)(2) of the Act, we consider whether there are lands owned or managed by the DOD where a national security impact might exist. Lands within the designation of critical habitat for Salt Creek tiger beetle are not owned or managed by the DOD and, therefore, anticipate no impact to national security. There are no areas excluded from critical habitat based on impacts on national security.

Exclusions Based on Other Relevant Impacts

Under section 4(b)(2) of the Act, we consider any other relevant impacts, in addition to economic impacts and impacts on national security. We consider a number of factors including whether the landowners have developed any HCPs or other management plans for the area, or whether there are conservation partnerships that would be encouraged by designation of, or exclusion from, critical habitat. In addition, we look at any Tribal issues, and consider the government-to-government relationship of the United States with Tribal entities. We also consider any social impacts that might occur because of the designation.

In preparing this rule, we have determined that there are currently no completed HCPs or other management plans for the Salt Creek tiger beetle, and the designation does not include any Tribal lands or trust resources. We anticipate no impact to Tribal lands, partnerships, or completed HCPs from this critical habitat designation. There are no areas excluded from this designation based on other relevant impacts.

Exclusions Based on Economic Impacts

Under section 4(b)(2) of the Act, we consider the economic impacts of specifying any particular area as critical habitat. In order to consider economic impacts, we prepared a draft analysis of the economic impacts of the critical habitat designation and related factors. The draft analysis (dated July 17, 2007) was made available for public review between December 12, 2007, and February 11, 2008 (72 FR 70716). We reopened the comment period and provided a second opportunity for public review of the economic analysis between June 3, 2008, and July 11, 2008 (73 FR 31665). We received public comments related to the draft economic analysis. A final analysis (dated October 31, 2008) of the potential economic effects of the designation was then prepared taking into consideration any relevant new information (ENTRIX 2008a, entire). A memorandum was later prepared (dated November 19, 2008; ENTRIX 2008b, entire) that reported the economic impacts associated with the revised proposed critical habitat designation that included an additional 138 ac (56 ha) as critical habitat for the Salt Creek tiger beetle.

The economic analysis considers the economic efficiency effects that may result from the designation, including habitat protections that may be co-extensive with the listing of the species. It also addresses distribution of impacts, including an assessment of the potential effects on small entities and the energy industry. The economic analysis focuses on the direct and indirect costs of the rule. However, economic impacts to land-use activities can exist in the absence of critical habitat. These impacts may result from, for example, section 7 consultations under the jeopardy standard, local zoning laws, State and natural resource laws, and enforceable management plans and best management practices applied by other State and Federal agencies.

Of all the activities, development is expected to be impacted the most by the designation of critical habitat through development restrictions in the area in and around Lincoln, Nebraska. Conservation activities implemented for the benefit of the Salt Creek tiger beetle also are expected to have an economic impact through anticipated land acquisition, compensation for conservation easements, habitat management, and restoration projects. Preparation of an HCP for the beetle, impacts to transportation and public works projects, and agricultural impacts are also anticipated, but these anticipated impacts are relatively small.

The total potential post-designation economic impacts of species conservation efforts (costs attributable to both species listing and the critical habitat designation, estimated from 2008-2027) in the areas designated as critical habitat for the Salt Creek tiger beetle are estimated at $20.5 to $22.6 million assuming a 7 percent discount rate (ENTRIX 2008b, p. 2). In annualized terms, potential costs are estimated to range between $1.6 and $1.8 million per year employing a 7 percent discount rate (ENTRIX 2008b, p. 2).

The total incremental impacts of the critical habitat designation (costs

attributable to the designation alone, estimated from 2008-2027) are estimated at $254,000 to $256,000 using a 7 percent discount rate (ENTRIX 2008b, p. 2). In annualized terms, potential incremental costs of the designation are estimated to be $23,000 per year at a 7 percent discount rate (ENTRIX 2008b, p. 2).

The total baseline impacts (costs attributable to listing alone, estimated from 2008-2027) are anticipated to occur absent any critical habitat designation for the species. The baseline costs of species conservation efforts in areas designated as critical habitat are estimated to range between $20.1 and $22.1 million assuming a 7 percent discount rate (ENTRIX 2008b, p. 2). In annualized terms, potential baseline costs are estimated to range between $1.6 and $1.8 million per year at a 7 percent discount rate (ENTRIX 2008b, p. 2).

After consideration of the impacts under section 4(b)(2) of the Act, the Secretary has determined not to exercise his discretion to exclude any areas from the final critical habitat designation based on the identified economic impacts, which showed that no group was unduly impacted. The final economic analysis is available for downloading from the Internet at *http://www.regulations.gov*, or *http://www.fws.gov/mountain-prairie/species/invertebrates/saltcreektiger/index.htm*, or upon request from the Nebraska Ecological Services Field Office (see **ADDRESSES** section).

Required Determinations

Regulatory Planning and Review—Executive Order 12866

The Office of Management and Budget (OMB) has determined that this rule is not significant and has not reviewed this rule under Executive Order (E.O.) 12866. The OMB bases its determination upon the following four criteria:

(a) Whether the rule will have an annual effect of $100 million or more on the economy or adversely affect an economic sector, productivity, jobs, the environment, or other units of the government.

(b) Whether the rule will create inconsistencies with other Federal agencies' actions.

(c) Whether the rule will materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

(d) Whether the rule raises novel legal or policy issues.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency must publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended RFA to require Federal agencies to provide a statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities. In this final rule, we are certifying that the critical habitat designation for the Salt Creek tiger beetle will not have a significant economic impact on a substantial number of small entities. The following discussion explains our rationale.

According to the Small Business Administration (SBA), small entities include small organizations, such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; as well as small businesses. Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we consider the types of activities that might trigger regulatory impacts under this rule, as well as the types of project modifications that may result. In general, the term "significant economic impact" is meant to apply to a typical small business firm's business operations.

To determine if the designation of critical habitat for the Salt Creek tiger beetle could significantly affect a substantial number of small entities, we consider the number of small entities affected within particular types of economic activities (e.g., housing development, grazing, oil and gas production, timber harvesting). We consider each industry or category individually to determine if certification is appropriate. In estimating the numbers of small entities potentially affected, we also consider whether their activities have any Federal involvement; some kinds of activities are unlikely to have any Federal involvement and so will not be affected by the designation of critical habitat.

Designation of critical habitat only affects activities conducted, funded, or permitted by Federal agencies. Some kinds of activities are unlikely to have any Federal involvement and so will not be affected by critical habitat designation. In areas where the subspecies is present, Federal agencies already are required to consult with us under section 7 of the Act on activities they fund, permit, or implement that may affect the Salt Creek tiger beetle (see Section 7 Consultation section). Federal agencies also must consult with us if their activities may affect critical habitat. Therefore, designation of critical habitat could result in an additional economic impact on small entities due to the requirement to reinitiate consultation for ongoing Federal activities (see Application of the "Adverse Modification" Standard section).

The economic analysis for the Salt Creek tiger beetle evaluates the potential for economic impacts related to several categories, including: (1) Land development; (2) development of the Salt Creek tiger beetle HCP; (3) public and non-governmental organization conservation and restoration; (4) agriculture; and (5) transportation and public works projects (ENTRIX 2007). Based on our analysis, only small agricultural entities are expected to be affected by conservation efforts for the Salt Creek tiger beetle. Land development, including conversion of cropland to pasture, is expected to be primarily carried out by private landowners. These landowners are likely to include small farmers. Therefore, the screening analysis focused on economic impacts resulting from loss of agriculture land values and modifications to farming activities. The small farmers expected to be affected are forecast to experience an impact equivalent to less than 0.08 percent of estimated annual sales (less than 0.1 of 1 percent), and therefore Salt Creek tiger beetle conservation activities are not expected to impact the annual profitability of small ranching and

farming operations (ENTRIX 2007, pp. 63-69).

In summary, we have considered whether this designation of critical habitat would result in a significant economic effect on a substantial number of small entities. We have determined, for the above reasons and based on currently available information, that it is not likely to affect a substantial number of small entities. Therefore, we certify that this regulation will not result in a significant economic impact on a substantial number of small business entities. Please refer to our final economic analysis of this designation for a more detailed discussion of potential economic impacts.

Energy Supply, Distribution, or Use—Executive Order 13211

On May 18, 2001, the President issued E.O. 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use) on regulations that significantly affect energy supply, distribution, and use. E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. OMB has provided guidance for implementing this E.O. that outlines nine outcomes that may constitute "a significant adverse effect" when compared without the regulatory action under consideration. The final economic analysis finds that none of these criteria are relevant to this analysis. Thus, based on information in the economic analysis, energy-related impacts associated with Salt Creek tiger beetle conservation activities within the critical habitat designation are not expected. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), we make the following findings:

(1) This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or Tribal governments, or the private sector, and includes both "Federal intergovernmental mandates" and "Federal private sector mandates." These terms are defined in 2 U.S.C. 658(5)-(7). "Federal intergovernmental mandate" includes a regulation that "would impose an enforceable duty upon State, local, or [T]ribal 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 [T]ribal governments under entitlement authority," if the provision would "increase the stringency of conditions of assistance" or "place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding," and the State, local, or Tribal governments "lack authority" to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; AFDC work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. "Federal private sector mandate" includes a regulation that "would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance or (ii) a duty arising from participation in a voluntary Federal program."

The designation of critical habitat does not impose a legally binding duty on non-Federal government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply, nor would critical habitat shift the costs of the large entitlement programs listed above onto State governments.

(2) We do not believe that this rule will significantly or uniquely affect small governments because it will not produce a Federal mandate of $100 million or greater in any year, that is, it is not a "significant regulatory action" under the Unfunded Mandates Reform Act. The designation of critical habitat imposes no obligations on State or local governments. As such, a Small Government Agency Plan is not required.

Takings—Executive Order 12630

In accordance with E.O. 12630 (Government Actions and Interference with constitutionally Protected Private Property Rights), we have analyzed the potential takings implications of designating approximately 1,933 ac (782 ha) of lands in Lancaster and Saunders Counties, Nebraska, as critical habitat for the Salt Creek tiger beetle in a takings implications assessment. The takings implications assessment concludes that this final designation of critical habitat does not pose significant takings implications for lands within or affected by the designation.

Federalism—Executive Order 13132

In accordance with E.O. 13132 (Federalism), this rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with Department of the Interior and Department of Commerce policy, we requested information from, and coordinated development of, this critical habitat designation with appropriate State resource agencies in Nebraska. The designation may have some benefit to these governments because the areas that contain the features essential to the conservation of the species are more clearly defined, and the physical and biological features of the habitat necessary to the conservation of the species are specifically identified. This information does not alter where and what federally sponsored activities may occur. However, it may assist local governments in long-range planning (rather than having them wait for case-by-case section 7 consultations to occur).

Where State and local governments require approval or authorization from a Federal agency for actions that may affect critical habitat, consultation under section 7(a)(2) will be required. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency.

Civil Justice Reform—Executive Order 12988

In accordance with E.O. 12988 (Civil Justice Reform), the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2)

of the Order. We are designating critical habitat in accordance with the provisions of the Act. This final rule uses standard property descriptions and identifies the features essential to the conservation of the subspecies within the designated areas to assist the public in understanding the habitat needs of the Salt Creek tiger beetle.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act (42 U.S. C. 4321 et seq.)

We have prepared an environmental assessment dated March 11, 2010, and made a finding of no significant impacts dated March 11, 2010. These documents are available on the Internet at *http://www.regulations.govand http://www.fws.gov/mountain-prairie/species/invertebrates/saltcreektiger/index.htm*.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, Government-to-Government Relations with Native American Tribal Governments (59 FR 22951), E.O. 13175, and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with Tribes in developing programs for healthy ecosystems, to acknowledge that Tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to Tribes. There are no Tribal lands that meet the definition of critical habitat for the Salt Creek tiger beetle. Therefore, we are not designating critical habitat for the Salt Creek tiger beetle on Tribal lands.

References Cited

A complete list of all references cited in this rulemaking is available upon request from the Acting Field Supervisor, Nebraska Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Author(s)

The primary authors of this package are staff members of the Nebraska Ecological Services Field Office, Grand Island, Nebraska.

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. In § 17.11(h), revise the entry for "Beetle, Salt Creek tiger" under "INSECTS" 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						
*	*	*	*	*	*	*	
INSECTS							
*	*	*	*	*	*	*	
Beetle, Salt Creek tiger	*Cicindela nevadica lincolniana*	U.S.A. (NE)	Entire	E	754	17.95(i)	NA
*	*	*	*	*	*	*	

■ 3. In § 17.95(i), add an entry for "Salt Creek Tiger Beetle (*Cicindela nevadica lincolniana*)" in the same alphabetical order in which this subspecies appears in the table at § 17.11(h), to read as follows:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(i) Insects.

* * * * *

Salt Creek Tiger Beetle *(Cicindela nevadica lincolniana)*

(1) Critical habitat units are depicted for Lancaster and Saunders Counties, Nebraska, on the maps below.

(2) The primary constituent elements of critical habitat for the Salt Creek tiger beetle are the following habitat components:

(i) Non-vegetated streambanks and mid-channel areas, located adjacent to and between saline stream edges and barren salt flats in saline and freshwater wetlands, in assemblages that are within 4 miles (6 kilometers) of one another;

(ii) Moist, barren salt flats with:

(A) Salmo and Saltillo soils or Lamo, Gibbon-Saltine, Obert, and Zoe soils with Salmo and Saltillo inclusions;

(B) Soil electroconductivity ranging from 2,016.0 mS/m to 2,992.2 mS/m;

(C) Soil moisture ranging from 43.5 percent to 51.7 percent; and

(D) Differential hydraulic pressures that create evaporation and result in exposed salt on soil surfaces;

(iii) A natural hydrologic regime resulting in annual high flows in saline streams in the early spring and summer, and natural elevation changes in groundwater levels to hydrate saline wetlands located on the floodplain; and

(iv) The presence of abundant and diverse flying and non-flying invertebrate prey species belonging to the orders Coleoptera, Orthoptera, Hemiptera, Hymenoptera, Odonata, Diptera, or Lepidoptera.

(3) Critical habitat does not include manmade structures (such as buildings, aqueducts, airports, roads, and other paved areas) and the land on which they are located existing on the effective date of this rule. In the future, we will be able to distinguish structures that existed at the time of critical habitat designation from structures created since critical habitat designation by using dated detailed aerial imagery maps.

(4) Critical habitat map units. Data layers defining map units were created using GIS software. We defined critical habitat boundaries as follows. We utilized the Resource Categorization Study (RCS) (Gilbert and Stutheit 1994) to define boundaries of the Salt Creek tiger beetle's historic range. Within the RCS boundaries, we then identified existing saline wetlands containing the features essential to the conservation of the Salt Creek tiger beetle; we also identified saline stream segments flowing through the saline wetlands, as represented by National Hydrography Data and further refined with aerial photography. Coordinate points defining critical habitat unit boundaries were created through an automated GIS process using Universal Transverse Mercator as the reference coordinate system.

(5) Note: Index map (Map 1) follows:

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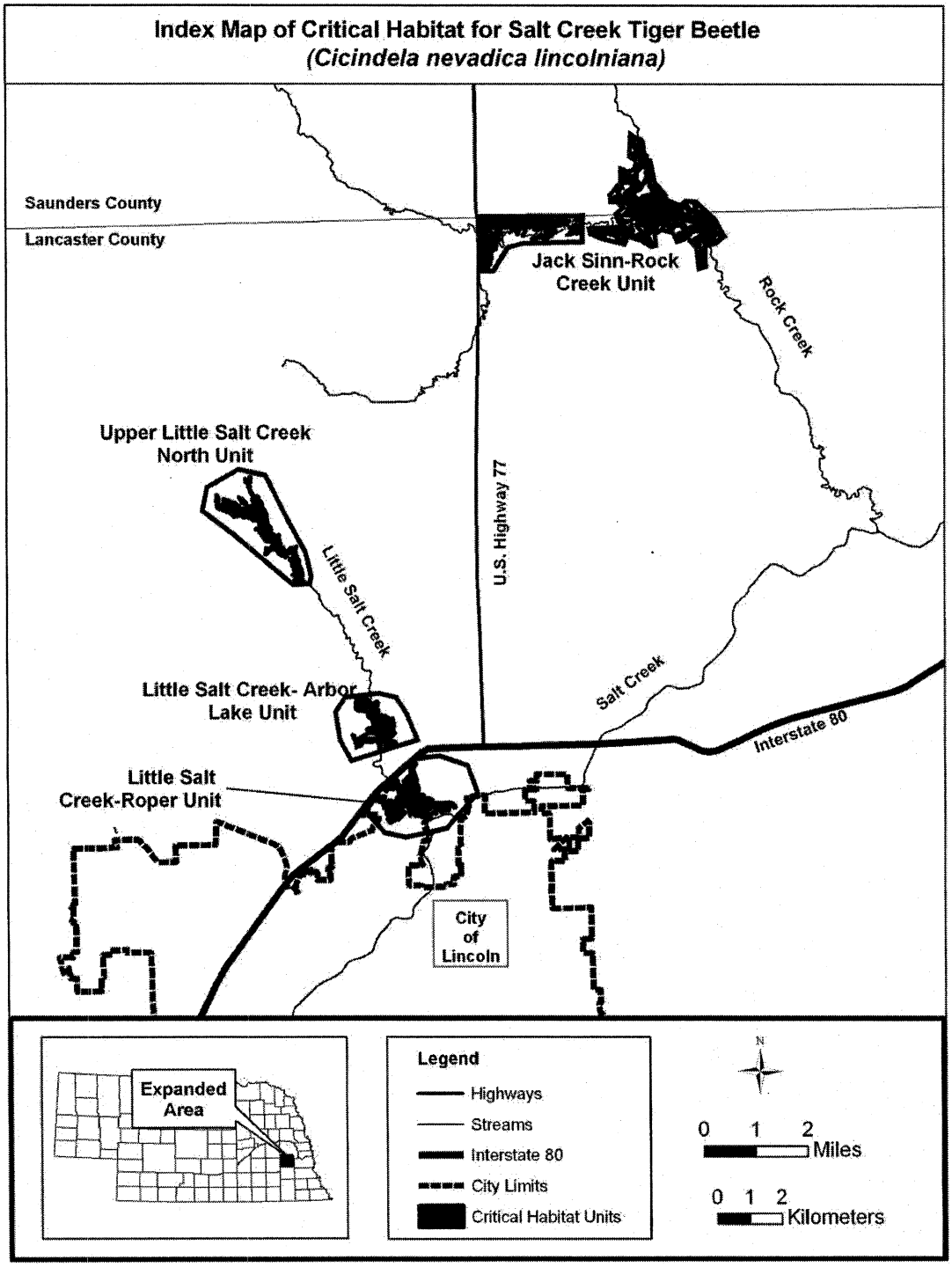

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(6) Unit 1: Upper Little Salt Creek North, Lancaster County, Nebraska.

(i) Tract 1a. Land bounded by the following Universal Transverse Mercator (UTM) Zone 14N, North American Datum of 1983 (NAD83) coordinates (E, N): 692489, 4536054; 692486, 4536053; 692479, 4536054; 692476, 4536059; 692474, 4536062; 692471, 4536063; 692466, 4536064; 692464, 4536067; 692463, 4536072; 692464, 4536076; 692465, 4536079; 692468, 4536080; 692471, 4536081; 692475, 4536082; 692485, 4536083; 692494, 4536069; 692495, 4536064; 692495, 4536062; 692493, 4536057; 692489, 4536054.

(ii) Tract 1b. Land bounded by the following Universal Transverse Mercator (UTM) Zone 14N, North American Datum of 1983 (NAD83) coordinates (E, N): 691216, 4538366; 691216, 4538366; 691216, 4538366; 691217, 4538375; 691222, 4538376; 691225, 4538377; 691229, 4538381; 691230, 4538384; 691232, 4538389; 691231, 4538394; 691231, 4538399; 691230, 4538404; 691229, 4538408; 691226, 4538412; 691224, 4538415; 691221, 4538418; 691216, 4538420; 691214, 4538420; 691212, 4538419; 691209, 4538418; 691201, 4538419; 691204, 4538432; 691205, 4538438; 691206, 4538444; 691207, 4538449; 691210, 4538460; 691213, 4538465; 691220, 4538467; 691224, 4538466; 691227, 4538461; 691229, 4538455; 691234, 4538451; 691241, 4538452; 691248, 4538455; 691255, 4538458; 691262, 4538458; 691264, 4538451; 691265, 4538442; 691262, 4538431; 691257, 4538418; 691256, 4538405; 691257, 4538394; 691258, 4538384; 691256, 4538379; 691251, 4538371; 691244, 4538366; 691236, 4538364; 691229, 4538364; 691219, 4538366; 691217, 4538364; 691231, 4538347; 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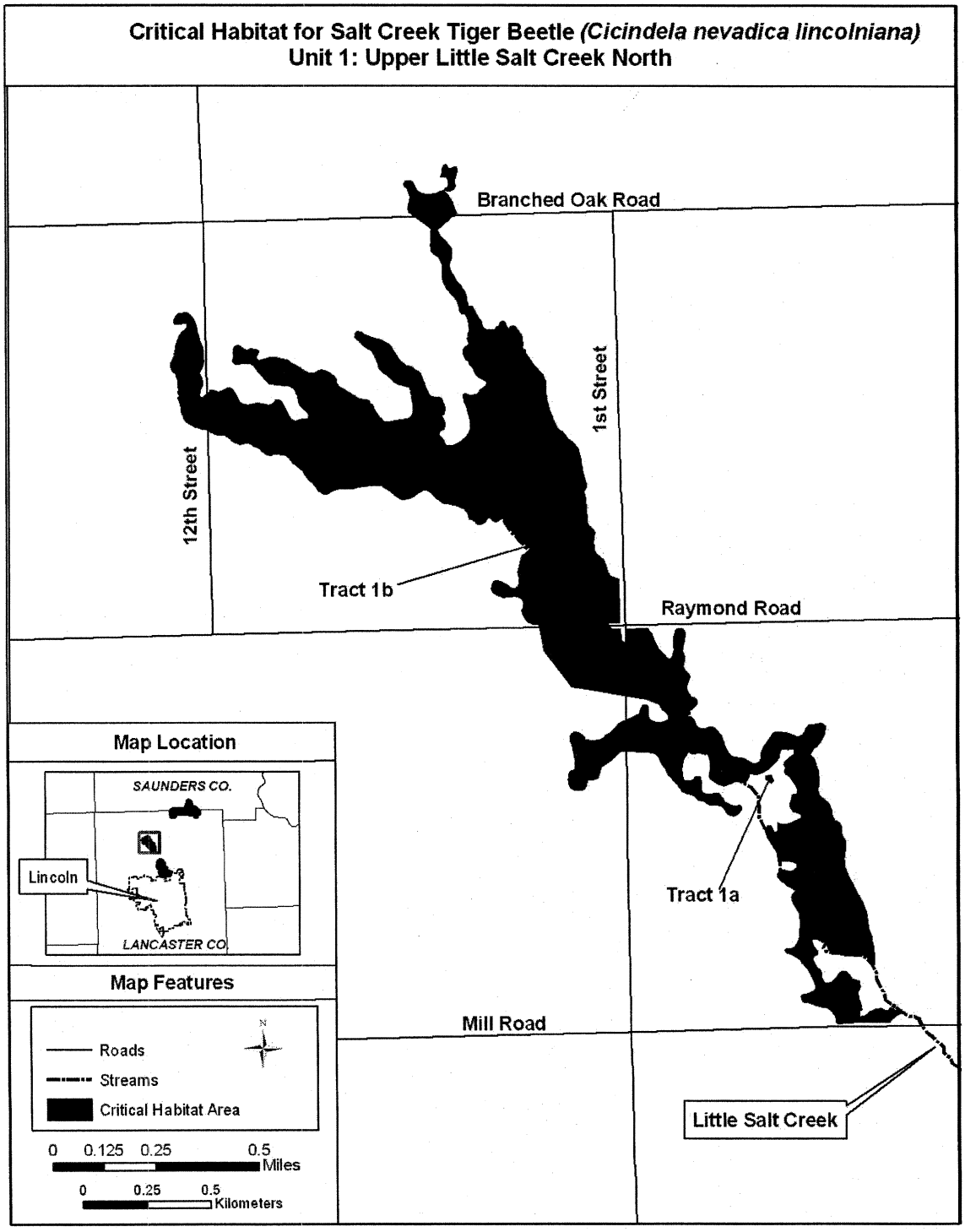
(iii) Note: Map of Unit 1, Upper Little Salt Creek North (Map 2), follows:

BILLING CODE 4310–55–S



BILLING CODE 4310–55–C

(7) Unit 2: Little Salt Creek—Arbor Lake, Lancaster County, Nebraska.

(i) Tract 2a. Land bounded by the following Universal Transverse Mercator (UTM) Zone 14N, North American Datum of 1983 (NAD83) coordinates (E, N): 695582, 4530097; 695584, 4530093; 695585, 4530092; 695590, 4530091; 695596, 4530091; 695600, 4530088; 695602, 4530085; 695602, 4530078; 695598, 4530070; 695591, 4530064; 695583, 4530058; 695572, 4530054; 695561, 4530051; 695555, 4530050; 695547, 4530048; 695541, 4530045; 695538, 4530043; 695530, 4530040; 695515, 4530031; 695496, 4530025; 695488, 4530021; 695482, 4530016; 695476, 4530013; 695471, 4530009; 695465, 4530008; 695457, 4530008; 695450, 4530009; 695444, 4530012; 695439, 4530017; 695434, 4530023; 695432, 4530031; 695428, 4530042; 695426, 4530044; 695422, 4530044; 695418, 4530043; 695413, 4530044; 695411, 4530046; 695409, 4530050; 695409, 4530056; 695411, 4530061; 695417, 4530065; 695427, 4530068; 695434, 4530074; 695438, 4530080; 695439, 4530087; 695439, 4530092; 695439, 4530098; 695441, 4530104; 695443, 4530106; 695450, 4530107; 695458, 4530105; 695467, 4530103; 695478, 4530101; 695488, 4530099; 695496, 4530097; 695506, 4530099; 695513, 4530102; 695522, 4530107; 695528, 4530111; 695534, 4530116; 695540, 4530120; 695548, 4530122; 695558, 4530122; 695565, 4530124; 695571, 4530123; 695576, 4530122; 695580, 4530116; 695581, 4530109; 695582, 4530104; 695582, 4530097.

(ii) Tract 2b. Land bounded by the following Universal Transverse Mercator (UTM) Zone 14N, North American Datum of 1983 (NAD83) coordinates (E, N): 695752, 4530111; 695749, 4530108; 695745, 4530108; 695738, 4530109; 695729, 4530109; 695722, 4530108; 695716, 4530106; 695708, 4530104; 695701, 4530104; 695694, 4530104; 695689, 4530105; 695683, 4530106; 695671, 4530106; 695669, 4530107; 695664, 4530110; 695662, 4530115; 695659, 4530124; 695658, 4530135; 695659, 4530146; 695661, 4530154; 695665, 4530165; 695670, 4530172; 695677, 4530181; 695681, 4530185; 695689, 4530190; 695695, 4530195; 695704, 4530200; 695710, 4530203; 695715, 4530205; 695721, 4530206; 695731, 4530204; 695738, 4530200; 695743, 4530198; 695748, 4530194; 695752, 4530190; 695755, 4530184; 695758, 4530177; 695761, 4530171; 695763, 4530163; 695764, 4530155; 695764, 4530146; 695762, 4530136; 695760, 4530128; 695758, 4530122; 695756, 4530117; 695752, 4530111.

(iii) Tract 2c. Land bounded by the following Universal Transverse Mercator (UTM) Zone 14N, North American Datum of 1983 (NAD83) coordinates (E, N): 694865, 4531575; 694912, 4531436; 694913, 4531436; 694921, 4531431; 694932, 4531426; 694944, 4531421; 694955, 4531418; 694964, 4531416; 694970, 4531412; 694975, 4531403; 694979, 4531392; 694982, 4531380; 694987, 4531366; 694993, 4531353; 695000, 4531342; 695007, 4531330; 695014, 4531318; 695021, 4531310; 695028, 4531306; 695034, 4531309; 695037, 4531312; 695041, 4531317; 695045, 4531325; 695048, 4531333; 695050, 4531344; 695056, 4531359; 695061, 4531374; 695067, 4531381; 695076, 4531387; 695085, 4531390; 695095, 4531394; 695102, 4531397; 695106, 4531402; 695104, 4531408; 695103, 4531413; 695102, 4531419; 695105, 4531424; 695111, 4531427; 695119, 4531430; 695126, 4531435; 695130, 4531439; 695133, 4531441; 695139, 4531441; 695148, 4531441; 695155, 4531442; 695163, 4531445; 695170, 4531447; 695174, 4531447; 695177, 4531446; 695180, 4531441; 695182, 4531436; 695184, 4531433; 695188, 4531427; 695193, 4531418; 695198, 4531408; 695203, 4531398; 695206, 4531388; 695209, 4531375; 695210, 4531361; 695209, 4531348; 695206, 4531336; 695202, 4531326; 695197, 4531314; 695191, 4531307; 695186, 4531301; 695179, 4531294; 695173, 4531284; 695169, 4531276; 695164, 4531266; 695161, 4531256; 695159, 4531246; 695160, 4531234; 695160, 4531221; 695167, 4531206; 695178, 4531196; 695185, 4531193; 695195, 4531190; 695206, 4531187; 695213, 4531183; 695219, 4531174; 695222, 4531165; 695224, 4531154; 695225, 4531141; 695225, 4531132; 695224, 4531122; 695223, 4531116; 695222, 4531114; 695220, 4531104; 695219, 4531097; 695220, 4531087; 695222, 4531077; 695227, 4531064; 695230, 4531058; 695232, 4531050; 695235, 4531044; 695237, 4531037; 695238, 4531027; 695239, 4531024; 695238, 4531017; 695236, 4531013; 695235, 4531012; 695260, 4530964; 695263, 4530964; 695267, 4530964; 695271, 4530963; 695275, 4530961; 695278, 4530958; 695284, 4530953; 695288, 4530951; 695293, 4530948; 695311, 4530942; 695321, 4530947; 695323, 4530952; 695325, 4530958; 695324, 4530964; 695321, 4530968; 695318, 4530972; 695315, 4530974; 695308, 4530977; 695302, 4530980; 695295, 4530982; 695287, 4530985; 695282, 4530987; 695275, 4530990; 695271, 4530995; 695270, 4531001; 695271, 4531006; 695274, 4531012; 695276, 4531015; 695278, 4531017; 695290, 4531020; 695302, 4531024; 695308, 4531024; 695314, 4531023; 695318, 4531022; 695322, 4531019; 695324, 4531017; 695327, 4531014; 695333, 4531011; 695340, 4531009; 695349, 4531011; 695355, 4531012; 695360, 4531012; 695365, 4531010; 695368, 4531007; 695372, 4531001; 695376, 4530996; 695380, 4530991; 695384, 4530988; 695387, 4530987; 695398, 4530981; 695402, 4530981; 695412, 4530983; 695419, 4530987; 695425, 4530991; 695430, 4530994; 695436, 4530994; 695445, 4530992; 695452, 4530989; 695459, 4530985; 695463, 4530979; 695466, 4530974;

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(iv) Tract 2d. Land bounded by the following Universal Transverse Mercator (UTM) Zone 14N, North American Datum of 1983 (NAD83) coordinates (E, N): 694708, 4530350; 694706, 4530341; 694705, 4530336; 694703, 4530331; 694701, 4530326; 694699, 4530322; 694698, 4530321; 694697, 4530318; 694696, 4530316; 694697, 4530314; 694697, 4530313; 694699, 4530312; 694706, 4530302; 694708, 4530300; 694710, 4530297; 694712, 4530293; 694712, 4530290; 694712, 4530284; 694710, 4530279; 694708, 4530271; 694705, 4530263; 694703, 4530258; 694702, 4530255; 694698, 4530252; 694695, 4530250; 694692, 4530249; 694689, 4530251; 694684, 4530253; 694679, 4530257; 694676, 4530258; 694666, 4530264; 694650, 4530270; 694641, 4530271; 694633, 4530270; 694629, 4530270; 694624, 4530269; 694618, 4530269; 694614, 4530271; 694609, 4530275; 694605, 4530279; 694603, 4530283; 694601, 4530288; 694602, 4530292; 694604, 4530296; 694608, 4530301; 694615, 4530305; 694622, 4530305; 694631, 4530303; 694638, 4530301; 694649, 4530299; 694656, 4530298; 694663, 4530296; 694667, 4530296; 694670, 4530298; 694673, 4530302; 694672, 4530306; 694671, 4530313; 694668, 4530317; 694664, 4530320; 694658, 4530322; 694652, 4530324; 694646, 4530327; 694644, 4530329; 694642, 4530334; 694642, 4530336; 694643, 4530340; 694644, 4530344; 694646, 4530348; 694652, 4530349; 694661, 4530349; 694666, 4530347; 694671, 4530344; 694674, 4530344; 694677, 4530343; 694679, 4530346; 694682, 4530352; 694684, 4530357; 694686, 4530361; 694687, 4530365; 694690, 4530369; 694693, 4530372; 694697, 4530372; 694700, 4530370; 694703, 4530367; 694705, 4530363; 694706, 4530358; 694708, 4530350.

(v) Tract 2e. Land bounded by the following Universal Transverse Mercator (UTM) Zone 14N, North American Datum of 1983 (NAD83) coordinates (E, N): 694483, 4530368; 694487, 4530364; 694488, 4530362; 694491, 4530343; 694494, 4530332; 694493, 4530323; 694490, 4530315; 694485, 4530306; 694482, 4530299; 694481, 4530288; 694484, 4530276; 694486, 4530272; 694494, 4530266; 694502, 4530265; 694513, 4530265; 694521, 4530265; 694530, 4530264; 694538, 4530260; 694545, 4530257; 694550, 4530253; 694555, 4530247; 694561, 4530241; 694565, 4530236; 694567, 4530233; 694569, 4530231; 694570, 4530228; 694572, 4530227; 694581, 4530223; 694587, 4530217; 694591, 4530212; 694593, 4530207; 694591, 4530203; 694590, 4530200; 694586, 4530199; 694579, 4530196; 694575, 4530194; 694598, 4530176; 694605, 4530177; 694613, 4530178; 694622, 4530177; 694632, 4530176; 694645, 4530175; 694654, 4530177; 694661, 4530179; 694667, 4530181; 694675, 4530179; 694683, 4530176; 694688, 4530171; 694693, 4530163; 694697, 4530156; 694700, 4530150; 694704, 4530140; 694704, 4530135; 694704, 4530123; 694709, 4530112; 694706, 4530105; 694700, 4530098; 694696, 4530091; 694694, 4530086; 694693, 4530078; 694695, 4530070; 694673, 4530067; 694663, 4530063; 694656, 4530060; 694648, 4530056; 694639, 4530052; 694631, 4530049; 694622, 4530045; 694613, 4530041; 694605, 4530039; 694600, 4530037; 694593, 4530038; 694589, 4530039; 694586, 4530041; 694583, 4530042; 694582, 4530043; 694573, 4530048; 694570, 4530047; 694566, 4530045; 694564, 4530042; 694562, 4530037; 694561, 4530032; 694559, 4530026; 694557, 4530019; 694553, 4530014; 694548, 4530010; 694543, 4530007; 694540, 4530006; 694536, 4530004; 694534, 4530002; 694532, 4529998; 694531, 4529994; 694531, 4529991; 694532, 4529989; 694522, 4529987; 694517, 4529985; 694514, 4529985; 694511, 4529988; 694510, 4529993; 694508, 4530003; 694508, 4530016; 694509, 4530030; 694512, 4530044; 694515, 4530054; 694519, 4530066; 694523, 4530075; 694528, 4530084; 694533, 4530092; 694539, 4530099; 694544, 4530104; 694549, 4530106; 694535, 4530130; 694532, 4530129; 694523, 4530126; 694511, 4530125; 694502, 4530127; 694494, 4530131; 694488, 4530135; 694481, 4530143; 694475, 4530149; 694471, 4530156; 694468, 4530164; 694467, 4530171; 694466, 4530178; 694472, 4530197; 694472, 4530213; 694471, 4530219; 694469, 4530223; 694464, 4530226; 694459, 4530227; 694456, 4530227; 694453, 4530229; 694449, 4530233; 694448, 4530237; 694448, 4530246; 694448, 4530256; 694446, 4530266;

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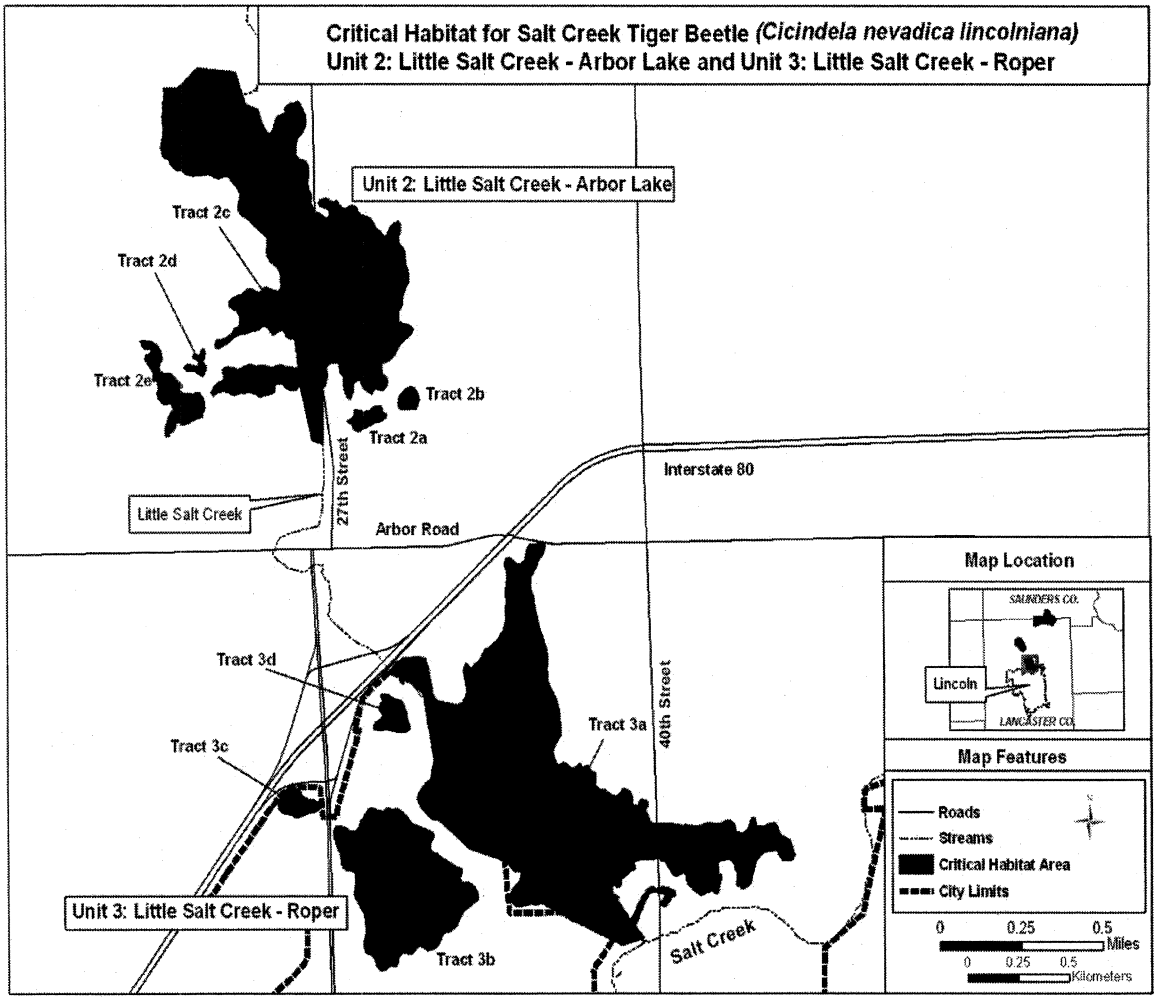
(vi) Note: Map of Units 2 and 3, Little Salt Creek—Arbor Lake and Little Salt Creek—Roper (Map 3), follows:

BILLING CODE 4310–55–S



BILLING CODE 4310–55–C

(8) Unit 3: Little Salt Creek—Roper, Lancaster County, Nebraska.

