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Presidential Documents

Title 3—

The President

Proclamation 8502 of April 20, 2010

National Equal Pay Day, 2010

By the President of the United States of America

A Proclamation

Throughout our Nation's history, extraordinary women have broken barriers to achieve their dreams and blazed trails so their daughters would not face similar obstacles. Despite decades of progress, pay inequity still hinders women and their families across our country. National Equal Pay Day symbolizes the day when an average American woman's earnings finally match what an average American man earned in the past year. Today, we renew our commitment to end wage discrimination and celebrate the strength and vibrancy women add to our economy.

Our Nation's workforce includes more women than ever before. In households across the country, many women are the sole breadwinner, or share this role equally with their partner. However, wage discrimination still exists. Nearly half of all working Americans are women, yet they earn only about 80 cents for every dollar men earn. This gap increases among minority women and those with disabilities.

Pay inequity is not just an issue for women; American families, communities, and our entire economy suffer as a result of this disparity. We are still recovering from our economic crisis, and many hardworking Americans are still feeling its effects. Too many families are struggling to pay their bills or put food on the table, and this challenge should not be exacerbated by discrimination. I was proud that the first bill I signed into law, the Lilly Ledbetter Fair Pay Restoration Act, helps women achieve wage fairness. This law brings us closer to ending pay disparities based on gender, age, race, ethnicity, religion, or disability by allowing more individuals to challenge inequality.

To further highlight the challenges women face and to provide a coordinated Federal response, I established the White House Council on Women and Girls. My Administration also created a National Equal Pay Enforcement Task Force to bolster enforcement of pay discrimination laws, making sure women get equal pay for an equal day's work. And, because the importance of empowering women extends beyond our borders, my Administration created the first Office for Global Women's Issues at the Department of State.

We are all responsible for ensuring every American is treated equally. From reshaping attitudes to developing more comprehensive community-wide efforts, we are taking steps to eliminate the barriers women face in the workforce. Today, let us reaffirm our pledge to erase this injustice, bring our Nation closer to the liberty promised by our founding documents, and give our daughters and granddaughters the gift of true equality.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim April 20, 2010, as National Equal Pay Day. I call upon all Americans to acknowledge the injustice of wage discrimination and join my Administration's efforts to achieve equal pay for equal work.

IN WITNESS WHEREOF, I have hereunto set my hand this twentieth day of April, in the year of our Lord two thousand ten, and of the Independence of the United States of America the two hundred and thirty-fourth.

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Rules and Regulations

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

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 1001, 1005, 1006, 1007, 1030, 1032, 1033, 1124, 1126, and 1131

[Doc. No. AMS–DA–09–0007; AO–14–A78, et al.; DA–09–02]

Milk in the Northeast and Other Marketing Areas; Order Amending the Orders

AGENCY: Agricultural Marketing Service, USDA

ACTION: Final rule.

SUMMARY: This final rule amends the producer-handler definitions of all Federal milk marketing orders to limit exemption from pooling and pricing provisions to those with total route disposition and sales of packaged fluid milk products to other plants of 3 million pounds or less per month. The exempt plant definition will continue to limit disposition of Class I milk products to 150,000 pounds or less per month. A referendum was held and the required number of producers approved the issuance of the orders as amended.

DATES: *Effective Date:* June 1, 2010.

FOR FURTHER INFORMATION CONTACT: Gino M. Tosi or Jack Rower, Senior Marketing Specialists, Order Formulation and Enforcement Branch, USDA/AMS/Dairy Programs, STOP 0231–Room 2971, 1400 Independence Avenue, SW., Washington, DC 20250–0231, (202) 720–2357, e-mail addresses: *gino.tosi@ams.usda.gov* and *jack.rower@ams.usda.gov*.

SUPPLEMENTARY INFORMATION: This final rule amends the producer-handler provisions of all Federal milk marketing orders to limit exemption from pooling and pricing to those with total route disposition and packaged sales of fluid milk products to other plants of 3 million pounds or less per month. The exempt plant definition will continue to limit disposition of Class I milk products to 150,000 pounds or less per month.

Accordingly, this final rule adopts proposed amendments detailed in the final decision (75 FR 10122).

This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have a retroactive effect.

The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674) (AMAA), provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the AMAA, any handler subject to an order may request modification or exemption from such order by filing with the Department of Agriculture (USDA) a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with the law. A handler is afforded the opportunity for a hearing on the petition. After a hearing, USDA would rule on the petition. The AMAA provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review USDA's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Regulatory Flexibility Act and Paperwork Reduction Act

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the Agricultural Marketing Service has considered the economic impact of this action on small entities and has certified that this rule would not have a significant economic impact on a substantial number of small entities. For the purposes of the Regulatory Flexibility Act, a dairy farm is considered a small business if it has an annual gross revenue of less than $750,000, and a dairy products manufacturer is a small business if it has fewer than 500 employees. For the purposes of determining which dairy farms are small businesses, the $750,000 per year criterion was used to establish a marketing guideline of 500,000 pounds per month. Although this guideline does not factor in additional monies that may be received by dairy producers, it should be an inclusive standard for most small dairy farms. For purposes of determining a handler's size, if the plant is part of a larger company operating multiple plants that collectively exceed the 500-employee limit, the plant will be considered a large business even if the local plant has fewer than 500 employees.

Producer-handlers are dairy farms that process their own milk production. These entities must operate one or more dairy farms as a pre-condition to operating processing plants as producer-handlers. The size of the dairy farm(s) determines the production level of the operation and is a controlling factor in the capacity of the processing plant and possible sales volume associated with the producer-handler entity. Determining whether a producer-handler is considered a small or large business is therefore dependent on the capacity of its dairy farm(s), where a producer-handler with annual gross revenue in excess of $750,000 is considered a large business.

The amendments to the producer-handler provisions will obligate some large producer-handlers under the Federal milk marketing order system to the same terms as other fully regulated handlers of their respective orders provided they meet the criteria for qualification as fully regulated plants. Entities currently defined as producer-handlers under the terms of their order will be subject to the pooling and pricing provisions of the order if their total route disposition of fluid milk products and sales of packaged fluid milk products to other plants exceeds 3 million pounds per month.

Producer-handlers with total route disposition and sales of packaged fluid milk products to other plants of 3 million pounds or less during the month will not be subject to the pooling and pricing provisions of any order as a result of this rulemaking. To the extent that current producer-handlers have route disposition of fluid milk products and sales of packaged fluid milk products to other plants outside of the order's marketing areas, such route disposition and sales to other plants will be subject to the pooling and pricing provisions of the orders if total

route disposition and sales to other plants cause them to become fully regulated.

If current producer-handlers have total route disposition and packaged sales of fluid milk products of more than 3 million pounds during a month, such producer-handlers will be regulated under the pooling and pricing provisions of the orders like other fully regulated handlers. Such large producer-handlers will account to the pool for their uses of milk at the applicable minimum class prices and pay the difference between their use-value of milk and the blend price of the order to that order's producer-settlement fund.

While this may cause an economic impact on those entities with more than three million pounds of route sales and sales to other plants that are currently considered producer-handlers under the Federal order system, the impact is offset by the benefit to other small businesses. With respect to dairy farms whose milk is pooled on Federal marketing orders, such dairy farms who have not heretofore shared in the additional revenue that accrues from the marketwide pooling of Class I sales by producer-handlers will share in such revenue. All producer-handlers who dispose of more than three million pounds of fluid milk products per month will account to all market participants at the announced Federal order Class I price for such use.

To the extent that some large producer-handlers become subject to the pooling and pricing provisions of Federal milk marketing orders, such will be determined by their capacity as handlers. Such entities will no longer face the restrictions necessary to maintain producer-handler status and the resulting exemption from the pooling and pricing provisions of the orders. In general, this includes being able to buy or acquire any quantity of milk from dairy farmers or other handlers instead of being limited by the current constraints of the orders. Additionally, the burden of balancing their milk production is relieved. Milk production in excess of what is needed to satisfy their Class I route disposition and sales to other plants may receive the minimum price protection established under the terms of the Federal milk marketing orders. The burden of balancing milk supplies will be borne by all producers and handlers under the terms of the orders.

During May 2009, the month in which the public hearing was held, the Northeast order had 57 pool distributing plants, 10 pool supply plants, 16 partially regulated distributing plants, 13 producer-handler plants and 40 exempt plants. Of the 83 regulated plants, 49 plants or 59 percent were considered large businesses. Of the 13,050 dairy farmers whose milk was pooled on the order, 628 farms or 5 percent were considered large businesses and 12,422 farms or 95 percent of dairy farms in the Northeast order were considered small businesses. Most of these dairy farms, large and small, could benefit by receiving a higher blend price, if the monthly limit of 3 million pounds of total Class I route disposition and sales of packaged fluid milk to other plants is adopted for producer-handlers.

During May 2009, the Appalachian order had 21 pool distributing plants, 1 pool supply plant, 2 partially regulated distributing plants, 1 producer-handler plant and 4 exempt plants. Of the 24 regulated plants, 21 plants or 88 percent were considered large businesses. Of the 2,516 dairy farmers whose milk was pooled on the order, 159 farms or 6 percent were considered large businesses and 2,357 farms or 94 percent of dairy farms in the Appalachian order were considered small businesses. Most of these dairy farms, large and small, could benefit by receiving a higher blend price, if the monthly limit of 3 million pounds of total Class I route disposition and sales of packaged fluid milk to other plants is adopted for producer-handlers.

During May 2009, the Florida order had 11 pool distributing plants, 5 partially regulated distributing plants and 2 exempt plants. The order had no pool supply plants or producer-handler plants as of May 2009. Of the 16 regulated plants, 12 plants or 75 percent were considered large businesses. Of the 249 dairy farmers whose milk was pooled on the order, 105 farms or 42 percent were considered large businesses and 144 farms or 58 percent of dairy farms in the Florida order were considered small businesses. Most of these dairy farms, large and small, could benefit by receiving a higher blend price, if the monthly limit of 3 million pounds of total Class I route disposition and sales of packaged fluid milk to other plants is adopted for producer-handlers.

During May 2009, the Southeast order had 22 pool distributing plants, 3 pool supply plants, 6 partially regulated distributing plants and 12 exempt plants. The order had no producer-handler plants as of May 2009. Of the 31 regulated plants, 28 plants or 90 percent were considered large businesses. Of the 2,992 dairy farmers whose milk was pooled on the order, 187 farms or 6 percent were considered large businesses and 2,805 farms or 94 percent of dairy farms in the Southeast order were considered small businesses. Most of these dairy farms, large and small, could benefit by receiving a higher blend price, if the monthly limit of 3 million pounds of total Class I route disposition and sales of packaged fluid milk to other plants is adopted for producer-handlers.

During May 2009, the Upper Midwest order had 24 pool distributing plants, 53 pool supply plants, 2 partially regulated distributing plants, 5 producer-handler plants and 11 exempt plants. Of the 79 regulated plants, 37 plants or 47 percent were considered large businesses. Of the 15,336 dairy farmers whose milk was pooled on the order, 1,001 farms or 7 percent were considered large businesses and 14,335 farms or 93 percent of dairy farms in the Upper Midwest order were considered small businesses. Most of these dairy farms, large and small, could benefit by receiving a higher blend price, if the monthly limit of 3 million pounds of total Class I route disposition and sales of packaged fluid milk to other plants is adopted for producer-handlers.

During May 2009, the Central order had 30 pool distributing plants, 12 pool supply plants, 1 partially regulated distributing plant, 7 producer-handler plants and 19 exempt plants. Of the 43 regulated plants, 35 plants or 81 percent were considered large businesses. Of the 3,600 dairy farmers whose milk was pooled on the order, 413 farms or 11 percent were considered large businesses and 3,187 farms or 89 percent of dairy farms in the Central order were considered small businesses. Most of these dairy farms, large and small, could benefit by receiving a higher blend price, if the monthly limit of 3 million pounds of total Class I route disposition and sales of packaged fluid milk to other plants is adopted for producer-handlers.

During May 2009, the Mideast order had 22 pool distributing plants, 2 pool supply plants, 4 partially regulated distributing plants, 1 producer-handler plant and 17 exempt plants. Of the 28 regulated plants, 8 plants or 29 percent were considered large businesses. Of the 7,238 dairy farmers whose milk was pooled on the order, 504 farms or 7 percent were considered large businesses and 6,734 farms or 93 percent of dairy farms in the Mideast order were considered small businesses. Most of these dairy farms, large and small, could benefit by receiving a higher blend price, if the monthly limit of 3 million pounds of total Class I route disposition and sales of packaged fluid milk to other plants is adopted for producer-handlers.

During May 2009, the Pacific Northwest order had 15 pool distributing plants, 8 pool supply plants, 13 partially regulated distributing plants, 5 producer-handler plants and 2 exempt plants. Of the 36 regulated plants, 20 plants or 56 percent were considered large business. Of the 657 dairy farmers whose milk was pooled on the order, 326 farms or 50 percent were considered large businesses. Because the Pacific Northwest order already fully regulates producer-handlers with monthly route distribution in excess of three million pounds per month, the action will have a minimal effect on small farmers whose milk is pooled on the order.

During May 2009, the Southwest order had 19 pool distributing plants, 2 pool supply plants, 1 partially regulated distributing plant, 5 producer-handler plants and 2 exempt plants. Of the 79 regulated plants, 19 plants or 86 percent were considered large businesses. Of the 588 dairy farmers whose milk was pooled on the order, 318 farms or 54 percent were considered large businesses and 270 farms or 46 percent of dairy farms in the Southeast order were considered small businesses. Most of these dairy farms, large and small, could benefit by receiving a higher blend price, if the monthly limit of 3 million pounds of total Class I route disposition and sales of packaged fluid milk to other plants is adopted for producer-handlers.

During May 2009, the Arizona order had 5 pool distributing plants, 1 pool supply plant, 15 partially regulated distributing plants and 1 exempt plant. The order had no producer-handler plants as of May 2009. Of the 21 regulated plants, 13 plants or 62 percent were considered large businesses. Of the 100 dairy farmers whose milk was pooled on the order, 95 farms or 95 percent were considered large businesses. Because the Arizona order already fully regulates producer-handlers with monthly route distribution in excess of 3 million pounds, the action will have a minimal effect on small farmers whose milk is pooled on the order.

As of May 2009, in their capacity as producers, 15 producer-handlers would be considered large producers as their annual marketings exceed 6 million pounds of milk (500,000 pounds per month). During the same month, 22 producer-handlers would be considered small producers. Record evidence indicates that as of March 2009, seven large producer-handlers had total route sales of two million pounds or more per month. Therefore, seven or fewer large producer-handlers could potentially become subject to the pooling and pricing provisions of Federal milk marketing orders because of route disposition of more than three million pounds per month.

This final rule amends the producer-handler provisions of all Federal milk marketing orders to limit exemption from pooling and pricing to those with total route disposition and packaged sales of fluid milk products to other plants of 3 million pounds or less per month. The exempt plant definition continues to limit disposition of Class I milk products to 150,000 pounds or less per month. Based on the above analysis, USDA has concluded that the amendments will not have a negative impact on small entities and may in fact benefit small and large dairy producers.

The Agricultural Marketing Service (AMS) is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

A review of reporting requirements was completed under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). It was determined that these amendments would have minimal impact on reporting, recordkeeping, or other compliance requirements for entities currently considered producer-handlers under Federal milk marketing orders because they would remain identical to the current requirements applicable to all other regulated handlers who are subject to the pooling and pricing provisions. No new forms are proposed and no additional reporting requirements would be necessary.

This notice does not require additional information collection that needs clearance by the Office of Management and Budget (OMB) beyond currently approved information collection. The primary sources of data used to complete the forms are routinely used in most business transactions. Forms require only a minimal amount of information that can be supplied without data processing equipment or a trained statistical staff. Thus, the information collection and reporting burden is relatively small. Requiring the same reports for all handlers does not significantly disadvantage any handler that is smaller than the industry average.

Prior Documents in This Proceeding

Notice of Hearing: Issued April 3, 2009; published April 9, 2009 (74 FR 16296).

Recommended Decision: Issued October 15, 2009; published October 21, 2009 (74 FR 54383).

Final Decision: Issued February 18, 2010; published March 4, 2010 (75 FR 10122).

Findings and Determinations

The findings and determinations hereinafter set forth supplement those that were made when the orders were first issued and when they were amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

The following findings are hereby made with respect to the Northeast and other marketing orders:

(a) Findings Upon the Basis of the Hearing Record

A public hearing was held with regard to certain proposed amendments to the tentative marketing agreements and to the orders regulating the handling of milk in the Northeast and other marketing areas. The hearing was held pursuant to the provisions of the AMAA and the applicable rules of practice and procedure (7 CFR part 900).

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said orders as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the AMAA;

(2) The parity prices of milk, as determined pursuant to section 2 of the AMAA, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the aforesaid marketing areas. The minimum prices specified in the orders as hereby amended are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest;

(3) The said orders, as hereby amended, regulate the handling of milk in the same manner as, and are applicable only to persons in the respective classes of industrial or commercial activity specified in, the marketing agreements upon which a hearing has been held; and

(4) All milk and milk products handled by handlers, as defined in the tentative marketing agreements and the orders as hereby amended, are in the current of interstate commerce or directly burden, obstruct, or affect interstate commerce in milk or its products.

(b) Additional Findings

The amendments to these orders are known to handlers. The final decision containing the proposed amendments to this order was issued on February 18, 2010 and published in the **Federal Register** on March 4, 2010 (75 FR 10122).

The changes that result from these amendments will not require extensive preparation or substantial alteration in the method of operation for handlers. In view of the foregoing, it is hereby found and determined that good cause exists for making these amendments effective following June 1, 2010. (Section 553(d), Administrative Procedures Act, 5 U.S.C. 551–559.)

(c) Determinations

It is hereby determined that:

(1) The refusal or failure of handlers (excluding cooperative associations specified in section 8c(9) of the AMAA) of more than 50 percent of the milk, which is marketed within the specified marketing areas, to sign a proposed marketing agreement, tends to prevent the effectuation of the declared policy of the AMAA;

(2) The issuance of this order amending the Northeast and other orders is the only practical means pursuant to the declared policy of the AMAA of advancing the interests of producers as defined in the orders as hereby amended; and

(3) The issuance of this order amending the Northeast and other orders is favored by at least two-thirds of the producers who were engaged in the production of milk for sale in the respective marketing areas.

List of Subjects in 7 CFR Parts 1001, 1005, 1006, 1007, 1030, 1032, 1033, 1124, 1126, and 1131

Milk marketing orders.

Order Relative to Handling

■ *It is therefore ordered,* that on and after the effective date hereof, the handling of milk in the Northeast and other marketing areas shall be in conformity to and in compliance with the terms and conditions of the orders, as amended, and as hereby amended, as follows:

■ For reasons set forth in the preamble, 7 CFR parts 1001, 1005, 1006, 1007, 1030, 1032, 1033, 1124, 1126, and 1131 are amended as follows:

■ 1. The authority citation for 7 CFR parts 1001, 1005, 1006, 1007, 1030, 1032, 1033, 1124, 1126, and 1131 continues to read as follows:

Authority: 7 U.S.C. 601–674, and 7253.

PART 1001—MILK IN THE NORTHEAST MARKETING AREA

■ 2. Amend § 1001.10 by revising paragraph (a) to read as follows:

§ 1001.10 Producer-handler.

* * * * *

(a) Operates a dairy farm and a distributing plant from which there is route disposition in the marketing area, and from which total route disposition and packaged sales of fluid milk products to other plants during the month does not exceed 3 million pounds;

* * * * *

PART 1005—MILK IN THE APPALACHIAN MARKETING AREA

■ 3. Amend § 1005.10 by revising paragraph (a) to read as follows:

§ 1005.10 Producer-handler.

* * * * *

(a) Operates a dairy farm and a distributing plant from which there is route disposition in the marketing area, and from which total route disposition and packaged sales of fluid milk products to other plants during the month does not exceed 3 million pounds;

* * * * *

PART 1006—MILK IN THE FLORIDA MARKETING AREA

■ 4. Amend § 1006.10 by revising paragraph (a) to read as follows:

§ 1006.10 Producer-handler.

* * * * *

(a) Operates a dairy farm and a distributing plant from which there is route disposition in the marketing area, and from which total route disposition and packaged sales of fluid milk products to other plants during the month does not exceed 3 million pounds;

* * * * *

PART 1007—MILK IN THE SOUTHEAST MARKETING AREA

■ 5. Amend § 1007.10 by revising paragraph (a) to read as follows:

§ 1007.10 Producer-handler.

* * * * *

(a) Operates a dairy farm and a distributing plant from which there is route disposition in the marketing area, and from which total route disposition and packaged sales of fluid milk products to other plants during the month does not exceed 3 million pounds;

* * * * *

PART 1030—MILK IN THE UPPER MIDWEST MARKETING AREA

■ 6. Amend § 1030.10 by revising paragraph (a) to read as follows:

§ 1030.10 Producer-handler.

* * * * *

(a) Operates a dairy farm and a distributing plant from which there is route disposition in the marketing area, and from which total route disposition and packaged sales of fluid milk products to other plants during the month does not exceed 3 million pounds;

* * * * *

PART 1032—MILK IN THE CENTRAL MARKETING AREA

■ 7. Amend § 1032.10 by revising paragraph (a) to read as follows:

§ 1032.10 Producer-handler.

* * * * *

(a) Operates a dairy farm and a distributing plant from which there is route disposition in the marketing area, and from which total route disposition and packaged sales of fluid milk products to other plants during the month does not exceed 3 million pounds;

* * * * *

PART 1033—MILK IN THE MIDEAST MARKETING AREA

■ 8. Amend § 1033.10 by revising paragraph (a) to read as follows:

§ 1033.10 Producer-handler.

* * * * *

(a) Operates a dairy farm and a distributing plant from which there is route disposition in the marketing area, and from which total route disposition and packaged sales of fluid milk products to other plants during the month does not exceed 3 million pounds;

* * * * *

PART 1124—MILK IN THE PACIFIC NORTHWEST MARKETING AREA

■ 9. Revise § 1124.10 introductory text to read as follows:

§ 1124.10 Producer-handler.

Producer-handler means a person who operates a dairy farm and a distributing plant from which there is route disposition in the marketing area, from which total route disposition and

packaged sales of fluid milk products to other plants during the month does not exceed 3 million pounds, and who the market administrator has designated a producer-handler after determining that all of the requirements of this section have been met.

* * * * *

PART 1126—MILK IN THE SOUTHWEST MARKETING AREA

■ 10. Amend § 1126.10 by revising paragraph (a) to read as follows:

§ 1126.10 Producer-handler.

* * * * *

(a) Operates a dairy farm and a distributing plant from which there is route disposition in the marketing area, and from which total route disposition and packaged sales of fluid milk products to other plants during the month does not exceed 3 million pounds;

* * * * *

PART 1131—MILK IN THE ARIZONA MARKETING AREA

■ 11. Revise § 1131.10 introductory text to read as follows:

§ 1131.10 Producer-handler.

Producer-handler means a person who operates a dairy farm and a distributing plant from which there is route disposition in the marketing area, from which total route disposition and packaged sales of fluid milk products to other plants during the month does not exceed 3 million pounds, and who the market administrator has designated a producer-handler after determining that all of the requirements of this section have been met.

* * * * *

Dated: April 19, 2010.

David R. Shipman,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 2010–9402 Filed 4–22–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0502; Directorate Identifier 2009–NE–02–AD; Amendment 39–16273; AD 2010–09–08]

RIN 2120–AA64

Airworthiness Directives; General Electric Company (GE) CJ610 Series Turbojet Engines and CF700 Series Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for GE CJ610 series turbojet engines and CF700 turbofan engines with AFT Technologies combustion liners, part number (P/N) AFT–5016T30G02. This AD requires removing from service, AFT Technologies combustion liners, P/N AFT–5016T30G02. This AD results from a report of an AFT Technologies combustion liner that released a large section of the inner combustion liner and reports of six combustion liners with premature cracks. We are issuing this AD to prevent premature cracks in the combustion liner, which could release pieces of the inner combustion liner. A release of pieces of the inner combustion liner could cause an uncontained failure of the engine turbine and damage to the airplane.

DATES: This AD becomes effective May 28, 2010.

ADDRESSES: The Docket Operations office is located at Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.

FOR FURTHER INFORMATION CONTACT: Norman Perenson, Aerospace Engineer, New York Aircraft Certification Office, FAA, Engine & Propeller Directorate, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; *e-mail: norman.perenson@faa.gov;* telephone (516) 228–7337; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION: The FAA proposed to amend 14 CFR part 39 with a proposed AD. The proposed AD applies to GE CJ610 series turbojet engines and CF700 turbofan engines with AFT Technologies combustion liners, P/N AFT–5016T30G02 installed. We published the proposed AD in the **Federal Register** on September 9, 2009 (74 FR 46395). That action proposed to require replacing combustion liners, P/N AFT–5016T30G02:

- Before they accumulate 200 hours-since-new (HSN) or 300 cycles-since-new (CSN), or
- Within 15 hours-in-service or 10 cycles-in-service, after the effective date of this AD, whichever occurs first, if the combustion liner has already exceeded 200 HSN or 300 CSN.

Examining the AD Docket

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

Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the comments received.

Agrees With the Proposed AD

One commenter agrees with the AD.

Request To Replace "* * * Other Products of the Same Type Design"

One commenter, AFT Technologies, asks us to replace "* * * other products of the same type design" with "* * * other products of the same manufacture." The commenter feels "The A.D. inadvertently suggests that despite PMA approval to manufacture the subject part, it's failure or potential for failure is the result of a design defect, as opposed to an equally possible manufacturing or assembly defect." And that the AD requires clarification.

We do not agree that there is any need to distinguish between design and manufacture in the AD. The regulation that controls type design, 14 CFR part 21.31, defines type design as design and manufacture. In addition, we didn't make any conclusion as to the cause of the excessive cracking. Determination of the cracking is the responsibility of the PMA holder. As stated in the discussion of the proposed rule, "The PMA holder has not been able to determine the cause of the premature combustion liner failure." Also, the statement "* * * other products of the same type design" appears only in the NPRM preamble section "FAA's Determination and Requirements of the Proposed AD." That

preamble section is not part of the final rule. We didn't change the AD.

Conclusion

We have carefully reviewed the available data, including the comment[s] received, and determined that air safety and the public interest require adopting the AD as proposed.

Costs of Compliance

We estimate that this AD affects 13 engines installed on airplanes of U.S. registry. We also estimate that it will take about 96 work-hours per engine to perform the required actions, and that the average labor rate is $80 per work-hour. Required parts will cost about $7,000 per engine. Based on these figures, we estimate the total cost of the AD to U.S. operators to be $190,840.

Authority for This Rulemaking

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

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

Regulatory Findings

We have determined that this 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 summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary at the address listed under **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration 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 airworthiness directive:

2010–09–08 General Electric Company (GE): Amendment 39–16273. Docket No. FAA–2009–0502; Directorate Identifier 2009–NE–02–AD.

Effective Date

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

Affected ADs

(b) None.

Applicability

(c) This AD applies to GE CJ610 series turbojet and CF700 series turbofan engines with AFT Technologies combustion liner, part number (P/N) AFT–5016T30G02, installed. These engines are installed on, but not limited to, Learjet Inc. model 24 series and model 25 series airplanes, Dassault Aviation Fan Jet Falcon series airplanes, and Sabreliner Corporation NA–265–70 and NA–265–80 series airplanes.

Unsafe Condition

(d) This AD results from a report of an AFT Technologies combustion liner that released a large section of the inner combustion liner and reports of six combustion liners with premature cracks. We are issuing this AD to prevent premature cracks in the combustion liner, which could release pieces of the inner combustion liner. A release of pieces of the inner combustion liner could cause an uncontained failure of the engine turbine and damage to the airplane.

Compliance

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

Replacement of AFT Technologies Combustion Liner P/N AFT–5016T30G02

(f) For engines that have an AFT Technologies combustion liner, P/N AFT–5016T30G02, with fewer than 200 hours-since-new (HSN) or 300 cycles-since-new (CSN), remove the AFT Technologies combustion liner, P/N AFT–5016T30G02, before exceeding 200 HSN or 300 CSN, whichever occurs first.

(g) For engines that have an AFT Technologies combustion liner, P/N AFT–5016T30G02, with 200 HSN or more or 300 CSN or more, remove the AFT Technologies combustion liner, P/N AFT–5016T30G02, within 15 hours-in-service or 10 cycles-in-service, after the effective date of this AD, whichever occurs first.

(h) After the effective date of this AD, don't install any AFT Technologies combustion liner, P/N AFT–5016T30G02, in any engine.

Alternative Methods of Compliance

(i) The Manager, New York Aircraft Certification Office, has the authority to approve alternative methods of compliance for this AD if requested using the procedures found in 14 CFR 39.19.

Related Information

(j) Contact Norman Perenson, Aerospace Engineer, New York Aircraft Certification Office, FAA, Engine & Propeller Directorate, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; *e-mail: norman.perenson@faa.gov;* telephone (516) 228–7337; fax (516) 794–5531, for more information about this AD.

Material Incorporated by Reference

(k) None.

Issued in Burlington, Massachusetts, on April 19, 2010.

Peter A. White,

Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 2010–9376 Filed 4–22–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 529

[Docket No. FDA–2010–N–0002]

Certain Other Dosage Form New Animal Drugs; Detomidine

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Orion Corp. The NADA provides for veterinary prescription use of detomidine hydrochloride oromucosal gel for sedation and restraint of horses.

DATES: This rule is effective April 23, 2010.

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

SUPPLEMENTARY INFORMATION: Orion Corp., Orionintie 1, 02200 Espoo, Finland, filed NADA 141–306 for veterinary prescription use of DORMOSEDAN GEL (detomidine hydrochloride) for sedation and restraint of horses. The application is approved as of March 22, 2010, and the regulations in 21 CFR part 529 are amended by adding new § 529.536 to reflect the approval.

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

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

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

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

List of Subjects in 21 CFR Part 529

Animal drugs.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 529 is amended as follows:

PART 529—CERTAIN OTHER DOSAGE FORM NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 529 continues to read as follows:

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

■ 2. Add § 529.536 to read as follows:

§ 529.536 Detomidine.

(a) *Specifications.* Each milliliter of gel contains 7.6 milligrams (mg) of detomidine hydrochloride.

(b) *Sponsor.* See No. 052483 in § 510.600(c) of this chapter.

(c) *Conditions of use in horses*—(1) *Amount.* Administer 0.018 mg per pound (mg/lb) (0.040 mg/kilogram (kg) sublingually.

(2) *Indications for use.* For sedation and restraint.

(3) *Limitations.* Federal law restricts this drug to use by or on the order of a licensed veterinarian.

Dated: April 19, 2010.

Bernadette Dunham,

Director, Center for Veterinary Medicine.

[FR Doc. 2010–9371 Filed 4–22–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 540

[BOP–1149–I]

RIN 1120–AB49

Inmate Communication With News Media: Removal of Byline Regulations

AGENCY: Bureau of Prisons, Justice.

ACTION: Interim rule.

SUMMARY: In this interim rule, the Bureau of Prisons (Bureau) revises its regulations regarding inmate contact with the community to delete two current Bureau regulations that prohibit inmates from publishing under a byline, due to a recent court ruling invalidating Bureau regulation language containing this prohibition.

DATES: Comments are due by June 22, 2010.

ADDRESSES: Rules Unit, Office of General Counsel, Bureau of Prisons, 320 First Street, NW., Washington, DC 20534.

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 *http://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 contains so much confidential business information that it cannot be effectively redacted, all or part of that comment may not be posted on *http://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.

In this interim rule, the Bureau revises its regulations regarding inmate contact with the community to delete two current Bureau regulations that prohibit inmates from publishing under a byline, due to a recent court ruling invalidating Bureau regulation language containing this prohibition.

Currently, 28 CFR 540.20(b) states as follows: "The inmate may not receive compensation or anything of value for correspondence with the news media. The inmate may not act as reporter or publish under a byline."

Also, current 28 CFR 540.62(d) states as follows: "An inmate currently confined in an institution may not be employed or act as a reporter or publish under a byline."

On August 9, 2007, in *Jordan* v. *Pugh,* 504 F.Supp.2d 1109 (D. Colo. 2007), the court issued a decision invalidating the byline language of § 540.20(b). The court found that not all inmate publishing under a byline jeopardizes security, and overruled the byline portion of the provision as facially overbroad for prohibiting all such activity. The Bureau is not appealing this decision. We

therefore alter the regulations accordingly.

Further, due to the court's findings regarding § 540.20(b), the identical provision in § 540.62(d) will also be deleted.

Administrative Procedure Act

The Administrative Procedure Act (5 U.S.C. 553(b)(3)(B)) allows exceptions to notice-and-comment rulemaking "when the agency for good cause finds * * * that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest." Further, § 553(d) provides an exception to the usual requirement of a delayed effective date when an agency finds "good cause" that the rule be made immediately effective.

This rulemaking is exempt from normal notice-and-comment procedures because advance notice and public comment in this instance is impracticable. It is impracticable to invite public comment on the result of a court order which invalidated the regulatory provision which we now seek to remove. Further, prompt implementation of the court order is necessary to protect the Bureau from liability arising from potential application of an invalidated regulation, and to afford inmates the benefit of the court's decision. Otherwise, this rulemaking makes no change to any rights or responsibilities of the agency or any regulated entities. For the same reasons, the Bureau finds that "good cause" exists to make this rule effective upon publication. Nevertheless, the Bureau invites public comment on this interim rule.

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 § 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 amends 28 CFR part 540 as follows.

PART 540—CONTACT WITH PERSONS IN THE COMMUNITY

■ 1. Revise the authority citation for 28 CFR part 540 to read as follows:

Authority: 5 U.S.C. 301; 551, 552a; 18 U.S.C. 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.

Subpart B—Correspondence

■ 2. Revise § 540.20(b) as follows:

§ 540.20 Inmate correspondence with representatives of the news media.

* * * * *

(b) The inmate may not receive compensation or anything of value for correspondence with the news media. The inmate may not act as reporter.

* * * * *

Subpart E—Contact With News Media

■ 3. Revise § 540.62(d) as follows:

§ 540.62 Institutional visits.

* * * * *

(d) An inmate currently confined in an institution may not be employed or act as a reporter.

* * * * *

[FR Doc. 2010–9373 Filed 4–22–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2010–0256]

RIN 1625–AA00

Safety Zone; Neuse River, New Bern, NC

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the waters of the Neuse River in support of the New Bern, North Carolina Tercentennial Celebration. All vessels are prohibited from transiting the zone except as specifically authorized by the Captain of the Port or his designated representative. The temporary safety zone is necessary to provide for the safety of the crews, spectators, and other users and vessels of the waterway during a Civil War naval bombardment reenactment.

DATES: This rule is effective from 11:30 a.m. through 8 p.m. on May 8, 2010.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2010–0256 and are available online by going to *http://www.regulations.gov,* inserting USCG–2010–0256 in the "Keyword"

box, and then clicking "Search." They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or e-mail CWO4 Stephen Lyons, Waterways Management Division Chief, Coast Guard Sector North Carolina; telephone (252) 247–4525, e-mail *Stephen.W.Lyons2@uscg.mil*. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because insufficient notice was provided to the Coast Guard to publish an NPRM and because the Coast Guard must take immediate measures to ensure the safety of life and property on the navigable waters of the United States.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register.** Delaying the effective date would be contrary to public interest, since immediate action is needed to ensure the public's safety from the hazards associated with maneuvering deep draft sailing vessels in the limits of a narrow channel and the firing of black powder cannons during a Civil War naval bombardment reenactment.

Basis and Purpose

The City of New Bern, North Carolina is sponsoring a Civil War naval bombardment reenactment on the waters of the Neuse River. The naval bombardment will include the 62′ Skipjack Ada Mae, the 72′ Gaff Rigged Schooner Jeanie B, and the 58′ Brigantine Meka II. The sailing vessels will be under sail and firing black powder cannons within the confines of the safety zone. Due to their limited maneuverability and draft, the event vessels are restricted to within 200 yards of the main channel.

Discussion of Rule

The Coast Guard is establishing a temporary safety zone on the waters of the Neuse River bound to the west by the U.S. Route 70 Highway Draw Bridge, from James City extending 700 yards east along the U.S. Highway 17 Highway Fixed Bridge, to a point 300 yards due east of Neuse River Daybeacon 34. The limits of the safety zone will encompass all the waters of the Neuse River bound by the following points; onshore at New Bern in approximate position 35°06′12″ W; 077°02′12″ N thence to 35°05′52″ W; 077°02′15″ N thence to 35°05′49″ W; 077°01′49″ N thence to 35°06′17″ W; 077°01′48″ N thence to 35°06′21″ W; 077°02′06″ N. The temporary safety zone will be enforced from 11:30 a.m. to 1 p.m. and from 6:30 p.m. to 8 p.m. on May 8, 2010. The safety zone is necessary to provide for the safety of the participating vessels, crews, spectators, sponsor vessels, and other users and vessels of the waterway. Persons and vessels will be prohibited from entering into, transiting through, or anchoring within this safety zone unless authorized by the Captain of the Port, or a designated representative.

Regulatory Analyses

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

Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. Although this regulation will restrict access to the area, the effect of this rule will not be significant because: (i) The safety zone will be in effect for a limited duration of time; and (ii), the Coast Guard will give advance notification via maritime advisories so mariners can adjust their plans accordingly.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: The owners or operators of tugs and barges, recreational, and fishing vessels intending to transit the specified portion of the Neuse River from 11:30 a.m. to 1 p.m. and from 6:30 p.m. to 8 p.m. on May 8, 2010.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons. This rule will be in effect for a limited duration of time and before the effective period, the Coast Guard will issue maritime advisories widely available to the users of the waterway.

Assistance for Small Entities

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

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

Collection of Information

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

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction. This rule establishes a temporary safety zone to protect the general public from the hazards associated with maneuvering deep draft sailing vessels in the limits of a narrow channel and the firing of black powder cannons during a civil war naval bombardment reenactment. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T05–0256 to read as follows:

§ 165.T05–0256 Safety Zone; Neuse River, New Bern, NC.

(a) *Definitions.* For the purposes of this section, *Captain of the Port* means the Commander, Sector North Carolina. *Designated representative* means any Coast Guard commissioned, warrant, or petty officer who has been authorized to act on the behalf of the Captain of the Port.

(b) *Location.* The following area is a temporary safety zone: the waters of the Neuse River bound to the west by the U.S. Route 70 Highway Draw Bridge, from James City extending 700 yards east along the U.S. Highway 17 Highway Fixed Bridge, to a point 300 yards due east of Neuse River Daybeacon 34. This zone includes all the waters of the Neuse River bound by the following points; Onshore at New Bern in approximate position 35°06′12″ W; 077°02′12″ N thence to 35°05′52″ W; 077°02′15″ N thence to 35°05′49″ W; 077°01′49″ N thence to 35°06′17″ W; 077°01′48″ N thence to 35°06′21″ W; 077°02′06″ N.

(c) *Regulations.* (1) The general regulations contained in § 165.23 of this part apply to the area described in paragraph (b) of this section.

(2) Persons or vessels requiring entry into or passage through any portion of the safety zone must first request authorization from the Captain of the Port, or a designated representative, unless the Captain of the Port previously announced via Marine Safety Radio Broadcast on VHF Marine Band Radio channel 22 (157.1 MHz) that this regulation will not be enforced in that portion of the safety zone. The Captain of the Port can be contacted at telephone number (252) 247–4570 or by radio on VHF Marine Band Radio, channels 13 and 16.

(d) *Enforcement.* The U.S. Coast Guard may be assisted in the patrol and enforcement of the zone by Federal, State, and local agencies.

(e) *Enforcement period.* This section will be enforced from 11:30 a.m. to

1 p.m. and from 6:30 p.m. to 8 p.m. on May 8, 2010 unless cancelled earlier by the Captain of the Port.

Dated: April 6, 2010.

A. Popiel,

Captain, U.S. Coast Guard, Captain of the Port North Carolina.

[FR Doc. 2010–9497 Filed 4–22–10; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2010–0081]

RIN 1625–AA08

Special Local Regulations for Marine Events; Chester River, Chestertown, MD

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing special local regulations during the reenactment portion of the "Chestertown Tea Party Festival", a marine event to be held on the waters of the Chester River, Chestertown, MD on May 29, 2010. These special local regulations are necessary to provide for the safety of life on navigable waters during the event. This action is intended to temporarily restrict vessel traffic in a portion of the Chester River during the event.

DATES: This rule is effective from 10 a.m. until 5 p.m. on May 29, 2010.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2010–0081 and are available online by going to *http://www.regulations.gov,* inserting USCG–2010–0081 in the "Keyword" box, and then clicking "Search." This material is also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or e-mail Mr. Ronald Houck, Sector Baltimore Waterways Management Division, Coast Guard; telephone 410–576–2674, e-mail *Ronald.L.Houck@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On March 5, 2010, we published a notice of proposed rulemaking (NPRM) entitled "Special Local Regulations for Marine Events; Chester River, Chestertown, MD" in the **Federal Register** (75 FR 043). We received no comments on the proposed rule. No public meeting was requested, and none was held.

Basis and Purpose

On May 29, 2010, the Chestertown Tea Party Festival will sponsor a reenactment in the Chester River at Chestertown, MD. The key component of the event consists of the Schooner SULTANA departing from its berth in Chestertown, transiting 200 yards to an anchorage location, embarking and disembarking Tea Party actors by dinghy, and then returning to its berth. Due to the need for vessel control during the event, the Coast Guard will temporarily restrict vessel traffic in the event area to provide for the safety of participants, spectators and other transiting vessels.

Discussion of Comments and Changes

The Coast Guard received no comments in response to the NPRM. No public meeting was requested and none was held.

Regulatory Analyses

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

Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. Although this regulation will prevent traffic from transiting a portion of the Chester River during the event, the effect of this regulation will not be significant due to the limited duration that the regulated area will be in effect and the extensive advance notifications that will be made to the maritime community via the Local Notice to Mariners and marine information broadcasts, so mariners can adjust their plans accordingly. Additionally, the regulated area has been narrowly tailored to impose the least impact on general navigation yet provide the level of safety deemed necessary. Vessel traffic will be able to transit safely around the regulated area.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule may affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit or anchor in the effected portions of the Chester River during the event.

Although this regulation prevents traffic from transiting a portion of the Chester River at Chestertown, MD during the event, this rule will not have a significant economic impact on a substantial number of small entities for the following reasons. This rule will be in effect for only a limited period. The regulated area is of limited size. Vessel traffic will be able to transit safely around the regulated area. Before the enforcement period, we will issue maritime advisories so mariners can adjust their plans accordingly.

Assistance for Small Entities

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

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

small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(h), of the Instruction. This rule involves implementation of regulations within 33 CFR part 100 applicable to organized marine events on the navigable waters of the United States that could negatively impact the safety of waterway users and shore side activities in the event area. The category of water activities includes but is not limited to sail boat regattas, boat parades, power boat racing, swimming events, crew racing, canoe and sail board racing. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 100

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

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233.

■ 2. Add a temporary section, § 100.35–T05–0081 to read as follows:

§ 100.35–T05–0081 Special Local Regulations for Marine Events; Chester River, Chestertown, MD.

(a) *Regulated area.* The following locations are regulated areas: All waters of the Chester River, within a line connecting the following positions: Latitude 39°12′27″ N, longitude 076°03′46″ W; thence to latitude 39°12′19″ N, longitude 076°03′53″ W; thence to latitude 39°12′25″ N, longitude 076°03′41″ W; thence to latitude 39°12′16″ N, longitude 076°03′48″ W; thence to the point of origin at latitude 39°12′27″ N, longitude 076°03′46″ W, located at Chestertown, Maryland. All coordinates reference Datum NAD 1983.

(b) *Definitions:* (1) *Coast Guard Patrol Commander* means a commissioned, warrant, or petty officer of the U.S. Coast Guard who has been designated by the Commander, Coast Guard Sector Baltimore.

(2) *Official Patrol* means any vessel assigned or approved by Commander, Coast Guard Sector Baltimore with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

(c) *Special local regulations:* (1) Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(2) The operator of any vessel in the regulated area must:

(i) Stop the vessel immediately when directed to do so by the Coast Guard

Patrol Commander or any Official Patrol.

(ii) Proceed as directed by the Coast Guard Patrol Commander or any Official Patrol.

(d) *Enforcement period.* This section will be enforced from 10 a.m. until 5 p.m. on May 29, 2010.

(3) The Coast Guard will publish a notice in the Fifth Coast Guard District Local Notice to Mariners and issue a marine information broadcast on VHF–FM marine band radio announcing specific event date and times.

Dated: April 7, 2010.

Mark P. O'Malley,

Captain, U.S. Coast Guard, Captain of the Port Baltimore, Maryland.

[FR Doc. 2010–9496 Filed 4–22–10; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2006–0990; FRL–9141–1]

Approval and Promulgation of Air Quality Implementation Plans; New Mexico; Revisions to New Mexico Transportation Conformity Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency is approving revisions to the New Mexico State Implementation Plan (SIP) concerning the State transportation conformity rules. On November 2, 2006, the State of New Mexico submitted revisions to the New Mexico Administrative Code (NMAC) 20.2.99 to ensure consistency with amendments to the Federal Transportation Conformity Rule. On June 27, 2007, and May 13, 2009, the State submitted further revisions to NMAC 20.2.99 for consistency with subsequent Federal rule revisions. These plan revisions meet statutory and regulatory requirements, and are consistent with EPA's guidance.

DATES: This rule is effective on June 22, 2010 without further notice, unless EPA receives relevant adverse comment by May 24, 2010. If EPA receives such comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket No. EPA–R06–OAR–2006–0990, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *EPA Region 6 "Contact Us" Web site: http://epa.gov/region6/r6coment.htm.* Please click on "6PD" (Multimedia) and select "Air" before submitting comments.
- *E-mail:* Mr. Guy Donaldson at *donaldson.guy@epa.gov.* Please also send a copy by e-mail to the person listed in the **FOR FURTHER INFORMATION CONTACT** section below.
- *Fax:* Mr. Guy Donaldson, Chief, Air Planning Section (6PD–L), at fax number 214–665–7263.
- *Mail:* Mr. Guy Donaldson, Chief, Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733.
- *Hand or Courier Delivery:* Mr. Guy Donaldson, Chief, Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733. Such deliveries are accepted only between the hours of 8 a.m. and 4 p.m. weekdays except for legal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R06–OAR–2006–0990. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, 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 Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. The file will be made available by appointment for public inspection in the Region 6 FOIA Review Room between the hours of 8:30 a.m. and 4:30 p.m. weekdays except for legal holidays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below or Mr. Bill Deese at 214–665–7253 to make an appointment. If possible, please make the appointment at least two working days in advance of your visit. There will be a 15 cent per page fee for making photocopies of documents. On the day of the visit, please check in at the EPA Region 6 reception area at 1445 Ross Avenue, Suite 700, Dallas, Texas.

The State submittal is also available for public inspection at the State Air Agency listed below during official business hours by appointment:

New Mexico Environment Department, 1190 St. Francis Drive, Suite N4050, Santa Fe, New Mexico 87505.

FOR FURTHER INFORMATION CONTACT: Jeffrey Riley, Air Planning Section (6PD–L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733, telephone (214) 665–8542; fax number 214–665–7263; e-mail address: *Riley.Jeffrey@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, whenever "we", "us", or "our" is used, we mean the EPA.

Outline

I. Background
II. Analysis of the State's Submittals
1. November 2, 2006, New Mexico SIP Submittal
2. June 27, 2007, New Mexico SIP Submittal
3. May 13, 2009, New Mexico SIP Submittal
III. Final Action
IV. Statutory and Executive Order Reviews

I. Background

The 1990 CAA required each State to submit a revision to its SIP to address the requirements of Section 176(c) of the Act pertaining to conformity determinations for metropolitan transportation plans, transportation improvement programs and other projects funded by the Federal Highway Administration or the Federal Transit Administration. This process is known as "transportation conformity," and serves to ensure that federally supported highway and transit projects are consistent with the purpose of the State's air quality plans in nonattainment and maintenance areas. EPA promulgated final rules on transportation conformity on November, 24, 1993 (58 FR 62188), and these rules have been revised many times since; the latest revision is that of January 24, 2008 (73 FR 4420). The initial New Mexico SIP revision that incorporated EPA's conformity rules was adopted on November 9, 1998, and it also has been revised several times to remain in alignment with the Federal rules. The latest EPA approval of New Mexico transportation conformity SIP provisions was on March 20, 2000 (65 FR 14877). This approval was a partial approval, with no action taken on sections 109.C.1, 114, 128.C–F, 137.E, 139.A.2, 140.A.1, and 147.B, which could not be approved at that time due to the March 2, 1999 United States Court of Appeals for the District of Columbia Circuit decision in *Environmental Defense Fund* v. *Environmental Protection Agency,* 167 F.3d 641 (D.C. Cir. 1999). Revisions to the New Mexico transportation conformity rules were submitted by the State to EPA on November 2, 2006, June 27, 2007, and May 13, 2009.

The November 2, 2006 SIP revision addresses amendments to the Federal transportation conformity rule made on August 6, 2002 (67 FR 50808) and July 1, 2004 (68 FR 40003). The June 27, 2007 SIP revision submitted by the State addresses amendments to the Federal transportation conformity rule made on May 6, 2005 (70 FR 24279) and March 10, 2006 (71 FR 12467). The May 13, 2009 SIP revision submitted by the State addresses amendments to the Federal transportation conformity rule made on January 24, 2008 (73 FR 4420). For more information on the State submittals and the amendments to the Federal transportation conformity rule please see our Technical Support Document (TSD) found in the electronic docket for this action. The electronic docket can be found at the Web site *http://www.regulations.gov* (Docket number EPA–R06–OAR–2006–0990).

II. Analysis of the State's Submittals

1. November 2, 2006, New Mexico SIP Submittal

In this submittal the State amended NMAC 20.2.99 as represented in Table 1, to bring the rules into alignment with Federal provisions. These changes include:

- Minor revisions to the 18-month requirement for the initial SIP submissions;
- Addition of a grace period for newly designated nonattainment areas;
- Adding the 1997 8-hour Ozone and fine particulate matter ($PM_{2.5}$) National Ambient Air Quality Standards (NAAQS); and
- Miscellaneous revisions to clarify the existing regulation and improve implementation.

This revision is consistent with the amendments to the Federal transportation conformity rule made on August 6, 2002 (67 FR 50808) and July 1, 2004 (68 FR 40003) which incorporate:

- A requirement that conformity to be redetermined within 18 months of an initial State implementation plan submission;
- A one-year grace period for newly designated nonattainment areas, consistent with an October 27, 2000 amendment to the Clean Air Act (42 U.S.C. 7506(c)(6));
- Procedures for implementing conformity for the 1997 ozone and $PM_{2.5}$ NAAQS;
- Procedures for advancing highway and transit projects during a conformity lapse, and
- The administrative process for determining whether the motor vehicle emissions budgets (MVEB) in SIP submissions are appropriate to use in conformity determinations.

A more detailed analysis of the amendments contained in this SIP submittal can be found in the TSD found in the electronic docket for this action.

2. June 27, 2007, New Mexico SIP Submittal

In this submittal the State amended NMAC 20.2.99 as represented in Table 1, to bring the rules into alignment with Federal provisions by:

- Adding nitrogen oxides (NO_X), volatile organic compounds (VOCs), sulfur oxides (SO_X), and ammonia (NH_3), each of which are precursors to $PM_{2.5}$, to the transportation conformity determinations for $PM_{2.5}$ nonattainment and maintenance areas; and
- Establishing criteria for which transportation projects must be analyzed for local impacts of particle emissions in nonttainment and maintenance areas for the $PM_{2.5}$ and coarse particulate matter (PM_{10}) NAAQS.

This revision is consistent with the amendments to the Federal transportation conformity rule made on May 6, 2005 (70 FR 24279) and March 10, 2006 (71 FR 12467) which:

- Incorporate NO_X, VOCs, SO_X, and NH_3 as possible transportation-related $PM_{2.5}$ precursors;
- Require that upon submittal of a $PM_{2.5}$ SIP, a $PM_{2.5}$ precursor must be considered in an area's conformity determinations if the SIP determines that emissions for that precursor are a significant contributor to the area's $PM_{2.5}$ air quality problem;
- Require criteria for determining which transportation projects must be analyzed for local impacts of particle emissions in $PM_{2.5}$ and PM_{10} nonattainment and maintenance areas.

A more detailed analysis of the amendments contained in this SIP submittal can be found in the TSD found in the electronic docket for this action.

2. May 13, 2009, New Mexico SIP Submittal

In this submittal the State amended NMAC 20.2.99 sections represented in Table 1 of this notice. The amendments help bring the State rules into alignment with Federal provisions.

These changes:

- Provide more time for State and local governments to meet conformity requirements;
- Provide a one-year grace period before the consequences of not meeting certain conformity requirements apply;
- Allow the option of shortening the timeframe of conformity determinations;
- Provide procedures for areas to use in substituting or adding transportation control measures (TCMs) to approved SIPs, and;
- Streamline other provisions.

This revision is consistent with the January 24, 2008 (73 FR 4420) transportation conformity rule amendments. These amendments were made by EPA to implement the 2005 Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU), (Pub. L. 109–59), and implement other changes not related to SAFETEA–LU. Prior to SAFETEA–LU, States were required to address these provisions as well as all other Federal conformity rule provisions in their conformity SIPs. With amendments to address SAFETEA–LU, EPA now allows States to submit

conformity SIPs that address only the following sections of the Federal rule that need to be tailored to a State's individual circumstances:

• 40 CFR 93.105, which addresses consultation procedures;

• 40 CFR 93.122(a)(4)(ii), which states that conformity SIPs must require that written commitments to control measures be obtained prior to a conformity determination if the control measures are not included in an MPO's transportation plan and TIP, and that such commitments be fulfilled; and

• 40 CFR 93.125(c), which states that conformity SIPs must require that written commitments to mitigation measures be obtained prior to a project-level conformity determination, and that project sponsors comply with such commitments.

Other changes to Federal transportation conformity rule regulations not related to SAFETEA–LU were made:

• Allowing the U.S. Department of Transportation, in consultation with EPA, to make categorical hot-spot findings for projects in areas that are in nonattainment or maintenance for carbon monoxide; and

• Removing the provision that allowed 8-hour ozone areas to use other tests for conformity instead of their 1-hour ozone SIP budgets.

However, the State has opted to revise 20.2.99 NMAC to reflect all amendments to the Federal Transportation Conformity Rule. A more detailed analysis of the amendments contained in this SIP submittal can be found in the TSD for this action.