(i) Tract 3a. Land bounded by the following Universal Transverse Mercator (UTM) Zone 14N, North American Datum of 1983 (NAD83) coordinates (E, N): 696382, 4529523; 696387, 4529519; 696387, 4529517; 696387, 4529512; 696385, 4529506; 696384, 4529499; 696383, 4529491; 696379, 4529481; 696372, 4529468; 696364, 4529460; 696359, 4529455; 696352, 4529446; 696347, 4529433; 696344, 4529427; 696339, 4529417; 696336, 4529410; 696333, 4529405; 696328, 4529398; 696326, 4529392; 696324, 4529388; 696323, 4529385; 696322, 4529384; 696316, 4529376; 696316, 4529374; 696315, 4529371; 696316, 4529356; 696313, 4529341; 696314, 4529331; 696317, 4529323; 696320, 4529310; 696325, 4529295; 696329, 4529281; 696332, 4529264; 696335, 4529246; 696338, 4529232; 696342, 4529218; 696345, 4529201; 696349, 4529187; 696353, 4529172; 696357, 4529157; 696361, 4529143; 696366, 4529132; 696370, 4529123; 696372, 4529113; 696376, 4529101; 696380, 4529089; 696385, 4529082; 696389, 4529074; 696392, 4529064; 696394, 4529053; 696394, 4529034; 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(ii) Tract 3b. Land bounded by the following Universal Transverse Mercator (UTM) Zone 14N, North American Datum of 1983 (NAD83) coordinates (E, N): 695565, 4528354; 695574, 4528353; 695580, 4528356; 695586, 4528359; 695593, 4528366; 695599, 4528367; 695606, 4528366; 695613, 4528361; 695619, 4528360; 695624, 4528359; 695632, 4528361; 695636, 4528361; 695641, 4528362; 695644, 4528361; 695663, 4528357; 695667, 4528353; 695675, 4528347; 695683, 4528338; 695693, 4528329; 695700, 4528322; 695707, 4528313; 695714, 4528306; 695722, 4528299; 695730, 4528293; 695741, 4528289; 695752, 4528286; 695763, 4528282; 695774, 4528277; 695782, 4528275; 695793, 4528271; 695802, 4528268; 695811, 4528263; 695814, 4528261; 695818, 4528260; 695822, 4528258; 695824, 4528256; 695826, 4528253; 695828, 4528245; 695826, 4528238; 695823, 4528232; 695822, 4528228; 695816, 4528219; 695813, 4528210; 695812, 4528203; 695811, 4528197; 695812, 4528189; 695814, 4528184; 695816, 4528179; 695821, 4528175; 695827, 4528170; 695832, 4528167; 695837, 4528167; 695842, 4528167; 695846, 4528165; 695846, 4528165; 695848, 4528159; 695942, 4528107; 695946, 4528107; 695954, 4528106; 695962, 4528102; 695966, 4528098; 695966, 4528094; 695966, 4528088; 695965, 4528083; 695963, 4528079; 695960, 4528069; 695958, 4528060; 695960, 4528050; 695963, 4528045; 695973, 4528042; 695981, 4528040; 695995, 4528039; 696008, 4528037; 696014, 4528033; 696021, 4528028; 696028, 4528022; 696037, 4528007; 696043, 4527992; 696046, 4527985; 696047, 4527977; 696047, 4527969; 696043, 4527964; 696034, 4527955; 696024, 4527948; 696014, 4527941; 696003, 4527934; 695996, 4527928; 695987, 4527924; 695979, 4527917; 695972, 4527911; 695966, 4527904; 695960, 4527891; 695954, 4527881; 695947, 4527866; 695939, 4527854; 695928, 4527841; 695919, 4527832; 695909, 4527827; 695899, 4527824; 695887, 4527822; 695876, 4527818; 695868, 4527809; 695864, 4527799; 695859, 4527786; 695854, 4527776; 695845, 4527766; 695836, 4527757; 695826, 4527751; 695811, 4527746; 695795, 4527744; 695783, 4527747; 695774, 4527753; 695768, 4527757; 695761, 4527761; 695751, 4527760; 695740, 4527755; 695731, 4527745; 695725, 4527736; 695718, 4527730; 695708, 4527729; 695698, 4527729; 695685, 4527732; 695676, 4527733; 695672, 4527733; 695669, 4527730; 695667, 4527728; 695654, 4527714; 695652, 4527711; 695649, 4527707; 695648, 4527699; 695646, 4527689; 695642, 4527680; 695638, 4527675; 695631, 4527673; 695625, 4527673; 695620, 4527675; 695617, 4527677; 695600, 4527673; 695590, 4527663; 695584, 4527659; 695575, 4527656; 695567, 4527654; 695559, 4527656; 695553, 4527658; 695547, 4527664; 695541, 4527673; 695536, 4527682; 695532, 4527693; 695529, 4527702; 695527, 4527706; 695522, 4527712; 695518, 4527718; 695514, 4527722; 695506, 4527725; 695496, 4527728; 695487, 4527733; 695483, 4527738; 695478, 4527750; 695476, 4527759; 695476, 4527768; 695477, 4527785; 695481, 4527799;

695485, 4527813; 695485, 4527827; 695485, 4527841; 695484, 4527866; 695482, 4527877; 695480, 4527888; 695478, 4527897; 695476, 4527906; 695472, 4527914; 695469, 4527921; 695462, 4527928; 695457, 4527936; 695450, 4527947; 695443, 4527956; 695438, 4527965; 695434, 4527974; 695430, 4527984; 695429, 4527991; 695429, 4528000; 695431, 4528012; 695432, 4528022; 695435, 4528042; 695436, 4528050; 695437, 4528058; 695437, 4528065; 695436, 4528070; 695434, 4528076; 695432, 4528080; 695428, 4528083; 695422, 4528086; 695414, 4528088; 695404, 4528090; 695395, 4528093; 695390, 4528094; 695383, 4528097; 695378, 4528100; 695373, 4528107; 695368, 4528118; 695365, 4528132; 695364, 4528144; 695363, 4528151; 695362, 4528155; 695360, 4528166; 695357, 4528172; 695354, 4528179; 695340, 4528211; 695337, 4528220; 695334, 4528228; 695332, 4528237; 695330, 4528244; 695329, 4528253; 695331, 4528261; 695332, 4528269; 695334, 4528275; 695336, 4528280; 695340, 4528284; 695343, 4528285; 695347, 4528287; 695353, 4528287; 695360, 4528288; 695371, 4528287; 695382, 4528284; 695393, 4528278; 695403, 4528271; 695412, 4528266; 695424, 4528264; 695434, 4528266; 695443, 4528270; 695450, 4528279; 695453, 4528289; 695457, 4528300; 695461, 4528308; 695466, 4528314; 695472, 4528320; 695476, 4528326; 695482, 4528336; 695489, 4528346; 695495, 4528354; 695502, 4528364; 695507, 4528368; 695515, 4528368; 695525, 4528365; 695533, 4528363; 695542, 4528361; 695555, 4528356; 695565, 4528354.

(iii) Tract 3c. Land bounded by the following Universal Transverse Mercator (UTM) Zone 14N, North American Datum of 1983 (NAD83) coordinates (E, N): 695160, 4528323; 695149, 4528321; 695141, 4528322; 695137, 4528325; 695132, 4528330; 695129, 4528332; 695119, 4528334; 695103, 4528336; 695093, 4528337; 695084, 4528340; 695076, 4528344; 695070, 4528348; 695064, 4528355; 695060, 4528363; 695058, 4528370; 695056, 4528380; 695055, 4528388; 695057, 4528396; 695062, 4528410; 695066, 4528420; 695072, 4528429; 695077, 4528435; 695083, 4528441; 695091, 4528446; 695098, 4528450; 695107, 4528452; 695115, 4528454; 695120, 4528455; 695127, 4528456; 695131, 4528455; 695139, 4528455; 695146, 4528453; 695150, 4528451; 695155, 4528448; 695167, 4528438; 695175, 4528426; 695180, 4528420; 695184, 4528417; 695187, 4528416; 695194, 4528412; 695204, 4528405; 695209, 4528403; 695218, 4528401; 695227, 4528401; 695236, 4528401; 695243, 4528400; 695252, 4528397; 695259, 4528393; 695264, 4528388; 695268, 4528381; 695269, 4528370; 695265, 4528362; 695260, 4528356; 695247, 4528349; 695237, 4528345; 695223, 4528343; 695209, 4528340; 695200, 4528337; 695190, 4528334; 695180, 4528330; 695169, 4528326; 695160, 4528323.

(iv) Tract 3d. Land bounded by the following Universal Transverse Mercator (UTM) Zone 14N, North American Datum of 1983 (NAD83) coordinates (E, N): 695576, 4528864; 695583, 4528864; 695587, 4528864; 695595, 4528864; 695602, 4528863; 695606, 4528862; 695608, 4528861; 695613, 4528857; 695628, 4528846; 695637, 4528842; 695645, 4528841; 695652, 4528840; 695660, 4528839; 695666, 4528838; 695673, 4528832; 695677, 4528826; 695681, 4528818; 695686, 4528807; 695690, 4528798; 695693, 4528790; 695696, 4528781; 695698, 4528771; 695698, 4528763; 695700, 4528752; 695703, 4528743; 695706, 4528737; 695710, 4528728; 695711, 4528721; 695710, 4528712; 695706, 4528705; 695697, 4528698; 695688, 4528695; 695675, 4528694; 695662, 4528694; 695648, 4528697; 695633, 4528700; 695616, 4528704; 695601, 4528706; 695588, 4528707; 695576, 4528704; 695562, 4528703; 695551, 4528704; 695541, 4528705; 695535, 4528708; 695531, 4528714; 695530, 4528725; 695533, 4528735; 695537, 4528741; 695545, 4528748; 695553, 4528751; 695563, 4528754; 695567, 4528757; 695571, 4528763; 695572.

(v) Note: Map of Unit 3 is provided at paragraph (7)(vi) of this entry.

(9) Unit 4: Jack Sinn—Rock Creek, Lancaster and Saunders Counties, Nebraska.

(i) Tract 4a. Land bounded by the following Universal Transverse Mercator (UTM) Zone 14N, North American Datum of 1983 (NAD83) coordinates (E, N): 698696, 4546073; 698716, 4546073; 698725, 4546074; 698733, 4546072; 698745, 4546068; 698753, 4546065; 698769, 4546054; 698781, 4546042; 698795, 4546021; 698802, 4546011; 698806, 4546005; 698811, 4546003; 698816, 4546001; 698820, 4546002; 698827, 4546004; 698832, 4546006; 698836, 4546006; 698844, 4546005; 698850, 4546004; 698855, 4546005; 698862, 4546007; 698866, 4546009; 698869, 4546012; 698874, 4546020; 698877, 4546027; 698883, 4546036; 698887, 4546039; 698893, 4546042; 698899, 4546045; 698902, 4546045; 698909, 4546044; 698919, 4546038; 698929, 4546024; 698941, 4546017; 698948, 4546013; 698955, 4546010; 698960, 4546009; 698966, 4546008; 698969, 4546007; 698978, 4546005; 698985, 4546009; 698993, 4546013; 699000, 4546017; 699008, 4546019; 699018, 4546023; 699030, 4546027; 699039, 4546027; 699046, 4546027; 699053, 4546025; 699061, 4546021; 699072, 4546017; 699083, 4546016; 699089, 4546012; 699093, 4546007; 699096, 4546002; 699097, 4545995; 699097, 4545991; 699094, 4545986; 699090, 4545982; 699086, 4545978; 699080, 4545975; 699072, 4545974; 699068, 4545973; 699060, 4545971; 699054, 4545968; 699049, 4545965; 699045, 4545959; 699040, 4545952; 699037, 4545945; 699032, 4545935; 699026, 4545928; 699020, 4545925; 699011, 4545921; 699001, 4545916; 698995, 4545914; 698988, 4545914; 698979, 4545913; 698973, 4545909; 698967, 4545906; 698958, 4545901; 698948, 4545885; 698943, 4545878; 698936, 4545861; 698934, 4545838; 698946, 4545838; 698961, 4545838; 698970, 4545841; 698982, 4545846; 698997, 4545852; 699012, 4545860; 699031, 4545867; 699038, 4545858; 699044, 4545846; 699046, 4545839; 699047, 4545831; 699047, 4545823; 699045, 4545820; 699042, 4545816; 699039, 4545814; 699030, 4545812; 699023, 4545807; 699013, 4545806; 699003, 4545806; 698983, 4545797; 698975, 4545798; 698967, 4545796; 698961, 4545793; 698954, 4545788; 698951, 4545785; 698944, 4545778; 698934, 4545764; 698912, 4545736; 698906, 4545722; 698899, 4545717; 698898, 4545710; 698897, 4545701; 698898, 4545694; 698898, 4545690; 698900, 4545682; 698900, 4545672; 698901, 4545661; 698902, 4545653; 698903, 4545648; 698903, 4545648; 698907, 4545646; 698914, 4545647; 698926, 4545651; 698935, 4545654; 698953, 4545653; 698950, 4545640; 698949, 4545625; 698946, 4545603; 698943, 4545580; 698939, 4545557; 698934, 4545540; 698926, 4545524; 698921, 4545512; 698913, 4545507; 698901, 4545503; 698888, 4545503; 698874, 4545504; 698866, 4545489; 698863, 4545484; 698859, 4545479; 698854, 4545474; 698850, 4545474; 698845, 4545472; 698838, 4545471; 698831, 4545469; 698813, 4545460; 698795, 4545444; 698787, 4545439; 698780, 4545428; 698775, 4545420; 698772, 4545414; 698770, 4545406; 698770, 4545397; 698771, 4545387; 698774, 4545362; 698779, 4545340; 698780, 4545335; 698781, 4545329;

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(ii) Tract 4b. Land bounded by the following Universal Transverse Mercator (UTM) Zone 14N, North American Datum of 1983 (NAD83) coordinates (E, N): 700784, 4546113; 700789, 4546099; 700792, 4546088; 700794, 4546075; 700791, 4546060; 700787, 4546048; 700783, 4546038; 700774, 4546032; 700758, 4546027; 700740, 4546022; 700727, 4546015; 700715, 4546004; 700704, 4545992; 700695, 4545976; 700689, 4545963; 700682, 4545950; 700674, 4545938; 700660, 4545924; 700646, 4545915; 700632, 4545907; 700612, 4545902; 700591, 4545899; 700573, 4545895; 700557, 4545890; 700547, 4545880; 700540, 4545867; 700538, 4545853; 700537, 4545839; 700531, 4545824; 700524, 4545818; 700506, 4545810; 700493, 4545806; 700478, 4545806; 700466, 4545808; 700459, 4545814; 700452, 4545822; 700445, 4545832; 700439, 4545839; 700429, 4545843; 700415, 4545844; 700402, 4545842; 700390, 4545844; 700380, 4545850; 700373, 4545858; 700366, 4545865; 700359, 4545872; 700352, 4545874; 700342, 4545877; 700318, 4545875; 700307, 4545871; 700293, 4545865; 700281, 4545861; 700268, 4545856; 700256, 4545856; 700244, 4545860; 700237, 4545861; 700215, 4545858; 700200, 4545855; 700179, 4545843; 700165, 4545836; 700153, 4545832; 700142, 4545833; 700129, 4545831; 700116, 4545825; 700109, 4545819; 700094, 4545809; 700081, 4545806; 700066, 4545809; 700049, 4545807; 700038, 4545805; 700027, 4545805; 700018, 4545808; 700016, 4545813; 700015, 4545822; 700017, 4545841; 700023, 4545855; 700027, 4545866; 700034, 4545874; 700045, 4545879; 700059, 4545879; 700069, 4545881; 700083, 4545887; 700097, 4545894; 700112, 4545899; 700126, 4545902; 700144, 4545905; 700163, 4545906; 700189, 4545903; 700209, 4545901; 700229, 4545900; 700249, 4545902; 700264, 4545908; 700278, 4545915; 700288, 4545922; 700300, 4545928; 700317, 4545936; 700361, 4545952; 700384, 4545961; 700398, 4545968; 700411, 4545974; 700422, 4545982; 700433, 4545989; 700443, 4545994; 700454, 4545994; 700466, 4545993;

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(iii) Tract 4c. Land bounded by the following Universal Transverse Mercator (UTM) Zone 14N, North American Datum of 1983 (NAD83) coordinates (E, N): 699777, 4546178; 699783, 4546168; 699790, 4546156; 699798, 4546147; 699810, 4546141; 699822, 4546136; 699830, 4546132; 699841, 4546126; 699849, 4546120; 699855, 4546111; 699857, 4546100; 699858, 4546088; 699853, 4546074; 699845, 4546058; 699834, 4546045; 699826, 4546036; 699816, 4546025; 699803, 4546014; 699794, 4546005; 699784, 4545993; 699776, 4545979; 699773, 4545968; 699772, 4545962; 699775, 4545951; 699779, 4545946; 699787, 4545940; 699795, 4545937; 699798, 4545937; 699801, 4545934; 699805, 4545929; 699784, 4545920; 699778, 4545920; 699770, 4545918; 699766, 4545914; 699762, 4545911; 699746, 4545927; 699744, 4545930; 699740, 4545939; 699739, 4545947; 699742, 4545963; 699748, 4545977; 699754, 4545988; 699763, 4545998; 699775, 4546009; 699785, 4546019; 699793, 4546026; 699801, 4546036; 699807, 4546044; 699811, 4546050; 699815, 4546060; 699821, 4546068; 699825, 4546078; 699826, 4546083; 699826, 4546090; 699825, 4546097; 699820, 4546103; 699809, 4546109; 699797, 4546110; 699788, 4546113; 699782, 4546122; 699779, 4546133; 699775, 4546138; 699768, 4546140; 699760, 4546144; 699756, 4546150; 699754, 4546158; 699754, 4546165; 699753, 4546170; 699752, 4546170; 699744, 4546172; 699733, 4546169; 699724, 4546161; 699717, 4546154; 699709, 4546149; 699696, 4546145; 699684, 4546142; 699671, 4546139; 699661, 4546135; 699655, 4546129; 699646, 4546118; 699639, 4546105; 699639, 4546098; 699643, 4546081; 699644, 4546073; 699642, 4546065; 699641, 4546059; 699634, 4546045; 699627, 4546029; 699623, 4546017; 699621, 4546002; 699618, 4545991; 699616, 4545983; 699615, 4545977; 699611, 4545972; 699608, 4545968; 699602, 4545963; 699600, 4545963; 699594, 4545963; 699588, 4545962; 699583, 4545964; 699577, 4545965; 699571, 4545968; 699565, 4545972; 699560, 4545978; 699555, 4545986; 699552, 4545991; 699546, 4546008; 699542, 4546024; 699540, 4546038; 699536, 4546055; 699527, 4546075; 699521, 4546089; 699511, 4546100; 699504, 4546107; 699497, 4546111; 699484, 4546114; 699457, 4546112; 699449, 4546112; 699439, 4546109; 699428, 4546104; 699423, 4546100; 699418, 4546095; 699414, 4546089; 699409, 4546081; 699406, 4546066; 699404, 4546061; 699402, 4546059; 699399, 4546060; 699395, 4546062; 699392, 4546063; 699390, 4546068; 699387, 4546076; 699386, 4546084; 699386, 4546094; 699386, 4546102; 699388, 4546113; 699395, 4546124; 699399, 4546131; 699403, 4546136; 699410, 4546142; 699433, 4546149; 699455, 4546150; 699467, 4546154; 699481, 4546152; 699499, 4546146; 699506, 4546143; 699513, 4546138; 699523, 4546129; 699532, 4546120; 699537, 4546115; 699542, 4546104; 699547, 4546095; 699550, 4546082; 699555, 4546069; 699561, 4546052; 699572, 4546024; 699579, 4546008; 699584, 4546003; 699588, 4546000; 699601, 4546001; 699601, 4546029; 699604, 4546036; 699606, 4546041; 699611, 4546053; 699615, 4546065; 699616, 4546080; 699616, 4546097; 699617, 4546110; 699619, 4546121; 699625, 4546131; 699632, 4546141; 699643, 4546150; 699658, 4546154; 699667, 4546158; 699681, 4546165; 699691, 4546174; 699700, 4546182; 699712, 4546189; 699722, 4546195; 699731, 4546198; 699742, 4546199; 699753, 4546199; 699760, 4546194; 699767, 4546186; 699777, 4546178.

(iv) Tract 4d. Land bounded by the following Universal Transverse Mercator (UTM) Zone 14N, North American Datum of 1983 (NAD83) coordinates (E, N): 701389, 4546232; 701381, 4546222; 701438, 4546226; 701441, 4546228; 701446, 4546228; 701448, 4546228; 701457, 4546225; 701461, 4546231; 701468, 4546239; 701472, 4546242; 701474, 4546244; 701479, 4546248; 701482, 4546249; 701488, 4546249; 701492, 4546248; 701495, 4546249; 701495, 4546249; 701505, 4546261; 701511, 4546263; 701518, 4546264; 701525, 4546264; 701533, 4546261; 701539, 4546255; 701544, 4546245; 701548, 4546238; 701555, 4546233; 701565, 4546229; 701573, 4546227; 701580, 4546223; 701586, 4546218; 701589, 4546212; 701589, 4546206; 701582, 4546198; 701583, 4546185; 701583, 4546184; 701596, 4546181; 701599, 4546177; 701600, 4546158; 701598, 4546144; 701597, 4546134; 701594, 4546123; 701591, 4546115; 701586, 4546108; 701579, 4546104; 701567, 4546101; 701551, 4546099; 701537, 4546098; 701521, 4546092; 701511, 4546082; 701503, 4546070; 701493, 4546055; 701489, 4546048; 701481, 4546038; 701474, 4546028; 701467, 4546018; 701460, 4546009; 701452, 4546001; 701447, 4545998; 701444, 4545995; 701439, 4545995; 701435, 4545999; 701432, 4546005; 701429, 4546010; 701427, 4546018; 701425, 4546023; 701427, 4546031; 701431, 4546039; 701436, 4546047; 701440, 4546055; 701443, 4546062; 701444, 4546070; 701444, 4546081; 701443, 4546084; 701436, 4546089; 701429, 4546092; 701422, 4546097; 701418, 4546104; 701414, 4546116; 701413, 4546124; 701414, 4546135; 701418, 4546148; 701421, 4546155; 701425, 4546164; 701428, 4546171; 701431, 4546176; 701432, 4546180; 701432, 4546188; 701432, 4546189; 701369, 4546194; 701369, 4546194; 701357, 4546193; 701343, 4546193; 701331, 4546194; 701322, 4546195; 701275, 4546175; 701283, 4546167; 701290, 4546157; 701299, 4546147; 701308, 4546138; 701315, 4546130; 701320, 4546123; 701323, 4546119; 701326, 4546110; 701329, 4546098; 701329, 4546091; 701340, 4546095; 701342, 4546094; 701345, 4546092; 701347, 4546090; 701349, 4546085; 701352, 4546079; 701353, 4546068; 701351, 4546056; 701348, 4546043; 701342, 4546027; 701333, 4546014; 701322, 4546003; 701306, 4545995; 701291, 4545988; 701270, 4545982; 701250, 4545977; 701228, 4545972; 701208, 4545967; 701185, 4545960; 701165, 4545955; 701148, 4545951; 701139, 4545948; 701132, 4545947; 701126, 4545949; 701122, 4545951; 701120, 4545954; 701119, 4545958; 701119, 4545963; 701131, 4545970; 701145, 4545976; 701159, 4545982; 701169, 4545990; 701174, 4545996; 701177, 4546003; 701181, 4546010; 701191, 4546014; 701207, 4546018; 701216, 4546022; 701223, 4546028; 701226, 4546034; 701224, 4546042; 701219, 4546046; 701209, 4546051; 701207, 4546055; 701206, 4546061; 701211, 4546069; 701221, 4546072; 701231, 4546073; 701240, 4546074; 701252, 4546077;

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(v) Tract 4e. Land bounded by the following Universal Transverse Mercator (UTM) Zone 14N, North American Datum of 1983 (NAD83) coordinates (E, N): 703097, 4546215; 703095, 4546208; 703095, 4546196; 703096, 4546183; 703098, 4546171; 703101, 4546160; 703107, 4546150; 703112, 4546145; 703122, 4546142; 703130, 4546142; 703136, 4546143; 703153, 4546145; 703164, 4546146; 703171, 4546147; 703179, 4546148; 703189, 4546150; 703194, 4546149; 703198, 4546146; 703200, 4546143; 703202, 4546138; 703204, 4546131; 703204, 4546124; 703203, 4546118; 703201, 4546112; 703199, 4546106; 703198, 4546100; 703202, 4546086; 703205, 4546074; 703205, 4546074; 703161, 4546071; 703137, 4546072; 703137, 4546043; 703157, 4546008; 703170, 4545997; 703168, 4545988; 703169, 4545981; 703175, 4545979; 703181, 4545977; 703189, 4545974; 703197, 4545969; 703198, 4545963; 703201, 4545949; 703208, 4545936; 703213, 4545921; 703212, 4545906; 703208, 4545899; 703199, 4545894; 703191, 4545893; 703185, 4545895; 703132, 4545967; 703084, 4546028; 703072, 4546066; 703041, 4546051; 703009, 4546024; 702961, 4545994; 702924, 4545972; 702914, 4545880; 702925, 4545838; 702923, 4545836; 702921, 4545825; 702920, 4545812; 702922, 4545794; 702928, 4545784; 702930, 4545777; 702929, 4545769; 702925, 4545763; 702921, 4545757; 702915, 4545754; 702908, 4545750; 702899, 4545746; 702887, 4545742; 702876, 4545740; 702865, 4545739; 702854, 4545741; 702837, 4545752; 702830, 4545759; 702827, 4545766; 702826, 4545779; 702826, 4545780; 702856, 4545857; 702872, 4545878; 702862, 4545934; 702848, 4545989; 702801, 4546000; 702766, 4545977; 702742, 4545931; 702746, 4545886; 702751, 4545874; 702750, 4545869; 702751, 4545853; 702753, 4545840; 702759, 4545827; 702763, 4545819; 702762, 4545814; 702758, 4545808; 702754, 4545804; 702747, 4545804; 702738, 4545807; 702731, 4545812; 702727, 4545818; 702722, 4545829; 702717, 4545838; 702710, 4545844; 702705, 4545847; 702693, 4545848; 702625, 4545934; 702526, 4545955; 702459, 4545968; 702386, 4545999; 702363, 4545999; 702362, 4546000; 702357, 4546011; 702352, 4546016; 702349, 4546021; 702344, 4546025; 702337, 4546029; 702332, 4546031; 702321, 4546034; 702315, 4546036; 702307, 4546037; 702301, 4546038; 702280, 4546038; 702266, 4546038; 702256, 4546036; 702247, 4546032; 702238, 4546029; 702233, 4546024; 702229, 4546015; 702229, 4546009; 702231, 4546003; 702235, 4545996; 702242, 4545992; 702250, 4545989; 702261, 4545988; 702276, 4545986; 702290, 4545981; 702295, 4545974; 702294, 4545969; 702290, 4545964; 702290, 4545960; 702293, 4545955; 702302, 4545945; 702310, 4545936; 702317, 4545921; 702318, 4545915; 702315, 4545907; 702313, 4545904; 702307, 4545902; 702296, 4545901; 702283, 4545901; 702270, 4545902; 702258, 4545903; 702245, 4545907; 702237, 4545911; 702234, 4545916; 702231, 4545927; 702229, 4545939; 702227, 4545948; 702223, 4545957; 702217, 4545971; 702210, 4545981; 702202, 4545988;

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(vi) Tract 4f. Land bounded by the following Universal Transverse Mercator (UTM) Zone 14N, North American Datum of 1983 (NAD83) coordinates (E, N): 701018, 4546521; 701025, 4546516; 701031, 4546509; 701035, 4546497; 701036, 4546487; 701039, 4546475; 701045, 4546464; 701054, 4546454; 701069, 4546442; 701085, 4546431; 701121, 4546421; 701139, 4546419; 701158, 4546417; 701174, 4546416; 701187, 4546415; 701198, 4546413; 701208, 4546412; 701217, 4546408; 701220, 4546405; 701222, 4546401; 701223, 4546396; 701223, 4546392; 701223, 4546388; 701223, 4546384; 701223, 4546382;

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(vii) Tract 4g. Land bounded by the following Universal Transverse Mercator (UTM) Zone 14N, North American Datum of 1983 (NAD83) coordinates (E, N): 701602, 4546442; 701600, 4546428; 701597, 4546415; 701592, 4546405; 701586, 4546395; 701578, 4546386; 701567, 4546378; 701556, 4546373; 701547, 4546372; 701534, 4546374; 701521, 4546377; 701505, 4546383; 701494, 4546389; 701484, 4546395; 701473, 4546402; 701460, 4546408; 701445, 4546411; 701431, 4546414; 701415, 4546414; 701401, 4546414; 701391, 4546415; 701384, 4546416; 701377, 4546418; 701372, 4546421; 701369, 4546424; 701367, 4546428; 701367, 4546432; 701371, 4546435; 701379, 4546437; 701389, 4546437; 701398, 4546437; 701410, 4546437; 701422, 4546436; 701429, 4546435; 701437, 4546433; 701447, 4546432; 701456, 4546432; 701475, 4546434; 701493, 4546438; 701512, 4546444; 701527, 4546451; 701539, 4546460; 701547, 4546468; 701553, 4546478; 701558, 4546489; 701561, 4546500; 701563, 4546510; 701565, 4546519; 701568, 4546525; 701570, 4546531; 701573, 4546535; 701578, 4546539; 701583, 4546539; 701588, 4546539; 701595, 4546534; 701598, 4546528; 701599, 4546518; 701600, 4546507; 701598, 4546493; 701596, 4546482; 701595, 4546472; 701597, 4546460; 701600, 4546452; 701602, 4546442.

(viii) Tract 4h. Land bounded by the following Universal Transverse Mercator (UTM) Zone 14N, North American Datum of 1983 (NAD83) coordinates (E, N): 703217, 4546589; 703217, 4546586; 703217, 4546579; 703049, 4546561; 702942, 4546563; 702869, 4546558; 702844, 4546498; 702818, 4546496; 702872, 4546437; 702928, 4546418; 702978, 4546411; 703039, 4546410; 703095, 4546436; 703144, 4546479; 703218, 4546537; 703218, 4546519; 703216, 4546517; 703212, 4546515; 703210, 4546512; 703206, 4546510; 703200, 4546506; 703192, 4546498; 703186, 4546493; 703171, 4546473; 703188, 4546474; 703194, 4546477; 703200, 4546478; 703203, 4546478; 703205, 4546477; 703206, 4546471; 703204, 4546466; 703199, 4546458; 703192, 4546450; 703182, 4546443; 703172, 4546437; 703164, 4546433; 703156, 4546430; 703149, 4546428; 703142, 4546428; 703141, 4546429; 703139, 4546435; 703135, 4546434; 703129, 4546431; 703123, 4546428; 703118, 4546423; 703111, 4546415; 703107, 4546405; 703103, 4546387; 703095, 4546382; 703088, 4546378; 703082, 4546375; 703074, 4546371; 703062, 4546366; 703051, 4546363; 703036, 4546359; 703021, 4546356; 703006, 4546353; 702992, 4546350; 702979, 4546347; 702966, 4546345; 702954, 4546346; 702943, 4546350; 702925, 4546354; 702924, 4546357; 702924, 4546358; 702921, 4546364; 702918, 4546373; 702914, 4546386; 702910, 4546397; 702903, 4546402; 702892, 4546407; 702880, 4546410; 702865, 4546413; 702855, 4546419; 702850, 4546427; 702844, 4546434; 702836, 4546437; 702822, 4546437; 702809, 4546440; 702801, 4546449; 702793, 4546458; 702781, 4546464; 702768, 4546472; 702764, 4546481; 702762, 4546493; 702762, 4546499; 702764, 4546504; 702769, 4546508; 702776, 4546512; 702785, 4546514; 702796, 4546515; 702811, 4546517; 702826, 4546521; 702835, 4546531; 702835, 4546540; 702833, 4546546; 702828, 4546547; 702817, 4546549; 702807, 4546549; 702796, 4546548; 702785, 4546545; 702768, 4546545; 702753, 4546545; 702735, 4546547; 702721, 4546550; 702715, 4546557; 702715, 4546564; 702716, 4546570; 702718, 4546573; 702720, 4546574; 702723, 4546575; 702727, 4546576; 702733, 4546577; 702742, 4546579; 702750, 4546580; 702762, 4546578; 702771, 4546577; 702785, 4546577; 702797, 4546580; 702807, 4546583; 702818, 4546586; 702831, 4546589; 702842, 4546591; 702849, 4546591; 702860, 4546587; 703205, 4546592; 703210, 4546593; 703215, 4546592; 703217, 4546590; 703217, 4546589.

(ix) Tract 4i. Land bounded by the following Universal Transverse Mercator (UTM) Zone 14N, North American Datum of 1983 (NAD83) coordinates (E, N): 704760, 4546632; 704759, 4546528; 704759, 4546503; 704757, 4546504; 704757, 4546463; 704759, 4546463; 704759, 4546435; 704751, 4546435; 704745, 4546436;

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(x) Tract 4j. Land bounded by the following Universal Transverse Mercator (UTM) Zone 14N, North

American Datum of 1983 (NAD83) coordinates (E, N): 705755, 4546121; 705768, 4546082; 705807, 4546037; 705849, 4546006; 705848, 4546004; 705850, 4545994; 705853, 4545987; 705858, 4545977; 705869, 4545962; 705876, 4545955; 705881, 4545951; 705887, 4545947; 705894, 4545943; 705898, 4545941; 705904, 4545943; 705910, 4545950; 705914, 4545956; 705917, 4545962; 705919, 4545967; 705920, 4545973; 705919, 4545978; 705936, 4545973; 705936, 4545969; 705938, 4545959; 705937, 4545949; 705931, 4545938; 705924, 4545930; 705916, 4545926; 705909, 4545924; 705853, 4545938; 705792, 4545978; 705750, 4546016; 705730, 4545996; 705727, 4545924; 705731, 4545836; 705747, 4545803; 705750, 4545780; 705743, 4545776; 705735, 4545769; 705731, 4545755; 705729, 4545741; 705725, 4545732; 705719, 4545724; 705711, 4545721; 705703, 4545720; 705698, 4545723; 705695, 4545732; 705694, 4545744; 705695, 4545755; 705694, 4545768; 705695, 4545779; 705695, 4545787; 705694, 4545794; 705693, 4545800; 705691, 4545803; 705682, 4545808; 705671, 4545811; 705661, 4545810; 705647, 4545809; 705640, 4545807; 705634, 4545806; 705628, 4545807; 705624, 4545809; 705620, 4545810; 705611, 4545809; 705606, 4545803; 705599, 4545812; 705595, 4545818; 705590, 4545827; 705584, 4545838; 705581, 4545846; 705580, 4545861; 705582, 4545870; 705584, 4545878; 705589, 4545889; 705594, 4545899; 705597, 4545907; 705596, 4545917; 705593, 4545933; 705594, 4545942; 705598, 4545948; 705600, 4545957; 705597, 4545966; 705593, 4545975; 705588, 4545983; 705582, 4545993; 705579, 4546002; 705576, 4546015; 705572, 4546025; 705568, 4546039; 705566, 4546053; 705565, 4546064; 705569, 4546077; 705573, 4546089; 705581, 4546104; 705588, 4546119; 705590, 4546131; 705592, 4546144; 705589, 4546153; 705586, 4546162; 705580, 4546169; 705573, 4546178; 705567, 4546185; 705563, 4546194; 705557, 4546204; 705549, 4546216; 705521, 4546246; 705509, 4546259; 705499, 4546270; 705490, 4546282; 705483, 4546297; 705480, 4546312; 705480, 4546327; 705482, 4546341; 705485, 4546358; 705488, 4546374; 705489, 4546388; 705489, 4546404; 705485, 4546415; 705478, 4546424; 705470, 4546431; 705464, 4546434; 705448, 4546439; 705437, 4546445; 705424, 4546452; 705410, 4546460; 705401, 4546465; 705387, 4546473; 705372, 4546483; 705359, 4546493; 705347, 4546502; 705334, 4546511; 705321, 4546520; 705306, 4546529; 705297, 4546535; 705285, 4546543; 705273, 4546552; 705263, 4546564; 705253, 4546573; 705244, 4546577; 705234, 4546579; 705222, 4546576; 705214, 4546573; 705208, 4546566; 705204, 4546557; 705202, 4546545; 705199, 4546525; 705195, 4546514; 705193, 4546509; 705190, 4546502; 705186, 4546493; 705181, 4546483; 705173, 4546474; 705166, 4546467; 705154, 4546455; 705172, 4546454; 705172, 4546453; 705202, 4546453; 705226, 4546467; 705225, 4546467; 705229, 4546472; 705235, 4546483;

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(xi) Tract 4k. Land bounded by the following Universal Transverse Mercator (UTM) Zone 14N, North American Datum of 1983 (NAD83) coordinates (E, N): 705162, 4546811; 705173, 4546744; 705106, 4546730; 705075, 4546704; 705137, 4546704; 705207, 4546698; 705306, 4546696; 705306, 4546696; 705308, 4546688; 705311, 4546678; 705000, 4546667; 704931, 4546687; 704873, 4546735; 704855, 4546781; 704812, 4546813; 704812, 4546814; 704812, 4546820; 704811, 4546826; 704808, 4546830; 704802, 4546831; 704793, 4546827; 704791, 4546825; 704750, 4546834; 704750, 4546838; 704748, 4546849; 704747, 4546861; 704748, 4546874; 704752, 4546882; 704762, 4546890; 704773, 4546896; 704782, 4546898; 704788, 4546902; 704796, 4546906; 704803, 4546913; 704807, 4546923; 704807, 4546936; 704807, 4546946; 704870, 4546886; 704920, 4546847; 704958, 4546774; 705006, 4546748; 705048, 4546766; 705076, 4546799; 705084, 4546840; 705084, 4546893; 705062, 4546927; 705046, 4546957; 705056, 4546960; 705070, 4546959; 705080, 4546953; 705087, 4546947; 705095, 4546942; 705103, 4546941; 705112, 4546940; 705122, 4546937; 705132, 4546930; 705140, 4546923; 705149, 4546917; 705156, 4546913;

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(xii) Tract 41. Land bounded by the following Universal Transverse Mercator (UTM) Zone 14N, North American Datum of 1983 (NAD83) coordinates (E, N): 02925, 4547900; 702933, 4547900; 702939, 4547902; 702948, 4547887; 702968, 4547865; 703001, 4547844; 703038, 4547835; 703043, 4547832; 703049, 4547829; 703054, 4547824; 703066, 4547809; 703087, 4547807; 703094, 4547806; 703100, 4547805; 703102, 4547805; 703103, 4547598; 703106, 4547564; 703105, 4547558; 703104, 4547555; 703099, 4547554; 703093, 4547555; 703086, 4547558; 703078, 4547562; 703069, 4547567; 703061, 4547572; 703045, 4547581; 703030, 4547586; 703016, 4547588; 703001, 4547587; 702990, 4547582; 702980, 4547578; 702953, 4547563; 702940, 4547560; 702927, 4547563; 702923, 4547568; 702922, 4547572; 702924, 4547584; 702926, 4547593; 702928, 4547599; 702935, 4547608; 702954, 4547624; 702961, 4547647; 702928, 4547653; 702897, 4547665; 702859, 4547666; 702857, 4547669; 702851, 4547678; 702847, 4547690; 702845, 4547700; 702846, 4547713; 702849, 4547727; 702849, 4547727; 702874, 4547742; 702907, 4547765; 702913, 4547822; 702912, 4547846; 702882, 4547872; 702874, 4547884; 702876, 4547891; 702880, 4547899; 702884, 4547906; 702893, 4547910; 702901, 4547911; 702911, 4547909; 702917, 4547907; 702921, 4547904; 702925, 4547900.

(xiii) Tract 4m. Land bounded by the following Universal Transverse Mercator (UTM) Zone 14N, North American Datum of 1983 (NAD83) coordinates (E, N): 703489, 4548057; 703478, 4548055; 703470, 4548054; 703464, 4548053; 703456, 4548057; 703453, 4548053; 703450, 4548052; 703444, 4548048; 703440, 4548044; 703432, 4548039; 703423, 4548034; 703411, 4548027; 703401, 4548021; 703388, 4548016; 703383, 4548016; 703381, 4548020; 703369, 4548005; 703365, 4547997; 703360, 4547989; 703355, 4547980; 703352, 4547973; 703353, 4547966; 703355, 4547961; 703357, 4547956; 703358, 4547949; 703335, 4547941; 703324, 4547935; 703316, 4547924; 703311, 4547910; 703309, 4547893; 703309, 4547877; 703312, 4547860; 703316, 4547842; 703320, 4547824; 703322, 4547808; 703319, 4547790; 703314, 4547773; 703308, 4547760; 703307, 4547744; 703308, 4547727; 703305, 4547714; 703302, 4547696; 703299, 4547677; 703299, 4547661; 703303, 4547648; 703311, 4547637; 703324, 4547630; 703338, 4547627; 703351, 4547623; 703360, 4547615; 703371, 4547599; 703375, 4547590; 703384, 4547577; 703388, 4547570; 703390, 4547553; 703393, 4547528; 703396, 4547508; 703395, 4547491; 703387, 4547473; 703376, 4547460; 703366, 4547450; 703358, 4547431; 703357, 4547415; 703355, 4547402; 703350, 4547393; 703339, 4547384; 703333, 4547374; 703330, 4547358; 703325, 4547344; 703315, 4547334; 703305, 4547326; 703293, 4547315; 703284, 4547306; 703258, 4547283; 703246, 4547274; 703231, 4547262; 703219, 4547253; 703207, 4547244; 703200, 4547234; 703199, 4547223; 703205, 4547211; 703219, 4547203; 703233, 4547197; 703240, 4547189; 703241, 4547173; 703237, 4547159; 703229, 4547148; 703214, 4547137; 703202, 4547123; 703197, 4547114; 703195, 4547103; 703198, 4547089; 703208, 4547073; 703221, 4547055; 703229, 4547044; 703236, 4547034; 703241, 4547026; 703247, 4547019; 703254, 4547005; 703256, 4547008; 703260, 4547012; 703263, 4547015; 703268, 4547023; 703273, 4547036; 703276, 4547050; 703276, 4547064; 703272, 4547074; 703267, 4547084; 703265, 4547099; 703267, 4547113; 703269, 4547126; 703275, 4547135; 703283, 4547145; 703292, 4547154; 703300, 4547162; 703327, 4547122; 703369, 4547100; 703416, 4547101; 703435, 4547128; 703465, 4547184; 703526, 4547199; 703620, 4547221; 703684, 4547237; 703726, 4547259; 703768, 4547339; 703811, 4547361; 703765, 4547387; 703726, 4547409; 703698, 4547449; 703699, 4547518; 703682, 4547530; 703674, 4547567; 703674, 4547612; 703659, 4547670; 703638, 4547662; 703611, 4547629; 703573, 4547594; 703542, 4547552; 703500, 4547509; 703469, 4547465; 703466, 4547441; 703447, 4547421; 703420, 4547372; 703381, 4547360; 703381, 4547363; 703378, 4547375; 703376, 4547393; 703376, 4547406; 703382, 4547419; 703390, 4547430; 703399, 4547444; 703405, 4547461; 703412, 4547479; 703417, 4547499; 703423, 4547516; 703431, 4547532; 703433, 4547542; 703462, 4547562; 703520, 4547619; 703543, 4547688; 703578, 4547749; 703593, 4547795;

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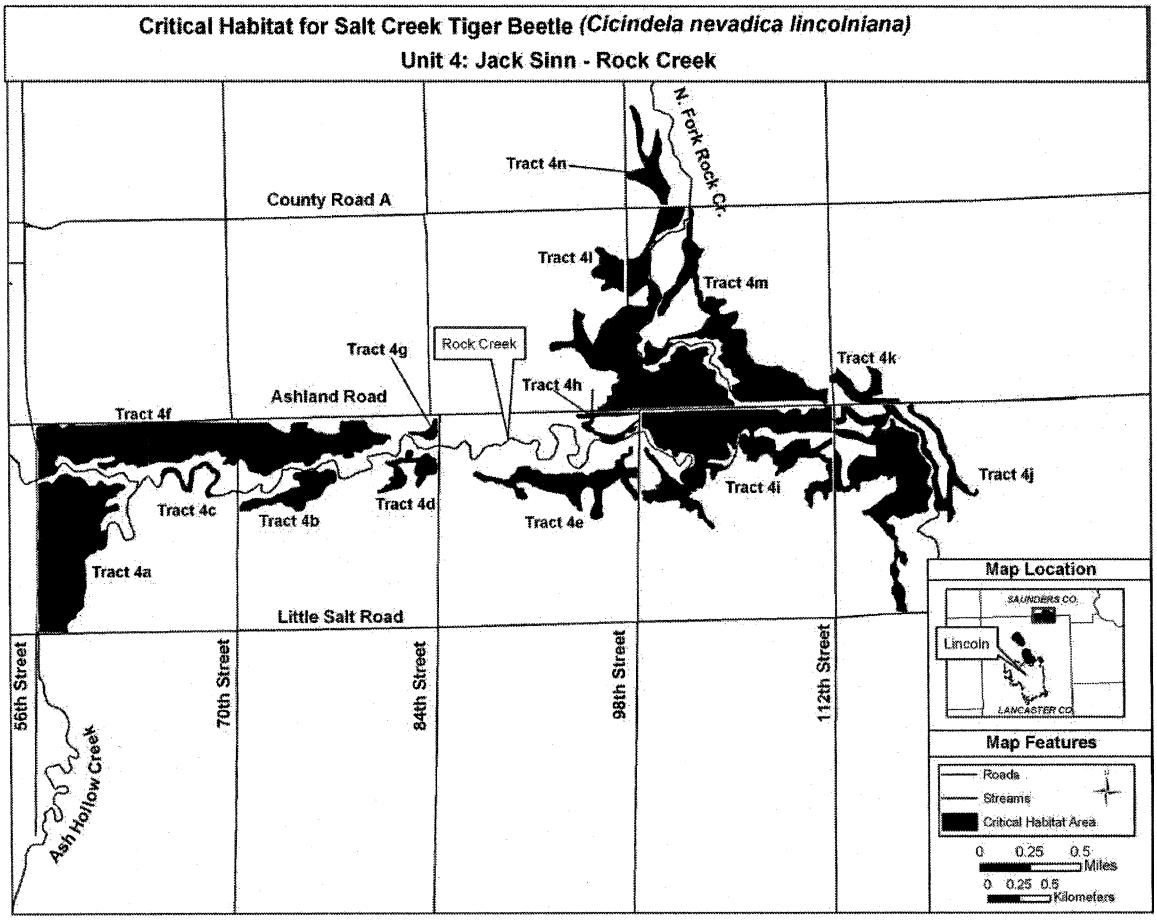
(xiv) Tract 4n. Land bounded by the following Universal Transverse Mercator (UTM) Zone 14N, North American Datum of 1983 (NAD83) coordinates (E, N): 703213, 4548983; 703212, 4548980; 703214, 4548981; 703216, 4548980; 703224, 4548972; 703227, 4548972; 703247, 4548891; 703261, 4548823; 703258, 4548757; 703244, 4548695; 703279, 4548634; 703314, 4548625; 703333, 4548677; 703347, 4548724; 703374, 4548847; 703375, 4548847; 703379, 4548849; 703382, 4548846; 703387, 4548837; 703389, 4548824; 703388, 4548810; 703388, 4548793; 703394, 4548778; 703398, 4548770; 703404, 4548759; 703406, 4548742; 703405, 4548728; 703403, 4548717; 703402, 4548703; 703408, 4548686; 703410, 4548670; 703410, 4548669; 703383, 4548606; 703387, 4548541; 703416, 4548480; 703482, 4548378; 703456, 4548298; 703458, 4548249; 703407, 4548248; 703379, 4548312; 703344, 4548357; 703290, 4548395; 703205, 4548437; 703135, 4548453; 703132, 4548456; 703126, 4548466; 703122, 4548472; 703120, 4548476; 703118, 4548481; 703117, 4548485; 703116, 4548490; 703116, 4548494; 703117, 4548499; 703119, 4548502; 703127, 4548503; 703137, 4548501; 703147, 4548500; 703157, 4548497; 703165, 4548496; 703171, 4548497; 703173, 4548501; 703179, 4548508; 703174, 4548519; 703184, 4548518; 703236, 4548529; 703279, 4548537; 703254, 4548586; 703225, 4548663; 703217, 4548736; 703208, 4548835; 703200, 4548891; 703182, 4548942; 703181, 4548946; 703180, 4548961; 703176, 4548977; 703173, 4548986; 703168, 4548996; 703164, 4549006; 703161, 4549012; 703159, 4549017; 703158, 4549021; 703157, 4549026; 703159, 4549030; 703165, 4549034; 703171, 4549034; 703179, 4549030; 703191, 4549020; 703200, 4549009; 703206, 4549000; 703210, 4548992; 703213, 4548983.

(xv) Note: Map of Unit 4, Jack Sinn – Rock Creek (Map 4), follows:

BILLING CODE 4310–55–S



* * * * *

Dated: March 12, 2010

Signed: Will Shafroth,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2010–7121 Filed 4–5–10; 8:45 am]

BILLING CODE 4310–55–C

Federal Register

Tuesday,
April 6, 2010

Part III

Department of Labor

Mine Safety and Health Adminisration

30 CFR Parts 18, 74, and 75
Coal Mine Dust Sampling Devices; High-Voltage Continuous Mining Machine Standard for Underground Coal Mines; Final Rules

DEPARTMENT OF LABOR

Mine Safety and Health Adminisration

30 CFR Part 74

RIN 1219–AB61

Coal Mine Dust Sampling Devices

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Final rule.

SUMMARY: This final rule revises requirements that the Mine Safety and Health Administration (MSHA) and the National Institute for Occupational Safety and Health (NIOSH) use to approve sampling devices that monitor miner exposure to respirable coal mine dust. The final rule updates approval requirements for the existing "coal mine dust personal sampler unit" to reflect improvements in this sampler over the past 15 years. The final rule also establishes criteria for approval of a new type of technology, the "continuous personal dust monitor," which is worn by the miner and will report dust exposure levels continuously during the shift.

DATES: This final rule is effective June 7, 2010.

The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of June 7, 2010.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances, MSHA, at *silvey.patricia@dol.gov* (E-mail), (202) 693–9440 (voice), or (202) 693–9441 (facsimile).

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I. Introduction

A. Background

The Coal Mine Health and Safety Act of 1969, the predecessor to the Federal Mine Safety and Health Act of 1977, required each operator of a coal mine to take accurate samples of the amount of respirable dust in the mine atmosphere to which each miner in the active workings of such mine is exposed. Samples had to be taken by a device approved by the Secretary and the Secretary of Health, Education and Welfare (Secretaries). MSHA's existing standards for joint approval of dust sampling devices were issued in 1972. They specified that MSHA's role was to determine whether the pump unit of a sampling device was intrinsically safe, and that the National Institute for Occupational Safety and Health (NIOSH) would determine whether the sampling device met the requirements of part 74.[1]

Since 1970, coal mine operators and MSHA have used approved coal mine dust personal sampler units (CMDPSUs) to determine the concentration of respirable dust in coal mine atmospheres. These devices sample the mine atmosphere by drawing mine air through a filter cassette that collects respirable coal mine dust. At the end of a full shift or 8 hours, whichever time is less, the cassette is sent to MSHA for processing. Each cassette is weighed under controlled conditions to determine the average concentration of respirable coal mine dust to which the affected miners were exposed.

In the 1990s, NIOSH began research and development to produce a prototype technology for a new type of personal dust monitor that could provide readings of dust levels in the mine immediately during the shift and at the end of the shift. This would eliminate the delay in obtaining an offsite laboratory analysis which requires days before the results are made available to the mine operator and MSHA. The promise of the new technology, which is referred to generically as a "continuous personal dust monitor" (CPDM), was that it could allow mine operators to promptly identify and respond to dust exposures exceeding the applicable MSHA standards. With this new technology, operators could evaluate causes of overexposures, implement control measures to reduce exposures, and adjust such controls as necessary.

In 2003, Rupprecht and Patashnick Co., Inc., now Thermo Fisher Scientific, developed an initial prototype CPDM under contract with NIOSH. The prototype incorporated a unique mechanical mass sensor system called Tapered Element Oscillating Microbalance (TEOM®). The TEOM mass sensor is made up of a hollow tapered tube, which is clamped at its base and free to oscillate at its narrow or free end on which the collection filter is mounted. Electronics positioned around the sensor cause the tube to oscillate (or resonate) at its natural frequency. When dust particles are deposited on the collection filter, the mass of the collection filter increases, causing the natural oscillating frequency of the tapered element to decrease. Because of the direct relationship between mass and frequency change, the amount of respirable dust deposited on the filter can be determined by measuring the frequency change. The

[1] In 1978, responsibility for mine safety and health was transferred from the Department of Interior to the Department of Labor. In 1980 the Department of Health Education and Welfare became the Department of Health and Human Services (HHS).

concentration of respirable dust in the mine atmosphere is then determined by a computer incorporated in the CPDM, which divides the mass of dust collected by the volume of mine air that passed through the CPDM during the sampled period. The result is reported on the CPDM's digital display. The cumulative average dust concentration is calculated and reported continuously over the duration of the shift and at the end of the shift. The data are also retained for downloading onto any personal computer with a Microsoft Windows® operating system using accompanying software. The prototype also projected the end-of-shift average dust concentration continuously during the shift. This information can be used to give early warnings of deteriorating dust controls to mine operators, allowing corrective action to be taken before the dust control system fails resulting in full-shift exposures exceeding regulatory limits.[2]

In 2006, NIOSH, in collaboration with MSHA, the mining industry, and labor, completed extensive testing to evaluate the accuracy of the pre-commercial CPDM and its suitability for use in underground coal mines in terms of ergonomics and durability. The testing verified that the device achieved with 95 percent confidence end-of-shift measurements within ± 25 percent of reference measurements [3] taken in a variety of coal mines. In addition, the testing demonstrated that the device was acceptable to miners from an ergonomics standpoint, and was sufficiently durable to withstand the conditions of transportation and use in the mines.[4]

B. Rulemaking History

Existing 30 CFR part 74, "Coal Mine Dust Personal Sampler Units," includes procedures and requirements which MSHA and NIOSH use to jointly approve the design, construction, performance, and manufacturing quality of the CMDPSU. Part 74 is design-specific and does not permit the approval of coal mine dust sampling devices of a different design than currently approved. The CMDPSU is currently the only sampling device approved for use in coal mines to monitor miners' exposure to respirable coal mine dust. The new CPDM technology cannot be approved under the existing regulation.

MSHA and NIOSH recognize that the CPDM's ability to measure in real time the concentrations of respirable coal mine dust to which a miner is exposed could improve health protection of miners because the CPDM allows mine operators to take prompt action to prevent dust overexposures. Accordingly, the CPDM technology can be a vital element in the strategy used by mine operators and MSHA to more effectively control miners' exposure to respirable coal mine dust.

To accommodate approval of the new CPDM technology, MSHA and NIOSH published a proposed rule to revise part 74 (on January 16, 2009 (74 FR 2915)). The agency received comments on the proposed rule and held one public hearing on July 8, 2009, (74 FR 27265) in Arlington, Virginia. The comment period closed on August 14, 2009.

Although this final rule addresses approval of the CPDM, existing standards under 30 CFR parts 70, 71 and 90 will need to be revised before any new dust exposure monitoring technology can be used in coal mines for compliance purposes. This final rule does not address compliance-related issues, such as how the CPDM will be used, who would be required to wear such a device and when.

The final rule also updates existing design requirements for approving CMDPSUs to reflect improvements incorporated voluntarily by the manufacturer since the mid 1990s in the currently approved sampling device.

II. Summary of Final Rule

This final rule revises existing requirements for the approval of personal dust monitoring devices in 30 CFR part 74. It also establishes performance-based and other requirements for approval of the new CPDM.

Part 74 is renumbered as follows:

Subpart A—General.

Subpart B—Approval Requirements for Coal Mine Dust Personal Sampler Unit—specifications for existing technology.

Subpart C—Approval Requirements for Continuous Personal Dust Monitors—specifications for new technology.

Subpart D—General Requirements for All Devices—administrative provisions applicable to both the CMDPSU and CPDM.

III. Section-By-Section Analysis

Subpart A—General

A. § 74.1 Purpose

Final § 74.1, establishes requirements for approval of coal mine dust sampling devices designed to determine the concentrations of respirable dust in coal mine atmospheres; procedures for applying for such approval; test procedures; and labeling. Final 74.1 is unchanged from the proposal and addresses both CMDPSU and CPDM technology. MSHA received no comments on the proposal.

B. § 74.2 Definitions

Final § 74.2, like the proposal, is a new section that defines key terms used in the final rule.

Final paragraphs (a) and (b), like the proposal, define the concepts of "accuracy" and "bias" as they apply to CPDMs. They are key performance parameters for testing and approving the CPDM. MSHA received no comments on the proposal.

Final paragraphs (c) and (d), like the proposal, define the two types of coal mine dust sampling devices covered by this final rule, the "CMDPSU" and the "CPDM". The definitions are included to distinguish between the two types of dust monitoring technology. MSHA received no comments on the proposal.

Final paragraph (e), like the proposal, defines the "International Organization for Standardization (ISO)" as a voluntary consensus standards-setting organization. An ISO standard is relied on in this final rule (*see* § 74.9). MSHA received no comments on the proposal.

Final paragraph (f), like the proposal, defines the concept of "precision" as it applies to the CPDM. Precision is the third key performance parameter for the testing and approval of CPDMs. MSHA received no comments on the proposal.

Subpart B contains the approval requirements that apply to the CMDPSU.

C. § 74.3 Sampler Unit

Final § 74.3, like the proposal, renumbers existing § 74.2, and specifies the major components of a CMDPSU and remains unchanged from the proposal. MSHA received no comments on the proposal.

[2] For a more complete description of the technology, *see:* Volkwein, J.C., Vinson, R.P., S.J. Page, L.J. McWilliams, G.J. Joy, S.E. Mischler, and D.P. Tuchman. Laboratory and field performance of a continuously measuring personal respirable dust monitor. CDC RI 9669. September 2006. 47 pp. and Volkwein, J.C., R.P. Vinson, L.J. McWilliams, D.P. Tuchman, and S.E. Mischler, Performance of a New Personal Respirable Dust Monitor for Mine Use. CDC RI 9663. June 2004.

[3] Reference measurements were established using multiple gravimetric samplers in dust exposure chambers for laboratory testing and using CMDPSUs in a variety of coal mines for field testing.

[4] *See:* Volkwein, J.C., R.P. Vinson, S.J. Page, L.J. McWilliams, G.J. Joy, S.E. Mischler, and D.P. Tuchman. Laboratory and field performance of a continuously measuring personal respirable dust monitor. CDC RI 9669. September 2006. 47 pp. and Volkwein, J.C., R.P. Vinson, L.J. McWilliams, D.P. Tuchman, and S.E. Mischler. Performance of a New Personal Respirable Dust Monitor for Mine Use. CDC RI 9663. June 2004.

D. § 74.4 Specifications of Sampler Unit

Final § 74.4, like the proposal, renumbers existing § 74.3 and updates the requirements of the existing provision to reflect currently approved sampling technology.

Final paragraph (a)(1) updates existing pump dimensions to reflect the smaller and more compact size of currently approved sampling device: 4 inches (10 centimeters) in height; 4 inches (10 centimeters) in width; and 2 inches (5 centimeters) in thickness.

A commenter suggested that volume instead of size would be a preferable design parameter as it would not restrict future pump innovation and improvement and recommended a nominal value of 500–525cm^3. MSHA believes that this suggestion is inconsistent with the design-specific regulatory requirements applicable to the CMDPSU. MSHA experience indicates that specifying size as a design parameter has not restricted pump innovation and improvement as evidenced by the reduced size of the currently-approved pump unit, resulting from product improvements undertaken voluntarily by the manufacturer. The final rule remains unchanged from the proposal.

Final paragraph (a)(2), like the proposal, updates the existing maximum pump weight to 20 ounces (567 grams) to reflect the reduction in the weight of the currently approved pump unit. MSHA received no comment on the proposal.

Final paragraph (a)(3), like the proposal, updates existing requirements for the construction of the pump case and pump components by requiring protection against radio frequency and electromagnetic interference. This improvement will prevent potential instrument error or malfunction due to exposure to electromagnetic fields and various radio frequency ranges and signal strengths encountered in coal mines from power stations, electric motors and remote control transmitters. The final rule includes the proposed requirement that the case and components of the pump unit must be of durable construction and tight-fitting. MSHA received no comments on the proposal.

Final paragraphs (a)(4) and (a)(5), are the same as the proposal. These provisions require that: (1) The pump exhaust into the pump case to maintain a slight positive pressure; and (2) the pump unit be equipped with an ON/OFF switch that is protected against accidental operation during use and protected to keep dust from entering the mechanisms. MSHA received no comments on the proposal.

Final paragraph (a)(6), like the proposal, requires the pump unit to be equipped with a means to make flow rate adjustments accessible from outside the case. The flow rate adjuster must be recessed in the pump case and protected against accidental adjustment. If the pump is capable of maintaining flow rate consistency without adjustment, an external flow rate adjuster is not required. MSHA received no comments on the proposal.

Final paragraph (a)(7), like the proposal, requires that the power supply for the pump be a suitable battery located in the pump case or in a separate case which attaches to the pump by a permissible electrical connection. MSHA received no comments on the proposal.

Final paragraph (a)(8), like the proposal, requires that the irregularity in flow rate due to pulsation have a fundamental frequency of not less than 20 Hz. It also requires that the quantity of respirable dust collected with a sampling device be within ± 5 percent of that collected with a sampling head assembly operated with nonpulsating flow. MSHA received no comments on the proposal.

Final paragraphs (a)(9) and (a)(10), like the proposal, retains the existing provisions requiring the pump unit to be equipped with a belt clip and a suitable connection to allow the battery to be recharged without removing it from the pump case or battery case. MSHA received no comments on the proposal.

Final paragraphs (a)(11), like the proposal, requires a visual indication of the flow rate and specifies the calibration of the flow rate indicator. It updates existing calibration requirements to be within ±5 percent at 2.2, 2.0, and 1.7 liters per minute. The higher flow rates for calibration purposes better reflect the operating flow rate range specified in final paragraph (a)(12). MSHA received no comments on the proposal.

Final paragraph (a)(12), like the proposal, retains the existing requirement that the pump operate within a range from 1.5 to 2.5 liters per minute and be adjustable over this range. MSHA received no comments on the proposal.

Final paragraph (a)(13), like the proposal, requires the flow rate to remain consistent or stable over at least a 10-hour period, when the pump is operated at 2 liters per minute. This flow-rate consistency reflects the operating range of the currently approved sampling device and the prevalence of work shifts exceeding 8 hours in duration. The final rule, like the proposal, does not include the existing requirement to readjust the flow rate during the shift since the currently approved sampling device is designed to maintain a constant flow rate without requiring any readjustments during sampling. MSHA received no comments on the proposal.

Final paragraph (a)(14), like the proposal, is a new provision that requires the pump unit to be equipped with a flow restriction indicator. This new requirement reflects technology incorporated in the currently approved sampling device to prevent the shutdown of the pump during sampling and subsequent loss of the sample if the flow restriction is not corrected. The flow restriction indicator enables more accurate sampling of the mine atmosphere in the active workings. MSHA received no comments on the proposal.

Final paragraph (a)(15), like the proposal, specifies the required maximum expected operating time that the pump with a fully charged battery pack must be capable of operating at specific flow rates and sampling device loading. This paragraph reflects the higher level of operating performance inherent in the currently approved sampling device to permit sampling of shifts longer than 8 hours commonly worked today. Under the final rule, the existing resistance requirement for 8 hours of operation at a flow rate of 2 liters per minute is increased from 4 inches (10 centimeters) to 25 inches (64 centimeters) of water, as measured at the inlet of the pump. The final rule, like the proposal, adds a new provision that reflects technology incorporated in the currently approved sampling device. It requires the pump unit to operate not less than 10 hours at a flow rate of 2.5 liters per minute against a resistance of 15 inches (38 centimeters) of water. MSHA received no comments on the proposal.

Final paragraph (a)(16), like the proposal, is a new provision that requires the pump unit to be equipped with a low battery indicator. This provision reflects technology incorporated in the currently approved sampling device and is considered an important design feature. Failure of the battery during sampling results in loss of the sample and the inability to determine the concentrations of respirable coal mine dust in the work environment being monitored. MSHA received no comments on the proposal.

Final paragraph (a)(17), like the proposal, is a new provision and requires the pump unit to be equipped

with an elapsed time indicator displaying the actual pump run time after the pump is shut down due to a flow restriction or low battery power, or at the end of the sampling shift. This provision reflects technology incorporated in the currently approved sampling device and is necessary to determine if sampling was conducted for the required duration. Knowing the actual sampling time is essential for determining the concentration of respirable coal mine dust in the work environment being monitored. MSHA did not receive any comments on the proposal.

Final paragraph (b), like the proposal, addresses requirements for the sampling head assembly of the CMDPSU, which consist of a cyclone and a filter assembly.

Final paragraphs (b)(1) and (b)(2)(i), like the proposal, specify the components and construction of the cyclone, including dimensions of the components, and the characteristics of the collection filter. MSHA did not receive any comments on the proposal.

Final paragraph (b)(2)(ii), like the proposal, specifies characteristics and construction of the capsule enclosing the filter, and requires that the capsule prevent visual inspection of the filter surface or filter loading. It reflects the design and construction of the currently approved filter assembly, called the dust cassette, to safeguard the accuracy, integrity, and validity of the collected sample. MSHA did not receive any comments on the proposal.

Final paragraph (b)(2)(iii), like the proposal, specifies requirements for the cassette enclosing the capsule. It requires the cassette to completely enclose the filter capsule so as to prevent contamination and intentional or inadvertent alteration of dust deposited on the filter. The final rule also requires the cassette be designed to prevent reversal of the air flow through the capsule or other means of removing dust collected on the filter. These requirements reflect design of the currently approved filter assembly or dust cassette technology and are intended to safeguard the accuracy, integrity, and validity of the sample. MSHA did not receive any comments on the proposal.

Final paragraphs (b)(3) and (b)(4) are the same as the proposal. Final paragraph (b)(3) addresses the connections between the cyclone vortex finder and the filter capsule and connections between the filter capsule and hose. Final paragraph (b)(4), like the proposal, addresses clamping and positioning requirements of components. It requires that the cyclone-cassette assembly be firmly in contact, airtight and be attached firmly to a backing plate or other means of holding the sampling head in position. MSHA did not receive any comments on the proposal.

Final paragraph (b)(5), like the proposal, includes requirements for the hose connecting the sampler pump and the filter assembly. It requires that the hose be clear plastic. This provision reflects currently-approved technology and allows for examination of the external tubing to assure that it is clean and free of leaks, as accumulations or leaks could affect the accuracy of sampling results. MSHA did not receive any comments on the proposal.

Final paragraph (c) addresses requirements for the battery charger of the CMDPSU.

Final paragraph (c)(1), like the proposal, specifies the voltage and frequency requirements for the battery charger. It reflects currently used power supply voltage of 110 (VAC)(nominal). MSHA did not receive any comments on the proposal.

Final paragraphs (c)(2) and (c)(3), like the proposal, require that the battery charger be provided with a cord and polarized connector and that it be fused and have a grounded power plug. MSHA did not receive any comments on the proposal.

Final paragraph (c)(4), like the proposal, reflects currently approved technology and requires that the battery charger be capable of fully recharging the battery in the pump unit within 16 hours. MSHA did not receive any comments on the proposal.

E. § 74.5 Tests of Coal Mine Dust Personal Sampler Units

Final § 74.5, like the proposal, renumbers existing § 74.4 and provides authority for NIOSH and MSHA testing to evaluate whether the CMDPSU meets the requirements of the final rule. MSHA did not receive any comments on the proposal.

F. § 74.6 Quality Control

Final § 74.6, like the proposal, includes a clarifying reference to final § 74.13 (filing applications). MSHA did not receive any comments on the proposal.

Subpart C—Requirements for Continuous Personal Dust Monitors (CPDMs)

G. § 74.7 Design and Construction Requirements

Final § 74.7 provides design and construction requirements for the CPDM. The requirements are performance-oriented to allow manufacturers flexibility for continued innovation in this new technology. Where necessary and appropriate, the final rule includes design requirements to assure miner safety or accommodate specific mining conditions.

Final paragraph (a), like the proposal, requires that the CPDM be designed and constructed to allow miners to work safely. It also requires that the device be suitable to work requirements and working conditions of coal mining. MSHA did not receive any comments on the proposal.

Final paragraph (b), like the proposal, addresses ergonomic design requirements. It requires that, prior to filing an application under final § 74.13, the applicant must develop a testing protocol to determine if coal miners can wear the CPDM safely and without discomfort or impairment in the performance of their work duties throughout a full work shift. The protocol includes provisions for testing in one or more active mines under routine operating conditions. The testing protocol must be submitted to NIOSH prior to testing. In addition, the testing protocol and testing results must be submitted to NIOSH as part of the application for approval. NIOSH will advise and assist the applicant in developing an adequate testing protocol and arranging for adequate and competent testing resources, including, but not limited to, identifying testing experts and facilitating the cooperation of coal operators and miners. NIOSH reserves the authority to waive the requirement for the applicant to conduct such testing when it is apparent "that the device can be worn safely, without discomfort, and without impairing a coal miner in the performance of duties throughout a full work shift." MSHA did not receive any comments on the proposal.

Final paragraph (c), like the proposal, requires that the weight of a CPDM add no more than 2 kg to the total weight carried by the miner. However, a CPDM combined with other functions, such as communications or illumination, could weigh more than 2 kg if offset by the weight of a device the miner would no longer have to carry. In this case, the total added weight must not exceed the weight normally carried by miners without CPDMs by more than 2 kg. The 2-kg limit is based on the professional judgment of MSHA and NIOSH staff that the added load to miners needs to be minimized, considering that the safety gear and equipment currently worn and carried by underground coal miners can weigh up to approximately 16 kg. The limit in the final rule reflects

the weight of the prototype CPDM, which in NIOSH testing was worn and used by miners for full shifts and proved to be tolerable. The prototype device weighed approximately 3 kg, but served to power the cap lamp as well, so that a separate battery was not needed for the miner's cap lamp. In combination, the prototype with its dual-use battery increased the personal equipment load of the miners by less than 2 kg. MSHA did not receive any specific comments on this provision.

Final paragraph (d) requires that the CPDM provide accurate end-of-shift measurements of average respirable coal mine dust concentrations within the range of 0.2 to 4.0 mg/m^3. For end-of-shift average concentrations exceeding 4.0 mg/m^3, the CPDM must provide a reliable indication that the concentration exceeded 4.0 mg/m^3. This represents a change from the proposal in response to comments, which indicated some confusion and misinterpretation of the proposal. The proposal would have required that the CPDM provide accurate end-of-shift measurements of average respirable dust concentrations within the range of 10% to 2 times the permissible exposure limit (PEL) for respirable coal mine dust (currently 2.0 mg/m^3 when quartz content does not exceed 5%), and provide a reliable indication when the concentration exceeds 2 times the PEL. A commenter asked if the proposed requirement would remain the same if a dust sample contains more than 5% quartz causing the PEL to be subsequently reduced. This commenter also asked if the proposed requirement would remain the same if MSHA ever reduces the PEL for respirable dust or for quartz dust through future rulemaking. MSHA believes that the proposal could have been more clearly stated.

To provide better clarity regarding the actual range of average respirable coal mine dust concentrations over which the CPDM must provide accurate end-of-shift measurements, the final rule establishes the measurement range by defining a lower and upper range of average dust concentrations over which the CPDM must perform accurately. The final rule does not change the original intent of the proposal, which was to establish performance criteria for approving CPDM devices that accurately measure end-of-shift average dust concentrations based on current direct-reading monitoring technology.

The measurement range in the final rule reflects the actual range of average dust concentrations over which current CPDM technology performed accurately. The final requirement assures that the CPDM will provide accurate measurements of actual dust concentrations as low as 0.2 mg/m^3 (10% of the existing PEL) to permit monitoring of dust concentrations in active workings of coal mines under existing reduced standards due to quartz with no further accuracy testing. MSHA did not intend to address any issues related to a lower PEL for respirable coal mine dust or quartz in this rulemaking. In the event the PEL is reduced through rulemaking in the future resulting in reduced dust standards below 0.2 mg/m^3, the accuracy of the CPDM in monitoring the lower concentration limits would need to be verified with additional testing.

Final paragraph (e), like the proposal, requires that the CPDM operate reliably and accurately within the full range of environmental conditions encountered in coal mines. It requires that the CPDM operate reliably and accurately at any ambient temperature and varying temperatures ranging from minus 30 to plus 40 degrees Centigrade; at any atmospheric pressure from 700 to 1000 millibars; at any ambient humidity from 10 to 100 percent relative humidity; and while exposed to water mists generated for dust suppression and while monitoring atmospheres including such water mists. These parameters, in addition to those in paragraphs (f) and (g) of this section, address the full range of environmental conditions found in coal mines. MSHA and NIOSH specifically solicited comments on these parameters, as well as any others that might be appropriate. MSHA did not receive any comments on the proposal.

Final paragraph (f), like the proposal, requires that the CPDM meet standards established by the American National Standards Institute (ANSI), the Federal Communications Commission (FCC), and the International Electrotechnical Commission (IEC) for control of and protection from electromagnetic interference. The FCC is an independent Federal agency that regulates radiofrequency emitting devices. ANSI and IEC are voluntary standards-setting organizations, the former covering a variety of technical and management areas and the latter specializing in electrotechnology. The use of these standards would address the potential for interference associated with the increasing use of radiofrequency controls for mining machinery and mine communication systems.

Final paragraph (f)(1) requires the CPDM to meet emissions requirements of IEEE Std. C95.1–2005, IEEE Standard for Safety Levels with Respect to Human Exposure to Radio Frequency Electromagnetic Fields, 3 kHz to 300 GHz. The proposal would have required that the operator meet the requirements of ANSI C95.1–1982 (Standard for Safety Levels with Respect to Human Exposure to Radio Frequency Electromagnetic Fields). The ANSI C95.1–1982 reference in the proposal has been updated and the final rule is changed to include the latest reference. MSHA did not receive any comments on the proposal.

Final paragraph (f)(2), like the proposal, requires that the CPDM meet the immunity and susceptibility requirements of the International Electrotechnical Commission (IEC) 61000–4–6.

A commenter stated that the proposal was confusing as to the depth of testing required. This commenter asked if the intent of the proposal was to test against the entire section of 610000–4 through 61000–6, or only sections 61000–4 and 61000–6, or the specific test defined in 61000–4–6.

MSHA inadvertently cited the IEC reference in the proposal as IEC 61000–4 and 61000–6. The proposal should have been phrased as follows: "persons must proceed in accordance with IEC 61000–4–6 (Electromagnetic compatibility—Part 4–6: Testing and measurement techniques—Immunity to conducted disturbances, induced by radio-frequency fields)." In response to the commenter's question, the Agency clarified in the hearing notice (74 FR 27263) its intent that the proposed test be in accordance with the specific test defined in IEC 61000–4–6. The final rule includes this nonsubstantive correction.

Final paragraph (g), like the proposal, requires that the CPDM be designed and constructed to remain safe and accurate after undergoing durability evaluation involving vibration and drop tests representative of conditions of use in the mine. In testing for vibration, NIOSH will use Military Standard 810F, 514.5. This test measures the degree of vibration expected while the device is worn by miners on and operating mining equipment and during transport in and out of the mine. The drop test that NIOSH applies will involve three 3-foot drops onto a bare concrete surface (one drop testing each axis of the device). This test represents the occasional drops and knocking of the device expected during use of the device by miners. NIOSH will conduct the testing regime on test devices prior to further testing by the applicant under § 74.8 and intrinsic safety testing by MSHA under § 74.11(d). MSHA did not receive any comments on this proposal.

Final paragraphs (h)(1) and (2) require adequate legibility or audibility of monitoring results, computer (*i.e.,*

digital) recording of results in a form compatible with widely available computer technology, and reporting of results as cumulative mass concentration in units of mass per volume of air (mg/m^3). The visibility requirement for a minimum digital character height of 6 millimeters is based on testing during CPDM prototype development. All other requirements in this provision allow flexibility for new innovative designs that would provide timely, reliable, and appropriately quantified information.

A commenter stated that, except for provisions for the size of characters and end of shift results, there is nothing in the rule that provides for results for shorter time periods (from minutes to hours). This commenter stated that an instrument that provides only the end of shift results would not be acceptable. Additionally, whatever number the instrument displays should not be truncated and, instead, should be rounded as is the customary practice in most other applications. This commenter suggested that the information displayed on the CPDM be the same as described in NIOSH Publication RI 9669, "Laboratory and Field Performance of a Continuously Measuring Personal Respirable Dust Monitor."

Since monitoring of compliance with the applicable dust standard will continue to be based on the average dust concentration measured over a full shift, it is vital that the CPDM provide accurate full-shift (or end-of-shift) measurements. It should be noted that shorter time period data may also be available. However, MSHA believes that to prescribe the time period for intra-shift measurements of less than 8 hours may limit future CPDM development. The final rule does not include the commenter's suggestion.