III. Final Action

EPA is approving revisions to the New Mexico SIP and associated rules which were submitted by NMED on November 2, 2006, June 27, 2007, and May 13, 2009. These revisions achieve the purpose of bringing the State SIP and associated rules into alignment with Federal statutes and regulations. Table 1 represents the revised sections of NMAC 20.2.99 that EPA is approving in this action. Where sections were repeated in subsequent revisions, the more recent revisions are taken to supersede the previous revisions, since the more recent language captures the previous revisions.

TABLE 1—REVISIONS TO NMAC 20.2.99

[By submittal date]

NMAC 20.2.99 section	State effective date	Submittal date to EPA
109, 114, 116, 117, 118, 120, 121, 123, 129, 136, 143, 144, 145, 146, 147, 149, 152, 153, 154	10/15/2005	11/2/2006
150	9/1/2007	6/27/2007
2, 7, 111, 112, 113, 115, 122, 124, 125, 128, 133, 134, 135, 137, 138, 139, 140, 148, 151	6/1/2009	5/13/2009

We have evaluated the State's submittals and have determined that they meet the applicable requirements of the Clean Air Act and EPA regulations, and are consistent with EPA policy.

EPA is publishing this rule without prior proposal because we view this as a non-controversial amendment and anticipate no adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the SIP revision if relevant adverse comments are received. This rule will be effective on June 22, 2010 without further notice unless we receive adverse comment by May 24, 2010. If we receive adverse comments, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so now. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

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 22, 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, Ozone, Nitrogen dioxides, Particulate matter, Reporting and recordkeeping requirements, Transportation conformity, Transportation-air quality planning, Volatile organic compounds.

Dated: April 9, 2010.

Lawrence E. Starfield,

Acting Regional Administrator, Region 6.

■ 40 CFR part 52 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 GG—New Mexico

■ 2. The first table in § 52.1620(c) entitled "EPA Approved New Mexico Regulations" is amended by revising the entry for Part 99 and adding new entries for 20.2.99.1 to 20.2.99.154 immediately following the entry for Part 99 to read as follows:

§ 52.1620 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED NEW MEXICO REGULATIONS

State citation	Title/subject	State approval/ effective date	EPA approval date	Explanation
New Mexico Administrative Code (NMAC) Title 20—Environment Protection Chapter 2—Air Quality				
*	*	*	*	*
Part 99—Transportation Conformity				
20.2.99.1	Issuing Agency	11/23/1998	3/20/2000, 65 FR 14873	
20.2.99.2	Scope	6/1/2009	4/23/2010, [Insert FR page number where document begins].	
20.2.99.3	Statutory Authority	11/23/1998	3/20/2000, 65 FR 14873	
20.2.99.4	Duration	11/23/1998	3/20/2000, 65 FR 14873	
20.2.99.5	Effective Date	11/23/1998	3/20/2000, 65 FR 14873	
20.2.99.6	Objective	11/23/1998	3/20/2000, 65 FR 14873	
20.2.99.7	Definitions	6/1/2009	4/23/2010, [Insert FR page number where document begins].	
20.2.99.8	Documents	11/23/1998	3/20/2000, 65 FR 14873	
20.2.99.9 to 20.2.99.108	[Reserved]	11/23/1998	3/20/2000, 65 FR 14873	
20.2.99.109	Applicability	10/15/2005	4/23/2010, [Insert FR page number where document begins].	
20.2.99.110	Priority	11/23/1998	3/20/2000, 65 FR 14873	
20.2.99.111	Frequency of Conformity Determinations	6/1/2009	4/23/2010, [Insert FR page number where document begins].	
20.2.99.112	Frequency of Conformity Determinations—Transportation Plans.	6/1/2009	4/23/2010, [Insert FR page number where document begins].	
20.2.99.113	Frequency of Conformity Determinations—Transportation Improvement Programs.	6/1/2009	4/23/2010, [Insert FR page number where document begins].	
20.2.99.114	Frequency of Conformity Determinations—Projects.	10/15/2005	4/23/2010, [Insert FR page number where document begins].	
20.2.99.115	Frequency of Conformity Determinations—Triggers for Transportation Plan and Tip Conformity Determinations.	6/1/2009	4/23/2010, [Insert FR page number where document begins].	

EPA-APPROVED NEW MEXICO REGULATIONS—Continued

State citation	Title/subject	State approval/ effective date	EPA approval date	Explanation
20.2.99.116	Consultation	10/15/2005	4/23/2010, [Insert FR page number where document begins].	
20.2.99.117	Agency Roles in Consultation	10/15/2005	4/23/2010, [Insert FR page number where document begins].	
20.2.99.118	Agency Responsibilities in Consultation	10/15/2005	4/23/2010, [Insert FR page number where document begins].	
20.2.99.119	General Consultation Procedures	11/23/1998	3/20/2000, 65 FR 14873	
20.2.99.120	Consultation Procedures for Specific Major Activities.	10/15/2005	4/23/2010, [Insert FR page number where document begins].	
20.2.99.121	Consultation Procedures for Specific Routine Activities.	10/15/2005	4/23/2010, [Insert FR page number where document begins].	
20.2.99.122	Notification Procedures for Routine Activities	6/1/2009	4/23/2010, [Insert FR page number where document begins].	
20.2.99.123	Conflict Resolution and Appeals to the Governor.	10/15/2005	4/23/2010, [Insert FR page number where document begins].	
20.2.99.124	Public Consultation Procedures	6/1/2009	4/23/2010, [Insert FR page number where document begins].	
20.2.99.125	Content of Transportation Plans and Timeframes of Conformity Determinations.	6/1/2009	4/23/2010, [Insert FR page number where document begins].	
20.2.99.126	Relationship of Transportation Plan and Tip Conformity to the NEPA Process.	11/23/1998	3/20/2000, 65 FR 14873	
20.2.99.127	Fiscal Constraints for Transportation Plans and TIPs.	11/23/1998	3/20/2000, 65 FR 14873	
20.2.99.128	Criteria and Procedures for Determining Conformity of Transportation Plans, Programs, and Projects—General.	6/1/2009	4/23/2010, [Insert FR page number where document begins].	
20.2.99.129	Criteria and Procedures—Latest Planning Assumptions.	10/15/2005	4/23/2010, [Insert FR page number where document begins].	
20.2.99.130	Criteria and Procedures—Latest Emissions Model.	11/23/1998	3/20/2000, 65 FR 14873	
20.2.99.131	Criteria and Procedures—Consultation	11/23/1998	3/20/2000, 65 FR 14873	
20.2.99.132	Criteria and Procedures—Timely Implementation of TCMs.	11/23/1998	3/20/2000, 65 FR 14873	
20.2.99.133	Criteria and Procedures—Currently Conforming Transportation Plan and TIP.	6/1/2009	4/23/2010, [Insert FR page number where document begins].	
20.2.99.134	Criteria and Procedures—Projects from a Transportation Plan and TIP.	6/1/2009	4/23/2010, [Insert FR page number where document begins].	
20.2.99.135	Criteria and Procedures—Localized Co, PM_{10}, and $PM_{2.5}$ Violations (Hot Spots).	6/1/2009	4/23/2010, [Insert FR page number where document begins].	
20.2.99.136	Criteria and Procedures—Compliance with PM_{10}, and $PM_{2.5}$ Control Measures.	10/15/2005	4/23/2010, [Insert FR page number where document begins].	
20.2.99.137	Criteria and Procedures—Motor Vehicle Emissions Budget.	6/1/2009	4/23/2010, [Insert FR page number where document begins].	
20.2.99.138	Criteria and Procedures—Interim Emissions in Areas without Motor Vehicle Emissions Budgets.	6/1/2009	4/23/2010, [Insert FR page number where document begins].	
20.2.99.139	Consequences of Control Strategy Implementation Plan Failures.	6/1/2009	4/23/2010, [Insert FR page number where document begins].	
20.2.99.140	Requirements for Adoption or Approval of Projects by Other Recipients of Funds Designated Under Title 23 U.S.C. or the Federal Transit Laws.	6/1/2009	4/23/2010, [Insert FR page number where document begins].	

EPA-APPROVED NEW MEXICO REGULATIONS—Continued

State citation	Title/subject	State approval/ effective date	EPA approval date	Explanation
20.2.99.141	Procedures for Determining Regional Transportation-Related Pollutant Emissions—General Requirements.	11/23/1998	3/20/2000, 65 FR 14873	
20.2.99.142	Procedures for Determining Regional Transportation-Related Pollutant Emissions—Analysis in Serious, Severe, and Extreme Ozone Nonattainment Areas and Serious Carbon Monoxide Areas.	11/23/1998	3/20/2000, 65 FR 14873	
20.2.99.143	Procedures for Determining Regional Transportation-Related Pollution Emissions—Two-Year Grace Period for Regional Emissions Analysis Requirements in Certain Ozone and Co Areas.	10/15/2005	4/23/2010, [Insert FR page number where document begins].	
20.2.99.144	Procedures for Determining Regional Transportation-Related Pollutant Emissions—Areas Which are not Serious, Severe or Extreme Ozone Nonattainment Areas or Serious Carbon Monoxide Areas.	10/15/2005	4/23/2010, [Insert FR page number where document begins].	
20.2.99.145	Procedures for Determining Regional Transportation-Related Pollutant Emissions—PM_{10} from Construction-Related Fugitive Dust.	10/15/2005	4/23/2010, [Insert FR page number where document begins].	
20.2.99.146	Procedures for Determining Regional Transportation—Related Pollutant Emissions—$PM_{2.5}$ from Construction—Related Fugitive Dust.	10/15/2005	4/23/2010, [Insert FR page number where document begins].	
20.2.99.147	Procedures for Determining Regional Transportation-Related Pollutant Emissions—Reliance on Previous Regional Emissions Analysis.	10/15/2005	4/23/2010, [Insert FR page number where document begins].	
20.2.99.148	Procedures for Determining Localized CO, PM_{10}, and $PM_{2.5}$ Concentrations (Hot-Spot Analysis).	6/1/2009	4/23/2010, [Insert FR page number where document begins].	
20.2.99.149	Using the Motor Vehicle Emissions Budget in the SIP (or Implementation Plan Submission).	10/15/2005	4/23/2010, [Insert FR page number where document begins].	
20.2.99.150	Enforceability of Design Concept and Scope and Project-Level Mitigation and Control Measures.	9/1/2007	4/23/2010, [Insert FR page number where document begins].	
20.2.99.151	Exemptions	6/1/2009	4/23/2010, [Insert FR page number where document begins].	
20.2.99.152	Traffic Signal Synchronization Projects	10/15/2005	4/23/2010, [Insert FR page number where document begins].	
20.2.99.153	Special Exemptions from Conformity Requirements for Pilot Program Areas.	10/15/2005	4/23/2010, [Insert FR page number where document begins].	
20.2.99.154	Savings Provision	10/15/2005	4/23/2010, [Insert FR page number where document begins].	

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[FR Doc. 2010–9366 Filed 4–22–10; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 483

[CMS–2266–F]

RIN 0938–AO82

Medicare and Medicaid Programs; Waiver of Disapproval of Nurse Aide Training Program in Certain Cases

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final rule.

SUMMARY: This final rule will permit a waiver of a nurse aide training disapproval as it applies to skilled nursing facilities, in the Medicare program, and nursing facilities, in the Medicaid program, that are assessed a civil money penalty of at least $5,000 for noncompliance that is not related to quality of care. This is a statutory provision enacted by section 932 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) (Pub. L. 108–173, enacted December 8, 2003).

DATES: *Effective Date:* These regulations are effective on May 24, 2010.

FOR FURTHER INFORMATION CONTACT: Pat Miller, (410) 786–6780.

SUPPLEMENTARY INFORMATION:

I. Background

Waiver of Disapproval of Nurse Aide Training Program in Certain Cases

To participate in the Medicare and/or Medicaid programs, long-term care facilities must be certified as meeting Federal participation requirements. Long-term care facilities include skilled nursing facilities (SNFs) for Medicare and nursing facilities (NFs) for Medicaid. The Federal participation requirements for these facilities are specified in regulations at 42 CFR part 483, subpart B.

Section 1864(a) of the Social Security Act (the Act) authorizes the Secretary to enter into agreements with State survey agencies to determine whether SNFs meet the Federal participation requirements for Medicare. Section 1902(a)(33)(B) of the Act provides for State survey agencies to perform the same survey tasks for facilities participating or seeking to participate in the Medicaid program. The results of Medicare and Medicaid related surveys are used by the Centers for Medicare & Medicaid Services and the State Medicaid agency, respectively, as the basis for a decision to enter into or deny a provider agreement, recertify facility participation in one or both programs, or impose remedies on a noncompliant facility.

To assess compliance with Federal participation requirements, surveyors conduct onsite inspections (surveys) of facilities. In the survey process, surveyors directly observe the actual provision of care and services to residents and the effect or possible effects of that care to evaluate whether the care furnished meets the assessed needs of individual residents.

Sections 1819(b)(5) and 1919(b)(5) of the Act and implementing regulations at § 483.75(e) require that all individuals employed by a facility as nurse aides must have successfully completed a nurse aide training program.

Sections 1819(f)(2) and 1919(f)(2) of the Act provide that facility-based nurse aide training could be offered either by the facility or in the facility by another entity approved by the State. Therefore, a facility in good standing (that is, one that is not subject to an event that results in disapproval of a nurse aide training program) may offer a facility-based program in one of two ways: It can either conduct its own facility-based State-approved nurse aide training and have the State or a State-approved entity administer the nurse aide competency evaluation program, or it can offer the entire nurse aide training and competency evaluation program through an outside entity which has been approved by the State to conduct both components.

Further, these sections prohibit States from approving a nurse aide training and competency evaluation program or a nurse aide competency evaluation program offered by or in a SNF or NF when any of the following specified events have occurred in that facility—

- The facility has operated under a nurse staffing waiver;
- The facility has been subject to an extended or partial extended survey unless the survey shows the facility is in compliance with the participation requirements; or
- The facility has been assessed a civil money penalty of not less than $5,000, or has been subject to a denial of payment, the appointment of a temporary manager, termination, or in the case of an emergency, been closed and had its residents transferred.

Program disapproval is a required, rather than a discretionary, response whenever any of these events occur. Since facilities are required to employ nurse aides who have successfully completed a training program, when a facility loses its ability to conduct facility-based training, it must, for the duration of the 2-year program disapproval, provide the required training through either the State or another State-approved outside organization as provided by § 483.151(a). However, sections 1819(f)(2)(C) and 1919(f)(2)(C) of the Act permit a waiver for program disapproval of programs offered in (but not by) a facility if the State—

- Determines that there is no other such program offered within a reasonable distance of the facility;
- Assures that an adequate environment exists for operating the program in the facility; and
- Notifies the State Long Term Care Ombudsman of this determination and these assurances.

Section 932(c)(2)(B) of the MMA added sections 1819(f)(2)(D) and 1919(f)(2)(D) of the Act which allows the Secretary to waive a facility's disapproval of its nurse aide training program upon application of a facility if the disapproval resulted from the imposition of a civil money penalty of at least $5,000 and that is not related to quality of care provided to residents in the facility.

II. Summary of the Proposed Provisions and Response to Comments

In the November 23, 2007 **Federal Register** 72 FR 65692, we published the proposed rule entitled, "Medicare and Medicaid Programs; Waiver of Disapproval of Nurse Aide Training Program in Certain Cases and Nurse Aide Petition for Removal of Information for Single Finding of Neglect" and provided for a 30 day comment period.

A. Waiver of Disapproval of Nurse Aide Training Program in Certain Cases

The statutory provisions set forth in the published proposed rule pertain specifically and only to the civil money penalty disapproval trigger under sections 1819(f)(2)(B)(iii)(I)(c) and 1919(f)(2)(B)(iii)(I)(c) of the Act and establish authority for CMS to approve a facility's request to waive disapproval of its nurse aide training program when that facility has been assessed a civil money penalty of at least $5,000 for deficiencies that are not related to quality of care.

We received a total of 23 comments from various States, health care associations and consumer advocacy organizations. The comments for this

proposal ranged from general support or general opposition of the proposal to more specific comments regarding the new training program disapproval waiver.

B. Nurse Aide Petition for Removal of Information for Single Finding of Neglect

We received nine comments on the proposed rule provision requiring the State to establish a procedure to permit a nurse aide to petition the State to have a single finding of neglect removed from the nurse aide registry if the State determines that the employment and personal history of the nurse aide does not reflect a pattern of abusive behavior or neglect and the neglect involved in the original finding was a single occurrence as found at sections 1819(g)(1)(D) and 1919(g)(1)(D) of the Social Security Act (section 4755 of the Balanced Budget Act of 1997—Pub. L. 105–33, enacted on August 5, 1997). The thoughtful comments received on these provisions of the proposed rule necessitate that CMS take additional time to further explore the issues put forth in the comments and analyze the statute to reconsider whether regulatory action is necessary and the available options before proceeding. In the event that the Secretary determines that regulatory action is required for this issue, we will publish a new notice of proposed rulemaking. Therefore, we are not finalizing these provisions in this final rule and are removing them from this final rule at this time.

General Comments

Waiver of Disapproval of Nurse Aide Training Program in Certain Cases

Comment: One commenter suggested that CMS propose a legislative change that would remove the loss of nurse aide training as an automatic consequence to the three specified events discussed earlier in this preamble, and, instead, establish the training program disapproval as another available enforcement remedy. This commenter believes it would be more rational to create the training program disapproval as another enforcement option to be considered when deficiencies bear a relationship to the care and services that a nurse aide provides. The loss of the training program in this case would be appropriate because the facility's deficiencies demonstrate that it is not providing a positive training model for its nurse aides.

Another commenter believes that the 2-year program disapproval period is excessive and that it impedes a facility's ability to recruit and retain staff. This commenter is particularly concerned about the 2-year program disapproval based on a facility having a nurse staffing waiver because the "lock out" contradicts the staffing waiver criteria and it does not permit a facility to begin a training program once it has acquired the needed staff.

Response: This comment falls outside the purview of this regulation. This rule specifically pertains to permitting a waiver of a facility's nurse aide training program disapproval when the facility is assessed a civil money penalty of at least $5,000 for noncompliance that is not related to quality of care.

Regarding the length of the disapproval period, we note that the 2-year disapproval period is a statutory provision. Such a legislative change falls outside the purview of this regulation.

Comment: One commenter suggested that the variability in the use of civil money penalties among States could create inequities in the waiver application process.

Response: Some variations may exist given the fact that these penalties are a discretionary remedy and are, therefore, not imposed with identical frequency and amount from State to State. We have expended great efforts to ensure all determinations are made as consistently as possible, particularly with civil money penalty determinations.

Comment: One commenter suggested that the word "assessed" not be used as it relates to the $5,000 civil money penalty threshold amount that enables a facility to request a training program disapproval waiver. Since "assessed" has been defined in CMS's State Operations Manual to mean the final amount determined to be owed after a hearing, waiver of right to a hearing, or settlement, this commenter believes that it allows a facility to delay the imposition of the nurse aide training prohibition for too long. Instead, the commenter proposed that CMS redefine "assessed" to mean the final decision of CMS to impose a civil money penalty.

Response: We do not have the authority to hasten or otherwise change the timeframe in which determinations are made about nurse aide training disapproval based on imposition of civil money penalties of at least $5,000 or more. The statute is explicit that a nurse aide training program must be prohibited when a facility is "assessed" a civil money penalty of at least $5,000. Additionally, a facility has a right to appeal a certification of noncompliance that leads to an enforcement remedy, such as a civil money penalty, and/or to waive its right to a hearing which reduces the assessed penalty amount under 42 CFR 488.436(b) before the final penalty amount owed by the facility is determined. Indeed, under 42 CFR 498.3(b)(14) and (d)(10)(i), a facility may only challenge the scope and severity level of noncompliance found by CMS if a successful challenge would affect the range of the civil money penalty that could be collected by CMS or impact upon the facility's nurse aide training program. Since various events could result in a different amount of civil money penalty "assessed" than the original amount, decisions about training program disapproval prior to knowing the final assessed penalty amount would be contrary to the intent of the statute. Nurse aide training program disapproval takes effect after a final civil money penalty amount is assessed if the amount exceeds at least $5,000.

Comment: One commenter wanted to know if a facility would still lose its nurse aide training program if it had other disapproval-causing events, even though it had a civil money penalty that qualified for a training program disapproval waiver. In other words, does each separate event, that requires nurse aide training disapproval, stand alone?

Response: Yes. This waiver does not eliminate the loss of nurse aide training based on other occurring events that also require training disapproval, such as if, within the previous 2 years, a facility is subjected to an extended (or partial extended) survey under sections 1819(g)(2)(B)(i) or 1919(g)(2)(B)(i) or when a facility has been subject to a remedy described in sections 1819(h)(2)(B)(i), or (iii), 1819(h)(4), 1919(h)(1)(B)(i) or 1919(h)(2)(A)(i), (iii) or (iv) of the Act.

Comment: One commenter wondered whether the waiver request should be submitted to the State or to CMS. This commenter also asked whether the training program disapproval waiver applies only to facilities that operate their own training program or if it also applies to facilities that serve as a training site for another program, for example, a technical college.

Response: Waivers should be submitted to the State. Waiver determinations will be made by CMS on a case-by-case basis after considering the recommendation and facts of that case as provided by the State. This point was made in the November 23, 2007 proposed rule on page 65694 in the preamble to the proposed rule and will be included in manual guidance that will be developed in collaboration with interested stakeholders.

Regarding the waiver's applicability, the new training program disapproval

waiver provision cross-references to sections 1819(f)(2)(B)(iii)(I) and 1919(f)(2)(B)(iii)(I) of the Act, which specifically apply only to training programs "offered by or in" a facility. Therefore, the training program disapproval waivers would also apply to a facility that serves as a training site for another program because it is being offered within the facility.

Comment: One commenter believes that CMS should make waiver determinations, as well as the rationale for the determinations, available to the public in order to ensure transparency in the process.

Response: While this comment is outside the scope of this final rule, we appreciate the recommendation and will consider expanding current disclosure policies in a separate regulatory document.

Comment: Some commenters believe that broader and more specific direction needs to be provided about what factors will be considered in making waiver request determinations. One commenter stressed the need for specific timeframes and procedures relative to submitting and approving these requests. Other commenters disagreed with the examples and rationale provided in the preamble to the proposed rule to demonstrate the general expectation of the rule's applicability. These commenters urged that different and expanded examples and decision making criteria be provided, and some offered criteria. A few of these commenters believe that such additional direction should be provided in this final rule rather than issued as manual guidance in CMS's State Operations Manual in order to ensure appropriate public awareness and comment. Other commenters requested that stakeholders be included in developing the manual guidance.

Response: While we do not intend to include instructions in this final rule on these operational issues, we will work with all interested stakeholders to develop the guidance necessary to implement the regulatory provisions set forth in this final rule. Participation of all interested parties will ensure that the various perspectives are represented and considered.

Comment: One commenter expressed concern about the distinction that the proposed rule made between per instance civil money penalties and per day civil money penalties relative to determining how discrete and aggregate noncompliance should be evaluated in applying the waiver provision. This commenter contends that no such flexibility exists in the supporting legislation because it does not specifically differentiate between civil money penalties that are based on single, or multiple, instances of noncompliance. CMS is urged to remove the flexibility and instead require that any noncompliance with quality of care should, regardless of whether singularly or in combination with other non-quality of care noncompliance, prevent a training disapproval waiver.

Response: We do not agree with this comment. The statute refers to civil money penalties generally so it does not specifically acknowledge the two civil money penalty types, that is, the per day and per instance, nor does it preclude differentiating between them. Since civil money penalties can be assessed for specific instances of noncompliance (per instance) as well as for aggregate noncompliance (per day), we needed a method of determining how discrete and aggregate noncompliance should be evaluated for waiver approval purposes. As stated in the preamble to the proposed rule, when a per instance civil money penalty of at least $5,000 is assessed for noncompliance with a specific participation requirement, the evaluation of that specific deficiency's direct impact on residents is clear-cut. However, when the civil money penalty of at least $5,000 is per day, the evaluation becomes more difficult because the penalty amount is not directly attributable to any one deficiency but, instead, is for the total noncompliance of the facility. Additionally, aggregate noncompliance may be comprised of a combination of quality of care and non quality of care deficiencies as well as various levels of severity and scope. When this is the case, all of the deficiencies would need to be reviewed to determine if individually or in total they are indicative of an overall facility failure or inability to directly provide quality care to residents. A single care-giving deficiency, among other non care-giving deficiencies (none of which meet other criteria for nurse aide training disapproval), may result in a conclusion that the facility, overall, is providing quality care to its residents and therefore, is providing a positive training model for its nurse aides. However, it is also possible that the seriousness of that single facility failure, among other non care-giving deficiencies, may result in a conclusion that the facility, overall, is not providing quality care to its residents and therefore, is not providing a positive training model for its nurse aides. The ability to make these determinations is critical to ensure that rational and defensible conclusions can be made relative to the facility's ability to provide quality care to its residents as well as whether the loss of its nurse aide training program is appropriate or eligible for a waiver.

Part 483—Requirements for States and Long Term Care Facilities

Section 483.151 State Review and Approval of Nurse Aide Training and Competency Evaluation Programs

We proposed to redesignate the current § 483.151(c), (d), and (e) as § 483.151(d), (e), and (f), respectively. We also proposed to add a new paragraph (c)(1) in § 483.151 where a facility may request that we waive the disapproval of its nurse aide training program when the facility has been assessed a civil money penalty of not less than $5,000 if the civil money penalty was not related to the quality of care furnished to residents in the facility. We proposed to add a new paragraph (c)(2) in § 483.151 to define the term quality of care furnished to residents, as the direct hands-on care and treatment that a health care professional or direct care staff provides to a resident. We proposed to add a new paragraph (c)(3) in § 483.151 to specify that any waiver of disapproval of a nurse aide training program does not waive any civil money penalty imposition.

Comment: Several commenters believe that the proposed definition of "quality of care", as direct hands-on care and treatment that a health care professional or direct care staff provides to a resident, is too limited and should be expanded to include other aspects of care and services that the facility provides to residents. These commenters contend that issues related to, for example, resident's rights, cleanliness, and safety can impact a resident's quality of care as significantly as those that constitute direct hands-on care and they should also preclude a training program disapproval waiver.

Response: While we do not disagree that all care and services provided by a nursing home are important, Congressional intent about what constitutes "quality of care" is made clear on page 776 of the Conference Report to the MMA (H.R. Rep. No. 108–391 (2003), reprinted in 2004 U.S.C.C.A.N. 1808, 2130), which states that, "* * * Quality of care in such instances refers to direct, hands on care furnished to residents of a facility." In order to address this reference, it was necessary to identify care-giving requirements, that is, care and treatment that a health care professional or direct care staff provides to a resident. That

determination will lead to conclusions about the impact the noncompliance may have on the facility's ability to provide a positive training model to its nurse aides. Additionally, it is important to note as we did in the preamble to the proposed rule, that noncompliance need not be in a care-giving requirement in order to be assessed a civil money penalty of at least $5,000 nor to disapprove a nurse aide training program. Noncompliance with any requirement, whether care-giving or non-care-giving, may result in the imposition of a civil money penalty or other remedy. Once a $5,000 or greater civil money penalty remedy or other triggering remedies are imposed, a facility's ability to provide nurse aide training is prohibited for 2 years unless a waiver is approved and no other training-disapproval event has occurred.

IV. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995, we are required to provide 30-day notice in the **Federal Register** and solicit public comment when a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

Therefore, we are soliciting public comment on each of these issues for the following information collection requirements discussed below.

Section 483.151 State Review and Approval of Nurse Aide Training and Competency Evaluation Programs

Section 483.151(c)(1) states that a facility may request that CMS waive disapproval of its nurse aide training program when a facility has been assessed a civil money penalty of not less than $5,000 if the civil money penalty was not related to the quality of care furnished to residents in the facility.

The burden associated with this requirement is the time and effort put forth by the facility to request a waiver as well as the time and effort for States to make determinations on each waiver request. We estimate it would take one facility 1 hour to submit a waiver and one State 1 hour to make a determination on the request. We believe that 462 facilities may potentially request a waiver annually; therefore, the total annual burden associated with this requirement is 462 hours for facilities and 462 hours for States.

As required by section 3504(h) of the Paperwork Reduction Act of 1995, we have submitted a copy of this final regulation to OMB for its review of these information collection requirements described above.

If you comment on these information collection and record keeping requirements, please mail copies directly to the following:

Centers for Medicare & Medicaid Services, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attn.: Melissa Musotto, CMS–2266–F, Room C5–14–03, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Attn.: Katherine T. Astrich, CMS Desk Officer, CMS–2266–F, *Katherine_T._Astrich@omb.eop.gov.* Fax (202) 395–6974.

V. Regulatory Impact Statement

We have examined the impact of this rule as required by Executive Order 12866 on Regulatory Planning and Review (September 30, 1993, as further amended), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, section 202 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), and Executive Order 13132 on Federalism (August 4, 1999), and the Congressional Review Act (5 U.S.C. 804 (2)).

Executive Order 12866 (as amended by Executive Order 13258, directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year). This regulatory requirement will not reach the economic threshold and thus is not considered a major rule.

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, non-profit organizations and government agencies. For purposes of the RFA, most nursing homes are considered to be small entities. We are not preparing an analysis for the RFA for this regulatory proposal because we have determined that this rule will not have a significant economic impact on a substantial number of small businesses or other small entities. Therefore, the Secretary has determined that this final rule will not have a significant economic impact on a substantial number of small entities.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. We are not preparing an analysis for section 1102(b) of the Act for this regulatory proposal because we have determined, and the Secretary has determined, that this rule will not have a significant impact on the operations of a substantial number of small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of $100 million in 1995 dollars, updated annually for inflation. In 2008 that threshold was approximately $125 million. This regulatory proposal will have no consequential effect on State, local, or Tribal governments in the aggregate or by the private sector, of $127 million.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. Since this regulation will not impose a substantial direct cost on State or local governments, preempt States, or otherwise have a Federalism implication, the requirements of E.O. 13132 are not applicable.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

List of Subjects in 42 CFR Part 483

Grant programs—health, Health facilities, Health professions, Health Records, Medicaid, Medicare, Nursing

homes, Nutrition, Reporting and recordkeeping requirements, Safety.

■ For the reasons set forth in the preamble, the Centers for Medicare and Medicaid Services amends 42 CFR chapter IV as set forth below:

PART 483—REQUIREMENTS FOR STATES AND LONG TERM CARE FACILITIES

■ 1. The authority citation for part 483 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

* * * * *

■ 2. Section 483.150(a) is revised to read as follows:

§ 483.150 Statutory basis: Deemed meeting or waiver of requirements.

(a) *Statutory basis.* This subpart is based on sections 1819(b)(5), 1819(f)(2), 1919(b)(5), and 1919(f)(2) of the Act, which establish standards for training nurse-aides and for evaluating their competency.

* * * * *

■ 3. Section 483.151 is amended by—

■ A. Revising the section heading.

■ B. Redesignating paragraphs (c), (d), and (e) as paragraphs (d), (e), and (f) respectively.

■ C. Adding new paragraph (c).

The revision and addition reads as follows:

§ 483.151 State review and approval of nurse aide training and competency evaluation programs.

* * * * *

(c) *Waiver of disapproval of nurse aide training programs.*

(1) A facility may request that CMS waive the disapproval of its nurse aide training program when the facility has been assessed a civil money penalty of not less than $5,000 if the civil money penalty was not related to the quality of care furnished to residents in the facility.

(2) For purposes of this provision, "quality of care furnished to residents" means the direct hands-on care and treatment that a health care professional or direct care staff furnished to a resident.

(3) Any waiver of disapproval of a nurse aide training program does not waive any requirement upon the facility to pay any civil money penalty.

* * * * *

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program)

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: January 14, 2010.

Charlene Frizzera,

Acting Administrator, Centers for Medicare & Medicaid Services.

Approved: April 12, 2010.

Kathleen Sebelius,

Secretary.

[FR Doc. 2010–8902 Filed 4–22–10; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R1–ES–2009–0005; 92220–1113–0000–C6]

RIN 1018–AW42

Endangered and Threatened Wildlife and Plants; Reclassification of the Oregon Chub From Endangered to Threatened

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), are reclassifying the federally endangered Oregon chub (*Oregonichthys crameri*) to threatened status under the authority of the Endangered Species Act of 1973, as amended (Act). This decision is based on a thorough review of the best available scientific and commercial data, which indicate that the species' status has improved to the point that the Oregon chub is not currently in danger of extinction throughout all or a significant portion of its range.

DATES: This final rule is effective on May 24, 2010.

ADDRESSES: Comments and materials received, as well as supporting documentation used in the preparation of this final rule, are available for inspection, by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Oregon Fish and Wildlife Office, 2600 SE 98th Avenue, Suite 100, Portland, OR 97266; (telephone 503/231–6179).

FOR FURTHER INFORMATION CONTACT: State Supervisor, U.S. Fish and Wildlife Service, Oregon Fish and Wildlife Office (*see* **ADDRESSES**). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800/877–8339, 24 hours a day, 7 days a week.

SUPPLEMENTARY INFORMATION:

Background

The purposes of the Act (16 U.S.C. 1531 *et seq.*) are to provide a means whereby the ecosystems upon which endangered and threatened species depend may be conserved and to provide a program for the conservation of those species. A species can be listed as endangered or threatened because of any of the 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. When we determine that protection of a species under the Act is no longer warranted, we take steps to remove (delist) the species from the Federal list. If a species is listed as endangered, we may reclassify it to threatened status as an intermediate step before delisting; however, reclassification to threatened status is not required in order to delist.

Section 3 of the Act defines terms that are relevant to this final rule. An endangered species is any species that is in danger of extinction throughout all or a significant portion of its range. A threatened species is any species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. A species includes any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife that interbreeds when mature.

Previous Federal Actions

In our December 30, 1982, Review of Vertebrate Wildlife for Listing as Endangered or Threatened Species, we listed the Oregon chub as a Category 2 candidate species (47 FR 58454). Category 2 candidates, a designation no longer used by the Service, were species for which information contained in Service files indicated that proposing to list was possibly appropriate but additional data were needed to support a listing proposal. The Oregon chub maintained its Category 2 status in both the September 18, 1985 (50 FR 37958) and January 6, 1989 (54 FR 554) Notices of Review.

On April 10, 1990, the Service received a petition to list the Oregon chub as an endangered species and to designate critical habitat. The petition and supporting documentation were submitted by Dr. Douglas F. Markle and Mr. Todd N. Pearsons, both affiliated with Oregon State University. The

petitioners submitted taxonomic, biological, distributional, and historical information and cited numerous scientific articles in support of the petition. The petition and accompanying data described the Oregon chub as endangered because it had experienced a 98 percent range reduction and remaining populations faced significant threats. On November 1, 1990, the Service published a 90-day finding indicating that the petitioners had presented substantial information indicating that the requested action may be warranted and initiated a status review (55 FR 46080).

On November 19, 1991, the Service published a 12-month finding on the petition concurrent with a proposal to list the species as endangered (56 FR 58348). On October 18, 1993, we published a final rule listing the Oregon chub as endangered (58 FR 53800). A 5-year review of the Oregon chub's status was completed in February 2008 (U.S. Fish and Wildlife Service 2008a, pp. 1–34); this review concluded that the Oregon chub's status had substantially improved since listing, and that the Oregon chub no longer met the definition of an endangered species, but did meet the definition of a threatened species, under the Act. The review, therefore, recommended that we downlist the Oregon chub from endangered to threatened.

On March 10, 2009, the Service published a proposed rule (74 FR 10412) to designate critical habitat for the Oregon chub. The public comment period on the proposal was open for 60 days, from March 10, 2009, to May 11, 2009. We subsequently reopened the public comment period on the critical habitat proposal on September 22, 2009, for an additional 30 days, ending October 22, 2009 (74 FR 48211). During the reopened public comment period, we held a public hearing in Corvallis, Oregon. We published a final rule designating critical habitat on March 10, 2010 (75 FR 11010).

On May 15, 2009, we published a proposed rule to reclassify the Oregon chub from endangered to threatened (74 FR 22870). We contacted interested parties (including elected officials, Federal and State agencies, local governments, scientific organizations, interest groups, and private landowners) through a press release and related fact sheets, faxes, mailed announcements, telephone calls, and e-mails. In addition, we notified the public and invited comments through news releases to media outlets throughout the region, including major newspapers (The Oregonian [Portland, OR], The Statesman-Journal [Salem, OR], and The Register-Guard [Eugene, OR]), and television and radio news stations. The public comment period on the proposal was open for 60 days, from May 15, 2009, to July 14, 2009.

On May 19, 2009, the Service published a notice in the **Federal Register** announcing the Oregon Department of Fish and Wildlife's (ODFW) application for an enhancement of survival permit under section 10(a)(1)(A) of the Act (74 FR 23431). The permit application included a proposed Programmatic Safe Harbor Agreement between ODFW and the Service (Oregon Department of Fish and Wildlife and U.S. Fish and Wildlife Service 2009, pp. 1–30). We issued the permit on August 31, 2009. The term of the permit and agreement is 30 years. The permit authorizes ODFW to extend incidental take coverage with assurances to eligible landowners who are willing to carry out habitat management measures that would benefit the Oregon chub by enrolling them under the agreement as Cooperators through issuance of Certificates of Inclusion. The geographic scope of the agreement includes all non-Federal properties throughout the estimated historical distribution of the species in the Willamette Valley *(i.e.,* between the cities of Oregon City and Oakridge, Oregon).

Species Information

The Oregon chub is a small minnow (Family Cyprinidae) endemic to the Willamette River Basin in western Oregon (Markle *et al.* 1991, p. 288). The Oregon chub has an olive-colored back grading to silver on the sides and white on the belly (Markle *et al.* 1991, p. 286). Oregon chub are found in slack water, off-channel habitats such as beaver ponds, oxbows, side channels, backwater sloughs, low-gradient tributaries, and flooded marshes. These habitats usually have little or no water flow, silty and organic substrate, and abundant aquatic vegetation for hiding and spawning cover (Pearsons 1989, p. 12; Scheerer and McDonald 2000, p. 9). Summer temperatures in shallow ponds inhabited by Oregon chub generally exceed 16 degrees Celsius (C) (61 degrees Fahrenheit (F)) (Scheerer *et al.* 1998, p. 26). In the winter months, Oregon chub are found buried in detritus or concealed in aquatic vegetation (Pearsons 1989, p. 16).

Oregon chub reach maturity at about 2 years of age (Scheerer and McDonald 2003, p. 78) and in wild populations can live up to 9 years. Most individuals over 5 years old are females (Scheerer and McDonald 2003, p. 68). Oregon chub spawn in warm (16 to 21 degrees C (61 to 70 degrees F)) shallow water from June through August (Scheerer and McDonald 2000, p. 10). The diet of Oregon chub collected in a May sample consisted primarily of copepods, cladocerans, and chironomid larvae (Markle *et al.* 1991, p. 288).

In the early 1990s, Oregon chub populations were found predominantly in the Middle Fork Willamette River (Middle Fork), with a few, small populations found in the Mid-Willamette River, Santiam River, and Coast Fork Willamette River (Coast Fork). The species is now well distributed throughout the Willamette Basin (in Polk, Marion, Linn, Lane, and Benton Counties, Oregon), with populations in the Santiam River (9 sites), Mid-Willamette River (6 sites), McKenzie River (4 sites), Middle Fork (16 sites), and Coast Fork (3 sites) (Bangs *et al.* 2008, p. 7). There are currently 19 populations that contain more than 500 adults each; 16 of these have a stable or increasing trend (Bangs *et al.* 2008, pp. 7–10).

Review of the Recovery Plan

The Service published a final recovery plan for the Oregon chub in 1998 (U.S. Fish and Wildlife Service 1998). Recovery plans are intended to guide actions to recover listed species and to provide measurable objectives against which to measure progress towards recovery; however, precise attainment of the recovery criteria is not a prerequisite for downlisting or delisting. The Oregon chub recovery plan established the following criteria for downlisting the species from endangered to threatened:

(1) Establish and manage 10 populations of at least 500 adults each;

(2) All of these populations must exhibit a stable or increasing trend for 5 years; and

(3) At least three populations must be located in each of the three sub-basins of the Willamette River identified in the plan (Mainstem Willamette River, Middle Fork, and Santiam River).

The recovery plan established the following criteria for delisting (*i.e.,* removing the species from the List of Endangered and Threatened Wildlife):

(1) Establish and manage 20 populations of at least 500 adults each;

(2) All of these populations must exhibit a stable or increasing trend for 7 years;

(3) At least four populations must be located in each of the three sub-basins (Mainstem Willamette River, Middle Fork, and Santiam River); and

(4) Management of these populations must be guaranteed in perpetuity.

Recovery actions specified in the recovery plan to achieve the downlisting and delisting goals included managing existing sites, establishment of new populations, research into the ecology of the species, and public education and outreach to foster greater understanding of the Oregon chub and its place in the natural environment of the Willamette Basin (U.S. Fish and Wildlife Service 1998, pp. 28–44).

Recovery Plan Implementation

When we listed the Oregon chub as endangered in 1993, it was known to occur at only nine locations within a 30-kilometer (18.6-mile) reach of the Willamette River, representing just 2 percent of its historical range (Markle *et al.* 1991, p. 288). Since 1992, the Service, ODFW, U.S. Army Corps of Engineers (Corps), U.S. Forest Service, Oregon Parks and Recreation Department, and Oregon Department of Transportation have funded ODFW staff to conduct surveys for Oregon chub throughout the Willamette Valley. ODFW has surveyed 650 off-channel habitats and small tributaries in the Willamette River Basin (Scheerer 2007, p. 92), greatly increasing our knowledge of the current and potential habitat available to the Oregon chub. Other research projects have resulted in new information on the species' habitat use, timing of spawning, and age and growth patterns (U.S. Fish and Wildlife Service 2008a, pp. 13–15).

The status of the Oregon chub has improved dramatically since it was listed as endangered. The improvement is due largely to the implementation of actions identified in the Oregon chub recovery plan. This includes the discovery of many new populations as a result of ODFW's surveys of the basin, and the establishment of additional populations via successful reintroductions within the species' historical range (Scheerer 2007, p. 97). To date, Oregon chub populations have been introduced at 16 sites (9 in the Mainstem Willamette sub-basin, 4 in the Middle Fork sub-basin, and 3 in the Santiam sub-basin) (Bangs *et al.* 2008, p. 7). Introduced populations have been established in suitable habitats with low connectivity to other aquatic habitats to reduce the risk of invasion by nonnative fishes (see Summary of Factors Affecting the Species—Factor C below for more information) (Scheerer 2007, p. 98). At present, 7 of these populations persist and exhibit stable or increasing trends; 2 populations were reintroduced too recently to evaluate success (i.e., the populations introduced in 2008 at St. Paul Ponds and Sprick Pond); and 5 introduced populations have been extirpated or are not likely to remain viable. Reasons for reintroduction failures include pond desiccation, low dissolved oxygen, unauthorized introductions of nonnative predatory fishes, and high mortality of introduced fish (Scheerer *et al.* 2007, p. 2; Scheerer 2008a, p. 6; Scheerer 2009a, p. 1).

Currently, there are 38 Oregon chub populations, of which 19 have more than 500 adults (Bangs *et al.* 2008, p. 7). Sixteen years have passed since listing, and the species is now relatively abundant and well distributed throughout much of its presumed historical range. The risk of extinction has been substantially reduced as threats have been managed, and as new populations have been discovered or re-established. The Oregon chub has exceeded or met nearly all of the criteria for downlisting to threatened described in the recovery plan. A review of the species' current status relative to the downlisting criteria from the Recovery Plan follows.

Downlisting Criterion 1: Establish and manage 10 populations of at least 500 adults each. This criterion has been exceeded. There are 19 populations with more than 500 adult Oregon chub (see Table 1 below).

Downlisting Criterion 2: All 10 populations referenced in Downlisting Criterion 1 must exhibit a stable or increasing trend for 5 years. This criterion has been exceeded; there are 16 populations with at least 500 adults that are stable or increasing (*see* Table 1 below). Scheerer *et al.* (2007, p. 4) defined abundance trends as increasing, declining, stable, or not declining using linear regression of abundance estimates over time for each population with more than 500 adult fish over the last 5 years. When the slope of this regression was negative and significantly different from zero (P>0.10), the population was categorized as declining. When the slope was positive and significantly different from zero (P<0.10), the population was categorized as increasing. When the slope was not significantly different from zero (P>0.10), Scheerer *et al.* (2007, p. 4) calculated the coefficient of variation of the abundance estimates to discriminate between populations that were stable (i.e., low variation in population abundance estimates) and those that were unstable but not declining (i.e., high variation in population abundance estimates). When the coefficient of variation was less than 1.0, the population was defined as stable; otherwise, the population was considered unstable but not declining (see Table 1 below).

Downlisting Criterion 3: At least three populations (which meet downlisting criteria 1 and 2 above) must be located in each of the three sub-basins of the Willamette River (Mainstem Willamette River, Middle Fork Willamette, and Santiam River). This criterion has been exceeded in two sub-basins, and is nearly accomplished in the third. In the Mainstem Willamette River sub-basin, there are 6 populations with 500 or more Oregon chub with stable or increasing trends; in the Middle Fork Willamette sub-basin, there are 8 populations with 500 or more Oregon chub with stable or increasing trends; and in the Santiam River sub-basin, there are 3 populations with 500 or more Oregon chub, but only 2 with stable or increasing trends over the last 5 years (see Table 1 below). Five-year trends were calculated for abundant populations (>500 individuals for the last 5 years) only. Table 1 shows the populations by sub-basin.

TABLE 1—OREGON CHUB POPULATION ESTIMATES AND TRENDS (FROM BANGS ET AL. 2008, P. 7)

Population site name	Owner [1]	Population estimate [2]	5-year trend [3]
Santiam River Sub-basin:			
Foster Pullout Pond	Corps	2,640	increasing.
Gray Slough	Private	660	stable.
South Stayton Pond	ODFW	1,710	
Geren Island North Channel	City of Salem	210	
Pioneer Park Backwater	Private	320	
Stayton Public Works Pond	City of Stayton	70	
Santiam I–5 Side Channels	ODOT	(2)	
Green's Bridge Slough	Private	(8)	

TABLE 1—OREGON CHUB POPULATION ESTIMATES AND TRENDS (FROM BANGS ET AL. 2008, P. 7)—Continued

Population site name	Owner [1]	Population estimate [2]	5-year trend [3]
Santiam Easement	Private (with USFWS easement)	(2)	
Mainstem Willamette Sub-basin (includes McKenzie River and Coast Fork):			
Ankeny Willow Marsh	USFWS	36,460	increasing.
Dunn Wetland	Private	46,330	stable.
Finley Gray Creek Swamp	USFWS	2,140	increasing.
Finley Cheadle Pond	USFWS	3,520	increasing.
Finley Display Pond	USFWS	830	increasing.
St. Paul Ponds	ODFW	(25)	
Muddy Creek	Private	(3)	
Russell Pond	Private	650	stable.
Shetzline Pond	Private	130	
Big Island	Private	200	
Green Island	Private	(12)	
Herman Pond	USFS	(3)	
Coast Fork Side Channels	OPRD/ODOT	130	
Sprick	Private	(12)	
Lynx Hollow Side Channels	OPRD	(0)	
Middle Fork Sub-basin:			
Shady Dell Pond	USFS	7,250	increasing.
E. Bristow St. Park—Berry Slough	OPRD	5,460	increasing.
Dexter Reservoir RV Alcove—DEX3	Corps	2,450	stable.
Wicopee Pond	USFS	5,430	stable.
Fall Creek Spillway Ponds	Corps	3,050	declining.
Buckhead Creek	USFS	1,260	declining.
East Fork Minnow Creek Pond	ODOT	2,160	stable.
Elijah Bristow Island Pond	OPRD	550	stable.
Hospital Pond	Corps	3,680	stable.
Dexter Reservoir Alcove—PIT1	Corps	680	stable.
Haws Pond	Private	280	
E. Bristow St. Park—NE Slough	OPRD	230	
Jasper Park Slough	OPRD	(1)	
Elijah Bristow South Slough	OPRD	(1)	
Middle Fk Willamette RM 198.6	OPRD	(1)	
Middle Fk Willamette RM 199.5	OPRD	(1)	

[1] Owner abbreviations: Corps = U.S. Army Corps of Engineers, USFWS = U.S. Fish and Wildlife Service, USFS = U.S. Forest Service, ODOT = Oregon Department of Transportation, OPRD = Oregon Parks and Recreation Department, ODFW = Oregon Department of Fish and Wildlife.
[2] Population numbers are mark–recapture estimates except those shown in parentheses, which are the number of fish counted.
[3] Five-year trends were calculated for abundant populations (>500 individuals for the last 5 years) only.

Additional Conservation Measures

The Oregon Chub Working Group (Working Group) was formed in 1991. This group of Federal and State agency biologists, academicians, land managers, and others meet each year to share information on the status of the Oregon chub, results of new research, and ongoing threats to the species. The Working Group has been an important force in improving the conservation status of the Oregon chub.

An interagency conservation agreement was established for the Oregon chub in 1992, prior to listing (U.S. Fish and Wildlife Service 1998, p. 59). The Service, ODFW, Oregon Department of Parks and Recreation, Corps, U.S. Bureau of Land Management, and U.S. Forest Service are the parties to the agreement. The objectives of the conservation agreement are to: (1) Establish a task force drawn from participating agencies to oversee and coordinate Oregon chub conservation and management actions, (2) protect existing populations, (3) establish new populations, and (4) foster greater public understanding of the species, its status, and the factors that influence it (U.S. Fish and Wildlife Service 1998, pp. 65–66).

The Oregon chub is designated as "Sensitive-Critical" by ODFW. The "Sensitive" species classification was created under Oregon's Sensitive Species Rule (OAR 635–100–040) to address the need for a proactive species conservation approach. The Sensitive Species List is a nonregulatory tool that helps focus wildlife management and research activities, with the goal of preventing species from declining to the point of qualifying as "endangered" or "threatened" under the Oregon Endangered Species Act (ORS 496.171, 496.172, 496.176, 496.182 and 496.192). Species designated as Sensitive-Critical are those for which listing as endangered or threatened would be appropriate if immediate conservation actions were not taken. This designation encourages, but does not require, implementation of any conservation actions for the species; however, other State agencies, such as the Oregon Department of State Lands, the Water Resources Department, and the Oregon State Marine Board, refer to the Sensitive Species List when making regulatory decisions.

In 2009, the Service developed a programmatic Safe Harbor Agreement with ODFW (Oregon Department of Fish and Wildlife and U.S. Fish and Wildlife Service 2009, pp. 1–30). A Safe Harbor Agreement is a voluntary agreement involving private or other non-Federal property owners whose actions contribute to the recovery of species listed as endangered or threatened under the Act. In exchange for actions that contribute to the recovery of listed species on non-Federal lands, participating property owners receive formal assurances from the Service that if they fulfill the conditions of the Safe Harbor Agreement, the Service will not

require any additional management activities by the participants without their consent. In addition, at the end of the agreement period, participants may return the enrolled property to the baseline conditions that existed at the beginning of the agreement. The programmatic Safe Harbor Agreement allows ODFW to work with private landowners to establish new populations of Oregon chub on private lands, directly advancing the recovery of the species. The permit, authorized under section 10(a)(1)(A) of the Act, associated with the programmatic Safe Harbor Agreement authorizes ODFW to extend incidental take coverage with assurances to eligible landowners who are willing to carry out habitat management measures that would benefit the Oregon chub by enrolling them under the agreement as Cooperators through issuance of Certificates of Inclusion.

Summary of Comments and Responses

In conformance with our policy on peer review, published on July 1, 1994 (59 FR 34270), we solicited the expert opinions of four appropriate and independent experts following publication of the proposed rule. We received five comment letters on the proposed rule: four from peer reviewers and one comment letter from ODFW. All of the reviewers were in support of the reclassification, and most recommended only minor clarifications to the proposed rule. We have incorporated these minor clarifications into this final rule. We received one substantive comment, which we summarize and respond to below.

Comment: One peer reviewer agreed with the Service's proposal to reclassify the Oregon chub as threatened, but noted that climate change and its effects to the hydrology of the Willamette Basin were not addressed in the proposed rule, and suggested that these issues need to be evaluated before the Service considers delisting the Oregon chub.

Our Response: Climate change presents substantial uncertainty regarding the future environmental conditions in the Willamette Basin. The channelization of the Willamette River and its tributaries, and the introduction of nonnative predatory fishes were the major factors underlying the historical decline of the Oregon chub. Changing climate is expected to place an added stress on the species and its habitats. The Intergovernmental Panel on Climate Change (IPCC) has concluded that recent warming is already strongly affecting aquatic biological systems; this is evident in increased runoff and earlier spring peak discharge in many glacier- and snow-fed rivers (IPCC 2007, p. 8). Projections for climate change in North America include decreased snowpack, more winter flooding, and reduced summer flows (IPCC 2007, p. 14). Projections for climate change in the Willamette Valley in the next century include higher air temperatures that will lead to lower soil moisture and increased evaporation from streams and lakes (Climate Leadership Initiative (CLI) and the National Center for Conservation Science and Policy 2009, p. 9). While there is high uncertainty in the total precipitation projections for the region, effective precipitation (precipitation that contributes to runoff) may be reduced significantly even if there is no decline in total precipitation (CLI and the National Center for Conservation Science and Policy 2009, p. 9).

Although climate change is almost certain to affect aquatic habitats in the Willamette Basin (CLI 2009, p. 1), there is great uncertainty about the specific effects of climate change on the Oregon chub. The Service has developed a strategic plan to address the threat of climate change to vulnerable species and ecosystems; goals of this plan include maintaining ecosystem integrity by protecting and restoring key ecological processes such as nutrient cycling, natural disturbance cycles, and predator-prey relationships (U.S. Fish and Wildlife Service 2009; p. 21). The Oregon chub recovery program will strive to achieve these goals by working to establish conditions that allow populations of Oregon chub to be resilient to changing environmental conditions and to persist as viable populations into the future. Our recovery program for the species focuses on maintaining large populations distributed across the species' entire historical range in a variety of ecological settings (*e.g.,* across a range of elevations). This approach is consistent with the general principles of conservation biology. In their review of minimum population viability literature, Traill *et al.* (2009, p. 3) found that maintenance of large populations across a range of ecological settings increases the likelihood of species persistence under the pressures of environmental variation and facilitates the retention of important adaptive traits through the maintenance of genetic diversity. Maintaining multiple populations across a range of ecological settings, as described in the recovery plan, will also increase the likelihood that at least some of these populations persist under the stresses of a changing climate.

Our recovery program will continue to focus on monitoring the species' status and responding to changing conditions. Any future proposal to delist the species due to recovery will need to establish that the species is not likely to become endangered in the foreseeable future throughout all or a significant portion of its range in the absence of the Act's protections, including consideration of any likely effects caused by changing climate.

Summary of Factors Affecting the Species

Section 4 of the Act and its implementing regulations (50 CFR part 424) set forth the procedures for listing species, reclassifying species, or removing species from listed status. "Species" is defined by the Act as including any species or subspecies of fish or wildlife or plants, and any distinct vertebrate population segment of fish or wildlife that interbreeds when mature. Once the "species" is determined, we then evaluate whether that species may be endangered or threatened because of one or more of the five factors described in section 4(a)(1) of the Act. We must consider these same five factors in reclassifying or delisting a species. For species that are already listed as endangered or threatened, this analysis of threats is an evaluation of both the threats currently facing the species and the threats that are reasonably likely to affect the species in the foreseeable future following the delisting or downlisting and the removal or reduction of the Act's protections.

A species is "endangered" for purposes of the Act if it is in danger of extinction throughout all or a significant portion of its range, and is "threatened" if it is likely to become endangered within the foreseeable future throughout all or a significant portion of its range. The word "range" is used here to refer to the range in which the species currently exists, and the word "significant" refers to the value of that portion of the range being considered to the conservation of the species. The "foreseeable future" is the period of time over which events or effects reasonably can or should be anticipated, or trends reasonably extrapolated; see discussion following Factor E, below.

After completing a rangewide threats analysis, we also evaluate whether the Oregon chub is endangered or threatened in any significant portion(s) of its range.

Factor A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Historical records indicate that the Oregon chub was distributed throughout the Willamette Basin, from the Clackamas River in the north, to the Coast Fork and Middle Fork in the south (Markle *et al.* 1991, p. 288). When we listed the Oregon chub as endangered in 1993, the species was known to exist at only nine locations, representing only 2 percent of the species' historical range (Markle *et al.* 1991, pp. 288–289; Scheerer *et al.* 2007, p. 2). Four of these locations had fewer than 10 individuals (Scheerer *et al.* 2007, p. 2). This precipitous decline in the species' abundance and distribution was attributed to the extensive channelization, dam construction, and chemical contamination that occurred in the Willamette Basin, particularly from the 1940s through the late 20th century (Pearsons 1989, pp. 29–30).

There are at least 371 dams in the Willamette River Basin, most of which were constructed from 1950 through 1980 (Hulse *et al.* 2002, p. 30). These dams reduced the magnitude, extent, and frequency of flooding in the basin, which dramatically reduced the amount of slough and side channel habitats available to the Oregon chub (Hulse *et al.* 2002, pp. 28–30). Other structural changes, such as revetment and channelization, diking and drainage, and the removal of floodplain vegetation, eliminated or altered the side channels and sloughs used by the Oregon chub, and destroyed the natural processes that replenish these slack water habitats (Hjort *et al.* 1984, p. 73; Sedell and Frogatt 1984, p. 1833; Hulse *et al.* 2002, p. 27). Analysis of historical records shows that over one-half of the Willamette's sloughs and alcoves had been lost by 1995 (Hulse *et al.* 2002, p. 18). Although the Oregon chub evolved in a dynamic environment in which flooding periodically created and reconnected habitat for the species, currently most populations of Oregon chub are isolated from other chub populations due to the reduced frequency and magnitude of flood events and the presence of migration barriers such as impassable culverts and beaver dams (Scheerer *et al.* 2007, p. 9).

In the 16 years since we listed the Oregon chub as endangered, concerted efforts by Federal, State, and local governments and private landowners have increased the number of Oregon chub populations from 9 to 38 (Scheerer *et al.* 2007, p. 2; Scheerer 2008a, p. 6; Bangs *et al.* 2008, p. 7). This dramatic increase in the number of populations is a result of the discovery of new populations through extensive surveys of suitable habitats throughout the Willamette Basin and the establishment of new populations through successful reintroductions within their historical range (Scheerer 2007, p. 97). Since 1992, Oregon chub have been reintroduced to 16 locations, resulting in the successful establishment of 9 populations (Bangs *et al.* 2008, p. 7).

The analysis of threats in the final rule to list the Oregon chub as an endangered species and the recovery plan for the species discussed numerous potential threats to water quality in Oregon chub habitats. Many Oregon chub populations occur near rail, highway, and power transmission corridors; near agricultural fields; and within public park and campground facilities; prompting concern that these populations could be threatened by chemical spills, runoff, or changes in water level or flow conditions caused by construction, diversions, or natural desiccation (58 FR 53800; U.S. Fish and Wildlife Service 1998, p. 14, Scheerer 2008c, p. 1). In the 16 years since listing, a few of these concerns have been realized, and are discussed in the paragraphs below.

Excessive siltation from ground disturbing activities in the watershed, such as logging upstream of Oregon chub habitat, can degrade or destroy Oregon chub habitat. The threat of siltation due to logging in the watershed has been identified at five sites: Green Island North Channel, Finley Gray Creek Swamp, East Fork Minnow Creek Pond, Buckhead Creek, and Wicopee Pond (Scheerer 2008c, p. 1). In the 1990s, a large part of the Minnow Creek Watershed in the Middle Fork Willamette sub-basin was logged; flood events in the watershed in 1996, 1997, and 1998 caused accelerated sedimentation in the beaver pond at East Fork Minnow Creek Pond, and over half of the open water wetted area of the Oregon chub habitat there was lost as sediment filled the pond (Scheerer 2009b, p. 1). The Oregon chub population in East Fork Minnow Creek Pond declined dramatically following these floods and the resulting sedimentation (Scheerer 2009b, p. 1).

Water quality investigations at sites in the Middle Fork and Mainstem Willamette sub-basins have found some adverse effects to Oregon chub habitats. Nutrient enrichment may have caused the crash of the Oregon chub population at Oakridge Slough on the Middle Fork. The slough is downstream from the Oakridge Sewage Treatment Plant and has a thick layer of decaying organic matter, which may limit the amount of useable habitat available to the chub (Buck 2003, p. 2). In the late 1990s, the Oregon chub population in Oakridge Slough peaked at nearly 500 individuals; since then, the population has apparently declined to zero (Scheerer *et al.* 2007, p. 2). Increased nitrogen and phosphorus concentrations have been detected in the slough; while the nutrient concentrations are not believed to be directly harmful to Oregon chub, the elevated nutrient levels may have resulted in eutrophication of the pond, with associated anoxic conditions unsuitable for chub, or increased plant and algal growth that severely reduced habitat availability (Buck 2003, p. 12).

Studies at William L. Finley National Wildlife Refuge have found evidence of elevated levels of nutrients and pesticides in Oregon chub habitats (Materna and Buck 2007, p. 67). Water samples were collected in 1998 from Gray Creek Swamp, which is home to a large population of Oregon chub. Analyses detected three herbicides, although all were below criteria levels recommended for protection of aquatic life; however, one form of nitrogen (total Kjeldahl N) exceeded Environmental Protection Agency (EPA) criteria levels recommended for protection of aquatic life in the Willamette Valley (Materna and Buck 2007, p. 67). The source of the contamination is likely agricultural runoff from farm fields adjacent to the Refuge (Materna and Buck 2007, p. 68). We note that EPA's recommended criteria for protection of aquatic life are not intended to be protective of all aquatic life, and may not be fully protective of the Oregon chub. EPA and the Service are working together to assess the effects of pollutants on the Oregon chub through section 7 consultation on Oregon water quality standards.

Fluctuating water levels in Lookout Point Reservoir on the Middle Fork Willamette River were limiting the breeding success of the Oregon chub population in Hospital Pond, which provides habitat for the species in a pool connected to the reservoir by a culvert. In 2001, 2002, and 2003, the Corps, which manages Lookout Point Reservoir, implemented a series of projects to protect the population of Oregon chub in Hospital Pond. The goal was to allow the Corps to manage the water level in Lookout Point Reservoir independently of the water elevation in Hospital Pond. The Corps installed a gate on Hospital Pond's outlet culvert and lined the porous berm between the pond and reservoir; these modifications allow the Corps to maintain the water level needed to support Oregon chub

spawning in Hospital Pond independent of the water level in the reservoir (U.S. Fish and Wildlife Service 2002, pp. 1–11). The Corps also excavated additional area to create more suitable spawning habitat in the pond (U.S. Fish and Wildlife Service 2003, pp. 1–3). The result of these management actions has been a large stable population of Oregon chub in Hospital Pond (Scheerer 2008a, p. 6).

Most of the known Oregon chub populations occur on lands with some level of protective status and management (see Table 1 above). The Service manages several Oregon chub populations on the Finley and Ankeny units of the Willamette Valley National Wildlife Refuge Complex (Refuge). Recovery of the Oregon chub is a high priority for the Refuge. The Refuge actively monitors the status of the populations, habitat quality, and nonnative fish presence; when threats are detected, the Refuge implements management actions to reverse the threats (Smith 2008, p. 1).

Five populations of Oregon chub occur on lands managed by the Corps; the Corps manages Oregon chub in accordance with the Service's biological opinion on the Willamette Project. In July 2008, the Corps, Bonneville Power Administration (BPA), and Bureau of Reclamation (BOR) completed formal consultation with the Service under section 7(a)(2) of the Act on the operation and maintenance of the Willamette Project, the system of 13 dams and associated impoundments that provide flood control, irrigation, municipal and industrial water supply, navigation, fish and wildlife conservation, flow augmentation, hydroelectric power generation, and recreation to the Willamette Valley. The Service concluded that the project would not jeopardize the continued existence of the Oregon chub (U.S. Fish and Wildlife Service 2008b, p. 170). The Service's biological opinion describes the measures that will be implemented by the Corps, BPA, and BOR to maintain and improve habitat for the Oregon chub. These measures include:

(1) Monitoring the status of Oregon chub populations affected by operation and maintenance of the dams to gain a better understanding of the influence of the Willamette Project on the species;

(2) Managing water levels in Oregon chub habitats directly affected by reservoir operations;

(3) Relocating Oregon chub from ponds adversely affected by reservoir operations to new locations with better prospects for long-term protection;

(4) Conducting studies to identify the effects of flow management on Oregon chub habitats; and

(5) Funding a pilot study to investigate the impact of floodplain restoration and reconnection on fish communities in river reaches below Willamette Project dams.

Operation and maintenance of the Willamette Project under the new biological opinion will result in improved protections for the Oregon chub and new information that will benefit the species throughout the Willamette Basin.

The Oregon Department of Transportation has developed and is implementing a plan to protect and enhance Oregon chub populations on the agency's properties or those which may be affected by highway maintenance on the Santiam River, Coast Fork Willamette River, and Middle Fork Willamette River (Scheerer 2005, pp. 1–21).

The Oregon chub populations at Elijah Bristow State Park and Jasper Park on the Middle Fork are managed by the Oregon Parks and Recreation Department, which uses the Service's recovery plan as guidance to ensure conservation of the chub populations within the parks (Schleier 2008).

The U.S. Forest Service monitors and manages several Oregon chub populations on the Middle Fork (Scheerer 2008b, p. 1).

In addition to the management and protection provided to the Oregon chub on Federal and State lands, two individual Safe Harbor Agreements and a new programmatic Safe Harbor Agreement have been completed to guide management of Oregon chub populations on private lands. Safe Harbor Agreements are voluntary arrangements between the Service and cooperating non-Federal landowners to promote management for listed species on non-Federal property while giving assurances to participating landowners that no additional future regulatory restrictions will be imposed. The programmatic Safe Harbor Agreement with ODFW (Oregon Department of Fish and Wildlife and U.S. Fish and Wildlife Service 2009, pp. 1–30) will substantially contribute to the recovery of the Oregon chub.

Summary of Factor A

The Oregon chub has experienced extensive loss of slough and side-channel habitat due to hydrological changes resulting from dam construction and channelization in the Willamette Valley. However, many new habitats have been artificially created and are being managed to maintain populations of Oregon chub. There is evidence that some populations are threatened by water quality degradation and associated reduction in habitat quality, although this has been documented at only a few sites. Habitat conditions have improved to the point where the species is not presently in danger of extinction. However, without the continued protections provided by the Act, or long-term management agreements, the Oregon chub would likely become endangered in the foreseeable future due, in part, to the destruction, modification, or curtailment of its habitat. In addition, a changing climate is expected to place an added stress on the species and its habitats, although there is substantial uncertainty regarding the future environmental conditions in the Willamette Basin (*see* Summary of Comments and Responses section, above).

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

Overutilization for commercial, recreational, scientific, or educational purposes was not a factor in listing, nor is it currently known to be a threat to the Oregon chub.

Factor C. Disease or Predation

The proliferation of predatory, nonnative fish is the most significant current threat to Oregon chub populations (Scheerer *et al.* 2007, p. 14). The basin contains 31 native fish species and 29 nonnative species (Hulse *et al.* 2002, p. 44). The large-scale alteration of the Willamette Basin's hydrologic system (*i.e.,* construction of dams and the resultant changes in flood frequency and intensity) has created conditions that favor nonnative, predatory fishes, and reservoirs throughout the basin have become sources of continual nonnative fish invasions in the downstream reaches (Li *et al.* 1987, p. 198).

Oregon chub are most abundant at sites where nonnative fishes are absent (Scheerer 2007, p. 96). Predatory, nonnative centrarchids (bass and sunfish) and *Ameiurus* spp. (bullhead catfish) are common in the off-channel habitats used by Oregon chub (Scheerer 2002, p. 1075). Sites with high connectivity to adjacent flowing water frequently contain nonnative, predatory fishes and rarely contain Oregon chub (Scheerer 2007, p. 99). The presence of centrarchids and bullhead catfishes is probably preventing Oregon chub from recolonizing otherwise suitable habitats throughout the basin (Markle *et al.* 1991, p. 291).

Management for Oregon chub has focused on establishing secure, isolated habitats free of nonnative fishes. However, natural flood events may breach barriers to connectivity allowing invasion by nonnative fishes. During the 1996 floods in the Willamette Basin, nonnative fishes invaded the habitats of the two largest Oregon chub populations in the Santiam River (Geren Island North Channel and Santiam Easement). In the next 2 years, these populations declined by more than 50 percent, and have not recovered to pre-1996 levels more than 10 years later (Scheerer 2002, p. 1078; Bangs *et al.* 2008, p. 7).

Game fish have also been intentionally introduced into chub ponds. An illegal introduction of largemouth bass (*Micropterus salmoides*) at an Oregon chub population site on the Middle Fork apparently caused a significant decline in that population from over 7,000 fish to approximately 3,000 fish from 2000 to 2008 (Scheerer *et al.* 2007, p. 14; Bangs *et al.* 2008, p. 7). The ubiquity of nonnative fishes in the Willamette Basin has created a substantial challenge to the recovery of the Oregon chub. Scheerer *et al.* (2007, pp. 10–14) conclude, "The resulting paradox is that the frequent interaction of the river with the floodplain habitats * * *, conditions which historically created off-channel habitats and aided in the dispersal of chub and the interchange of individuals among populations, now poses a threat to Oregon chub by allowing dispersal of nonnative species."

Nonnative fishes may also serve as sources of parasites and diseases for the Oregon chub. However, disease and parasite problems have not been identified in this species, nor has the issue been studied.

Summary of Factor C

Predatory, nonnative fishes are the most significant current threat to the recovery of the Oregon chub. Nonnative fishes are abundant and ubiquitous in the Willamette River Basin, and continual monitoring and management are required to protect existing Oregon chub populations from invasion. Predation remains a concern, but as the status of the species has improved since listing (*i.e.,* more populations have been established and are being managed to minimize threats), the relative effect of the threat of predatory, nonnative fishes has declined. Nevertheless, predation continues to impact the Oregon chub such that it is likely to become endangered in the foreseeable future without continued protection under the Act.

Factor D. The Inadequacy of Existing Regulatory Mechanisms

Before we listed the Oregon chub as endangered in 1993, the species had no regulatory protections. Upon its listing as endangered, the species benefited from the protections of the Act, which include the prohibition against take and the requirement for interagency consultation for Federal actions that may affect the species. Section 9 of the Act and Federal regulations prohibit the take of endangered and threatened species without special exemption. The Act defines "take" as to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct (16 U.S.C. 1532(19)). Our regulations define "harm" to include significant habitat modification or degradation that results in death or injury to listed species by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering (50 CFR 17.3). Our regulations also define "harass" as intentional or negligent actions that create the likelihood of injury to listed species to such an extent as to significantly disrupt normal behavior patterns, which include, but are not limited to, breeding, feeding, or sheltering (50 CFR 17.3).

Section 7(a)(1) of the Act requires all Federal agencies to utilize their authorities in furtherance of the purposes of the Act by carrying out programs for the conservation of endangered species and threatened species. Section 7(a)(2) of the Act requires Federal agencies to ensure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of listed species or adversely modify their critical habitat. Thus, listing the Oregon chub provided a variety of protections, including the prohibition against take and the conservation mandates of section 7 for all Federal agencies. Because the Service has regulations that prohibit take of all threatened species (50 CFR 17.31(a)), unless modified by a special rule issued under section 4(d) of the Act (50 CFR 17.31(c)), the regulatory protections of the Act are largely the same for species listed as endangered and as threatened; thus, the protections provided by the Act will remain in place if the Oregon chub is reclassified as a threatened species.

The Oregon chub is designated as "Sensitive-Critical" by ODFW. This designation is a nonregulatory tool that helps focus wildlife management and research activities, with the goal of preventing species from declining to the point of qualifying as "threatened" or "endangered" under the Oregon Endangered Species Act (ORS 496.171, 496.172, 496.176, 496.182 and 496.192). Sensitive-Critical designation encourages, but does not require, the implementation of any conservation actions for the species; however other State agencies, such as the Oregon Department of State Lands, the Water Resources Department, and the Oregon State Marine Board, refer to the Sensitive Species List when making regulatory decisions.

The Oregon chub is not protected by any other regulatory mechanisms.

Summary of Factor D

The regulatory mechanisms in effect under the Act provide a prohibition against take, the affirmative conservation mandate of section 7(a)(1), and the duty of all Federal agencies to avoid jeopardizing the continued existence/destroying or adversely modifying critical habitat of section 7(a)(2); these regulatory mechanisms will remain in place with the Oregon chub's downlisting to threatened. A program of conservation actions will be implemented by the Corps, BPA, and BOR as a result of the Service's biological opinion on the Willamette Project. However, because there are no other regulatory mechanisms in place beyond the Act, the inadequacy of regulatory mechanisms still threatens the Oregon chub.

Factor E. Other Natural or Manmade Factors Affecting Its Continued Existence

Almost half of all the fish species in the Willamette River are not native to the basin (Hulse *et al.* 2002, p. 44). Along with the direct threat of predation (see Factor C, above), nonnative fish compete with Oregon chub for food resources. Competition with nonnative fishes may contribute to the decline and exclusion of Oregon chub from suitable habitats. The observed feeding strategies and diets of nonnative fishes, particularly juvenile centrarchids and adult mosquitofish (*Gambusia affinis*), overlap with the diet and feeding strategies described for the Oregon chub (Li *et al.* 1987, pp. 197–198). Thus, direct competition for food between Oregon chub and nonnative species may limit the distribution and expansion of the species; however, no studies have focused on the topic of competitive exclusion to date.

Historically, floods provided the mechanism of dispersal and genetic exchange for Oregon chub populations throughout the Willamette Basin (Scheerer 2002, p. 1078). The current management focus on protecting Oregon

chub populations in isolation, which protects the species from the introduction of predatory, nonnative fishes, may be having negative genetic implications (Scheerer 2002, p. 1078). This lack of connectivity means that movement of individuals among populations occurs rarely, if at all, which results in little or no genetic exchange among populations (Scheerer *et al.* 2007, p. 9). Research is under way to determine if Oregon chub populations have distinct genetic characteristics in the different sub-basins of the Willamette River; preliminary results seem to indicate that genetic differences exist among the major sub-basins of the Willamette Basin (Ardren *et al.* 2008, p. 1). There is concern that an unintended effect of managing for isolated populations may be genetic drift and inbreeding. If this proves to be the case, managers may need to move fish among populations to fulfill the role that natural flooding once played (Scheerer *et al.* 2007, p. 15).

Summary of Factor E

Competition from nonnative species and the potential loss of genetic diversity as a result of managing Oregon chub populations in isolated habitats are threats that could affect Oregon chub populations throughout the species' range. However, the magnitude of these threats is unknown.

Conclusion of 5-Factor Analysis

We have carefully assessed the best scientific and commercial data available and have determined that the Oregon chub is not currently in danger of extinction. We believe that the species now meets the definition of a threatened species throughout all of its range. It has exceeded two of the downlisting criteria and is on the brink of meeting the third. Recovery plans are intended to guide and measure recovery. Recovery criteria for downlisting and delisting are developed in the recovery planning process to provide measurable goals on the path to recovery; however, precise attainment of all recovery criteria is not a prerequisite for downlisting or delisting. Rather, the decision to revise the status of a listed species is based solely on the analysis of the five listing factors identified in section 4 of the Act. The Act provides for downlisting from endangered to threatened when the best available data indicate that a species, subspecies, or distinct population segment is no longer in danger of extinction, but is likely to become endangered in the foreseeable future without the continued protection of the Act.

At the time we completed the Oregon Chub Recovery Plan in 1998, we attempted to describe what the range, abundance, and distribution of Oregon chub populations should be before downlisting and delisting. These estimates were manifested in the downlisting and delisting criteria discussed above, and these criteria effectively established the Service's position on what constitutes "threatened" for the Oregon chub, in the case of downlisting criteria, and "recovered," in the case of the delisting criteria. Because the downlisting criteria have not been precisely met, the finding in this rule represents a departure from the Service's previously articulated description of "threatened" for the Oregon chub, and so must be further explained.

We compared current Oregon chub population information with the downlisting criteria for each sub-basin and estimated the amount by which each population goal's had been exceeded. The result of this comparison is shown in Table 2.

TABLE 2—COMPARISON OF NUMERICAL POPULATION GOALS FOR DOWNLISTING FROM THE OREGON CHUB RECOVERY PLAN WITH CURRENT POPULATION ESTIMATES, BY SUB-BASIN (CURRENT POPULATION DATA FROM BANGS ET AL. 2008, P. 7)

Sub-basin	Downlisting goal (number of fish/number of populations)	Current population estimate (number of fish/number of populations)	Percent of downlisting goal achieved (number of fish/number of populations)
Santiam	1,500/3	5,622/9	375/300
Mainstem Willamette	1,500/3	90,442/13	6,029/433
Middle Fork Willamette	1,500/3	32,484/16	2,166/533

Although these totals do not incorporate the 5-year stable or increasing trend aspect of the downlisting criteria, the number of chub in these basins greatly exceeds the minimum required in the downlisting criteria for both the number of populations and the number of individual fish. Taken together, along with the 5-factor analysis discussed above, it is clear that the status of the chub is far more secure than it might be with 4,500 fish in 9 populations across 3 sub-basins with 5-year stable or increasing trends.

The number of populations has increased from 9 to 38 since we listed the species in 1993; there are 16 large (>500 individuals) populations with stable or increasing trends. The species is well distributed throughout the Willamette Basin, and most of these populations have some type of protective management and appear to be viable as long as they are monitored and adaptively managed. Although many of the threats have been reduced by recovery efforts, threatened status is appropriate because the species is likely to become endangered in the foreseeable future without the protections of the Act or long-term management agreements and adaptive management actions. In addition, concerns remain regarding the genetic implications of managing Oregon chub in isolated ponds, cut off from potential interactions with other populations in the basin.

Threats to existing habitats remain, including manipulation of flows which can lead to desiccation, nutrient and pesticide runoff, and vegetative succession in shallow pond environments. The chief threat to existing Oregon chub populations is nonnative fish invasions, which may occur as a result of flood events, intentional introductions, or through connections between isolated chub habitats and adjacent watercourses. However, as the status of the species has improved since listing (*i.e.,* more populations have been established and are being managed to minimize threats), the relative effect of the threat of predatory nonnative fishes has declined. Monitoring for nonnative fish invasions and adaptively managing in response to such invasions is necessary for the long-term viability of this species.

In the absence of the Act's regulatory protections, predation by nonnative fishes, as well as population declines and range contraction resulting from habitat loss are expected to continue. We have no information to suggest that the threats identified above are likely to be reduced in the foreseeable future. We also do not have any indication that regulatory mechanisms will materialize to address or ameliorate the ongoing threats to the species. Thus, future Oregon chub population declines and range contraction, similar to what has been observed in the past, is a reasonable expectation without the continued protections of the Act.

Having determined that the Oregon chub is threatened throughout its range, we must next determine if the species is endangered in any significant portion of its range. The primary remaining threats to the species are introduction of predatory, nonnative fishes into chub ponds and water quality degradation. Extensive surveys of the Willamette Basin have found that predatory, nonnative fishes are abundant and widespread in each of the sub-basins (Scheerer 2007, p. 97). Threats to water quality, including chemical spills, agricultural runoff, and drought, are not restricted to any portion of the Oregon chub's range, and are equally likely to occur in any of the three sub-basins. While the threats associated with reduced genetic exchange among populations are not yet well understood it seems likely that the potential genetic consequences of management for isolated populations (*e.g.,* inbreeding and genetic drift) would be experienced across the range of the species, as protection of isolated ponds is the management goal for populations in all three of the sub-basins.

In summary, the primary threats to the Oregon chub are relatively uniform throughout the species' range. We have determined that none of the existing or potential threats, either alone or in combination with others, currently place the Oregon chub in danger of extinction throughout any significant portion of its range. However, without the continued protections of the Act or long-term management agreements, the Oregon chub is likely to become endangered throughout its range in the foreseeable future. Threatened status is therefore appropriate for the Oregon chub throughout its entire range.

Effects of This Rule

This final rule revises 50 CFR 17.11(h) to reclassify the Oregon chub from endangered to threatened on the List of Endangered and Threatened Wildlife. However, this reclassification does not significantly change the protection afforded this species under the Act. The regulatory protections of sections 7 and 9 of the Act (see Factor D, above) remain in place. Anyone taking, attempting to take, or otherwise possessing Oregon chub, or parts thereof, in violation of section 9 is subject to a penalty under section 11 of the Act. Under section 7 of the Act, all Federal agencies must ensure that any actions they authorize, fund, or carry out are not likely to jeopardize the continued existence of the Oregon chub or adversely modify its critical habitat.

Whenever a species is listed as threatened, the Act allows us to propose a special rule under section 4(d) of the Act. The special rule would modify the standard protections for that threatened species under section 9 of the Act and Service regulations at 50 CFR 17.31 and 17.71, if that action is deemed necessary and advisable to provide for the conservation of the species. However, 4(d) rules are only one of the tools that the Service uses to promote species conservation and may not be necessary in circumstances where other tools (*e.g.,* Safe Harbor Agreements) have already proven effective in eliciting conservation partnerships. There are no 4(d) rules in place or proposed for the Oregon chub, because there is currently no conservation need to do so for the species. For the Oregon chub, we have developed a programmatic Safe Harbor Agreement with ODFW (Oregon Department of Fish and Wildlife and U.S. Fish and Wildlife Service 2009, pp. 1–30) that allows ODFW to work with private landowners to establish new populations of Oregon chub on private lands, directly advancing the recovery of the species (*see* Additional Conservation Measures above). This final rule does not affect our Oregon chub Programmatic Safe Harbor Agreement with ODFW.

Required Determinations

Paperwork Reduction Act of 1995

Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), require that Federal agencies obtain approval from OMB before collecting information from the public. This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act. 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

We have determined we do not need to prepare an Environmental Assessment or an Environmental Impact Statement, as defined under the authority of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), in connection with regulations adopted under section 4(a) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

A complete list of all references cited in this rule is available upon request from the Oregon Fish and Wildlife Office (*see* **ADDRESSES**).

Authors

The primary authors of this rule are Cat Brown and Doug Baus of the Oregon Fish and Wildlife Office (*see* **ADDRESSES**).

List of Subjects in 50 CFR Part 17

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

Regulation Promulgation

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

PART 17—[AMENDED]

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

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

■ 2. Amend § 17.11(h) by revising the entry for "Chub, Oregon" under FISHES in the List of Endangered and Threatened Wildlife to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*		*
FISHES							
*	*	*	*	*	*		*
Chub, Oregon	*Oregonichthys crameri.*	U.S.A. (OR)	Entire	T	520,769	17.95(e)	NA
*	*	*	*	*	*		*

* * * * *

Dated: April 13, 2010.

Rowan W. Gould,

Acting Director, Fish and Wildlife Service.

[FR Doc. 2010–9375 Filed 4–22–10; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 080521698–9067–02]

RIN 0648–XW04

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Closure of the Eastern U.S./Canada Management Area

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

ACTION: Temporary rule; closure and possession restriction.

SUMMARY: NMFS announces a temporary closure of the Eastern U.S./Canada Area to limited access Northeast (NE) multispecies days-at-sea (DAS) vessels and a prohibition on the harvest, possession, and landing of Georges Bank (GB) yellowtail flounder by all federally-permitted vessels within the entire U.S./Canada Management Area. Based upon vessel monitoring system (VMS) reports and other available information, the Administrator, Northeast Region, NMFS (Regional Administrator) has projected that 100 percent of the fishing year (FY) 2009 total allowable catch (TAC) of GB yellowtail flounder allocated to be harvested from the U.S./Canada Management Area has been harvested. This action is being taken to prevent the FY 2009 TAC for GB yellowtail flounder in the U.S./Canada Management Area from being exceeded during FY 2009 in accordance with the regulations implemented under Amendment 13 to the NE Multispecies Fishery Management Plan (FMP) and the Magnuson–Stevens Fishery Conservation and Management Act.

DATES: Effective 0001 hours April 20, 2010, through April 30, 2010.

FOR FURTHER INFORMATION CONTACT: Brett Alger, Fisheries Management Specialist, (978) 675–2153, fax (978) 281–9135.

SUPPLEMENTARY INFORMATION: Regulations governing the GB yellowtail flounder landing limit within the U.S./Canada Management Area are found at 50 CFR 648.85(a)(3)(iv)(C) and (D). The regulations authorize vessels issued a valid limited access NE multispecies permit and fishing under a NE multispecies DAS to fish in the U.S./Canada Management Area, as defined at § 648.85(a)(1), under specific conditions. The TAC for GB yellowtail flounder for FY 2009 (May 1, 2009–April 30, 2010) was set at 1,617 mt by the 2009 interim final rule (74 FR 17030, April 13, 2009). An action published on March 16, 2010 (75 FR 12462), removed a restriction on the use of specific trawl gear in parts of the Western U.S./Canada Area (effective March 11, 2010) and removed a trawl gear restriction in the Eastern U.S./Canada Area (effective on April 13, 2010). Additionally, the trip limit for GB yellowtail flounder in the U.S./Canada Management Area was raised from 2,500 lb (1,134 kg) to 5,000 lbs (2,268 kg) per trip on March 24, 2010 (75 FR 15625). These actions increased vessels' opportunity to fully harvest the GB yellowtail flounder TAC for FY 2009. The regulations at § 648.85(a)(3)(iv)(C)(*3*) authorize the Administrator, Northeast (NE) Region, NMFS (Regional Administrator) to close the Eastern U.S./Canada Area to groundfish DAS vessels and prohibit all vessels from harvesting, possessing, or landing yellowtail flounder from the U.S./Canada Management Area to prevent the GB yellowtail flounder TAC from being exceeded.

According to the most recent VMS reports and other available information, the cumulative GB yellowtail flounder catch is approximately 98.6 percent of the TAC as of April 19, 2010. Therefore, to ensure that the TAC for GB yellowtail flounder will not be exceeded, the Eastern U.S./Canada Area is closed to all limited access NE multispecies DAS vessels and all vessels are prohibited from harvesting, possessing, or landing yellowtail flounder from the U.S./Canada Management Area, effective 0001 hr April 20, 2010, through April 30, 2010.

Classification

This action is authorized by 50 CFR part 648 and is exempt from review under Executive Order 12866.

Pursuant to 5 U.S.C. 553(b)(3)(B) and (d)(3), there is good cause to waive prior notice and opportunity for public comment, as well as the delayed effectiveness for this action, because prior notice and comment and a delayed effectiveness would be impracticable and contrary to the public interest. This action will temporarily close the Eastern U.S./Canada Area to NE multispecies DAS vessels and prohibit all vessels from harvesting, possessing, or landing yellowtail flounder from the U.S./Canada Management Area. This action is necessary to halt the catch of GB yellowtail flounder in the U.S./Canada Management Area and prevent the FY 2009 GB yellowtail flounder TAC from being exceeded during FY 2009. Because of the rapid increase in GB yellowtail harvest rate, it is projected that 100 percent of the GB yellowtail flounder TAC will be harvested prior to the end of FY 2009.

This action is required by the regulations at § 648.85(a)(3)(iv)(C)(*3*) to prevent over-harvesting the U.S./Canada

Management Area TACs. The time necessary to provide for prior notice, opportunity for public comment, and delayed effectiveness for this action would prevent the agency from taking immediate action to halt the catch of GB yellowtail flounder in the U.S./Canada Management Area. To allow vessels to continue directed fishing effort on GB yellowtail flounder during the period necessary to publish and receive comments on a proposed rule could potentially allow the GB yellowtail flounder to exceed the FY 2009 TAC for this stock. Exceeding the FY 2009 TAC for GB yellowtail flounder would increase mortality of this overfished stock beyond that evaluated during the development of Amendment 13 and the 2009 Interim Action, resulting in decreased revenue for the NE multispecies fishery, increased negative economic impacts to vessels operating in the U.S./Canada Management Area, a reduced chance of achieving optimum yield in the groundfish fishery, and unnecessary delays to the rebuilding of this overfished stock. Exceeding the FY 2009 GB yellowtail flounder TAC would also necessitate that any overage of the GB yellowtail flounder TAC during FY 2009 for this stock be deducted from the FY 2010 TAC for this stock. Reducing the FY 2010 TAC due to exceeding the FY 2009 TAC caused by delaying this action, therefore, would create an unnecessary burden on the fishing industry and further negative economic and social impacts that were not previously considered.

The Regional Administrator's authority to close the Eastern U.S./Canada Area to all groundfish DAS vessels when any of the TACs specified are projected to be caught, was publicly considered and open to public comment during the development of Amendment 13. The public is able to obtain information on the rate of harvest of the GB yellowtail flounder TAC via the NMFS Northeast Regional Office website (*http://www.nero.noaa.gov*), which provides at least some advanced notice of a potential action to prevent the TAC for GB yellowtail from being exceeded during FY 2009. Therefore, any negative effect the waiving of public comment and delayed effectiveness may have on the public is mitigated by these factors.

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

Dated: April 20, 2010.

Emily H. Menashes,

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

[FR Doc. 2010–9514 Filed 4–20–10; 4:15 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 75, No. 78
Friday, April 23, 2010

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

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

7 CFR Part 4288

RIN 0570–AA75

Subpart B—Advanced Biofuel Payment Program; Correction

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Proposed rule; correction.

SUMMARY: The Agency published a document in the **Federal Register** of April 16, 2010 at 75 FR 20085 proposing a payment program for producers of advanced biofuels to supporting existing advanced biofuel production and to encourage new production of advanced biofuels. As published, the proposed rule indicates that public comments must be received on or before May 17, 2010. This reflects a 30-day public comment period, when a 60-day public comment period was intended.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Diane Berger, (202) 260–1508.

SUPPLEMENTARY INFORMATION:

Correction

In the **Federal Register** of April 16, 2010, in FR Doc. 2010–8278, on page 20085, column 2, under **DATES**, the third line is corrected by changing "May 17, 2010" to "June 15, 2010."

Dated: April 19, 2010.

Judith A. Canales,

Administrator, Rural Business-Cooperative Service.

[FR Doc. 2010–9345 Filed 4–22–10; 8:45 am]

BILLING CODE 3410–XY–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2010–0238]

RIN 1625–AA08

Special Local Regulation; Detroit APBA Gold Cup, Detroit River, Detroit, MI

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes establishing a temporary special local regulation in the Captain of the Port Detroit Zone on the Detroit River, Detroit, Michigan. This special local regulation is intended to restrict vessels from portions of the Detroit River during the Detroit APBA Gold Cup. This special local regulation is necessary to protect spectators and vessels from the hazards associated with powerboat races.

DATES: Comments and related material must be received by the Coast Guard on or before May 24, 2010.

ADDRESSES: You may submit comments identified by docket number USCG–2010–0238 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 CDR Joseph Snowden, Prevention Department, Sector Detroit, Coast Guard; telephone (313) 568–9580, e-mail *Joseph.H.Snowden@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–2010–0238), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (via *http://www.regulations.gov*) or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via *http://www.regulations.gov,* it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* click on the "submit a comment" box, which will then become highlighted in blue. In the "Document Type" drop down menu select "Proposed Rule" and insert "USCG–2010–0238" 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–2010–0238" 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

This temporary special local regulation is necessary to ensure the safety of vessels and spectators from hazards associated with a powerboat race. The Captain of the Port Detroit has determined powerboat races in close proximity to watercraft and infrastructure pose significant risk to public safety and property. The likely combination of large numbers of recreation vessels, powerboats traveling at high speeds, and large numbers of spectators in close proximity to the water could easily result in serious injuries or fatalities. Establishing a special local regulation around the location of the race course will help ensure the safety of persons and property at these events and help minimize the associated risks.

Discussion of Proposed Rule

This proposed temporary special local regulation is necessary to ensure the safety of spectators and vessels during the setup, course familiarization, testing and race in conjunction with the Detroit APBA Gold Cup. The powerboat race and associated testing will occur between 7 a.m. on July 7, 2010 and 7 p.m. on July 11, 2010. The special local regulation will be enforced daily from 7 a.m. to 7 p.m. on July 7–11, 2010.

The special local regulation will encompass all waters of the Detroit River, between Detroit, MI and Belle Isle, within an area bound on the west by a north south line created by the Belle Isle Bridge, starting on land in Detroit at position 42°20′07″ N; 083°00′00″ W and extending south to a point on Belle Isle at position 42°20′04″ N; 082°59′08″ W, and bound on the east by a north-south line starting on land in Detroit at position 42°21′03″ N; 082°57′07″ W, and extending south to a point on Belle Isle at position 42°21′00″ N; 082°57′07″ W. All geographic coordinates are North American Datum of 1983 [NAD 83].

All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on scene patrol personnel. Entry into, transiting, or anchoring within the special local regulation area is prohibited unless authorized by the Captain of the Port Detroit or his designated on scene representative. The Captain of the Port or his designated on scene representative may be contacted via VHF Channel 16.

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.

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation is unnecessary.

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

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 rule will affect the following entities, some of which might be small entities: the owners and operators of vessels intending to transit or anchor in a portion of the Detroit River near Detroit, MI between 7 a.m. and 7 p.m. on July 7–11, 2010.

This special local regulation area will not have a significant economic impact on a substantial number of small entities for the following reasons: This rule will only be enforced for twelve hours on each day for five days total. In the event that this temporary special local regulation affects shipping, commercial vessels may request permission from the Captain of the Port Detroit to transit through the special local regulation area. The Coast Guard will give notice to the public via a Broadcast Notice to Mariners that the regulation is in effect and when it is being 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 CDR Joseph Snowden, Prevention Department, Sector Detroit, Coast Guard; telephone (313) 568–9580, e-mail *Joseph.H.Snowden@uscg.mil*. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

The Coast Guard recognizes the treaty rights of Native American Tribes. Moreover, the Coast Guard is committed to working with Tribal Governments to implement local policies and to mitigate tribal concerns. We have determined that this rule and fishing rights protection need not be incompatible. We have also determined that 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. Nevertheless, Indian Tribes that have questions concerning the provisions of this proposed rule or options for compliance are encouraged to contact the point of contact listed under **FOR FURTHER INFORMATION CONTACT**.

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. This rule involves the establishment of a special local regulation. Based on our preliminary determination, there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, we believe that this rule should be categorically excluded. Because this event establishes a special local regulation, paragraph (34)(h) of figure 2–1 of the Instruction applies. Thus, no further environmental documentation is required. 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 100

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

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233.

2. Add a new temporary § 100.35T09–0238 as follows:

§ 100.35T09–0238 Special Local Regulation; Detroit APBA Gold Cup; Detroit River; Detroit, MI.

(a) *Location.* The following is a temporary special local regulation area: all waters of the Detroit River, between Detroit, MI and Belle Isle, within an area bound on the west by a north south line created by the Belle Isle Bridge, starting on land in Detroit at position 42°20′07″ N; 083°00′00″ W and extending south to a point on Belle Isle at position 42°20′04″ N; 082°59′08″ W, and bound

on the east by a north-south line starting on land in Detroit at position 42°21′03″ N; 082°57′07″ W, and extending south to a point on Belle Isle at position 42°21′00″ N; 082°57′07″ W. (DATUM: NAD 83).

(b) *Effective Period.* This regulation is effective from 7 a.m. on July 7, 2010, to 7 p.m. on July 11, 2010. This regulation will be enforced daily from 7 a.m. until 7 p.m. on July 7–11, 2010.

(c) *Regulations.*

(1) In accordance with the general regulations in § 100.35 of this part, entry into, and transiting or anchoring within this special local regulation area is prohibited unless authorized by the Captain of the Port Detroit, or his designated on-scene representative.

(2) This special local regulation area is closed to all vessel traffic, except as may be permitted by the Captain of the Port Detroit or his designated on-scene representative.

(3) The "on-scene representative" of the Captain of the Port is any Coast Guard commissioned, warrant, or petty officer who has been designated by the Captain of the Port to act on his behalf. The on-scene representative of the Captain of the Port will be aboard either a Coast Guard or Coast Guard Auxiliary vessel. The Captain of the Port or his designated on scene representative may be contacted via VHF Channel 16.

(4) Vessel operators desiring to enter or operate within the special local regulation area shall contact the Captain of the Port Detroit or his on-scene representative to obtain permission to do so. Vessel operators given permission to enter or operate in the special local regulation area must comply with all directions given to them by the Captain of the Port or his on-scene representative.

Dated: April 8, 2010.

E.J. Marohn,

Commander, U.S. Coast Guard, Acting Captain of the Port Detroit.

[FR Doc. 2010–9492 Filed 4–22–10; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2010–0279]

RIN 1625–AA08

Special Local Regulation; Harrison Township Grand Prix, Lake St. Clair; Harrison Township, MI

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes establishing a temporary special local regulation in the Captain of the Port Detroit Zone on Lake St. Clair, Harrison Township, Michigan. This special local regulation is intended to restrict vessels from portions of Lake St. Clair during the Harrison Township Grand Prix. This special local regulation is necessary to protect spectators and vessels from the hazards associated with powerboat races.

DATES: Comments and related material must be received by the Coast Guard on or before May 24, 2010.

ADDRESSES: You may submit comments identified by docket number USCG–2010–0279 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 CDR Joseph Snowden, Prevention Department, Sector Detroit, Coast Guard; telephone (313) 568–9580, e-mail *Joseph.H.Snowden@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–2010–0279), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (via *http://www.regulations.gov*) or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via *http://www.regulations.gov*, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov*, click on the "submit a comment" box, which will then become highlighted in blue. In the "Document Type" drop down menu select "Proposed Rule" and insert "USCG–2010–0279" 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–2010–0279" 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

This temporary special local regulation is necessary to ensure the safety of vessels and spectators from hazards associated with a powerboat race. The Captain of the Port Detroit has determined powerboat races in close proximity to watercraft and infrastructure pose significant risk to public safety and property. The likely combination of large numbers of recreation vessels, powerboats traveling at high speeds, and large numbers of spectators in close proximity to the water could easily result in serious injuries or fatalities. Establishing a special local regulation around the location of the race course will help ensure the safety of persons and property at these events and help minimize the associated risks.

Discussion of Proposed Rule

This proposed temporary special local regulation is necessary to ensure the safety of spectators and vessels during the setup, course familiarization, testing and race in conjunction with the Harrison Township Grand Prix. The powerboat races will occur between 10 a.m. and 4 p.m. on July 17 and 18, 2010. The special local regulation will be enforced daily from 10 a.m. to 4 p.m. on July 17–18, 2010.

The special local regulation will encompass all waters of Lake St. Clair, near Harrison Township, MI, bound by a line extending from a starting point in Lake St. Clair located at position 42°32′ 44″ N, 082°50′42″ W; traveling southeast to position 42°32′10″ N, 082°47′50″ W; northeast to position 42°34′07″ N, 082°47′30″ W; west to position 42°34′05″ N, 082°49′35″ W; and southwest to the point of origin at position 42°32′ 44″ N, 082°50′42″ W;. This regulated navigation area encompasses the entire race course located in Lake St. Clair near Metro Beach, Harrison Township. All geographic coordinates are North American Datum of 1983 [NAD 83].

All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on scene patrol personnel. Entry into, transiting, or anchoring within the special local regulation area is prohibited unless authorized by the Captain of the Port Detroit or his designated on scene representative. The Captain of the Port or his on scene representative may be contacted via VHF Channel 16.

Regulatory Analyses

We developed this 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. We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation is unnecessary. This determination is based on the minimal time that vessels will be restricted from the special regulation area and the special regulation area is located where the Coast Guard expects minimal adverse impact to mariners from the special regulation area's activation.

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 rule will affect the following entities, some of which might be small entities: The owners and operators of vessels intending to transit or anchor in a portion of Lake St. Clair near Harrison Township, MI, between 10 a.m. on July 17, and 4 p.m. on July 18, 2010.

This special local regulation area will not have a significant economic impact on a substantial number of small entities for the following reasons: This rule will only be enforced for six hours on each day for two days total. In the event that this temporary special local regulation affects shipping, commercial vessels may request permission from the Captain of the Port Detroit to transit through the special local regulation area. The Coast Guard will give notice to the public via a Broadcast Notice to Mariners that the regulation is in effect and when it is being 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 CDR Joseph Snowden, Prevention Department, Sector Detroit, Coast Guard; telephone (313) 568–9580, e-mail *Joseph.H.Snowden@uscg.mil.* The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

The Coast Guard recognizes the treaty rights of Native American Tribes. Moreover, the Coast Guard is committed to working with Tribal Governments to implement local policies and to mitigate tribal concerns. We have determined that this rule and fishing rights protection need not be incompatible. We have also determined that 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. Nevertheless, Indian Tribes that have questions concerning the provisions of this proposed rule or options for compliance are encouraged to contact the point of contact listed under **FOR FURTHER INFORMATION CONTACT.**

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. This rule involves the establishment of a special local regulation. Based on our preliminary determination, there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, we believe that this rule should be categorically excluded. Because this event establishes a special local regulation, paragraph (34)(h) of figure 2–1 of the Instruction applies. Thus, no further environmental documentation is required. 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 100

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

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233.

2. Add a new temporary § 100.35T09–0279 as follows:

§ 100.35T09–0279 Special Local Regulation; Harrison Township Grand Prix; Lake St. Clair; Harrison Township, MI.

(a) *Location.* The following is a temporary special local regulation area: All waters of Lake St. Clair, near Harrison Township, MI, bound by a line extending from a starting point in Lake St. Clair located at position 42°32′44″ N, 082°50′42″ W; traveling southeast to position 42°32′10″ N, 082°47′50″ W; northeast to position 42°34′07″ N, 082°47′30″ W; west to position 42°34′05″ N, 082°49′35″ W; and southwest to the point of origin at position 42°32′44″ N, 082°50′42″ W. This regulated navigation area encompasses the entire race course located in Lake St. Clair near Metro Beach, Harrison Township. (DATUM: NAD 83).

(b) *Effective Period.* This regulation is effective from 10 a.m. on July 17, 2010, to 4 p.m. on July 18, 2010. This regulation will be enforced daily from 10 a.m. until 4 p.m. on July 17–18, 2010.

(c) *Regulations.*

(1) In accordance with the general regulations in § 100.35 of this part, entry into, and transiting or anchoring within this special local regulation area is prohibited unless authorized by the Captain of the Port Detroit, or his on-scene representative.

(2) This special local regulation area is closed to all vessel traffic, except as may be permitted by the Captain of the Port Detroit or his on-scene representative.

(3) The "on-scene representative" of the Captain of the Port is any Coast Guard commissioned, warrant, or petty officer who has been designated by the

Captain of the Port to act on his behalf. The on-scene representative of the Captain of the Port will be aboard either a Coast Guard or Coast Guard Auxiliary vessel.

(4) Vessel operators desiring to enter or operate within the special local regulation area shall contact the Captain of the Port Detroit or his on-scene representative to obtain permission to do so. The Captain of the Port or his designated on scene representative may be contacted via VHF Channel 16. Vessel operators given permission to enter or operate in the special local regulation area must comply with all directions given to them by the Captain of the Port or his on-scene representative.

Dated: April 9, 2010.

E.J. Marohn,

Commander, U.S. Coast Guard, Acting Captain of the Port Detroit.

[FR Doc. 2010–9499 Filed 4–22–10; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2006–0990; FRL–9140–9]

Approval and Promulgation of Air Quality Implementation Plans; New Mexico; Revisions to New Mexico Transportation Conformity Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the New Mexico State Implementation Plan (SIP) concerning the State transportation conformity rules. The plan revisions are intended to ensure consistency with amendments to the Federal Transportation Conformity Rule. These plan revisions meet statutory and regulatory requirements, and are consistent with EPA's guidance.

DATES: Written comments should be received on or before May 24, 2010.

ADDRESSES: Please see the related direct final rule, which is located in the "Rules and Regulations" section of this **Federal Register,** for detailed instructions on how to submit comments.

FOR FURTHER INFORMATION CONTACT: Jeffrey Riley, Air Planning Section (6PD–L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733, telephone 214–665–8542; fax number 214–665–7263; e-mail address *riley.jeffrey@epa.gov.*

SUPPLEMENTARY INFORMATION: This document proposes to take action on SIP revisions pertaining to the State of New Mexico. We have published a direct final rule approving the State's SIP revisions in the "Rules and Regulations" section of this **Federal Register** because we view this as a noncontroversial action and anticipate no adverse comment. We have explained our reasons for this action in the preamble to the direct final rule.

If we receive no adverse comment, we will not take further action on this proposed rule. If we receive adverse comment, we will withdraw the direct final rule and it will not take effect. We would address all public comments in any subsequent final rule based upon this proposed rule.

We do not intend to institute a second comment period on this action. Any parties interested in commenting must do so at this time. For further information, please see the information provided in the **ADDRESSES** section of this document.

Dated: April 9, 2010.

Lawrence E. Starfield,

Acting Regional Administrator, Region 6.

[FR Doc. 2010–9365 Filed 4–22–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R02–OAR–2010–0161, FRL–9141–5]

Approval and Promulgation of Implementation Plans; Implementation Plan Revision; State of New Jersey

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) proposes to approve a request from the State of New Jersey to revise its State Implementation Plan (SIP) to incorporate amendments to Subchapter 4 "Control and Prohibition of Particles from Combustion of Fuel," Subchapter 10 "Sulfur in Solid Fuels," Subchapter 16 "Control and Prohibition of Air Pollution by Volatile Organic Compounds," Subchapter 19 "Control and Prohibition of Air Pollution from Oxides of Nitrogen," and related amendments to Subchapter 21 "Emission Statements." The amendments relate to the control of oxides of nitrogen (NO_X), sulfur dioxide (SO_2), particles and volatile organic compounds (VOCs) from stationary sources. This proposed SIP revision consists of control measures needed to meet the State's commitment to adopt additional reasonably available control technology (RACT) rules that address RACT requirements for the 1997 national ambient air quality standards for ozone. Additionally, the proposed SIP revision includes control measures that will help the State meet the national ambient air quality standards for fine particles.

The intended effect of this proposed rule is to approve the State control strategy, which will result in emission reductions that will help achieve attainment of the national ambient air quality standards for ozone and fine particles required by the Clean Air Act (the Act).

DATES: Comments must be received on or before May 24, 2010.

ADDRESSES: Submit your comments, identified by Docket ID number EPA–R02–OAR–2010–0161, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: Werner.Raymond@epa.gov.*
- *Fax:* 212–637–3901.
- *Mail:* Raymond Werner, Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007–1866.
- *Hand Delivery:* Raymond Werner, Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007–1866. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R02–OAR–2010–0161. 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 *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 Environmental Protection Agency, Region II Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007–1866. EPA requests, if at all possible, that you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8 a.m. to 4 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Paul Truchan (*truchan.paul@epa.gov*) concerning Subchapters 16 and 21, Anthony (Ted) Gardella (*gardella.anthony@epa.gov*) concerning Subchapter 19, and Kenneth Fradkin (*fradkin.kenneth@epa.gov*) concerning Subchapters 4 and 10, at the Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007–1866, (212) 637–4249.

SUPPLEMENTARY INFORMATION: For detailed information on New Jersey's proposed SIP revision see the Technical Support Document (TSD), prepared in support of today's action. The TSD can be viewed at *http://www.regulations.gov.*

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I. EPA's Proposed Action

A. What Action Is EPA Proposing?

On April 21, 2009 New Jersey submitted a proposed State Implementation Plan (SIP) revision that includes amendments to New Jersey Administrative Code, Title 7: Chapter 27 (NJAC 7:27) Subchapter 4 "Control and Prohibition of Particles from Combustion of Fuel;" Subchapter 8 "Permits and Certificates for Minor Facilities (and Major Facilities Without an Operating Permit);" Subchapter 10 "Sulfur in Solid Fuels;" Subchapter 16 "Control and Prohibition of Air Pollution by Volatile Organic Compounds;" Subchapter 19 "Control and Prohibition of Air Pollution from Oxides of Nitrogen;" and Subchapter 21 "Emission Statements."

EPA proposes to approve the state amendments to Subchapter 4 and Subchapter 10 as revisions to the SIP. These amendments relate to the control of particle and sulfur dioxide emissions and will help the State make advances towards reducing regional haze and meeting the national ambient air quality standards (NAAQS) for fine particles.

EPA will review Subchapter 8 and will address the approvability of all Subchapter 8 amendments in a future action.