In response to the commenter's suggestion that the concentration values displayed by the instrument should be rounded instead of truncated, paragraph (h)(2) in the final rule has been modified to require the CPDM to report cumulative mass concentrations with two significant figures of accuracy rounded as the customary practice. The commenter's suggestion that the information displayed on the CPDM be the same as described in NIOSH Publication RI 9669, "Laboratory and Field Performance of a Continuously Measuring Personal Respirable Dust Monitor" was not adopted to permit continued innovation in how dust concentration measurements are displayed by CPDMs.

Final paragraph (i), like the proposal, requires that the power source for the CPDM have sufficient capacity to enable continuous sampling for 12 hours in a coal mine dust atmosphere up to 4.0 mg/m^3. This requirement provides reasonable assurance that the power supply is sufficient to enable accurate measurement of respirable dust concentrations for 12-hour work shifts, which according to MSHA data, would accommodate some of the longer recorded shifts currently being worked in underground coal mines. MSHA's data indicate that 98 percent of work shifts in active underground mines are 10 hours or less and over 99 percent of work shifts are 12 hours or less.

It should be recognized that if dust concentrations in the active workings being monitored exceed 4.0 mg/m^3 continuously over a 12-hour period, a power supply meeting this requirement might not be sufficient to sustain monitoring for the complete shift. This is because sampling environments containing higher dust concentrations will result in increased particulate loading on the sample collection media which places greater power demands on the CPDM to increase pump speed and maintain the required sample flow rate without requiring any mid-course adjustments. However, since over 99 percent of the underground coal mines work shifts that are 12 hours or less, the final rule provides sufficient assurance that the CPDM will have the power capacity to monitor high dust concentrations during the entire work shift, and to cumulatively document that miner's exposure exceeded the PEL for the full shift. Final paragraph (i), like the proposal, also requires that a CPDM that uses a rechargeable battery be recharged using the standard power supplies in mines (110 VAC).

Several commenters supported the proposed requirement that the CPDM be powered continuously for 12 hours since miners work shifts longer than 8 hours. However, they also suggested that CPDMs be capable of operating for a minimum of 16 hours to accommodate full work shifts, up to 16 hours. One of the commenters further suggested that, if this is not feasible, it should be required in two years. While MSHA recognizes that some miners may work longer than 12 hours, those situations are neither typical nor wide spread. Since the performance requirements in the final rule are intended to address typical mining operating conditions, they do not include the commenters' suggestion that the CPDM be capable of operating up to 16 hours. Further, given the current state of battery technology, a 16-hour battery would significantly increase the size and weight of the CPDM beyond the limits specified in this final rule.

Final paragraph (j), like the proposal, requires that if a CPDM uses a pump to sample the atmosphere, it must perform with a flow stability within ± five percent of the calibrated flow for 95% of samples for a continuous duration of 12 hours.[5] This requirement is integral to achieving representative, accurate measurements of respirable coal mine dust concentrations. The paragraph also requires that the applicant specify the flow calibration maintenance interval necessary to achieve the required level of flow stability in the calibration instructions for the device. MSHA did not receive any comments on the proposal.

Final paragraph (k), like the proposal, requires that a CPDM using a rechargeable battery have a battery check feature to indicate to the user that the device is adequately recharged to operate as intended for an entire work shift of up to 12 hours under normal conditions of use. This important feature will minimize using CPDMs whose battery was not fully charged to permit full-shift monitoring without experiencing a monitoring failure during the shift due to low battery power. MSHA did not receive any comments on the proposal.

Final paragraph (l), like the proposal, sets forth requirements for CPDMs that share components with other personal equipment carried by an underground miner, such as cap lamps.

Final paragraph (l)(1), like the proposal, requires the applicant to obtain necessary approvals required for other devices if the CPDM is integrated or shares functions with such devices used in mines, such as cap lights or power sources, prior to receiving final approval of the CPDM from NIOSH. This provision enables NIOSH to assure all requirements, as appropriate, are met for other devices integrated with or sharing functions with the CPDM that are not approved by NIOSH.

Final paragraph (l)(2), like the proposal, requires that the CPDM operate effectively with the integrated functions. This provision assures that the CPDM is not compromised by integration of functions and provides reasonable assurance that the device functions as intended. MSHA did not receive any comments on the proposal.

Final paragraph (m), like the proposal, specifies performance requirements that help assure that CPDMs are designed to prevent intentional tampering or inadvertent altering of monitoring

[5] NIOSH Manual of Analytic Methods, Method 0600, Issue 3, Fourth Edition, January 15, 1998.

results. It requires that the CPDM have a safeguard or indicator which either prevents altering the measuring or reporting functions of the device or indicates if these functions have been altered.

This requirement will assure that manufacturers design and incorporate tampering safeguards and indicators in the CPDM that address foreseeable actions by users. It also allows NIOSH to require, to the extent feasible, changes in the design of an already approved device, following discovery of tampering methods or inadvertent actions that can alter monitoring results.

A commenter supported the proposed requirement; however, the commenter doubted that safeguards could prevent tampering altogether. This commenter suggested that MSHA have other methods to prevent and detect tampering and to prosecute those who perpetuate this action. MSHA recognizes the importance of having a credible monitoring program that provides meaningful health surveillance and confidence in the program. MSHA's actions to improve sampling technology, to investigate questionable sampling practices, and take appropriate legal action demonstrate the Agency's commitment to maintain a credible and reliable dust monitoring program. While it may be difficult to prevent tampering all together, MSHA has not ignored this important issue and believes that the CPDM technology should limit the ability to alter monitoring results. MSHA believes that the final rule addresses commenters' concerns with respect to tampering or altering CPDM results. MSHA will continue to evaluate operator results, conduct its own sampling, follow-up on reports of inappropriate sampling practices, conduct investigations as it has in the past, and take appropriate enforcement action.

Final paragraph (n), like the proposal, requires that the CPDM be designed to assure that it can be properly cleaned and maintained to perform accurately and reliably for the duration of its service life. The infiltration and accumulation of dust and moisture in components can adversely affect the operability and monitoring accuracy of a CPDM. MSHA did not receive any comments on the proposal.

H. § 74.8 Measurement, Accuracy, and Reliability Requirements

Final § 74.8, like the proposal, establishes new performance requirements for CPDMs. These requirements reflect current evaluation methods for assessment of direct-reading monitors. These methods have been summarized and issued as general guidelines by NIOSH in "Components for the Evaluation of Direct-Reading Monitors for Gases and Vapors".[6] The requirements also reflect the state-of-the-art technology of the CPDM prototype. Accordingly, this final rule establishes a science-based, feasible baseline for the performance of the new CPDM technology. Upon request, NIOSH will provide a report on the performance of the prototype CPDMs. The results are partially summarized in several peer-reviewed journal articles.[7]

Final paragraph (a), like the proposal, requires that the CPDM be capable of measuring respirable dust within the personal breathing zone of the miner whose exposure is being monitored. The breathing zone is generally considered to be the area surrounding the worker's nose and mouth. This zone is pictured by drawing a sphere with a 10-inch radius which is centered on the nose. Current industrial hygiene principles accept breathing zone samples as most representative of the atmosphere to which workers are exposed.[8] MSHA did not receive any comments on the proposal.

Final paragraph (b), like the proposal, provides requirements for the measurement accuracy of the CPDM. MSHA did not receive any comments on the proposal.

Final paragraph (b)(1), like the proposal, requires for full-shift measurements of 8 hours or more, a 95 percent confidence that the recorded measurements are within ±25 percent of the true dust concentration, as determined by CMDPSU reference measurements, over a concentration range from 0.2 to 4.0 mg/m^3. The specific degree of accuracy required is based on the current state of the technology of direct-reading monitors and on the need for reasonable accuracy in industrial hygiene assessments to assure worker protection. NIOSH has demonstrated the feasibility of this accuracy requirement through testing of the CPDM prototype.[9]

The concentration range of 0.2 to 4.0 mg/m^3 over which the CPDM must provide accurate measurements is also based on current CPDM technology, as represented by the pre-commercial device. This technology requires a minimum quantity of dust loading on the microbalance filter before the CPDM can provide an accurate measurement. This allows the CPDM to distinguish actual exposure quantities from small measurement variations due to imperfections of the CPDM equipment. The lower range of dust concentration levels tested (0.2 mg/m^3) assures that accuracy is maintained for situations where the quartz content in the mine environment exceeds 5 percent causing the PEL to be reduced. Similarly, there is an upper bound of dust loading, which is likely to exceed the concentration level of 4.0 mg/m^3,[10] specified in the final rule. Above this concentration level the current CPDM technology may lose sensitivity as a result of the heavily loaded filter on the microbalance. The Agencies are confident that the final rule will assure that the range of end-of-shift average dust concentrations over which the CPDM must provide accurate measurements will be adequate to quantify actual full-shift exposures that may range from exceptionally low to exceptionally high concentrations. MSHA did not receive any comments on the proposal.

For intra-shift measurements of less than 8 hours, final paragraph (b)(2), like the proposal, requires a 95 percent confidence that the recorded measurements are within ±25 percent of the true dust concentration, as determined by CMDPSU reference measurements, over the dust concentration range equivalent to 0.2 to 4.0 mg/m^3 for an 8-hour period. This provision includes a formula for calculating the equivalent dust concentration range for assessing accuracy of intra-shift measurements. MSHA did not receive any comments on the proposal.

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[6] Kennedy, E. R., T.J. Fischbach, R. Song, P.M. Eller, and S.A. Shulman, 1995. Guidelines for air sampling and analytical method development and evaluation, DHHS (NIOSH) Publication No. 95–117.

[7] Volkwein, J.C., R.P. Vinson, S.J. Page, L.J. McWilliams, G.J. Joy. S.E. Mischler and D.P. Tuchman. Laboratory and field performance of a continuously measuring personal respirable dust monitor. CDC RI 9669. September 2006. 47 pp. and Volkwein, J. C., R.P. Vinson, L.J. McWilliams, D.P. Tuchman, and S.E. Mischler. Performance of a New Personal Respirable Dust Monitor for Mine Use. CDC RI 9663. June 2004.

[8] Guffy, S.E., M.E. Flanagan, G. VanBelle. Air Sampling at the chest and ear as representative of the breathing zone. AIHAJ, 62:416–427, 2001, show that ear locations are preferred and that dust sources relative to sample position are important. A NIOSH study on miners shows that the chest and cap lamp positions are representative of exposures at the miner's nose (Vinson, R.P. and J. C. Volkwein, Determining the Spatial Variability of Personal Sampler Inlet Locations (in press) JOEH, 2007).

[9] Volkwein, J.C., R.P. Vinson, L.J. McWilliams, D.P. Tuchman, and S.E. Mischler. Performance of a New Personal Respirable Dust Monitor for Mine Use. CDC RI 9663. June 2004.

[10] NIOSH testing of the CPDM prototype used 4.0 mg/m^3 dust concentration as the upper limit in challenging the device for accuracy. NIOSH did not conduct testing to identify the actual upper limit at which the accuracy of the prototype would be degraded below the testing standard, although the ultimate occurrence of such degradation is predictable based on engineering principles.

Final paragraph (c), like the proposal, requires the CPDM to meet the accuracy requirements of the final rule regardless of the variation in density, composition, size distribution of respirable coal mine dust particles, and presence of spray mist in coal mines. Some monitoring devices, such as light scattering detectors, use technologies that have potential for monitoring aerosol dust concentrations. These devices currently lack the ability to distinguish differences in density and composition of coal mine dust particles and other aerosols in the mine, or to accommodate variation in the coal mine dust particle distribution. To be effective, the CPDM must produce accurate measurements for any coal mine atmosphere. MSHA did not receive any comments on the proposal.

Final paragraph (d), like the proposal, requires that the CPDM monitor with sufficient precision. Under the final rule, precision must be established through testing to determine the degree to which the CPDM is able to closely replicate multiple concentration measurements when sampling identical dust concentrations. The precision requirement is a relative standard deviation of less than 0.1275 without bias for multiple measurements. It will enable MSHA and mine operators to monitor changes in dust concentrations with reasonable confidence. MSHA did not receive any comments on the proposal.

Final paragraph (e), like the proposal, requires the bias of CPDM measurements to be limited such that the uncorrectable discrepancy between the mean of the distribution of measurements and the true dust concentration being measured during testing be no greater than 10 percent. It also requires that measurement bias be constant over the range of dust concentration levels tested, between 0.2 to 4.0 mg/m^3, for an 8-hour sampling period. This requirement assures that the CPDM does not consistently either overestimate or underestimate respirable coal mine dust concentrations to a substantial degree. This provides further assurance of the accuracy of the CPDM with respect to multiple measurements. MSHA did not receive any comments on the proposal.

Final paragraph (f), like the proposal, requires applicants to use the NIOSH testing procedure "Continuous Personal Dust Monitor Accuracy Testing," June 23, 2008, to evaluate the accuracy, reliability, precision, and bias of a CPDM. The NIOSH procedure is incorporated by reference. The procedure is available at the NIOSH Web site: *http://www.cdc.gov/niosh/mining/pubs/pubreference/outputid3076.htm*. The procedure requires that testing be performed under diverse environmental conditions and that test results be submitted, in writing, to NIOSH. The protocol assures that all CPDMs are evaluated consistently. NIOSH will provide assistance to applicants, as necessary, to make the arrangement of such testing feasible. MSHA did not receive any comments on the proposal.

I. § 74.9 Quality Assurance

Final § 74.9, like the proposal, establishes new quality assurance requirements for CPDM manufacturers.

Final paragraph (a), like the proposal, requires the applicant to establish and maintain a quality control system that assures devices produced under the applicant's certificate of approval meet the specifications to which they are certified under this part and are reliable, safe, effective, and otherwise fit for their intended use. The quality control system must meet the specifications in ISO Q9001–2000 standard established by the ISO.[11] The ISO standard is incorporated by reference. This consensus standard for quality management is in widespread use in U.S. and international manufacturing and service industries. It requires a comprehensive quality management system, which is essential for the manufacture of sophisticated technical equipment used in worker safety and health.

Final paragraph (a), like the proposal, also requires the applicant to submit a copy of the most recent registration under ISO Q9001–2000 to NIOSH, together with the application and, subsequent to an approval, upon request. Registration under ISO Q9001–2000, American National Standard, Quality Management Systems-Requirements, will be considered evidence of compliance with the ISO Q9001–2000 standard. NIOSH considers registration under the ISO quality management standard as evidence that the applicant has established a sound quality assurance program. The registration will allow the applicant to use existing and widely available independent auditing services. MSHA did not receive any comments on the proposal.

Final paragraph (b), like the proposal, requires applicants or approval holders to allow NIOSH to conduct quality management audits when requested or in response to quality-related complaints. NIOSH has similar authority under its respirator certification program (42 CFR part 84), which has been used to assure product quality in the respirator market. This audit authority is essential in the event of substantial quality management problems in the manufacture of CPDMs. MSHA did not receive any comments on the proposal.

Final paragraph (c), like the proposal, requires the applicant or approval holder to correct any quality management deficiencies identified by NIOSH or an independent audit within a reasonable time as determined by NIOSH. The final rule also provides that failure to correct a deficiency may result in the disapproval of a pending application or revocation of an existing approval until such time as NIOSH has determined that the deficiency is corrected. NIOSH has similar authority under its respirator certification program, although NIOSH has rarely had to employ it. MSHA did not receive any comments on the proposal.

J. § 74.10 Operating and Maintenance Instructions

Final § 74.10(a), like the proposal, requires the manufacturer to include operating and storage instructions and maintenance and service life plan with each new CPDM sold.

A commenter suggested that the proposal provide more specific and objective criteria so that anybody in the industry can, after reading them, operate the CPDM. In response to this commenter's suggestion, final § 74.10(a) has been changed from the proposal to include a new requirement in paragraph (a)(iv) that the operating instructions include a one page "quick start guide" that will enable a novice to start and operate the CPDM. Except for renumbering, all other provisions remain the same.

Final paragraph (b), like the proposal, is new and requires the manufacturer to submit the instructions and plan under paragraph (a) to NIOSH with the application for approval. It also requires that instructions and the plan be submitted if any substantive changes are made to the approved device or the approved instructions. Adequate instructions must be provided to facilitate effective use of sophisticated monitoring equipment. NIOSH review and approval of instructions serves an important final quality control function for the manufacturer and assures that instructions are clearly written and easily understood. NIOSH has similar authority under its respirator

[11] ISO Q9001:2000 is the International Standard: *Quality management systems—Requirements, 3rd edition*, approved on December 15, 2000 and available from the International Organization for Standardization and the American National Standards Institute.

certification program (42 CFR part 84). MSHA did not receive any comments on the proposal.

K. § 74.11 Tests of the CPDM

Final § 74.11 establishes new testing requirements for evaluation of CPDMs.

Final paragraph (a), like the proposal, requires the applicant to conduct all testing specified in §§ 74.7–74.8 of this part, with the exception of durability testing under § 74.7(g). It further requires that the testing be performed by an independent testing entity approved by NIOSH. This requirement provides reasonable assurance of the quality of testing and the reliability of test results. MSHA did not receive any comments on the proposal.

Final paragraph (b), like the proposal, provides for NIOSH to assist the applicant in identifying appropriate testing services. It also requires that applicants submit testing protocols to NIOSH prior to testing so that NIOSH can verify their adequacy. It is unlikely that an applicant would be familiar with testing resources capable of addressing every element of the final rule. NIOSH will be able to provide the applicant with information on private and university laboratories available for testing. In addition, NIOSH review of testing protocols will minimize the possibility of inadequate testing, which might result in the applicant incurring unnecessary delay and costs. MSHA did not receive any comments on the proposal.

Final paragraph (c), like the proposal, requires the applicant to arrange for the independent testing entity to report testing protocols and results directly to NIOSH. This direct reporting relationship between the testing entity and NIOSH further establishes the independence of the applicant from the testing. MSHA did not receive any comments on the proposal.

Final paragraph (d), like the proposal, requires the applicant to submit the CPDM to MSHA for testing and evaluation to determine the intrinsic safety of a CPDM submitted for approval. MSHA conducts all intrinsic safety testing for mining equipment used in underground coal mines. A CPDM that does not pass intrinsic safety testing will not be approved for use in coal mines. MSHA did not receive any comments on the proposal.

Subpart D—General Requirements for All Devices

L. § 74.12 Conduct of Tests; Demonstrations

Final § 74.12, like the proposal, addresses procedures for conducting tests, and renumbers and makes clarifying changes to the existing provision. This section concerns the management of testing information prior to and after the issuance of a certificate of approval.

Final paragraph (a), like the proposal, requires MSHA and NIOSH to continue the existing practice of not disclosing details of applicant's drawings or product specifications or other related materials.

Final paragraph (b), like the proposal, clarifies that after issuing a certificate of approval, MSHA and NIOSH may reveal test protocols and results considered for approval of the CPDM. It provides for the Agencies to protect disclosure of this information to the fullest extent, consistent with the Freedom of Information Act. MSHA did not receive any comments on the proposal.

M. § 74.13 Applications

Final § 74.13 substantively the same as the proposal, addresses requirements for filing an application for approval of a coal mine dust sampling device. Final paragraph (a), like the proposal, requires the submission of an application in duplicate to both NIOSH and MSHA for approval of a CMDPSU. It also requires that 10 complete CMDPSUs be submitted to NIOSH and one pump be sent to MSHA for testing. This provision is the same as the existing requirement for the CMDPSU. MSHA did not receive any comments on the proposal.

Final paragraph (b), like the proposal, requires the submission of an application in duplicate to both NIOSH and MSHA. It also requires that three complete CPDMs be submitted to NIOSH and one to MSHA. The submitted devices will be used by NIOSH to evaluate compliance with the design and construction requirements, verify any testing results, evaluate the use and maintenance instructions, and address quality assurance matters. The device sent to MSHA will undergo intrinsic safety testing. MSHA did not receive any comments on the proposal.

Final paragraph (c), like the proposal, requires that drawings and specifications provided in the application must be detailed to identify the design of the CMDPSU or its pump unit or CPDM and disclose the dimension, and materials of all component parts. This information is necessary for a complete evaluation of compliance with design and construction requirements in the final rule. MSHA did not receive any comments on the proposal.

N. § 74.14 Certificate of Approval

Final § 74.14, like the proposal, specifies the procedures that NIOSH and MSHA will use to approve or disapprove an application for a CMDPSU or CPDM. MSHA did not receive any comments on the proposal.

O. § 74.15 Approval Labels

Final § 74.15, like the proposal, specifies labeling procedures and other requirements for the applicant. MSHA did not receive any comments on the proposal.

P. § 74.16 Material Required for Record

Final § 74.16, like the proposal, addresses requirements for a permanent record of each application, the return of CMDPSU or CPDM test devices to the applicant, and the delivery of a commercially produced device to NIOSH. MSHA did not receive any comments on the proposal.

Q. § 74.17 Changes After Certification

Final § 74.17, like the proposal, includes procedures which the applicant must follow to change features of an approved CMDPSU or CPDM. This provision requires the applicant to file an application to change any feature and to test the modified device if NIOSH determines that testing is required. MSHA did not receive any comments on the proposal.

R. § 74.18 Withdrawal of Certification

Final § 74.18, like the proposal, authorizes NIOSH or MSHA to revoke for cause any certificate of approval for a CMDPSU or CPDM. MSHA did not receive any comments on the proposal.

IV. Regulatory Economic Analysis

A. Executive Order 12866

Under Executive Order (E.O.) 12866 (58 FR 51735), as amended by Executive Order 13258 (amending Executive Order 12866 on Regulatory Planning and Review (67 FR 9385)), the Agency must determine whether a regulatory action is "significant" and subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Under section 3(f), the order defines a "significant regulatory action" as an action that is likely to result in a rule (1) Having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities (also referred to as "economically significant"); (2) creating

serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order. MSHA has determined that the final rule does not have an annual effect of $100 million or more on the economy and, is not an economically "significant regulatory action" pursuant to section 3(f) of Executive Order 12866. MSHA, however, has concluded that the final rule is otherwise significant under Executive Order 12866 because it raises novel legal or policy issues.

This final rule updates existing requirements for the approval of a coal mine dust personal sampler unit (CMDPSU) to reflect the current state of this technology. The current approval holder of this device has voluntarily incorporated the improved requirements in the final rule into the device. The final rule also includes procedures and requirements by which NIOSH and MSHA could approve a new monitoring technology, continuous personal dust monitor (CPDM), for use in coal mines.

Providing requirements to allow the approval of a new monitoring technology, the CPDM, for use in coal mines, does not have any potential for adversely impacting the economy. Although there is a commercial version of the CPDM available for use by the mining industry, the final rule does not address matters related to its use in coal mines. It only addresses the performance requirements for the approval of CPDM devices.

B. Benefits

MSHA received no comments on the Agency's benefits analysis concerning the approval of the CPDM. The only comments received regarding benefits pertained to the use of the CPDM, which is not a subject of this rulemaking. Therefore, the Agency is retaining the benefits analysis used for the proposal.

Respirable coal mine dust is produced when material is extracted from the coal seam by drilling, blasting, and cutting, and during loading and transporting of that material from the mine. It consists of a mixture of very small particles of coal, silica, and other mineral and organic materials found in the mine environment that can be inhaled and deposited in the lungs. It presents a significant health hazard if not adequately controlled. Long-term exposure to excessive levels of respirable coal mine dust causes coal workers' pneumoconiosis (CWP) and other occupational lung diseases like chronic obstructive pulmonary disease (COPD) which are collectively known as "black lung." Overexposure to respirable silica dust can lead to silicosis. These occupational lung diseases can devastate a miner's quality of life, create a heavy burden on the victim and the victim's family, and in some cases lead to premature death.

The existing approved dust sampler used by coal mine operators and MSHA consists of a person-wearable battery-powered pump that draws mine air through a cyclone that separates respirable dust that can enter the inner lung and deposits it on a filter that is then weighed by MSHA. The dust concentration is calculated based on the volume of air sampled and the mass of dust collected. Usually, this procedure takes several days before mine operators and MSHA receive the results. The final rule updates application requirements for the existing coal mine dust sampling device to reflect design improvements incorporated voluntarily by the manufacturer since the mid 1990s. Updating the CMDPSU application requirements will ensure that any new manufacturer entering the market will produce a sampling device that reflects currently-used technology.

The CPDM represents an innovative technology that provides real-time and continuous accurate measurement of respirable coal mine dust during a working shift. Continuous exposure readings enable mine management to be proactive and take immediate preventive action to avoid potentially excessive exposures. The devices can also be used as an engineering tool to permit the operator to rapidly evaluate the effectiveness of various dust control strategies.

MSHA and NIOSH recognize that benefits derived from real-time continuous monitoring will occur when monitoring devices with this new technology and strategies for their use are developed and implemented. However, before CPDMs can be introduced in coal mines, they must be approved for use by MSHA and NIOSH. The existing regulations limit approval to dust sampling devices of the current design and do not permit the Agencies to approve other technologically advanced sampling devices that are capable of monitoring dust concentrations on a real-time and continuous basis.

In summary, the final rule incorporates requirements for approval of the CPDM and includes improved requirements for the CMDPSU.

C. Compliance Costs

MSHA received no comments on the Agency's proposed cost analysis concerning the cost of approving coal mine dust sampling devices. Similar to the comments on benefits, the only comments that MSHA received regarding costs pertained to the use of the CPDM, which is not a subject of this rulemaking. The Agency is therefore retaining the analysis used for the proposal. Further, due to the small magnitude of the costs, the Agency has not prepared a separate regulatory economic analysis. All cost estimates are, therefore, included in this final rule.

There is only one manufacturer of the CMDPSU currently approved for use in coal mines. No new applications for approval have been received in over 30 years. The final rule, which updates the design requirements for the CMDPSU, does not require this manufacturer to submit an application for a new approval or any additional information to MSHA and NIOSH. The CMDPSU approved under existing requirements already meets the final rule's updated requirements.

MSHA and NIOSH are aware of only one manufacturer capable of mass producing a CPDM that could be submitted for approval under this final rule. The Agencies believe that very few instrument manufacturers have the capacity or interest to develop technology suitable for directly and continuously measuring concentrations of respirable coal mine dust in mine atmospheres. The CPDM required a Federal investment of approximately $5.3 million, an additional private investment of approximately $750,000, and more than four years of development before a suitable device could be produced that could accurately measure respirable dust concentrations in coal mine atmospheres. It is likely that few, if any, firms would undertake this substantial level of research and development given the limited market for such a product.

Consequently, MSHA and NIOSH expect that in the first year under the final rule, there would be one manufacturer filing an application seeking approval of a CPDM. The cost of the final rule in the first year is estimated to be $293,000. The first year approval costs are annualized over an infinite time period by using a 7 percent discount factor [12] that results in a cost

[12] The 7 percent discount rate was obtained from the Office of Management and Budget (OMB) Circular A–4, issued September 17, 2003. The 7 percent rate is an estimate of the average before-tax

Continued

of approximately $20,500 ($293,000 × 0.07). The $293,000 consists of approximately: $250,000 for the applicant to have tests performed on the CPDM by a third party (under final §§ 74.7 and 74.8); $9,500 for MSHA to evaluate and test the CPDM for intrinsic safety (under proposed § 74.11); $3,200 for the applicant to file an application for approval of the CPDM (under final § 74.13); and $30,000 for the cost of the three CPDMs retained by NIOSH and MSHA (under final §§ 74.16(a) and (b)). The final rule costs are detailed below.

Final §§ 74.7 and 74.8 require tests that the applicant must have performed by a third party. These tests are for: ergonomic design (under final § 74.7(b)); environmental conditions (under final § 74.7(e)); electromagnetic interference (under final § 74.7(f)); flow stability and calibration of pump (under final § 74.7(j)); and accuracy testing which includes reliability measurement, precision, and bias testing (under final §§ 74.8(c), (d), and (e)). MSHA estimates that it would cost the applicant approximately $250,000 to conduct the tests that are required by final §§ 74.7 and 74.8. The annualized cost is $17,500 ($250,000 × 0.07).

Final § 74.11 requires that the applicant submit the CPDM to MSHA for testing and evaluation, under 30 CFR § 18.68, to determine whether the electronic components of the CPDM submitted for approval meet the applicable permissibility requirements. The following tests will be performed by MSHA under § 18.68(a)(1): Current limiting resistor adequacy test; coal dust thermal ignition test; optical isolator test; impact test and force test of encapsulated electrical assemblies; drop testing intrinsically safe apparatus; mechanical test of partitions; piezoelectric device impact test; and dielectric strength test. The battery flash current test will be performed under §§ 18.68(a)(1) and (b)(1). The methane thermal ignition test will be performed under §§ 18.68(a)(1) and (b)(6). The maximum surface temperature test will be performed under § 18.68(a)(1) and (b)(3). The spark ignition test will be performed under §§ 18.68(a)(1), (a)(2), (a)(4), (a)(5), (b)(4), and (b)(5).

MSHA estimates that it will take an average of 45 hours to evaluate and 40 hours to test each application. MSHA charges an hourly fee of $84 per hour for evaluation and testing time. In addition, MSHA applies a support factor of 1.617 to cover the administrative, clerical and technical support services involved in evaluating an application. Thus, the cost for MSHA evaluation and testing is approximately $9,500 [(45 hrs. × $84 × 1.617) + (40 hrs. × $84)]. The annualized cost is approximately $700 ($9,500 × 0.07).

Final § 74.13(b) requires that a written application for approval be submitted to MSHA and NIOSH in duplicate. MSHA estimates that it takes an engineer, earning $74.32 per hour, a total of 40 hours to prepare and compile the materials needed to accompany an application. MSHA estimates that it takes a clerical employee, earning $26.37 per hour, 0.25 hours (15 minutes) to copy an application, averaging 250 pages, at $0.15 per page. The postage cost per application is estimated to be $5. Thus, the cost to file an application is estimated at $3,200 [(1 application × 40 hrs. × $74.32 per hr.) + (0.25 hrs. × $26.37 per hour × 4 copies) + (250 pages × $0.15 cost per page × 4 copies) + ($5 × 4 copies)]. The annualized cost is approximately $200 ($3,200 × 0.07).

Final § 74.16(a) requires that MSHA and NIOSH each retain one CPDM that is submitted with the application. In addition, final § 74.16(b) requires that NIOSH receive one commercially produced CPDM free of charge, if it is approved by NIOSH and MSHA. MSHA estimates that the cost of a CPDM could range between $8,000 and $12,000 (for an average of $10,000 per device). Thus, the cost to provide two CPDMs with the application and one subsequent to the approval of the application is estimated to be $30,000 (3 CPDMs × $10,000 per CPDM). The annualized cost is $2,100 ($30,000 × 0.07).

D. Economic and Technological Feasibility

MSHA received no comments on the feasibility analysis, and, is therefore restating the feasibility analysis from the proposed rule. Although the CPDM is a new type of sampling device, the final rule is technologically feasible. The device has been developed and successfully tested in underground coal mines. This final rule puts in place the necessary requirements to enable an applicant to seek NIOSH and MSHA approval of a CPDM for use in coal mines. The one-time, first year cost to obtain an approval for the CPDM is estimated to be approximately $293,000. MSHA concludes that the final rule is economically feasible.

V. Regulatory Flexibility Act and Small Business Regulatory Enforcement Fairness Act

Pursuant to the Regulatory Flexibility Act (RFA) of 1980, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA), MSHA has analyzed the impact of the final rule on small entities. Based on that analysis, MSHA has notified the Chief Counsel for Advocacy, Small Business Administration, and made the certification under the Regulatory Flexibility Act at 5 U.S.C. 605(b) that the final rule does not have a significant economic impact on a substantial number of small entities.

The final rule updates requirements for the existing CMDPSU and establishes procedures and requirements for approving a new technology, or CPDM, for use in coal mines. A manufacturer of a CPDM receiving an approval would be able to market the device. The U.S. market might also serve as a basis for marketing the device internationally.

Currently, the new CPDM cannot be approved because the existing design specifications of 30 CFR Part 74 provide for the approval of only one, substantially different type of technology, for monitoring concentrations of respirable dust in coal mine atmospheres. NIOSH's evaluation of the design and performance of the CPDM has provided the empirical basis for the approval requirements in the final rule requirements. Accordingly, MSHA has determined that this final rule fosters the commercialization of the CPDM.

Since the final rule does not impact the manufacturer of the existing sampler and permits the approval of the new CPDM, MSHA concludes that it will not have a significant economic impact on a substantial number of small entities.

VI. Paperwork Reduction Act of 1995

The final rule will impose estimated information collection requirements of 41 burden hours which are related to filing approval applications required by final § 74.13. This burden occurs in the first year that the rule is in effect. MSHA estimates that it takes an engineer 40 hours to compile the material for the application, and a clerical employee 1 hour to prepare and send four copies of the application (0.25 hours per application × 4 copies). Two copies of the application need to be sent to both NIOSH and MSHA. Based on hourly wage rates of $74.32 for an engineer and $26.37 for a clerical employee, the related burden costs are estimated to be approximately $3,000 (40 hrs. × $74.32)

rate of return to private capital in the U.S. economy. It is a broad measure that reflects the returns to real estate and small business capital as well as corporate capital.

+ (0.25 hrs. × $26.37 × 4 copies). The final burden will be accounted for in OMB control No. 1219–0066 which contains the burden for applications filed with MSHA that involve intrinsic safety testing.

VII. Other Regulatory Considerations

A. The Unfunded Mandates Reform Act of 1995

MSHA has reviewed the final rule under the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1501 *et seq.*). MSHA has determined that this final rule does not include any Federal mandate that may result in increased expenditures by State, local, or Tribal governments; nor will it increase private sector expenditures by more than $100 million in any one year or significantly or uniquely affect small governments. Accordingly, the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1501 *et seq.*) requires no further agency action or analysis.

B. The Treasury and General Government Appropriations Act of 1999: Assessment of Federal Regulations and Policies on Families

This final rule has no effect on family well-being or stability, marital commitment, parental rights or authority, or income or poverty of families and children. Accordingly, § 654 of the Treasury and General Government Appropriations Act of 1999 (5 U.S.C. 601 note) requires no further agency action, analysis, or assessment.

C. Executive Order 12630: Government Actions and Interference With Constitutionally Protected Property Rights

The final rule does not implement a policy with takings implications. Accordingly, E.O. 12630 requires no further Agency action or analysis.

D. Executive Order 12988: Civil Justice Reform

The final rule was written to provide a clear legal standard for affected conduct and was carefully reviewed to eliminate drafting errors and ambiguities, so as to minimize litigation and undue burden on the Federal court system. Accordingly, the final rule meets the applicable standards provided in § 3 of E.O. 12988.

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

The final rule has no adverse impact on children. Accordingly, E.O. 13045 requires no further Agency action or analysis.

F. Executive Order 13132: Federalism

The final rule does not have "federalism implications" because it 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." Accordingly, E.O. 13132, requires no further Agency action or analysis.

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

The final rule does not have "Tribal implications" because it does not "have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal government and Indian Tribes, or on the distribution of power and responsibilities between the Federal government and Indian Tribes." Accordingly, E.O. 13175 requires, no further Agency action or analysis.

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

Executive Order 13211 requires agencies to publish a statement of energy effects when a rule has a significant energy action that adversely affects energy supply, distribution, or use. The final rule only addresses the approval of coal mine dust sampling devices. As stated previously, this rule does not address their particular use in coal mines. Therefore, the final rule does not affect coal mines, nor does it have a significant energy action that adversely affects energy supply, distribution, or use. Accordingly, MSHA has concluded that the final rule is not a "significant energy action" because it is not "likely to have a significant adverse effect on the supply, distribution, or use of energy * * * (including a shortfall in supply, price increases and increased use of foreign supplies)." Accordingly, E.O. 13211 requires no further Agency action or analysis.

I. Executive Order 13272: Proper Consideration of Small Entities in Agency Rulemaking

MSHA has reviewed the final rule to assess and take appropriate account of its potential impact on small businesses, small governmental jurisdictions, and small organizations. MSHA has determined and certified that the final rule does not have a significant economic impact on a substantial number of small entities.

List of Subjects in 30 CFR Part 74

Incorporation by reference, Mine safety and health, Occupational safety and health, Direct reading devices, Monitoring technology.

Dated: March 29, 2010.

Joseph A. Main

Assistant Secretary of Labor for Mine Safety and Health.

■ For the reasons set out in the preamble, and under the authority of the Federal Mine Safety and Health Act of 1977 as amended by the Mine Improvement and New Emergency Response Act of 2006, MSHA is amending chapter I of title 30 of the Code of Federal Regulations by revising part 74 to read as follows:

PART 74—COAL MINE DUST SAMPLING DEVICES

Subpart A—General

Sec.
74.1 Purpose.
74.2 Definitions.

Subpart B—Approval Requirements for Coal Mine Dust Personal Sampler Unit

74.3 Sampler unit.
74.4 Specifications of sampler unit.
74.5 Tests of coal mine dust personal sampler units.
74.6 Quality control.

Subpart C—Requirements for Continuous Personal Dust Monitors (CPDMs)

74.7 Design and construction requirements.
74.8 Measurement, accuracy, and reliability requirements.
74.9 Quality assurance.
74.10 Operating and maintenance instructions.
74.11 Tests of the continuous personal dust monitor.

Subpart D—General Requirements for All Devices

74.12 Conduct of tests; demonstrations.
74.13 Applications.
74.14 Certificate of approval.
74.15 Approval labels.
74.16 Material required for record.
74.17 Changes after certification.
74.18 Withdrawal of certification.

Authority: 30 U.S.C. 957.

Subpart A—General

§ 74.1 Purpose.

The regulations in this part set forth the requirements for approval of coal mine dust sampling devices for determining the concentrations of respirable dust in coal mine atmospheres; procedures for applying for such approval; test procedures; and labeling.

§ 74.2 Definitions.

(a) *Accuracy:* the ability of a continuous personal dust monitor

(CPDM) to determine the "true" concentration of the environment sampled. Accuracy describes the closeness of a typical measurement to the quantity measured, although it is defined and expressed in terms of the relative discrepancy of a typical measurement from the quantity measured. The accuracy of a CPDM is the theoretical maximum error of measurement, expressed as the proportion or percentage of the amount being measured, without regard for the direction of the error, which is achieved with a 0.95 probability by the method.

(b) *Bias:* the uncorrectable relative discrepancy between the mean of the distribution of measurements from a CPDM and the true concentration being measured.

(c) *Coal mine dust personal sampler unit (CMDPSU):* a personal device for measuring concentrations of respirable dust in coal mine atmospheres that meets the requirements specified under Subpart B of this part.

(d) *Continuous personal dust monitor (CPDM):* a sampling device for continuously measuring concentrations of respirable dust in coal mine atmospheres that reports within-shift and end-of shift measurements of dust concentrations immediately upon the completion of the period of exposure that was monitored and that meets the requirements specified under Subpart C of this part.

(e) *ISO:* the International Organization for Standardization, an international standard-setting organization composed of representatives from various national standards-setting organizations. ISO produces industrial and commercial voluntary consensus standards used worldwide.

(f) *Precision:* the relative variability of measurements from a homogeneous atmosphere about the mean of the population of measurements, divided by the mean at a given concentration. It reflects the ability of a CPDM to replicate measurement results.

Subpart B—Approval Requirements for Coal Mine Dust Personal Sampler Unit

§ 74.3 Sampler unit.

A CMDPSU shall consist of:

(a) A pump unit,

(b) A sampling head assembly, and

(c) If rechargeable batteries are used in the pump unit, a battery charger.

§ 74.4 Specifications of sampler unit.