EPA proposes to approve, as revisions to the New Jersey ozone SIP, the state-adopted amendments to Subchapter 16 and Subchapter 19, and related amendments to Subchapter 21, each adopted by New Jersey on March 20, 2009, and submitted to EPA on April 21, 2009. New Jersey amended Subchapter 16 and Subchapter 19 to meet the State's commitment to adopt additional RACT rules for 12 of 13 source categories (see 74 FR 2945, January 16, 2009), which will result in additional emission reductions of NO_X and VOCs. EPA proposes that New Jersey's state-adopted Subchapters 16 and 19, and the related amendments to Subchapter 21, are fully approvable as SIP-strengthening measures for New Jersey's ozone SIP. The amendments to Subchapters 16, 19 and 21 in New Jersey's submittal meet the State's commitment to adopt additional RACT control measures for 12 of 13 source categories to achieve additional emission reductions of NO_X and VOCs to attain the 8-hour ozone standard. The one remaining source category, adhesives and sealants, will be addressed in a separate rulemaking.

B. Why Is EPA Proposing This Action?

EPA is proposing this action to:

- Give the public the opportunity to submit comments on EPA's proposed action;
- Approve control measures which reduce NO_X and VOC emissions, a precursor of ozone formation, to help attain the NAAQS for ozone;
- Further New Jersey's and EPA's RACT requirements under the Clean Air Act (the Act); and
- Make New Jersey's regulations for additional emission reductions federally enforceable and available for emission reduction credit in the SIP.
- Approve control measures that reduce particles, sulfur dioxide, and NO_X emissions, to help attain the NAAQS for fine particles.
- Approve control measures that reduce regional haze.

C. What Are the Clean Air Act Requirements for RACT?

Sections 172(c)(1), 182(b)(2) and 182(f) of the Act require nonattainment areas that are designated as moderate or above to adopt RACT. All of New Jersey is subject to this requirement since all counties in the State are located in either of two nonattainment areas that are classified as moderate ozone nonattainment areas for the 8-hour ozone standard (40 CFR 81.331). In accordance with section 182(b), New Jersey must, at a minimum, adopt RACT level controls for sources covered by a Control Techniques Guidelines (CTG) document and for any major non-CTG sources.

Section IV.G of EPA's Phase 2 implementation rule (70 FR 71612, November 29, 2005) (Phase 2 Rule) discusses the RACT requirements for the 1997 8-hour ozone standard. It states, in part, that where a RACT SIP

is required, SIPs implementing the 8-hour ozone standard generally must assure that RACT is met, either through a certification that previously required RACT controls represent RACT for 8-hour ozone implementation purposes or, where necessary, through a new RACT determination. The majority of counties in New Jersey were previously classified under the 1-hour ozone standard as severe, while the remaining counties were subject to RACT as part of the Ozone Transport Region. New Jersey chose a uniform applicability level for RACT based on the severe classification which resulted in a statewide requirement for major sources of NO_X and VOC to be defined as those having emissions of 25 tons per year or more of both VOC and/or NO_X. Under the 8-hour standard, areas classified as moderate, the definition for major source is 50 tons per year for VOC and 100 tons per year for NO_X. However, New Jersey's choice to retain the original 1-hour ozone limits statewide in New Jersey for purposes of the RACT analysis resulted in a more stringent evaluation of RACT. New Jersey's use of 25 tons per year for RACT is consistent with the anti-backsliding requirement of the Act. See Clean Air Act sections 110(l) and 193; and *South Coast Air Quality Management Dist (SCAQMD)* v. *EPA,* 472 F.3d 882 (D.C. Cir. 2006).

D. How Did New Jersey Address the RACT Requirements for the 8-Hour Ozone Standard?

New Jersey submitted a RACT assessment in an August 1, 2007 submission which was supplemented on December 14, 2007. The RACT submission from the State of New Jersey consisted of: (1) A certification that previously adopted RACT controls in New Jersey's SIP for 101 source categories that were approved by EPA under the 1-hour ozone standard are based on the currently available technically and economically feasible controls, and that they continue to represent RACT for 8-hour ozone implementation purposes; (2) a commitment to adopt new or more stringent regulations that represent RACT control levels for both specific source categories and specific sources; and (3) a negative declaration that for certain Control Techniques Guidelines and/or Alternative Control Techniques (ACTs) documents there are no sources within New Jersey or that there are no sources above the applicable thresholds.

EPA reviewed the State's RACT analysis and agreed with the State's conclusions. On May 15, 2009 (74 FR 22837) EPA conditionally approved New Jersey's RACT SIP for the 8-hour ozone standard conditioned on the State's meeting its commitment to submit adopted RACT rules for 13 source categories by April 1, 2009. To address this commitment, on March 20, 2009, New Jersey adopted the RACT rules for the following 12 source categories: Alternative and facility-specific VOC and NO_X emission limits; emulsified and cutback asphalt used for paving; asphalt pavement production plants; CTGs published in 2006: flat wood paneling, flexible packaging printing materials, and offset lithographic printing and letterpress printing; coal-fired boilers serving electric generating units (EGUs); oil and gas-fired boilers serving EGUs; High Electric Demand Day (HEDD) EGUs; industrial/commercial/institutional boilers and other indirect heat exchangers; municipal solid waste incinerators; glass manufacturing furnaces; sewage sludge incinerators; and VOC stationary storage tanks. The industrial adhesives and sealants source category (13th) was adopted on October 30, 2008 and submitted as a SIP revision on April 9, 2009. EPA will propose action on the adhesives and sealant rule in a separate action.

E. When Were New Jersey's RACT Requirements Proposed and Adopted?

New Jersey proposed the RACT rules at Subchapters 4, 10, 16 and 19, and related amendments to Subchapter 21, on August 4, 2008, accepted written comments on them until October 3, 2008, and held public hearings on them on September 26, 2008. New Jersey adopted the amended RACT rules and related requirements on March 20, 2009, and submitted them to EPA for approval as revisions to the SIP on April 21, 2009. On June 4, 2009, EPA determined the submittal to be administratively and technically complete.

F. What is EPA's Evaluation of New Jersey's Subchapter 4—"Control and Prohibition of Particles From Combustion of Fuel?"

New Jersey previously submitted Subchapter 4 (state effective date October 12, 1977) as a SIP revision and EPA approved it on January 27, 1984 (49 FR 3465). In this action, EPA is acting on the April 21, 2009 submittal of amendments to Subchapter 4 that affect the coal-fired boiler source category, which consist of new definitions and more stringent emission limits for facilities that emit particles from coal-fired boilers.

Section 4.1 Definitions

New Jersey revised section 4.1, Definitions, to add and/or revise terms and their definitions. EPA evaluated New Jersey's definitions for consistency with the Act, EPA regulations, and EPA policy, and proposes to approve them.

Section 4.2 Standards for the Emission of Particles

New Jersey amended section 4.2 of Subchapter 4 to lower the current SIP approved particle emission rates for existing coal-fired boilers and for coal-fired boilers with a particle control apparatus that is newly constructed, installed or reconstructed. Owners/operators must comply with the new particle emission rates unless otherwise specified in an enforceable agreement with New Jersey. Note, particulates and particles are synonymous terms.

The particulate emission rates in section 7:27–4.2(a) are unchanged from emission rates in the current SIP approved Subchapter 4. The emission rates listed in section 7:27–4.2(a) will no longer apply for any coal-fired boiler or particulate control apparatus regulated by new sections 7:27–4.2(b) or 7:27–4.2(c) on and after the required compliance dates. The compliance date for sources subject to 7:27–4.2(b) is May 19, 2009; the compliance date for sources subject to 7:27–4.2(c) is December 15, 2012.

The particulate emission rate listed in section 7:27–4.2(b) of 0.0150 pounds per million BTUs (MMBTU) shall apply for coal fired boilers that have a particulate control apparatus that is newly constructed, installed, reconstructed, and commences operation on or after May 19, 2009. The owner or operator shall demonstrate compliance based on the average of three stack tests, approved by New Jersey, and in accordance with the source's approved permit. A coal-fired boiler or particulate control apparatus is also subject, as applicable, to existing New Jersey state-of-the-art requirements at 7:27–8.12 and 22:35, lowest achievable emission rate requirements at NJAC 7:27–18, and best available control technology requirements at 40 CFR 52.21, which are incorporated into the applicable implementation plan by reference.

Unless regulated by 7:27–4.2(b), the particulate emission rate listed in section 7:27–4.2(c) shall apply for coal fired boilers in operation prior to May 19, 2009. Coal fired boilers are subject to an emission rate limit of 0.0300 pounds per MMBTU, or the permitted emission rate in effect as of May 19, 2009, whichever is lower. The owner or operator shall demonstrate compliance based on the average of three stack tests, approved by New Jersey, and in accordance with the source's approved permit.

EPA supports and proposes to approve the amendments to Subchapter 4, which further reduce particulate emissions in the State.

G. What Is EPA's Evaluation of New Jersey's Subchapter 10—"Sulfur in Solid Fuels?"

New Jersey previously submitted Subchapter 10 (state effective date July 14, 1981) as a SIP revision and EPA approved it on November 3, 1981 (46 FR 54542). In this action, EPA is acting on amendments that affect facilities that emit sulfur dioxide (SO_2) emissions from solid fuel burning sources, including boilers serving electric generating units (EGUs). The amendments include new definitions and more stringent emission limits for SO_2.

Section 10.1 Definitions

New Jersey revised section 10.1, Definitions to add and/or revise terms and their definitions.

EPA evaluated New Jersey's definitions for consistency with the Act, EPA regulations, and EPA policy, and proposes to approve them.

Section 10.2 Sulfur Contents Standards

New Jersey amended section 10.2 of Subchapter 10 to require sources to comply with more stringent SO_2 emission rates contained in section 7:27–10.2(h), and to eliminate the need to control SO_2 emissions by regulating the sulfur content of solid fuel. Owners/operators must comply with the new SO_2 emission rates unless otherwise specified in an enforceable agreement with New Jersey.

Section 7:27–10.2(a), which regulates the sulfur content of solid fuel stored, offered for sale, sold, delivered or exchanged in trade, for use in New Jersey, and section 7:27–10.2(b), which regulates the sulfur content of solid fuel burned, will no longer apply to any source after December 14, 2012. Additionally, existing section 7:27–10.2(c), which required different emission standards based on the level of SO_2 nonattainment of a particular zone, will no longer apply after December 14, 2012. Existing sections 7:27–10.2(d),(e), and (f), which also regulate SO_2 emissions based on the sulfur content of fuel, and subsection (g), which applies to authorizations granted pursuant to subsection (f), will also no longer apply after December 14, 2012.

Pursuant to section 7:27–10.2(h), all sources that combust solid fuel on or after December 15, 2012 must comply with the maximum SO_2 emission rate of 0.250 pounds/MMBtu gross heat input based on a 24-hour emission rate and 0.150 pounds/MMBtu gross heat input based on a 30-calendar-day rolling average emission rate. Any source that combusts solid fuel, and that is constructed, installed, reconstructed, or modified, is also subject, as applicable, to existing New Jersey state-of-the-art requirements at 7:27–8.12 and 22:35, lowest achievable emission rate requirements at NJAC 7:27–18, and best available control technology requirements at 40 CFR 52.21, which are incorporated into the applicable implementation plan by reference.

Pursuant to section 7:27–10.2(j), owners/operators of boilers may request, from New Jersey, a one-year extension of the December 15, 2012 compliance deadline. Section 10.2(j) provides the necessary administrative and procedural requirements for owners to submit an extension request and the conditions under which New Jersey will approve the extension request.

EPA supports and proposes to approve the amendments to this existing provision, which address SO_2 emissions from solid fuel burning.

Section 10.5 SO_2 Emission Rate Determinations

Section 10.5 of Subchapter 10 is a new provision that establishes procedures for calculating the 24-hour and 30-calendar-day rolling average emission rates for SO_2 that are specified in 10.2(h).

SO_2 emissions must be determined through the use of a Continuous Emissions Monitoring System (CEMS). Section 10.5(c) allows owners/operators to exclude emissions when the units are not combusting solid fuel. Section 10.5(c)1 allows an exemption from the 30 calendar day SO_2 emission rate during the period of startup until the unit begins combusting coal. Section 10.5(c)2 allows an exemption from the 24-hour SO_2 emission rate during the period of time that the boiler does not combust coal. New Jersey provided for this exemption to exclude emissions from periods when the boiler is combusting fuel other than solid fuels, such as fuel oil or natural gas, which can be burned during the start-up of coal fired boilers.

EPA supports these amendments and is proposing to approve them.

H. What Is EPA's Evaluation of New Jersey's Subchapter 16: "Control and Prohibition of Air Pollution by Volatile Organic Compounds?"

New Jersey previously submitted Subchapter 16 (state effective date October 17, 2005) as a SIP revision and EPA approved it on July 31, 2007 (72 FR 41626). In this action, EPA is acting on amendments to Subchapter 16 that affect the following VOC sources or source categories: VOC stationary storage tanks; sources subject to control technique guidelines (CTGs) for flat wood paneling coatings, flexible packaging printing materials and offset lithographic printing and letterpress printing; sources subject to alternative or facility-specific VOC control requirements; and asphalt used for paving;

Section 16.1 Definitions

New Jersey revised section 16.1, Definitions, to add and/or revise terms and their definitions.

EPA evaluated New Jersey's definitions for consistency with the Act, EPA regulations, and EPA policy and proposes to approve them.

Section 16.2 VOC Stationary Storage Tanks

New Jersey has reevaluated the level of controls currently required for stationary storage tanks that store VOC by studying controls that have been successfully implemented in other states. The revisions primarily affect those tanks in Range III which is the range that covers larger tanks that store high vapor pressure VOC, such as gasoline, located at refineries, terminals, and pipeline breakout stations. The new requirements can be grouped into five categories: deck fittings and seals, domes, roof landings, degassing and cleaning operations, and inspection and maintenance procedures.

Deck Fittings and Seals

New Jersey revised section 16.2(l) to add provisions that require roof penetrations, such as slotted guide poles, access hatches, and adjustable roof legs to have seals, and require upgraded seals for other deck fittings. In addition they provide more stringent rim seal system requirements for existing and new storage tanks in Range III and require roof openings to be maintained in a leak-free condition, as determined by EPA Method 21 (40 CFR part 60, Appendix A).

Domes

New Jersey revised section 16.2(l) to require, with some exceptions, that domes be installed on external floating roof tanks that store materials with true vapor pressures greater than three pound per square inch absolute (psia). Any tanks exempted from the requirement of section 16.2(l) must still comply with other requirements in section 16.2 for tanks in existence on May 18, 2009, the day before the

operative date of these provisions. Compliance is required the first time an existing tank is degassed following May 19, 2009, the operative date of these revisions, but no later than May 1, 2020. A new tank is required to comply before the tank is initially filled.

Roof Landings

Sections 16.2(n), (o), and (p) are new provisions that New Jersey designed to minimize emissions when a tank goes through a "roof landing cycle." A roof landing cycle is composed of three phases: the removal of all stored liquid VOC (the floating roof is no longer in contact with the stored liquid VOC, but is supported by legs or cables), the idling period (when the tank is waiting to be refilled), and the refilling of the tank. Pursuant to 16.2(p)(1)(i), any floating roof tank existing on May 19, 2009 and not exempt pursuant to 16.2(f)(6), must submit to NJDEP, by December 1, 2009, a complete, written facility-wide tank VOC control plan. Pursuant to 16.2(p)(1)(ii) any new tank, excluding those exempt pursuant to 16.2(f)(6), must submit to NJDEP, by 120 days of installation, a written new or updated facility-wide tank VOC control plan. Pursuant to 16.2(p)(2)(ii), schedules for implementation of emission controls by May 19, 2019 are to be consistent with the facility's schedule for tank removal from service for normal inspection and maintenance and with the facility's schedule for the installation of any new tanks. As an alternative to the implementation schedule of emission controls, storage tanks in Range III that store gasoline may submit an emissions averaging plan pursuant to 16.2(p)2.iii.

Degassing and Cleaning Operations

Storage tanks must be periodically cleaned and accumulated sludge removed. Before this can occur, tanks must be degassed (removal of gases that remain after the liquid has been removed). Section 16.2(q) is a new provision that contains requirements for handling the gases and sludge that must be removed when a tank is degassed and cleaned between May 1 and September 30. Compliance with these requirements begins on May 1, 2010. Displaced vapors must be sent to a vapor control system with at least 95 percent control efficiency. Section 16.2(q) also contains approved methods for cleaning the inside of the tank. Sludge from tanks that contained a VOC with a vapor pressure greater than 1.5 psia (pounds per square inch absolute) must be transferred to receiving vessels that are controlled to prevent 95 percent of the emissions from being released to the atmosphere. Sludge containers must be kept vapor tight and free from liquid leaks.

Inspection and Maintenance

Section 16.2(r) is a new provision that applies to VOC storage tanks in Range III and requires that the tanks in this range be inspected by an authorized inspector and the results recorded on an inspection form (contained in Subchapter 16, Appendix II). Section 16.2(r) specifically identifies what must be annually inspected and what must be inspected once a tank is degassed but not less than once every 10 years. Any equipment that does not meet Subchapter 16 requirements must be repaired or replaced.

EPA evaluated the section 16.2 provisions for consistency with the Act, EPA regulations, and EPA policy and proposes to approve them.

Section 16.7 Surface Coating and Graphic Arts Operations

Offset Lithographic Printing and Letterpress Printing

New Jersey revised section 16.7 to address the CTG for Offset Lithographic Printing and Letterpress Printing. Subsections (r) and (s) were added and require more stringent emission controls. Where more resource intensive emission controls are necessary or involve modifying the equipment, compliance is required by May 1, 2010. The VOC solvent content of fountain solutions is limited depending on the type of equipment and the limits must be complied with by May 19, 2009. Cleaning materials are restricted to a composite vapor pressure less than 10 mm Hg (millimeters mercury) or VOC content of less than 70 percent by weight with some exceptions after May 19, 2009.

In addition, section 16.7(t) was added and requires, effective May 19, 2009, best management practices, such as, keeping VOC and VOC containing materials in closed containers, ensuring mixing vessels have covers and are kept closed when not adding or removing materials, keeping VOC containing shop towels in closed containers, and recordkeeping requirements. The above changes are consistent with the CTG recommendations issued on October 5, 2006.

EPA evaluated these provisions for consistency with the Act, EPA regulations, and EPA policy and proposes to approve them.

Flexible Package Printing

The New Jersey amendments to section 16.7 address the CTG for Flexible Package Printing. Section 16.7(h)(3) was added and requires more stringent emission controls for rotogravure, sheet-fed gravure, or flexographic printing operations installed or modified on or after May 19, 2010. Section 16.7, Table 7D –Part B contains new maximum allowable VOC content of surface coating formulations (minus water) limits. Section 16.7(t) requires best management practices (see above description). These amendments are consistent with the CTG recommendations issued on October 5, 2006.

EPA evaluated these provisions for consistency with the Act, EPA regulations, and EPA policy and proposes to approve them.

Flat Wood Paneling and Printed Hardwood Coatings

The New Jersey amendments to section 16.7 address the CTG for Flat Wood Paneling and Printed Hardwood Coatings. Section 16.7, Table 7B contains new maximum allowable VOC content per volume of coating (minus water) limits for flat wood paneling and printed hardwood coatings of 2.1 pounds per gallon with a compliance date of May 19, 2009. Section 16.7(t) requires best management practices (see above description).

The amendments to section 16.7 are consistent with the CTG recommendations issued on October 5, 2006. EPA has evaluated these provisions for consistency with the Act, EPA regulations, and EPA policy and proposes to approve them.

Section 16.11 Asphalt Pavement Production Plants

The New Jersey amendments to section 16.11 clarify that it applies to plants where asphalt pavement is produced. There were no changes to the requirements.

EPA evaluated this provision for consistency with the Act, EPA regulations, and EPA policy and proposes to approve it.

Section 16.17 Alternative and Facility-Specific VOC Control Requirements

The New Jersey amendments to section 16.17 limit the duration of an approved VOC alternative control plan to ten years. Section 16.17(c)5 provides that, for control plans issued after May 19, 2009, sources can reapply for a new plan the year before the existing alternate control plan expires. Sources with VOC control plans issued prior to May 19, 2009 must reapply and demonstrate continued justification or comply with the specific Subchapter 16 requirements for that source. If the source does not submit a proposed plan

by August 17, 2009, the existing plan terminates on August 17, 2009 and the source must comply with all applicable provisions of Subchapter 16. All alternative control plans must be submitted by the State to EPA for approval as a revision to the SIP.

EPA has evaluated these provisions for consistency with the Act, EPA regulations, and EPA policy and proposes to approve them.

Section 16.19 Application of Cutback and Emulsified Asphalts

The New Jersey amendments to section 16.19 further reduce the amount of VOC that is allowed to be included in cutback asphalt or emulsified asphalt used between April 16 through October 14 to no greater than 0.1 percent VOC by weight or no greater than 6.0 milliliters of oil distillate, in accordance with ASTM Method D244, Standard Test Methods and Practices for Emulsified Asphalts, or AASHTO T 59, Standard Method of Test for Testing Emulsified Asphalts. In addition, it requires cutback asphalt or emulsified asphalt to be stored in sealed containers from April 16 through October 14. Both these requirements are applicable as of April 16, 2009. EPA evaluated these provisions for consistency with the Act, EPA regulations, and EPA policy and proposes to approve them.

Other Changes to Subchapter 16

In addition to the above, New Jersey modified Subchapter 16 to make technical and administrative corrections, to delete outdated provisions, such as the repealed Open Market Emissions Trading Program, and to clarify the use of terms in section 16.17.

EPA evaluated these provisions for consistency with the Act, EPA regulations, and EPA policy and proposes to approve them.

I. What Is EPA's Evaluation of New Jersey's Subchapter 19 "Control and Prohibition of Air Pollution From Oxides of Nitrogen?"

The following is a summary of EPA's evaluation of New Jersey's April 21, 2009 SIP submittal consisting of new provisions and amendments to existing provisions to Subchapters 19.

New Jersey previously submitted Subchapter 19 as a SIP revision to address the NO_X RACT requirements, which EPA approved as SIP revisions on January 27, 1997 (62 FR 3804), March 29, 1999 (64 FR 14832) and July 31, 2007 (72 FR 41626). New Jersey also developed a NO_X Budget Trading Program, which EPA approved as a SIP revision on May 22, 2001 (66 FR 28063), and the Clean Air Interstate Rule (CAIR) program, which EPA approved as a SIP revision on October 1, 2007 (72 FR 55666). The current submission provides new provisions and amendments that establish more stringent RACT limits for facilities that emit NO_X. New Jersey revised Subchapter 19 to require owners and operators to implement the following new provisions and amendments to existing provisions:

1. New Provisions

Municipal Solid Waste (MSW) Incinerators

Section 19.12 of Subchapter 19 is a new provision that establishes a NO_X emission limit, compliance monitoring requirements and compliance dates for any size MSW incinerator. The new NO_X emission limit is 150 parts per million measured on a dry volume basis (ppmvd) at 7% oxygen, averaged over a calendar day is set forth in section 19.12(a). If the NO_X emission limit cannot be achieved, section 19.12(b) provides that owners/operators of the MSW incinerator can comply by obtaining an alternative maximum allowable NO_X emission rate pursuant to section 19.13 of Subchapter 19. In accordance with section 19.13(h), any State approved alternative maximum allowable NO_X emission limit pursuant to 19.13(c) or NO_X control plan pursuant to 19.13(b) must be submitted by New Jersey to EPA for approval as a SIP revision. Section 19.12(c) provides that compliance with the NO_X limit is to be demonstrated with a continuous emission monitoring system (CEMS), pursuant to section 19.18 of Subchapter 19. Compliance is due by July 18, 2009 if achieved by optimization of an existing NO_X air pollution control system (APCS) without modifying the incinerator, however the date is extended to May 1, 2011 if compliance must be achieved by installing a NO_X APCS or if it is necessary to physically modify the incinerator.

The NO_X emission limit of 150 ppmvd is more stringent than the federal limits currently in effect for existing large and small MSW incinerators (see 40 CFR Part 62, Subparts FFF and JJJ) and is more stringent than the limits previously approved by EPA as source-specific SIP revisions submitted by New Jersey, pursuant to section 19.13 of Subchapter 19.

EPA supports these new provisions and is proposing to approve them.

Sewage Sludge Incinerators

Section 19.28 of Subchapter 19 is a new provision that establishes NO_X emission limits and compliance requirements for sewage sludge incinerators. Section 19.28(a) provides that the NO_X emission limit is 7.0 pounds NO_X per ton of dry sewage sludge for Multiple Hearth type incinerators and 2.5 pounds NO_X per ton of dry sewage sludge for Fluidized Bed type incinerators, unless the owner/operator is complying with alternative compliance options at section 19.3(f) of Subchapter 19. The NO_X emission limit of 7.0 pounds NO_X per ton of dry sewage sludge for Multiple Hearth type incinerators is more stringent than the limits previously approved by EPA as source-specific SIP revisions submitted by New Jersey, pursuant to section 19.13 of Subchapter 19. EPA did not previously receive any source-specific SIP revisions from New Jersey for Fluidized Bed type sewage sludge incinerators.

Pursuant to section 19.15(a) of Subchapter 19, owners/operators of sewage sludge incinerators must demonstrate compliance with either a CEMS or source emission tests. Pursuant to sections 19.15(b) and (c), owners/operators shall meet the following compliance demonstration dates: (1) For a source that was in operation before January 1, 1995, compliance is to be demonstrated at the frequency set forth in the permit for the equipment; and (2) for a source that commenced operation or is altered after January 1, 1995, initial compliance is to be demonstrated within 180 days of when the source commences operation.

Pursuant to section 19.3(f) of Subchapter 19, owners/operators of sewage sludge incinerators may comply by using one of the alternative options listed in 19.3(f)(1)–(4) or a combination of options (1) and (3). The options in section 19.3(f) are: (1) An emissions averaging plan approved by New Jersey pursuant to sections 19.6 and 19.14; (2) an alternative maximum allowable NO_X emission rate approved by New Jersey pursuant to section 19.13; (3) a plan for seasonal fuel switching approved by New Jersey pursuant to sections 19.14 and 19.20; and (4) a plan for phased compliance through the use of either repowering approved by New Jersey pursuant to section 19.21 or innovative control technology approved by New Jersey pursuant to section 19.23. In accordance with New Jersey's requirements for phased compliance through the use of either repowering or innovative control technology, owners/operators were required to have applied

to implement a plan by February 7, 2006 and to have fully implemented the plans by November 7, 2009. Since the New Jersey compliance deadlines have past, unless already fully implemented by November 7, 2009, these two phased compliance plan options are no longer available as control options.

When Subchapter 19 was last approved, EPA stated that it takes no action to either approve or disapprove the existing provisions for phased compliance using repowering or innovative control technology at sections 19.21 and 19.23, respectively, because they contain a compliance date of November 7, 2009, which was beyond the 1-hour ozone attainment date deadline. See 72 FR 41626, July 31, 2007. EPA continues to take no action on the phased compliance provisions at sections 19.21 and 19.23, which are no longer viable control options, and requests New Jersey to delete this date which has now passed the next time Subchapter 19 is revised.

EPA supports these changes and is proposing to approve this new provision.

High Electric Demand Days (HEDD) Electric Generating Units (EGUs)

Sections 19.29 and 30 of Subchapter 19 are new provisions that establish a short term and a long term control strategy, respectively, for limiting NO_X emissions on "HEDD" and establishing, as applicable, recordkeeping, reporting, and monitoring requirements for EGUs operating on HEDD which are typically days during the summer months when both temperatures and ozone levels can be high. Section 19.1 defines a "HEDD unit" as an EGU, capable of generating 15 megawatts or more, that commenced operation prior to May 1, 2005, and that operated less than or equal to an average of 50 percent of the time during the ozone seasons of 2005 through 2007.[1] Section 19.1 defines an HEDD as a day on which the generating load is forecast by the PJM Interconnection[2] to have a peak value of 52,000 megawatts or higher.

Section 19.29 of Subchapter 19, contains the short term strategy to achieve NO_X reductions from HEDD units starting on May 19, 2009 through September 30, 2014 thereby providing owners/operators of affected units time to develop and implement the long term strategy pursuant to section 19.30, which requires compliance with the more stringent NO_X emission limits at amended sections 19.4 and 19.5 for boilers and combustion turbines, respectively. HEDD units applicable to section 19.29 are old units that typically emit high levels of NO_X on HEDD.

The short term strategy is based upon a March 2, 2007 Memorandum of Understanding (MOU)[3] signed by New Jersey and the other member states of the Ozone Transport Commission (OTC). This MOU commits New Jersey to reduce NO_X emissions associated with HEDD units by 19.8 tons per day (TPD) on high electric demand days. Pursuant to section 19.29(b), this short term strategy requires owners/operators of HEDD units to do the following: (1) By June 18, 2009, submit to New Jersey an approvable "2009 Protocol" that defines all of the control measures pursuant to section 19.29(d) needed to achieve its share of the statewide NO_X emission reductions from HEDD units, on each HEDD day during the period May 19, 2009 through September 30, 2014, as determined by 'Equation 1' of section 19.29(c); (2) provide a demonstration that all the required NO_X reductions were obtained and include a demonstration in an annual report, pursuant to section 19.29(k); and (3) submit the annual report to New Jersey by January 30th of the following year, pursuant to section 19.29(k).

The short term strategy also defines the applicability of the rule to specific affected sources, provides for recordkeeping and reporting requirements, provides detailed compliance requirements of an approvable 2009 Protocol, and establishes permitting requirements.

It should be noted that pursuant to section 19.29(b)(3) of New Jersey's short term strategy, owners/operators of subject HEDD units may request the State's approval of a phased compliance plan, pursuant to section 19.22, which provides an additional year for compliance with the required NO_X reductions due to impracticality. During the interim period, section 19.22(g)(4) requires owners/operators of an approved phased compliance plan to control NO_X emissions either by adjusting the combustion process or seasonally combusting natural gas, pursuant to section 19.20, or implementing other control measures that New Jersey determines are appropriate.

In addition to meeting the NO_X reductions, (tons/HEDD) as provided in Equation 1, for the period from May 20, 2009 through April 30, 2015 owners/operators of HEDD units that are stationary combustion turbines are also required to meet a specific NO_X emission limit (expressed as lbs/MMBTU), pursuant to section 19.5, as follows: (1) Table 4 emission limits apply for simple cycle combustion turbines; and (2) Table 5 emission limits apply for combined cycle or regenerative cycle combustion turbines.

New Jersey's long term NO_X reduction strategy provided in section 19.30 of Subchapter 19 addresses requirements for owners/operators of HEDD units meeting new NO_X emission limits starting in 2015 and beyond. As stated above, the new more stringent NO_X emission limits, for boilers and combustion turbines, respectively, are provided in the new amendments in sections 19.4 and 19.5. Owners/operators of HEDD units are required to submit to New Jersey a "2015 HEDD Emission Limit Achievement Plan" ("2015 Plan") by May 1, 2010. The purpose of the 2015 Plan is to document how the owner/operator intends to comply with the 2015 HEDD NO_X emission limits and to provide a schedule by which the new emission limits will be achieved for each HEDD unit. Owners/operators of HEDD units are required to submit to New Jersey an annual update on the progress of the 2015 Plan for each calendar year from 2010 through 2014. Owners/operators of HEDD units are required to indicate any obstacles that might impede progress in achieving compliance with the applicable 2015 NO_X emission limit and any steps needed to overcome these obstacles in their annual updates.

EPA supports the new provisions, which address NO_X reductions from HEDD units and proposes to approve them.

2. Amendments to Existing Provisions

Boilers Serving Electric Generating Units (EGUs)

New Jersey revised section 19.4 of Subchapter 19 by lowering the current SIP approved NO_X emission rates, and by providing new compliance dates, as summarized in Tables 1–3 of Subchapter 19, for boilers serving EGUs. Owners/operators must comply with the new NO_X emission rates unless they are complying with the alternative compliance options in section 19.3(f)[4]

[1] HEDD units can include some stationary gas turbines and some boilers.

[2] PJM Interconnection is a regional transmission organization (RTO) that coordinates the movement of wholesale electricity in all or parts of 13 states and the District of Columbia, including the State of New Jersey.

[3] "Memorandum of Understanding Among the States of the Ozone Transport Commission Concerning the Incorporation of High Electric Demand Day Emission Reduction Strategies into Ozone Attainment State Implementation Planning".

[4] Whenever EPA refers to section 19.3(f), the reader is referred to the discussion at section I.I.1

Continued

or unless otherwise specified in an enforceable agreement with New Jersey.

The NO_X emission rates in Table 1 of the amendments are the same as the emission rates in the current SIP approved Subchapter 19 and are required to be complied with until December 14, 2012. For coal boilers, the NO_X emission rates in Tables 2 and 3 are lowered to 1.5 pounds per megawatt hour (lb/MWh), resulting in additional NO_X reductions ranging from about 75 percent to 85 percent, depending upon the boiler type, and the operative compliance date is December 15, 2012. New Jersey revised the NO_X emission rates from heat input based rates (pounds per MMBTU) in Table 1 to the production output based rates (lb/MWh) provided in Tables 2 and 3. Output based limits encourage sources to improve plant operating efficiency and encourage pollution prevention measures, such as clean energy supply, which result in reduced fuel consumption and reduced emission of pollutants, including NO_X.

When calculating a 24-hour NO_X emission rate for coal combustion at a coal boiler, section 19.4 allows owners/operators to exclude emissions during startup and shutdown under the following restricted conditions: (1) For startup, when the unit is not combusting fossil fuel (coal), for a period not to exceed 8 hours, from initial combustion until the unit combusts coal and is synchronized with a utility electric distribution system; and (2) for shutdown, when the unit is no longer combusting coal and no longer synchronized with a utility electric distribution system. New Jersey provided for this exemption because of technological limitations: Selective catalytic reduction (SCR) and selective non-catalytic reduction (SNCR) control technologies do not control NO_X emissions effectively at lower than optimum temperatures that can occur during startup and shutdown periods. EPA is in agreement with New Jersey's exemption for the following reasons: (1) The impact on ambient air quality is minimized by New Jersey's narrowly defined startup and shutdown requirements; (2) the exemption only applies during startup and shutdown periods when coal is not combusted; (3) the NO_X control strategies have technological limitations during startup and shutdown periods; and (4) New Jersey requires compliance with oil/gas NO_X emission limits during this startup/shutdown period. This startup/shutdown exemption is consistent with EPA's guidance as discussed in the TSD.

For oil and gas boilers, the NO_X emission rates provided in section 19.4, Table 3, expressed as lb/MWh, are more stringent as follows: (1) 2.0 for boilers combusting heavier than No. 2 fuel oil, resulting in additional NO_X reductions as high as 53 percent, depending upon the boiler type; and (2) 1.0 for boilers combusting either No. 2 and lighter fuel oil or gas only, resulting in additional NO_X reductions ranging from about 50 percent to 76 percent, depending upon the boiler type.

The operative compliance date for oil and gas fired boilers that are subject to the new NO_X emission rates in Table 3 is May 1, 2015.

Pursuant to section 19.4(f) of Subchapter 19, owners/operators of coal-fired boilers may request from New Jersey a one-year extension of both the December 15, 2012 emission limit compliance deadline and the June 15, 2013 compliance demonstration deadline required at section 19.4(d)(1). Section 19.4(f) provides the necessary administrative and procedural requirements for owners to submit an extension request and the conditions under which New Jersey will approve the extension request.

EPA supports and proposes to approve the amendments to the current SIP-approved provision as they provide for further NO_X reductions from boilers serving EGUs.

Stationary Combustion Turbines

New Jersey revised section 19.5 of Subchapter 19 to lower the current SIP approved NO_X emission rates and to provide compliance dates for stationary combustion turbines, as summarized in Tables 4–7 of Subchapter 19. The NO_X emission rates in Tables 4 through 6 are the same as the emission rates in the current SIP approved Subchapter 19.

Table 7 is applicable to all HEDD unit stationary combustion turbines or stationary combustion turbines capable of generating 15 MW or more that commenced operation on or after May 1, 2005. The NO_X emission rates in Table 7 are more stringent, by approximately 40 to 54 percent, depending upon the type of turbine and fuel combusted, than the current Table 6 SIP approved NO_X emission rates. Owners/operators of affected units must comply with the Table 7 NO_X emission rates on and after May 1, 2015.

EPA supports and proposes to approve the amendments to the current SIP approved provision as they provide for further NO_X reductions from stationary combustion turbines.

Industrial/Commercial/Institutional (ICI) Boilers and Other Indirect Heat Exchangers (IHEs)

New Jersey revised section 19.7 of Subchapter 19 by lowering the current SIP approved maximum allowable NO_X emission rates, by providing compliance dates, and by lowering the applicability threshold for ICI boilers and other IHEs. The more stringent requirements at section 19.7 do not apply to ICI boilers and other IHEs at petroleum refineries. Owners/operators must comply with the NO_X emission rates unless they are complying with the alternative compliance options in section 19.3(f) (see footnote 4).

The NO_X emission rates in the new Table 9 are more stringent than the current SIP approved rates in Table 8 and are applicable to owners/operators of ICI boilers and IHEs, whether or not the source is located at a facility classified as major for NO_X, for those sources that are not located at a petroleum refinery. Newly applicable sources are required to be in compliance with the new limits as follows: (1) The applicability threshold is lowered, for sources with a heat input rate expressed as lb/MMBTU, to 25 from 50 lb/MMBTU and (2) the applicability of these provisions is extended to ICI boilers and IHEs not located at a facility classified as major for NO_X. The new NO_X emission rates are lowered as much as 77%, depending upon the boiler type and/or fuel combusted. The State has indicated there are no longer any coal-fired boilers in operation. Therefore it has deleted the requirement to comply with these NO_X emission rates for the source category "coal-fired boilers." For sources with a heat input rate of at least 25 MMBTU/hr but less than 50 MMBTU/hr, compliance with the Table 9 NO_X emission rates are required on and after (1) May 1, 2011 if compliance is achieved without physically modifying the boiler or IHE and (2) May 1, 2012 for sources that comply by a physical modification. For sources with a heat input rate of at least 50 MMBTU/hr, compliance with the Table 9 NO_X emission rates is required on and after (1) May 1, 2010 if compliance is achieved without physically modifying the boiler or IHE and (2) May 1, 2011 for sources that comply by a physical modification.

For ICI boilers and IHEs located at petroleum refineries, the current SIP approved NO_x emission rates in Table 8 are still applicable.

EPA supports and proposes to approve the amendments to the current SIP-approved provision as the amendments provide for further NO_X

of this rulemaking relating to sewage sludge incinerators.

reductions from ICI boilers and other IHEs.

Asphalt Pavement Production Plants

New Jersey revised section 19.9 of Subchapter 19 by lowering the current SIP approved maximum allowable NO_X emission limit for dryers at asphalt production plants, by providing new compliance dates, and by requiring implementation and recordkeeping associated with new best management practices. The NO_X emission limits are lowered, in the range of 37 to 67 percent, from 200 ppmvd, as measured at 7 percent oxygen, to more stringent limits depending upon the fuel combusted in the dryer. The new NO_X emission limits are as follows: (1) 75 ppmvd for natural gas combustion; (2) 100 ppmvd for No. 2 fuel oil combustion; and (3) 125 ppmvd for No. 4 fuel oil, heavier fuel oil, on-specification used oil or any mixture of these three oils. Owners/operators must comply with the NO_X emission limits unless they are complying with the alternative compliance options in section 19.3(f) (*see* footnote 4). In addition, owners/operators must annually adjust the combustion process of the dryer pursuant to section 19.16 of Subchapter 19.

Owners/operators of an asphalt pavement production plant that are complying without physically modifying the dryer must be in compliance with the new NO_X emission limits by the following dates: (1) By May 1, 2011, for sources with a heat input rate of less than 100 MMBTU/hr and (2) by May 1, 2010, for sources with a heat input rate of at least 100 MMBTU/hr. For owners/operators of sources that must make physical modifications to comply, the compliance date is extended one year for each of the scenarios above.

EPA supports and proposes to approve the amendments to the current SIP approved provision that addresses NO_X reductions from asphalt pavement production plants.

Glass Manufacturing Furnaces

New Jersey revised section 19.10 of Subchapter 19 by lowering the current SIP approved NO_X emission limits by approximately 27 to 64 percent, by adding new applicable source categories, and by providing compliance dates for glass manufacturing furnaces having the potential to emit more than 10 tons of NO_X per year. The new NO_X emission limits for glass manufacturing furnaces subject to the provisions are either 4.0 or 9.2 tons NO_X per ton of glass removed from the furnace, depending upon the type of glass produced and the production rate of the glass furnace. The amendments applicable to glass manufacturing furnaces that produce pressed glass, blown glass, fiberglass and flat glass are now regulated by section 19.10.

Pursuant to section 19.10(f), in lieu of meeting the NO_X emission limits at sections 19.10(a) and (b), owners/operators of glass manufacturing furnaces may comply by using the alternative compliance options at section 19.10(f), which parallel those for sewage sludge incinerators at 19.3(f) (see footnote 4), except that the alternative compliance option for innovative control technology and the phased compliance by repowering are not allowed by New Jersey.

Owners/operators of glass manufacturing furnaces are required to be in compliance with the new NO_X emission limits on and after May 1, 2010. Based on economic considerations, compliance with the amendments is required on the first day of startup after rebricking of the furnace occurs. Since economic feasibility is one of the RACT requirements, New Jersey's compliance requirement is acceptable to EPA.

EPA supports and proposes to approve the amendments to the current SIP approved provision that addresses NO_X reductions from glass manufacturing furnaces.

Alternative and Facility-Specific NO_X Emission Limits (AELs and FSELs)

Section 19.13 of Subchapter 19 establishes a procedure for making case-by-case RACT determinations for facilities classified as major for NO_X, for an item of equipment, or for a source operation. Owners/operators of major NO_X facilities with emission sources having a potential to emit of more than 10 tons of NO_X per year, where no previous presumptive NO_X emission limit has been established in Subchapter 19, are required to apply to New Jersey for a facility-specific emission limit (FSEL). Where a presumptive NO_X emission limit exists in Subchapter 19 and owners/operators determine that the presumptive NO_X limit cannot be met by the source, the owners/operators can apply to New Jersey, pursuant to the procedures in section 19.13, for an alternative emission limit (AEL). FSELs and AELs are determined on a case-by-case basis. Pursuant to section 19.13(h), any FSEL or AEL approved by New Jersey must be submitted by the State to EPA for approval as a revision to the SIP. If EPA denies the approval of the proposed NO_X plan as a revision to the SIP, section 19.13(l) provides that New Jersey will revoke its approval of the plan.

Section 19.13 is amended by requiring owners/operators of each facility with either an FSEL or an AEL that was issued by New Jersey before May 1, 2005 to submit a new NO_X control plan by August 17, 2009 unless a 90-day extension is requested and approved by the State. Pursuant to section 19.13(b)(1), any FSEL approved by New Jersey after May 19, 2009 will not have an expiration date unless there is a modification, alteration or reconstruction of the source, for which the State's approval of a new FSEL is required. Pursuant to section 19.13(b)(2) any AEL approved by New Jersey will have a term limit of 10 years. An approval of an AEL is void upon alteration of the equipment or source operation, unless New Jersey determines that the alteration does not materially affect the basis of the original approval or the source, prior to the alteration, applies for and obtains a revised AEL (see sections 19.13(b)(6) and 19.13(k)). New Jersey made these amendments after its review of existing FSELs and AELs many of which were approved as long ago as 1997. In many cases, the State determined that control technologies have advanced sufficiently since that time, warranting reevaluations of these case-by-case determinations.

EPA supports and proposes to approve the amendments to the current SIP approved provision as they will lead to potential NO_X reductions from specific-sources.

3. Additional Amendments to Subchapter 19

New Jersey adopted a number of other amendments since EPA last approved amendments to Subchapter 19 (72 FR 41626, July 31, 2007). Among other things, these amendments (1) Revised terms and definitions that do not change the meaning or stringency of the provisions; (2) revised section 19.2 to expand the list of the following applicable source categories: Certain glass manufacturing furnaces, any municipal solid waste incinerator, and any sewage sludge incinerator; (3) revised section 19.3 to exclude owners/operators of HEDD units from using alternative compliance options at section 19.3(f), beginning on May 1, 2015; and (4) deleted the entire provision at section 19.27 that referred to New Jersey's now defunct Open Market Trading Program at Subchapter 30 that was repealed in 2004.

4. Compliance Dates

New Jersey amended Subchapter 19 by including new provisions and amendments to previously approved SIP provisions that result in more stringent NO_X emission limitations that will lead to additional reductions in NO_X emissions from the affected major stationary combustion sources.

New Jersey uses the emission benefits from the new provisions and amendments to Subchapter 19 in a variety of ways in the SIP. Some are used to meet reasonable further progress goals, others as a contingency measure should an area fail to attain the 1997 ozone standard, some to support the "weight of evidence" arguments concerning attainment of the 1997 ozone standard, and others that will be used to help to attain the new 2008 ozone standard (currently under reconsideration) that New Jersey anticipates will replace the 1997 ozone standard. In addition, New Jersey was seeking to fulfill the section 182(b)(2) and section 172(c)(1) requirements for RACT as applied to both the 1997 and 2008 ozone standards in setting the emission standards and compliance due dates.

Emission reductions required by sections 182(b)(2) and 172(c)(1) of the Act, used to fulfill in the 1997 ozone SIP, are required to be achieved by May 2009. Sources with compliance periods that go beyond May 2009 are used as contingency measures or towards meeting RACT for the 2008 ozone standard. In determining a compliance date for a level of control that can be considered RACT, the time necessary to make the required modifications and the cost of modifications were taken into consideration. For example, rebricking of a glass manufacturing furnace, which usually accompanies new emission controls, is a significant factor in evaluating both time and expenses necessary for the project. Requiring a "rebricking" of a furnace before it is physically necessary would constitute a significant additional cost that could result in the new emission controls being considered economically unreasonable.

The compliance dates included in Subchapter 19's provisions are as expeditious as practical considering the level of the required new controls. Consistent with the Phase 2 Rule, any emission reduction used in the 1997 ozone SIP is required to occur no later than the start of the 2009 ozone season, which is the time by which a state must demonstrate that it achieved the necessary emission reductions to meet the June 15, 2010 attainment date for areas that are classified as a moderate nonattainment area for the 8-hour ozone standard.

Based on preliminary air quality data monitored for the 3-year period from 2007–2009, the Philadelphia-Wilmington-Atlantic City, PA–NJ–MD–DE nonattainment area is eligible for a one year extension of its attainment date to June 15, 2011 because of the clean air quality data monitored for 2009. Similarly, the New York-N.New Jersey-Long Island, NY–NJ–CT nonattainment area is eligible for a clean data determination based on three years of clean data. In addition, consistent with EPA's last approval of Subchapter 19 (see 72 FR 41626, July 31, 2007), EPA continues to take no further action to approve or disapprove the existing provisions for phased compliance by repowering and innovative control technology at sections 19.21 and 19.23. These provisions still include the compliance date of November 7, 2009, which is beyond the November 15, 2007 attainment deadline for the NY–NJ–CT 1-hour ozone standard. For this reason, as indicated in EPA's July 2007 approval of Subchapter 19, New Jersey should delete the reference to the November 7, 2009 compliance date for these two phased compliance plans.

5. Other Comments

As stated above, owners/operators of HEDD units subject to New Jersey's short term strategy at section 19.29 may apply to the State for approval of a phased compliance plan pursuant to section 19.22 that allows for an additional year for compliance with the required NO_X reductions due to demonstrated impracticality. However, at section 19.1, the definition of "interim period" allows a source an additional two years instead of one year from May 19, 2009. As discussed with the State, New Jersey should revise section 19.1 to make it consistent with section 19.22.

6. NO_X RACT

EPA originally approved Subchapter 19 into the SIP on May 31, 1972. 37 FR 10842, 10880 and 40 CFR 52.1576. This rule was adopted because the Clean Air Act requires states to submit to EPA a plan that provides for implementation, maintenance and enforcement of a degree of nitrogen oxide reduction that is necessary to achieve attainment with the NAAQS. New Jersey developed, adopted and submitted to EPA, for approval into the SIP, Subchapter 19, a plan for the application of reasonably available control technology to reduce nitrogen oxide emissions from stationary sources.

Pursuant to 40 CFR 81.331, New Jersey-NO_2 table, all areas in New Jersey are classified as "Cannot be classified or better than national standards."

New Jersey submitted previous versions of Subchapter 19 as SIP revisions which EPA approved as SIP revisions on January 27, 1997 (62 FR 3804), March 29, 1999 (64 FR 14832) and July 31, 2007 (72 FR 41626). New Jersey also developed, adopted and submitted to EPA a NO_X Budget Trading Program and a Clean Air Interstate Rule (CAIR) program which EPA approved as SIP revisions on May 22, 2001 (66 FR 28063) and October 1, 2007 (72 FR 55666), respectively. The current submission provides new provisions and amendments that establish more stringent RACT limits for stationary sources that emit NO_X.

Given the previously approved versions of Subchapter 19 and the most recent version of Subchapter 19 that EPA is proposing to approve in this action, EPA has determined that New Jersey has met the requirement to adopt NO_X RACT. Therefore, the 40 CFR 52.1576 finding relating to the New Jersey SIP not providing for NO_X RACT has been satisfied and this finding should be removed.

J. What Is EPA's Evaluation of New Jersey's Subchapter 21—"Emission Statements?"

This rule requires industrial facilities to report annually detailed information on specified air pollutant emissions and process-related data to New Jersey, if the facility emits or has the potential to emit air pollutants above a specified emissions threshold. New Jersey previously submitted Subchapter 21 (state effective date February 18, 2003) as a SIP revision and EPA approved it on August 2, 2004 (69 FR 46106). In this action, EPA is acting on two revisions to Subchapter 21, one adopted on October 30, 2008 with an operative date of December 29, 2008 and the second adopted on March 20, 2009 with an operative date of May 19, 2009.

The October 30, 2008 revision incorporated changes to the definition of volatile organic compounds (VOC) in section 21.1. The new definition excludes tertiary butyl acetate or t-butyl acetate (TBAC) from VOC emissions limitations or VOC content requirements, but requires that TBAC be considered a VOC for purposes of recordkeeping, emissions reporting, photochemical dispersion modeling and inventory requirements. EPA evaluated New Jersey's revised VOC definition for consistency with the Act, EPA regulations, and EPA policy. The revised definition of VOC as used in the

above rules is consistent with EPA's definition in 40 CFR 51.100(s). EPA is proposing to approve this revision.

The March 20, 2009 version incorporates changes to sections 21.1 and 21.5 that require owners/operators of VOC stationary storage tanks with floating roofs to provide additional emission information concerning roof landing operations.

EPA evaluated New Jersey's revisions for consistency with the Act, EPA regulations, and EPA policy and proposes to approve them.

II. Conclusion

Both Subchapters 16 and 19 contain provisions which require case-by-case RACT determinations to be submitted as SIP revisions. These case-by-case RACT determinations are needed to fulfill the RACT requirement of section 182 of the Act. The State is in the process of evaluating these determinations for approval and therefore has not yet submitted them as SIP revisions. EPA would normally propose to conditionally approve this SIP revision as meeting the RACT requirement pending New Jersey's submission and EPA's approval of the case-by-case RACT determinations. However, based on information provided by New Jersey, the quantity of NO_X and VOC emissions relevant to these determinations is below 5 percent of the stationary source baseline of emissions which is what EPA considers to be de minimis. Therefore, pursuant to EPA guidance,[5] EPA is proposing to approve Subchapters 16 and 19. The remaining element needed to fulfill the VOC RACT requirement is New Jersey's Subchapter 26, which New Jersey submitted to EPA on April 9, 2009, as a SIP revision and which EPA is currently reviewing.

Therefore, EPA evaluated New Jersey's submittal for consistency with the Act, EPA regulations and policy. The proposed new control measures will strengthen the SIP by providing additional NO_X, SO_2, fine particulate, and VOC emission reductions. Accordingly, EPA is proposing to approve the revisions to Subchapters 4, 10, 16, 19 and related revisions to Subchapter 21, as adopted on March 20, 2009, except that EPA is continuing to not act, for the reasons explained above in this rulemaking, on the phased compliance plans by repowering and innovative control technology in sections 19.21 and 19.23, respectively. In addition, EPA is proposing to delete 40 CFR 52.1576, relating to a prior finding that NO_X RACT was not included in the New Jersey SIP.

[5] "Approval Options for Generic RACT Rules Submitted to Meet the non-CTG VOC RACT Requirement and Certain NO_X RACT Requirements," November 7, 1996.

III. 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.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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

Dated: April 14, 2010.

Judith A. Enck,

Regional Administrator, Region 2.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Service

42 CFR Part 416

[CMS–3217–P]

RIN 0938–AP93

Medicare Program; Ambulatory Surgical Centers, Conditions for Coverage

AGENCY: Centers for Medicare & Medicaid Services (CMS).

ACTION: Proposed rule.

SUMMARY: This proposed rule would revise one of the existing conditions for coverage (CfC) that ambulatory surgical centers (ASCs) must meet in order to participate in the Medicare program. The proposed revision would modify the current CfC for patient rights to include an exception that would allow an ASC to provide patients or the patients' representative or surrogate with required patient rights information on the day of the procedure when the procedure must, to safeguard the health of the patient, be performed on the same day as the physician's referral. In addition, we are proposing some other minor changes to the CfC for patient right requirements.

DATES: To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. EST on June 22, 2010.

ADDRESSES: In commenting, please refer to file code CMS–3217–P. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of four ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this regulation to *http://www.regulations.gov.* Follow the instructions under the "More Search Options" tab.

2. *By regular mail.* You may mail written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–3217–P, P.O. Box 8010, Baltimore, MD 21244–8010.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–3217–P, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

4. *By hand or courier.* If you prefer, you may deliver (by hand or courier) your written comments before the close of the comment period to either of the following addresses:

a. For delivery in Washington, DC—Centers for Medicare & Medicaid Services, Department of Health and Human Services, Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

(Because access to the interior of the Hubert H. Humphrey Building is not readily available to persons without Federal government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

b. For delivery in Baltimore, MD—Centers for Medicare & Medicaid Services, Department of Health and Human Services, 7500 Security Boulevard, Baltimore, MD 21244–1850.

If you intend to deliver your comments to the Baltimore address, please call telephone number (410) 786–9994 in advance to schedule your arrival with one of our staff members.

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

FOR FURTHER INFORMATION CONTACT: Joan A. Moliki, (410) 786–5526, Jacqueline Morgan, (410) 786–4282, Steve Miller, (410) 786–6656, or Jeannie Miller, (410) 786–3164.

SUPPLEMENTARY INFORMATION:

Inspection of Public Comments: All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following Web site as soon as possible after they have been received: *http://www.regulations.gov.* Follow the search instructions on that Web site to view public comments.