(a) *Pump unit:*

(1) *Dimensions.* The overall dimensions of the pump unit, hose connections, and valve or switch covers shall not exceed 4 inches (10 centimeters) in height, 4 inches (10 centimeters) in width, and 2 inches (5 centimeters) in thickness.

(2) *Weight.* The pump unit shall not weigh more than 20 ounces (567 grams).

(3) *Construction.* The case and all components of the pump unit shall be of sufficiently durable construction to endure the wear of use in a coal mine, shall be tight fitting to minimize the amount of dust entering the pump case, and shall be designed to protect against radio frequency interference and electromagnetic interference.

(4) *Exhaust.* The pump shall exhaust into the pump case, maintaining a slight positive pressure which will reduce the entry of dust into the pump case.

(5) *Switch.* The pump unit shall be equipped with an ON/OFF switch or equivalent device on the outside of the pump case. This switch shall be protected against accidental operation during use and protected to keep dust from entering the mechanisms.

(6) *Flow rate adjustment.* Except as provided in the last sentence of this paragraph, the pump unit shall be equipped with a suitable means of flow rate adjustment accessible from outside the case. The flow rate adjuster shall be recessed in the pump case and protected against accidental adjustment. If the pump is capable of maintaining the flow rate consistency required in this part without adjustment, an external flow rate adjuster is not required.

(7) *Battery.* The power supply for the pump shall be a suitable battery located in the pump case or in a separate case which attaches to the pump case by a permissible electrical connection.

(8) *Pulsation.* (i) The irregularity in flow rate due to pulsation shall have a fundamental frequency of not less than 20 Hz.

(ii) The quantity of respirable dust collected with a sampler unit shall be within ±5 percent of that collected with a sampling head assembly operated with nonpulsating flow.

(9) *Belt clips.* The pump unit shall be provided with a belt clip which will hold the pump securely on a coal miner's belt.

(10) *Recharging connection.* A suitable connection shall be provided so that the battery may be recharged without removing the battery from the pump case or from the battery case if a separate battery case is used.

(11) *Flow rate indicator.* A visual indicator of flow rate shall be provided either as an integral part of the pump unit or of the sampling head assembly. The flow rate indicator shall be calibrated within ±5 percent at 2.2, 2.0, and 1.7 liters per minute to indicate the rate of air passing through the accompanying sampling head assembly.

(12) *Flow rate range.* The pump shall be capable of operating within a range of from 1.5 to 2.5 liters per minute and shall be adjustable over this range.

(13) *Flow rate consistency.* The flow shall remain within ±0.1 liters per minute over at least a 10-hour period when the pump is operated at 2 liters per minute with a standard sampling head assembly.

(14) *Flow restriction indicator.* The pump shall be capable of detecting restricted flow and providing a visual indication if it occurs. The flow restriction indicator shall remain activated until the cause is corrected. The pump shall shut down automatically if flow is restricted for one minute.

(15) *Duration of operation.* The pump with a fully charged battery pack shall be capable of operating for (i) not less than 8 hours at a flow rate of 2 liters per minute against a resistance of 25 inches (64 centimeters) of water measured at the inlet of the pump; and (ii) for not less than 10 hours at a flow rate of 2 liters per minute against a resistance of 15 inches (38 centimeters) of water measured at the inlet of the pump.

(16) *Low battery indicator.* The pump unit shall be equipped with a visual indicator of low battery power.

(17) *Elapsed time indicator.* The pump unit shall be capable of displaying the actual pump run time in minutes (up to 999 minutes) and retaining the last reading after the pump is shut down due to either a flow restriction described in paragraph (a)(14) of this section or low battery power described in paragraph (a)(16) of this section or at the end of the sampling shift.

(b) *Sampling head assembly.* The sampling head assembly shall consist of a cyclone and a filter assembly as follows:

(1) *Cyclone.* The cyclone shall consist of a cyclone body with removable grit cap and a vortex finder and shall be constructed of nylon or a material equivalent in performance. The dimensions of the components, with the exception of the grit cap, shall be identical to those of a Dorr-Oliver 10 millimeter cyclone body, part No. 28541/4A or 01B11476–01 and vortex finder, part No. 28541/4B.

(2) *Filter assembly.* The filter assembly shall meet the following requirements:

(i) *Filter.* The filter shall be a membrane filter type with a nominal pore size not over 5 micrometers. It shall be nonhydroscopic and shall not dissolve or decompose when immersed

in ethyl or isopropyl alcohol. The strength and surface characteristics of the filter shall be such that dust deposited on its surface may be removed by ultrasonic methods without tearing the filter. The filter resistance shall not exceed 2 inches (0.5 centimeters) of water at an airflow rate of 2 liters per minute.

(ii) *Capsule.* The capsule enclosing the filter shall not permit sample air to leak around the filter and shall prevent visual inspection of the filter surface or filter loading. The capsule shall be made of nonhydroscopic material. Its weight, including the enclosed filter, shall not exceed 5 grams and it shall be pre-weighed by the manufacturer with a precision of ± 0.001 milligrams. Impact to the capsule shall not dislodge any dust from the capsule, which might then be lost to the weight measurement.

(iii) *Cassette.* The cassette shall enclose the capsule so as to prevent contamination and intentional or inadvertent alteration of dust deposited on the filter. The cassette must be easily removable without causing a loss or gain of capsule weight. The cassette shall be designed to prevent contaminants from entering or dust from leaving the capsule when it is not in use, and to prevent the reversal of airflow through the capsule or other means of removing dust collected on the filter.

(3) *Arrangement of components.* The connections between the cyclone vortex finder and the capsule and between the capsule and the ¼-inch (0.64 centimeters) (inside diameter) hose mentioned in paragraph (b)(5) of this section shall be mechanically firm and shall not leak at a rate of more than 0.1 liters per hour under a vacuum of 4 inches (10 centimeters) of water.

(4) *Clamping of components.* The clamping and positioning of the cyclone body, vortex finder, and cassette shall be rigid, remain in alignment, be firmly in contact and airtight. The cyclone-cassette assembly shall be attached firmly to a backing plate or other means of holding the sampling head in position. The cyclone shall be held in position so that the inlet opening of the cyclone is pointing perpendicular to, and away from, the backing plate.

(5) *Hose.* A 3-foot (91 centimeter) long, ¼-inch (0.64 centimeters) (inside diameter) clear plastic hose shall be provided to form an airtight connection between the inlet of the sampler pump and the outlet of the filter assembly. A device, capable of sliding along the hose and attaching to the miner's outer garment, shall be provided.

(c) *Battery charger.*

(1) *Power supply.* The battery charger shall be operated from a 110 (VAC) (nominal), 60 Hz power line.

(2) *Connection.* The battery charger shall be provided with a cord and polarized connector so that it may be connected to the charge socket on the pump or battery case.

(3) *Protection.* The battery charger shall be fused, shall have a grounded power plug, and shall not be susceptible to damage by being operated without a battery on charge.

(4) *Charge rates.* The battery charger shall be capable of fully recharging the battery in the pump unit within 16 hours.

§ 74.5 Tests of coal mine dust personal sampler units.

(a) The National Institute for Occupational Safety and Health (NIOSH), Department of Health and Human Services, shall conduct tests to determine whether a CMDPSU that is submitted for approval under these regulations meets the requirements set forth in § 74.4.

(b) The Mine Safety and Health Administration (MSHA), Department of Labor, will conduct tests and evaluations to determine whether the pump unit of a CMDPSU that is submitted for approval under these regulations complies with the applicable permissibility provisions of 30 CFR 18.68.

§ 74.6 Quality control.

The applicant shall describe the way in which each lot of components will be sampled and tested to maintain its quality prior to assembly of each sampler unit. In order to assure that the quality of the CMDPSU will be maintained in production through adequate quality control procedures, MSHA and NIOSH reserve the right to have their qualified personnel inspect each applicant's control-test equipment procedures and records and to interview the employees who conduct the control tests. Two copies of the results of any tests made by the applicant on the CMDPSU or the pump unit thereof shall accompany an application provided under § 74.13 of this part.

Subpart C—Requirements for Continuous Personal Dust Monitors

§ 74.7 Design and construction requirements.

(a) *General requirement.* Continuous Personal Dust Monitors (CPDMs) shall be designed and constructed for coal miners to wear and operate without impeding their ability to perform their work safely and effectively, and shall be sufficiently durable to perform reliably in the normal working conditions of coal mines.

(b) *Ergonomic design testing.* Prior to submitting an application under § 74.13, the applicant shall develop a testing protocol and test the CPDM to assure that the device can be worn safely, without discomfort, and without impairing a coal miner in the performance of duties throughout a full work shift. The results of the test shall also demonstrate that the device will operate consistently throughout a full work shift under representative working conditions of underground coal miners, including representative types and durations of physical activity, tasks, and changes in body orientation.

(1) The testing protocol shall specify that the tests be conducted in one or more active mines under routine operating conditions during production shifts.

(2) The applicant shall submit the testing protocol, in writing, to NIOSH for approval prior to conducting such testing.

(3) The applicant shall include the testing protocol and written test results in the application submitted to NIOSH as specified in § 74.13.

(4) NIOSH will advise and assist the applicant, as necessary, to develop a testing protocol and arrange for the conduct of testing specified in this paragraph.

(5) NIOSH may further inspect the device or conduct such tests as it deems necessary to assure the safety, comfort, practicality, and operability of the device when it is worn by coal miners in the performance of their duties.

(6) NIOSH may waive the requirement for the applicant to conduct testing under paragraph (b) of this section if NIOSH determines that such testing is unnecessary to assure the safety, comfort, practicality, and operability of the device when it is worn by coal miners in the performance of their duties.

(c) *Maximum weight.* A CPDM shall not add more than 2 kg to the total weight carried by the miner. CPDMs that are combined with other functions, such as communication or illumination, may exceed 2 kg provided that the total added weight carried by the miner does not exceed 2 kg.

(d) *Dust concentration range.* The CPDM shall measure respirable coal mine dust concentrations accurately, as specified under § 74.8, for an end-of-shift average measurement, for concentrations within a range from 0.2 to 4.0 mg/m^3 for respirable coal mine dust. For end-of-shift average concentrations exceeding 4.0 mg/m^3, the CPDM shall provide a reliable

indication that the concentration exceeded 4.0 mg/m^3.

(e) *Environmental conditions.* The CPDM shall operate reliably and accurately as specified under § 74.8, under the following environmental conditions:

(1) At any ambient temperature and varying temperatures from minus 30 to plus 40 degrees centigrade;

(2) At any atmospheric pressure from 700 to 1000 millibars;

(3) At any ambient humidity from 10 to 100 percent relative humidity; and

(4) While exposed to water mists generated for dust suppression and while monitoring atmospheres including such water mists.

(f) *Electromagnetic interference.* The CPDM shall meet the following standards for control of and protection from electromagnetic interference.

(1) For emissions control, operators must follow: IEEE Std C95.1–2005, (IEEE Standard for Safety Levels with Respect to Human Exposure to Radio Frequency Electromagnetic Fields, 3 kHz to 300 GHz) and 47 CFR 15.1 through 15.407 (FCC Radio Frequency Devices). Persons must proceed in accordance with IEEE Std C95.1–2005 (IEEE Standard for Safety Levels with Respect to Human Exposure to Radio Frequency Electromagnetic Fields, 3 kHz to 300 GHz).

(i) The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Persons may obtain a copy from: American National Standards Institute (ANSI), 25 West 43rd Street, New York, NY 10036. *http://www.ansi.org.*

(ii) Persons may inspect a copy at MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209–3939, (202) 693–9440, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

(2) For immunity/susceptibility protection, operators must follow: IEC 61000–4–6, International Standard (Electromagnetic compatibility—Part 4–6: Testing and measurement techniques—Immunity to conducted disturbances, induced by radio-frequency fields), Edition 3.0, 2008–10. Persons must proceed in accordance with IEC 61000–4–6, International Standard (Electromagnetic compatibility—Part 4–6: Testing and measurement techniques—Immunity to conducted disturbances, induced by radio-frequency fields), Edition 3.0, 2008–10. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(i) Persons may obtain a copy from the International Electrotechnical Commission at the address provided below:

International Electrotechnical Commission, IEC Central Office, 3, rue de Varembé, P.O. Box 131, CH–1211 GENEVA 20, Switzerland. *http://www.standardsinfo.net.*

(ii) Persons may inspect a copy at MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209–3939, (202) 693–9440, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

(g) *Durability testing.* The CPDM shall be designed and constructed to remain safe and measure respirable coal mine dust concentrations accurately, as specified under § 74.8 of this section after undergoing the following durability tests, which NIOSH will apply to test devices prior to their use in further testing under § 74.8 of this-subpart:

Vibration	Mil-Std-810F, 514.5	U.S. Highway Vibration, Restrained Figure 514.5C–1.	1 Hours/Axis, 3 Axis; Total Duration = 3 Hrs, equivalent to 1,000 miles.
Drop	3-foot drop onto bare concrete surface	In standard in-use configuration	1 drop per axis (3 total).

(1) Persons must proceed in accordance with Mil-Std-810F, 514.5, Department of Defense Test Method for Environmental Engineering Considerations and Laboratory Tests, 1 January 2000. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Persons may obtain a copy from the U.S. Department of Defense at the address provided below.

ASC/ENOI, Bldg. 560, 2530 Loop Road West, Wright-Patterson AFB OH 45433–7101. *http://www.dtc.army.mil/navigator/.*

(2) Persons may inspect a copy at MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209–3939, (202) 693–9440, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

(h) *Reporting of monitoring results.*

(1) The CPDM shall report continuous monitoring results legibly or audibly during use. A digital display, if used, shall be illuminated and shall provide a minimum character height of 6 millimeters. Other forms of display (*e.g.,* analogue) must provide comparable visibility. Auditory reporting, if used, shall be clear, have adjustable volume, and provide means for the user to obtain data reports repetitively. The CPDM shall also report end-of-shift results using computer software compatible with current, commonly used personal computer technology.

(2) The CPDM shall report results as cumulative mass concentration in units of mass per volume of air (mg/m^3) with two significant figures of accuracy rounded as customary.

(i) *Power requirements.* The power source of the CPDM shall have sufficient capacity to enable continuous sampling for 12 hours in a coal mine dust atmosphere of up to 4.0 mg/m^3. If the CPDM uses a rechargeable battery, the battery charger shall be operated from a 110 (VAC) (nominal), 60 Hz power line.

(j) *Flow stability and calibration of pump.* If a pump is used, the flow shall not vary more than ±5 percent of the calibrated flow for 95 percent of samples taken for any continuous duration for up to 12 hours. The flow calibration maintenance interval to assure such performance shall be specified in the calibration instructions for the device.

(k) *Battery check.* If the CPDM uses a rechargeable battery, the CPDM shall have a feature to indicate to the user that the device is sufficiently charged to operate and provide accurate measurements for an entire shift of 12 hours under normal conditions of use.

(l) *Integration with other personal mining equipment.*

(1) If the CPDM is integrated or shares functions with any other devices used in mines, such as cap lights or power sources, then the applicant shall obtain

approvals for such other devices, prior to receiving final certification of the CPDM under this section.

(2) A CPDM that is integrated with another device shall be tested, according to all the requirements under this part, with the other device coupled to the CPDM and operating.

(m) *Tampering safeguards or indicators.* The CPDM shall include a safeguard or indicator which either prevents intentional or inadvertent altering of the measuring or reporting functions or indicates that the measuring or reporting functions have been altered.

(n) *Maintenance features.* The CPDM shall be designed to assure that the device can be cleaned and maintained to perform accurately and reliably for the duration of its service life.

§ 74.8 Measurement, accuracy, and reliability requirements.

(a) *Breathing zone measurement requirement.* The CPDM shall be capable of measuring respirable dust within the personal breathing zone of the miner whose exposure is being monitored.

(b) *Accuracy.* The ability of a CPDM to determine the true concentration of respirable coal mine dust at the end of a shift shall be established through testing that demonstrates the following:

(1) For full-shift measurements of 8 hours or more, a 95 percent confidence that the recorded measurements are within ± 25 percent of the true respirable dust concentration, as determined by CMDPSU reference measurements, over a concentration range from 0.2 to 4.0 mg/m^3; and

(2) For intra-shift measurements of less than 8 hours, a 95 percent confidence that the recorded measurements are within ± 25 percent of the true respirable dust concentration, as determined by CMDPSU reference measurements, over the concentration range equivalent to 0.2 to 4.0 mg/m^3 for an 8-hour period.[1]

(c) *Reliability of measurements.* The CPDM shall meet the accuracy requirements under paragraph (b) of this section, regardless of the variation in density, composition, size distribution of respirable coal mine dust particles, and the presence of water spray mist in coal mines.

(d) *Precision.* The precision of the CPDM shall be established through testing to determine the variability of multiple measurements of the same dust concentration, as defined by the relative standard deviation of the distribution of measurements. The relative standard deviation shall be less than 0.1275 without bias for both full-shift measurements of 8 hours or more, and for intra-shift measurements of less than 8 hours within the dust concentration range equivalent to 0.2 to 4.0 mg/m^3 for an 8-hour period, as specified under paragraph (b)(2) of this section.

(e) *Bias.* The bias of the CPDM measurements shall be limited such that the uncorrectable discrepancy between the mean of the distribution of measurements and the true dust concentration being measured during testing shall be no greater than 10 percent. Bias must be constant over the range of dust concentration levels tested, 0.2 to 4.0 mg/m^3 for an 8-hour sampling period.

(f) *Testing conditions.* Laboratory and mine testing of the CPDM for accuracy, precision, bias, and reliability under diverse environmental conditions (as defined under § 74.7(e) and (g)) shall be determined using the NIOSH testing procedure, "Continuous Personal Dust Monitor Accuracy Testing," June 23, 2008, available at: *http://www.cdc.gov/niosh/mining/pubs/pubreference/outputid3076.htm.* All testing results shall be submitted to NIOSH in writing on the application filed under § 74.11.

(1) Persons must proceed in accordance with NIOSH testing procedure "Continuous Personal Dust Monitor Accuracy Testing," June 23, 2008. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Persons may obtain a copy at the address below: NIOSH–Publications Dissemination, 4676 Columbia Parkway, Cincinnati, OH 45226. *http://www.cdc.gov/niosh/mining.*

(2) Persons may inspect a copy at MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209–3939, (202) 693–9440, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

§ 74.9 Quality assurance.

(a) *General requirements.* The applicant shall establish and maintain a quality control system that assures that CPDM devices produced under the applicant's certificate of approval meet the required specifications and are reliable, safe, effective, and otherwise suitable for their intended use. To establish and to maintain an approval under this part, the applicant shall:

(1) Submit a copy of the most recent registration under ISO Q9001–2000, American National Standard, Quality Management Systems-Requirements, published by ISO:

(i) With the application for approval under § 74.13 of this part; and

(ii) Upon request by NIOSH, subsequent to the approval of a CPDM under this part.

(2) Persons must proceed in accordance with ISO Q9001–2000, American National Standard, Quality Management Systems-Requirements. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Persons may obtain a copy from the International Organization for Standardization at the address provided below.

International Organization for Standardization, ISO Central Secretariat, 1, ch. de la Voie-Creuse, Case Postale 56, CH–1211 GENEVA 20, Switzerland. *http://www.standardsinfo.net.*

(3) Persons may inspect a copy at MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209–3939, (202) 693–9440, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

(b) *Quality management audits.* Upon request, applicants or approval holders must allow NIOSH to inspect the quality management procedures and records, and to interview any employees who may be knowledgeable of quality management processes associated with the production of the CPDM. Audits may be conducted either on an occasional or periodic basis or in response to quality-related complaints or concerns.

(c) *Applicant remediation of quality management deficiencies.* An applicant or approval holder must correct any quality management deficiency identified by an audit within a

[1] The equivalent dust concentration range to the 8-hour range of 0.2 − 4 mg/m^3 is calculated by multiplying this 8-hour range by the dividend of eight hours divided by the duration of the intrashift measurement specified in units of hours. For example, for a measurement taken at exactly one hour into the shift, the 8-hour equivalent dust concentration range would be a one-hour average concentration range of: 8 hours/1 hour × (0.2 − 4 mg/m^3) = 1.6 − 32 mg/m^3; for a two-hour measurement, the applicable concentration range would be calculated as: 8 hours/2 hours × (0.2 − 4 mg/m^3) = 0.8 − 16 mg/m^3; for a 4-hours measurement, the equivalent range would be: 0.4 − 8 mg/m^3; * * * *etc.* A CPDM must perform accurately, as specified, for intrashift measurements within such equivalent concentration ranges.

reasonable time as determined by NIOSH. Failure to correct a deficiency may result in NIOSH disapproval of a pending application or, in the case of an approved device, revocation of approval until NIOSH determines that the deficiency is corrected.

§ 74.10 Operating and maintenance instructions.

(a) *Contents.* The manufacturer must include operating and storage instructions and a maintenance and service life plan with each new CPDM device sold. These documents must be clearly written.

(1) Operating and storage instructions must include:

(i) An explanation of how the CPDM works;

(ii) A schematic diagram of the CPDM;

(iii) Procedures for wearing and use of the CPDM;

(iv) A one page "quick start guide" that will enable a novice to start and operate the CPDM.

(v) Procedures for calibration of the CPDM;

(vi) Procedures for inspecting the operating condition of the CPDM;

(vii) Procedures and conditions for storage, including the identification of any storage conditions that would likely impair the effective functioning of the CPDM; and

(viii) Procedures and conditions of use, including identification of any conditions of use that would likely impair the effective functioning of the CPDM.

(2) The maintenance and service life plan must address:

(i) Conditions that should govern the removal from service of the CPDM; and

(ii) Procedures that a user or others should follow when inspecting, performing maintenance and calibration, and determining when the CPDM should be removed from service.

(b) *Submission to NIOSH for approval.* A copy of the instructions and plan under paragraph (a) of this section shall be submitted to NIOSH with the application for approval of the CPDM and if substantive changes are made to the approved device or approved instructions.

§ 74.11 Tests of the continuous personal dust monitor.

(a) *Applicant testing.* The applicant shall conduct tests to determine whether a CPDM that is submitted for approval under these regulations meets the requirements specified in §§ 74.7–74.8 of this part, with the exception of durability testing, which shall be conducted by NIOSH as specified in § 74.7(g) of this part. Applicant testing shall be performed by an independent testing entity approved by NIOSH.

(b) *NIOSH testing assistance.* NIOSH will provide consultation to the applicant to identify and secure necessary testing services for meeting the requirements specified in §§ 74.7–74.8 of this part. Applicants must submit testing protocols to NIOSH prior to testing to verify that the testing protocols adequately address the requirements.

(c) *Reporting of applicant testing results.* The applicant shall include the results from testing specified under paragraph (a) of this section when submitting the application under § 74.13 of this part to NIOSH.

(d) *Intrinsic safety testing.* The applicant shall submit the CPDM to MSHA for testing and evaluation, pursuant to 30 CFR 18.68, to determine whether the electronic components of the CPDM submitted for approval meet the applicable permissibility provisions.

Subpart D—General Requirements for All Devices

§ 74.12 Conduct of tests; demonstrations.

(a) Prior to the issuance of a certificate of approval, only personnel of MSHA and NIOSH, representatives of the applicant, and such other persons as may be mutually agreed upon may observe the tests conducted. MSHA and NIOSH shall hold as confidential, and shall not disclose, principles of patentable features, nor shall MSHA or NIOSH disclose any details of the applicant's drawings or specifications or other related material.

(b) After the issuance of a certificate of approval, MSHA or NIOSH will conduct such public demonstrations and tests of the approved device as MSHA or NIOSH deem appropriate, and may reveal the protocols and results of testing considered for the approval of the device. The conduct of any additional investigations, tests, and demonstrations shall be under the sole direction of MSHA and NIOSH and any other persons shall be present only as observers.

§ 74.13 Applications.

(a) Testing of a CMDPSU will be performed by NIOSH, and testing of the pump unit of the CMDPSU will be conducted by MSHA. The applicant must submit a written application in duplicate to both NIOSH and MSHA. Each copy of the application must be accompanied by complete scale drawings, specifications, and a description of materials. Ten complete CMDPSUs must be submitted to NIOSH with the application, and one pump unit must be submitted to MSHA.

(b) Testing of a CPDM will be performed by the applicant as specified under § 74.11. The applicant must submit a written application in duplicate to both NIOSH and MSHA. Each copy of the application must be accompanied by complete scale drawings, specifications, a description of materials, and a copy of the testing protocol and test results which were provided by an independent testing entity, as specified in § 74.11(a). Three complete CPDM units must be sent to NIOSH with the application, and one CPDM device must be sent to MSHA.

(c) Complete drawings and specifications accompanying each copy of the application shall be fully detailed to identify the design of the CMDPSU or pump unit thereof or of the CPDM and to disclose the dimensions and materials of all component parts.

§ 74.14 Certificate of approval.

(a) Upon completion of the testing of a CMDPSU or the pump unit or after review of testing protocols and testing results for the CPDM, NIOSH or MSHA, as appropriate, shall issue to the applicant either a certificate of approval or a written notice of disapproval. NIOSH will not issue a certificate of approval unless MSHA has first issued a certificate of approval for either the pump unit of a CMDPSU or for the CPDM. If a certificate of approval is issued, no test data or detailed results of tests will accompany such approval. If a notice of disapproval is issued, it will be accompanied by details of the defects, resulting in disapproval, with a view to possible correction.

(b) A certificate of approval will be accompanied by a list of the drawings and specifications covering the details of design and construction of the CMDPSU and the pump unit, or of the CPDM, as appropriate, upon which the certificate of approval is based. The applicant shall keep exact duplicates of the drawings and specifications submitted to NIOSH and to MSHA relating to the CMDPSU, the pump unit thereof, or the CPDM, which has received a certificate of approval. The approved drawings and specifications shall be adhered to exactly in the production of the certified CMDPSU, including the pump unit or of the CPDM, for commercial purposes. In addition, the applicant shall observe such procedures for, and keep such records of, the control of component parts as either MSHA or NIOSH may in writing require as a condition of approval.

§ 74.15 Approval labels.

(a) Certificate of approval will be accompanied by photographs of designs for the approval labels to be affixed to each CMDPSU or CPDM, as appropriate.

(b) The labels showing approval by NIOSH and by MSHA shall contain such information as MSHA or NIOSH may require and shall be reproduced legibly on the outside of a CMDPSU or CPDM, as appropriate, as directed by NIOSH or MSHA.

(c) The applicant shall submit full-scale designs or reproductions of approval labels and a sketch or description of the position of the labels on each sampling device.

(d) Use of the approval labels obligates the applicant to whom the certificate of approval was issued to maintain the quality of the complete CMDPSU or CPDM, as appropriate, and to guarantee that the complete CMDPSU or CPDM, as appropriate, is manufactured or assembled according to the drawings and specifications upon which the certificate of approval was based. Use of the approval labels is authorized only on CMDPSUs or CPDMs, as appropriate, that conform to the drawings and specifications upon which the certificate of approval we based.

§ 74.16 Material required for record.

(a) As part of the permanent record of the approval application process, NIOSH will retain a complete CMDPSU or CPDM, as appropriate, and MSHA will retain a CMDPSU or CPDM, as appropriate, that has been tested and certified. Material not required for record purposes will be returned to the applicant at the applicant's request and expense upon receipt of written shipping instructions by MSHA or NIOSH.

(b) As soon as a CMDPSU or CPDM, as appropriate, is commercially available, the applicant shall deliver a complete sampling device free of charge to NIOSH at the address specified on the NIOSH Web page: *http://www.cdc.gov/niosh/mining*.

§ 74.17 Changes after certification.

(a) If the applicant desires to change any feature of a certified CMDPSU or a certified CPDM, the applicant shall first obtain the approval of NIOSH pursuant to the following procedures:

(1) Application shall be made as for an original certificate of approval, requesting that the existing certification be extended to encompass the proposed change. The application shall be accompanied by drawings, specifications, and related material.

(2) The application and accompanying material will be examined by NIOSH to determine whether testing of the modified CMDPSU or CPDM or components will be required. Testing will be necessary if there is a possibility that the modification may adversely affect the performance of the CMDPSU or CPDM. NIOSH will inform the applicant whether such testing is required.

(3) If the proposed modification meets the pertinent requirements of these regulations, a formal extension of certification will be issued, accompanied by a list of new and revised drawings and specifications to be added to those already on file as the basis for the extension of certification.

(b) If a change is proposed in a pump unit of a certified CMDPSU or in electrical components of a CPDM, the approval of MSHA with respect to intrinsic safety shall be obtained in accordance with the procedures set forth in § 74.11(d).

§ 74.18 Withdrawal of certification.

Any certificate of approval issued under this part may be revoked for cause by NIOSH or MSHA which issued the certificate.

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DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 18 and 75

RIN 1219–AB34

High-Voltage Continuous Mining Machine Standard for Underground Coal Mines

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Final rule.

SUMMARY: This final rule revises the Mine Safety and Health Administration's (MSHA's) electrical safety standards for the installation, use, and maintenance of high-voltage continuous mining machines in underground coal mines. It also revises MSHA's design requirements for approval of these mining machines. The final rule will allow mine operators to use high-voltage continuous mining machines with enhanced safety protection against fires, explosions, and shock hazards and will facilitate the use of advanced equipment designs.

DATES: The final rule is effective on June 7, 2010. The incorporation by reference in this rule is approved by the Director of the Federal Register as of June 7, 2010.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances, MSHA, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209–3939. Ms. Silvey can be reached at *silvey.patricia@dol.gov* (e-mail), 202–693–9440 (voice), or 202–693–9441 (facsimile). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The outline of this final rule is as follows:

I. Introduction
- A. Background
- B. Petition for Modification (PFM) Requirements in the Final Rule

II. Discussion of the Final Rule
- A. General Discussion—Part 18—Electric Motor-Driven Mine Equipment and Accessories
- B. General Discussion—Part 75—Mandatory Safety Standards—Underground Coal Mines

III. Section-by-Section Analysis
- A. Part 18—Electric Motor-Driven Mine Equipment and Accessories
- B. Part 75—Mandatory Safety Standards—Underground Coal Mines

IV. Executive Order 12866: Regulatory Planning and Review
- A. Population at Risk
- B. Benefits
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V. Feasibility
- A. Technological Feasibility
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VI. Regulatory Flexibility Act (RFA) and Small Business Regulatory Enforcement Fairness Act (SBREFA)
- A. Definition of a Small Mine
- B. Factual Basis for Certification

VII. Paperwork Reduction Act of 1995
- A. Elimination of Burden Hours
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VIII. Other Regulatory Considerations
- A. The Unfunded Mandates Reform Act of 1995
- B. Executive Order 13132: Federalism
- C. The Treasury and General Government Appropriations Act of 1999: Assessment of Federal Regulations and Policies on Families
- D. Executive Order 12630: Government Actions and Interference With Constitutionally Protected Property Rights
- E. Executive Order 12988: Civil Justice Reform
- F. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks
- G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
- H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

I. Introduction

A. Background

Horsepower for electrical equipment in mines has increased over the years. The voltages required to operate this equipment have also increased to accommodate the design of safe, practical, and efficient equipment. Because of the industry's need for higher voltages and the marked improvement in the design and manufacturing technology of high-voltage components, MSHA has established requirements for use of high-voltage electrical equipment such as longwall systems. This rule establishes additional requirements to address the use and approval of high-voltage continuous mining machines. These additional requirements preserve safety and health protections for miners.

MSHA's existing standards do not allow the use of high-voltage continuous mining machines because high-voltage mining machines were not available when the standards were developed. MSHA has granted 52 Petitions for Modification (PFMs) since 1997 to allow mine operators to use this equipment. In granting the PFMs, MSHA determined that the methods the mine operator proposed to follow when using the high-voltage equipment would at all times guarantee no less than the same measure of protection afforded the miners by the existing standards.

On July 16, 2004, MSHA published a proposal (69 FR 42812) to establish design requirements in part 18 for approval of high-voltage continuous mining machines operating in production areas of underground mines. The proposal also included new requirements in part 75 for the installation, use, and maintenance of high-voltage continuous mining machines in underground coal mines.

In the proposal, MSHA announced that it would hold four public hearings in September 2004, and would allow comments through October 14, 2004. However, on August 23, 2004, MSHA published a notice changing the public hearing dates to November 2004 and extending the comment period to December 10, 2004 (69 FR 51787). Based on the review of all comments and testimony, MSHA re-proposed provisions related to the types of trailing cables that could be used with high-voltage continuous mining machines and the types of cable handling equipment that must be used when handling energized high-voltage trailing cables (71 FR 15359, March 28, 2006). In developing the final rule, MSHA considered the comments, hearing testimony, and granted PFMs.

B. Petition for Modification Requirements in the Final Rule

The final rule includes most of the requirements that were in the granted PFMs. In each instance where a PFM requirement was not included in the rule, MSHA has addressed the Agency's rationale in the section-by-section analysis of the preamble.

This final rule supersedes all PFMs granted prior to the effective date, and eliminates the need for mine operators to file for a PFM to use high-voltage continuous mining machines with voltage up to 2,400 volts.

II. Discussion of the Final Rule

A. General Discussion—Part 18—Electric Motor-Driven Mine Equipment and Accessories

The final rule addresses design requirements for approval of high-voltage continuous mining machines. The rule is intended to prevent the following hazards:

(1) High-voltage arcing;

(2) Ignition of a methane-air mixture surrounding the machine if an arc or methane explosion occurs within the explosion-proof enclosure;

(3) Enclosure failure from an increased pressure rise if an arc or methane explosion occurs within the explosion-proof enclosure; and

(4) Electrical shock hazards to miners when working with or around high-voltage equipment.

One commenter stated that the proposal did not provide the same level of safety that some of the granted PFMs provided. This commenter expressed concern that MSHA was trying to issue a one-size-fits-all regulation while mine-specific PFMs better assure safety. MSHA does not believe that the final rule represents a generic approach or compromises safety. MSHA reviewed all provisions contained in granted PFMs and the final rule includes most of the provisions. However, in some cases, the Agency revised the language in the PFMs to allow more flexibility for mine specific conditions. The Agency explained at the public hearing that Part 18 covers this commenter's examples and should eliminate the concerns. Additionally, the final rule incorporates additional safety measures such as short-circuit, under-voltage, sensitive ground-fault protection, a look-ahead circuit, cable handling methods, and cable inspection procedures that would assure the same level of safety as the granted PFMs.

This final rule provides a mining environment as safe as the existing environment and facilitates the use of advanced equipment designs.

B. General Discussion—Part 75—Mandatory Safety Standards—Underground Coal Mines

This final rule revises 30 CFR Part 75 to establish mandatory electrical safety standards for the proper installation of high-voltage continuous mining machines, electrical and mechanical protection of the equipment, handling of trailing cables, and procedures for performing electrical work. These safety standards include new provisions as well as most of the provisions contained in granted PFMs.

There are 27 high-voltage continuous mining machines used in 8 underground coal mines that have been granted PFMs. Some of the requirements in this final rule are not included in those PFMs. Accordingly, mine operators with granted PFMs who wish to continue using high-voltage continuous mining machines will be required to comply with the additional requirements specified in this final rule. These additional requirements include new testing and recordkeeping requirements for tramming the machine in and out of the mine. In addition, there may be other new provisions that mine operators must adopt, such as following the cable manufacturers' recommended procedures when pulling the trailing cable with equipment other than the continuous mining machine (See § 75.828).

The final rule also revises § 75.1002 by adding paragraph (b)(5) to allow the use of high-voltage continuous mining machines in areas where permissible equipment is required.

III. Section-by-Section Analysis

A. Part 18—Electric Motor-Driven Mine Equipment and Accessories

Section 18.54 High-Voltage Continuous Mining Machines

Final § 18.54(a) is derived from existing requirements for high-voltage longwall mining systems and is similar to the proposal. The final rule retains the proposed requirement that low- and medium-voltage circuits in each motor-starter enclosure be separated from high-voltage circuits by barriers, partitions, or covers. The purpose of this provision is to protect persons from coming in contact with energized high-voltage conductors or parts when testing and troubleshooting low- and medium-voltage circuits.

Several commenters expressed concern over this proposal. They indicated that in order to comply with the proposed provisions, existing high-voltage continuous mining machines would need to be retrofitted with

additional interlocked barriers and partitions to separate low- and medium-voltage from high-voltage components and circuits. One commenter stated that it is not the location of components that is the risk, but rather the access to energized high-voltage components. The commenter further stated that barriers, partitions, or the enclosure itself can prevent access. The primary purpose of proposed paragraph (a) is to prevent access to energized high-voltage components and circuits. In the final rule, MSHA has revised the proposal to clarify its intent to assure that existing equipment would not need retrofitting. The final rule permits high-voltage and low- and medium-voltage components and circuits in the same compartments if barriers are provided and covers are arranged so that testing and troubleshooting can be performed without exposing persons to any high-voltage conductors or parts. This change allows for flexibility in design and does not reduce safety for miners.

Final paragraph (a), like the proposal, requires barriers and partitions to be constructed of grounded metal or nonconductive insulating board.

One commenter expressed a preference for using barriers made of insulating boards rather than grounded metal, but stated that either is acceptable. MSHA agrees that use of either material would meet the requirements of final paragraph (a).

Final paragraph (b) requires that each removable cover, barrier, or partition of a motor-starter enclosure that provides access to high-voltage components be provided with at least two interlock switches that automatically de-energize the high-voltage components when the cover, barrier, or partition is removed.

A commenter expressed concern with the proposed requirement for interlock switches on all barriers, partitions, and covers. The commenter requested that MSHA not require interlock switches except when the cover, barrier, or partition provides access to energized high-voltage circuits or parts.

MSHA did not intend to require interlock switches on all barriers, partitions, and covers and has clarified the language in the final rule to require interlock switches only when there is direct access to high-voltage circuits. Interlock switches protect miners from shock hazards by de-energizing high-voltage circuits when barriers, partitions, or covers are removed.

Final paragraph (c), like the proposal, requires that circuit-interrupting devices be designed and installed to prevent automatic re-closure to protect miners from electrical shocks, fires, explosions, and unintentional machine movement. For example, a roof-collapse or equipment insulation failure can result in short-circuit or ground-fault condition. This could result in the automatic re-closing of the circuit-interrupting device and pose a hazard to miners. MSHA received no comments on this proposal.

Final paragraph (d), like the proposal, includes requirements for the grounding of the electrostatic shield for high-voltage transformers supplying control voltages on continuous mining machines.

Final paragraph (d)(1), like the proposal, requires that the nominal control voltage not exceed 120 volts line-to-line. Limiting the control voltages to 120 volts line-to-line reduces the potential for electrocution of miners. This provision is consistent with granted PFMs. MSHA received no comments on this proposal.

Final paragraph (d)(2), like the proposal, requires that control transformers with high-voltage primary windings in each high-voltage motor-starter enclosure, or that supply control power to multiple motor-starter enclosures, have an electrostatic (Faraday) shield installed between the primary and secondary windings. The purpose of the electrostatic shield is to isolate the high-voltage from lower-voltage circuit. This protects miners from high-voltage shocks should a fault develop between the primary and secondary windings. Electrostatic shielding also prevents transients (sudden short-term changes in voltage and current) occurring on the primary circuit from being transferred to the secondary circuit. These transients can damage equipment and create the risk of a fire and electrical shock.