Comments received timely will also be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone 1–800–743–3951.

I. Background

A. Legislative and Regulatory Authority for the Ambulatory Surgical Centers, Conditions for Coverage

As the single largest payer for health care services in the United States, the Centers for Medicare & Medicaid Services (CMS) has a critical role in promoting high quality care for Medicare beneficiaries. CMS is responsible for ensuring that the conditions for coverage (CfCs) of Ambulatory Surgical Center (ASC) services, and enforcement of those conditions, are adequate to protect the health and safety of the individuals treated in such ASCs. Any regulatory changes that we contemplate must consider patient health and safety along with the administrative burden placed on Medicare-participating facilities.

Section 1832(a)(2)(F)(i) of the Social Security Act (the Act) specifies that an ASC must meet health, safety, and other requirements specified by the Secretary of Health and Human Services (HHS) (the Secretary) in regulation if it has an agreement in effect with the Secretary to perform procedures covered by Medicare. Under the agreement, the ASC agrees to accept the standard Medicare amount determined under section 1833(i)(2) of the Act as full payment for services, and to accept assignment of benefits as described in section 1842(b)(3)(B)(ii) of the Act for payment for all services furnished by the ASC to enrolled individuals. Substantive requirements are set forth in 42 CFR part 416 subpart B and subpart C of our regulations. The regulations at 42 CFR part 416 subpart B describe the general conditions and requirements for ASCs, and the regulations at 42 CFR part 416 subpart C describe the specific CfCs for ASCs.

B. Updates and Revisions to the Ambulatory Surgical Centers Conditions for Coverage

On August 31, 2007, we published a proposed rule (72 FR 50470) in the **Federal Register** entitled, "Medicare and Medicaid Programs; Ambulatory Surgical Centers, Conditions for Coverage," in which we proposed to update the ASC CfCs by revising some of the definitions and the CfCs regarding governing body and management, and laboratory and radiologic services, to reflect current ASC practices. In addition, we proposed to add several new CfCs regarding quality assessment and performance improvement; patient rights; infection control; and patient admission, assessment and discharge. We proposed these CfCs in order to promote and protect patient health and safety.

In the proposed rule at § 416.50, we proposed to divide the patient rights CfC into four standards. Under the first standard, § 416.50(a)(1), "Notice of rights," we proposed that ASCs be required to provide the patient or the patient's representative with verbal and written notice of the patient's rights in a language and manner the patient understood in advance of providing care to the patient. In addition, we set out what information would be required and where the ASC would have to post the information for the patient to see while waiting for treatment.

On November 18, 2008, we published a final rule (73 FR 68502), entitled "Medicare Program; Changes to the Hospital Outpatient Prospective Payment System and CY 2009 Payment Rates". The final rule, among other changes, finalized the new CfC for patient rights in ASCs. In response to the proposed patient rights provision, several commenters expressed concern about the amount of paperwork patients would be required to complete on the day of the procedure and stated that patients would benefit from reviewing pertinent information before they arrived at the ASC for the procedure (see 73 FR 68718). Therefore, in response to comments, we revised our proposed requirement for patient rights at § 416.50(a)(1), (a)(1)(ii) and (a)(2)(i), to specify that ambulatory surgical centers (ASCs) provide patient rights information to patients or the patient's representative in advance of the date of the procedure.

When we published the final rule for the ASC CfCs on November 18, 2008, we specified at § 416.50(a)(1) that patient rights information was to be provided by the ASC in advance of the date of the procedure. It was, and continues to be, our intent to require that ASCs provide patients or the patient's representative or surrogate with information we believe they need in order to make an informed choice about the facility where their procedure will be performed. Likewise, we continue to believe that this information should be imparted in advance of the date of the procedure.

The patient's representative or surrogate, who could be a family member or friend that accompanies the patient, may act as a liaison between the patient and the ASC to help the patient communicate, understand, remember, and cope with the interactions that take place during the visit, and explain any instructions to the patient that are delivered by the ASC staff. If a patient is unable to fully communicate directly with the ASC staff, then the ASC may give patient rights information to the patient's representative or surrogate. The patient has the choice of using an interpreter of his or her own, or one supplied by the ASC. A professional interpreter is not considered to be a patient's representative or surrogate. Rather, it is the professional interpreter's role to pass information from the ASC to the patient. In following translation practices, we recommend, but do not propose requiring, that a written translation be provided in languages that non-English speaking clients can read, particularly for languages that are most commonly used by non-English-speaking clients of the ASC. We note that there are many hundreds of languages (not all written) that are used by one or more residents of the United State, but that in most geographic areas the most common non-English language, by far, is Spanish.

While we propose this standard under the authority of title 18, section 1832(a)(2)(F)(i), there are other legal requirements, most notably, those under title VI of the Civil Rights Act of 1964. Our proposed requirement has been designed to be compatible with recent guidance on title VI. The Department of Health and Human Services' (HHS) guidance related to Title VI of the Civil Rights Act of 1964, "Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons" (August 8, 2003, 68 FR 47311) applies to those entities that receive federal financial assistance from HHS, including ASCs. This guidance may assist ASCs in ensuring that patient rights information is provided in a language and manner the Medicare patient understands.

In the November 18, 2008, ASC regulation, we also specified at § 416.50(a)(1)(ii) (physician financial interest or ownership), and § 416.50(a)(2)(i) (Advance directives) that ASCs are also required to provide this information to patients in advance of the date of the procedure. We believe that the current organization of § 416.50 is confusing relative to the need for ASCs to furnish information to patients prior to the date of the procedure. Therefore, we are proposing to revise this section.

II. Provisions of the Proposed Regulation

As stated above, the November 18, 2008 final rule finalized the patient's right provision at § 416.50, to require ASCs to provide specific patients' rights information to patients in advance of the date of the procedure. We believed this modification would alleviate provider concerns while at the same time afford patients sufficient time to review pertinent information before undergoing a procedure. However, since the publication of the final rule, it has come to our attention that a few ASCs sometimes provide same-day procedures on an emergency basis. Therefore, the current patient rights CfC requirement has been problematic for those ASCs that perform procedures on the same day they receive physician referrals (for example, a patient is referred to an ASC due to severe eye trauma).

ASCs contemplating providing services to a patient on the same day he or she receives a referral must either refuse serving the patient for fear of violating Medicare requirements or accept the patient for service and be out of compliance with Medicare patient rights requirements. ASCs that serve same-day patients would like to continue to serve this constituency; however, potential non-compliance with the current Medicare requirement is a deterrent.

This rule proposes to establish an exception when an ASC is providing services to a patient on the same day he or she receives a physician referral for the ASC service(s) and when a delay in providing the service(s) would adversely affect the patient's health. In general, the ASC would continue to be required to provide information as specified at § 416.50. However, the proposed exception would apply only if: (1) The written referral was signed and dated by the physician on the date the patient was presented at the ASC for the service(s); and (2) a physician in the ASC or the referring physician communicates in writing and the ASC documents in the medical record that the procedure must be performed as soon as possible to safeguard the health of the patient. This proposed exception attempts to balance our responsibility to promote the health and safety of ASC patients with undue burden on facilities.

In addition to modifying § 416.50 to provide for an exception for same-day procedures, we are proposing minor revisions to this section. Currently § 416.50(a)(1) and (a)(2) require disclosure of information to be made in advance of the date of the procedure. We are proposing to eliminate this specific requirement from these sections and add this requirement to the stem statement at § 416.50 since the stem statement applies to all of the proposed requirements at § 416.50.

The current provisions at § 416.50(a), (b), and (c) require that an ASC provide verbal and written notice of patient rights to the patient or the patient's representative. This encompasses the posting of rights, disclosure of physician financial interest or ownership, the provision of advance directives, the submission and investigation of grievances, the exercise of rights, privacy and safety, and the confidentiality of clinical records. We are proposing to reorganize § 416.50(a), (b), and (c) by creating separate standards for provisions that are currently required in these paragraphs. Specifically, we are proposing to retitle and reorganize the requirements of § 416.50, "Patient rights," as follows: (a) *Standard:* Notice of rights; (b) *Standard:* Disclosure of physician financial interest or ownership; (c) *Standard:* Advance directives; (d) *Standard:* Submission and investigation of grievances; (e) *Standard:* Exercise of rights and respect for property and person; (f) *Standard:* Privacy and safety; (g) *Standard:* Confidentiality of medical records; and (h) *Standard:* Exception to the timing of the notice of patient rights. We believe this reorganization would eliminate confusion about the patient rights information to be provided to patients. We note that these are not new requirements.

In addition, as stated above, we are proposing to add a new exception to § 416.50 (proposed Standard (h)) that would allow an ASC in the case of an emergency procedure, and when it was not feasible to provide notice of patient rights information in advance of the date of the procedure, to provide this information to the patient or the

patient's representative or surrogate on the day of treatment before the procedure.

III. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995, we are required to provide 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires that we solicit comments on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

Proposed § 416.50 (h)(1) and (h)(2) would require an ASC facility to furnish information as specified when an ASC accepts a patient for a procedure that must be performed on the same day as a physician referral. Specifically, proposed § 416.50(h)(2) states that a physician in the ASC or the referring physician must communicate in writing and the ASC must document in the medical record that the procedure be performed as soon as possible to safeguard the health of the patient. The burden associated with this requirement is the time and effort necessary for an ASC physician or a referring physician to make the aforementioned written communication and documentation.

We believe the burden associated with this requirement in proposed § 416.50 constitutes a usual and customary business practice as defined in 5 CFR 1320.3(b)(2). The medical record requirement at § 416.47, which remains unchanged, also specifies that ASCs must maintain complete, comprehensive and accurate medical records to ensure adequate patient care. A physician referral letter is considered part of the patient's medical history and is always part of the medical record.

If you comment on these information collection and recordkeeping requirements, please do either of the following:

1. Submit your comments electronically as specified in the **ADDRESSES** section of this proposed rule; or

2. Submit your comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: CMS Desk Officer, CMS–3217–P, Fax: (202) 395–6974; or E-mail: *OIRA_submission@omb.eop.gov.*

IV. Response to Comments

Because of the large number of public comments we normally receive on **Federal Register** documents, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

V. Regulatory Impact Statement

We have examined the impacts of this rule as required by Executive Order 12866 on Regulatory Planning and Review (September 30, 1993), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, section 202 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), Executive Order 13132 on Federalism (August 4, 1999), and the Congressional Review Act (5 U.S.C. 804(2)).

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year). This rule does not reach the economic threshold and thus is not considered a major rule.

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $7.0 million to $34.5 million in any 1 year. Individuals and States are not included in the definition of a small entity. We estimate there are approximately 5,100 Medicare Participating ASCs with average admissions of approximately 1,240 patients per ASC (based on the number of patients seen in ASCs in 2008). Most ASCs are considered to be small entities, either by nonprofit status or by having revenues of $7 million to $34.5 million in any 1 year. For purposes of burden estimates, we are unable to accurately determine the exact number of ASCs that provide services to patients on the same day as referral by their physicians. However, one national ASC chain informed us in September 2009 that approximately 3 percent of its ASCs provide services to patients on the same day as referral by their physicians. Using this percentage, we estimate that 153 ASCs overall perform these same day services. Due to this small percentage, we have determined that the ASC industry on average will experience a slightly reduced burden associated with mailing out patient rights informational packets to patients prior to providing the service(s). Instead, a small percentage of patients would be informed in person on the day of the procedure. Thus, we believe this exception rule should have little or no effect on the benefit cost of ASC services.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. However, this proposed rule only affects ambulatory surgical centers and not hospitals. As a result, we are not preparing an analysis for section 1102(b) of the Act because we believe and the Secretary has determined that this rule will not have a significant impact on the operations of a substantial number of small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year by State, local or tribal governments, in the aggregate, or by the private sector of $100 million in 1995 dollars, updated annually for inflation. In 2010, that threshold level is approximately $135 million. This proposed rule is not expected to reach this spending threshold.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. This proposed rule has no Federalism implications and does not impose any costs on State or local governments. Therefore, the requirements of

Executive Order 13132 are not applicable.

In accordance with the provisions of Executive Order 12866, this regulation was not reviewed by the Office of Management and Budget.

List of Subjects in 42 CFR Part 416

Health facilities, Health professions, Medicare, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services proposes to amend 42 CFR part 416 as set forth below:

PART 416—AMBULATORY SURGICAL SERVICES

1. The authority citation for part 416 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

Subpart C—Specific Conditions for Coverage

2. Section 416.50 is revised to read as follows:

§ 416.50 Condition for coverage—Patient rights.

The ASC must inform the patient or the patient's representative or surrogate of the patient's rights and must protect and promote the exercise of these rights, as set forth in this section. The ASC must also post the written notice of patient rights in a place or places within the ASC likely to be noticed by patients waiting for treatment or by the patient's representative or surrogate, if applicable.

(a) *Standard: Notice of rights.* Except as set forth in paragraph (h) of this section, an ASC must, in advance of the date of the procedure, provide the patient or the patient's representative or surrogate with verbal and written notice of the patient's rights in a language and manner that ensures the patient or the patient's representative or surrogate understands all of the patient's rights as set forth in this section. The ASC's notice of rights must include the address and telephone number of the State agency to whom patients may report complaints as well as the Web site for the Office of the Medicare Beneficiary Ombudsman.

(b) *Standard: Disclosure of physician financial interest or ownership.* The ASC must disclose, in accordance with Part 420 of this subchapter, and where applicable, provide a list of physicians who have financial interest or ownership in the ASC facility. Disclosure of information must be in writing.

(c) *Standard: Advance directives.* The ASC must comply with the following requirements:

(1) Provide the patient or, as appropriate, the patient's representative or surrogate with written information concerning its policies on advance directives, including a description of applicable State health and safety laws and, if requested, official State advance directive forms.

(2) Inform the patient or, as appropriate, the patient's representative or surrogate of the patient's right to make informed decisions regarding the patient's care.

(3) Document in a prominent part of the patient's current medical record, whether or not the individual has executed an advance directive.

(d) *Standard: Submission and investigation of grievances.* The ASC must establish a grievance procedure for documenting the existence, submission, investigation, and disposition of a patient's written or verbal grievance to the ASC. The following criteria must be met:

(1) All alleged violations/grievances relating, but not limited to, mistreatment, neglect, verbal, mental, sexual, or physical abuse, must be fully documented.

(2) Allegations of neglect, mistreatment, sexual or physical abuse must be immediately reported to a person in authority in the ASC.

(3) Only substantiated allegations of neglect, mistreatment, sexual or physical abuse must be reported to the applicable State authority or the local authority, or both.

(4) The grievance process must specify timeframes for review of the grievance and the provisions of a response.

(5) The ASC, in responding to the grievance, must investigate all grievances made by a patient or the patient's representative or surrogate regarding treatment or care that is (or fails to be) furnished.

(6) The ASC must document how the grievance was addressed, as well as provide the patient with written notice of its decision. The decision must contain the name of an ASC contact person, the steps taken to investigate the grievance, the result of the grievance process, and the date the grievance process was completed.

(e) *Standard: Exercise of rights and respect for property and person.*

(1) The patient has the right to

(i) Be free from any act of discrimination or reprisal.

(ii) Voice grievances regarding treatment or care that is (or fails to be) provided.

(iii) Be fully informed about a treatment or procedure and the expected outcome before it is performed.

(2) If a patient is adjudged incompetent under applicable State health and safety laws by a court of proper jurisdiction, the rights of the patient are exercised by the person appointed under State law to act on the patient's behalf.

(3) If a State court has not adjudged a patient incompetent, any legal representative or surrogate designated by the patient in accordance with State law may exercise the patient's rights to the extent allowed by State law.

(f) *Standard: Privacy and safety.* The patient has the right to the following:

(1) Personal privacy.

(2) Receive care in a safe setting.

(3) Be free from all forms of abuse or harassment.

(g) *Standard: Confidentiality of medical records.* The ASC must comply with the Department's rules for the privacy and security of individually identifiable health information, as specified at 45 CFR parts 160 and 164.

(h) *Standard: Exception to the timing of the notice of patient rights.* In the case of an emergency procedure, when it is not feasible to inform the patient or the patient's representative or surrogate of the patient's rights in advance of the date of the procedure, the ASC may provide the required notice and disclosures to the patient or the patient's representative or surrogate immediately before the procedure only if the following conditions are met:

(1) The signed physician referral is in writing, is dated the day the patient presents at the ASC, and is placed in the patient's medical record prior to the procedure.

(2) A physician in the ASC or the referring physician communicates in writing and the ASC documents in the medical record that the procedure must be performed as soon as possible to safeguard the health of the patient.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: *January 21, 2010.*

Charlene Frizzera,

Acting Administrator, Centers for Medicare & Medicaid Services.

Approved: *April 5, 2010.*

Kathleen Sebelius,

Secretary.

[FR Doc. 2010–8903 Filed 4–22–10; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

46 CFR Part 2

[Docket No. USCG–2007–27668]

RIN 1625–AB35

Approval of Classification Societies

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: Congress requires that classification societies conducting certain work in the United States must either be full members of International Association of Classification Societies (IACS) or approved by the Coast Guard. In this proposed rule, the Coast Guard proposes application procedures and performance standards that classification societies must meet in order to be approved. Through this proposed rule, the Coast Guard seeks to improve marine safety and environmental protection by assuring the consistency and quality of work conducted by classification societies that review, examine, survey, or certify the construction, repair, or alteration of a vessel in the United States.

DATES: Comments and related material must either be submitted to our online docket via *http://www.regulations.gov* on or before July 22, 2010 or reach the Docket Management Facility by that date.

ADDRESSES: You may submit comments identified by docket number USCG–2007–27668 using any one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.*
- *Fax:* 202–493–2251.
- *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.
- *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

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

Viewing incorporation by reference material: You may inspect the material proposed for incorporation by reference at room 1308, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593–0001 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–372–1371. Copies of the material are available as indicated in the "Incorporation by Reference" section of this preamble.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or e-mail Mr. William Peters, Office of Design and Engineering Standards, Coast Guard, telephone 202–372–1371, e-mail *William.S.Peters@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:

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I. 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.

A. Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2007–27668), 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 or by fax, mail, or hand delivery, but please use only one of these means. We recommend that you include your name and a mailing address, an e-mail address, or a phone 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,* select the Advanced Docket Search option on the right side of the screen, insert "USCG–2007–27668" in the Keyword box, press Enter, and then click on the balloon shape for "Submit a Comment" 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 this proposed rule based on your comments.

B. 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,* insert USCG–2007–27668 in the Keyword box and press Enter. Then, choose from the resulting list the types of documents you want to view. If you do not have access to the Internet, you may view the docket online by visiting 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.

C. 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).

D. Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one to the docket using one of the methods specified under **ADDRESSES**. In your request, 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.**

II. Abbreviations

CFR Code of Federal Regulations
COTP Captain of the Port
DHS Department of Homeland Security
IACS International Association of Classification Societies
ICLL International Convention on Load Lines 1966
IMO International Maritime Organization
ISM International Management Code for the Safe Operation of Ships and for Pollution Prevention
ISO International Organization for Standardization
ISPS International Ship and Port Facility Security Code
MARPOL 73/78 International Convention for the Prevention of Pollution From Ships, 1973, as modified by the Protocol of 1978
MOU Memorandum of Understanding
NAICS North American Industry Classification System
NARA National Archives and Records Administration
NEPA National Environmental Policy Act of 1969
RO recognized organization
SOLAS International Safety of Life at Sea
U.S.C. United States Code

III. Background

In section 413 of the Coast Guard and Maritime Transportation Act of 2004, Congress amended 46 U.S.C. 3316(c) to require that, after December 31, 2004, a classification society, including an employee or agent of that society, may not review, examine, survey, or certify the construction, repair or alteration of a vessel in the United States unless the classification society is either approved by the Coast Guard or is a full member of the International Association of Classification Societies (IACS). Public Law 108–293, August 9, 2004. (For information on IACS *see http://www.iacs.org.uk*). On November 2, 2004, the Coast Guard published a "Notice of Policy" (69 FR 63548) in the **Federal Register** to provide guidance on the approval application process for classification societies that are not full members of IACS.

After reviewing applications from classification societies seeking approval under the provisions of 46 U.S.C. 3316(c) and the guidance in our notice, we decided that the procedures and criteria the Coast Guard uses to evaluate classification societies should be made part of Title 46, Code of Federal Regulations (46 CFR) in order to have a specific, consistent, and enforceable basis for approval determinations. We consider it prudent to incorporate the requirements of 46 U.S.C. 3316(c) into 46 CFR part 2 because maritime industry personnel and Coast Guard field inspectors are generally more familiar with the Code of Federal Regulations than they are with the U.S. Code.

Inconsistencies in the applications we reviewed since January 2005 also reveal a need for clear regulations that explain the basis for approval. Furthermore, our analysis of the applications we reviewed since January 2005 indicates we can simplify the approval process to make requests easier to submit and evaluate.

To incorporate the requirements of 46 U.S.C. 3316(c) into regulations, the Coast Guard deems the International Maritime Organization (IMO) Resolution A.739(18), "Guidelines for the Authorization of Organizations Acting on Behalf of the Administration," to provide sound and international recognized standard from which to base the Coast Guard's review and approval program.

IMO acknowledges that classification societies often act as recognized organizations (ROs) under powers delegated by the flag state Administrations [1] when they perform technical and survey work on behalf of a government agency. Recognizing this relationship, IMO adopted Resolution A.739(18) that establishes minimum competency standards required by the applicable international conventions for ROs that act on behalf of Administrations to conduct vessel examinations, issue international certificates, perform surveys and certifications, and determine vessel tonnage. IMO Resolution A.739(18) is consistent with our minimum standards for a recognized classification society in 46 CFR Part 8, "Vessel Inspection Alternatives."

To work on behalf of a flag state Administration, a recognized organization must sufficiently demonstrate that its business practices meet or exceed the performance standards described in IMO Resolution A.739(18). For example, the RO must show that it:

- Publishes and systematically maintains rules for the construction and maintenance of vessels;
- Is professionally staffed with strategically placed resources for geographic coverage;
- Maintains a high level of professional ethics;
- Is competent;
- Provides timely and quality services; and
- Maintains an internal quality system no less effective than the ISO 9000 series certification. (For information on these standards or ISO, *see http://www.iso.ch*.)

When an RO demonstrates these competencies to the satisfaction of the Administration, its authorization is documented in a formal written agreement under the requirements of IMO Resolution A.739(18).

Similarly, a classification society that is not a full member of IACS must meet the following requirements for approval under the provisions of 46 U.S.C. 3316(c):

a. Vessels surveyed by the classification society must have an adequate safety record;

b. The classification society must have an adequate program to develop and implement safety standards for vessels it surveys;

c. The classification society must have an adequate program to make their safety records available in an electronic format; and

d. The classification society must have an adequate program to make the safety records of a vessel survey available to other classification societies, and to request records from other classification societies that previously surveyed the vessel for the purpose of a specific vessel survey.

To better assess the classification societies the Coast Guard evaluates the classification societies' implementation of safety standards for vessels by examining worldwide port state control statistics for the classification society and the vessels it surveys. This data is found in the annual reports published by the world's regional port state control organizations. These include, but are not limited to:

- Paris Memorandum of Understanding on Port State Control (Paris MOU: *http://www.parismou.org*);
- Memorandum of Understanding on Port State Control in the Asian-Pacific Region (Tokyo MOU: *http://www.tokyomou.org*);
- Mediterranean Memorandum of Understanding on Port State Control (Med MOU: *http://www.medmou.org*);
- Black Sea Memorandum of Understanding on Port State Control (Black Sea MOU: *http://www.bsmou.org*);
- The Latin American Agreement on Port State Control of Vessels (Vina del Mar MOU: *http://www.acuerdolatino.int.ar*);
- West and Central Africa Memorandum of Understanding on Port State Control (ABUJA MOU);
- Riyadh Memorandum of Understanding on Port State Control in the Gulf Region (Riyadh MOU: *http://www.riyadhmou.org*);

[1] The term "Administration" means the government whose flag a vessel is entitled to fly.

- Indian Ocean Memorandum on Port State Control (Indian Ocean MOU: *http://www.iomou.org*); and
- Caribbean Memorandum of Understanding on Port State Control (Caribbean MOU: *http://www.caribbeanmou.org*).

These Memoranda of Understanding (MOU) are regional agreements among countries to share port state control inspection results with the aim of eliminating the operation of sub-standard ships. The MOUs are managed by secretariats that maintain databases of inspection activities and results and often compile the data into annual reports. This data is available to the public and identifies, among other things:

- Vessel names and particulars;
- Inspection dates and locations;
- Classification societies;
- Deficiencies noted;
- Detentions imposed;
- Lists of detained vessels; and
- Lists of banned and targeted vessels.

For information on U.S. port state control results and the regional MOUs, *see http://www.uscg.mil/hq/g-m/pscweb/index.htm.* A copy of the most recent annual report from the United States and the regional organizations can be found in this docket.

The Coast Guard can evaluate the performance of a particular classification society by scrutinizing the port state control history of the vessels it surveys. For example, an annual report from a major MOU secretariat typically includes 3 years of data showing the performance of all ships listed by Administration and RO. The RO is usually the classification society.

This shared port state control data is indispensable for evaluating the safety performance of Administrations and classification societies. Not only can the Coast Guard check performance from the data in the annual reports, but trends can be tracked from year to year.

IV. Discussion of Comments

Two commenters responded to the November 2, 2004, "Notice of policy" (69 FR 63548). Both commenters asked several questions about the revised 46 U.S.C. 3316 and the Coast Guard's approval policy.

Two commenters asked if the new requirements would restrict classification societies from performing work related to the International Ship and Port Facility Security Code (ISPS Code) or the International Management Code for the Safe Operation of Ships and for Pollution Prevention (ISM Code). The new requirements would only prohibit a non-compliant classification society from reviewing, examining, surveying, or certifying the construction, alteration, or repair of a vessel in the United States. Work other than the construction, alteration, or repair of a vessel related to issuing certificates would not be affected.

Two commenters asked whether a vessel that is issued an international certificate or examined for classification purposes by a non-compliant classification society would be denied entry to U.S. ports. These vessels would not be denied entry to U.S. ports, but they might be subject to targeted port state control inspections.

Two commenters asked how an application should be formatted. An application can be made in either paper or a common electronic format, such as Portable Document Format (PDF).

One commenter asked if a non-compliant classification society may conduct classification surveys of vessels whose construction, repair, or alteration had been previously supervised by a compliant classification society. A non-compliant classification society may not review, examine, survey, or certify the construction, repair, or alteration of a vessel in the United States, regardless of who previously surveyed the vessel. To the extent practicable, a non-compliant classification society is not prohibited from surveying elements of a vessel that are not associated with that vessel's construction, repair, or alteration. Previous survey work performed by a compliant classification society would have no bearing on the prohibition of certain work by a non-compliant classification society.

One commenter asked that we define the term "adequate," as used extensively in the revised statutes. This term was not defined in the November 2004 "Notice of policy" (69 FR 63548). In this rulemaking, we propose clear, measurable performance standards to avoid vagueness. The term "adequate" is no longer used. If additional clarification is needed for the proposed performance standards, comments and suggestions can be submitted for this rulemaking.

Similarly, another commenter inquired about the meaning of the phrase "safety records." This phrase also was not defined in the November 2004 "Notice of policy" (69 FR 63548). The Coast Guard believes that the proposed rule, in detailing the performance standards for approval, fully defines the meaning of this phrase. If additional clarification is needed, comments and suggestions can be submitted for this rulemaking.

One commenter asked if a vessel with a list of repairs required by U.S. port state control officers would be allowed to perform cargo operations and leave U.S. waters to make those repairs abroad under the review, examination, and survey of an RO. If such a vessel is neither detained nor held by the Captain of the Port (COTP), it would be able to depart the United States. Because the proposed rule would not apply to a vessel outside the United States, a non-compliant classification society could perform services permitted by the port state in which the repairs are to be made.

One commenter asked if the prohibition of non-compliant classification societies applies specifically to certain flag states. The prohibitions that would apply in the proposed rule are not associated with any flag state. The proposed requirements would only prohibit a non-compliant classification society from reviewing, examining, surveying, or certifying the construction, alteration, or repair of a vessel in the United States.

One commenter asked if a flag state inspector would be affected by the proposed rule. A flag state inspector who performs statutory work directly for a flag state would not be affected by the proposed rule.

One commenter inquired if the list of vessels surveyed by the classification society and included in the approval application should be limited to those surveyed for classification purposes. Following 46 U.S.C. 3316(C)(2), the safety records of all vessels surveyed by the classification society, whether or not they are surveyed for classification purposes, would be considered in the assessment of the safety record of the classification society.

Both previous commenters also inquired about the type of electronic format that would be acceptable to the Coast Guard for providing requested safety records. A commonly available electronic word processing format or access to a web-based electronic database, in which information on vessels surveyed by the classification society is available, would be acceptable.

V. Discussion of Proposed Rule

In this rulemaking, we propose to revise 46 CFR part 2 by adding definitions for "Administration," "classification society," "recognized organization," and "regional port state control secretariat."

We also propose to add a new section describing the procedures to apply for approval. Under this section, a classification society must demonstrate it has an adequate program to develop safety standards for vessels. This

requirement would be met by providing a copy of the written agreement that shows it is an RO for at least one Administration signatory to the:

—International Safety of Life at Sea (SOLAS);
—International Convention for the Prevention of Pollution From Ships, 1973, as modified by the Protocol of 1978 (MARPOL 73/78);
—International Convention on Load Lines 1966 (ICLL); and
—Protocol of 1988 relating to the ICLL.

The written agreement must show that the classification society complies with IMO Resolution A.739(18). In addition, the Administration recognizing the classification society must not be on a port state control target list or equivalent.

In this rule, we also propose the classification society seeking Coast Guard approval must demonstrate it has an adequate program to implement safety standards for vessels by meeting the following requirements:

• The classification society must not be assigned a Priority I Matrix Point Assignment as identified in the most recent publication of "Port State Control in the United States" and as having more than one RO-related detention for the vessels it surveys during the past 3 years; and

• The classification society must demonstrate that the vessels it surveys have a worldwide detention rate of 2 percent or less based on the number of detentions related to the classification society's activities divided by the number of vessel inspections for at least 40 port state control inspections.

Where sufficient performance records are not available from a regional port state control secretariat, the Coast Guard would consider applications for approval and vessel safety record data based on fewer than 40 inspections on a case-by-case basis.

In this rule, we also propose to require a classification society to demonstrate that it has a program to share information electronically with other classification societies and the Coast Guard. A description of this capability would be part of the Coast Guard approval application.

In this rule, we also propose to annually reevaluate the records of approved classification societies to ensure they continue to meet the conditions for approval. An annual review would help the Coast Guard identify classification societies with deteriorating safety records and decide what action is appropriate.

The Coast Guard proposes three courses of action that could be taken if an approved classification society demonstrates substandard performance. A classification society could have its approval placed on probation, suspended, or revoked.

If a classification society approval is placed on probation, the classification society would be notified and could continue to conduct survey work. The Coast Guard would continue to monitor the classification society's performance through port state control records. If the Coast Guard finds improved performance, probation could be lifted. On the other hand, if performance is still below the conditions of approval, the Coast Guard could suspend the approval.

When a classification society's approval is suspended, it could no longer conduct survey work on vessels in the United States. The Coast Guard would continue to monitor the classification society's performance and could remove the suspension or place the approval on probation, depending on the results of the annual review. Alternatively, if performance does not improve, the Coast Guard could revoke the approval.

When an approval is revoked, the classification society could no longer perform survey work on vessels in the United States and the Coast Guard would cease monitoring the society's records. Before resuming survey work on vessels in the United States, the classification society would be required to obtain approval by resubmitting an application as outlined in the above paragraphs.

In this rulemaking, we also propose to add a new section to Part 2 referencing the penalty provisions of 46 U.S.C. 3318. We considered Coast Guard enforcement actions in the case where a non-approved classification society performs a prohibited review, examination, survey, or certification. Title 46 U.S.C. 3318 does not authorize the Coast Guard to penalize a classification society for violations of § 3316. Therefore, to enforce the provisions of § 3316, we propose to hold the owner, charterer, managing operator, agent, master, or individual in charge of a vessel responsible for ensuring compliant classification societies are employed for survey work when the vessel is in the United States.

VI. Incorporation by Reference

Material proposed for incorporation by reference appears in § 2.45–5. You may inspect this material at U.S. Coast Guard Headquarters where indicated under **ADDRESSES**. Copies of the material are available from the sources listed in § 2.45–5.

Before publishing a binding rule, we will submit this material to the Director of the Federal Register for approval of the incorporation by reference.

VII. 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.

A. 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 proposed rule amends regulations to require Coast Guard approval of classification societies that are not full members of the IACS. This rulemaking would not affect classification societies that are current members of the IACS. This proposed rule comprises application procedures and the performance standards classification societies must meet for approval. This rulemaking would incorporate provisions based on the statutory requirements in 46 U.S.C. 3316(c). These statutory requirements have been enforced since January 2005. We expect minimal costs to industry as a result of this rulemaking.

The Coast Guard has been receiving applications since January 2005. Approved classification societies would not need to take additional action to comply with this rulemaking and would not incur additional cost if they comply with existing requirements. The provisions of this rulemaking that would require periodic review also do not impose changes that would result in additional costs since the Coast Guard currently performs these reviews of approved classification societies.

We do not expect additional applications at this time. Classification societies have had more than four years to submit applications and we estimate that most affected classification societies have submitted applications.[2] Additionally, we are not aware of the formation of any new classification societies and none of the approved classification societies have currently been placed on suspension or

[2] We expect only those classification societies with potential vessel activity in U.S. waters would consider submitting an application and need approval under current requirements, which are the requirements of this rulemaking.

revocation. There are currently 6 classification societies approved under the provisions of 46 U.S.C. 3316(c).[3]

We estimate the costs of preparing and reviewing one application below for illustration, even though we expect this rulemaking would not result in additional costs. Classification societies would incur the burden to prepare and submit applications for approval or re-approval. Based on information from the Coast Guard's Naval Architecture Division, we estimate that it would take a junior manager 8 hours to prepare an application and a senior manager 2 hours to review and approve it. We estimate the information used to prepare an application would be available as a result of existing classification society operations and require no additional data collection. Using wage rates of $67 for the junior manager and $88 for the senior manager, we estimate that the total industry cost for an application would be $712 ((8 hours × $67/hour) + (2 hours × $88/hour)).[4]

The costs to government would be the time for the Coast Guard to review and reply to the application for approval. From our experience with earlier approvals, we estimate that it would take a junior officer 2 hours to review the application and draft a reply and a senior officer 0.5 hours to review and approve the reply. Using wage rates of $67 for the junior officer and $88 for the senior officer, we estimate the total government cost for an application to be $178 ((2 hours × $67/hour) + (0.5 hour × $88/hour)). The estimated total cost for one application would be $890 ($712 + $178). As discussed above, we expect no new classification societies to apply and the costs of this rulemaking to be minimal.

The benefits of this rulemaking derive from incorporating the approval information of 46 U.S.C. 3316(c) into 46 CFR part 2. We consider the maritime industry and Coast Guard field offices, in general, to be more familiar with the Code of Federal Regulations (CFR) than with the U.S. Code. By adding the statutory requirements to the CFR we anticipate improved administrative clarity and efficiency.

At this time, based on available information since January 2005, we expect that this rulemaking would not be economically significant under Executive Order 12866 (*i.e.,* have an annual effect on the economy of $100 million or more). The Coast Guard urges interested parties to submit comments that specifically address the economic impacts of this rulemaking. Comments can be made as indicated in the **ADDRESSES** section.

B. Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we 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.

Classification societies affected by this proposed rule are classified under one of the following North American Industry Classification System (NAICS) 6-digit codes for water transportation: 488330—Navigation Services to Shipping or 488390—Other Support Activities for Water Transportation. According to the Small Business Administration's (SBA) size standards, a U.S. company classified under these NAICS codes with annual revenues less than $7 million is considered a small entity.

The classification societies affected by this rulemaking are all foreign owned and operated. The affected classification societies are currently incurring the cost of the statutory requirements and this rulemaking would not require additional costs. In addition, we consider the costs of these requirements to not be substantial. See the "Regulatory Planning and Review" section for additional detail on cost impacts.

Therefore, 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. If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rulemaking would have a significant economic impact on it, please submit a comment to the Docket Management Facility at the address under **ADDRESSES**. In your comment, explain why you think it qualifies and how and to what degree this rulemaking would economically affect it.

C. 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 proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult Mr. William Peters, Office of Design and Engineering Standards, Coast Guard, via phone at 202–372–1372 or e-mail at *William.S.Peters@uscg.mil.* 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.

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

D. Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). Under OMB regulations implementing the PRA, "Controlling Paperwork Burdens on the Public" (5 CFR 1320), collection of information means the obtaining, soliciting, or requiring the disclosure to an agency of information by or for an agency by means of identical questions posed to, or identical reporting, recordkeeping, or disclosure requirements imposed on, ten or more persons. "Ten or more persons" refers to the number of respondents to whom a collection of information is addressed by the agency within any 12-month period and does not include employees of the respondent acting within the scope of their employment, contractors engaged by a respondent for the purpose of complying with the collection of information, or current employees of the Federal government. Collections of information affecting ten or more respondents within any 12-month period require OMB review and approval.

[3] Approvals as of 11/27/09 based on applicants since January 2005 that are not full members of the IACS. The current list includes Bulgarski Koraben Register, China Corporation Register of Shipping, Hellenic Register of Shipping, Indian Register of Shipping, International Naval Surveys Bureau, and Polski Rejestr Statkow. The current list of classification society approvals can be accessed at *https://homeport.uscg.mil/.* This site requires registration.

[4] For the purpose of estimating preliminary costs to industry and government, we used standard loaded hourly rates used in Coast Guard Information Collection Requests. These hourly rates include wages, benefits, overhead, and other expenses. These rates are found at *http://www.uscg.mil/directives/ci/7000-7999/CI_7310_1L.PDF* (link as of 11/27/2009).

This proposed rule comprises application procedures classification societies must meet for approval. We expect fewer than ten entities (potentially none) would be affected by this requirement within any 12-month period. As such, the number of respondents is less than the threshold of ten respondents per 12-month period for collection of information requirements under the PRA.

F. Unfunded Mandates Reform Act

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

G. Taking of Private Property

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

H. 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.

I. 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 may disproportionately affect children.

J. 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.

K. 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.

L. 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 uses the following voluntary consensus standards: IMO Resolution A.739(18) "Guidelines for the Authorization of Organizations Acting on Behalf of the Administration." The proposed section that references this standard and the location where this standard is available is listed in 46 CFR 2.45–5.

M. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. A preliminary environmental analysis checklist supporting this determination is available in the docket where indicated under the "Public Participation and Request for Comments" section of this preamble. This rule involves the approval of classification societies that examine, survey, or certify the construction, repair, or alteration of a vessel. This rule falls under paragraphs 34(b) and (d) of Commandant Instruction M16475.1D, which refer to the delegation of authority and the inspection of vessels. 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 46 CFR Part 2

Incorporation by reference, Marine safety, Reporting and recordkeeping requirements, Vessels.

For the reasons listed in the preamble, the Coast Guard proposes to amend 46 CFR part 2 as follows:

PART 2—VESSEL INSPECTIONS

1. The authority citation for part 2 continues to read as follows:

Authority: 33 U.S.C. 1903; 43 U.S.C. 1333; 46 U.S.C. 2110, 3103, 3205, 3306, 3307, 3703; 46 U.S.C. Chapter 701; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1. Subpart 2.45 also issued under the Act Dec. 27, 1950, Ch. 1155, secs. 1, 2, 64 Stat. 1120 (*see* 46 U.S.C. App. Note prec. 1).

2. Add subpart 2.45 to read as follows:

Subpart 2.45—Classification Society Activities

Sec.
2.45–1 Definitions.
2.45–5 Incorporation by reference.
2.45–10 General.
2.45–15 Approval requirements.
2.45–20 Probation, suspension and revocation.
2.45–25 Application for approval.
2.45–30 Penalties.

Subpart 2.45—Classification Society Activities

§ 2.45–1 Definitions.

Administration means the Government of the State whose flag the ship is entitled to fly.

Classification society means an organization that, at a minimum, verifies that a vessel meets requirements embodying the technical rules, regulations, standards, guidelines and associated surveys, and inspections covering the design, construction, and/or through-life compliance of a ship's structure and essential engineering and electrical systems.

Recognized organization (RO) means an organization authorized to act on behalf of an Administration.

Regional port state control secretariat means an organization established to collect and maintain port state control

inspection data in addition to other functions under a regional agreement among countries.

§ 2.45–5 Incorporation by reference.

Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, the Coast Guard must publish notice of change in the **Federal Register** and the material must be available to the public. All approved material is available for inspection 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.* Also, it is available for inspection at the Coast Guard's Office of Design and Engineering Systems (CG–521), 2100 Second Street, SW., Washington, DC 20593–0001, and is available from the sources indicated in this section.

(a) International Maritime Organization, 4 Albert Embankment, London SE1 7SR, U.K. +44 (0)20 7735 7611, *http://www.imo.org/*.

(b) IMO Resolution A.739(18), Guidelines for the Authorization of Organizations Acting on Behalf of the Administration, adopted 4 November 1993.

§ 2.45–10 General.

(a) A classification society (including an employee or agent of that society) must not review, examine, survey, or certify the construction, repair, or alteration of a vessel in the United States unless it is either a full member of the International Association of Classification Societies (IACS) or is approved under the provisions of this subpart.

(b) This subpart applies to a recognized organization that meets the definition of a classification society provided in § 2.45–1 of this subpart.

§ 2.45–15 Approval requirements.

(a) This section applies to a classification society that is not a full member of IACS.

(b) A classification society may be approved for purpose of § 2.45–10 if the following conditions are met:

(1) Vessels surveyed by the classification society must have a world-wide port state control detention rate of less than 2 percent based on the number of detentions related to the classification society's activities divided by the number of vessel inspections for at least 40 port state control inspection;

(2) The classification society must not be identified in the most recent publication of "Port State Control in the United States" as a Priority I and as having more than one Recognized Organization (RO)-related detention for the past 3 years;

(3) The classification society must comply with the minimum standards for a recognized organization recommended in IMO Resolution A.739(18), Appendix 1 (incorporated by reference, *see* § 2.45–5);

(4) The classification society must be an RO for at least one country under a formal written agreement that includes all of the elements described in IMO Resolution A.739(18), Appendix 2 (incorporated by reference, *see* § 2.45–5);

(5) The country for which the classification society is an RO:

(i) Must be signatory to each of the following: the International Safety of Life at Sea Convention (SOLAS), the International Convention on the Prevention of Pollution from Ships (MARPOL 73/78), the International Convention on Load Lines (ICLL), 1966, and the Protocol of 1988 relating to the ICLL, 1966; and

(ii) Must not be identified as a flag state targeted by the Coast Guard or equivalent by any regional port state control secretariat for additional port state control examinations; and

(6) The classification society must use a system to:

(i) Make its safety records and those of persons acting on behalf of the classification society available to the Coast Guard in electronic format;

(ii) Provide its safety records and those of persons acting on behalf of the classification society to another classification society that requests those records for the purpose of conducting surveys of vessels; and

(iii) Request the safety records of a vessel to be surveyed from any other classification society that previously surveyed that vessel.

(c) Where sufficient performance records are not available from a regional port state control secretariat, the Coast Guard may consider an equivalent safety performance indicator proposed by the classification society seeking approval.

§ 2.45–20 Probation, suspension and revocation.

(a) A classification society approved for the purpose of this subpart must maintain the minimum requirements for approval set forth in § 2.45–15.

(b) If an approved classification society fails to maintain compliance with paragraph (a) of this section, the Coast Guard may place the classification society approval on probation, or suspend or revoke the classification society's approval, as appropriate.

(c) A classification society on probation is approved for the purpose of this subpart. The probation continues until the next review of the classification society's compliance with paragraph (a) of this section.

(1) If the review shows that compliance with paragraph (a) of this section is achieved, the probation may end.

(2) If the review shows significant improvement but compliance with paragraph (a) of this section is not achieved, the probation may be extended.

(3) If the review does not show significant improvement, and compliance with paragraph (a) of this section is not achieved, the approval may be suspended.

(d) A classification society whose approval is suspended is not approved for the purpose of this subpart. Suspension will continue until the next review of the classification society's compliance with paragraph (a) of this section.

(1) If the review shows compliance with paragraph (a) of this section, the classification society's approval may be restored.

(2) If the review shows significant improvement toward compliance with paragraph (a) of this section, the suspension may be extended.

(3) If the review does not show significant improvement and compliance with paragraph (a) of this section, the classification society's approval may be revoked.

(e) A classification society whose approval is revoked is not approved for the purpose of this subpart. The classification society may reapply for approval when the requirements of § 2.45–15 are met.

(f) The Coast Guard's Office of Design and Engineering Standards (CG–521) administers probations, suspensions, and revocations and makes all related notifications to affected classification societies.

§ 2.45–25 Application for approval.

An application for approval must be made in writing and in the English language to U.S. Coast Guard, Commandant (CG–521), Office of Design and Engineering Standards, 2100 Second Street, SW. STOP 7126, Washington, DC 20593–7126. The application must:

(a) Indicate the type of work the classification society intends to perform on vessels in the United States;

(b) Include documentation demonstrating that the classification society complies with § 2.45–15 of this subpart;

(c) Contain a list of the vessels surveyed by the classification society over the previous 3 calendar years. The list must include vessel names, flags, and IMO numbers, as well as initial vessel inspections and detentions; and

(d) Provide a summary of the safety records of vessels the classification society surveys for each of the previous 3 calendar years, including initial vessel inspections and detentions for all data contained in regional port state control Memoranda of Understanding and other port state control data sources, including the U.S. Coast Guard.

§ 2.45–30 Penalties.

The owner, charterer, managing operator, agent, master, or individual in charge of a vessel that employs a classification society to review, examine, survey or certify the construction, repair, or alteration of a vessel in the United States is subject to civil penalties in accordance with Title 46 U.S.C. 3318 if the classification society is not a full member of IACS or not approved by the Coast Guard under this subpart.

Dated: April 16, 2010.

F.J. Sturm,

Acting Director of Commercial Regulations and Standards, U.S. Coast Guard.

[FR Doc. 2010–9336 Filed 4–22–10; 8:45 am]

BILLING CODE 9110–04–P

Notices

Federal Register
Vol. 75, No. 78
Friday, April 23, 2010

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Del Norte Resource Advisory Committee (RAC)

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Del Norte Resource Advisory Committee (RAC) will meet in Crescent City, California. The committee meeting is authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 110–343) and in compliance with the Federal Advisory Committee Act.

DATES: The meeting will be held May 10, 2010, from 6 p.m. to 8:30 p.m.

ADDRESSES: The meeting will be held at the Del Norte County Unified School District, Board Room, 301 West Washington Boulevard, Crescent City, California 95531.

FOR FURTHER INFORMATION CONTACT: Julie Ranieri, Committee Coordinator, Six Rivers National Forest, 1330 Bayshore Way, Eureka, CA 95503 (707) 441–3673; e-mail *jranieri@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Agenda items to be covered include: (1) Approval of Meeting Ground Rules and Operational Guidelines, (2) Discussion and decision on filling vacant replacement positions, (3) Process for soliciting project proposals and timeline, (4) Discuss on hiring someone to work with the public on project submissions, (5) Presentation on the RAC *Coast to Crest* Legacy Project, (6) Set a calendar of meetings.

Public input opportunity will be provided and individuals will have the opportunity to address the Committee at that time.

Dated: April 16, 2010.

Tyrone Kelley,

Forest Supervisor.

[FR Doc. 2010–9419 Filed 4–22–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF AGRICULTURE

Forest Service

Amador County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Amador County Resource Advisory Committee will meet in Jackson, California. The committee is meeting as authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 110–343) and in compliance with the Federal Advisory Committee Act. The purpose of the meeting is to meet as a committee for the first time, receive a briefing on duties and responsibilities, elect a chair person, and set the dates for the next meetings.

DATES: The meeting will be held at the Amador County Supervisors Building on May 5, 2010, 5 p.m.

ADDRESSES: The meeting will be held at the Amador County Supervisors Building located at 801 Court Street, Jackson, California, 95642 in the Board of Supervisor's Chambers. Written comments should be sent to Frank Mosbacher; Forest Supervisor's Office; 100 Forni Road; Placerville, CA 95667. Comments may also be sent via e-mail to *fmosbacher@fs.fed.us,* or via facsimile to 530–621–5297.

All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at 100 Forni Road; Placerville, CA 95667. Visitors are encouraged to call ahead to 530–622–5061 to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Frank Mosbacher, Public Affairs Officer, Eldorado National Forest Supervisors Office, (530) 621–5268.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. The following business will be conducted: This will be the first time newly appointed members to the Amador County RAC will have a chance to meet each other. Following introductions, information will be shared about the purpose of the RAC, roles and responsibilities, and the Federal Advisory Committee Act. In addition, a committee chair will be elected and a calendar of next meeting dates will be established. More information will be posted on the Eldorado National Forest Web site @ *http://www.fs.fed.us/r5/eldorado.* A public comment opportunity will be made available following the business activity. Future meetings will have a formal public input period for those following the yet to be developed public input process.

Dated: April 12, 2010.

Ramiro Villalvazo,

Forest Supervisor.

[FR Doc. 2010–9295 Filed 4–22–10; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Hood/Willamette Resource Advisory Committee (RAC)

AGENCY: Forest Service, USDA.

ACTION: Action of meeting.

SUMMARY: The Hood/Willamette Resource Advisory Committee (RAC) will meet on Tuesday, May 18, 2010. The meeting is scheduled to begin at 9:30 a.m. and will conclude at approximately 12:30 p.m. The meeting will be held at the Salem Office of the Bureau of Land Management Office; 1717 Fabry Road SE; Salem, Oregon; (503) 375–5646. The tentative agenda includes: (1) Recommendations on 2011 Projects; and (2) Public Forum.

The Public Forum is tentatively scheduled to begin at 10 p.m. Time allotted for individual presentations will be limited to 4–5 minutes. Written comments are encouraged, particularly if the material cannot be presented within the time limits for the Public Forum. Written comments may be submitted prior to the May 18th meeting by sending them to Designated Federal Official Connie Athman at the address given below.

FOR FURTHER INFORMATION CONTACT: For more information regarding this meeting, contact Connie Athman; Mt. Hood National Forest; 16400 Champion Way; Sandy, Oregon 97055; (503) 668–1672.

Dated: April 16, 2010.

Gary L. Larsen,

Forest Supervisor.

[FR Doc. 2010–9298 Filed 4–22–10; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Plan Revision for Kaibab National Forest; Coconino, Yavapai, and Mojave Counties; AZ

AGENCY: Forest Service, USDA.

ACTION: Notice of Intent to revise the forest plan.

SUMMARY: As directed by the National Forest Management Act (NFMA), the USDA Forest Service is revising the Kaibab National Forest Land Management Plan (forest plan) and will also prepare an environmental impact statement (EIS) for the revised forest plan. This notice briefly describes the nature of the decision to be made, the proposed action and need for change, and information concerning public participation. It also provides estimated dates for filing the EIS and the names and addresses of the responsible agency official and the individuals who can provide additional information. Finally, this notice briefly describes the applicable planning rule and how work done on the plan revision under the 2008 planning rule will be used or modified for completing this plan revision.

The revised Kaibab National Forest Land Management Plan will supersede the forest plan approved by the Regional Forester on April 15, 1988, amended eight times from 1988 to 2009. Two of the eight amendments were site specific, involving the reclassification of suitable timberlands to non-forest lands. The other six amendments were programmatic; two clarified procedures, one incorporated direction for the Regional amendment of Forest plans (goshawk, spotted owl, and old growth), one incorporated direction for wildfire use, one adopted the Recreation Opportunity Spectrum and Scenery Management System for the Tusayan and Williams Ranger Districts, and one incorporated direction for the treatment of noxious and invasive weeds. This amended forest plan will remain in effect until the revised forest plan takes effect.

DATES: Comments concerning the need for change provided in this notice will be most useful in the development of the draft revised plan and draft environmental impact statement if received by June 1, 2010. The agency expects to release a draft revised plan and draft environmental impact statement for formal comment by fall 2010 and a final revised plan and final environmental impact statement by summer 2011.

ADDRESSES: Send written comments to: Kaibab National Forest, Attention: Forest Plan Revision Team, 800 S. 6th St., Williams, Arizona 86046. Comments may also be sent via e-mail to *southwestern-kaibab@fs.fed.us* or via facsimile to (928) 635–8208, with "Forest Plan Revision" in the subject line.

FOR FURTHER INFORMATION CONTACT: Ariel Leonard, Forest Planner, Kaibab National Forest at (928) 635–8283 or e-mail: *aleonard@fs.fed.us.* Information on this revision is also available at the Kaibab National Forest revision Web site at *http://fs.usda.gov/goto/kaibab/plan_revision* or by request. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339 between 8 a.m. and 8 p.m., Eastern Time Monday through Friday.

SUPPLEMENTARY INFORMATION:

Name and Address of the Responsible Official

The responsible official is Corbin Newman, Regional Forester, Southwestern Region, 333 Broadway SE., Albuquerque, NM 87102.

Nature of the Decision To Be Made

The EIS process is meant to inform the Regional Forester so that he can decide which forest plan alternative best meets the need to achieve quality land management under the sustainable multiple-use management concept, meet the diverse needs of people, and conserve the National Forest's resources, as required by the NFMA and the Multiple Use Sustained Yield Act (MUSYA). The new forest plan will describe the strategic intent of managing the Kaibab National Forest into the next 10 to 15 years and will address the need for change described below. The new forest plan will provide management direction in the form of goals (desired conditions), objectives, suitability determinations, standards, guidelines, and a monitoring plan, including the identification of management indicator species (MIS). It may also make new special area recommendations for wilderness, or other special areas.

As important as the decisions to be made is the identification of the types of decisions that will not be made within the revised forest plan. The authorization of project-level activities on the forests is not a decision made in the forest plan but occurs through subsequent project specific decision-making. The designation of routes, trails, and areas for motorized vehicle travel are not considered during plan revision, but are being addressed in concurrent, but separate, environmental assessments for motorized travel management planning on the Williams, Tusayan, and North Kaibab Ranger Districts. Some issues (*e.g.,* hard rock mining on public domain lands), although important, are beyond the authority or control of the Kaibab National Forest and will not be considered. In addition, some issues, such as restoring cottonwood willow riparian forests, may not be undertaken at this time, but addressed later as future forest plan amendments.