Final paragraphs (d)(2)(i) and (d)(2)(ii) address requirements for grounding the electrostatic shield. If the transformer has an external grounding terminal, paragraph (d)(2)(i) requires the shield to be connected from the grounding terminal to the equipment ground by a minimum of a No. 12 American Wire Gauge (A.W.G.) grounding conductor. This requirement will assure proper current carrying capacity and mechanical strength of the grounding conductor.

If the transformer does not have an external terminal, paragraph (d)(2)(ii) requires that the electrostatic shield be connected to the transformer frame by an internal conductor. This conductor, generally installed when the transformer is manufactured, is considered an extension of the shield and therefore may be smaller than a No. 12 A.W.G. In this case, bolting the transformer frame to the equipment enclosure will provide the required path to ground, as long as an effective low impedance electrical connection is maintained. MSHA received no comments on these proposals.

Final paragraph (e), like the proposal, addresses requirements for indicator light circuits. Final paragraph (e)(1) requires a grounded-phase indicator light on any ungrounded, three-phase power circuit onboard the machine to alert the machine operator when a grounded-phase condition occurs. Ungrounded circuits include high-voltage transformers that power low- and medium-voltage circuits. The secondary windings of these transformers are connected in an ungrounded configuration. With ungrounded systems, the capacitive coupling between each phase conductor and ground can subject the ungrounded system to dangerous over-voltages resulting from intermittent ground faults. If a second phase is grounded, a short-circuit condition will occur and cause arcing between components. This could result in a methane-air explosion, cause failure of the enclosure, and expose miners to electrical shock. MSHA received a number of comments on this proposal.

Some commenters stated that a grounded phase indicator light should be required on all high-voltage continuous mining machines. MSHA does not agree. This requirement is unnecessary when the three-phase power circuits onboard are grounded because the circuits are protected with ground-fault devices that automatically trip the circuit breaker at the power center. Currently, all 2,400-volt continuous mining machines have grounded-phase indicator light circuits because they have ungrounded power circuits onboard.

Several commenters stated that lower voltage continuous mining machines and high-voltage shearing machines are not required to have a grounded-phase indicator light circuit and have operated many years without incident. They further stated that grounded-phase indictor light circuits are unnecessary and create a shock hazard for those who perform maintenance on the machine.

In response, MSHA notes that lower voltage continuous mining machines and high-voltage shearing machines are designed differently from high-voltage continuous mining machines. Explosion-proof enclosures onboard low- and medium-voltage continuous mining machines and explosion-proof enclosures for high-voltage shearing machines are designed and tested to withstand arcing faults within the enclosure. On a high-voltage continuous

mining machine, however, only explosion-proof enclosures containing high-voltage switchgear are designed and tested to withstand internal arc faults. High-voltage continuous mining machines also have explosion-proof enclosures that do not contain high-voltage switchgear. These enclosures are not designed and tested to withstand high-energy arcing faults. Therefore, to prevent ignition hazards, the final rule requires indicator light circuits to assure that arcing does not occur and injure miners. Additionally, maintenance personnel are not exposed to shock hazards if they follow the troubleshooting and testing procedures specified in this final rule. MSHA believes that a greater hazard exists when a grounded-phase condition goes undetected.

Final paragraph (e)(2), like the proposal, requires that the indicator light be installed so that the machine operator can readily observe it from any location where the continuous mining machine is normally operated. MSHA received no comments on this proposal.

Final paragraph (e)(3), like the proposal, requires that the onboard ungrounded, three-phase power circuit have a test circuit for the grounded-phase indicator light circuit. It also requires that the test circuit be designed so that it can be activated without removing any enclosure covers and without creating a double-phase-to-ground fault. This requirement will assure proper operation of the indicator light circuit and that personnel conducting the test are not exposed to any hazard. MSHA received no comments on this proposal.

Final paragraph (f) addresses the current carrying capacity, outside diameter, and the physical properties of high-voltage trailing cables. Unlike the proposal, the final rule does not incorporate by reference the Insulated Cable Engineer's Standards (ICEA) S–75–381/National Electrical Manufacturer's Association (NEMA) Standard, NEMA WC 58–1997, but rather includes a table for the outside diameters and ampacity ratings for high-voltage trailing cables. This table is referenced as Table 10 in Appendix I of 30 CFR Part 18, and is consistent with tables contained in the ICEA S–75–381/NEMA WC 58–1997. The purpose of the table is to standardize the ampacity and outer diameter of cables to ensure the interchangeability of trailing cables provided by different manufacturers.

A commenter expressed concern that proposed paragraph (f) did not specifically limit trailing cable length. Existing § 18.35(a)(5) specifies the maximum allowable lengths for trailing cables used to conduct electrical energy to production equipment, including continuous mining machines. For this reason, the Agency does not believe that it needs to limit trailing cable length in this provision.

Final paragraph (f)(1), like the proposal, requires that trailing cables be constructed to include 100 percent semi-conductive tape shielding over each insulated power conductor. Final paragraph (f)(2) requires a grounded metallic braid shielding over each power conductor. The combination of semi-conductive tape and grounded metallic shielding around each power conductor provides symmetrical distribution of voltage stresses on the conductor insulation. Shielding also prevents transients on power systems. These provisions protect miners from shock and electrocution. MSHA received no comments on these proposals.

Final paragraph (f)(3) requires that the cable include either a ground-check conductor not smaller than a No. 10 A.W.G., or a center ground-check conductor not smaller than a No. 16 A.W.G. stranded conductor. The term "stranded" has been added in the final rule to describe the No. 16 A.W.G. ground-check conductor for accuracy. The ground-check conductor is either located in the outer interstice of a trailing cable along with the grounding conductors or in the center of the trailing cable. Cables designed with a No. 16 A.W.G. center ground-check conductor have been successfully used in high-voltage longwall applications for several years.

A commenter indicated that the reference in the proposed preamble to the No. 16 A.W.G. "stranded" conductor describing the center ground-check conductor is technically incorrect, and suggested "special annular stranded with extensibility." MSHA does not agree. Cable manufacturers and ICEA/NEMA standards reference the center ground-check conductor as "stranded." The terminology suggested by the commenter is a description of the quality of the No. 16 A.W.G. ground-check conductor and is consistent with the cable designs specified in the ICEA/NEMA standard.

Final paragraph (f)(4), like the re-proposal, addresses the design and construction of high-voltage trailing cable jackets. MSHA received several comments on the proposal.

Some commenters suggested that the final rule allow single-jacketed cables made of thermoplastic polyurethane (TPU) because of its high tensile strength and resistance to abrasion and tear. A commenter stated that the minimum tensile strengths for the single-jacketed and double-jacketed cables are 5,000 and 2,400 pounds per square inch, respectively; and tear strengths are 120 and 40 pounds per inch, respectively. The commenter also stated that the TPU material can be made in a color other than black, that TPU-jacketed trailing cables have been in use in the mining industry for 11 or 12 years, and that they have been used successfully on mining equipment such as shearing machines and medium-voltage continuous mining machines.

Others stated that at least one granted PFM permitted the use of a TPU jacket as an alternative to the double-jacket requirement on two high-voltage continuous mining machines and on shuttle cars for over two years without any problems.

Based on the comments, MSHA re-proposed paragraph (f)(4) to allow the option of using either a double-jacketed or a single-jacketed cable. The final rule contains requirements for both types of trailing cables.

Final paragraph (f)(4)(i) requires that a double-jacketed cable, if used, consist of two reinforced layers of jacket material, with the inner layer a distinctive color from the outer layer. It also requires that black not be used for either layer. If used, a double-jacketed cable must have tear strength of more than 40 pounds per inch thickness and a tensile strength of more than 2,400 pounds per square inch.

Final paragraph (f)(4)(ii) specifies the requirements for a single-jacketed cable. If used, a single-jacketed cable must have tear strength of more than 100 pounds per inch thickness and a tensile strength of more than 4,000 pounds per square inch, and not be black in color. The final rule specifies the minimum values for the tear and tensile strength based on granted PFMs.

In the re-proposal, MSHA requested comments on the minimum tear and tensile strength values for single-jacketed cables and received none.

Final paragraph (g), like the proposal, requires manufacturers to provide safeguards against corona on all 4,160-volt circuits in explosion-proof enclosures.

Corona is a luminous discharge that occurs around electric conductors that are subject to high electric stresses. Corona can cause premature breakdown of insulating materials in explosion-proof enclosures onboard the high-voltage continuous mining machine. This poses the risk of arcing and may result in explosion. Although corona usually does not present a hazard until a voltage of 8,000 volts is reached, safeguards should be taken at 4,160

volts, the maximum voltage permitted under Part 18. Safeguards include using cables with a corona-resistant insulation such as ethylene propylene to avoid small nicks or cuts in the cable insulation and to minimize high-voltage transients. MSHA received no comments on this proposal.

Final paragraph (h), like the proposal, requires limiting the maximum explosion pressure rise within an enclosure to 0.83 times the design pressure for any explosion-proof enclosure containing high-voltage switchgear. The requirement protects miners against explosion hazards that may arise from the effects of sustained high-voltage arcing faults. Arcing faults may significantly contribute to a pressure rise in an explosion-proof enclosure during an internal methane-air explosion. A pressure rise above the design limit of the enclosure can cause the explosion-proof enclosure to fail to contain the methane explosion. MSHA received no comments on the proposal.

Final paragraph (i), like the proposal, prohibits high-voltage electrical components located in explosion-proof enclosures from being coplanar with a single-plane flame-arresting path. This provision prevents the heat or flame from an arc or methane explosion in an explosion-proof enclosure from igniting a methane-air mixture surrounding the enclosure by preventing conductor material particles from being expelled through the flame-arresting path. The possibility of this occurring with multi-plane flame-arresting path surfaces is non-existent because deflecting the path prevents ignitions by expelled particles. MSHA received no comments on this proposal.

Final paragraph (j), like the proposal, requires that rigid insulation between high-voltage terminals (phase-to-phase or phase-to-ground) be designed with creepage distances in accordance with the table specified in this section. The distances in the table provide adequate isolation to prevent a phase-to-phase or phase-to-ground fault that could cause a possible explosion. The required creepage distances are based on the phase-to-phase use voltage and the Comparative Tracking Index (CTI) of the insulation used. An appropriate method of determining the CTI of the electrical insulating material is described in the American Society for Testing and Materials Standard, ASTM D3638 "Standard Test Method for Comparative Tracking Index of Electrical Insulating Materials." The creepage distances in the table are consistent with most commercially available high-voltage components to which this provision applies. MSHA received no comments on the proposal.

Final paragraph (k), like the proposal, specifies minimum free distances (MFDs) in motor-starter enclosures. If the MFDs are below the values specified in the table, the enclosure could fail and cause an explosion. MFDs are distances between the wall or cover of an enclosure and uninsulated electrical conductors inside the enclosure. These MFDs are established to prevent wall or cover damage that might result from arcing.

Final paragraph (k)(1), like the proposal, requires that values not specified in the table be calculated using a specific engineering formula. This formula is based on existing longwall requirements. Final paragraph (k)(2) requires that the MFD be increased by 1.5 inches for 4,160-volt systems and by 0.7 inches for 2,400-volt systems when the adjacent wall area is the top of the enclosure. This increase in distance is necessary to account for the thermal effects of arcing due to heat rising within the enclosure. Final paragraph (k)(2) also addresses the use of a steel shield in conjunction with an aluminum wall or cover. Under these circumstances, the thickness of the steel shield is used to determine the MFD. MSHA received no comments on the proposal.

Final paragraph (l), like the proposal, addresses static pressure testing of explosion-proof enclosures containing high-voltage switchgear. Final paragraph (l)(1) requires that, prior to performing the explosion tests, a static pressure test be performed on each prototype design of an explosion-proof enclosure housing high-voltage switchgear. It also establishes the static pressure testing and performance requirements for explosion-proof enclosures housing the high-voltage switchgear.

Final paragraph (l)(2) requires that every explosion-proof enclosure containing high-voltage switchgear manufactured after the prototype was tested undergo a static pressure test or follow an MSHA-accepted quality assurance procedure covering inspection of the enclosure. MSHA received no comments on this proposal.

B. Part 75—Mandatory Safety Standards—Underground Coal Mines

Section 75.823 High-Voltage Continuous Mining Machines; Scope

Final § 75.823 describes the scope of this standard. The standard addresses requirements for use of high-voltage continuous mining machines of up to 2,400 volts in underground coal mines. Final § 75.823 also defines the term "qualified person" to mean a person meeting the requirements specified in existing § 75.153.

MSHA received no specific comments on this proposal. However, several comments relating to machine voltage are relevant here. One commenter agreed with the proposed rule which would have allowed machines to operate at 4,160-volts. Other commenters opposed allowing the voltage to exceed 2,400-volts, the limit in granted PFMs. They stated that the industry has no experience with 4,160-volt continuous mining machines and that these machines are more dangerous than 2,400-volt machines.

The final rule limits the voltage of the continuous mining machines to 2,400 volts because of the Agency's lack of experience with 4,160-volt continuous mining machines in coal mines. Part 18, however, allows for approval of equipment up to 4,160 volts. Mine operators seeking MSHA approval to use 4,160-volt continuous mining machines would have to file a petition for modification.

Section 75.824 Electrical Protection

Final § 75.824 establishes the electrical protection requirements for high-voltage continuous mining machines. Effective electrical protection reduces the likelihood of ignitions, fires, and electrical shocks. With the exception of (a)(2)(ii), this section is based on granted PFMs. This section of the final rule is the same as the proposed rule except that non-substantive changes have been made for clarity.

Final paragraph (a) requires the use of an adequate circuit-interrupting device capable of providing short-circuit, overload, ground-fault, and under-voltage protection. The purpose of a circuit-interrupting device is to interrupt the circuit in which it is used without damage to itself when subjected to the maximum voltage and current of the system. Short-circuit and overload protection prevent damage to cables and motors that can result from arcing and overheating. Ground-fault protection minimizes the risk of shock and electrocution. Under-voltage protection prevents the unintentional movement of equipment which can place miners at risk when power is lost and then restored.

Final paragraph (a)(1)(i) specifies the current setting for a short-circuit protective device. The device is required to be set at the lower of: (1) The setting specified in the approval documentation, or (2) 75 percent of the minimum available phase-to-phase

short-circuit current at the continuous mining machine.

The approval documentation specifies the maximum allowable setting of the breaker required to protect the trailing cable. This setting takes into consideration the cable size and length, and the motor starting current. If 75 percent of the minimum available short-circuit current is less than the setting specified in the approval, the breaker setting will be based on that amount.

One commenter suggested that MSHA eliminate the phrase "whichever is less" from the rule to allow the design of systems that could utilize smaller cables and reduce injuries from handling cables. MSHA does not agree with this commenter. If the size of the trailing cable used is different than the cable size specified in the approval documentation, the machine would not be permissible. Furthermore, eliminating the words "whichever is less," would allow the mine operator to set the circuit-interrupting device at a value that may cause it not to trip. For example, if the mine operator chooses to set the circuit-interrupting device at 1,200 amps as required in the approval, and 75 percent of the minimum available short-circuit current is only 750 amps, the circuit-interrupting device would not trip.

Final paragraph (a)(1)(ii) revises the proposed rule to allow the short-circuit device protecting the trailing cable to have an intentional time delay not exceeding 0.050 seconds. The purpose of permitting a time delay is to eliminate nuisance tripping during motor starting.

Proposed paragraph (a)(1)(ii) required that the time delay not exceed the setting specified in the approval documentation or 0.050 seconds, whichever is less. After further review, MSHA found that the approval documentation does not specify a time delay. No comments were received on this proposal.

Final paragraph (a)(2) establishes requirements for ground-fault protection.

Final paragraph (a)(2)(i) requires a neutral grounding resistor to limit ground-fault currents to not more than 0.5 amps. Neutral grounding resistors are used in resistance grounded systems to limit the level of ground-fault current in a circuit. The use of a 0.5 amps neutral grounding resistor in conjunction with the ground-fault device specified in final paragraph (a)(2)(ii) will provide additional protection to miners from shock and fire hazards. MSHA received no comments on this proposal.

Final paragraph (a)(2)(ii) requires that the circuit extending to the continuous mining machine be protected by a ground-fault device set at not more than 0.125 amps. The provision also allows a maximum time delay of up to 0.050 seconds. The 0.125-amps limit is based on MSHA's experience and knowledge that sensitive ground-fault devices are commercially available and have been successfully used to detect ground-fault currents. The ground-fault device would have to operate within 0.050 seconds when exposed to 0.125 amps or more. MSHA received no comments on this proposal.

Final paragraph (a)(2)(iii) requires a look-ahead circuit to detect a ground-fault condition and prevent the closing of a circuit-interrupting device when the ground-fault exists in a circuit. Detection of the ground-fault condition prior to energizing the circuit will protect miners from the risk of electrical shock. Additionally, the final rule incorporates the best practice to prevent the circuit-interrupting device from repeatedly closing when a ground-fault condition exists because that could create a second ground-fault which would result in a short-circuit condition. MSHA received no comments on this proposal.

Final paragraph (a)(2)(iv) requires a backup ground-fault device to detect an open neutral grounding resistor under a ground-fault condition. This device will provide additional protection. Once an open neutral grounding resistor is detected, the backup device will cause the circuit-interrupting device to de-energize that circuit at 40 percent of the voltage developed across the resistor. This value provides a safety factor. Additionally, this provision allows the backup device to have a maximum time-delay setting of 0.250 seconds. The time-delay setting is low enough to assure quick de-energization of the circuit when the neutral resistor opens and a ground-fault exists, while also allowing for selective tripping with the ground-fault protective device in final paragraph (a)(2)(ii).

One commenter had several concerns about this provision. The commenter stated that there were numerous problems with the potential transformer and voltage relay monitoring method as a backup device, which was used in MSHA's example. The commenter stated that potential transformers are not able to detect rectified faults because of ferroresonance. The potential transformer and voltage relay monitoring method has been widely used in the industry and MSHA is not aware of any problems associated with it. It is important to note that the proposal did not require the use of a particular backup device to detect an open neutral grounding resistor. Although MSHA listed this method as an example of a backup device in the proposal as one means of compliance, the Agency noted that other alternatives were acceptable.

The commenter also expressed concern that the proposal did not include a requirement for detecting a shorted resistor. The commenter stated that a shorted grounding resistor will not limit the voltage on the frame of portable equipment to 100 volts or less. The purpose of requiring a backup device is to detect a ground-fault condition when the neutral grounding resistor is open. The commenter's recommendation is not necessary because the ground-fault protection required in final paragraph (a)(2)(ii) will detect that condition and de-energize the circuit.

This commenter also suggested that the proposal be changed to require de-energization of the circuit within a certain time if the neutral grounding resistor opens, such as within 30 to 60 seconds. MSHA is not aware of any device that monitors a shorted neutral grounding resistor, nor does the Agency see the need for such a device. For the reasons stated above, no changes have been made to this section, and the final rule is the same as the proposal.

Final paragraph (a)(2)(v), like the proposal, requires a thermal device to detect an overheated neutral grounding resistor caused by sustained ground-fault current, and de-energize the incoming power. This device provides an added safety measure for miners.

The rule also requires that the overtemperature rating or setting of the device be the lower of: (1) 50 percent of the maximum temperature rise of the neutral grounding resistor, or (2) 302 °F (150 °C). Exposure of the neutral grounding resistor to sustained ground-fault currents generates heat which can cause the resistor to fail in the open mode. Failure of the resistor in an open mode will not provide ground-fault protection and increases the risk of shock hazards. The overtemperature setting requirement assures that the affected circuit is quickly de-energized under a sustained fault. MSHA's experience is that the temperature settings specified are high enough to prevent nuisance tripping while providing safe operating temperatures. Under the final rule, thermal protection must not be dependent on control power. This requirement recognizes that the loss of control power would prevent the operation of the detection device. Thermal protection includes, but is not

limited to, current transformers and thermal relays, thermostats, and other devices that sense overtemperature. MSHA did not receive any comments on the proposal.

Final paragraph (a)(2)(vi), like the proposal, requires a single window-type current transformer to encircle the three-phase conductors to activate the ground-fault device required in final paragraph (a)(2)(ii). It also prohibits the equipment grounding conductors from passing through the current transformer as this defeats operation of the ground-fault device and eliminates protection. Using the single-window type current transformer in conjunction with a ground-fault relay provides ground-fault protection for the circuit extending from the power center to the continuous mining machine. MSHA received no comments on this proposal.

Final paragraph (a)(2)(vii), like the proposal, requires a ground-fault test circuit for each ground-fault device. This provision requires that the test circuit inject no more than 50 percent of the current rating of the neutral grounding resistor through the current transformer. The purpose of the test circuit is to verify that a ground-fault condition will cause the corresponding circuit-interrupting device to open. MSHA received no comments on this proposal.

Final paragraph (a)(3), like the proposal, requires that the under-voltage device operate on a loss of voltage, de-energize the circuit, and prevent the equipment from automatically restarting. This provision is performance-oriented, which allows any under-voltage protective device that will operate on loss of voltage and prevent the circuit-interrupting device from automatically closing upon restoration of power. This requirement will reduce pinning and crushing risks to miners in case the equipment automatically restarts upon restoration of power. MSHA received no comments on this proposal.

Final paragraph (b), like the proposal, prohibits use of circuit-interrupting devices that automatically re-close after opening. Automatic re-closure allows a circuit that has been de-energized to become automatically re-energized. This provision will prevent automatic re-closing under fault conditions. Typically, faults occur in trailing cables due to damage from roof falls or when equipment runs over the cables. If this occurs, the use of a circuit-interrupting device designed to re-close automatically could present a risk of electrical shock and fire. MSHA received no comments on this proposal.

Final paragraph (c) requires a mine operator to take certain actions when a grounded-phase indicator light, if used, indicates a grounded-phase condition. Detection of a grounded-phase condition will reduce risks of electrical shock and arcing. The capacitive coupling between each phase conductor and ground can subject an ungrounded circuit to dangerous over-voltages from intermittent ground faults, which in turn can lead to arcing and insulation failure. Arcing can ignite methane and create a hazard to miners. Insulation failure can lead to another phase-to-ground failure and create a shock hazard.

Final paragraphs (c)(1) and (c)(2) specify the actions to be taken when a grounded-phase condition is indicated. Under paragraph (c)(1), once the indicator light shows that a grounded-phase condition has occurred, the machine must immediately be moved to an area where the roof is supported. This will minimize miners' exposure to roof falls while the equipment is being repaired. Final paragraph (c)(2) requires that that the grounded-phase condition be located and corrected prior to placing the machine back into operation. This requirement will protect miners from risks of electrical shocks.

MSHA received a number of comments concerning the indicator light circuit, and has addressed these comments in § 18.54(e). Except for minor editorial changes, the final provision is the same as the proposed rule.

Section 75.825 Power Centers

Final § 75.825 revises the proposal, and addresses the requirements for power centers that supply high-voltage continuous mining machines. The final rule includes provisions for disconnecting switches and devices, barriers and covers, interlocks, emergency stop switches, grounding sticks, and caution labels. These provisions reduce risks of electrical shocks, fires, and explosions.

Final paragraph (a), like the proposal, requires a main disconnecting switch in the power center that supplies power to the high-voltage continuous mining machines. The main disconnecting switch, when open, must de-energize the input power to all power transformers in the power center. This will provide a safe means of de-energizing high-voltage circuits in the power center without affecting the feed-through circuits. MSHA received no comments on the proposal.

Final paragraph (b), like the proposal, requires a disconnecting device for each circuit that powers a continuous mining machine. Disconnecting devices in power centers de-energize the power to the machine. Power must be de-energized prior to performing electrical work.

MSHA received no comments on this provision. In the final rule, MSHA has added clarifying language and defined "disconnecting device" as either a disconnecting switch or cable coupler.

Final paragraph (c), which was paragraph (c)(7) in the proposal, addresses labeling, design, and installation requirements for disconnecting switches specified in this final rule. This provision requires that each switch be labeled to clearly identify the circuit that it disconnects. MSHA's experience is that identifying the circuit being de-energized by the switch assures that the proper circuit is de-energized, which protects miners from exposure to electrical hazards. The design and installation requirements are specified in paragraphs (c)(1) through (c)(6) of the final rule.

Final paragraphs (c)(1) and (c)(2), like the proposal, require each disconnecting switch to have voltage and current ratings compatible with the circuits in which they are used. Improperly rated switches can cause overheating and arcing and may create a shock or fire hazard for miners. MSHA received no comments on these proposals.

Final paragraph (c)(3), like the proposal, requires that the disconnecting switch be designed and installed so that one can visually verify, without removing any covers, that the contacts of the device are open. If miners had to remove the cover to verify that the contacts are open, they could be exposed to energized high-voltage circuits and electrical shock risks. MSHA received no comments on the proposal.

Final paragraph (c)(4), like the proposal, requires the disconnecting switch to ground all power conductors on the "load" side when the switch is in the "open and grounded" position. It assures the discharge of any voltage caused by capacitance between the power conductors and ground. Grounding the circuit on the load side reduces the risk of shocks to miners who are working on the trailing cable or continuous mining machine. MSHA received no comments on the proposal.

Final paragraph (c)(5), like the proposal, requires that each disconnecting switch be designed so that it can only be locked when in the "open and grounded" position. A disconnecting switch that locks in the closed position could delay opening the switch during an emergency. This provision, in conjunction with the

requirements of final § 75.831, assures that the circuit will remain de-energized until work is completed. MSHA received no comments on the proposal.

Final paragraph (c)(6), like the proposal, requires that the disconnecting switch safely interrupt the full-load current in the circuit. A switch that is not capable of safely interrupting the full-load current could result in its destruction and injuries to miners from flash burns or flying parts.

The final rule provides an alternative if the switch is not designed to interrupt the full-load current of the circuit. It requires that the switch be designed to cause the circuit-interrupting device to automatically de-energize the incoming power before the disconnecting switch opens the circuit. MSHA received no comments on this provision and the requirement of the final rule is identical to the proposed rule.

Final paragraph (d) requires all compartments that provide access to high-voltage conductors or parts to have barriers or covers to prevent miners from coming into contact with energized circuits.

A commenter was concerned that the proposed rule would require that both a cover and a barrier be installed. This was not MSHA's intent. MSHA has revised the final rule to clarify that barriers or covers, or both, can be used.

Final paragraph (e), like the proposal, addresses the interlocking requirements between the control circuit and the main disconnecting switch.

Final paragraph (e)(1) requires that the interlock allow the control circuit to be energized through an auxiliary switch in the "test" position only when the main disconnecting switch is in the "open and grounded" position. When the main disconnecting switch is in the "open and grounded" position, the power conductors on the load side of the disconnecting switch are de-energized and grounded. The interlocking feature assures that, before the auxiliary switch can be placed in the "test" position, the main disconnecting switch is open and grounded.

Final paragraph (e)(2), like the proposal, requires that when the main disconnecting switch is "closed," the control circuit can only be powered through an auxiliary switch that is in the "normal" position. These requirements will prevent energization of the high-voltage circuits during testing and troubleshooting. MSHA received no comments on the proposed paragraph (e).

Final paragraph (f), like the proposal, was derived from granted PFMs. It requires that each cover or removable barrier of any compartment providing access to energized high-voltage conductors or parts have at least two interlock switches for the purpose of de-energizing exposed high-voltage conductors or parts when the cover or barrier is removed. While the granted PFMs did not specify how many interlock switches were required, the proposed rule required a minimum of two interlock switches as an added safety measure to protect miners against accidental contact with energized high-voltage circuits.

In the proposal, MSHA specifically requested comments on whether to add an exception for troubleshooting control circuits. A commenter suggested that each removable cover or barrier be interlocked to remove all power in the compartment before entering it, except when testing and troubleshooting control circuits. The commenter gave an example of some power centers that are designed with a circuit breaker in a separate incoming high-voltage compartment where the circuit breaker will remove power in other compartments instead of removing the incoming power.

MSHA believes that it is crucial to miners' safety that incoming power be de-energized when miners remove covers prior to performing electrical work. De-energizing incoming power rather than only the power in the compartment being accessed assures that miners will not be exposed to energized high-voltage circuits.

This commenter further suggested that MSHA require a single interlock switch instead of the two switches required in the proposed rule. The commenter stated that interlock switches expose miners to hazards when they troubleshoot failed switches. As noted in the proposal, MSHA has found that interlock switches might not operate effectively after exposure to the mine environment. To protect miners against accidental contact with energized high-voltage circuits, the final rule, like the proposal, requires two interlock switches to assure that at least one switch will function.

Another commenter stated that MSHA should not allow an exception for troubleshooting control circuits in the high-voltage compartments. MSHA believes that miners who troubleshoot and test energized circuits in accordance with the provisions in this and other existing rules, will be protected.

MSHA has considered comments and revised the proposal to allow troubleshooting and testing energized circuits when the control circuit is powered through an auxiliary switch in the "test" position.

Final paragraph (g), like the proposal, requires that an emergency stop switch be located on the outside of the power center. The switch will de-energize the incoming high-voltage if an emergency arises. This provision also requires that the switch be hard-wired to a fail-safe ground-wire monitor. In emergency situations, reliability of the stop-switch is critical. MSHA received no comments on the proposal.

Final paragraph (h), like the proposal, requires that the power center be equipped with a grounding stick to be used to discharge capacitors and circuits before electrical work is performed. The purpose of the grounding stick is to assure that all high-voltage capacitors are discharged and that all circuits and components are de-energized before electrical work is performed.

Capacitors are energy storage devices; they continue to be energized even after the circuit is de-energized. Although some capacitors are supplied with bleed-off resistors, these resistors can open and the capacitor will continue to be energized. A disconnecting switch blade may stick in the closed position with the switch in the open position. If this happens, one or more phases of the circuit would remain energized. Use of a grounding stick provides a last line of defense to assure that the person performing electrical work will not be exposed to energized high-voltage circuits.

Although there is no generally accepted definition, MSHA considers a grounding stick to be a live line tool (hot stick) made of either wood or fiberglass with a grounding attachment bonded to a No. ⅛ A.W.G. copper grounding conductor. To safely discharge the capacitors and parts, the grounding conductor would need to be permanently bonded to the power center frame.

The final rule requires that the power center have a label that identifies the location of the grounding stick to assure that the person performing the electrical work can easily find it. The rule requires that the grounding stick be stored in a dry location to maintain its effectiveness.

A commenter suggested that MSHA allow alternatives to the grounding stick to discharge capacitors or circuits. At this time, MSHA is not aware of any alternatives to the grounding stick. This provision will assure that energy storing components and circuits are discharged and de-energized before miners come in contact with them.

Another commenter agreed with the grounding stick requirement, stating that it will allow the safe discharge of stored energy and assure that miners

will not be exposed to high-voltage circuits. This commenter suggested that MSHA require steps to assure that energy stored in the cable after it is disconnected is discharged. Final paragraph (c)(4) requires that the disconnecting device ground all power conductors of the trailing cable when the device is in the "open and grounded" position. Therefore, MSHA has addressed this concern.

A third commenter stated that power centers that have a visual disconnect should not be required to have a grounding stick. Although the visual disconnecting device de-energizes the circuit it disconnects, it does not discharge capacitors and other circuits. Therefore, MSHA has not adopted the comment.

Based on comments, MSHA has clarified that the intent of the grounding stick is to discharge capacitors and de-energize high-voltage circuits.

Final paragraph (i), like the proposal, requires that all compartments that provide access to energized high-voltage conductors and parts display a caution label that warns miners against entering the compartment before de-energizing the incoming high-voltage. The label serves as a reminder to miners that the line side of a disconnecting switch remains energized when the switch is opened unless the incoming power to the switch is de-energized. The Agency did not receive any comments on the proposal.

Section 75.826 High-Voltage Trailing Cables

Final § 75.826, like the proposal, is derived from existing §§ 75.804 and 18.35 and specifies the requirements for high-voltage trailing cables.

Final paragraph (a) requires that the high-voltage trailing cable meet the design requirements of existing § 18.35 and the approval requirements of high-voltage continuous mining machines.

Final paragraph (b) allows two sizes of ground-check conductors depending on the cable design. The first option allows the use of a ground-check conductor not smaller than a No. 10 A.W.G. as required in existing § 75.804. This minimum size is required because the ground-check conductor is located on the periphery of the cable and is subjected to more flexing and bending, weakening the conductor and resulting in possible breakage or damage. As an alternative, the cable can have a ground-check conductor not smaller than the No. 16 A.W.G. located in the center of the cable. This design does not subject the ground-check conductor to the same stresses as the No. 10 A.W.G. when the cable is flexed. The main advantage of this alternative is the reduction of inter-machine arcing because the cable design will include three grounding conductors placed symmetrically. This cable design has been used successfully with high-voltage longwall equipment. It eliminates the need to petition for modification of § 75.804(a) when the cable is designed with a center ground-check conductor smaller than No. 10 A.W.G. but not smaller than a No. 16 A.W.G. No comments were received on the proposed section.

Section 75.827 Guarding of Trailing Cables

Final § 75.827 addresses requirements for guarding trailing cables. It renumbers proposed § 75.827(c) and (d) as final paragraphs (a) and (b).

Proposed § 75.827(a) would have required the high-voltage trailing cable to be supported on insulators or placed in an unused entry from the power center to the last open crosscut during advance mining, to within 150 feet outby any pillar workings during second mining, and to within 150 feet of the continuous mining machine when used in outby areas.

Some commenters were concerned that supporting the cable on insulators may subject shuttle or ram car operators to injuries if the cable is supported at canopy height. They stated that in muddy conditions, shuttle or ram cars could slide into the coal ribs and cause the equipment to hit and damage the cable, exposing the equipment operators to possible arc burns and electrical shock. They also stated that by placing the cable on the floor, the machine tires and not the canopy would hit the cable, and any resulting hazard would occur away from the machine operator. Other commenters agreed with the proposed language requiring that the cables be supported on insulators but suggested that the cable be installed only when it is de-energized. Others suggested that the cable be installed on insulators at a minimum height of 6.5 feet and 7.5 feet.

Commenters stated that an unused entry may not always be available to meet the proposed requirement to place the cable in an unused entry. After evaluating the comments, MSHA agrees that suspending the cable may be more of a hazard to miners than placing the cable on the mine floor. MSHA also agrees that an unused entry may not always be available. Therefore, the final rule does not contain the proposed requirements that the cable must be supported or placed in an unused entry.

Proposed § 75.827(b) permitted the temporary storage of cables on a sled or in a crosscut located between the power center and the last open crosscut. It required these storage locations to be barricaded and to have warning signs posted.

One commenter stated that in many cases, allowing temporary storage of trailing cables at the locations in the proposal would encourage storage of cables in mining sections, posing a safety threat to miners. The commenter further stated that the proposal was not practical or safe. In response to comments, the final rule does not contain the requirement for temporary storage of cables.

One commenter stated that the requirements of § 75.827 are excessive because the cable leaving the power center is the safest cable on the section and should not be required to meet additional requirements. MSHA does not agree with this commenter because the cable is still susceptible to damage by mobile equipment. Consequently, guarding and protecting the cable from damage by mobile equipment are important safety measures for the protection of miners.

Proposed § 75.827(c), redesignated as final § 75.827(a), addresses guarding of the trailing cable. Final paragraph (a)(1) specifies the locations where the high-voltage trailing cable must be guarded. These locations are: (1) From the power center cable coupler for a distance of 10 feet inby the power center; (2) from the entrance gland for a distance of 10 feet outby the last strain clamp on the continuous mining machine; and (3) any location where the cable could be damaged by moving equipment. These are locations where miners are likely to come in contact with the cable and where the cable could be damaged. To be effectively guarded, the cable must be fully covered, so that there is a physical barrier between the cables and miners. One commenter suggested that the trailing cable be guarded for 10 feet inby the power center. MSHA agrees that this is the location that miners are most likely to come in contact with the cable. In response to comments, the final rule requires that the cable be guarded for 10 feet inby the power center. The proposed requirement for guarding the trailing cable between the power center and the first cable insulator is not included in the final rule since insulators are not required.

Final paragraph (a)(1)(ii) requires that the high-voltage trailing cable be guarded from the entrance gland for a distance of 10 feet outby the last strain clamp on the continuous mining machine. The proposal required guarding for a "minimum" of 10 feet. Some commenters suggested that this distance be increased from 10 feet to 35 feet or more. The proposal would have

allowed guarding for a distance of 35 feet or more. However, requiring guarding for a distance longer than 10 feet, as suggested by the commenters, would preclude detection of a damaged cable in the guarded area because the final rule does not require removal of guarding when inspecting the cable. The final rule does not contain the term minimum and does not require guarding beyond 10 feet.

Final paragraph (a)(1)(iii), like the proposal, requires guarding at any location where the cable could be damaged by moving equipment. MSHA received no comments on this proposal.

Final paragraph (a)(2), like the proposal, requires that guarding be constructed of nonconductive flame-resistant material, or grounded metal. If a marking does not appear on the guarding to indicate that it is flame-resistant, MSHA will request documentation to substantiate that the material is flame-resistant. Metal and non-conductive guarding may be of a continuous length or overlapping shorter pieces. Shorter pieces of metal guarding must be bonded together to assure a continuous metallic path. MSHA received no comments on this proposal.

Final paragraph (b) addresses requirements when equipment must cross any portion of the cable. It allows two alternatives for protecting the cable from mobile equipment: (1) Suspension of the cable from the mine roof; or (2) the use of commercially available cable crossovers. MSHA encourages mine operators to establish work practices that minimize the need for cable crossovers, such as placing the cable in locations where mobile equipment is not likely to travel.

Final paragraphs (b)(2)(i) through (b)(2)(vii), like the proposal, specify minimum design requirements for cable crossovers. Cable crossovers are commercially available and are used throughout the industry to protect cables from mobile equipment damage. These minimum design requirements will assure that the largest piece of equipment used would be able to cross over the cable without damaging it. MSHA's experience is that cable crossovers provide effective protection when properly used. MSHA received no comments on the proposal. However, the phrase "in or inby the last open crosscut" is not included in the final rule and the requirement is not limited to any section of the mine.

Section 75.828 Trailing Cable Pulling

Final § 75.828 addresses procedures for pulling high-voltage trailing cable with equipment other than the continuous mining machine.

In the proposal, § 75.828 was titled "Trailing Cable Handling and Pulling". Proposed § 75.828(a), dealing with handling energized cables, is renumbered § 75.833(a) and addressed in the discussion of that provision. Except for editorial changes, final § 75.828 is identical to proposed § 75.828(b). It requires that the mine operator de-energize the high-voltage trailing cable and follow manufacturer's procedures for pulling the cable. Cable manufacturers' recommendations usually include: The proper application of a rope or sling to pull the cable; minimum bending diameter; maximum length of trailing cable that can be safely pulled; and the number of corners that the cable can be pulled around. The purpose of this requirement is to prevent damage to the cable while it is being pulled. For example, when pulling a cable with ropes, if a loop smaller than the minimum bending diameter for the size of the trailing cable is created, the cable can be damaged.

One commenter suggested that this proposed requirement be eliminated. Another stated that there was no safety benefit from requiring the trailing cable to be de-energized since the high-voltage trailing cable is significantly safer than other cables. These necessary requirements are included in the final rule as it has been MSHA's experience that pulling long lengths of cable around corners with shuttle cars or scoops may cause the ropes or slings to penetrate the cable and roll back the jacket, shielding, and insulation, thereby exposing energized conductors. If these conditions occur while the cable is energized, miners will be exposed to the risk of an electrical shock. De-energizing the trailing cable prior to pulling will assure that exposed conductors will not present shock hazards to miners.