Need for Change and Proposed Action

Since the forest plan was approved in 1988, there has been a shift in management emphasis from outputs to outcomes, new scientific information and understanding, and changes in economic, social, and ecological conditions. The Analysis of the Management Situation (AMS) and subsequent management reviews identified four priority needs that will serve to focus the scope of this plan revision. These topics reflect the priority needs for change and potential changes in program direction that will be emphasized in the development of the revised forest plan:

1. *Modify stand structure and density of forested ecosystems towards reference conditions and restore historic fire regimes.* The multiple ecological, social, and economic benefits of reducing the risk of uncharacteristic fires made this a primary area of focus. The revised Forest Plan will define desired characteristics including: Species composition; structural characteristics such as spacing tree groups and tree density; and disturbance patterns such as frequency, severity, intensity, and size and fire. It will also describe the strategies in the form of objectives, guidelines that will define the "when", "where", and "how" to achieve the desired conditions. Objectives will focus on restoration activities such as thinning and burning in high priority areas. Guidelines and standards will serve to provide direction to focus and

constrain vegetation management activities.

2. *Protect and regenerate aspen.* The protection and regeneration of aspen is a priority because of the important role aspen plays in providing local habitat diversity and scenery. Aspen stands are currently in decline throughout most of the southwest. On the Williams Ranger District, most aspen stands are generally unhealthy because they are being overtopped by conifers and there has been little to no recruitment of young trees due to heavy browsing by Rocky Mountain elk. The revised Forest Plan will define desired characteristics for aspen including regeneration, recruitment, structural composition, understory plants, and disturbance processes. Strategies for achieving desired conditions will focus on thinning encroaching conifers, protection from browse, and the reintroduction of fire.

3. *Protect natural waters.* The Kaibab National Forest is one of the driest Forests in the Nation. With the exception of one perennial stream that is less than 2 miles in length, most of the natural waters are small springs and ephemeral wetlands. The current forest plan offers little guidance for managing these rare and ecologically important resources. Natural waters are centers of high biological diversity, have traditional cultural significance, and are popular recreation destinations. The revised forest plan will provide desired conditions and include strategies to restore and protect natural waters. This work is relatively inexpensive and would provide important ecological and social benefits.

4. *Restore grasslands by reducing tree encroachment in grasslands and meadows.* Tree encroachment into grasslands has reduced the amount of grasslands significantly over the past 100 years. This reduction has reduced the amount and quality of available habitat for grassland-associated species. The montane/subalpine grasslands on the North Kaibab Ranger District are at a higher risk of loss because they are linear and encroachment occurs more quickly. Desired conditions for grasslands will include desired natural patterns of abundance, composition, and distribution. Strategies will focus on reducing tree density, restoring fire to the ecosystem, and modifying fences that would improve habitat connectivity for pronghorn antelope.

In addition to the priority needs for change topics above, this forest plan revision process will develop consistent, efficient, and scientifically-based plan components to provide direction for: (1) A balanced range of recreation opportunities within the limits of the administrative and resource capacity; (2) management response in the years immediately following large disturbance events; (3) energy corridors and renewable energy development requests; (4) mining exploration and development; (5) special-use management; and (6) special forest products collection. Additionally, the Forest will review the results of the Wilderness Needs Assessment and the eligibility of Kanab Creek Wild and Scenic River. Other needs for change have been and will continue to be identified. These may be addressed in the proposed forest plan, or incorporated in the future as amendments.

Public Involvement

Extensive public involvement and collaboration has already taken place. The Kaibab National Forest has hosted multiple general public meetings in Williams, Tusayan, Flagstaff, Phoenix, Fredonia (all in Arizona) and in Kanab, Utah, as well as focused meetings on ecological sustainability and special areas. There was also a series of facilitated collaborative stakeholder meetings, supported by spatial modeling and analysis that were designed to identify high-priority treatment areas and provide guidance for restoring fire adapted ecosystems. The Kaibab National Forest also hosted five topic-based "collaborwriting" sessions and an on-line discussion forum that focused on drafting desired conditions and guidance for grasslands, springs/wetlands, aspen, mixed conifer forests, and recreation. Consultation and collaboration with American Indian Tribes has been ongoing, with multiple government to government meetings with the Hopi, Navajo, Hualapai, Havasupai, Zuni, and Kaibab-Paiute Tribes. The Kaibab forest plan revision was also a topic at several multitribe and Navajo Chapters meetings.

Based on the collaborative process and other input received to date, a working draft of the Kaibab National Forest Land Management Plan has been prepared and is available at *http://fs.usda.gov/goto/kaibab/draft_plan* for review and comment. The working draft is meant to provide a foundation for continued collaborative discussion and feedback before the proposed action/preferred alternative has been finalized. The information received in response to this notice of intent will be used to make additions and modifications needed to finalize the proposed forest plan, identify issues and potential alternatives, and guide the analysis of environmental effects.

It is important that reviewers provide their comments at such times and in such a way that they are useful to the Agency's preparation of the revised forest plan and EIS. Therefore, comments on the proposed action and need for change will be most valuable if received by June 1, 2010, and should clearly articulate the reviewer's concerns.

Following the preparation of the draft environmental impact statement (DEIS) and Notice of Availability later this fall, there will be a formal notice and comment period.

The submission of timely and specific comments can affect a reviewer's ability to participate in subsequent administrative or judicial review. At this time, we anticipate using the 2000 planning rule pre-decisional objection process (36 CFR 219.32) for administrative review.

Comments received in response to this solicitation, including the names and addresses of those who comment will be part of the public record. Comments submitted anonymously will be accepted and considered.

Applicable Planning Rule

Preparation of the revised plan was underway when the 2008 National Forest System land management planning rule was enjoined on June 30, 2009, by the United States District Court for the Northern District of California (*Citizens for Better Forestry* v. *United States Department of Agriculture,* 632 F. Supp. 2d 968 (N.D. Cal. June 30, 2009)). On December 18, 2009, the Department reinstated the previous planning rule, commonly known as the 2000 planning rule in the **Federal Register** (**Federal Register**, Volume 74, No. 242, Friday, December 18, 2009, pages 67059 thru 67075). The transition provisions of the reinstated rule (36 CFR 219.35 and appendices A and B) allow use of the provisions of the National Forest System land and resource management planning rule in effect prior to the effective date of the 2000 Rule (November 9, 2000), commonly called the 1982 planning rule, to amend or revise plans. The Kaibab National Forest has elected to use the provisions of the 1982 planning rule, including the requirement to prepare an EIS, to complete its plan revision.

The Kaibab National Forest Plan revision was initiated with a Notice of Initiation in the **Federal Register** on April 20, 2009 (Vol. 74, No. 74, pages 17947–17948). Although the 2008 planning rule is no longer in effect, information gathered prior to the court's injunction is useful for completing the plan revision using the provisions of the

1982 planning rule. The Kaibab National Forest has concluded that most of the materials developed for the plan revision process to date are appropriate for continued use in the revision process. The following foundation documents are available at: *http://fs.usda.gov/goto/kaibab/plan_rev_docs.*

- The Comprehensive Evaluation Report (CER) that was signed April 14, 2010, after substantial public collaboration forms the basis for need to change the existing Forest Plan and the proposed action for the plan revision.
- The CER supplementary document, which supplemented the CER with additional information to conform to the Analysis of Management Situation (AMS) need for change provisions of the 1982 planning rule, dated April 16, 2010.
- The Ecological Sustainability Report (ESR), completed in December 2008, will continue to be used as a reference in the planning process as appropriate to those items in conformance with the 2000 planning rule transition language and 1982 planning rule provisions. It primarily contains scientific information that is not affected by the change of planning rule. This information will be updated with any new available information.
- The Social and Economic Sustainability Report completed in August 2008 is not affected by the change in planning rule and will continue to be used as a reference in the planning process. This information will be updated with new information as it is available.

Additional background reports, assessments, and information will be used, some of which is available on the Kaibab National Forest at: *http://fs.usda.gov/goto/kaibab/plan_revision.*

As necessary or appropriate, the material listed above will be further adjusted as part of the planning process using the provisions of the 1982 planning rule.

Authority: 16 U.S.C. 1600–1614; 36 CFR 219.35 (74 FR 67073–67074).

Dated: April 16, 2010.

Michael R. Williams,

Forest Supervisor.

[FR Doc. 2010–9425 Filed 4–22–10; 8:45 am]

BILLING CODE 3410–11–P

CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD

[Docket No. CSB–10–01]

National Academy of Sciences Study

AGENCY: Chemical Safety and Hazard Investigation Board.

ACTION: Notice and request for comments.

SUMMARY: The Fiscal Year 2010 appropriations legislation for the Chemical Safety and Hazard Investigation Board (CSB) provides funding for a study by the National Academy of Sciences (NAS) to examine the use and storage of methyl isocyanate, including the feasibility of implementing alternative chemicals or processes and an examination of the cost of alternatives at the Bayer CropScience facility in Institute, West Virginia. With this notice, the CSB is outlining the scope of the study to be undertaken by the NAS and requesting public comments regarding the study.

DATES: Written comments must be received by the CSB on or before May 10, 2010.

ADDRESSES: You may submit written comments, identified by docket number CSB–10–01, by either of the following methods:

- *E-mail (preferred): nascomments@csb.gov*. Include CSB–10–01 in the subject line of the message.
- *Mail:* Chemical Safety and Hazard Investigation Board, Office of Congressional, Public, and Board Affairs, Attn: D. Horowitz, 2175 K Street, NW., Suite 650, Washington, DC 20037.

Instructions: All comment submissions must include the agency name and docket number. All comments received, including any personal information provided, will be made available to the public without modifications or deletions. For detailed instructions on submitting comments electronically, including acceptable file formats, see the "Electronic Submission of Comments" heading in the **SUPPLEMENTARY INFORMATION** section of this document. Comments received by the CSB will be posted online in the Open Government section of the CSB Web site, *http://www.csb.gov/open.aspx*.

FOR FURTHER INFORMATION CONTACT: Dr. Daniel Horowitz, Director of Congressional, Public, and Board Affairs, at (202) 261–7613.

SUPPLEMENTARY INFORMATION:

Background

Bayer CropScience Incident

On August 28, 2008, a fatal explosion and fire occurred at the Bayer CropScience (BCS) plant located in Institute, West Virginia. The explosion occurred during the restarting of the plant's methomyl production unit, when highly toxic and reactive methomyl waste was overloaded into a residue treater vessel. A violent runaway reaction ruptured the 5,000-pound vessel and sent it through the production unit, breaking pipes and equipment. The explosion and resulting chemical release and fire fatally injured two employees. Six volunteer firefighters and two others showed likely symptoms of chemical exposure. The blast wave damaged businesses thousands of feet away.

Congressional Testimony

On April 21, 2009, John S. Bresland, Chairman of the CSB, testified before the House Energy and Commerce Committee regarding the CSB's ongoing investigation at the BCS site. Chairman Bresland testified that the CSB investigation had revealed significant lapses in process safety management. Plant operators had received inadequate training on a new computer control system, which was being used for the first time. Written operating procedures were outdated and could not be followed during startups, due to longstanding equipment problems. The heater for the residue treater was known to be undersized. This regularly forced operators to defeat critical safety interlocks during startups—increasing the chance of dangerously overloading the treater with methomyl.

Chairman Bresland also stated that the blast could have propelled the residue treater in any direction. About 80 feet from the original location of the treater, there was a 37,000-pound capacity tank of methyl isocyanate (MIC), which held 13,800 pounds of the highly toxic and volatile liquid on the night of the accident. Chairman Bresland announced that the CSB was further investigating whether this tank was located in a safe position and whether alternative arrangements to using or storing MIC had been considered at Bayer, or should be considered in the future.

Interim Public Meeting

On April 23, 2009, the CSB investigation team presented its initial findings to the Board at a public meeting in Institute, West Virginia. In its presentation the CSB team stated that it planned to conduct further studies on how MIC was used and stored at the facility, in light of the preliminary findings.

Bayer Announcement

In August 2009, Bayer officials announced a plan which they said would reduce both the maximum and the average inventory of MIC at the Institute site by approximately 80%. This would be accomplished in part by

eliminating the on-site production of two MIC-derived carbamate pesticides, and in part by restricting the inventory of MIC needed for producing two remaining pesticides. Bayer officials also stated the company would end the bulk storage of MIC in aboveground tanks, including the 37,000-pound capacity MIC tank that was near the August 2008 explosion site. That tank, as noted in Congressional testimony in April, was exposed to potential projectiles and other hazards from the explosion.

Congressional Appropriations

On October 30, 2009, the President signed the Fiscal Year 2010 appropriations legislation for the CSB. *See* Public Law 111–88, 123 Stat. 2949. This legislation contained the following language regarding the CSB's ongoing investigation of the Bayer CropScience incident, "Provided further, That of the funds appropriated under this heading, $600,000 shall be for a study by the National Academy of Sciences to examine the use and storage of methyl isocyanate including the feasibility of implementing alternative chemicals or processes and an examination of the cost of alternatives at the Bayer CropScience facility in Institute, West Virginia." Public Law 111–88, 123 Stat. 2950.

Proposed Study

In order to accomplish the study called for by the CSB's appropriations legislation, the agency has drafted the following task statement for the NAS:

Proposed Task Statement for National Academy of Sciences Study on "Inherently Safer Chemical Processes: The Use of Methyl Isocyanate at Bayer CropScience"

Public Law 111–88 (the Department of the Interior, Environment, and Related Agencies Appropriations Act, 2010) directs the Chemical Safety and Hazard Investigation Board (CSB) to conduct "a study by the National Academy of Sciences to examine the use and storage of methyl isocyanate including the feasibility of implementing alternative chemicals or processes and an examination of the cost of alternatives at the Bayer CropScience facility in Institute, West Virginia." [1]

The study is needed because of concerns about the potential for an airborne release of the chemical, which is highly toxic by inhalation and could adversely impact the health and safety of workers and the public in West Virginia's Kanawha Valley.[2] Depending upon the progress of the study, the availability of funding, and other factors, the CSB may contract for a second, related study to examine inherently safer technology (IST) alternatives to other high-volume toxic chemicals used in industry.

For a number of years, the Bayer facility in Institute [3] has stored approximately 200,000 pounds of methyl isocyanate (MIC), which has been used as an intermediate to produce carbamate pesticides, including carbofuran, carbaryl, aldicarb, methomyl, and thiodicarb (Larvin). It is the only remaining site in the U.S. which manufactures and stores large quantities of MIC. In August 2009, one year after a serious explosion and fire near an aboveground MIC storage tank, Bayer announced a plan to reduce the maximum inventory of MIC at the Institute site by 80% and to eliminate aboveground storage of the chemical. This plan, which is currently being implemented, would leave approximately 40,000 pounds of MIC stored underground at the site on an ongoing basis. To achieve the inventory reduction, Bayer plans to use its existing carbamate manufacturing technology but to discontinue the production of two MIC-derived carbamate pesticides, methomyl [4] and carbofuran.[5]

Tasks

The National Academy of Sciences (NAS) study will focus on further risk-reduction opportunities, above and beyond the envisioned 80% reduction in MIC inventory. To perform the study, the NAS shall convene an expert panel with diverse representation, including individuals with industry, academic, community, environmental, and labor experience and backgrounds. The expert panel shall produce a detailed written report and recommendations on the following subjects:

1. Review and evaluate the state of the art in inherently safer process assessments and implementation:

- Provide a working definition of Inherently Safer Technology (IST), as the term applies to the chemical industry and other process industries.
- Review and evaluate current practices for inherently safer process assessments, including the goals and applicability of these tools. Specifically, do existing methods adequately account for all the potential life-cycle benefits and risks from adopting inherently safer technologies?
- Review and evaluate current economic valuation methods for estimating the cost of alternative chemicals and processes. Specifically, do these methods accurately estimate capital investment costs, operating costs, and payback periods?
- Review and evaluate current standards and metrics for measuring the effectiveness of inherently safer technology applications in the chemical and process industries.
- Review and evaluate the impact of existing State and local regulatory programs that seek to promote inherently safer processes, such as the Industrial Safety Ordinance in Contra Costa County, California, and the Toxic Catastrophe Prevention Act in New Jersey.
- Provide guidance on best practices for inherently safer process assessments, metrics, and IST cost evaluation methods.

2. Examine the use and storage of MIC at the Bayer CropScience facility in Institute, West Virginia:

- Review the current industry practice for the use and storage of MIC in manufacturing processes, including a summary of changes adopted by industrial users of MIC following the 1984 Bhopal accident.
- Review current and emerging technologies for producing carbamate pesticides, including carbaryl, aldicarb, and related compounds. The review should include:

—Synthetic methods and patent literature.
—Manufacturing approaches used worldwide for these materials.
—Manufacturing costs for different synthetic routes.
—Environmental and energy costs and tradeoffs for alternative approaches.
—Any specific fixed-facility accident or transportation risks associated with alternative approaches.
—Regulatory outlook for the pesticides, including their expected lifetime on the market.

- Identify the best possible approaches for eliminating or reducing

[1] Congress appropriated $600,000 for conducting the study.

[2] On December 3, 1984, the uncontrolled release of MIC from an underground storage tank at a Union Carbide pesticide manufacturing facility in Bhopal, India, killed thousands of residents and disabled or injured thousands of others.

[3] The facility was constructed in the 1940's and was developed as a carbamate pesticide manufacturing complex by Union Carbide, which owned the facility from 1947–1986. Bayer CropScience acquired the facility in 2002.

[4] The methomyl production unit was heavily damaged in the August 2008 explosion. Bayer opted not to rebuild the unit but to begin purchasing methomyl from other sources and convert it into thiodicarb (Larvin) at the Institute site. The conversion of methomyl to thiodicarb does not use MIC.

[5] On December 31, 2009, the U.S. Environmental Protection Agency revoked all tolerances for the pesticide, having determined that "dietary, worker, and ecological risks are unacceptable for all uses of carbofuran."

the use of MIC in the Bayer carbamate pesticide manufacturing processes, through, for example, substitution of less hazardous intermediates, intensifying existing manufacturing processes, or consuming MIC simultaneously with its production. Examine these approaches using the best practices for inherently safer process assessment identified under Task 1.

• Estimate projected costs of alternative approaches identified above.

• Compare the inherently safer process assessments conducted by Bayer and previous owners of the Institute site with benchmarks established under Task 1.

Deliverables

For each task, the NAS shall provide a monthly progress report to the CSB from inception to completion. The NAS should promptly notify the CSB of any problems encountered or other matters that require CSB attention.

The principal deliverable item is a detailed written report of the expert panel addressing each point in Tasks 1 and 2, above. The report should be produced within 12 months of the initiation of the project. The panel may conduct public hearings in West Virginia, or elsewhere, as appropriate.

Questions for Public Comment

1. Does the proposed Task Statement include the appropriate topics for consideration by the NAS? Are there any additional general or specific topics the NAS panel will need to consider in order to reach a satisfactory answer on the feasibility and costs of reducing the use and storage of MIC?

2. If funds are available, should the CSB initiate a second, related study to consider the feasibility, costs, and benefits of inherently safer alternatives to other chemicals? For example, should a study consider alternatives to the use of hydrogen fluoride in refinery alkylation processes and/or to the use of chlorine in water treatment? What other chemicals or processes should be considered if a second study is undertaken?

3. What kinds of backgrounds and expertise should be represented on the NAS panel?

4. Is the proposed timetable appropriate?

Electronic Submission of Comments

Electronic submission of comments is preferred. Comments should be submitted by e-mail to *nascomments@csb.gov*. Comments may be submitted in the body of the e-mail message or as an attached PDF, MS Word, or plain text ASCII file. Files must be virus-free and unencrypted. Please ensure that the comments themselves, whether in the body of the e-mail or attached as a file, include the docket number (CSB–10–01), the agency name, and your full name and address.

Authority: 42 U.S.C. 7412(r)(6)(F), (N); Pub. L. 111–88, 123 Stat. 2950.

Dated: April 19, 2010.

Christopher W. Warner,

General Counsel.

[FR Doc. 2010–9422 Filed 4–22–10; 8:45 am]

BILLING CODE 6350–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Utah Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that a planning meeting of the Utah Advisory Committee to the Commission will convene by conference call at 10 a.m. on Thursday, May 6, 2010. The purpose of this meeting is to provide a brief overview of recent Commission and regional activities, discuss civil rights issues in the state, hear from a subcommittee on the Utah Anti-Discrimination Division's state audit report, and plan future activities and projects.

This meeting is available to the public through the following toll-free call-in and conference ID numbers: 1–866–364–8798; conference ID 70344123. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and conference ID.

To ensure that the Commission secures an appropriate number of lines for the public, persons are asked to register by contacting Evelyn Bohor of the Rocky Mountain Regional Office and TTY/TDD (303) 866–1049 by noon on May 3, 2010.

Members of the public are entitled to submit written comments. The comments must be received in the regional office by June 7, 2010. The address is: U.S. Commission on Civil Rights, Rocky Mountain Regional Office, 1961 Stout Street, Suite 240, Denver, CO 80294. Comments may be e-mailed to *ebohor@usccr.gov.* Records generated by this meeting may be inspected and reproduced at the Rocky Mountain Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this advisory committee are advised to go to the Commission's Web site, *http://www.usccr.gov,* or to contact the Rocky Mountain Regional Office at the above e-mail or street address.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission and FACA.

Dated in Washington, DC, 19 April 2010.

Peter Minarik,

Acting Chief, Regional Programs Coordination Unit.

[FR Doc. 2010–9383 Filed 4–22–10; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.

Title: 2008 Panel of the Survey of Income & Program Participation, Wave 7 Topical Modules.

OMB Control Number: 0607–0944.

Form Number(s): SIPP–28705(L) Director's Letter; SIPP/CAPI Automated Instrument; SIPP28003 Reminder Card.

Type of Request: Revision of a currently approved collection.

Burden Hours: 143,303.

Number of Respondents: 94,500.

Average Hours per Response: 30 minutes.

Needs and Uses: The U.S. Census Bureau requests authorization from the Office of Management and Budget (OMB) to conduct the Wave 7 interview for the 2008 Panel of the Survey of Income and Program Participation (SIPP). The core SIPP and reinterview instruments were cleared under Authorization No. 0607–0944.

The SIPP represents a source of information for a wide variety of topics and allows information for separate topics to be integrated to form a single and unified database so that the interaction between tax, transfer, and

other government and private policies can be examined. Government domestic policy formulators depend heavily upon the SIPP information concerning the distribution of income received directly as money or indirectly as in-kind benefits and the effect of tax and transfer programs on this distribution. They also need improved and expanded data on the income and general economic and financial situation of the U.S. population. The SIPP has provided these kinds of data on a continuing basis since 1983, permitting levels of economic well-being and changes in these levels to be measured over time.

The survey is molded around a central "core" of labor force and income questions that remain fixed throughout the life of a panel. The core is supplemented with questions designed to answer specific needs, such as estimating eligibility for government programs, examining pension and health care coverage, and analyzing individual net worth. These supplemental questions are included with the core and are referred to as "topical modules."

The topical modules for the 2008 Panel Wave 7 are as follows: Medical Expenses and Utilization of Health Care (Adults and Children), Work-Related Expenses and Child Support Paid, and Assets, Liabilities, and Eligibility. These topical modules were previously conducted in the SIPP 2008 Panel Wave 4 instrument. Wave 7 interviews will be conducted from September 1, 2010 to December 31, 2010.

The SIPP is designed as a continuing series of national panels of interviewed households that are introduced every few years, with each panel having durations of approximately 3 to 4 years. The 2008 Panel is scheduled for four years and four months and includes thirteen waves which began September 1, 2008. All household members 15 years old or over are interviewed using regular proxy-respondent rules. They are interviewed a total of thirteen times (thirteen waves), at 4-month intervals, making the SIPP a longitudinal survey. Sample people (all household members present at the time of the first interview) who move within the country and reasonably close to a SIPP primary sampling unit (PSU) will be followed and interviewed at their new address. Individuals 15 years old or over who enter the household after Wave 1 will be interviewed; however, if these people move, they are not followed unless they happen to move along with a Wave 1 sample individual.

The OMB has established an Interagency Advisory Committee to provide guidance for the content and procedures for the SIPP. Interagency subcommittees were set up to recommend specific areas of inquiries for supplemental questions.

The Census Bureau developed the 2008 Panel Wave 7 topical modules through consultation with the SIPP OMB Interagency Subcommittee. The questions for the topical modules address major policy and program concerns as stated by this subcommittee and the SIPP Interagency Advisory Committee.

Data provided by the SIPP are being used by economic policymakers, the Congress, state and local governments, and federal agencies that administer social welfare or transfer payment programs, such as the Department of Health and Human Services and the Department of Agriculture.

Affected Public: Individuals or households.

Frequency: Every 4 months.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 U.S.C., Section 182.

OMB Desk Officer: Brian Harris-Kojetin, (202) 395–7314.

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 Brian Harris-Kojetin, OMB Desk Officer either by fax (202–395–7245) or e-mail (*bharrisk@omb.eop.gov*).

Dated: April 20, 2010.

Glenna Mickelson,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2010–9427 Filed 4–22–10; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Office of the Secretary

National Telecommunications and Information Administration

International Trade Administration

National Institute of Standards and Technology

[Docket No. 100402174–0175–01]

RIN 0660–XA12

Information Privacy and Innovation in the Internet Economy

AGENCY: Office of the Secretary, U.S. Department of Commerce; National Telecommunications and Information Administration, U.S. Department of Commerce; International Trade Administration, U.S. Department of Commerce; and National Institute of Standards and Technology, U.S. Department of Commerce.

ACTION: Notice of Inquiry.

SUMMARY: The Department of Commerce's Internet Policy Task Force is conducting a comprehensive review of the nexus between privacy policy and innovation in the Internet economy. The Department seeks public comment from all Internet stakeholders, including the commercial, academic and civil society sectors, on the impact of current privacy laws in the United States and around the world on the pace of innovation in the information economy. The Department also seeks to understand whether current privacy laws serve consumer interests and fundamental democratic values. After analyzing the comments responding to this Notice, the Department intends to issue a report, which will contribute to the Administration's domestic policy and international engagement in the area of Internet privacy.

DATES: Comments are due on or before June 7, 2010.

ADDRESSES: Written comments may be submitted by mail to the National Telecommunications Administration at U.S. Department of Commerce, 1401 Constitution Avenue, NW., Room 4725, Washington, DC 20230. Submissions may be in any of the following formats: HTML, ASCII, Word, rtf, or pdf. Online submissions in electronic form may be sent to *privacy-noi-2010@ntia.doc.gov*. Paper submissions should include a three and one-half inch computer diskette or compact disc (CD). Diskettes or CDs should be labeled with the name and organizational affiliation of the filer and the name of the word processing

program used to create the document. Comments will be posted at *http://www.ntia.doc.gov/advisory/privacyinnovation*.

FOR FURTHER INFORMATION CONTACT: For questions about this Notice contact: Joe Gattuso, Office of Policy Analysis and Development, National Telecommunications and Information Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Room 4725, Washington, DC 20230, telephone (202) 482–1880; e-mail *jgattuso@ntia.doc.gov*. Please direct media inquires to NTIA's Office of Public Affairs at (202) 482–7002.

SUPPLEMENTARY INFORMATION: Recognizing the vital importance of the Internet to U.S. innovation, prosperity, education and political and cultural life, the Department has made it a top priority to ensure that the Internet remains open for innovation. The Department has created an Internet Policy Task Force whose mission is to identify leading public policy and operational challenges in the Internet environment. The Task Force leverages expertise across many bureaus at the Department, including those responsible for domestic and international information and communications technology policy, international trade, cybersecurity standards and best practices, intellectual property, business advocacy and export control. This is one in a series of inquiries from the Task Force. The Task Force is conducting similar reviews of cybersecurity, global free flow of information goods and services, and online copyright protection issues. The Task Force may explore additional areas in the future.

Background: The Department has launched the Privacy and Innovation Initiative to identify policies that will enhance: (1) The clarity, transparency, scalability and flexibility needed to foster innovation in the information economy; (2) the public confidence necessary for full citizen participation with the Internet; and (3) uphold fundamental democratic values essential to the functioning of a free market and a free society.

Innovation in the information economy continues to drive U.S. commerce. Entrepreneurs and innovators in the United States are developing novel information applications and creative ways of delivering existing goods and services via the Internet. American technology companies have created hundreds of thousands of new online applications, revolutionizing how consumers and businesses interact, transact, and use information. Beyond the boundaries of electronic commerce, the Internet is transforming critical sectors of the U.S. and global economy and society, such as health care, energy, education, the arts and political life. In all these sectors, proper use of personal information can play a critical, value-added role, so establishing consumer trust and assuring flexibility for innovators is vital.

Recognizing that economic, social, and political participation in the Internet is essential for all citizens, the United States must establish an environment respectful of long-standing privacy principles and individual privacy expectations, even as they evolve.

Contribution of this NOI to the Internet Policy Task Force: Responses to this Notice will assist the Task Force in preparing its report on Privacy and Innovation in the Information Economy. The purpose of this report will be to identify and evaluate privacy policy challenges, and to analyze various approaches to meet those challenges. The Task Force's report may include options and recommendations for general regulatory, legislative, self-regulatory and voluntary steps that will enhance privacy and innovation, though the Task Force does not expect to recommend detailed legislative or regulatory proposals at this point. The Task Force is hopeful that the dialogue launched here and the research conducted will contribute to Administration-wide policy positions and global privacy strategy.

Contribution of Online Commerce to the U.S. Economy: Between 1999 and 2007, the United States economy enjoyed an increase of over 500 percent in business-to-consumer online commerce.[1] Taking into account business-to-business transactions, online commerce in 2007 accounted for over $3 trillion dollars in revenue for U.S. companies.[2] The economic benefits provided by the information economy increased even during our economic downturn. During 2008, industry analysts estimate that sales of the top 100 online retailers grew 14.3 percent.[3] In contrast, the U.S. Census Bureau estimates a 0.9 percent decrease in total retail sales over that time period.[4] In 2009, U.S. mobile commerce sales grew over 200 percent compared to the previous year, reaching $1.2 billion.[5] Analysts expect this impressive growth to continue in 2010, projecting $2.4 billion in mobile commerce.[6] Online sales growth and expanding information systems are creating new jobs focused on the information economy and directly impacting our economic recovery.

In addition to the growth of online commerce, the Internet, the World Wide Web, and associated information systems have lead to an unprecedented growth in productivity over the last decade.[7] More businesses are using the Internet to provide electronic records to customers and trading partners, and enterprises are shifting to a digital back office and greener business environment. Although this has spurred additional green innovation, the fact that increasingly more data is being stored electronically and aggregated creates new challenges in the privacy arena.

Sustaining the growth of digital commerce and U.S. commerce generally will require continued innovation in how information is used and shared across the Internet. Commerce today depends on online communication and the transmission of significant amounts of data. Key to the current inquiry, the Department believes this development places data protection in a new light.

The Nexus Between Privacy and Commerce, and the Department's Role: Consumers have expressed concern regarding new or unexpected uses of their personal information by online applications. Since Internet commerce is dependent on consumer participation, consumers must be able to trust that their personal information is protected online and securely maintained. At the same time, companies need clear policies that enable the continued development of new business models and the free flow of data across state and international borders in support of domestic and global trade. Our challenge is to align flexibility for innovators along with privacy protection.

The Department has played an instrumental role in developing policies that have helped commerce over the Internet flourish. Over the past two decades, the National Telecommunications and Information Administration (NTIA), in its role as

[1] U.S. Census Bureau, "E-Stats," May 28, 2009.

[2] *Id.*

[3] Mark Brohan, "The Top 500 Guide," *Internet Retailer,* June 2009.

[4] U.S. Census Bureau, "Quarterly Retail E-Commerce Sales: 4th Quarter 2008," Feb. 16, 2010, Table 4.

[5] "U.S. M-Commerce Sales to Hit $2.4 Billion This Year, ABI Research Says," *Internet Retailer,* Feb. 16, 2010.

[6] *Id.*

[7] Executive Office of the President of the United States, Council of Economic Advisors of the President, *2010 Economic Report of the President,* at Chapter 10, Feb. 2010.

principal adviser to the President on telecommunications policies, has worked closely with other parts of government on these issues.[8] In 1993, the White House formed the Information Infrastructure Task Force (White House Task Force), chaired by the Secretary of Commerce, to develop telecommunications and information policies to promote the development of the Internet. The Privacy Working Group of the White House Task Force, led by NTIA, published a report entitled *Privacy and the National Information Infrastructure.* In the report, NTIA analyzed the state of privacy in the United States as it relates to existing and future communications services and recommended principles to govern the collection, processing, storage and use of personal data.[9] In 1997, the White House Task Force noted NTIA's findings in publishing *A Framework for Global Electronic Commerce,* proposing five principles for international discussion to facilitate the growth of Internet commerce.[10]

Over subsequent years, the Department has worked in a number of international fora to develop privacy and security guidelines that foster international trade. ITA administers the U.S.-European Union (EU) Safe Harbor Framework, which allows U.S. companies to meet the requirements of the 1995 EU *Directive on Data Protection* for transferring data outside of the European Union.[11] ITA also administers the U.S.-Swiss Safe Harbor Framework, which was implemented in 2008. The Department played a significant role in the development of the 1980 Organization for Economic Cooperation and Development (OECD) Privacy Guidelines, the 2005 Asia Pacific Economic Cooperation (APEC) Privacy Framework and the launch of the Trilateral Committee on Transborder Data Flows in 2008. ITA also is involved in bilateral Internet commerce and privacy policy initiatives with India, Japan, China, Korea and other key countries. In addition, ITA works closely with the Department's National Institute of Standards and Technology (NIST) and U.S. industry in developing international standards covering cybersecurity and data privacy.

Today, there is a domestic and global reassessment of approaches to privacy given the fundamental changes in the information economy. The Federal Trade Commission (FTC) recently hosted a series of public roundtables to explore the privacy challenges posed by the wide array of 21st century technology and business practices that collect and use consumer data.

The goal of the roundtables was to determine how best to protect consumer privacy while supporting beneficial uses of the information and technological innovation. The FTC accepted public comments on these issues through April 14, 2010, and FTC staff is now reviewing the comments received.[12] The Department of Commerce has participated in these sessions and will continue to collaborate with the FTC going forward. The National Broadband Plan (Plan), which the Federal Communications Commission released on March 16, 2010, makes recommendations for government action to address online privacy issues.[13] Specifically, the Plan recommended clarifying the relationship between users and their online profiles; developing trusted "identity providers" to help consumers manage their data; and creating principles to require that customers provide informed consent before service providers share certain types of information with third parties.[14] The Plan also urged the creation of a number of Internet privacy-related innovations to enhance our nation's energy, education, health care, and government performance.[15]

Internationally, the OECD's Committee on Consumer Policy (CCP) recently launched a review of the 1999 *Guidelines for Consumer Protection in the Context of E-Commerce.*[16] The OECD Working Party on Information Security and Privacy (WPISP) is conducting a 30th anniversary study of the 1980 OECD *Guidelines Governing the Protection of Privacy and Transborder Flows of Personal Data.*[17] The APEC Electronic Commerce Steering Group is developing a system for cross-border data flows among APEC members to implement its 2005 Privacy Framework.[18] The United States, Canada and Mexico recently finalized a report highlighting the need to address impediments to transborder data flows.[19] Finally, the European Commission is evaluating and considering changes to its 1995 *Directive on Data Protection.*[20] Given the global reevaluation of data privacy policies, the Task Force is seeking to determine whether current privacy frameworks, or frameworks that are in development, create barriers to innovation on the Internet and, if so, how they might be addressed.

Request for Comment

This Notice of Inquiry seeks comment on the impact of the current privacy framework on Internet commerce and innovation, both from the commercial and consumer perspective, as well as ways in which it may be necessary to adjust today's privacy framework to preserve and even enhance innovation and privacy in our new web-centric information environment.

The questions below are intended to assist in framing the issues and should not be construed as a limitation on comments that parties may submit. The Department invites comment on the full range of issues that may be presented by this inquiry. Comments that contain references, studies, research and other empirical data that are not widely published should include copies of the referenced materials with the submitted comments.

1. The U.S. Privacy Framework Going Forward

Prior to releasing this Notice, the Department conducted listening sessions with a wide range of

[8] 47 U.S.C. 902 (noting NTIA has "the authority to serve as the President's principal adviser on telecommunications policies pertaining to the Nation's economic and technological advancement and to the regulation of the telecommunications industry."); *see also* Connecting America: The National Broadband Plan, *http://download.broadband.gov/plan/national-broadband-plan.pdf*, page 55.

[9] *See* National Telecommunications and Information Administration, "Privacy and the National Information Infrastructure: Safeguarding Telecommunications-Related Personal Information," Oct. 1995, *http://www.ntia.doc.gov/ntiahome/privwhitepaper.html.*

[10] *See* President William J. Clinton and Vice President Albert Gore, Jr. "A Framework for Global Electronic Commerce," Washington, DC. 1997, *http://clinton4.nara.gov/WH/New/Commerce/read.html.*

[11] For more information on the U.S.-EU Safe Harbor Framework, *see http://www.export.gov/safeharbor/.*

[12] *See* Federal Trade Commission, Exploring Privacy: A Roundtable Series, *http://www.ftc.gov/bcp/workshops/privacyroundtables/.*

[13] *See* Connecting America: The National Broadband Plan, *http://download.broadband.gov/plan/national-broadband-plan.pdf.*

[14] *Id.* at 55–56 (Recommendations 4.14–4.16).

[15] *Id.* at 208. 234–35, 252, 253, 286 (Recommendations 10.4, 11.11, 12.2, 12.5, 14.6, 14.7).

[16] *See* OECD, Conference on Empowering E-Consumers: Strengthening Consumer Protection in the Internet Economy, Washington, DC, Dec. 8–10, 2009, *http://www.oecd.org/document/20/0,3343,en_21571361_43348316_43410324_1_1_1_1,00.html.*

[17] *See* OECD, The 30th Anniversary of the OECD Privacy Guidelines, *http://www.oecd.org/document/35/0,3343,en_2649_34255_44488739_1_1_1_1,00.html.*

[18] *See* APEC, *Data Privacy Pathfinder Projects Implementation Work Plan*, *http://www.apec.org/apec/apec_groups/committee_on_trade/electronic_commerce.html.*

[19] *See* Office of Technology and Electronic Commerce, Trilateral Committee on Transborder Data Flow, *http://spp.gov/pdf/Eng_Statement_of_Free_Flow.pdf.*

[20] *See* European Commission, Freedom, Security, and Justice, Data Protection, *http://ec.europa.eu/justice_home/fsj/privacy/index_en.htm.*

stakeholders in order to understand the questions most pertinent to stakeholders in the commercial, academic and civil society sectors and that have the greatest bearing on innovation and consumer expectations. During the course of those conversations, the Department heard that the customary notice and choice approach to consumer protection may be outdated, especially in the context of information-intensive, highly interactive, Web-based services. According to some, online interactions and web-based information linkages have become so complicated that it is increasingly difficult to provide consumers truly meaningful notice and choice. In lieu of, or in addition to notice and choice, some have advanced the notion that sophisticated data managers migrate to a "use-based" model.[21] These assertions raise several questions.

Does the existing privacy framework provide sufficient guidance to the private sector to enable organizations to satisfy these laws and regulations? Are there modifications to U.S. privacy laws, regulations and self-regulatory systems that would better support innovation, fundamental privacy principles and evolving consumer expectations? If so, what areas require increased attention, either in the form of new laws, regulations or self-regulatory practices? What is the state of efforts to develop a self-regulatory privacy framework? Are there certain minimum or default requirements that should be incorporated either into self regulation or to law? What is the proper goal of privacy laws and regulations: Should the focus on commercial data privacy policy be on satisfying subjective consumer expectations or is it also necessary to enact objective privacy principles?

Those addressing the utility of self-regulation should differentiate between practices defined and monitored unilaterally by an enterprise, and practices and monitoring systems developed by third-parties. If a third-party develops best practices, what mechanisms would be available for users and civil society to provide feedback? How will industry sectors enforce best-practice regimes when it might not be in their economic interest to do so?

Is the notice and choice approach to consumer data privacy still a useful model? Are there alternative approaches or frameworks that might be used instead of notice and choice? Those who urge a use-based model for commercial data privacy should detail how they would go about defining data protection obligations based on the type of data uses and the potential harm associated with each use.[22] Describe how a use-based privacy system would work? How should policy makers determine what constitute harmful uses of personal information in this model? Are there examples from existing privacy laws and regulations that suggest strengths and weakness of the "use-based" model? Is this "use-based" model for commercial data privacy a workable approach for companies and consumers? What is the relationship between use-based privacy rules and proposed accountability systems?

2. U.S. State Privacy Laws

Most U.S. states have data breach laws or private sector data privacy laws, and some have both.[23] These and other state laws and regulations govern how companies can collect, use and disclose personal data about citizens of each state. The Task Force seeks input on how different state-level laws and regulations affect companies' compliance costs and product development processes. The agencies seek comment on whether a diversity of state privacy laws has a positive, negative or neutral impact on the privacy rights of Internet users.

What, if any, hurdles do businesses face in complying with different state laws concerning privacy and data protection? Is there harmonization among state laws governing data protection? Please describe any significant differences that exist between the states. How does complying with multiple states' laws affect organizations' business activities and ability to operate online? What types of existing state laws have the greatest impact on companies' business models? What approaches do companies take to comply with privacy laws in multiple states? Have state laws that attempt to regulate location privacy had an impact on the development of business models or the way in which businesses introduce new products in various markets?[24] What future directions in state law are anticipated? Does the variety of technology-specific state laws help individual Internet users exercise their rights, or does it create confusion for consumers? Have technology-specific state privacy laws affected online innovation and business development and, if so, how?

3. International Privacy Laws and Regulations

A variety of foreign laws govern how companies collect, use and share personal data. There are national laws, sub-national laws, a region-wide Directive in the European Union in addition to member-state laws and, in many countries, laws under development. The Task Force seeks input on how international data privacy laws and regulations affect global Internet commerce, companies' compliance costs and product development process, and Internet users.

What, if any, hurdles do businesses face in complying with different foreign laws concerning privacy and data protection? What types of foreign privacy laws have the greatest impact on companies' business models? What approaches have businesses used to comply with laws in multiple foreign jurisdictions? Do foreign laws that contain content-based restrictions impede global trade or foreign investment? For example, are there laws that restrict the types of information that may be transferred, displayed, published or posted online which have deterred businesses from entering certain markets or from engaging in certain cross-border activity? Are laws that permit governments to have access to personal information an impediment to innovation or global trade and investment? If so, are the laws themselves actually an impediment, or is it the application and enforcement of such laws that are of concern? What challenges do businesses face when trying to transfer data across borders? What lessons have been learned from the U.S.-EU Safe Harbor Framework that could be applied in the global context? What mechanisms do organizations use to enable cross border data transfers? To what extent if any do privacy laws outside the United States create third party liability for Internet intermediaries such as search engines, content hosting

[21] Use-based rules regulate the types of uses (or purposes) for which personal information may be employed as opposed to regulating what personal data can be collected.

[22] For more information on the use-based model, see e.g., The Business Forum for Consumer Privacy "A Use and Obligations Approach to Protecting Privacy: A Discussion Document," Dec. 7, 2009, *http://www.huntonfiles.com/files/webupload/CIPL_Use_and_Obligations_White_Paper.pdf.*

[23] For a list of state data breach and data privacy laws see The National Conference of State Legislatures, Telecommunications and Information Technology, *http://www.ncsl.org/Default.aspx?TabID=756&tabs=951,71,539#539.*

[24] Locational privacy (also known as "location privacy") is an individual's ability to move in public space with the expectation that his or her location will not be systematically and secretly recorded for later use.

services, Internet service providers or others? [25]

How does the multiplicity of international privacy laws impact Internet users? What models for protection of individual privacy rights across borders have proven effective in the global environment of the Internet? Can countries with different privacy rules cooperate to protect the privacy interests of their citizens?

How might privacy regimes in the United States and other jurisdictions across the globe be harmonized?

4. Jurisdictional Conflicts and Competing Legal Obligations

Today, cloud computing models allow organizations to collect, store, access and process data in separate locations around the world. This can create challenges for both companies and regulators in determining where data is located and who has jurisdiction over that data. In addition, different regulators may attempt to assert jurisdiction over data or a company's business practices, which may create conflicting or competing legal obligations. For example, one jurisdiction may require a company to retain its data, while another may ask that data be expunged after its use. The Task Force seeks information on any jurisdictional conflicts companies and regulators face as a result of data privacy laws, how they are reconciled and what, if any, effect they have on trade and foreign investment.

Do organizations face jurisdictional disputes as a result of domestic or foreign privacy laws? Please describe the types of jurisdictional disputes that arise as a result of privacy laws. What, if any, conflicting legal obligations do companies face as a result of data privacy laws? How do companies address jurisdictional conflicts and any resulting conflicting legal and regulatory obligations? How do such conflicts affect the cost of doing business? Do jurisdictional issues affect global sales of U.S. companies when the U.S. company stores data from non-U.S. customers inside the United States? Does cloud computing, or other methods of globally distributing and managing data, raise specific issues with respect to jurisdiction of which Commerce and regulators should be aware? Have jurisdictional conflicts had any impact on U.S. consumers?

5. Sectoral Privacy Laws and Federal Guidelines

The U.S. privacy framework is composed of sectoral laws combined with constitutional, statutory, regulatory and common law protections, in addition to industry self-regulation. Sectoral laws govern the handling of personal data considered most sensitive. For instance, the Communications Act includes privacy protections that telecommunication providers and cable operators must follow when handling the personal information of subscribers.[26] The Health Insurance Portability and Accountability Act (HIPAA) stipulates how "covered" health care entities can use and disclose data.[27] The Fair Credit Reporting Act (FCRA) governs how consumer reporting agencies share personal information.[28] The Gramm-Leach-Bliley Act (GLBA) covers certain data held by financial institutions.[29] The Children's Online Privacy Protection Act (COPPA) protects information collected online about children under 13.[30] In addition to these sectoral laws, the Federal Trade Commission Act (FTC Act) provides the FTC authority to combat "unfair or deceptive" business practices.[31] The FTC also provides guidance for businesses regarding privacy and security practices.[32] These laws and guidelines affect U.S. economic activity by controlling how organizations can use data to develop new products and services or improve existing ones. The laws and guidelines differentiate between categories of data (*e.g.,* health care, financial and other), and they differentiate between data subjects (*e.g.,* children and others). The Task Force seeks input on how the U.S. privacy framework affects business innovation, accountability and compliance related to the use of personal information.

How does the current sectoral approach to privacy regulation affect consumer experiences, business practices or the development of new business models? How does the sectoral approach affect individual privacy expectations? What practices and principles do these sectoral approaches have in common, how do they differ? Are there alternatives or supplements to the sectoral approach that should be considered? What can be done to make the current framework more conducive to business development while ensuring effective privacy protections?

6. New Privacy-Enhancing Technologies and Information Management Processes

Researchers at universities, think tanks, international organizations and company laboratories are developing privacy-enhancing technologies and business methods to implement company privacy policies and user preferences and to increase company accountability. Researchers, for example, are considering consumer-targeted systems that employ text analysis and behavioral economics to create enhanced notification to consumers about privacy policies or to manage the information they are sharing. These technologies and ever-evolving, internal business processes have become an integral component of industry self-regulation. At the same time, researchers recognize the limitations of privacy-enhancing technologies related to consumer and industry adoption, new research demonstrating the possibility of data re-identification,[33] and the continued security risks posed by hackers and other forms of electronic intrusion. The

[25] *See, e.g.,* 47 U.S.C. 230(c) (2006) ("No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider.").

[26] *See* 47 U.S.C. 551 (2006) (Protection of Subscriber Privacy).

[27] *See* 42 U.S.C. 1320 (2006) ("A covered entity may not use or disclose protected health information" except as permitted by statute.). For information on HIPPA, *see http://www.hhs.gov/ocr/privacy/.*

[28] *See* 15 U.S.C. 1681r ("Any officer or employee of a consumer reporting agency who knowingly and willfully provides information concerning an individual from the agency's files to a person not authorized to receive that information shall be fined under title 18, imprisoned for not more than 2 years, or both."). For information on the FCRA, *see http://www.ftc.gov/os/statutes/fcrajump.shtm.*

[29] *See* 15 U.S.C. 6801–09, 6821–27 (2006). *See e.g.,* 15 U.S.C. 6801a (2006) ("It is the policy of the Congress that each financial institution has an affirmative and continuing obligation to respect the privacy of its customers and to protect the security and confidentiality of those customers' nonpublic personal information."). For information on the GLBA, *see http://www.ftc.gov/privacy/privacyinitiatives/glbact.html.*

[30] *See* 15 U.S.C. 6501–06 (2006). *See, e.g.,*15 U.S.C. 6502a (2006) ("It is unlawful for an operator of a website or online service directed to children, or any operator that has actual knowledge that it is collecting personal information from a child, to collect personal information from a child in a manner that violates the [statute]."). For information on the COPPA, *see http://www.ftc.gov/privacy/privacyinitiatives/childrens.html.*

[31] *See* 15 U.S.C. 41–58 (2006). *See, e.g.*, 15 U.S.C. 45(a) (2006) ("The Commission is hereby empowered and directed to prevent persons, partnerships, or corporations * * * from using unfair methods of competition in or affecting commerce and unfair or deceptive acts or practices in or affecting commerce."). For information on the FTC Act, *see http://www.ftc.gov/ogc/stat1.shtm.*

[32] *See* Federal Trade Commission, Privacy Initiatives, *http://www.ftc.gov/privacy/index.html.*

[33] Re-identification is the process by which personal data is matched with its true owner. In order to protect privacy of consumers, personal identifiers, such as social security numbers, are often removed from databases containing sensitive information. This de-identified data safeguards consumer privacy. However, computer scientists recently revealed that this "anonymize" data can be re-identified, such that the sensitive information may be linked back to an individual.

Task Force seeks input on the development, use and acceptance of privacy-related technologies and business processes and their potential to enhance consumer trust in Internet commerce.

What is the state of development of technologies and business methods aimed at: (1) Improving companies' ability to monitor and audit their compliance with their privacy policy and expressed user preferences; (2) using text analysis or similar technologies to provide privacy notices; and (3) enabling anonymized browsing, communication and authentication? Please describe any other ongoing efforts to develop privacy-enhancing technologies or processes of which the Commerce Department should be aware. How has recent research demonstrating the possibility of data re-identification affected anonymization research efforts? Have consumers or businesses readily accepted or used these technologies when they were made available? What steps can be taken to assure that privacy-enhancing business processes are robust, complied with and regularly updated? Do technology designers and implementers have the right balance of incentives to include privacy considerations at the design phase of their work? Have currently-available privacy-related technologies and processes increased user trust or companies' ability to manage personal information?

Finally, the FCC has raised a number of privacy-related recommendations for government action.[34] Specifically, the Plan recommends clarifying the relationship between users and their online profiles; developing trusted "identity providers" to assist consumers manage their data; and creating principles to require customers provide informed consent before service providers share certain types of information with third parties. What kinds of contributions to privacy and innovation could such identity providers make? What marketplace experience is there with such trusted third parties? Are there any services of this sort imagined by the FCC in operation today? Is any government action needed to encourage the marketplace in this direction?

7. Small and Medium-Sized Entities and Startup Companies

Small and medium-sized entities (SMEs) and startup companies face the same data protection laws and guidelines as their larger counterparts, but with fewer resources. The Task Force seeks input on how the issues outlined above might uniquely affect smaller companies and how these effects are managed.

How do existing privacy laws impact SMEs and startup companies? Please describe any unique compliance burdens placed on smaller companies as a result of existing privacy laws. Are there commercial or collective tools available to address such issues? How might privacy protections be better achieved in the SME environment? Have smaller companies been unable to engage in certain types of business activities as a result of existing privacy laws? Do foreign privacy laws pose a barrier to SMEs' international business plans? If such unique burdens do exist, what mechanisms do SMEs see as helpful for surmounting those challenges?

8. The Role for Government/Commerce Department

The U.S. privacy framework described above is multi-faceted. The combination of sector-specific laws for sensitive data, self-regulation, complemented by FTC enforcement authority, transparent privacy practices, and voluntary guidelines, have generated industry best practices, privacy seal programs and private sector innovation to enhance privacy disclosures and consumer choice regarding data usage. In many, though not all cases, this has been a formula for success to build on. Yet, surveys continue to indicate that consumers are concerned or confused about what happens to their personal information online. The Task Force seeks input on how to help address barriers to increased innovation and consumer trust in the information economy.

How can the Commerce Department help address issues raised by this Notice of Inquiry?

Dated: April 20, 2010.

Gary M. Locke,

Secretary of Commerce.

Lawrence E. Strickling,

Assistant Secretary for Communications and Information.

Francisco J. Sánchez,

Under Secretary of Commerce for International Trade.

Patrick Gallagher,

Director, National Institute of Standards and Technology.

[FR Doc. 2010–9450 Filed 4–22–10; 8:45 am]

BILLING CODE 3510–60–P

[34] *See supra* note 14.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Marine Recreational Fisheries Statistics Survey

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before June 22, 2010.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Rob Andrews, (301) 713–2328, ext. 148 or *Rob.Andrews@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

Marine recreational anglers are surveyed for catch and effort data, fish biology data, and angler socioeconomic characteristics. These data are required to carry out provisions of the Magnuson-Stevens Fishery Conservation and Management Act (MSA), (16 U.S.C. 1801 *et seq.*) as amended, regarding conservation and management of fishery resources.

The marine recreational fishing catch and effort data are currently collected through a combination of telephone surveys and on-site intercept surveys with recreational anglers. Recent amendments to the MSA require the development of an improved data collection program for recreational fisheries. To meet the requirements of the MSA, NOAA's National Marine Fisheries Service is developing pilot studies to test alternative approaches for surveying recreational anglers. Studies will test the effectiveness of panel surveys for contacting anglers and collecting recreational fishing catch and

effort data. The goal of these studies is to develop an efficient means of collecting fishing data while maintaining complete coverage of the angling population, as well as testing assumptions and assessing potential sources of error in ongoing recreational fishing surveys.

II. Method of Collection

Information will be collected by telephone, mail and online (Web) interviews.

III. Data

OMB Control Number: 0648–0052.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Individuals or households.

Estimated Number of Respondents: 912,600 (5,040 new).

Estimated Time per Response: 8 minutes for mail screening interviews and 10 minutes for panel survey Web or telephone interviews.

Estimated Total Annual Burden Hours: 50,685 (3,192 new).