Section 75.829 Tramming Continuous Mining Machines In and Out of the Mine and From Section to Section

Final § 75.829 addresses tramming continuous mining machines in and out of the mine or from one section to another, and testing required prior to tramming.

Final paragraph (a) revises the proposal for clarity and sets forth procedures for tramming the continuous mining machine. It also requires that the applicable power sources used to tram the machine not be moved while energized as specified in existing § 75.812.

Final paragraph (a)(1), like the proposal, requires that when tramming the continuous mining machine the power source must not be located where permissible equipment is required. This provision is adapted from existing § 75.500, which prohibits non-permissible equipment from being used in specific areas of the mine. Typically, power sources listed in § 75.829(c) are not "permissible" and, therefore, must not be used in areas where permissible equipment is required. MSHA received no comments on this proposal.

Final paragraph (a)(2) prohibits the mining machine from being used for mining while being trammed except when using a power source that is appropriate for this activity. Typically, the power sources used to tram the machine do not have the capacity to provide for mining or cutting functions. If mining or cutting were attempted while the machine was powered by sources other than a power center, overloading and loss of power could occur.

Although MSHA received no comments on proposed § 75.829(a)(2), the final rule clarified the proposal by specifying when a power center used for tramming is appropriate for mining and cutting.

Final paragraph (a)(3), like the proposal, requires that low-, medium-, and high-voltage cables comply with the applicable provisions dealing with flame resistance qualities and design requirements of low, medium, and high voltages when using the power sources specified in § 75.829(c). MSHA received no comments on this proposal.

Final paragraph (a)(4), like the proposal, requires that the high-voltage cable be mechanically secured onboard the continuous mining machine. This requirement applies to the high-voltage portable transformer specified in paragraph (c)(2) of this section. If the trailing cable does not fit on the machine, a shorter length of cable should be used to connect the diesel-generator output to the continuous mining machine. The purpose of this requirement is to prevent anyone from handling energized high-voltage cables and to minimize damage to the cable while tramming the continuous mining machine. MSHA received no comments on this proposal.

Final paragraph (b), like the proposal, requires specific tests to be conducted prior to tramming. Final paragraph (b)(1) requires that ground-fault and ground-wire monitor tests be performed by a qualified person. The purpose of these tests is to assure proper operation of the ground-fault and ground-wire monitor. It is not the Agency's intent that these tests be performed after momentary or incidental stops during the tramming process. The testing

requirements assure that these devices operate properly to protect miners from electrical shocks. The final rule clarifies the meaning of a functional test. This provision also requires that corrective actions and recordkeeping resulting from these tests be performed in accordance with §§ 75.832(f) and (g) of this final rule.

The ground-fault test assures that the circuit will be de-energized if a ground-fault condition exists. Most manufacturers of power centers provide ground-fault test circuits so that the circuit can be tested without creating an actual ground-fault condition, which would expose miners to the risk of burns and shocks. The test will assure that the ground-wire monitor will de-energize the circuit if the ground-check or grounding circuit is opened. Manufacturers of ground-wire monitors provide a built-in test switch for this purpose. When low- and medium-voltage power sources are used, a ground-wire monitor is required in accordance with § 75.902. A ground-wire monitor is not required for the high-voltage power sources because these power sources use external bonding.

One commenter suggested that a record be made only of the corrective actions and that such a record be kept on the machine with the date, time, and initials of the qualified person when the work is completed. MSHA's data and experience show that all records and certifications of tests and repairs are valuable tools for both mine operators and MSHA. Records and certifications can be used to determine trends with respect to equipment failure and/or design problems. They have also been useful sources of information during accident investigations. Records are required to be kept on the surface because they will be more readily accessible to mine personnel and inspectors. Therefore, final § 75.829(b)(1) retains the requirements of the proposal.

Final paragraph (b)(2), like the proposal, requires that prior to tramming the continuous mining machine, where applicable, a person designated by the operator must activate the test circuit for the grounded-phase detection circuit on the continuous mining machine. This test is applicable only if a grounded-phase detection circuit is required. The purpose of requiring this test is to assure that the detection circuit will successfully detect a grounded-phase condition. If the test indicates that the detection circuit is not functioning properly, corrective action must be taken in accordance with § 75.832(f) of the final rule. A record of this test is not required. MSHA received no comments on this proposal.

Final paragraph (c) specifies the power sources, in addition to the power center, that may be used when the mining machine is trammed. Power sources specified in this section have been selected to minimize the need to handle energized high-voltage cables. It also specifies the requirements that different power sources, such as generators or stationary power supplies found at belt drives, must meet. These sources can provide: (1) Low or medium voltage to portable transformers that are either mounted on or attached to the high-voltage continuous mining machine; or (2) high-voltage power sources. The source is a generator set that includes a low- or medium-voltage diesel-generator and a step-up transformer that provides high voltage to the continuous mining machine.

Final paragraph (c)(1), like the proposal, addresses the use of a medium-voltage power source that supplies 995 volts to the continuous mining machine. To use this type of power source, the machine circuitry would need to be rewired to allow the 995-volt trailing cable to energize the tram and hydraulic pump motor circuits. Figure 1 of the standard illustrates a high-voltage continuous mining machine using a 995-volt power source. The 995 volts can be supplied by the mine's power system or a low- or medium-voltage diesel-generator set. If a low- or medium-voltage diesel-generator set is used as the power source, the generator set may be moved while energized in accordance with existing regulations. MSHA received no comments on the proposal.

Final paragraph (c)(1)(i), like the proposal, prohibits back-feeding the continuous mining machine with medium voltage to energize the high-voltage circuits. This provision will prevent the high-voltage motors from being powered by medium-voltage sources that do not meet necessary requirements. MSHA received no comments on this proposal.

Final paragraph (c)(1)(ii) requires compliance with all applicable requirements for medium-voltage circuits in 30 CFR Part 75, such as overcurrent, ground-fault, under-voltage, and ground-wire monitors. MSHA received no comments on this proposal.

Proposed § 75.829(c)(1)(iii) is not included in the final rule. It would have prohibited moving the medium-voltage portable transformer while energized. This section was initially included in the proposed rule because it would not have been practical to move the energized portable transformer and comply with 30 CFR 75.516, which requires the power cable feeding the portable transformer to be supported on well-insulated insulators. Additionally, if the portable transformer has a high-voltage primary winding that provides a medium-voltage output for tramming the continuous mining machine, the movement of the transformer would be prohibited by § 75.812, unless the conditions specified in § 75.812 are met. However, neither §§ 75.516 nor 75.812 prohibit movement of this equipment.

Therefore, upon reconsideration, MSHA has decided not to include the proposed provision in the final rule to avoid any conflict with existing standards.

Final paragraph (c)(2) addresses the use of step-up transformers to convert low or medium voltage to high voltage to power the continuous mining machine. Figure 2 of the standard illustrates this configuration. Unlike the proposal, the final rule does not include the term "onboard" to allow for other step-up transformers. The term "temporary," used in the proposed rule to define an "onboard step-up transformer," is not used in the final rule.

Final paragraph (c)(2)(i) requires that the trailing cable supplying low- or medium-voltage to the step-up transformer meet the applicable requirements of 30 CFR Part 75. For example, the trailing cable must meet the overcurrent, ground-fault, and under-voltage protection requirements for underground low- and medium-voltage alternating current circuits (Subpart J). The term "input" describing the trailing cable was removed, as unnecessary. This requirement remains unchanged from the proposed rule.

Final paragraph (c)(2)(ii), like the proposal, requires that the high-voltage circuit output of the step-up transformer supplying power to the mining machine meet the applicable provisions of final § 75.824.

Final paragraph (c)(2)(iii)(A) requires the step-up transformer to be securely mounted on either the continuous mining machine or a sled/cart connected to the machine. This will minimize vibration that can lead to an internal ground fault or damage to the transformer. The proposal would have required the step-up transformer to be securely mounted onboard the continuous mining machine.

Some commenters suggested that MSHA allow the installation of the transformer on a sled/cart connected by a tow-bar and in close proximity to the continuous mining machine. MSHA agrees that this alternative provides

effective protection and has revised the proposal accordingly.

Final paragraph (c)(2)(iii)(B), like the proposal, requires that the frame of the transformer be bonded to the frame of the continuous mining machine and the metallic shell of each cable coupler by a No. 1/0 A.W.G. or larger conductor, and connected to the incoming ground conductor of the trailing cable. These grounding requirements assure a low impedance grounding path from the transformer to the outby power source should a ground-fault condition occur. MSHA received no comments on the proposal.

Final paragraph (c)(2)(iii)(C), like the proposal, requires that each of the transformer enclosure covers be equipped with at least two interlock switches and that an external emergency stop switch be provided to de-energize the input power to the step-up transformer when activated in emergency situations. MSHA received no comments on the proposal and the final rule includes clarifying changes.

Proposed paragraph (c)(3) is not included in the final rule in response to comments.

One commenter objected to addressing high-voltage diesel-powered generators in the proposed rule, stating that the equipment was not relevant to the rulemaking and should be dealt with in a separate rulemaking. The commenter requested that MSHA conduct public hearings on the issue and suggested that MSHA include these requirements in the rulemaking on low- and medium-voltage diesel-powered electrical generators if necessary. In response to comments, the final rule does not include the high-voltage diesel generator option.

Section 75.830 Splicing and Repair of Trailing Cables

Final § 75.830 defines and addresses requirements for splices and repairs of trailing cables.

Final paragraph (a) is derived from granted PFMs and addresses requirements for persons performing splices and repairs. It also specifies the manner in which the trailing cable must be spliced or repaired to assure that miners are not exposed to shock and burn hazards.

Commenters stated that the proposal did not distinguish between a splice and a repair, and suggested that MSHA define these terms. In response, MSHA has defined the terms in final paragraphs (a)(1) and (a)(2) based on existing § 7.402 and granted PFMs.

Another commenter stated that MSHA should use the language from the Program Policy Manual relating to the existing standard for temporary splice of trailing cable (§ 75.603) to identify whether cable damage requires a splice or repair. This existing standard is not applicable here because the proposed rule addressed permanent cable repairs. The final rule does not use temporary or permanent. It requires the use of an MSHA-approved kit, which precludes the use of temporary splices.

Final paragraph (a)(3)(i), like the proposal, requires that cable splicing and repair be performed only by a qualified person who is trained in cable splicing and repair of high-voltage cables. From MSHA's experience, hands-on training provides effective training. These requirements will assure that the individual performing cable splicing and repair understands the construction of the cable, the purpose of every component, and the hazards associated with failure to replace each component with a component similar to the original.

Some commenters suggested that the proposal be revised to allow splices to be made under the direction of a qualified person. MSHA has not incorporated this suggestion because a qualified person has the knowledge and experience to make an effective splice that will protect miners from electrical shocks. MSHA is concerned that a person who is not qualified may not have the knowledge, training, or experience to perform splicing and repairs safely.

Final paragraph (a)(3)(ii), like the proposal, requires that splicing and repairs be made in a workman-like manner. The quality of workmanship is vital to maintaining the same level of protection to miners as that provided by the original cable. MSHA received no comments on the proposal.

Final paragraph (a)(3)(iii), like the proposal, requires that splices and repairs of trailing cables meet the requirements of existing § 75.810. This existing standard requires that the spliced or repaired cable be mechanically strong, provide the same flexibility and conductivity as the original cable, be insulated and sealed to exclude moisture, preserve the cable's flame-resistance quality, and have good bonding to the outer jacket. MSHA received no comments on this proposal.

Final paragraph (a)(3)(iv) revises proposed § 75.830(b) by deleting the reference to permanent cable repair and requires that the trailing cable be repaired using an MSHA-approved splice kit that contains specific instructions.

MSHA prohibited the use of a permanent tape-type splice in granted PFMs. The final rule does not prohibit this type of splice. Tape-type splices can be used to make an effective splice when proper procedures are followed. MSHA did not allow them in granted PFMs because the splice materials were often used improperly and allowed moisture to enter the splice. Moisture degrades the insulation and ultimately creates a risk of electrical shock. Instead of prohibiting all tape-type splices, the final rule requires that all splices be made with an MSHA-approved splice kit. The approved kits contain materials and appropriate instructions on the proper methods for making a splice. The kit includes tape that is self-vulcanizing so it will exclude moisture when applied as instructed, thereby preventing the risk of electrical shock.

MSHA received several comments concerning tape-type splices. Some commenters suggested that only vulcanized splices be used because moisture cannot be kept out of tape splices. These commenters stated that although tape-type splices are good when first made, after dragging the cable the tape splices become damaged. MSHA does not agree that only vulcanized splices can be effective. If a splice is made in accordance with the instructions included in the MSHA-approved high-voltage splice kit, the splice should be effective and exclude moisture.

Another commenter stated that electricians need more training on cable splicing and repair because not everyone reads the instructions provided in the kits. MSHA agrees and, in response, the final rule includes a new requirement for specialized training for persons who perform maintenance on high-voltage mining machines which includes the cable.

Final § 75.830(b) limits the number of splices in a certain portion of the trailing cable. Final § 75.830(b)(1), as in the proposal, prohibits splicing of the high-voltage trailing cable within 35 feet of the continuous mining machine.

Some commenters suggested that splicing should be prohibited within 50 to 60 feet from the continuous mining machine. MSHA's experience with low- and medium-voltage equipment is that the portion of the cable within 35 feet of the continuous mining machine is subjected to more strains, stresses, and cable handling than the rest of the cable. The probability that a miner will be shocked by an inadequate splice is greatest within this portion of the cable due to weakened and damaged cable.

Several commenters stated that the number of splices should be limited because cable splicing causes the resistance of the cable to go up. MSHA asked commenters during public

hearings for suggestions on a reasonable limit for the number of splices. No number was suggested. Final paragraph (b)(2) limits to four (4) the splices in the portion of the trailing cable that extends from the continuous mining machine outby for a distance of 300 feet. Granted PFMs contained a 4-splice limitation. Based on Agency experience with PFMs, the final rule includes this limit.

Section 75.831 Electrical Work; Troubleshooting and Testing

Final § 75.831 includes requirements for performing electrical work, including troubleshooting and testing. It contains editorial changes for clarity.

Final paragraph (a) requires that prior to performing electrical work, other than troubleshooting and testing, on the trailing cable or continuous mining machine, a qualified person must de-energize the trailing cable in accordance with either paragraph (a)(1) or (a)(2). De-energization is usually accomplished by opening the circuit-interrupting device. The qualified person must follow the required work procedures to prevent inadvertent re-energization. These procedures are important to assure that miners are not exposed to potential shock, fire, or other hazards when performing electrical work.

Final paragraphs (a)(1) and (a)(2) specify the two lock-out and tagging procedures. Depending on the power center design, a disconnecting switch or a cable coupler (plug and receptacle) would be used to lock-out and tag the trailing cable. Final paragraph (a)(1) specifies work procedures if a disconnecting switch is used on the output circuit of the power center supplying power to the continuous mining machine. If a disconnecting switch is used, final paragraph (a)(1)(i) requires the switch to be opened to provide visual evidence that the output is de-energized, grounded, and locked out and tagged in the open and grounded position. This allows the cable coupler plug to remain connected to the power receptacle. No comments were received on this proposal.

Final paragraph (a)(1)(ii), like the proposal, requires the plug and receptacle to be locked together and tagged. This requirement will assure that the cable coupler plug cannot be disconnected from the receptacle and connected to a spare circuit. When this procedure is used, connection to a grounding receptacle is unnecessary because opening the disconnecting switch grounds the power conductors of the high-voltage trailing cable.

MSHA understands that some mine operators prefer not to disconnect high-voltage couplers since this may lead to problems when re-energizing the circuit. The main problem with disconnecting high-voltage couplers is the risk of contaminating the couplers' insulation with dust. Using a disconnecting switch to ground and isolate power from the trailing cable and continuous mining machine would eliminate the need to remove the cable coupler plug from the receptacle.

One commenter suggested that the proposal be revised to allow other means of locking-out and tagging, such as requiring all spare circuit visual disconnects to be locked-out and tagged. This suggestion may require the person performing the work to carry more keys and locks because there may be more than one spare circuit and each must be locked. Also, MSHA believes that most of the plugs and receptacles are designed with means to lock them together.

Final paragraph (a)(2), like the proposal, addresses the use of a cable coupler as a disconnecting device. After power has been removed, final paragraph (a)(2)(i) requires the plug to be disconnected from the receptacle and connected to a grounding receptacle. The grounding receptacle, which is mounted on the power center, will cause all power conductors of the cable to be grounded to the power center frame. Connecting the plug to the grounding receptacle assures that no voltage will be present in the cable conductors. MSHA received no comments on this proposal.

Final paragraph (a)(2)(ii) requires the plug and grounding receptacle to be locked together and tagged. Tagging will alert miners that work is being done on the circuit, and the lock will prevent the circuit from being re-energized and ungrounded while work is being performed. These requirements will prevent shock hazards to miners while performing electrical work. MSHA received no comments on this proposal.

Final paragraph (a)(2)(iii) requires that a dust cover be placed over the power receptacle to protect it from becoming contaminated by dust when the trailing cable is disconnected. Dust is a conducting medium and can create ground faults. The dust cover will also prevent miners from contacting energized parts of the receptacle. MSHA received no comments on this proposal.

Final paragraph (b) addresses all troubleshooting requirements. It contains only minor clarifying changes from the proposal. It requires that during troubleshooting and testing, the de-energized cable may be disconnected from the grounding receptacle only for that period of time necessary to locate the defective condition. Generally, when the cable is disconnected from the power receptacle, it is connected to the grounding receptacle. It also requires that prior to troubleshooting and testing the trailing cable, a qualified person must follow one of the lock-out and tagging procedures specified in paragraphs (b)(1) and (b)(2). Following these procedures prevents inadvertent re-energization of the circuits being tested and protects miners from shock, fire, or other hazards.

Final paragraphs (b)(1) and (b)(2), like the proposal, address lock-out and tagging procedures based on the design of the power center. These procedures are the same as discussed in paragraph (a) of this section.

One commenter suggested that since the high-voltage trailing cable is not subject to accumulation of static charges, as in the case of a surface high-voltage line which is subject to wind and other sources of charge buildup, the Agency should not require constant grounding. MSHA does not agree and, consistent with existing rules, the final rule contains grounding requirements to assure the safety of personnel performing electrical work on high-voltage circuits.

Final paragraph (c), re-numbered from proposed paragraph (d), addresses limitations on troubleshooting and testing. It is derived from granted PFMs and existing troubleshooting requirements for longwalls. The final rule recognizes that it may be necessary for circuits or equipment to remain energized for troubleshooting and testing, such as when taking voltage and current readings to identify a problem. It contains conditions under which this can be done.

Final paragraph (c)(1), like the proposal, limits troubleshooting and testing of energized circuits to low- and medium-voltage systems because troubleshooting and testing energized circuits is known to be inherently hazardous work. Further, there are no adequate equipment and insulation ratings for testing energized high-voltage circuits and equipment. MSHA received no comments on this proposal.

Final paragraph (c)(2), like the proposal, permits troubleshooting and testing of energized circuits only for the purpose of determining voltages and currents, including evaluation of waveforms or other electrical diagnostic testing. MSHA received no comments on this proposal.

Final paragraph (c)(3), like the proposed (d)(3), requires that troubleshooting and testing of energized circuits be performed only by a qualified person. This requirement assures that the person conducting the

testing is aware of the hazards associated with these tests. The requirement for wearing properly rated gloves has been moved to final paragraph (c)(4). MSHA received no comments on this proposal.

Final paragraph (c)(4) requires that the qualified person wear protective gloves when the voltage of the circuit is 40 volts or more. It also specifies the types of gloves to be used for different voltages. Based on MSHA's experience and electrical accident data, the Agency has concluded that 40 volts is the lowest voltage level that is likely to cause electrocution. The final rule requires gloves to protect miners who might inadvertently contact energized circuits during troubleshooting and testing.

Dry work gloves or rubber insulating gloves with leather protectors, in good condition, i.e., free of holes, etc., can be used when troubleshooting 40-volt to 120-volt circuits nominal. Normally, the nominal control voltage for mining equipment is 120 volts. If miners are testing intrinsically safe circuits, dry gloves can be used for circuits that exceed 120 volts nominal. When the circuit is not intrinsically safe, rubber insulating gloves with leather protectors rated for at least the nominal voltage of the circuit and equipment are required to be used on circuits that exceed 120 volts nominal. Typically, mining equipment is rated as 220, 480, 995 volts and higher. Commercially available rubber insulating gloves are rated for 1,000 volts but are not rated for each of these voltages. Therefore, when testing or troubleshooting low- and medium-voltage circuits, 1,000-volt rated gloves must be used. MSHA received no comments on this proposal.

Final paragraph (d), re-numbered from proposed paragraph (e), specifies the work procedures to be followed when performing electrical work, other than troubleshooting and testing, in any compartment of the power center. These procedures will assure that miners are not exposed to potential shock, fire, or other hazards when performing electrical work.

Final paragraph (d)(1), re-numbered from proposed (e)(1), requires that affected circuits be de-energized in accordance with existing de-energization requirements (see § 75.509). MSHA received no comments on the proposal.

Final paragraph (d)(2), re-numbered from proposed paragraphs (e)(2) and (4), requires that a qualified person open the corresponding disconnecting switch and lock it out and tag it to isolate the circuit. MSHA received no comments on the proposal.

Final paragraph (d)(3), re-numbered from proposed (e)(3), requires that a qualified person visually verify that the contacts of the disconnecting switch are open and grounded. To verify, the qualified person views the position of the contacts through a window. Opening the disconnecting switch grounds the high-voltage conductors. Grounding the conductors protects the miner working on a circuit from exposure to energized high-voltage circuits which reduces the risk of electrical shock and electrocution. MSHA received no comments on the proposal.

Final paragraph (d)(4), re-numbered from proposed paragraph (e)(5), requires that all high-voltage capacitors and circuits in the power center be discharged prior to performing electrical work. Because capacitors are energy storage devices, they may continue to hold a charge even after the disconnecting switch is opened and the circuit is de-energized. Therefore, to assure that miners are not exposed to shock hazards, capacitors and circuits must be discharged before performing work. MSHA received no comments on the proposal.

Final paragraph (e), re-numbered from proposed paragraph (f), requires that when more than one qualified person is working on the same circuit or equipment, each person must install their own lock and tag on the circuit or equipment on which work is being performed. It also requires that each lock and tag be removed by the individual who installed them. Limiting removal of the lock to the person who installed it will prevent accidental re-energization of equipment or circuits before all persons have completed their work.

MSHA's accident investigation experience reveals that failure to lock out and tag circuits and equipment prior to performing maintenance is the root cause of many accidents. This finding is supported in both the National Safety Council's Data Sheet 237 Revision B, "Methods of Locking Out Electrical Switches" (1971) and the National Fire Protection Association's NFPA 70E "Standard for Electrical Safety Requirements for Employee Workplaces" (2000 Edition). If persons are required to place and remove their own locks, they will be more aware of and responsible for their own safety as well as safety of others. Following these procedures, miners will take the steps necessary to assure proper de-energization. This requirement reduces the risk of error due to lack of communication or inadvertent re-energization. MSHA received no comments on this proposal.

Final paragraph (e)(2), like proposed paragraph (f)(2), includes requirements for removing locks and tags. If the person who installed the lock and tag is not available, the mine operator can authorize a qualified person to remove that person's lock and tag. In this case, the mine operator must notify the person who installed the lock and tag that they have been removed. MSHA received no comments on this proposal.

Section 75.832 Frequency of Examinations; Recordkeeping

Final § 75.832 includes non-substantive editorial changes for clarity. It specifies the frequency of testing certain equipment and circuits, and the requirements for creating and maintaining adequate records. Unlike granted PFMs that required some tests to be done weekly, the final rule requires those tests to be conducted at least every 7 days. Frequent examination and testing of the trailing cable and the high-voltage continuous mining machine, as well as testing of the ground-fault test circuit and ground-wire monitor circuit, is necessary because moving this equipment increases the likelihood of component failure and break down. MSHA's enforcement experience with existing weekly examination and testing requirements indicates that the actual frequency between examinations and tests is sometimes as long as 13 days. By changing the requirement to testing every 7 days, MSHA will avoid prolonged periods between tests and examinations.

Final paragraph (a) requires that a qualified person examine the high-voltage continuous mining machine at least once every 7 days to verify that electrical protection, equipment grounding, permissibility, cable insulation, and control devices are properly installed and maintained. The purpose of the examination is to assure that the equipment is operating safely. The examination will also advance miners' safety and minimize their exposure to fire, electric shock, ignition, or operational hazards.

Final paragraph (b) requires that, at least once every 7 days and prior to tramming the machine, a qualified person activate the ground-fault test circuit to verify that it will cause the corresponding circuit-interrupting device to open. Activating the ground-fault test circuit verifies that the ground-fault protection circuit is operating properly. Failure of the ground-fault circuit to function properly when a

ground fault exists would expose miners to shock hazards.

Final paragraph (c), like the proposal, requires that, at least once every 7 days and prior to tramming the machine, a qualified person test the ground-wire monitor circuit to verify that it will cause the corresponding circuit-interrupting device to open. Testing of a ground-wire monitor circuit normally requires activation of a test switch.

MSHA received a number of comments on this proposal. Some commenters suggested that the 7-day examination requirement be changed to a weekly examination. They stated that the 7-day requirement will be confused with other electrical examinations performed on a weekly or monthly basis and recommended that, for consistency purposes, testing should be done on a weekly basis. Other commenters supported the 7-day requirement, stating that the weekly requirement can provide a gap of 13 days between tests. MSHA agrees and the final rule includes the 7-day requirement for testing and examination.

Final paragraph (d) addresses inspection of the high-voltage trailing cable.

Final paragraph (d)(1) requires that once each day, during the shift that the continuous mining machine is first energized, a qualified person de-energize and inspect the entire length of cable from the power center to the machine. This inspection must include all areas of the cable where guarding is required, the outer jacket repairs, and splices for damage or deterioration. The cable inspection does not require removal of the guarding but rather, requires assuring that the guarding is provided where required. In response to comments, MSHA has replaced production day that was in the proposal with the more clarifying phrase "during the shift that the continuous mining machine is first energized".

Final paragraph (d)(2) requires that at the beginning of each shift that the continuous mining machine is energized, a person designated by the mine operator de-energize and visually inspect the high-voltage trailing cable from the mining machine: (1) To the last open crosscut; (2) to within 150 feet of the working place during retreat or second mining; or (3) up to 150 feet of the machine when it is used in outby areas for cutting overcasts, underpasses, sumps, etc. The inspection must include an examination of the outer jacket of the cable for damage. The specified locations are areas where the trailing cable is most likely to be damaged by mobile equipment. Visual inspection will assure the integrity of the cable and increase miners' safety.

MSHA received a number of comments on the proposed provisions relating to trailing cable inspections. One commenter suggested that the proposed requirements be deleted due to the superior design and construction of high-voltage trailing cables. Although MSHA agrees that the high-voltage trailing cable design and construction is superior to low- and medium-voltage cable designs, the Agency continues to believe that the requirements in the final rule are necessary to assure integrity of the cable while in use.

Others recommended changing the proposal from each production shift to each shift. They stated that such a change would be necessary in order to include idle shifts during which equipment is moved for section setup and maintenance. Another commenter suggested that MSHA change the proposal to allow for hot seat change-outs. Some commenters disagreed with this suggestion because this change would allow inspections to be made at the end of the shift and could result in a damaged cable remaining undetected for eight hours.

MSHA agrees with the suggestion to inspect the cable at the beginning of each shift the machine is energized, which would include idle shifts. MSHA believes that it is important to examine the trailing cable in all shifts where the machine is energized to detect any damage and has revised the proposal accordingly.

Another commenter objected to the proposed provision requiring the high-voltage trailing cable to be de-energized, suggesting instead that the miner wear high-voltage gloves when handling the energized cable. MSHA does not agree because when visually examining the high-voltage trailing cable, the miner may need to handle, move, or bend the cable. Handling, moving, or bending a damaged energized cable can result in an internal short-circuit and subsequent arc-flash injuries to the miner. Using high-voltage gloves to handle a damaged energized cable would not protect miners from arc-flash injuries. Therefore, it is necessary to de-energize the cable prior to the examination.

Final paragraph (e), like the proposal, is derived from granted PFMs and requires that at the beginning of each production shift, a person designated by the operator must test the grounded-phase detection circuit on the high-voltage continuous mining machine. This provision will assure that the detection circuit functions properly and that it will detect a grounded-phase condition. If the detection circuit is defective, a grounded-phase condition will remain undetected and miners will be exposed to the risk of electrical shock. MSHA received no comments on the proposal.

Final paragraph (f), like the proposal, requires equipment to be removed from service or repaired when any examinations or tests reveal damage that could lead to a risk of fire, electric shock, ignition, or operational hazard. This provision will assure that equipment that may pose a danger to miners is not used until the hazardous condition is corrected. For example, if examination of a trailing cable reveals an exposed conductor, miners would be at risk of potential fire, electrical shock, and methane gas ignition when the cable is energized. MSHA received no comments on this proposal.

Final paragraph (g) specifies the recordkeeping requirements for the examinations and tests in the final rule and is consistent with existing recordkeeping requirements. Records and certifications of tests and repairs are valuable tools for mine operators. Records and certifications are used by MSHA to identify trends in equipment failure and design problems so that the Agency can disseminate necessary best practice information to the mining community.

Final paragraph (g)(1)(i), like the proposal, requires that the person who examines and tests the equipment certify by signature and date that the tests and examinations have been conducted. Only the person conducting the examinations and tests can provide the certification because that person would have direct knowledge of the test results.

Final paragraph (g)(1)(ii) requires that a record be kept of any unsafe conditions found by the individual who conducted the tests because that person would have direct knowledge of the unsafe conditions. Unlike the proposal, which did not identify who must record corrective action, final paragraph (g)(2) specifies that the individual who takes any corrective action must be the one to record that action. The clarification is important because the person conducting the tests may not be the one who takes the corrective action.

Final paragraphs (g)(3) and (g)(4) are new provisions added in response to comments. Final paragraph (g)(3) requires that records must be countersigned by the mine foreman or equivalent mine official by the end of their next regularly scheduled working shift. Final paragraph (g)(4) requires that records be maintained either in a secure book that is not susceptible to alteration or electronically in a computer system

that is also secure and not susceptible to alteration.

Some commenters suggested that mine management share the responsibility of assuring that records are properly documented and stored. In so doing, these commenters raised the fact that the proposal did not require records to be countersigned and that they have made this suggestion on several occasions during previous rulemakings. MSHA has re-evaluated this issue. In the preamble to the proposed rule, MSHA stated that the Agency accepts certification only from the person who examines and tests the equipment because that person will have knowledge of the results of the examination and tests. MSHA reconsidered its position and the final rule requires countersigning of records by a foreman or equivalent. In making this change, the Agency determined that countersigning of records by a foreman or equivalent will help to assure accuracy of the records. Additionally, as mentioned earlier, records are an important tool in maintaining miners' health and safety. The countersigning requirement will provide important corroboration of this vital action.

One commenter requested that the recordkeeping requirement be more specific. This commenter requested clarification on alternate methods of recordkeeping, specifically questioning electronic signatures for electronic records.

The final rule requires that examination, testing, and repair records for mine equipment must not be susceptible to alteration. MSHA recognizes that electronic storage of records is becoming a more valuable alternative for the mining industry. In response to comments, the final rule includes a new provision to require that records be maintained either in a secure book that is not susceptible to alteration or electronically in a computer system that is also secure and not susceptible to alteration. MSHA defines the phrase "secure and not susceptible to alteration" to mean that the stored record, including signatures, cannot be tampered with or modified. Examples of books that are considered secure and not susceptible to alteration include, but are not limited to, record books that are currently approved by state mine safety agencies and permanently bound books. Examples of books that are not considered secure and are susceptible to alteration include loose leaf binders and spiral note books. An example of an acceptable electronic record storage that is secure would be a record stored in a "write once, read many" drive. MSHA believes that electronic records meeting these criteria are practical and reliable as traditional records.

Final paragraph (g)(5), like the proposal, requires that certifications and records, including those in electronic form, be kept for at least one year and be made available at the mine for inspection by authorized representatives of the Secretary and representatives of miners. MSHA received no comments on this proposal.

Section 75.833 Handling High-Voltage Trailing Cables

Final § 75.833 addresses the requirements for handling energized trailing cables. It requires that energized trailing cable not be handled unless high-voltage insulating gloves or insulated cable handling tools are used.

Based on comments received on the proposed rule, the re-proposal contained the option of providing high-voltage insulating gloves, which include both the rubber gloves and the leather outer protector gloves, or insulated cable handling tools. MSHA received two comments on the re-proposal. Both commenters suggested that MSHA should not require the use of insulating high-voltage gloves because the high-voltage trailing cable is safer than current trailing cables already permitted for use without gloves. Under the final rule, gloves are not required if cable handling tools are used.

Some commenters on the proposal recommended that personal protective equipment (PPE) be required in addition to the cable handling tools. MSHA considered this comment and decided that because PPE is not tested to a nationally-recognized standard, it may not provide protection to miners. For that reason the final rule does not require PPE.

Final paragraph (a), like the re-proposal, prohibits handling energized trailing cables unless high-voltage insulating gloves or insulating cable handling tools are used.

Final paragraph (b), like the re-proposal, requires that mine operators make either the insulating gloves or cable handling tools available for miners to use.

Final paragraph (c), like the re-proposal, addresses the requirements for insulating gloves and cable handling tools. Final paragraph (c)(1) addresses the design requirements for rubber gloves and incorporates by reference the American Society for Testing and Materials (ASTM) publication ASTM F496–02a, "Standard Specification for In-Service Care of Insulating Gloves and Sleeves" (2002). Final paragraph (c)(2) requires that the rubber gloves be air-tested to assure their effectiveness. Final paragraph (c)(3) requires that both the leather protector and the rubber insulating glove be visually examined before each use. Final paragraph (c)(4) requires that damaged rubber gloves be removed from service or destroyed, and that the leather protector be maintained in good condition or replaced.

Final paragraph (d), like the re-proposal, addresses the requirements for insulated cable handling tools. Final paragraph (d)(1) requires that insulated cable handling tools be rated and maintained to withstand at least 7,500 volts to assure that the handling tools provide at least the same level of protection to miners as the insulating high-voltage gloves.

Final paragraph (d)(2) requires that insulated cable handling tools be designed and manufactured for cable handling to protect miners from shock hazards. Examples of insulated cable handling tools are hooks, slings, and tongs, when designed and manufactured for cable handling.

Final paragraph (d)(3) requires that the insulated cable handling tools be visually examined before each use for signs of damage or defects.

Final paragraph (d)(4) requires that damaged or defective insulated cable handling tools be removed from the underground area of the mine or destroyed to assure that they are not available to use.

Section 75.834 Training

Final § 75.834 is new and addresses training requirements based on comments received on the proposal. One commenter stated that it is important to train miners on safety practices where new technologies are utilized and requested that specific training be required for those who test and repair high-voltage cables. MSHA originally believed that part 48 provides sufficient training requirements. Upon consideration, the final rule contains specific training requirements that are consistent with the provisions in granted PFMs. It also requires that the specialized training be specified in the part 48 plans.

Final paragraph (a) requires that miners who perform maintenance on high-voltage continuous mining machines be trained in high-voltage safety, testing, and repair and maintenance procedures. Final paragraph (b) requires that miners who work in the vicinity of high-voltage continuous mining machines or who move the high-voltage equipment or cables also be trained in high-voltage safety procedures and precautions. MSHA's experience is that not only miners who work on equipment are

exposed to hazards, but also miners in the vicinity.

Section 75.1002 Installation of Electric Equipment and Conductors; Permissibility

Existing § 75.1002 addresses requirements for conductors and cables used in or in by the last open crosscut as well as electrical equipment, conductors and cables used within 150 feet of pillar workings. Final § 75.1002 allows the use of shielded, high-voltage cables that supply power to permissible continuous mining machines in underground coal mines. No comments were received on this proposal.

IV. Executive Order 12866: Regulatory Planning and Review

Executive Order (E.O.) 12866, as amended, requires that regulatory agencies assess both the costs and benefits of intended regulations. To comply with Executive Order 12866, MSHA has prepared a Regulatory Economic Analysis (REA) for the final rule. The REA contains supporting data and explanations for the summary materials presented in sections IV through VII of this preamble, including the covered mining industry, benefits and costs, feasibility, small business impact, and information collection requirements. The REA is located on MSHA's Web site at *http://www.msha.gov/rea.HTM#final*. A copy of the REA can be obtained from MSHA's Office of Standards, Regulations and Variances. MSHA has determined that the final rule will not have an annual effect of $100 million or more on the economy and, therefore, it is not an economically "significant regulatory action" pursuant to section 3(f) of E.O. 12866.

A. Population at Risk

The final rule applies to all underground coal mines in the United States. Based on MSHA data, there were 583 underground coal mines reporting production, employing 44,456 miners, operating in the U.S. in 2008.

B. Benefits

The final rule will reduce the potential for electrical-related fatalities and injuries when using high-voltage continuous mining machines due to: Better design and construction criteria; improved ground-fault protection; handling of lighter cables; and increased safety requirements for work practices. These design and work practice requirements offer greater protection against electrical shock, cable overheating, fire hazards, unsafe work and repair practices, and back injuries and other sprains caused by handling trailing cables. These benefits are described in more detail in Chapter III of the REA associated with this rulemaking.

C. Compliance Costs

MSHA estimates that the final rule will result in total yearly net compliance cost of approximately $50,100 for all the underground operators that use high-voltage continuous mining machines. MSHA estimates that for all underground coal mine operators that use high-voltage continuous mining machines with 20–500 employees, yearly costs will be approximately $85,875 and yearly cost savings will be approximately $45,200, which results in a net cost of approximately $40,675. For all underground coal mine operators using high-voltage continuous mining machines with 501+ employees, MSHA estimates yearly costs of approximately $16,225 and yearly cost savings of approximately $6,800, which results in a net cost of $9,425. For a complete breakdown of the compliance costs and savings of the final rule, see Chapter IV of the REA associated with this rulemaking.

V. Feasibility

MSHA has concluded that the requirements of the final rule are technologically and economically feasible.

A. Technological Feasibility

High-voltage continuous mining machines have been used to produce coal in underground coal mines since 1997. Underground coal mine operators that use high-voltage continuous mining machines are currently following most of the provisions of the final rule through conditions set forth in their granted Petitions for Modification (PFMs). Any requirements in the final rule that are different from those currently being followed in granted PFMs will not make the implementation of the final rule technologically infeasible for underground coal mine operators who choose to use high-voltage continuous mining machines for extracting coal. MSHA therefore concludes that the final rule is technologically feasible.

B. Economic Feasibility

MSHA has traditionally used a revenue screening test—whether the yearly compliance costs of a regulation are less than 1 percent of revenues, or are negative (i.e., provide net cost savings)—to establish presumptively that compliance with the regulation is economically feasible for the mining industry. As estimated in the REA that accompanies this final rule, the underground coal mining industry will incur a net yearly compliance cost of approximately $50,100 versus annual revenue of approximately $18.4 billion per year. On this basis, the Agency concludes that the rule is economically feasible.

VI. Regulatory Flexibility Act (RFA) and Small Business Regulatory Enforcement Fairness Act (SBREFA)

Pursuant to the Regulatory Flexibility Act (RFA) of 1980, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA), MSHA has analyzed the impact of the final rule on small businesses. Based on that analysis, MSHA has notified the Chief Counsel for Advocacy, Small Business Administration, and made the certification under the Regulatory Flexibility Act at 5 U.S.C. 605(b) that the final rule will not have a significant economic impact on a substantial number of small entities. The factual basis for this certification is presented in full in Chapter V of the REA and in summary form below.

A. Definition of a Small Mine

Under the RFA, in analyzing the impact of the final rule on small entities, MSHA must use the Small Business Administration (SBA) definition for a small entity or, after consultation with the SBA Office of Advocacy, establish an alternative definition for the mining industry by publishing that definition in the **Federal Register** for notice and comment. MSHA has not taken such an action and hence is required to use the SBA definition. The SBA defines a small entity in the mining industry as an establishment with 500 or fewer employees.

In addition to examining small entities as defined by SBA, MSHA has also looked at the impact of this final rule on underground coal mines with fewer than 20 employees, which MSHA and the mining community have traditionally referred to as "small mines." These small mines differ from larger mines not only in the number of employees, but also in economies of scale in material produced, in the type and amount of production equipment, and in supply inventory. Therefore, the cost of complying with MSHA's final rule and the impact of the final rule on small mines will also be different. It is for this reason that small mines are of special concern to MSHA.

Although the final rule does apply to mine operators with fewer than 20 employees that choose to use high-

voltage continuous mining machines, MSHA's experience has been that no underground coal mine operator with fewer than 20 employees has ever requested a PFM to use high-voltage continuous mining machines. MSHA has analyzed the economic impact of the final rule on all underground coal mine operators with 500 or fewer employees, which conforms to the requirements of the RFA. The Agency concludes that it can certify that the final rule will not have a significant economic impact on a substantial number of small entities that are covered by this final rule.

B. Factual Basis for Certification

Using SBA's definition of a small mine operator, the estimated yearly net compliance cost of the final rule on small underground coal mine operators is approximately $40,675. The estimated yearly net compliance cost is less than one percent of the estimated annual revenues of approximately $14.5 billion for small underground coal mine operators with 500 or fewer employees.

Based on this analysis, MSHA has determined that the final rule will not have a significant economic impact on a substantial number of small underground coal mine operators with 500 or fewer employees. MSHA has certified these findings to the SBA. The factual basis for this certification is discussed in Chapter V of the REA associated with this final rule.

VII. Paperwork Reduction Act of 1995

As a result of this final rule there will be: (1) An elimination of burden hours and related cost approved under OMB control numbers 1219–0065 and (2) burden hours in the Information Collection Request (ICR) that accompanies this final rule. The burden hours and related cost for these two items are discussed below. For a more detailed explanation of how the burden hours and related cost for the two items were determined, see Chapter VII of the REA associated with this final rule.

A. Elimination of Burden Hours

As a result of this final rule, mine operators will no longer need a PFM of existing 30 CFR 75.1002 to use a high-voltage continuous mining machine. Existing OMB control number 1219–0065 includes annual burden hours and cost related to the time it takes mine operators to prepare and file petitions with MSHA, including petitions to use a high-voltage continuous mining machine. As a result of this rulemaking, the burden hours and cost approved under OMB control number 1219–0065 that relate to the time it takes operators to prepare and file petitions need to be reduced to reflect the fact that petitions to use a high-voltage continuous mining machine will no longer be needed. Therefore, the burden hours and cost in OMB control number 1219–0065 should be reduced by approximately 48 hours and $3,700 annually.

B. Burden Hours

The final rule will impose approximately 819 first-year burden hours and related cost of $50,200 on underground coal mine operators using high-voltage continuous mining machines. Of the 819 first-year burden hours, 12 hours and related costs of $700 are associated with conducting a ground-fault and ground-wire monitor circuit test prior to tramming the high-voltage continuous mining machine as required by final § 75.829. In addition, 242 hours and related cost of $9,450 are associated with tagging requirements that are required by final § 75.831. Also, 565 hours and related cost of $40,050 are associated with final § 75.832(c), which requires a ground-wire monitor circuit test, and final § 75.832(g), which requires countersigning of records concerning examinations and tests specified in final § 75.832(a), (b), and (c).

The following final requirements do not have burden hours associated with them. Final § 75.825(i) requires that all compartments providing access to energized high-voltage conductors and parts display a caution label to warn miners against entering the compartment(s) before de-energizing incoming high-voltage circuits. This requirement is not a paperwork burden to mine operators because it is currently a normal business practice of manufacturers to place such warning labels on the compartments noted above.

Final § 75.832(a) and (b) require that examinations or tests be conducted at least once every seven days, and final § 75.832(g) requires that a record be made of these examinations or tests. Paragraph (a) requires an examination of the high-voltage continuous mining machine. Paragraph (b) requires a test of the ground-fault test circuit. The examinations required by final § 75.832(a) and (b) are already being conducted as part of a larger weekly examination of electrical equipment required under existing § 75.512 (electrical equipment; examination, testing and maintenance). Existing § 75.512 also requires that records be made of these examinations and tests. Since the burden for conducting examinations and tests required by final § 75.832(a) and (b) and making records of them is already accounted for under existing § 75.512 (which is approved under OMB control number 1219–0116), such activity is not included in the ICR accompanying this final rule. However, the countersigning of these records is not part of any existing requirement, and is, therefore, accounted for in the ICR that accompanies this rulemaking.

C. Details

The information collection package has been submitted to the Office of Management and Budget (OMB) for review under 44 U.S.C. 3504(h) of the Paperwork Reduction Act of 1995, as amended. A copy of the information collection package can be obtained from the Department of Labor by email request to *king.darrin@dol.gov* or by phone request at 202–693–4129.

VIII. Other Regulatory Considerations

A. The Unfunded Mandates Reform Act of 1995

MSHA has reviewed the final rule under the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1501 *et seq.*). MSHA has determined that this final rule does not include any federal mandate that may result in increased expenditures by State, local, or tribal governments; nor will it increase private sector expenditures by more than $100 million in any one year or significantly or uniquely affect small governments. Accordingly, the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1501 *et seq.*) requires no further Agency action or analysis.

B. Executive Order 13132: Federalism

The final rule does not have "federalism implications" because 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." Accordingly, under E.O. 13132, no further Agency action or analysis is required.

C. The Treasury and General Government Appropriations Act of 1999: Assessment of Federal Regulations and Policies on Families

Section 654 of the Treasury and General Government Appropriations Act of 1999 (5 U.S.C. 601 note) requires agencies to assess the impact of Agency action on family well-being. MSHA has determined that the final rule will have no effect on family stability or safety, marital commitment, parental rights and authority, or income or poverty of families and children. The final rule impacts only the underground coal mine industry. Accordingly, MSHA

certifies that the final rule will not impact family well-being.

D. Executive Order 12630: Government Actions and Interference With Constitutionally Protected Property Rights

This final rule does not implement a policy with takings implications. Accordingly, under E.O. 12630, no further Agency action or analysis is required.

E. Executive Order 12988: Civil Justice Reform

The final rule was written to provide a clear legal standard for affected conduct and was carefully reviewed to eliminate drafting errors and ambiguities, so as to minimize litigation and undue burden on the Federal court system. Accordingly, the final rule will meet the applicable standards provided in section 3 of E.O. 12988, Civil Justice Reform.

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

The final rule will have no adverse impact on children. Accordingly, under E.O. 13045, no further Agency action or analysis is required.

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

The final rule does not have "tribal implications" because it will not "have substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes." Accordingly, under E.O. 13175, no further Agency action or analysis is required.

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

Executive Order 13211 requires agencies to publish a statement of energy effects when a rule has a significant energy action that adversely affects energy supply, distribution or use. MSHA has reviewed this final rule for its energy effects because the final rule applies to the underground mining sector. Because this final rule will result in yearly net compliance cost of approximately $50,100 to the underground coal mining industry, relative to annual revenues of $18.4 billion in 2008, MSHA has concluded that it is not a significant energy action because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Accordingly, under this analysis, no further Agency action or analysis is required.

List of Subjects in 30 CFR Parts 18 and 75

Coal mining, Incorporation by reference, Mine safety and health, Reporting and recordkeeping requirements, Underground mining.

Dated: March 29, 2010.

Joseph A. Main,

Assistant Secretary of Labor for Mine Safety and Health.

■ For the reasons set out in the preamble and under the authority of the Mine Safety and Health Act of 1977, as amended, Chapter I of Title 30, Code of Federal Regulations, Parts 18 and 75 are amended as follows:

PART 18—ELECTRIC MOTOR-DRIVEN MINE EQUIPMENT AND ACCESSORIES

■ 1. The authority citation for part 18 continues to read as follows:

Authority: 30 U.S.C. 957 and 961.

■ 2. Add § 18.54 to subpart B to read as follows:

§ 18.54 High-voltage continuous mining machines.

(a) *Separation of high-voltage components from lower voltage components.* In each motor-starter enclosure, barriers, partitions, and covers must be provided and arranged so that personnel can test and troubleshoot low- and medium-voltage circuits without being exposed to energized high-voltage circuits. Barriers or partitions must be constructed of grounded metal or nonconductive insulating board.

(b) *Interlock switches.* Each removable cover, barrier, or partition of a compartment in the motor-starter enclosure providing direct access to high-voltage components must be equipped with at least two interlock switches arranged to automatically de-energize the high-voltage components within that compartment when the cover, barrier, or partition is removed.

(c) *Circuit-interrupting devices.* Circuit-interrupting devices must be designed and installed to prevent automatic re-closure.

(d) *Transformers supplying control voltages.*

(1) Transformers supplying control voltages must not exceed 120 volts line to line.

(2) Transformers with high-voltage primary windings that supply control voltages must incorporate a grounded electrostatic (Faraday) shield between the primary and secondary windings. Grounding of the shield must be as follows:

(i) Transformers with an external grounding terminal must have the shield grounded by a minimum of No. 12 A.W.G. grounding conductor extending from the grounding terminal to the equipment ground.

(ii) Transformers with no external grounding terminal must have the shield grounded internally through the transformer frame to the equipment ground.

(e) *Onboard ungrounded, three-phase power circuit.* A continuous mining machine designed with an onboard ungrounded, three-phase power circuit must:

(1) Be equipped with a light that will indicate a grounded-phase condition;

(2) Have the indicator light installed so that it can be observed by the operator from any location where the continuous mining machine is normally operated; and

(3) Have a test circuit for the grounded-phase indicator light circuit to assure that the circuit is operating properly. The test circuit must be designed so that, when activated, it does not require removal of any electrical enclosure cover or create a double-phase-to-ground fault.

(f) *High-voltage trailing cable(s).* High-voltage trailing cable(s) must conform to the ampacity and outer dimensions specified in Table 10 of Appendix I to Subpart D of this part. In addition, the cable must be constructed with:

(1) 100 percent semi-conductive tape shielding over each insulated power conductor;

(2) A grounded metallic braid shielding over each insulated power conductor;

(3) A ground-check conductor not smaller than a No. 10 A.W.G.; or if a center ground-check conductor is used, not smaller than a No. 16 A.W.G. stranded conductor; and

(4) Either a double-jacketed or single-jacketed cable as follows:

(i) *Double jacket.* A double-jacketed cable consisting of reinforced outer and inner protective layers. The inner layer must be a distinctive color from the outer layer. The color black must not be used for either protective layer. The tear strength for each layer must be more than 40 pounds per inch thickness and the tensile strength must be more than 2,400 pounds per square inch.

(ii) *Single jacket.* A single-jacketed cable consisting of one protective layer. The tear strength must be more than 100 pounds per inch thickness, and the

tensile strength must be more than 4,000 pounds per square inch. The cable jacket must not be black in color.

(g) *Safeguards against corona.* Safeguards against corona must be provided on all 4,160-voltage circuits in explosion-proof enclosures.

(h) *Explosion-proof enclosure design.* The maximum pressure rise within an explosion-proof enclosure containing high-voltage switchgear must be limited to 0.83 times the design pressure.

(i) *Location of high-voltage electrical components near flame paths.* High-voltage electrical components located in high-voltage explosion-proof enclosures must not be coplanar with a single plane flame-arresting path.

(j) *Minimum creepage distances.* Rigid insulation between high-voltage terminals (Phase-to-Phase or Phase-to-Ground) must be designed with creepage distances in accordance with the following table:

Phase-to-phase voltage	Points of measure	Minimum creepage distances (inches) for comparative tracking index (CTI) range [1]			
		CTI ≥ 500	380 ≤ CTI < 500	175 ≤ CTI < 380	CTI < 175
2,400	0–0	1.50	1.95	2.40	2.90
	0–G	1.00	1.25	1.55	1.85
4,160	0–0	2.40	3.15	3.90	4.65
	0–G	1.50	1.95	2.40	2.90

[1] Assumes that all insulation is rated for the applied voltage or higher.

(k) *Minimum free distances.* Motor-starter enclosures must be designed to establish the minimum free distance (MFD) between the wall or cover of the enclosure and uninsulated electrical conductors inside the enclosure in accordance with the following table:

Wall/cover thickness (in)	Steel MFD (in)			Aluminum MFD (in)		
	A [1]	B [2]	C [3]	A [1]	B [2]	C [3]
1/4	2.8	4.3	5.8	[4] NA	[4] NA	[4] NA
3/8	1.8	2.3	3.9	8.6	12.8	18.1
1/2	* 1.2	2.0	2.7	6.5	9.8	13.0
5/8	* 0.9	1.5	2.1	5.1	7.7	10.4
3/4	* 0.6	* 1.1	1.6	4.1	6.3	8.6
1	*	* 0.6	* 1.0	2.9	4.5	6.2

* Note: The minimum electrical clearances must still be maintained in accordance with the minimum clearance table of § 18.24.

[1] Column A specifies the MFD for enclosures that have available three-phase, bolted, short-circuit currents of 10,000 amperes root-mean-square (rms) value or less.

[2] Column B specifies the MFD for enclosures that have maximum available three-phase, bolted, short-circuit currents greater than 10,000 and less than or equal to 15,000 amperes rms.

[3] Column C specifies the MFD for enclosures that have maximum available three-phase, bolted, short-circuit currents greater than 15,000 and less than or equal to 20,000 amperes rms.

[4] Not Applicable—MSHA does not allow aluminum wall or covers to be 1/4 inch or less in thickness. (See also § 18.31.)

(1) For values not included in the table, the following formulas, on which the table is based, may be used to determine the minimum free distance.

(i) Steel Wall/Cover:

$$MFD = 2.296 \times 10^{-6} \frac{(35 + 105(C))\ (I_{sc})\ (t)}{(C)\ (d)} - \frac{d}{2}$$

(ii) Aluminum Wall/Cover:

$$MFD = 1.032 \times 10^{-5} \frac{(35 + 105(C))\ (I_{sc})\ (t)}{(C)\ (d)} - \frac{d}{2}$$

Where "C" is 1.4 for 2,400 volt systems or 3.0 for 4,160 volt systems; "I_{sc}" is the three-phase, short-circuit current in amperes of the system; "t" is the clearing time in seconds of the outby circuit-interrupting device; and "d" is the thickness in inches of the metal wall/cover adjacent to an area of potential arcing.

(2) The minimum free distance must be increased by 1.5 inches for 4,160 volt systems and 0.7 inches for 2,400 volt systems when the adjacent wall area is the top of the enclosure. If a steel shield is mounted in conjunction with an aluminum wall or cover, the thickness of the steel shield is used to determine the minimum free distances.

(l) *Static pressure testing of explosion-proof enclosures containing high-voltage switchgear.*

(1) *Prototype enclosures.* The following static pressure test must be performed on each prototype design of an explosion-proof enclosure containing high-voltage switchgear prior to the explosion tests.

(i) *Test procedure.*

(A) The enclosure must be internally pressurized to at least the design pressure, maintaining the pressure for a minimum of 10 seconds.

(B) Following the pressure hold, the pressure must be removed and the pressurizing agent removed from the enclosure.

(ii) *Acceptable performance.*

(A) During pressurization, the enclosure must not exhibit:

(*1*) Leakage through welds or casting; or

(*2*) Rupture of any part that affects the explosion-proof integrity of the enclosure.

(B) Following removal of the pressurizing agents, the enclosure must not exhibit:

(*1*) Cracks in welds visible to the naked eye;

(*2*) Permanent deformation exceeding 0.040 inches per linear foot; or

(*3*) Excessive clearances along flame-arresting paths following retightening of fastenings, as necessary.

(2) *Enclosures for production.* Every explosion-proof enclosure containing high-voltage switchgear manufactured after the prototype was tested must undergo one of the following tests or procedures:

(i) The static pressure test specified in paragraph (l)(1)(i) of this section; or

(ii) An MSHA-accepted quality assurance procedure covering inspection of the enclosure.

(A) The quality assurance procedure must include a detailed check of parts against the drawings to determine that—

(*1*) The parts and the drawings coincide; and

(*2*) The requirements stated in part 18 have been followed with respect to materials, dimensions, configuration and workmanship.

(B) [Reserved]

Appendix I to Subpart D [Amended]

■ 3. Add Table 10 to Appendix I to Subpart D of Part 18 to read as follows:

* * * * *

TABLE 10—HIGH VOLTAGE TRAILING CABLE AMPACITIES AND OUTSIDE DIAMETERS

Power conductor	Ampacity*	Outside diameter** (inches)		
Size AWG or kcmil	Amperes per conductor	SHD–GC 2001 to 5000 volts	SHD–CGC 2001 to 5000 volts	SHD–PCG 2001 to 5000 volts
6	93	1.56	1.62	.....
4	122	1.68	1.73	.....
3	140	1.78	1.82	1.94
2	159	1.87	1.91	2.03
1	184	1.95	1.98	2.12
1/0	211	2.08	2.10	2.26
2/0	243	2.20	2.20	2.40
3/0	279	2.36	2.36	2.58
4/0	321	2.50	2.50	2.76
250	355	2.69	2.69	.....
300	398	2.81	2.81	.....
350	435	2.95	2.95	.....
500	536	3.31	3.31	.....

These ampacities are based on single isolated conductor in air, operated with open-circuited shield for a 90 °C conductor temperature and an ambient temperature of 40 °C.

** Tolerances for the outside diameter are +8%/−5%.

PART 75—MANDATORY SAFETY STANDARDS—UNDERGROUND COAL MINES

■ 4. The authority citation for Part 75 continues to read as follows:

Authority: 30 U.S.C. 811.

■ 5. Add §§ 75.823 through 75.834 to subpart I, to read as follows:

§ 75.823 Scope.

Sections 75.823 through 75.834 of this part are electrical safety standards applicable to 2,400 volt continuous mining machines and circuits. A "qualified person" as used in these sections means a person meeting the requirements of § 75.153. Other standards in 30 CFR apply to these circuits and equipment where appropriate.

§ 75.824 Electrical protection.

(a) *Trailing cable protection.* The trailing cable extending to the high-voltage continuous mining machine must be protected by a circuit-interrupting device of adequate interrupting capacity and voltage that provides short-circuit, overload, ground-fault, and under-voltage protection as follows:

(1) *Short-circuit protection.*

(i) The current setting of the device must be the setting specified in the approval documentation or 75 percent of the minimum available phase-to-phase short-circuit current, whichever is less; and

(ii) The time-delay setting must not exceed 0.050 seconds.

(2) *Ground-fault protection.*

(i) Neutral grounding resistors must limit the ground-fault current to no more than 0.5 ampere.

(ii) Ground-fault devices must cause de-energization of the circuit extending to the continuous mining machine at not more than 0.125 ampere. The time-delay of the device must not exceed 0.050 seconds.

(iii) Look-ahead circuits must detect a ground-fault condition and prevent the circuit-interrupting device from closing as long as the ground-fault condition exists.

(iv) Backup ground-fault devices must cause de-energization of the circuit extending to the continuous mining machine at not more than 40 percent of the voltage developed across the neutral grounding resistor when a ground fault occurs with the neutral grounding resistor open. The time-delay setting of the backup device must not exceed 0.25 seconds.

(v) Thermal devices must detect a sustained ground-fault current in the neutral grounding resistor and must de-energize the incoming power. The device must operate at either 50 percent of the maximum temperature rise of the neutral grounding resistor or 302° F (150° C), whichever is less. Thermal protection must not be dependent on control power and may consist of a current transformer and over-current

relay in the neutral grounding resistor circuit.

(vi) A single window-type current transformer that encircles all three-phase conductors must be used to activate the ground-fault device protecting the continuous mining machine. Equipment grounding conductors must not pass through the current transformer.

(vii) A test circuit for the ground-fault device must be provided. The test circuit must inject no more than 50 percent of the current rating of the neutral grounding resistor through the current transformer. When the test circuit is activated, the circuit-interrupting device must open.

(3) *Under-voltage protection.* The under-voltage device must operate on a loss of voltage, de-energize the circuit, and prevent the equipment from automatically restarting.

(b) *Re-closing.* Circuit-interrupting devices must not re-close automatically.

(c) *Onboard Power Circuits.* When a grounded-phase indicator light circuit is used and it indicates a grounded-phase fault, the following corrective actions must be taken:

(1) The machine must be moved immediately to a location with a properly supported roof; and

(2) The grounded-phase condition must be located and corrected prior to placing the continuous mining machine back into operation.

§ 75.825 Power centers.

(a) *Main disconnecting switch.* The power center supplying high voltage power to the continuous mining machine must be equipped with a main disconnecting switch that, when in the open position, de-energizes input to all power transformers.

(b) *Trailing cable disconnecting device.* In addition to the main disconnecting switch required in paragraph (a) of this section, the power center must be equipped with a disconnecting device for each circuit that supplies power to a high-voltage continuous mining machine. A disconnecting device is defined as a disconnecting switch or a cable coupler.

(c) *Disconnecting switches.* Each disconnecting switch must be labeled to clearly identify the circuit it disconnects, and be designed and installed as follows:

(1) Rated for the maximum phase-to-phase voltage of the circuit;

(2) Rated for the full-load current of the circuit that is supplied power through the device.

(3) Allow for visual observation, without removing any covers, to verify that the contacts are open;

(4) Ground all power conductors on the load side when the switch is in the "open and grounded" position;

(5) Can only be locked out in the "open and grounded" position; and

(6) Safely interrupts the full-load current of the circuit or causes the current to be interrupted automatically before the disconnecting switch opens.

(d) *Barriers and covers.* All compartments that provide access to high-voltage circuits must have barriers and/or covers to prevent miners from contacting energized high-voltage circuits.

(e) *Main disconnecting switch and control circuit interlocking.* The control circuit must be interlocked with the main disconnecting switch in the power center so that:

(1) When the main disconnecting switch is in the "open" position, the control circuit can only be powered through an auxiliary switch in the "test" position; and

(2) When the main disconnecting switch is in the "closed" position, the control circuit can only be powered through an auxiliary switch in the "normal" position.

(f) *Interlocks.* Each cover or removable barrier providing access to high-voltage circuits must be equipped with at least two interlock switches. Except when the auxiliary switch is on the "test" position, removal of any cover or barrier that exposes energized high-voltage circuits must cause the interlock switches to automatically de-energize the incoming circuit to the power center.

(g) *Emergency stop switch.* The power center must be equipped with an externally accessible emergency stop switch hard-wired into the incoming ground-wire monitor circuit that de-energizes the incoming high-voltage in the event of an emergency.

(h) *Grounding stick.* The power center must be equipped with a grounding stick to be used prior to performing electrical work to assure that high-voltage capacitors are discharged and circuits are de-energized. The power center must have a label readily identifying the location of the grounding stick. The grounding stick must be stored in a dry location.

(i) *Caution label.* All compartments providing access to energized high-voltage conductors and parts must display a caution label to warn miners against entering the compartments before de-energizing incoming high-voltage circuits.

§ 75.826 High-voltage trailing cables.

High-voltage trailing cables must:

(a) Meet existing trailing cable requirements and the approval requirements of the high-voltage continuous mining machine; and

(b) Meet existing ground-check conductor requirements (§ 75.804) or have a stranded center ground-check conductor not smaller than a No. 16 A.W.G.

§ 75.827 Guarding of trailing cables.

(a) *Guarding.*

(1) The high-voltage cable must be guarded in the following locations:

(i) From the power center cable coupler for a distance of 10 feet inby the power center;

(ii) From the entrance gland for a distance of 10 feet outby the last strain clamp on the continuous mining machine; and,

(iii) At any location where the cable could be damaged by moving equipment.

(2) Guarding must be constructed using nonconductive flame-resistant material or grounded metal.

(b) *Suspended cables and cable crossovers.* When equipment must cross any portion of the cable, the cable must be either:

(1) Suspended from the mine roof; or

(2) Protected by a cable crossover having the following specifications:

(i) A minimum length of 33 inches;

(ii) A minimum width of 17 inches;

(iii) A minimum height of 3 inches;

(iv) A minimum cable placement area of two and one half-inches (2½″) high by four and one-quarter inches (4¼″) wide;

(v) Made of nonconductive material;

(vi) Made of material with a distinctive color. The color black must not be used; and

(vii) Made of material that has a minimum compressive strength of 6,400 pounds per square inch (psi).

§ 75.828 Trailing cable pulling.

The trailing cable must be de-energized prior to being pulled by any equipment other than the continuous mining machine. The cable manufacturer's recommended pulling procedures must be followed when pulling the trailing cable with equipment other than the continuous mining machine.

§ 75.829 Tramming continuous mining machines in and out of the mine and from section to section.

(a) *Conditions of use.* Tramming the continuous mining machine in and out of the mine and from section to section must be done in accordance with movement requirements of high-voltage power centers and portable transformers (§ 75.812) and as follows:

(1) The power source must not be located in areas where permissible equipment is required;

(2) The continuous mining machine must not be used for mining or cutting purposes, unless a power center is used in accordance with §§ 75.823 through 75.828 and §§ 75.830 through 75.833;

(3) Low-, medium-, and high-voltage cables must comply with §§ 75.600–1, 75.907, and 75.826, as applicable; and

(4) The energized high-voltage cable must be mechanically secured onboard the continuous mining machine. This provision applies only when using the power sources specified in paragraphs (c)(2) and (c)(3) of this section.

(b) *Testing prior to tramming.* Prior to tramming the continuous mining machine,

(1) A qualified person must activate the ground-fault and ground-wire monitor test circuits of the power sources specified in paragraph (c) of this section to assure that the corresponding circuit-interrupting device opens the circuit. Corrective actions and recordkeeping resulting from these tests must be in accordance with §§ 75.832(f) and (g).

(2) Where applicable, a person designated by the mine operator must activate the test circuit for the grounded-phase detection circuit on the continuous mining machine to assure that the detection circuit is functioning properly. Corrective actions resulting from this test must be in accordance with § 75.832(f).

(c) *Power sources.* In addition to the power center specified in § 75.825, the following power sources may be used to tram the continuous mining machine.

(1) *Medium-voltage power source.* A medium-voltage power source is a source that supplies 995 volts through a trailing cable (See Figure 1 of this section) to the continuous mining machine. The medium-voltage power source must—

(i) Not be used to back-feed the high-voltage circuits of the continuous mining machine; and

(ii) Meet all applicable requirements for medium-voltage circuits in 30 CFR 75.

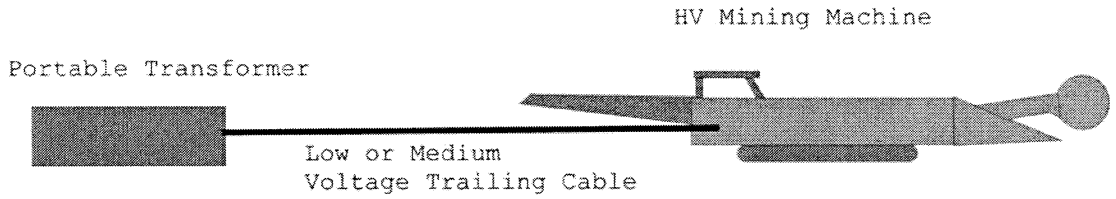

Figure 1-Power Source-75.829(c)(1) 995 volts used for tramming

(2) *Step-up transformer.* A step-up transformer is a transformer that steps up the low or medium voltage to high voltage (See Figure 2 in this section) and must meet the following requirements:

(i) The trailing cable supplying low or medium voltage to the step-up transformer must meet the applicable requirements of 30 CFR part 75;

(ii) The high-voltage circuit output of the step-up transformer supplying power to the continuous mining machine must meet the applicable provisions of § 75.824;

(iii) The step-up transformer enclosure must be—

(A) Securely mounted to minimize vibration on:

(*1*) The continuous mining machine; or

(*2*) A sled/cart that must be connected to the continuous mining machine by a tow-bar and be in close proximity to the mining machine.

(B) Grounded as follows:

(*1*) Connected to the incoming ground conductor of the low- or medium-voltage trailing cable;

(*2*) Bonded by a No. 1/0 A.W.G. or larger external grounding conductor to the continuous mining machine frame; and

(*3*) Bonded by a No. 1/0 A.W.G. or larger external grounding conductor to the metallic shell of each cable coupler.

(C) Equipped with:

(*1*) At least two interlock switches for each of the enclosure covers; and

(*2*) An external emergency stop switch to remove input power to the step-up transformer.

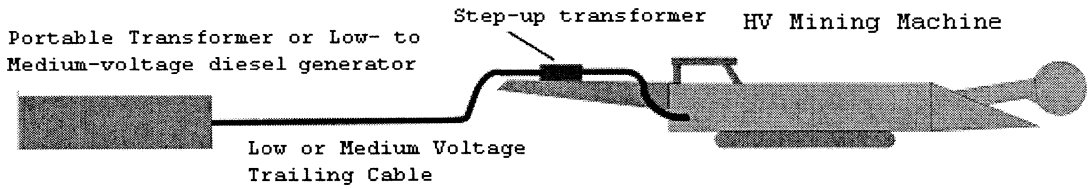

Figure 2 - Power source - 75.829(c)(2) 480 or 995 volts to a step-up transformer to 2300 volts for tramming

§ 75.830 Splicing and repair of trailing cables.

(a) *Splices and repairs.*

(1) Splicing means the mechanical joining of one or more severed conductors in a single length of a cable including the replacement of: Insulation, semi-conductive tape, metallic shielding, and the outer jacket(s).

(2) Repair means to fix damage to any component of the cable other than the conductor.

(3) Splices and repairs to high-voltage trailing cables must be made:

(i) Only by a qualified person trained in the proper methods of splicing and repairing high-voltage trailing cables;

(ii) In a workman-like manner;

(iii) In accordance with § 75.810; and

(iv) Using only MSHA-approved high-voltage kits that include instructions for outer-jacket repairs and splices.

(b) *Splicing limitations.*

(1) Splicing of the high-voltage trailing cable within 35 feet of the continuous mining machine is prohibited.

(2) Only four (4) splices will be allowed at any one time for the portion of the trailing cable that extends from the continuous miner outby for a distance of 300 feet.

§ 75.831 Electrical work; troubleshooting and testing.

(a) *Trailing cable and continuous mining machine electrical work procedures.* Prior to performing electrical work, other than troubleshooting and testing, on the high-voltage trailing cable or the continuous mining machine, a qualified person must de-energize the power center and follow procedures specified in paragraph (1) or (2):

(1) If a trailing cable disconnecting switch is provided:

(i) Open and ground the power conductors, lock out and tag the disconnecting switch; and

(ii) Lock out and tag the plug to the power receptacle.

(2) If a trailing cable disconnecting switch is not provided and a cable coupler is used as a disconnecting device:

(i) Remove the plug from the power receptacle and connect it to the grounding receptacle;

(ii) Lock out and tag the plug to the grounding receptacle; and

(iii) Place a dust cover over the power receptacle.

(b) *Troubleshooting and testing the trailing cable.* During troubleshooting and testing, the de-energized high-voltage cable may be disconnected from the power center only for that period of time necessary to locate the defective condition. Prior to troubleshooting and testing trailing cables, a qualified person must perform the following:

(1) If a trailing cable disconnecting switch is provided:

(i) Open and ground power conductors and lock out and tag the disconnecting switch;

(ii) Disconnect the plug from the power receptacle;

(iii) Lock out and tag the plug; and

(iv) Place a dust cover over the power receptacle.

(2) If a trailing cable disconnecting switch is not provided and a cable coupler is used as a disconnecting device:

(i) Remove the plug from the power receptacle and connect it to the grounding receptacle to ground the power conductors;

(ii) Remove the plug from the grounding receptacle and install a lock and tag on the plug; and

(iii) Place a dust cover over the power receptacle.

(c) *Troubleshooting and testing limitations.* Troubleshooting and testing energized circuits must be performed only:

(1) On low- and medium-voltage circuits;

(2) When the purpose of troubleshooting and testing is to determine voltages and currents;

(3) By qualified persons; and

(4) When using protective gloves in accordance with the following table:

Circuit voltage	Type of glove required
Greater than 120 volts (nominal) (not intrinsically safe)	Rubber insulating gloves with leather protectors.
40 volts to 120 volts (nominal) (both intrinsically safe and non-intrinsically safe).	Either rubber insulating gloves with leather protectors or dry work gloves.
Greater than 120 volts (nominal) (intrinsically safe)	Either rubber insulating gloves with leather protectors or dry work gloves.

(d) *Power center electrical work procedures.* Before any work is performed inside any compartment of the power center, except for troubleshooting and testing energized circuits as specified in paragraph (c) of this section, a qualified person must:

(1) De-energize affected circuits;

(2) Open the corresponding disconnecting switch, lock it out, and tag it to assure the circuit is isolated;

(3) Visually verify that the contacts of the disconnecting switch are open and grounded; and

(4) Discharge all high-voltage capacitors and circuits.

(e) *Locking out and tagging responsibilities.*

(1) When more than one qualified person is performing electrical work, including troubleshooting and testing, each person must install an individual lock and tag. Each lock and tag must be removed only by the persons who installed them.

(2) If the person who installed the lock and tag is unavailable, the lock and tag may be removed by a person authorized by the operator, provided that:

(i) The authorized person is a qualified person; and

(ii) The mine operator assures that the person who installed the lock and tag is aware that the lock and tag have been removed.

§ 75.832 Frequency of examinations; recordkeeping.

(a) *Continuous mining machine examination.* At least once every 7 days, a qualified person must examine each high-voltage continuous mining machine to verify that electrical protection, equipment grounding, permissibility, cable insulation, and control devices are properly installed and maintained.

(b) *Ground-fault test circuit.* At least once every 7 days, and prior to tramming the high-voltage continuous mining machine, a qualified person must activate the ground-fault test circuit to verify that it will cause the corresponding circuit-interrupting device to open.

(c) *Ground-wire monitor test.* At least once every 7 days, and prior to tramming the high-voltage continuous mining machine, a qualified person must examine and test each high-voltage continuous mining machine ground-wire monitor circuit to verify that it will cause the corresponding circuit-interrupting device to open.

(d) *Trailing cable inspections.*

(1) Once each day during the shift that the continuous mining machine is first energized, a qualified person must de-energize and inspect the entire length of the high-voltage trailing cable from the power center to the continuous mining machine. The inspection must include examination of the outer jacket repairs and splices for damage, and assure guarding is provided where required.

(2) At the beginning of each shift that the continuous mining machine is energized, a person designated by the mine operator must de-energize and visually inspect the high-voltage trailing cable for damage to the outer jacket. This inspection must be conducted from the continuous mining machine to the following locations:

(i) The last open crosscut;

(ii) Within 150 feet of the working place during retreat or second mining; or

(iii) Up to 150 feet from the continuous mining machine when the machine is used in outby areas.

(e) *Grounded-phase detection test.* When a grounded-phase test circuit is provided on a high-voltage continuous mining machine, a person designated by the mine operator must activate the test circuit at the beginning of each production shift to assure that the detection circuit is functioning properly.

(f) *Corrective action.* When examinations or tests of equipment reveal a risk of fire, electrical shock, ignition, or operational hazard, the equipment must be immediately removed from service or repaired.

(g) *Record of tests.*

(1) At the completion of examinations and tests required under paragraphs (a), (b), and (c) of this section, the person conducting the examinations and tests must:

(i) Certify by signature and date that the examinations and tests have been conducted.

(ii) Make a record of any unsafe condition found.

(2) Any corrective action(s) must be recorded by the person taking the corrective action.

(3) The record must be countersigned by the mine foreman or equivalent mine official by the end of the mine foreman's or the equivalent mine official's next regularly scheduled working shift.

(4) Records must be maintained in a secure book that is not susceptible to alteration or electronically in a computer system so as to be secure and not susceptible to alteration.

(5) Certifications and records must be kept for at least 1 year and must be made available for inspection by authorized representatives of the Secretary and representatives of miners.

§ 75.833 Handling high-voltage trailing cables.

(a) *Cable handling.*

(1) Miners must not handle energized trailing cables unless they are wearing high-voltage insulating gloves, which include the rubber gloves and leather outer protector gloves, or are using insulated cable handling tools that meet the requirements of paragraph (c) or (d) of this section.

(2) Miners must not handle energized high-voltage cables with any parts of their bodies except by hand in accordance with paragraph (1) above.

(b) *Availability.* Each mine operator must make high-voltage insulating gloves or insulated cable handling tools available to miners handling energized high-voltage trailing cables.

(c) *High-voltage insulating gloves.* High-voltage insulating gloves must meet the following requirements:

(1) The rubber gloves must be designed and maintained to have a voltage rating of at least Class 1 (7,500 volts) and tested every 30 days in accordance with publication ASTM F496–02a, "Standard Specification for In-Service Care of Insulating Gloves and Sleeves" (2002). The Director of the Federal Register approved this incorporation by reference in accordance with 5 U.S.C. 522(a) and 1 CFR part 51. ASTM F496–02a may be obtained from the American Society for Testing and Materials, 100 Barr Harbor Drive, West Conshohocken, Pennsylvania 19428–2959, call 610–832–9500 or go to *http://astm.org*. ASTM F496–02a is available for inspection at any MSHA Coal Mine Safety and Health District office, at the MSHA Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, VA 22209–3939, 202–693–9440, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*.

(2) The rubber glove portion must be air-tested at the beginning of each shift to assure its effectiveness.

(3) Both the leather protector and rubber insulating gloves must be visually examined before each use for signs of damage or defects.

(4) Damaged rubber gloves must be removed from the underground area of the mine or destroyed. Leather protectors must be maintained in good condition or replaced.

(d) *Insulated cable handling tools.* Insulated cable handling tools must be:

(1) Rated and properly maintained to withstand at least 7,500 volts;

(2) Designed and manufactured for cable handling;

(3) Visually examined before each use for signs of damage or defects; and

(4) Removed from the underground area of the mine or destroyed if damaged or defective.

§ 75.834 Training.

In addition to existing part 48 task training, hazard training, training for qualified persons under existing § 75.153, and annual refresher training, the following specialized training shall be provided and specified in the part 48 plan:

(a) Training for miners who perform maintenance on high-voltage continuous mining machines in high-voltage safety, testing, and repair and maintenance procedures.

(b) Training for personnel who work in the vicinity of high-voltage continuous mining machines in safety procedures and precautions for moving the high-voltage machines or the trailing cables.

■ 6. Amend § 75.1002 by adding paragraph (b)(5) to read as follows:

§ 75.1002 Installation of electric equipment and conductors; permissibility.

* * * * *

(b) * * *

(5) Shielded high-voltage cables supplying power to permissible continuous mining machines.

[FR Doc. 2010–7309 Filed 4–5–10; 8:45 am]

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