Estimated Total Annual Cost to Public: $0.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: April 20, 2010.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2010–9423 Filed 4–22–10; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

International Trade Administration

Application(s) for Duty–Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, as amended by Pub. L. 106–36; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States. Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be postmarked on or before May 13, 2010. Address written comments to Statutory Import Programs Staff, Room 3720, U.S. Department of Commerce, Washington, D.C. 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. at the U.S. Department of Commerce in Room 3720.

Docket Number: 10–005. Applicant: Liquid Crystal Institute, Kent State University, Summit Street, PO Box 5190, Kent, OH 44242. Instrument: Electron Microscope. Manufacturer: FEI Company, the Czech Republic. Intended Use: This instrument will be used to study the structure and composition of soft materials (liquid crystals, polymers, biomaterials). Justification for Duty–Free Entry: There are no domestic manufactures of this instrument. Application accepted by Commissioner of Customs: March 24, 2010.

Docket Number: 10–006. Applicant: Purdue University, 915 W. State Street, Lilly Hall, B126, West Lafayette, IN 47907–2054. Instrument: Electron Microscope. Manufacturer: FEI Corporation, the Netherlands. Intended Use: The instrument is intended to be used to study viruses and other macromolecular assemblies. Using cryo–electron microscopy, numerous virus/macromolecular assemblies will be investigated to better understand virus entry into cells as well as the propagation pathway. Justification for Duty–Free Entry: There are no domestic manufactures of this instrument. Application accepted by Commissioner of Customs: March 24, 2010.

Docket Number: 10–007. Applicant: Washington University in St. Louis, Purchasing Department, 1 Brookings Drive, Campus Box 1069, St. Louis, MO 63130. Instrument: Electron Microscope. Manufacturer: JEOL, Ltd., Japan. Intended Use: This instrument will be use to analyze and characterize medically relevant cells, tissues, and molecules. The objective is to understand the molecular and cellular basis of a wide range of human diseases. Justification for Duty–Free Entry: There are no domestic manufactures of this instrument. Application accepted by Commissioner of Customs: March 24, 2010.

Dated: April 19, 2010.

Christopher Cassel,

Director, IA Subsidies Enforcement Office.

[FR Doc. 2010–9478 Filed 4–22–10; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket Number 100311135–0182–02]

FY 2010 NIST Center for Neutron Research (NCNR) Comprehensive Grants Program Extension of Due Date for Proposals

AGENCY: National Institute of Standards and Technology (NIST), United States Department of Commerce.

ACTION: Notice.

SUMMARY: NIST publishes this notice to extend the deadline for proposal submission for its Fiscal Year 2010 NCNR Comprehensive Grants Program competition to 5 p.m. EDT, Thursday, May 13, 2010.

DATES: Applications must be received no later than 5 p.m. EDT, Thursday, May 13, 2010.

ADDRESSES: Paper copies of full proposals must be submitted to the address below. Paper submissions require an original and two copies: Tanya Burke, NIST Center for Neutron Research; National Institute of Standards and Technology; 100 Bureau Drive, Stop 6100; Gaithersburg, Maryland 20899–6100. Electronic submissions of full proposals must be submitted to: *http://www.grants.gov.*

FOR FURTHER INFORMATION CONTACT: Tanya Burke, NIST Center for Neutron Research, National Institute of Standards and Technology, 100 Bureau Drive, Stop 6100, Gaithersburg, Maryland 20899–6100. Tel (301) 975–4711, *E-Mail: tanya.burke@nist.gov.*

SUPPLEMENTARY INFORMATION: On April 13, 2010, the NIST Center for Neutron Research (NCNR) announced that it was soliciting proposals for financial assistance for significant research involving Neutron Research and Spectroscopy specifically aimed at assisting visiting researchers at the NIST Center for Neutron Research, developing new instrumentation for Neutron

Research, conducting collaborative research with NIST scientists, and to conduct other outreach and educational activities that advance the use of neutrons by U.S. university and industrial scientists (75 FR 18784). The due date for submission of all proposals was 5 p.m. EDT on Friday, May 7, 2010. NIST is extending the deadline to give applicants more time to prepare and submit proposals. The new deadline is 5 p.m. EDT, May 13, 2010.

All NCNR Comprehensive Grants Program competition requirements and information announced in the April 13, 2010, **Federal Register** apply to proposals submitted during the extended time period.

Executive Order 12372 (Intergovernmental Review of Federal Programs). Proposals under this program are not subject to Executive Order 12372.

Executive Order 13132 (Federalism). This notice does not contain policies with Federalism implications as defined in Executive Order 13132.

Executive Order 12866 (Regulatory Planning and Review). This notice is not a significant regulatory action under sections 3(f)(3) and 3(f)(4) of Executive Order 12866, as it does not materially alter the budgetary impact of a grant program and does not raise novel policy issues. This notice is not an "economically significant" regulatory action under Section 3(f)(1) of the Executive Order, as it does not have an effect on the economy of $100 million or more in any one year, and it does not have a material adverse effect on the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.

Administrative Procedure Act and Regulatory Flexibility Act. Prior notice and comment are not required under 5 U.S.C. 553, or any other law, for rules relating to public property, loans, grants, benefits or contracts (5 U.S.C. 553(a)). Because prior notice and an opportunity for public comment are not required pursuant to 5 U.S.C. 553 or any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are inapplicable. Therefore, a regulatory flexibility analysis is not required and has not been prepared.

Dated: April 20, 2010.

Marc G. Stanley,

Acting Deputy Director.

[FR Doc. 2010–9525 Filed 4–22–10; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XU31

Incidental Takes of Marine Mammals During Specified Activities; Replacement and Repair of Fur Seal Research Observation Towers and Walkways on St. Paul Island, Alaska

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

ACTION: Notice; issuance of an Incidental Harassment Authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA) regulations, notification is hereby given that NMFS issued an Incidental Harassment Authorization (IHA) to NMFS, Alaska Region (NMFS AKR) for the take of small numbers of marine mammals, by Level B harassment, incidental to conducting replacement and repair of northern fur seal research observation towers and walkways on St. Paul Island, Alaska, from April to June and December 2010.

DATES: Effective April 20, 2010 through June 7, 2010 and December 1 to 31, 2010.

ADDRESSES: A copy of the IHA and application are available by writing to P. Michael Payne, Chief, Permits, Conservation, and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910 or by telephoning the contact listed here. A copy of the application containing a list of the references used in this document may be obtained by writing to the address specified above, telephoning the contact listed below (see **FOR FURTHER INFORMATION CONTACT**), or 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: Howard Goldstein or Jolie Harrison, Office of Protected Resources, NMFS, 301–713–2289.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) directs the Secretary of Commerce (Secretary) to allow, upon request, the incidental, but not intentional, taking of marine mammals by United States (U.S.) citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An authorization to take small numbers of marine mammals by harassment shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth to achieve the least practicable adverse impact. 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. 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].

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 for 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.

Summary of Request

On February 2, 2010, NMFS received a letter from NMFS AKR requesting an IHA to authorize the take, by Level B harassment, of small numbers of northern fur seals (*Callorhinus ursinus*) incidental to conducting replacement and repair operations for fur seal research observation towers and walkways on St. Paul Island, Alaska.

NMFS is currently contracting demolition, repair, and select replacement of northern fur seal

observation towers and walkways. The original timing restrictions for this project would have allowed human presence and work on the rookeries only until April 20, 2010, which would have made the incidental take of northern fur seals unlikely. However, the proposed construction season has been extended to the first week of June in order to provide flexibility in the construction schedule to complete the replacement and repair of the observation towers and walkways during a single winter and spring season. NMFS AKR has identified a need to authorize the incidental taking of northern fur seals hauling out on St. Paul Island during their intermittent and early season presence through early June.

The purpose of the replacement and repair operations is to provide safe access for fur seal researchers into the dense breeding aggregations of northern fur seals. Safe access for researchers is required because northern fur seals exhibit strong site fidelity, tenacity, and high levels of aggression within dense aggregations. In addition, non-territorial fur seals are sensitive to human presence within and near breeding areas as a result of visual, auditory, and olfactory stimuli. The observation towers and walkways provide elevated access to observe and count breeding and resting fur seals, reducing stimuli that influence fur seal behavior. Additional information on the construction project is contained below and in the IHA application, which is available upon request (see **ADDRESSES**).

Description of the Specified Activities

NMFS AKR is currently contracting demolition, repair and select replacement of northern fur seal research infrastructure on St. Paul Island, Alaska. The objective of this work is to repair 47 fur seal observation towers and their associated walkways within fur seal breeding areas around the island. Prior to the replacement phase of the project, old towers and walkways will need to be demolished. The replacement work will occur at the Reef rookery (i.e., breeding area); if funding is available in future years it will occur at other sites. Seven observation towers will be replaced at the Reef rookery, and the long term plan is to replace and repair the remaining 40 towers at the other rookeries around the island (depending on funding).

Construction crews will be using hand carpentry techniques, possibly supplemented with small gasoline generators, and pneumatic tools. Most construction sites are inaccessible to vehicles with the exception of all-terrain vehicles and equipment or snow machines, if conditions allow. Crews will be primarily accessing the immediate worksites by foot. The proposed action includes summer and fall construction restrictions to protect northern fur seals from disturbances during the breeding and pup rearing period. Repair and replacement activities will include human presence within the fur seal breeding areas and use of all-terrain and four-wheel drive vehicles to transport personnel, equipment, and materials. Construction crews will use hand and power tools, gas-powered generators, and air compressors. Construction crews will need to demolish and remove old towers and walkways prior to replacement of new structures. Large boulders or uneven terrain will be altered to facilitate construction or access to areas where new foundations are to be placed.

NMFS AKR biologists will begin daily marine mammal monitoring for the presence of fur seals on April 20, 2010, and record the number and response of northern fur seals to the proposed actions until June 7, 2010. Construction activities will cease and demobilization will begin if the incidental taking of northern fur seals is predicted to exceed that authorized in the IHA prior to June 1, 2010; otherwise all activities will be completed on the rookeries by June 7, 2010.

Additional details regarding the authorized action were included in the proposed IHA notice (75 FR 11121, March 10, 2010) and Environmental Assessment (EA).

Dates, Duration, and Location of Specified Activity

The research walkways and towers will be repaired and replaced on St. Paul Island, Alaska from January 4, 2010, through June 7, 2010, and again in December, 2010 if necessary and authorized. The dates of the authorization will be from April 20 to June 7, 2010, and December 1 to 31, 2010, which is during the presence of fur seals at the location of the specified activity. See below for information regarding when northern fur seals arrive (i.e., when incidental take starts occurring).

Comments and Responses

A notice of receipt of the NMFS AKR application and proposed IHA was published in the **Federal Register** on March 10, 2010 (75 FR 11121). During the comment period, NMFS received comments from the Marine Mammal Commission (Commission). NMFS also received comments from a private citizen. The public comments can be found online at: *http:www.nmfs.noaa.gov/pr/permits/incidental.htm*. The following are their comments, and NMFS' responses.

Comment 1: The Commission recommends that NMFS issue the requested IHA to NMFS AKR, provided that the monitoring and mitigation activities proposed in NMFS' **Federal Register** notice for the proposed IHA are included in the authorization and are carried out as described.

Response: NMFS agrees with the Commission's recommendation and conditions to this effect have been included in the IHA issued to the NMFS AKR.

Comment 2: The Commission recommends that NMFS issue the requested IHA to NMFS AKR, provided that (1) field crews clear all construction-related debris (including debris from towers or walkways that have fallen down) from each site upon completion of construction activity, and (2) crews use bolts or other materials, rather than nails, during construction so that structures that become decrepit in the future do not become hazardous to animals (e.g., boards with nails sticking out).

Response: During the repair and replacement operations all construction debris is being removed. Pressure treated wood will go to the dump, unless it is usable and local residents can take it for their use on home projects. Natural wood is used by the construction contractor for forms for grout pads or temporary bracing if it is good. If it is not good it is burned in the burn barrels for hand warming. All waste from burn barrels, including ash and nails, is taken to the dump. If good natural wood is left over, the local residents may take it for use in home projects or to burn in their wood stoves. At this time there is no demolition scheduled for the new walkways as this work was done back in January 2010.

NMFS disagrees with the Commission's recommendation that crews use bolts or other materials, rather than nails during construction. The repair and replacement work was designed and engineered by a certified engineer that has certified the design meets code and structural load and stress criteria. The 47 tower structures have already been nailed, and are on schedule to be replaced with the new design for safety and long-term maintenance cost effectiveness.

Comment 3: The private citizen questioned the number of sites, the use of taxpayer dollars for funding the project, and the purpose of the research. The private citizen also stated that no

work should be done during northern fur seal breeding and use of the sites.

Response: The objective of the project is to repair 47 fur seal observation towers and their associated walkways within fur seal breeding areas around the island. The purposes of the repair and replacement of the northern fur seal observation towers and walkways is to provide safe access for fur seal researchers into the dense breeding aggregations of northern fur seals. Safe access for researchers is required because northern fur seals exhibit strong site fidelity, tenacity, and high levels of aggression within dense aggregations. In addition, non-territorial fur seals are sensitive to human presence within and near breeding areas as a result of visual, auditory, and olfactory stimuli. The observation towers and walkways provide elevated access to observe and count breeding and resting northern fur seals that minimize the stimuli that influence fur seal behavior. The authorization dates will allow the incidental take of northern fur seals hauling out on St. Paul Island during their intermittent and early season presence through June 7, 2010 and again in December, 2010, if needed.

Description of Marine Mammals and Habitat Affected in the Activity Area

Several marine mammal species are known to or could occur in the Bering Sea off the Alaska coastline (see Table 1 below). The northern fur seal is the only species of marine mammal managed by NMFS that may be present in the project area during the construction project. Northern fur seals are not listed as threatened or endangered under the Endangered Species Act (ESA), but are designated as depleted under the MMPA. Other marine mammal species managed by NMFS that inhabit the Bering Sea, but are not anticipated to occur in the Bering Sea project area during the replacement and repair activities, are listed in Table 1 (below). Polar bears and Pacific walrus also occur in the Bering Sea, but they are not addressed further, since they are managed under the jurisdiction of the U.S. Fish and Wildlife Service (USFWS).

The marine mammals that occur in the action area belong to four taxonomic groups: mysticetes (baleen whales), odontocetes (toothed whales), pinnipeds (seals, sea lions, and walrus), and carnivores (polar bears). Table 1 below outlines the marine mammal species and their habitat in the region of the activity area.

TABLE 1. THE HABITAT AND CONSERVATION STATUS OF MARINE MAMMALS INHABITING THE PROPOSED STUDY AREA IN THE U.S. BERING SEA OFF ALASKA.

Species	Habitat	ESA[1]
Mysticetes		
Bowhead whale (*Balaena mysticetus*)	Pack ice and coastal	EN
North Pacific right whale (*Eubalaena japonica*)	Coastal and shelf	EN
Gray whale (*Eschrichtius robustus*)	Coastal and lagoons	NL
Humpback whale (*Megaptera novaeangliae*)	Mainly nearshore waters and banks	EN
Minke whale (*Balaenoptera acutorostrata*)	Shelf and coastal	NL
Sei whale (*Balaenoptera borealis*)	Primarily offshore and pelagic	EN
Fin whale (*Balaenoptera physalus*)	Slope, mostly pelagic	EN
Blue whale (*Balaenoptera musculus*)	Pelagic and coastal	EN
Odontocetes		
Killer whale (*Orcinus orca*)	Widely distributed	NL
Beluga whale (*Delphinapterus leucas*)	Coastal, ice edges	NL
Baird's beaked whale (*Berardius bairdii*)	Pelagic	NL
Stejneger's beaked whale (*Mesoplodon stejnegeri*)	Likely pelagic	NL
Harbor porpoise (*Phocoena phocoena*)	Coastal, inland waters	NL
Dall's porpoise (*Phocoenoides dalli*)	Slope, offshore waters	NL
Pinnipeds		
Northern fur seal (*Callorhinus ursinus*)	Pelagic, breeds coastally	NL
Steller sea lion (*Eumetopias jubatus*)	Mostly pelagic, high relief	EN
Bearded seal (*Erignathus barbatus*)	Ice	NL
Spotted seal (*Phoca largha*)	Pack ice	Proposed T (Southern DPS) NL (Okhotsk and Bering DPSs)
Ringed seal (*Phoca hispida*)	Landfast and pack ice	NL

TABLE 1. THE HABITAT AND CONSERVATION STATUS OF MARINE MAMMALS INHABITING THE PROPOSED STUDY AREA IN THE U.S. BERING SEA OFF ALASKA.—Continued

Species	Habitat	ESA[1]
Ribbon seal (*Histriophoca fasciata*)	Landfast and pack ice	NL
Pacific harbor seal (*Phoca vitulina richardsi*)	Coastal	NL
Pacific Walrus (*Odobenus rosmarus divergens*)	Ice, coastal	NL
Carnivores		
Polar bear (*Ursus maritimus marinus*)	Ice, coastal	T

[1] U.S. Endangered Species Act: EN = Endangered, T = Threatened, NL = Not listed

Not all of these species (listed in Table 1 above) are expected to be harassed from the described proposed activities. Because the activities are occurring on land, only northern fur seals are expected to be disturbed by the project.

Northern fur seals (*Callorhinus ursinus*) are likely to be found within the activity area. Northern fur seals are seasonal residents on St. Paul Island, and may be found on the breeding and resting areas around the island from late April until early December.

Adult males are the most likely group of northern fur seals to be encountered on St. Paul during the spring of 2010. By June 1, 2010, NMFS estimates about 50 percent of the maximum count (4,976) of adult males will be present on the St. Paul Island breeding areas. NMFS' estimate includes both territorial males and non-territorial males.

In addition, NMFS estimates intermittent arrival and departure of few sub-adult males during the winter and spring. Most sub-adult male seals begin arriving during the last week of May resulting in a few tens to a hundred seals at any of the hauling grounds on St. Paul Island (Gentry, 1981)

Northern Fur Seal

Northern fur seals occur from southern California north to the Bering Sea and west to the Okhotsk Sea and Honshu Island, Japan. During the summer breeding season, most of the worldwide population is found on the Pribilof Islands in the southern Bering Sea, with the remaining animals on rookeries in Russia, on Bogoslof Island in the southern Bering Sea, and on San Miguel Island off Southern California (Lander and Kajimura, 1982; NMFS, 1993). This species may temporarily haul-out onto land at other sites in Alaska, British Columbia, and on islets along the coast of the continental U.S., but generally do so outside of the breeding season (Fiscus, 1983).

Northern fur seals are colonial breeding pinnipeds that exhibit strong site fidelity and currently breed on a few islands in the North Pacific Ocean and Bering Sea. Adult male fur seals, about three to five times larger than females, arrive at rookeries prior to the late June/July breeding season and defend territories within the rookery. Beginning in mid-June the rookeries are occupied by breeding females, who within a few days give birth and begin nursing their single pup. Lactating females cycle between on shore attendance and at-sea foraging trips during the nursing period (July to November).

NMFS designated the Pribilof Islands northern fur seal population depleted on June 17, 1988 (53 FR 17888) because it declined to less than 50 percent of levels observed in the late 1950s and no compelling evidence suggested that the northern fur seal carrying capacity of the Bering Sea had changed substantially since the late 1950s. Towell and Ream (2008) report that the 2008 pup production estimate for St. Paul Island was 6.6 percent less than the estimate in 2006. The 2008 pup production estimate for St. George Island was 6.4 percent greater than the estimate in 2006. Since the depleted designation in 1988 pup production on St. Paul Island has declined by 40 percent (171,610 pups born to 102,674) and on St. George Island by 27 percent (24,280 pups born to 18,160).

Male northern fur seals arrive on all of their breeding islands in reverse proportion to their age. That is, the oldest seals arrive first followed by progressively younger seals. Thus adult males nine years old and older arrive as early as late April and persist intermittently at first and then permanently (for territorial males) for the duration of their tenure on the island which generally ranges for about 30 to 60 days (Gentry, 1998). All non-territorial males (i.e., younger than 7 years old) arrive on the island and cycle between fasting and resting on shore and foraging trips at sea from June through November (Sterling and Ream, 2004). Fur seals can be observed on and near St. Paul Island in nearly every month of the year, but the probability of encountering a hauled-out fur seal in any month from December until April is highly uncertain and near zero for any particular day.

Two separate stocks of northern fur seals are recognized within U.S. waters, an Eastern Pacific stock and a San Miguel Island stock. The most recent estimate for the number of fur seals in the Eastern Pacific stock, based on pup counts from 2002 on Sea Lion Rock, from 2006 on the Pribilof Islands, and from 2005 on Bogoslof Island is 665,500 animals. The minimum population estimate is 654,437 animals; this estimate includes the first pup counts on Bogoslof Island in more than 5 years and does not indicate population increase.

NMFS anticipates that no northern fur seals will be injured, seriously injured, or killed during the replacement and repair activities with incorporation of the described mitigation and monitoring measures. Because of the mitigation and monitoring requirements discussed in this document, NMFS and NMFS AKR believes it is highly unlikely that the activities would have the potential to injure (Level A harassment), or cause serious injury, or mortality of northern fur seals; however, they may temporarily leave or avoid the area where the proposed construction activities may occur, thus resulting in Level B harassment. NMFS AKR has requested the incidental take of 579 adult male northern fur seals (9,785 times) and 1,000 sub-adult northern male fur seals (one time) or 1,579 total individual northern fur seals for the proposed action. The requested take is approximately 0.24 percent of the estimated minimum (654,437) Eastern Pacific stock. NMFS has determined that the number of requested incidental takes for the action is small relative to population estimates of northern fur seals.

Further information on the biology and local distribution of these species

and others in the region can be found in NMFS AKR's application, which is available upon request (see **ADDRESSES**), and the NMFS Marine Mammal Stock Assessment Reports, which are available online at: *http://www.nmfs.noaa.gov/pr/species/*.

Potential Effects of Activities on Marine Mammals

All anticipated takes likely to occur incidental to the construction activities would be Level B harassment (as defined in 50 CFR 216.3), involving short-term, temporary changes in behavior. Incidental harassment may result if hauled-out animals move away from the field crew personnel. For the purpose of estimating the number of pinnipeds taken by these activities, NMFS assumes that pinnipeds that move or change the direction of their movement in response to the presence of field crew personnel are taken by Level B harassment. Animals that merely raise their head and look at the field crew personnel are not considered to have been taken.

Some adult seals may depart, but NMFS AKR anticipates most will alter their activity budgets due to stimuli related construction. NMFS used the 2006 adult male counts because they were available and partitioned by section, and because the continued decline of northern fur seals provided us with a conservative (i.e., biased high) estimate. NMFS estimates about five percent of the adult males, less than one percent of sub-adult males, and no females or pups on St. Paul Island will be exposed to the construction activities. NMFS anticipates sub-adult seals will be displaced from their resting areas if encountered during construction. The NMFS AKR anticipates there will be no significant impact on the species or stock of northern fur seals from the construction activity on the rookeries prior to and after the breeding season.

Given the considerations noted above, and the small proportion of the total northern fur seal population potentially disturbed by the proposed construction activity, the effects of operations are expected to be limited to short-term and localized displacement (behavioral changes) within the work sites involving relatively small numbers of seals. The effects of the construction operations fall within the MMPA definition of Level B harassment. The impacts of the construction activities are expected to be negligible for the northern fur seal stock and populations.

Potential Effects of Activities on Marine Mammal Habitat

The NMFS AKR does not anticipate any negative impact on northern fur seal habitat from the demolition, repair, and replacement of observation towers and walkways on St. Paul Island. These structures have been located in nearly the same areas for at least 50 years at some locations and northern fur seals continue to use the habitat around the structures. The demolition and removal of condemned structures will restore some small areas of fur seal habitat. The replacement and repair of observation towers and walkways will likely result in no net change or modification to marine mammal habitat. Consequently, construction activities are anticipated to have a negligible impact on the local northern fur seal population and their habitat.

Number of Marine Mammals Expected to be Incidentally Taken by the Proposed Activity

The NMFS AKR is requesting take, by Level B harassment only, of male northern fur seals. The method of taking will be from a combination of human presence, scent, and airborne construction noise.

TABLE 2. SUMMARY OF INCIDENTAL TAKING BY HARASSMENT OF NORTHERN FUR SEALS DURING CONSTRUCTION ACTIVITIES ON ST. PAUL ISLAND

	Prior to April 25, 2010	Week 1	Week 2	Week 3	Week 4	Week 5	Total
Adult Male Northern Fur Seal	0	8 seals taken 58 times	115 seals taken 811 times	232 seals taken 1,621 times	463 seals taken 3,242 times	579 seals taken 4,053 times	579 seals taken 9,785 times

Most adult male northern fur seals will be incidentally taken by harassment multiple times. NMFS AKR anticipates approximately 230 of the 579 adult males will be taken once. These single takes by harassment are of the estimated non-territorial adult males predicted to be present and will likely depart due to the noise, presence or scent of the construction activities on the rookery. NMFS estimates the remaining 349 adult male northern fur seals are territorial at Reef rookery on St. Paul Island during the five week period beginning late April, 2010 and will not depart. NMFS predicts these territorial males may change the time spent in certain behaviors due to the presence, noise, or scent due to construction activities on the rookery.

The number of incidental takes by harassment was derived from 2006 adult male counts from the National Marine Mammal Laboratory (NMML) from Reef rookery (Fowler *et al.*, 2006) and was corrected based on the timing of arrival curve from Gentry (1998). Rookeries are divided into sections allowing easier tabulation of counts and the maximum counts in each section have been divided by the percentage estimated on land for each week in Tables 3a to 3e (below). NMFS summed the daily take estimates into weekly bins (Table 3a to 3e) because few animals were predicted on land in late April and early May, but those few animals would likely be taken repeatedly during the week and every subsequent week. Table 3 shows fractional daily taking within each section, summed for the week, and rounded up into Table 2. NMFS estimates an additional 1,000 sub-adult male seals may be encountered during the construction or repair activities at Reef or other rookeries (Table 2).

TABLE 3A. ESTIMATED DAILY TAKE OF ADULT MALE NORTHERN FUR SEALS ON REEF ROOKERY FOR THE LAST WEEK OF APRIL. ESTIMATE BASED ON ONE PERCENT OF THE MAXIMUM 2006 BULL COUNTS.

Class Bull	Section										
	1	2	3	4	5	6	7	8	9	10	11
2	0.13	0.26	0.27	0.1	0.22	0.21	0.05	0.27	0.22	0.11	0.03
3	0.48	0.81	0.63	0.46	0.67	0.7	0.01	0.66	0.37	0.28	0.04
5	0.08	0.27	0.4	0.47	0.31	0.13	0.15	0.31	0.34	0.72	1.42

Total Taking by Harassment Week 1: 57.9

TABLE 3B. ESTIMATED DAILY TAKE OF ADULT MALE NORTHERN FUR SEALS ON REEF ROOKERY FOR THE FIRST WEEK OF MAY. ESTIMATE BASED ON 10 PERCENT OF THE MAXIMUM 2006 BULL COUNTS.

Class Bull	Section										
	1	2	3	4	5	6	7	8	9	10	11
2	1.3	2.6	2.7	1	2.2	2.1	0.5	2.7	2.2	1.1	0.3
3	4.8	8.1	6.3	4.6	6.7	7	0.1	6.6	3.7	2.8	0.4
5	0.8	2.7	4	4.7	3.1	1.3	1.5	3.1	3.4	7.2	14.2

Total Taking by Harassment Week 2: 810.6

TABLE 3C. ESTIMATED DAILY TAKE OF ADULT MALE NORTHERN FUR SEALS ON REEF ROOKERY FOR THE SECOND WEEK OF MAY. ESTIMATE BASED ON 20 PERCENT OF THE MAXIMUM 2006 BULL COUNTS.

Class Bull	Section										
	1	2	3	4	5	6	7	8	9	10	11
2	2.6	5.2	5.4	2	4.4	4.2	1	5.4	4.4	2.2	0.6
3	9.6	16.2	12.6	9.2	13.4	14	0.2	13.2	7.4	5.6	0.8
5	1.6	5.4	8	9.4	6.2	2.6	3	6.2	6.8	14.4	28.42

Total Taking by Harassment Week 3: 1621.2

TABLE 3D. ESTIMATED DAILY TAKE OF ADULT MALE NORTHERN FUR SEALS ON REEF ROOKERY FOR THE THIRD WEEK OF MAY. ESTIMATE BASED ON 40 PERCENT OF THE MAXIMUM 2006 BULL COUNTS.

Class Bull	Section										
	1	2	3	4	5	6	7	8	9	10	11
2	5.2	10.4	10.8	4	8.8	8.4	2	10.8	8.8	4.4	1.2
3	19.2	32.4	25.2	18.4	26.8	28	0.4	26.4	14.8	11.2	1.6
5	3.2	10.8	16	18.8	12.4	5.2	6	12.4	13.6	28.8	56.8

Total Taking by Harassment Week 4: 3242.4

TABLE 3E. ESTIMATED DAILY TAKE OF ADULT MALE NORTHERN FUR SEALS ON REEF ROOKERY FOR THE LAST WEEK OF MAY. ESTIMATE BASED ON 50 PERCENT OF THE MAXIMUM 2006 BULL COUNTS.

Class Bull	Section										
	1	2	3	4	5	6	7	8	9	10	11
2	6.5	13	13.5	5	11	10.5	2.5	13.5	11	5.5	1.5

TABLE 3E. ESTIMATED DAILY TAKE OF ADULT MALE NORTHERN FUR SEALS ON REEF ROOKERY FOR THE LAST WEEK OF MAY. ESTIMATE BASED ON 50 PERCENT OF THE MAXIMUM 2006 BULL COUNTS.—Continued

Class Bull	Section										
	1	2	3	4	5	6	7	8	9	10	11
3	24	40.5	31.5	23	33.5	35	0.5	33	18.5	14	2
5	4	13.5	20	23.5	15.5	6.5	7.5	15.5	17	36	71
Total Taking by Harassment Week 5: 4053											

NMFS and NMFS AKR estimate that the incidental "take by harassment" could be up to 579 adult male northern fur seals taken 9,785 times and 1,000 sub-adult male northern fur seals taken once during the action.

Mitigation

In order to issue an Incidental Take Authorization (ITA) for small numbers of marine mammals 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.

Northern fur seals are the only marine mammal species managed by NMFS expected to be present in the project area during the planned construction activities. The construction season has been chosen based on the minimum likelihood of encountering breeding and nursing northern fur seals. The amount of work and weather conditions during the winter season necessitates providing some contingency arrangements for work to be completed when few if any fur seals are found on land. In addition, the outlying periods requested are prior to the arrival and after the departure of the most sensitive fur seals (i.e., adult females and unweaned pups). Gentry (1998) experimented with complete displacement in early June of territorial males from their terrestrial sites. He found that over 80 percent of adult males returned within seven hours to their original territory site with less aggression than required to originally secure the site. Thus territorial adult males are highly resistant to disturbance at the time of year NMFS AKR is requesting authorization for incidental harassment. Some individual territorial males were so resistant to harassment that it required four to six people with poles and noisemakers to move them from their sites.

Thus, the combination of a winter and spring construction season along with incidental harassment of small numbers of adult and sub-adult male northern fur seals will minimize the potential for adverse impacts to the population and habitat. The habitat is further protected because the ground is frozen and resistant to erosion and degradation due to vehicle traffic. In addition to the mitigation described above, NMFS AKR will also limit field personnel to approaching sites cautiously, choosing a route that minimizes the potential for disturbance of pinnipeds; and after each site visit, the site will be vacated as soon as possible so that it can be re-occupied by pinnipeds that may have been disturbed. The implementation of a monitoring and mitigation program is expected by NMFS to achieve the least practicable adverse impact upon the affected species or stock.

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) indicate that requests for IHAs must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present.

NMFS AKR will begin marine mammal monitoring at Reef, Gorbatch, and Ardiguen breeding areas to identify and count northern fur seals on land, their response to the presence and absence of construction activities and the timing of arrival beginning the last week of April. In addition to counts of northern fur seals monitoring will also record the type and duration of construction activities at each site where northern fur seals are identified to evaluate the construction actions potential contribution to the responses observed. Gorbatch and Ardiguen breeding areas will provide control areas with no construction activities to compare the timing of arrival and response of male northern fur seals at Reef. NMFS AKR will consider before-after/control-impact (see Underwood, 1994) study design in the final monitoring plan, method and analysis. NMFS AKR will have monitors check the site every morning before the arrival of field crew personnel for seal presence and provide the best route. In addition, they would be able to complete a "before" count that could provide a baseline for estimating incidental take.

Information recorded by observers will include: species counts, life history stage (e.g., adult, sub-adult, pup, etc.) numbers of observed disturbances (e.g., flushed into the water; moving more than 1 m [3.3 ft], but not into the water; becoming alert and moving, but do not move more than 1 m; and changing the direction of current movement), descriptions of the disturbance behaviors and responses during construction activities, closest point of approach to field crew personnel, as well as the date, time, and weather conditions. Observations of stampeding, other unusual behaviors, numbers, or distributions of pinnipeds at St. Paul Island will be reported to NMFS' NMML so that any potential follow-up observations can be conducted by the appropriate personnel. Weather observations should be recorded during activities and observations as they have strong influence on the presence/absence and behavior of pinnipeds and propagation of human scent. In addition, any chance observations of tag-bearing pinnipeds (including carcasses) as well as any rare or unusual species of marine mammals will be reported to NMFS.

If at any time injury, serious injury, or death of any marine mammal occurs that may be a result of the construction activities, NMFS AKR will suspend construction activities and contact NMFS immediately to determine how

best to proceed to ensure that another injury or death does not occur and to ensure that the applicant remains in compliance with the MMPA.

Any takes of marine mammals other than those authorized by the IHA, as well as any injuries or deaths of marine mammals, will be reported to the Alaska Regional Administrator and NMFS Office of Protected Resources, within 24 hours. NMFS AKR will submit a draft report to NMFS within 90 days of completing the replacement and repair activities. The monitoring report would contain a summary of information gathered pursuant to the monitoring and mitigation requirements set forth in the IHA, including detailed descriptions of observations of any marine mammal, by species, number, age class, and sex, whenever possible, that is sighted in the vicinity of the proposed project area; description of the animal's observed behaviors, and the activities occurring at the time. The location and time of each animal sighting will also be included. A final report must be submitted to the Regional Administrator and Chief of the Permits, Conservation, and Education Division within 30 days after receiving comments from NMFS on the draft final report. If no comments are received from NMFS, the draft final report will be considered to be the final report.

Encouraging and Coordinating Research

Coordination and collaboration with Tribal Government of St. Paul Island's Ecosystem Conservation Office (Tribal ECO) will be accomplished to partner with and potentially utilize local sentinels currently implementing a long-term monitoring program on St. Paul Island. Dr. Paul Wade at the NMML has conducted work at this site related to offshore observations of killer whales, and NMFS AKR will coordinate with Dr. Wade if necessary. Northern fur seal researchers at the NMML and North Pacific Universities Marine Mammal Consortium do not begin their work until the arrival of adult females in late June, but NMFS AKR will contact the Principal Investigators to ensure their plans have not changed and whether their research may overlap with this project.

Negligible Impact and Small Numbers Analysis and Determination

The Secretary, in accordance with paragraph 101(a)(5)(D) of the MMPA, shall authorize the take of small numbers of marine mammals incidental to specified activities (other than commercial fishing) within a specified geographic region, if among other things, the Secretary determines that the authorized incidental take will have a "negligible impact" on species or stocks affected by the authorization. NMFS implementing regulations codified at 50 CFR 216.103 states that "negligible impact is 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."

Impacts from the activities on northern fur seals and their habitat are expected to be temporary and occur to a small, localized population of marine mammals. The effects on the habitat from the proposed construction activities are not expected to have an effect on recruitment or survival rates. Due to the limited duration, and monitoring and mitigation measures described above, which include seasonal restrictions, takes will not occur during times of significance for marine mammals. The estimated incidental "take by harassment" of 579 adult male and 1,000 sub-adult male (1,579 total individuals) northern fur seals during the proposed action is approximately 0.24 percent of the estimated minimum (654,437 individuals) population of the Eastern Pacific stock.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the mitigation and monitoring measures, NMFS finds that NMFS AKR's proposed activities would result in the incidental take of small numbers of marine mammals, by Level B harassment only, and that the total taking from the construction activities would have a negligible impact on the affected species or stocks of marine mammals.

Impact on Availability of Affected Species for Taking for Subsistence Uses

Under the MMPA, NMFS must determine that an activity would not have an unmitigable adverse impact on the subsistence needs for marine mammals. While this includes usage of both cetaceans and pinnipeds, the primary impact by construction activities is expected to be impacts from replacement and repair of fur seal research observation towers and walkways on northern fur seals. In 50 CFR 216.103, NMFS has defined unmitigable adverse impact as:

An impact resulting from the specified activity: (1) that is likely to reduce the availability of the species to a level insufficient for a harvest to meet subsistence needs by: (i) causing the marine mammals to abandon or avoid hunting areas, (ii) directly displacing subsistence users, or (iii) placing physical barriers between the marine mammals and the subsistence hunters; and (2) that cannot be sufficiently mitigated by other measures to increase the availability of marine mammals to allow subsistence needs to be met.

Northern fur seals are not allowed to be harvested on land by Alaska Natives outside the harvest season described at 50 CFR 216.72, and 50 CFR 216.72(c)(1) states that "no fur seal may be taken on the Pribilof Islands before June 23 of each year." Therefore there will be no impact on subsistence use of northern fur seals. Steller sea lion subsistence hunting occurs during the winter and spring on the Reef Peninsula. Steller sea lion subsistence hunting does not occur at the tower and walkway sites on Reef Rookery. Hunting effort is primarily located at Gorbatch and Ardiguen Rookeries as well as the bluffs along the east shore to the north of Reef Rookery. Other sea lion hunting areas are not typically associated with fur seal towers and walkways and therefore would not be affected.

NMFS AKR has discussed the potential overlap between the construction season and location with subsistence hunting with the Tribal ECO staff. The NMFS AKR has ongoing communication with Steller sea lion hunters through the Tribal Government of St. Paul Island. As part of the cooperative management agreement between NMFS and the Tribal Government of St. Paul under section 119 of the MMPA, NMFS regularly communicates agency project plans and subsistence needs and activities. Most subsistence activities occur during the summer per the subsistence harvest regulations at 50 CFR 216 subpart F. Annual reports submitted to NMFS of subsistence marine mammal harvests indicate most hunting occurs at Northeast Point. Winter subsistence harvests occur at many locations surrounding St. Paul Island and are not concentrated at any locations where tower or walkway work would be conducted.

The number of individual northern fur seals likely to be impacted by construction operations is expected to be relatively low. With the proposed monitoring and mitigation measures described above, which include seasonal restrictions, the construction operations are not expected to cause seals to abandon/avoid subsistence hunting areas, directly displace subsistence users, or place physical barriers between the marine mammals and the subsistence hunters. Effects on most individual seals are expected to be

limited to localized and temporary displacement (Level B harassment). The taking by harassment is not expected to result in an unmitigable adverse impact on the availability of such species for taking for subsistence uses.

Endangered Species Act (ESA)

For the reasons already described in this **Federal Register** notice, NMFS has determined that the described proposed construction activities and the accompanying IHA are not anticipated to have the potential to adversely affect species under NMFS jurisdiction and protected by the ESA. Consequently, NMFS has determined that a Section 7 consultation is not required. The northern fur seal, which is the only species of marine mammal under NMFS jurisdiction likely to occur in the action area, is not listed under the ESA.

National Environmental Policy Act (NEPA)

NMFS has prepared an Environmental Assessment for Issuance of an Incidental Harassment Authorization for Replacement and Repair of Northern Fur Seal Observation Towers and Walkways on St. Paul Island, Alaska (EA), which analyzes the direct, indirect and cumulative environmental impacts of the proposed specified activities on marine mammals including those listed as threatened or endangered under the ESA. Based on the analysis contained in the EA, NMFS has issued a Finding of No Significant Impact (FONSI) for the issuance of the IHA.

Determinations

Based on NMFS AKR's application, as well as the analysis contained herein, NMFS has determined that the impact of the described replacement and repair operations will result, at most, in a temporary modification in behavior by small numbers of northern fur seals. The effect of the construction activities is expected to be limited to short-term and localized behavioral changes.

Due to the infrequency, short time-frame, and localized nature of these activities, the number of marine mammals, relative to the population size, potentially taken by harassment is expected to be small. In addition, no take by injury (Level A harassment), serious injury, and/or death is anticipated or authorized, and take by Level B harassment will be at the lowest level practicable due to incorporation of the monitoring and mitigation measures mentioned previously in this document. NMFS has further determined that the anticipated takes will have a negligible impact on the affected species or stock of marine mammals. Also, the construction project is not expected to result in an unmitigable adverse impact on subsistence uses of this species.

Authorization

As a result of these determinations, NMFS issued an IHA to NMFS AKR for the harassment of small numbers (based on populations of the species and stock) of northern fur seals incidental to construction operations on St. Paul Island, including the previously mentioned mitigation, monitoring, and reporting requirements.

Dated: April 16, 2010.

James H. Lecky,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2010–9513 Filed 4–22–10; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–849]

Certain Cut–to-Length Carbon Steel Plate from the People's Republic of China: Initiation of Antidumping Circumvention Inquiry

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

Effective Date: April 23, 2010.

SUMMARY: In response to a request from ArcelorMittal USA, Inc.; Nucor Corporation; SSAB N.A.D., Evraz Claymont Steel and Evraz Oregon Steel Mills (collectively "Domestic Producers"), the Department of Commerce ("Department") is initiating an antidumping circumvention inquiry, pursuant to section 781(c) of the Tariff Act of 1930, as amended (the "Act"), to determine whether certain imports of certain cut–to-length carbon steel plate ("CTL plate") are circumventing the antidumping duty order on CTL plate from the People's Republic of China ("PRC"). *See Suspension Agreement on Certain Cut–to-Length Carbon Steel Plate From the People's Republic of China; Termination of Suspension Agreement and Notice of Antidumping Duty Order*, 68 FR 60081 (October 21, 2003) ("Order").

FOR FURTHER INFORMATION CONTACT: Rebecca Pandolph or Howard Smith, AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230, telephone: (202) 482–3627 or (202) 482–5193, respectively.

SUPPLEMENTARY INFORMATION:

Background

On February 17, 2010, Domestic Producers requested that the Department make a final circumvention ruling within 45 days pursuant to 19 CFR 351.225(c)(2) and (d) with respect to CTL plate produced by Wuyang Iron and Steel Co., Ltd. ("Wuyang"), regardless of the exporter or importer, or imported by Stemcor USA Inc. ("Stemcor"), regardless of the producer or exporter, which contain 0.0008 percent or more, by weight, of boron.

Domestic Producers maintain that such plates are circumventing the *Order* on CTL plate from the PRC because of minor alterations thereto. *See* 781(c) of the Act; see also Letter from Domestic Producers regarding, "Certain Cut–to-Length Carbon Steel Plate From the People's Republic of China: Request for Circumvention Ruling," dated February 17, 2010 ("Domestic Producers' Request"). As evidence, Domestic Producers submitted a mill test certificate from Wuyang for ASTM A830 steel plate and a letter from a non–petitioning U.S. steel producer, stating that Stemcor was importing steel plate from PRC producers containing small amounts of boron resulting in the classification of the plate as "alloy" steel plate and, thus, circumventing the *Order. See id.* at 7–8 and Exhibits 1 and 2.

Domestic Producers note that the Department has made a previous ruling that CTL plate produced by Tianjin Iron and Steel Co., Ltd. and/or imported by Toyota Tsusho America with small amounts of boron added, but otherwise fitting the description of subject CTL plate, are circumventing the Order on CTL plate from the PRC. *See id.* at 9; *see also, Affirmative Final Determination of Circumvention of the Antidumping Duty Order on Certain Cut–to-Length Carbon Steel Plate From the People's Republic of China*, 74 FR 40565 (August 12, 2009). Moreover, Domestic Producers argue that there is an incentive for PRC producers to add insignificant amounts of boron to their steel products for the purpose of securing a higher export rebate, which further confirms the evidence that circumvention is occurring. *See* Domestic Producers' Request at 8 and Exhibit 4; *see also*, Letter from Domestic Producers, regarding "Certain Cut–to-Length Carbon Steel Plate From the People's Republic of China: Clarification of Request for Circumvention Ruling," dated March 23, 2010 ("Domestic Producers' Response") at 8–9 and Exhibit 4. Furthermore, Domestic Producers note that Wuyang's production and export of CTL plate with

boron follows the imposition of the *Order* on CTL plate from the PRC and occurs as the PRC government changed its own tariff system to favor exporters' shift from exporting non–alloy steel products to alloy steel products. *See* Domestic Producers' Request at 18.

On March 10, 2010, the Department identified various issues in the Domestic Producers' Request that required clarification. On March 18, and March 23, 2010, Domestic Producers submitted their responses. In their responses, Domestic Producers clarified that the ASTM A830 specification is not for alloy steels, but for carbon and manganese carbon steels. *See* Domestic Producers' Response at 4. Domestic Producers further assert that the submitted mill test certificate presented none of the characteristics that would be expected for steel to which boron has been added for hardenability. *See id.* at 5–7 and Exhibits 1 and 3.

On March 23, and March 26, 2010, Stemcor submitted comments on Domestic Producers' Request and responses to the Department's March 10, 2010, request for clarification. In its March 23, 2010, comments, Stemcor asserts that, contrary to Domestic Producers' allegation, it is not involved in circumventing the *Order* on CTL plate from the PRC. *See* letter from Stemcor regarding, "Certain Cut–to-Length Steel Plate from the People's Republic of China: Initial Comments on Request for Circumvention Ruling, dated March 23, 2010 at 2. Moreover, Stemcor claims that the facts of this case are distinct from the previous circumvention ruling. *See id.* at 3. Specifically, Stemcor notes that boron is not mentioned in the ASTM A36 specification, the specification of CTL plate which was examined in the previous circumvention ruling, whereas the CTL plate it imports is made to the ASTM A830 specification, which explicitly mentions boron. *See id.* at 3–4. In its March 26, 2010, comments, Stemcor asserts that boron is included in the ASTM A830 plate that it imports because boron imparts certain desirable physical properties, which enhances the wearability of the steel. See letter from Stemcor regarding, "Certain Cut–to-Length Steel Plate from the People's Republic of China: Further Comments on Request for Circumvention Ruling, dated March 26, 2010 at 2–3. Stemcor further asserts that the ASTM A830 plate meets its customers' requirements with regard to wear characteristics of steel. *See id.* at 7–8. Moreover, Stemcor asserts that the ASTM A830 steel *plate is used for making metal molds for the automotive industry, and not for structural steel as Domestic Producers allege.* See id. at 9–10. Stemcor also notes that the Domestic Producers' allegation concerning the role of the PRC government's rebate program for exports of alloy steel is wrong because the timing of the rebate program does not match the timing of Stemcor's imports of alloy steel plates. *See id.* at 12. The Department intends to explore the issues raised in Stemcor's comments after initiation.

Scope of the Order

The products covered by the order include hot–rolled iron and non–alloy steel universal mill plates (*i.e.*, flat–rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1250 mm and of a thickness of not less than 4 mm, not in coils and without patterns in relief), of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances; and certain iron and non–alloy steel flat–rolled products not in coils, of rectangular shape, hot–rolled, neither clad, nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances, 4.75 mm or more in thickness and of a width which exceeds 150 mm and measures at least twice the thickness. Included as subject merchandise in the order are flat–rolled products of nonrectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been "worked after rolling") - for example, products which have been beveled or rounded at the edges. This merchandise is currently classified in the Harmonized Tariff Schedule of the United States ("HTS") under item numbers 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000. Although the HTS subheadings are provided for convenience and customs purposes, the written description of the scope of the order is dispositive. Specifically excluded from subject merchandise within the scope of the order is grade X–70 steel plate.

Merchandise Subject to the Minor Alterations Antidumping Circumvention Inquiry

The merchandise subject to this antidumping circumvention inquiry consists of CTL plate from the PRC produced by Wuyang containing 0.0008 percent or more boron, by weight, and otherwise meeting the requirements of the scope of the *Order* as listed under the "Scope of the Order" section above, with the exception of merchandise meeting all of the following requirements: (1) aluminum level of 0.02 percent or greater, by weight; (2) a ratio of 3.4 to 1 or greater, by weight, of titanium to nitrogen; and (3) a hardenability test (*i.e.*, Jominy test) result indicating a boron factor of 1.8 or greater. The Department also intends to address whether its circumvention ruling will apply to particular producers, exporters, and/or importers (*e.g.*, Stemcor) or to U.S. imports of all CTL plate from the PRC.

Initiation of Minor Alterations Antidumping Circumvention Proceeding

Section 781(c)(1) of the Act provides that the Department may find circumvention of an antidumping duty order when products which are of the class or kind of merchandise subject to an antidumping duty order have been "altered in form or appearance in minor respects . . . whether or not included in the same tariff classification." The Department notes that, while the statute is silent as to what factors to consider in determining whether alterations are properly considered "minor," the legislative history of this provision indicates there are certain factors which should be considered before reaching a circumvention determination. In conducting a circumvention inquiry under section 781(c) of the Act, the Department has generally relied upon "such criteria as the overall physical characteristics of the merchandise, the expectations of the ultimate users, the use of the merchandise, the channels of marketing and the cost of any modification relative to the total value of the imported products." *See* S. Rep. No.71, 100th Cong., 1st Sess. 100 (1987) ("In applying this provision, the Commerce Department should apply practical measurements regarding minor alterations, so that circumvention can be dealt with effectively, even where such alterations to an article technically transform it into a differently designated article.")

Overall Physical Characteristics

Domestic Producers maintain that CTL plate with the addition of boron is produced in the same manner and to the same specifications as subject CTL plate. *See* Domestic Producers' Request at 13. Domestic Producers note that while boron can improve steel's hardenability, there are certain other

parameters that must be met. *See id.* at 13–14. Specifically, Domestic Producers maintain that if CTL plate is to be used as an alloy steel plate (i.e., boron steel plate), then an aluminum level of 0.02 percent or greater, by weight; a ratio of 3.4 to 1 or greater, by weight, of titanium to nitrogen; and a hardenability test (*i.e.*, Jominy test) result indicating a boron factor of 1.8 or greater must be present. *See id.*

Expectations of the Ultimate Users

Domestic Producers indicate that they are unaware of any instances where customers expect or request CTL plate with small amounts of boron added, other than to potentially avoid the added expense to the plate products that result from the antidumping duties in place. *See id.* at 15. Domestic Producers argue that without the proper amounts of aluminum and titanium and sufficient hardenability, there would be no reason to request the addition of boron nor would there be a basis for concluding that the presence of small amounts of boron added any special properties to CTL plate. *See id.*

Use of the Merchandise

Domestic Producers state the product at issue is used for the same purposes as subject merchandise. *See id.* at 16. Moreover, Domestic Producers assert that CTL plate with small amounts of boron is not suitable for different or additional uses compared to subject CTL plate without boron. *See id.* Domestic Producers conclude, therefore, that Wuyang's customers would have no basis for concluding that the presence of small amounts of boron imparts any special properties to the CTL plate beyond those already present in ASTM A830 plate without boron. *See id.*

Channels of Marketing

Domestic Producers state the channels of marketing for the boron–added CTL plate and the subject CTL plate are the same, noting that both products are marketed in the same manner, appeal to the same end users, and are used for the same end uses. *See id.*

Cost of Modification

Domestic Producers indicate that the addition of boron at levels recognized as alloy amounts by the tariff schedule involve minimal additional cost. In addition, Domestic Producers cite the Department's finding in a previous ruling that reaching the 0.0008 percent threshold for boron involved a cost amounting to considerably less than one–third of one percent of the sales price. *See* Domestic Producers' Request at 16–17.

Based on the information provided by Domestic Producers, the Department finds there is sufficient basis to initiate an antidumping circumvention inquiry, pursuant to section 781(c) of the Act, to determine whether the merchandise subject to the inquiry (identified in the "Merchandise Subject to the Minor Alterations Antidumping Circumvention Inquiry" section above) involves a minor alteration to subject merchandise that is so insignificant as to render the resulting merchandise (classified as "alloy" steel under the HTS) subject to the *Order* on CTL plate from the PRC. As noted above, in making this determination the Department also intends to address whether its circumvention ruling applies to particular producers, exporters, and/or importers or to all U.S. imports of CTL plate from the PRC. Although Domestic Producers requested that the Department make a final ruling within 45 days, additional time is needed for further inquiry into Domestic Producers' allegations and Stemcor's comments.

The Department will not order the suspension of liquidation of entries of any additional merchandise at this time. However, in accordance with 19 CFR 351.225(l)(2), if the Department issues a preliminary affirmative determination, we will then instruct U.S. Customs and Border Protection to suspend liquidation and require a cash deposit of estimated duties, at the applicable rate, for each unliquidated entry of the merchandise at issue, entered or withdrawn from warehouse for consumption on or after the date of initiation of the inquiry.

We intend to notify the International Trade Commission in the event of an affirmative preliminary determination of circumvention, in accordance with 781(e)(1) of the Act and 19 CFR 351.225(f)(7)(i)(C). The Department will, following consultation with interested parties, establish a schedule for questionnaires and comments on the issues. The Department intends to issue its final determination within 300 days of the date of publication of this initiation notice.

This notice is published in accordance with sections 781(c) and (d) of the Act and 19

CFR 351.225(i).

Dated: April 16, 2010.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2010–9488 Filed 4–22–10; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XS60

Marine Mammals; Subsistence Taking of Northern Fur Seals; St. George

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

ACTION: Notice; request for comments.

SUMMARY: NMFS announces the receipt of a petition for rulemaking under the Administrative Procedure Act (APA). The Pribilof Island Community of St. George Island, Traditional Council (Council) petitioned NMFS to revise regulations governing the subsistence taking of northern fur seals to allow residents of St. George Island to take male fur seal young of the year during the fall. NMFS solicits public comments on this request.

DATES: Written comments must be received at the appropriate address or fax number by June 22, 2010.

ADDRESSES: Information related to the request for rulemaking is available on the Internet at the following address: *http://www.fakr.noaa.gov/protectedresources/seals/fur.htm*.

Send comments to Kaja Brix, Assistant Regional Administrator, Protected Resources Division, Alaska Region, NMFS, Attn: Ellen Sebastian. Comments may be submitted by:

- Email: *furseal@noaa.gov*. Include in the subject line the following document identifier: Northern Fur Seal St. George. Email comments with or without attachments are limited to 5 megabytes;
- Mail: Kaja Brix, Assistant Regional Administrator, Protected Resources Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802;
- Hand Delivery to the Federal Building: 709 West 9th Street, Room 420A, Juneau, AK; or
- Fax: 907 586 7557.

All comments received are a part of the public record. All Personal Identifying Information (e.g., name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Michael Williams, (907) 271–5006, email *Michael.Williams@noaa.gov*; Kaja Brix, (907) 586–7235, email *Kaja.Brix@noaa.gov*; or Tom Eagle, (301) 713–2322, ext. 105, email *Tom.Eagle@noaa.gov*.

SUPPLEMENTARY INFORMATION: The subsistence harvest of northern fur seals on the Pribilof Islands is governed by regulations established under the Fur Seal Act and MMPA in 50 CFR 216.71–74. These regulations, which were promulgated by an emergency final rule in 1986 (51 FR 24828, July 9, 1986), require NMFS to publish estimated subsistence needs every three years, limit the harvest to sub-adult male fur seals, identify specific hauling grounds from which fur seals may be taken, and establish a period between June 23 and August 8 of each year, during which fur seals may be taken for subsistence purposes. The Council submitted a resolution to NMFS requesting the agency change the regulations to allow a harvest that better meets their customary and traditional needs. NMFS considers this resolution together with subsequent reports submitted by the Council to be a formal petition for rulemaking under the APA.

In its resolution, the Council noted that the community was initially allowed by the Federal Government to take fur seal young of the year in the fall for subsistence purposes. However, the harvest of fur seal young of the year is not included in the current regulations. Accordingly, the Council requested NMFS to modify its regulations to allow the harvest of 150 male fur seal young of the year annually to meet the subsistence needs for the community of St. George Island.

Harvest reports from the Council and harvest records from the NMFS indicated the need to change other three provisions of the current subsistence harvest regulations. First, the current regulations allow harvest only from Northeast and Zapadni hauling grounds. The Council reported in their 2008 and 2009 harvest reports that sufficient numbers of sub-adult males for the harvest are not always available at the Northeast and Zapadni hauling grounds, but are likely available on other sub-adult male hauling grounds. NMFS harvest records corroborate the lack availability of sub-adult males when harvests are limited to two or fewer hauling grounds.

Second, the current regulations require the harvest to stop no later than August 8 of each year. The Council stated that traditional practices included the harvest of fur seal young of the year in the fall. Accordingly, the Council contends, a separate fall harvest season is most consistent with traditional practices and subsistence needs identified for St. George Island.

Third, the current regulations at 50 CFR 216.74 describe data collection needs and other requirements to cooperate with scientists that the Council feels are no longer applicable nor consistent with the E.O. 13175 Tribal Consultation, American Indian Native Policy of the U.S. Department of Commerce, or the comanagement agreement signed by the Council and NMFS in 2001.

The Assistant Administrator for Fisheries, NOAA, has determined that the petition contains sufficient information to enable NMFS to consider the substance of the petition. NMFS solicits public comment on the Council's request to modify regulations that govern taking fur seals for subsistence purposes by residents of St. George. NMFS is particularly interested in information that would allow an evaluation of the effects on the fur seal population of a harvest that included male young of the year in the fall, a distribution of the current sub-adult male harvest across additional hauling grounds, and a reevaluation of the requirements to cooperate with scientists interested in the subsistence harvest of northern fur seals. NMFS will consider public comments received in determining whether to proceed with the revisions of the regulations requested by the Council. Upon determining whether to initiate the requested rulemaking, the Assistant Administrator for Fisheries, NOAA, will publish in the **Federal Register** a note of the Agency's final disposition of the Council's petition request.

Dated: April 19, 2010.

Eric C. Schwaab,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 2010–9510 Filed 4–22–10; 8:45 am]

BILLING CODE 3510–22–S

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to and deletions from the Procurement List.

SUMMARY: The Committee is proposing to add to the Procurement List products and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete products previously furnished by such agencies.

Comments Must Be Received On or Before: 5/24/2010.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

For Further Information or To Submit Comments Contact: Barry S. Lineback, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION:

This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice will be required to procure the products and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and services to the Government.

2. If approved, the action will result in authorizing small entities to furnish the products and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products and services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

End of Certification

The following products and services are proposed for addition to Procurement List for production by the nonprofit agencies listed:

Products

NSN: MR 987—Towel, Super Absorbent, Orange.

NSN: MR 988—Towel, Super Absorbent, Kitchen Set, Assorted Colors.

NPA: Industries for the Blind, Inc., West

Allis, WI.
Contracting Activity: Military Resale-Defense Commissary Agency, Fort Lee, VA.
Coverage: C-list for 100% of the Military Resale requirements of the Defense Commissary Agency, Fort Lee, VA.
NSN: 7930–00–NIB–0553—TriBase Multi-Purpose Cleaner, 2 liter, 4/BX.
NSN: 7930–00–NIB–0554—TriBase Multi-Purpose Cleaner, 55 gallon drum, 1 DR.
NSN: 7930–00–NIB–0555—BioRenewable Glass Cleaner, 2-liter, 4/BX.
NSN: 7930–00–NIB–0556—BioRenewable Glass Cleaner, 55 gallon drum, 1 DR.
NSN: 7930–00–NIB–0557—Neutral Disinfectant Cleaner, 2-liter, 4/BX.
NSN: 7930–00–NIB–0558—Neutral Disinfectant Cleaner, 55 gallon drum, 1 DR.
NSN: 7930–00–NIB–0559—BioRenewable Industrial Cleaner, 2 liter, 4/BX.
NSN: 7930–00–NIB–0560—BioRenewable Industrial Cleaner, 55 gallon drum, 1 DR.
NSN: 4510–00–NIB–0021—Dispensing unit, 4 station, stainless steel, 1 EA.
NSN: 4510–00–NIB–0022—Dispensing unit, 3-station, stainless steel, 1 EA.
NSN: 8125–00–NIB–0024—Tribase multi-purpose silk screened 8 oz bottle, 12/BX.
NSN: 8125–00–NIB–0025—Glass cleaner silk screened 8 oz bottle, 12/BX.
NSN: 8125–00–NIB–0026—Neutral Disinfectant silk screened 8 oz bottle, 12/BX.
NSN: 8125–00–NIB–0027—Industrial cleaner silk screened 8 oz bottle, 12/BX.
NSN: 8125–00–NIB–0030—Neutral Disinfectant silk screened 32 oz bottle, 12/BX.
NSN: 8125–00–NIB–0041—Spray Bottle, BioRenewables Restroom Cleaner, Silk Screened, 8 oz, 2/BX.
NSN: 8125–00–NIB–0042—Spray Bottle, BioRenewables Restroom Cleaner, Silk Screened, 32 oz, 12/BX.
NSN: 7930–00–NIB–0612—Cleaner, Restroom, BioRenewables, 55 GL Drum, 1 DR.
NSN: 8125–00–NIB–0040—Industrial Cleaner Silk Screened 32 oz Bottle, 12/BX.
NPA: Susquehanna Association for the Blind and Visually Impaired, Lancaster, PA.
Contracting Activity: Department of Justice, Federal Prison System, Central Office, Washington, DC.
Coverage: C-List for 100% of the requirements of the Federal Prison System, Central Office, Washington, DC.

Services

Service Type/Location: Document Destruction Services, Dallas Finance Center—Dept of Homeland Security (ICE), 1460 Prudential Drive, Dallas, TX.
NPA: Expanco, Inc., Fort Worth, TX.
Contracting Activity: Dept of Homeland Security, Bureau of Immigration and Customs Enforcement, Mission Support—Dallas Office, Dallas, TX.

Service Type/Location: Car Wash Service, Customs and Border Protection/Indio Border Station, 83–801 Vin Deo Circle, Indio, CA.
NPA: Sheltering Wings Corp., Blythe, CA.
Contracting Activity: Dept. of Homeland Security, Bureau of Customs and Border Protection, Office of Procurement, Washington, DC.

Service Type/Location: Janitorial, U.S. Border Patrol Station: Camp Grip, Devil's Highway, Yuma, AZ.

Service Type/Location: Janitorial and Grounds Maintenance, U.S. Border Patrol Station: Yuma Annex, 4030 S. Avenue A, Yuma, AZ.
NPA: The EXCEL Group, Inc., Yuma, AZ.
Contracting Activity: Dept of Homeland Security, Bureau of Customs and Border Protection, Office of Procurement, Washington, DC.

Service Type/Location: Administrative Support Services, Natick Contracting Division, AMSSB–ACN–S, Natick, MA.
NPA: Work, Incorporated, North Quincy, MA.
Contracting Activity: Dept of the Army, XR W2DF Rdecom ACQ CTR Natick, Natick, MA.

Deletions

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in additional reporting, recordkeeping or other compliance requirements for small entities.
2. If approved, the action may result in authorizing small entities to furnish the products to the Government.
3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products proposed for deletion from the Procurement List.

End of Certification

The following products are proposed for deletion from the Procurement List:

Products

Case, Tent Repair Kit

NSN: 8340–00–270–1334.
NPA: Work Services Corporation, Wichita Falls, TX.
Contracting Activity: Defense Supply Center Philadelphia, Philadelphia, PA.

JR Deluxe Time Management System

NSN: 7530–00–NSH–0095—JR Deluxe Version TMS, Black.

Executive/Personal Time Management System

NSN: 7530–01–537–7818L—DAYMAX System, JR Version, 2009, Black w/Logo.
NSN: 7530–01–537–7819L—DAYMAX System, JR Version, 2009, Navy w/Logo.
NSN: 7530–01–537–7821L—DAYMAX System, JR Version, 2009, Burgundy w/Logo.
NSN: 7530–01–537–7822L—DAYMAX System, IE, 2009, Black w/Logo.
NSN: 7530–01–537–7824L—DAYMAX System, IE, 2009, Navy w/Logo.
NSN: 7530–01–537–7823L—DAYMAX System, IE, 2009, Burgundy w/Logo.
NSN: 7530–01–537–7825L—DAYMAX System, LE, 2009, Black w/Logo.
NSN: 7530–01–537–7826L—DAYMAX System, LE, 2009, Navy w/Logo.
NSN: 7530–01–537–7827L—DAYMAX System, LE, 2009, Burgundy w/Logo.
NSN: 7530–01–537–7805L—DAYMAX System, GLE, 2009, Black w/Logo.
NSN: 7530–01–537–7803L—DAYMAX System, GLE, 2009, Navy w/Logo.
NSN: 7530–01–537–7804L—DAYMAX System, GLE, 2009, Burgundy w/Logo.
NSN: 7530–01–537–7804—DAYMAX System, GLE, 2009, Burgundy.
NSN: 7530–01–537–7803—DAYMAX System, GLE, 2009, Navy.
NSN: 7530–01–537–7802—DAYMAX System, DOD Planner, 2009.
NSN: 7530–01–537–7806—DAYMAX System, Camouflage Planner, 2009.
NSN: 7510–01–537–7808—DAYMAX, IE/LE Month at a View, 2009, 3-hole.
NSN: 7510–01–537–7807—DAYMAX, IE/LE Week at a View, 2009, 3-hole.
NSN: 7510–01–537–7809—DAYMAX, IE/LE Day at a View, 2009, 3-hole.
NSN: 7510–01–537–7815—DAYMAX, GLE Week at a View, 2009, 7-hole.
NSN: 7510–01–537–7810—DAYMAX, GLE Day at a View, 2009, 7-hole.
NSN: 7510–01–537–7812—DAYMAX, Tabbed Monthly, 2009, 3-hole.
NSN: 7510–01–537–7814—DAYMAX, Tabbed Monthly, 2009, 7-hole.
NSN: 7530–01–537–7805—DAYMAX System, GLE, 2009, Black.
NSN: 7530–01–537–7827—DAYMAX System, LE, 2009, Burgundy.
NSN: 7530–01–537–7826—DAYMAX System, LE, 2009, Navy.
NSN: 7530–01–537–7825—DAYMAX System, LE, 2009, Black.
NSN: 7530–01–537–7823—DAYMAX System, IE, 2009, Burgundy.
NSN: 7530–01–537–7824—DAYMAX System, IE, 2009, Navy.
NSN: 7530–01–537–7822—DAYMAX System, IE, 2009, Black.
NSN: 7530–01–537–7821—DAYMAX System, JR Version, 2009, Burgundy.
NSN: 7530–01–537–7819—DAYMAX System, JR Version, 2009, Navy.
NSN: 7530–01–537–7802L—DAYMAX System, DOD Planner w/Logo, 2009.
NSN: 7530–01–537–7806L—DAYMAX System, Camouflage Planner w/Logo, 2009.
NSN: 7530–01–537–7801L—DAYMAX System, Desert, Camouflage Planner w/Logo.
NSN: 7530–01–537–7801—DAYMAX System, Desert, Camouflage Planner, 2009.
NSN: 7510–01–537–7813—DAYMAX, GLE Month at a View, 2009, 7-hole.
NSN: 7530–01–537–7818—DAYMAX System, JR Version, 2009, Black.
NSN: 7530–01–545–3738—Appointment Book Refill, 2009.
NSN: 7510–01–545–3709—Calendar Pad, Type I, 2009.
NSN: 7510–01–545–3773—Calendar Pad, Type II, 2009.
NPA: The Easter Seal Society of Western Pennsylvania, Pittsburgh, PA.

Contracting Activity: GSA/FSS OFC SUP CTR—Paper Products, New York, NY.

Barry S. Lineback,

Director, Business Operations.

[FR Doc. 2010–9442 Filed 4–22–10; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Addition

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Addition to the Procurement List.

SUMMARY: This action adds to the Procurement List products to be furnished by a nonprofit agency employing persons who are blind or have other severe disabilities.

DATES: *Effective Date:* 5/24/2010.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Barry S. Lineback, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION:

Addition

On 2/26/2010 (75 FR 8927), the Committee for Purchase From People Who Are Blind or Severely Disabled published notice of the proposed addition to the Procurement List.

After consideration of the material presented to it concerning capability of a qualified nonprofit agency to provide the products and impact of the addition on the current or most recent contractors, the Committee has determined that the products listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products to the Government.

2. The action will result in authorizing small entities to furnish the products to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products proposed for addition to the Procurement List.

End of Certification

Accordingly, the following products are added to the Procurement List:

Products

NSN: 8955–01–E10–1648—Beverage Base, Non-nutritive Sweetened, Lemonade.

NSN: 8955–01–E10–1650—Beverage Base, Non-nutritive Sweetened, Raspberry Ice.

NPA: Bosma Industries for the Blind, Inc., Indianapolis, IN.

Contracting Activity: Defense Logistics Agency, Defense Supply Center Philadelphia, Philadelphia, PA.

Coverage: C-List for 100% the government requirements for the Defense Supply Center Philadelphia, Philadelphia, PA.

Barry S. Lineback,

Director, Business Operations.

[FR Doc. 2010–9443 Filed 4–22–10; 8:45 am]

BILLING CODE 6353–01–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

TIME AND DATE: 2 p.m., Wednesday, May 19, 2010.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Sauntia S. Warfield, 202–418–5084.

Sauntia S. Warfield,

Assistant Secretary of the Commission.

[FR Doc. 2010–9592 Filed 4–21–10; 4:15 pm]

BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

TIME AND DATE: 11 a.m., Friday, May 28, 2010.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Sauntia S. Warfield, 202–418–5084.

Sauntia S. Warfield,

Assistant Secretary of the Commission.

[FR Doc. 2010–9598 Filed 4–21–10; 4:15 pm]

BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

TIME AND DATE: 11 a.m., Friday May 7, 2010.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Sauntia S. Warfield, 202–418–5084.

Sauntia S. Warfield,

Assistant Secretary of the Commission.

[FR Doc. 2010–9601 Filed 4–21–10; 4:15 pm]

BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

TIME AND DATE: 11 a.m., Friday, May 14, 2010.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Sauntia S. Warfield, 202–418–5084.

Sauntia S. Warfield,

Assistant Secretary of the Commission.

[FR Doc. 2010–9602 Filed 4–21–10; 4:15 pm]

BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

TIME AND DATE: 11 a.m., May 21, 2010.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Sauntia S. Warfield, 202–418–5084.

Sauntia S. Warfield,

Assistant Secretary of the Commission.

[FR Doc. 2010–9604 Filed 4–21–10; 4:15 pm]

BILLING CODE 6351–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DOD–2010–OS–0055]

Proposed Collection; Comment Request

AGENCY: Defense Finance and Accounting Service, DoD.

ACTION: Notice.

SUMMARY: In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Defense Finance and Accounting Service announces the proposed extension of a public information collection and seeks public comment on the provisions thereof. Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by June 22, 2010.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Defense Finance and Accounting Service—Cleveland, Retired and Annuitant Pay, ATTN: Mr. Larry Sharpley, 1240 East Ninth Street, Cleveland, OH 44199, or call Mr. Larry Sharpley, 216–204–1677.

Title, Associated Form, and OMB Number: Application for Trusteeship, DD Form 2827, OMB License 0730–0013.

Needs and Uses: This form is used to report on the administration of the funds received on behalf of a mentally incompetent member of the uniformed services pursuant to 37 U.S.C. 602–604.

Affected Public: Individuals.

Annual Burden Hours: 18.75 hours.

Number of Respondents: 75.

Responses per Respondent: 1.

Average Burden per Response: 15 minutes.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

When members of the uniformed services are declared mentally incompetent, the need arises to have a trustee appointed to act on their behalf with regard to military pay matters. Individuals will complete this form to apply for appointment as a trustee on behalf of the member. The requirement to complete this form helps alleviate the opportunity for fraud, waste and abuse of Government funds and member's benefits.

Dated: April 19, 2010.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2010–9391 Filed 4–22–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DOD–2010–OS–0054]

Proposed Collection; Comment Request

AGENCY: Defense Finance and Accounting Service, DoD.

ACTION: Notice.

SUMMARY: In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Defense Finance and Accounting Service announces the proposed extension of a public information collection and seeks public comment on the provisions thereof. Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by June 22, 2010.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Defense Finance and Accounting Service—Cleveland, Retired and Annuitant Pay, *Attn:* Mr. Larry Sharpley, 1240 East Ninth Street, Cleveland, OH 44199, or call Mr. Larry Sharpley, 216–204–1677.

Title, Associated Form, and OMB Number: Trustee Report, DD Form 2826, OMB License 0730–0012.

Needs and Uses: This form is used to report on the administration of the funds received on behalf of a mentally incompetent member of the uniformed services pursuant to 37 U.S.C. 602–604.

Affected Public: Individuals.

Annual Burden Hours: 300 hours.

Number of Respondents: 600.

Responses per Respondent: 1.

Average Burden per Response: 30 minutes.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

When members of the uniformed services are declared mentally

incompetent, the need arises to have a trustee appointed to act on their behalf with regard to military pay matters. Trustees will complete this form to report the administration of the funds received on behalf of the member. The requirement to complete this form helps alleviate the opportunity for fraud, waste and abuse of Government funds and member's benefits.

Dated: April 19, 2010.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2010–9387 Filed 4–22–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DOD–2010–OS–0053]

Privacy Act of 1974; Systems of Records

AGENCY: Defense Finance and Accounting Service, DoD.

ACTION: Notice to alter a system of records.

SUMMARY: The Defense Finance and Accounting Service (DFAS) is proposing to alter a system of records notice in its inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This action will be effective without further notice on May 24, 2010 unless comments are received that would result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Fasham at (215) 522–5225.

SUPPLEMENTARY INFORMATION: The Defense Finance and Accounting Service notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the FOIA/PA Program Manager, Corporate Communications and Legislative Liaison, Defense Finance and Accounting Service, DFAS–HKC/IN, 8899 E. 56th Avenue, Indianapolis, IN 46249–0150.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on April 12, 2010, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated February 8, 1996 (February 20, 2996; 61 FR 6427).

Dated: April 19, 2010.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

T7333

SYSTEM NAME:

Travel Payment System (June 28, 2007; 72 FR 35436).

CHANGES:

* * * * *

SYSTEM NAME:

Delete entry and replace with "Integrated Automated Travel System (IATS)."

SYSTEM LOCATION:

Delete entry and replace with "Defense Finance and Accounting Service—Indianapolis, Chief Information Office (CIO) Systems Management, Military/Civilian Pay Systems Division, Payroll Support Systems Branch, Travel Systems Office, Attn: DFAS–IN/HTSBC, 8899 E. 56th Street, Indianapolis, IN 46249–0160.

To obtain a list of all of the user site locations please contact the above office. Users consist of DoD Components, such as Defense Finance and Accounting Service; Departments of the Army; Department of the Navy; Department of the Air Force; United States Marine Corps; and Defense Logistics Agency."

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with "DoD civilian personnel; Active Duty; Reserve; National Guard; former military members; retired military members; dependents of military personnel; and foreign nationals residing in the United States who are in receipt of official government travel orders."

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with "Individual's name, Social Security Number (SSN), bank routing number, bank account number, travel vouchers and subvouchers, travel allowance payment lists, travel voucher or subvoucher continuation sheets, vouchers and claims for dependent travel, dislocation or trailer allowances, certificate of non-availability of government quarters and mess, multiple travel payments list, travel payment card, requests for fiscal information concerning transportation requests, bills of lading, meal tickets, public vouchers for fees and claim for reimbursement for expenditures on official business, claim for fees and mileage of witness, certifications for travel under classified orders, travel card envelopes, and statements of adverse effect utilization of government facilities."

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with "5 U.S.C. 301, Departmental Regulations; 37 U.S.C. 404, Travel and transportation allowances: General; DoD Directive 5154.29, DoD Pay and Allowances Policy and Procedures; Department of Defense Financial Management Regulation (DoDFMR) 7000.14–R, Volume 9; and E.O. 9397 (SSN), as amended."

PURPOSE(S):

Delete entry and replace with "To provide an automated means for computing reimbursements for individuals for expenses incurred incident to travel for official Government business purposes and to account for such payments."

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Delete entry and replace with "In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, these records contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the Internal Revenue Service to provide information concerning the payment of travel allowances which are subject to Federal income tax.

To the Federal Reserve Bank and other banking facilities to make travel payments or for resolving problems associated with these payments.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Delete entry and replace with "Disclosures pursuant to 5 U.S.C. 552a(b)(12) may be made from this system to 'consumer reporting agencies' as defined in the Fair Credit Reporting Act, 15 U.S.C. 1681a(f) or the Federal Claims Collection Act of 1966, 31 U.S.C. 3701(a)(3). The purpose of the disclosure is to aid in the collection of outstanding debts owed to the Federal Government; typically, to provide an incentive for debtors to repay delinquent Federal Government debts by making these debts part of their credit records.

The disclosure is limited to information necessary to establish the identity of the individual, including name, address, and taxpayer identification number (Social Security Number (SSN)); the amount, status, and history of the claim; and the agency or program under which the claim arose for the sole purpose of allowing the consumer reporting agency to prepare a commercial credit report.

The DoD 'Blanket Routine Uses' set forth at the beginning of the DFAS compilation of systems of records notices apply to this system of records."

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with "Records may be temporary in nature and destroyed when superseded, obsolete, no longer needed, or cut off at the end of the fiscal year and destroyed 6 years and 3 months after cutoff. Records are destroyed by degaussing, burning, or shredding."

SYSTEMS MANAGER(S) AND ADDRESS:

Delete entry and replace with "Systems Manager, Integrated Automated Travel System (IATS), Defense Finance and Accounting Service Indianapolis, Chief Information Office (CIO) Systems Management, Military/Civilian Pay Systems Division, Payroll Support Systems Branch, Travel Systems Office, ATTN: DFAS–IN/HTSBCB, 8899 E 56th Street, Indianapolis, IN 46249–0160."

NOTIFICATION PROCEDURES:

Delete entry and replace with "Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the Defense Finance and Accounting Service, Freedom of Information/Privacy Act Program Manager, Corporate Communications and Legislative Liaison, 8899 E. 56th Street, Indianapolis, IN 46249–0150.

Written request should include full name, Social Security Number (SSN), current address, and telephone number."

RECORD ACCESS PROCEDURES:

Delete entry and replace with "Individuals seeking access to information about themselves in this system of records should address written inquiries to the Defense Finance and Accounting Service, Freedom of Information/Privacy Act Program Manager, Corporate Communications and Legislative Liaison, 8899 E. 56th Street, Indianapolis, IN 46429–0150.

Written request should include full name, Social Security Number (SSN), current address, and telephone number."

CONTESTING RECORD PROCEDURES:

Delete entry and replace with "The DFAS rules for accessing records, for contesting contents and appealing initial agency determinations are published in DFAS Regulation 5400.11–R; 32 CFR part 324; or may be obtained from the system manager."

RECORD SOURCE CATEGORIES:

Delete entry and replace with "The individual; DoD Components that include the Departments of the Army; Navy; United States Air Force; Marine Corps; Air Force Academy; and Defense Logistics Agency."

* * * * *

T7333

SYSTEM NAME:

Integrated Automated Travel System (IATS).

SYSTEM LOCATIONS:

Defense Finance and Accounting Service—Indianapolis, Chief Information Office (CIO) Systems Management, Military/Civilian Pay Systems Division, Payroll Support Systems Branch, Travel Systems Office, Attn: DFAS–IN/HTSBC, 8899 E. 56th Street, Indianapolis, IN 46249–0160.

To obtain a list of all of the user site locations please contact the above office. Users consist of DoD Components, such as Defense Finance and Accounting Service; Department of the Army; Department of the Navy; Department of the Air Force; United States Marine Corps; and Defense Logistics Agency.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

DoD civilian personnel; active duty; Reserve; National Guard; former military members; retired military members; dependents of military personnel; and foreign nationals residing in the United States who are in receipt of official government travel orders.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's name, Social Security Number (SSN), bank routing number, bank account number, travel vouchers and subvouchers, travel allowance payment lists, travel voucher or subvoucher continuation sheets, vouchers and claims for dependent travel, dislocation or trailer allowances, certificate of non-availability of government quarters and mess, multiple travel payments list, travel payment card, requests for fiscal information concerning transportation requests, bills of lading, meal tickets, public vouchers for fees and claim for reimbursement for expenditures on official business, claim for fees and mileage of witness, certifications for travel under classified orders, travel card envelopes, and statements of adverse effect utilization of government facilities.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Departmental Regulations; 37 U.S.C. 404, Travel and transportation allowances; general; DoD Directive 5154.29, DoD Pay and Allowances Policy and Procedures; Department of Defense Financial Management Regulation (DoDFMR) 7000.14.R, Volume 9; and E.O. 9397(SSN), as amended.

PURPOSE(S):

To provide an automated means for computing reimbursements for individuals for expenses incurred incident to travel for official Government business purposes and to account for such payments.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, these records contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the Internal Revenue Service to provide information concerning the payment of travel allowances which are subject to Federal income tax.

To the Federal Reserve Bank and other banking facilities to make travel payments or for resolving problems associated with these payments.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12) may be made from this

system to 'consumer reporting agencies' as defined in the Fair Credit Reporting Act, 15 U.S.C. 1681a(f) or the Federal Claims Collection Act of 1966, 31 U.S.C. 3701(a)(3). The purpose of the disclosure is to aid in the collection of outstanding debts owed to the Federal Government; typically, to provide an incentive for debtors to repay delinquent Federal Government debts by making these debts part of their credit records.

The disclosure is limited to information necessary to establish the identity of the individual, including name, address, and taxpayer identification number (Social Security Number (SSN)); the amount, status, and history of the claim; and the agency or program under which the claim arose for the sole purpose of allowing the consumer reporting agency to prepare a commercial credit report.

The DoD 'Blanket Routine Uses' published at the beginning of the DFAS compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders and electronic storage media.

RETRIEVABILITY:

Retrieved by individual's name and/or Social Security Number (SSN).

SAFEGUARDS:

Records are accessed by individuals responsible for servicing the record and authorized to use the record system in the performance of their official duties. All individuals are properly screened and cleared for need-to-know. Additionally, at most user sites, records are in office buildings protected by guards and controlled by screening of personnel and registering of visitors.

RETENTION AND DISPOSAL:

Records may be temporary in nature and destroyed when superseded, obsolete, no longer needed, or cut off at the end of the fiscal year and destroyed 6 years and 3 months after cutoff. Records are destroyed by degaussing, burning, or shredding.

SYSTEM MANAGER(S) AND ADDRESS:

Systems Manager Integrated Automated Travel System (IATS), Defense Finance and Accounting Service Indianapolis, Chief Information Office (CIO) Systems Management, Military/Civilian Pay Systems Division, Payroll Support Systems Branch, Travel Systems Office, ATTN: DFAS–IN/HTSBCB, 8899 E. 56th Street, Indianapolis, IN 46249–0160.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries Defense Finance and Accounting Service, Freedom of Information/Privacy Act Program Manager, Corporate Communications and Legislative Liaison, 8899 E. 56th Street, Indianapolis, IN 46249–0150.

Written request should include full name, Social Security Number (SSN), current address and telephone number.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves in this system of records should address written inquiries to the Defense Finance and Accounting Service, Freedom of Information/Privacy Act Program Manager, Corporate Communications and Legislative Liaison, 8899 E. 56th Street, Indianapolis, IN 46429–0150.

Written request should include full name, Social Security Number (SSN), current address and telephone number.

CONTESTING RECORD PROCEDURES:

The DFAS rules for accessing records, for contesting contents and appealing initial agency determinations are published in DFAS Regulation 5400.11–R; 32 CFR part 324; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

The individual; DoD Components that include the Departments of the Army; Navy; United States Air Force; Marine Corps; Air Force Academy; and Defense Logistics Agency.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 2010–9386 Filed 4–22–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DOD–2010–OS–0052]

Privacy Act of 1974; Systems of Records

AGENCY: National Security Agency/Central Security Service, DoD.

ACTION: Notice to amend a system of records.

SUMMARY: The National Security Agency/Central Security Service is proposing to amend a system of records notice in its existing inventory of records systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: The changes will be effective on May 24, 2010 unless comments are received that would result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Ms. Anne Hill at (301) 688–6527.

SUPPLEMENTARY INFORMATION: The National Security Agency/Central Security Service systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the National Security Agency/Central Security Service, Freedom of Information Act and Privacy Act Office, 9800 Savage Road, Suite 6248, Ft. George G. Meade, MD 20755–6248.

The specific changes to the records systems being amended are set forth below followed by the notices, as amended, published in their entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: April 19, 2010.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

GNSA 20

SYSTEM NAME:

NSA Police Operational Files (August 9, 2004; 69 FR 48183).

CHANGES:

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with "National Security Agency Act of 1959,

Public Law 86–36 (50 U.S.C. 402 note); 40 U.S.C. 1315, Law enforcement authority of Secretary of Homeland Security for protection of public property; 32 CFR Part 228, Security Protective Force; E.O. 12333, as amended, United States Intelligence Activities, DoD–D 5100.20, National Security Agency/Central Security Service; DoD–I 5200.8, Security of DoD Installations and Resources; DoD–R 5240.1, Procedures Governing the Activities of DoD Intelligence Components that Affect United States Persons; NSA/CSS Policy 5–7, Badge Identification System; NSA/CSS Policy 5–8, Use and control of firearms/Use of Force; E.O. 9397(SSN), as amended."

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with "Associate Director for Security & Counterintelligence, National Security Agency/Central Security Service, Ft. George G. Meade, MD 20755–6000."

NOTIFICATION PROCEDURE:

Delete entry and replace with "Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the National Security Agency/Central Security Service, Freedom of Information Act/Privacy Act Office, 9800 Savage Road, Ft. George G. Meade, MD 20755–6000.

Written inquiries should contain the individual's full name, Social Security Number (SSN) and mailing address."

RECORD ACCESS PROCEDURES:

Delete entry and replace with "Individuals seeking access to information about themselves contained in this system should address written inquiries to the National Security Agency/Central Security Service, Freedom of Information Act/Privacy Act Office, 9800 Savage Road, Ft. George G. Meade, MD 20755–6000.

Written inquiries should contain the individual's full name, Social Security Number (SSN) and mailing address."

CONTESTING RECORD PROCEDURES:

Delete entry and replace with "The NSA/CSS rules for contesting contents and appealing initial determinations are published at 32 CFR part 322 or may be obtained by written request addressed to the National Security Agency/Central Security Service, Freedom of Information Act/Privacy Act Office, 9800 Savage Road, Ft. George G. Meade, MD 20755–6000."

* * * * *

GNSA 2

SYSTEM NAME:

NSA Police Operational Files.

SYSTEM LOCATION:

National Security Agency/Central Security Service, Ft. George G. Meade, MD 20755–6000.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

NSA Police Officers; civilian DoD employees; military assignees; employees of other Federal agencies or military departments; contractor employees, non-appropriated fund instrumentality employees; family members of the afore-mentioned categories; owners or operators of vehicles entering or attempting to enter on or near NSA occupied areas; individuals arrested on or near NSA occupied areas; individuals suspected of posing a threat to the safety of NSA persons or property; and individuals cited for violations of NSA security regulations.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, Social Security Number (SSN), address, organization (or affiliation), dates of visit, type of badge issued, vehicle license plate number, phone number, date and place of birth, work center assigned, case number; information from Police inventory control documents (to include weapon and radio serial numbers, police officer's name, and police officer's assigned shift), Incident Reports, Security Information Reports, reports of security violations, arrest reports, CTC vehicle registration files, accident reports, suspect data file/reports, missing property reports, traffic/parking tickets, access control information, equipment inspection logs and similar documents or files.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

National Security Agency Act of 1959, Public Law 86–36 (50 U.S.C. 402 note); 40 U.S.C. 1315, Law enforcement authority of Secretary of Homeland Security for protection of public property; 32 CFR Part 228, Security Protective Force; E.O. 12333, as amended, United States Intelligence Activities, DoD–D 5100.20, National Security Agency/Central Security Service; DoD–I 5200.8, Security of DoD Installations and Resources; DoD–R 5240.1, Procedures Governing the Activities of DoD Intelligence Components that Affect United States Persons; NSA/CSS Policy 5–7, Badge Identification System; NSA/CSS Policy 5–8, Use and control of firearms/Use of Force; E.O. 9397(SSN), as amended.

PURPOSE(S):

To maintain records relating to the operations of the NSA Police for the purpose of providing reports for and on personnel and badge information of the current tenants of NSA/CSS facilities; to create and track the status of visit requests and the issuance of visitor badges; to identify employees and visitors at the entrances of the gated facility; to track inside the NSA/CSS facility authorized NSA/CSS employee and visitor badges as they are used to pass through automated turnstile system, access office suites and other work areas; to track any unsolicited contacts with the NSA/CSS; to track the investigation and determination of any wrongdoing or criminal activities by NSA/CSS employees or facility visitors; and to compile such statistics and reports on the number of unauthorized attempts to access NSA facilities, the number of security violations and arrests, the number of visitors, and reports of a similar nature.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, these records contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To Federal agencies to facilitate security, employment, detail, liaison, or contractual determinations as required, and in furtherance of, NSA police operations.

To Federal agencies involved in the protection of intelligence sources and methods, such as in counterintelligence investigations, to facilitate such protection.

The DoD 'Blanket Routine Uses'' published at the beginning of the NSA/CSS's compilation of record systems also apply to this record system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper files and electronic storage media.

RETRIEVABILITY:

By name, organization (or affiliation), dates of visit, type of badge issued, Social Security Number (SSN), vehicle license plate number, home address and phone number, date and place of birth, work center assigned, subject matter, and case number.

SAFEGUARDS:

Secured by a series of guarded pedestrian gates and checkpoints. Access to facilities is limited to security-cleared personnel and escorted visitors only. With the facilities themselves, access to paper and computer printouts are controlled by limited-access facilities and lockable containers. Access to electronic means is controlled by computer password protection.

RETENTION AND DISPOSAL:

Records are periodically reviewed for retention. Records having no evidential, informational, or historical value or not required to be permanently retained are destroyed. Visitor passes and campus access files are destroyed when 15 years old. Physical security compromise reports are destroyed 10 years from time of incident. Files relating to exercise of police functions are destroyed when three years old. Reports relating to arrests are destroyed when two years old. Routine police investigations and Guard Service Control files are destroyed when one year old. Destruction is by pulping, burning, shredding, or erasure or destruction of magnetic media.

SYSTEM MANAGER(S) AND ADDRESS:

Associate Director for Security & Counterintelligence, National Security Agency/Central Security Service, Ft. George G. Meade, MD 20755–6000.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the National Security Agency/Central Security Service, Freedom of Information Act/Privacy Act Office, 9800 Savage Road, Ft. George G. Meade, MD 20755–6000.

Written inquiries should contain the individual's full name, Social Security Number (SSN) and mailing address.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the National Security Agency/Central Security Service, Freedom of Information Act/Privacy Act Office, 9800 Savage Road, Ft. George G. Meade, MD 20755–6000.

Written inquiries should contain the individual's full name, Social Security Number (SSN) and mailing address.

CONTESTING RECORD PROCEDURES:

The NSA/CSS rules for contesting contents and appealing initial determinations are published at 32 CFR part 322 or may be obtained by written request addressed to the National Security Agency/Central Security Service, Freedom of Information Act/Privacy Act Office, 9800 Savage Road, Ft. George G. Meade, MD 20755–6000.

RECORD SOURCE CATEGORIES:

Individuals themselves; victims, witnesses, investigators, Security Protective Force, and other Federal or State agencies and organizations.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Investigatory material compiled for law enforcement purposes, other than material within the scope of subsection 5 U.S.C. 552a(j)(2), may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of such information, the individual will be provided access to the information exempt to the extent that disclosure would reveal the identity of a confidential source. **Note:** When claimed, this exemption allows limited protection of investigative reports maintained in a system of records used in personnel or administrative actions.

Records maintained solely for statistical research or program evaluation purposes and which are not used to make decisions on the rights, benefits, or entitlement of an individual except for census records which may be disclosed under 13 U.S.C. 8, may be exempt pursuant to 5 U.S.C. 552a(k)(4).

Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source. This provision allows protection of confidential sources used in background investigations, employment inquiries, and similar inquiries that are for personnel screening to determine suitability, eligibility, or qualifications.

An exemption rule for this exemption has been promulgated in accordance with requirements of 5 U.S.C. 553(b)(1), (2) and (3), (c) and (e) and published in 32 CFR part 322. For additional information contact Ms. Anne Hill, Privacy Act Officer, NSA/CSS Freedom of Information Act/Privacy Act Office, 9800 Savage Road, Suite 6248, Ft. George G. Meade, MD 20766–6248.

[FR Doc. 2010–9393 Filed 4–22–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army; U.S. Army Corps of Engineers

Notice of Intent To Prepare an Environmental Impact Statement/Environmental Impact Report for Phase 3 of Reclamation District No. 17 100-Year Levee Seepage Area Project, San Joaquin County, CA

AGENCY: Department of the Army, U.S. Army Corps of Engineers; DoD.

ACTION: Notice of Intent.

SUMMARY: The action being taken is the preparation of an environmental impact statement/environmental impact report (EIS/EIR) for Phase 3 of Reclamation District No. 17's (RD 17) 100-year Levee Seepage Area Project (LSAP). To implement Phase 3 of the LSAP, RD 17 is requesting permission from the U.S. Army Corps of Engineers pursuant to Section 14 of the Rivers and Harbors Act of 1899 (33 U.S.C. 408, referred to as "Section 408") for alteration of Federal project levees and Section 404 of the Clean Water Act (33 U.S.C. 1344) for placement of fill into jurisdictional waters of the United States. Under Section 408, the Chief of Engineers may grant permission to alter an existing Federal project if it is not injurious to the public interest and does not impair the usefulness of the project. Portions of the RD 17 levee system including the section of levee along the south bank of French Camp Slough, along the east bank of the San Joaquin River, and along the northerly bank of Walthall Slough are Federal project levees. Therefore, Section 408 permission is required for structural improvements to these portions of the RD 17 levee system and would be issued to the Central Valley Flood Protection Board. Under Section 404, the District Engineer permits the discharge of dredged or fill material into waters of the United States if the discharge meets the requirements of the Environmental Protection Agency's 404(b)(1) guidelines and is not contrary to the public interest. As the landside levee improvements would result in a discharge of fill material into waters of the United States, permission under Section 404 is needed and would be issued directly to RD 17. RD 17 is located in San Joaquin County, California in the cities of Stockton, Lathrop, and Manteca.

DATES: A public scoping meeting will be held on May 11, 2010, from 2 p.m. until 5 p.m. (*see* **ADDRESSES**). Send written comments by May 24, 2010.

ADDRESSES: Public Scoping Meeting, City Council Chambers, Lathrop City

Hall, 390 Towne Centre Drive, Lathrop, CA. Send written comments and suggestions concerning this study to Ms. Sarah Ross, U.S. Army Corps of Engineers, Sacramento District, Attn: Planning Division (CESPK–PD–RA), 1325 J Street, Sacramento, CA 95814–2922. Requests to be placed on the mailing list should also be sent to this address.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and EIS/EIR should be addressed to Ms. Sarah Ross at (916) 557–5256, by e-mail *Sarah.R.Ross@usace.army.mil,* or by mail (*see* **ADDRESSES**).

SUPPLEMENTARY INFORMATION:

1. *Proposed Action.* The U.S. Army Corps of Engineers is preparing an EIS/EIR to analyze the impacts of the work proposed by RD 17 to implement Phase 3 of the LSAP. The overall purpose of the LSAP is to reduce the risk of flooding by implementing improvements to portions of the approximately 19-mile RD 17 levee system to meet applicable Federal and State design recommendations for levees protecting urban areas. Phase 3 is a component of the LSAP proposed by RD 17 and would construct landside improvements to 23 subreaches of 10 levee reaches involving approximately 8.4 miles of the RD 17 levee system starting near the southern boundary of the city of Stockton, through the city of Lathrop, and to the southern boundary of the city of Manteca.

2. *Alternatives.* The EIS/EIR will consider several alternatives for reducing flood damage. Alternatives analyzed during the investigation will consist of a combination of one or more measures to reduce the risk of flooding. These measures include installing cutoff walls, constructing seepage berms, and constructing setback levees.

3. *Scoping Process.*

a. A public scoping meeting will be held on May 11, 2010, to present information to the public and to receive comments from the public. This meeting will begin a process to solicit input from the public as well as Federal, State, and local agencies concerned with Phase 3 of the LSAP.

b. Significant issues to be analyzed in depth in the EIS/EIR include effects on agricultural resources; land use; geology and soils; hydrology and hydraulics; water quality; biological resources (*i.e.,* fisheries, vegetation and wildlife resources, special-status species, and wetlands and other waters of the United States); cultural resources; transportation and circulation; air quality; noise; visual resources; utilities and service systems; hazards and hazardous materials; socioeconomics, population, and housing; and environmental justice. The EIS/EIR will also evaluate the cumulative effects of the proposed LSAP (including past LSAP Phases 1 and 2) and other related projects in the study area.

c. The U.S. Army Corps of Engineers is consulting with the State Historic Preservation Officer to comply with the National Historic Preservation Act; the U.S. Fish and Wildlife Service and the National Marine Fisheries Service to provide a biological opinion; and with the U.S. Fish and Wildlife Service to provide a Fish and Wildlife Coordination Act report.

d. A 45-day public review period will be provided for individuals and agencies to review and comment on the draft EIS/EIR. All interested parties are encouraged to respond to this notice and provide a current address if they wish to be notified of the draft EIS/EIR circulation.

4. *Availability.* The draft EIS/EIR is scheduled to be available for public review and comment in fall 2010.

Dated: April 15, 2010.

Thomas Chapman,

Colonel, U.S. Army, District Commander.

[FR Doc. 2010–9447 Filed 4–22–10; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID USA–2010–0006]

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DoD.

ACTION: Notice to alter a system of records.

SUMMARY: Department of the Army is proposing to alter a system of records notices in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on May 24, 2010 unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Mr. Leroy Jones at (703) 428–6185.

SUPPLEMENTARY INFORMATION: Department of the Army notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the Department of the Army, Privacy Office, U.S. Army Records Management and Declassification Agency, 7701 Telegraph Road, Casey Building, Suite 144, Alexandria, VA 22325–3905.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on April 9, 2010, to the House Committee on Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, "Federal Agency Responsibilities for Maintaining Records About Individuals" (February 20, 1996; 61 FR 6427).

Dated: April 19, 2010.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

A0600–8–101

SYSTEM NAME:

Military and Civilian Out-Processing Files (May 11, 2004; 69 FR 26080)

* * * * *

CHANGES:

SYSTEM NAME:

Delete entry and replace with "Installation Support Module Records."

SYSTEM LOCATION:

Delete entry and replace with "For systems maintained by Program Executive Office Enterprise Information Systems:

Project Director for Installation Management Systems—Army 200 Stovall Street, Alexandria, Virginia, 22332–6200.

For application and database servers that support the Installation Support Modules system:

U.S. Army Signal Network Enterprise Center—Fort Belvoir 10105 Gridley Road, Fort Belvoir, VA 22060–5840.

U.S. Army Signal Network Enterprise Center—Fort Huachuca 2133 Cushing Street, Bldg 61801, Fort Huachuca, AZ 85613–7008.

Individual Installation Support Modules application:

Central Issue Facility (CIF): Property book offices and Central Issue Facilities' supply rooms at most Army activities world-wide, Active Army training activities, National Guard Armories, and U.S. Army Reserve units.

In/Out Processing (In/Out Proc): Administrative offices and Army Staff agencies, field operating commands, installations and/or activities Army wide.

Transition Processing (TRANSPROC): Transition Centers at Active Army, Army National Guard and U.S. Army Reserve Installations world-wide.

Personnel Locator: Segments are maintained by mailrooms and/or Army telephone information operators at Headquarters, Department of the Army, Staff and field operating agencies, commands, installations and activities.

Official mailing addresses are published as an appendix to the Army's compilation of systems of records notices.

Education Management Information System (EDMIS): Education Centers at Army installations and a centralized automated education registry transcript system is maintained Army Human Resources Command, 200 Stovall Street, Alexandria, VA 22332–6200."

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with "Active duty Army, Army Reserve and Army National Guard personnel and in some cases their family members.

Additionally, individual applications cover the following categories:

Central Issue Facility (CIF): Civilian or other than Army military personnel who assume temporary custody or responsibility for United States Government property at Army.

Installation's Central Issue Facilities worldwide. Personnel Locator (PERSLOC): Department of the Army civilian employees, and in some instances their dependents.

Education Management Information System (EDMIS): Civilian employees, and in some instances their dependents."

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with "Name, other names used, Social Security Number (SSN), citizenship, gender, race/ethnicity, birth date, marital status, financial information, medical information, law enforcement information, employment information, military records, education information, Army Knowledge Online (AKO)user id, living or deceased, military/civilian/foreign national skills. In addition to the data elements, individual applications maintain the following data:

Central Issue Facility (CIF): Clothing/Equipment issued to Soldiers or other than Army military personnel who assume temporary custody or responsibility for United States Government property.

In/Out Processing (In/Out Proc): Soldiers' personal cell phone number, home telephone number, personal e-mail address, mailing/home address, emergency contact, mother's maiden name, spouse information, and child information.

Transition Processing (TRANSPROC): Soldiers' personal cell phone number, home telephone number, personal e-mail address, mailing/home address, emergency contact, mother's maiden name, spouse information, child information, disability information, and awards.

Personnel Locator (PERSLOC): Soldiers' mailing/home address, emergency contact.

Education Management Information System (EDMIS): Soldiers' personal cell phone number, home telephone number, personal e-mail address, mailing/home address, emergency contact, certifications/licensures."

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with "5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 3013, Secretary of the Army; 10 U.S.C. 136, Under Secretary of Defense for Personnel and Readiness; DoD Instruction 1322.25, Voluntary Education Programs; DoD Instruction 1336.01, Certificate of Release or Discharge from Active Duty (DD Form 214/215 Series); Army Regulation 735–5, Policies and Procedures for Property Accountability; and E.O. 9397 (SSN), as amended."

PURPOSE(S):

Delete entry and replace with "Provides an automated business practice for processing Soldiers, and selected civilians, to include focusing on Soldier readiness activities, in/out processing of Soldiers and family members, personnel location, management of educational records, issue and turn-in of organizational clothing and individual equipment, and Soldier transition."

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Delete entry and replace with "In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, these records contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

Education Management Information System (EDMIS): Information is disclosed to the Department of Labor, Bureau of Apprenticeship and Training for individuals enrolled in an Army Apprenticeship Program for the purpose of identifying Soldier's education and work qualifications for entry into the Department of Labor's Registered Apprenticeship Programs. Department of Labor's Registered Apprenticeship Programs help mobilize America's workforce with structured, on-the-job learning in traditional industries such as construction and manufacturing, as well as new emerging industries such as health care, information technology, energy, telecommunications and more.

Transition Processing (TRANSPROC): DD Form 214, Certificate of Release or Discharge from Active Duty, for Soldiers separating from the active Army is forwarded to Department of Veterans Affairs, Department of Labor, and State Directors of Veterans Affairs for the purpose of obtaining veterans benefits, re-employment rights and unemployment insurance."

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Delete entry and replace with "Electronic storage media."

RETRIEVABILITY:

Delete entry and replace with "All applications are retrieved by individual's name and Social Security Number (SSN)."

SAFEGUARDS:

Delete entry and replace with "Records are protected from unauthorized disclosure by storage in areas accessible only to authorized personnel within buildings secured by locks or guards. The server hosting the database is also protected behind firewalls and uses encryption during any data transfer. Access to data by the users is restricted by the Web application itself and is further limited

by user identification/authentication and the user role, which defines user privileges and functions within the application."

RETENTION AND DISPOSAL:

Delete entry and replace with "The characteristics of the Installation Support Modules applications require that data is kept on-line in the automated system for variable periods of time ranging from a few days after generation to indefinitely. Disposal of records is accomplished by purging them from the automated ISM system.

Individual ISM application records are maintained and disposed of in accordance with National Archives and Records Administration guidelines and guidance from the Headquarters Department of the Army Subject Area Functional Proponents as follows:

Central Issue Facility (CIF): CIF data is maintained on-line by the Installation Support Modules system for a period of two or more years (data creation through the end of the fiscal year plus two more fiscal years). At the end of the period (2+ years), records are automatically deleted by purging.

In/Out Processing (In/Out Proc): In-processing checklists (automated) are purged from the system by the Installation In-Processing operator upon completion of in-processing by the Soldier.

Transition Processing (TRANSPROC): Historical data pertaining to Soldiers separating from Active Duty will be maintained for a period of two years from separation date. After two years from separation date, the records are automatically deleted by purging. The records generated by Army Review Board Agency are maintained indefinitely. Copies of separation records (DD Form 214/215 and orders) are maintained in another Army automated system (iPERMS) for a period of 62 years at which time they are automatically purged from the iPERMS. The retention period for records in iPERMS is 62 years after the date of retirement, discharge, death in service, or 62 years after the completion of military service obligation. The date for transfer of ownership of the iPERMS records to the National Archives is 62 years.

Personnel Locator (PERSLOC): PERSLOC requires that the Individual Address Record information for departing soldiers be maintained on line for a period of twelve months and one day after the Soldier departs the Installation, then the records are automatically purged.

Education Management Information Management System (EDMIS): Soldier education data will be retained in active processing for the length of a Soldier's active duty tour, plus five years. After that period of time, the records are purged. Additionally, when the ISM system's hardware reaches end of life, the computer's hard drive is destroyed prior to sending the equipment to the Defense Reutilization and Marketing Office.

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with "Project Director, Installation Management Systems-Army, 200 Stovall Street, Alexandria, VA 22332–6200.

Proponents for individual applications are:

Central Issue Facility (CIF): Deputy Chief of Staff for Logistics, Headquarters, Department of the Army, 500 Army Pentagon, Washington, DC 20310–0500.

In/Out Processing: Commander, U.S. Army Human Resources Command, Out-Processing Functional Proponent, 200 Stovall Street, Alexandria, Virginia 22332–0500.

Transition Processing (TRANSPROC): Commander, U.S. Army Human Resources Command, Retirements and Separations Branch, 200 Stovall Street, Alexandria, VA 22332–0500.

Personnel Locator (PERSLOC): Commander or supervisor of organization maintaining locator or directory. Official mailing addresses are published as an appendix to the Army's compilation of systems of records notices.

Education Management Information System (EDMIS): Commander, U.S. Army Human Resources Command, Education Division, 200 Stovall Street, Alexandria, VA 22332–0500."

NOTIFICATION PROCEDURE:

Delete entry and replace with "Individuals seeking to determine whether information about themselves is contained in this system should provide written inquiries for individual applications to the Project Director, Installation Management Systems-Army, 200 Stovall Street, Alexandria, VA 22332–6200.

The request should contain full name, and some detail such as organization of assignment, that can be verified, except that, in cases where individual has provided written consent to release of home address/telephone number to the general public, no identification is required.

Central Issue Facility (CIF): Property book officer at the installation where record is believed to exist.

Individual should provide his/her full name, installation at which a hand receipt holder, and any other information that may facilitate locating the record.

In/Out Processing (In/Out Proc): Administrative office of the installation/activity to which the individual had been assigned.

Individual should provide the full name, Social Security Number (SSN), departure date, location of last employing office, and signature.

Transition Processing (TRANSPROC): Commander, U.S. Army Human Resources Command, Retirements and Separations Branch, 200 Stovall Street, Alexandria, VA 22332–0478.

Individual should provide the full name, Social Security Number (SSN), military status, and if separated, date and location of separation.

Personnel Locator (PERSLOC): Commander or supervisor of organization to which individual is/was assigned or employed. Official mailing addresses are published as an appendix to the Army's compilation of systems of records notices procedure.

Individual should provide the full name, Social Security Number (SSN), military status, and if separated, date and location of separation.

Education Management Information System (EDMIS): Education Management Information System (EDMIS): Commander, U.S. Army Human Resources Command, Education Division, 200 Stovall Street, Alexandria, VA 22332–0500 or the installation's Privacy Act Officer.

For verification purposes, individual should provide their full name, Social Security Number (SSN), current address and telephone number and other personal identifying data that would assist in locating the records.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States: "I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)".

If executed within the United States, its territories, possessions, or commonwealths: "I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)"."

RECORDS ACCESS PROCEDURES:

Delete entry and replace with "Individuals seeking to access records about themselves contained in this system of records should address written inquiries to Project Director,

Installation Management Systems-Army, 200 Stovall Street, Alexandria, VA 22332–6200.

Requests should contain the individual's full name, Social Security Number (SSN), current address, telephone number, when and where they were assigned during the contingency and notarized signature.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States: 'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)'.

If executed within the United States, its territories, possessions, or commonwealths: 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)'."

* * * * *

A0600–8–101

SYSTEM NAME:

Installation Support Modules Records

SYSTEM LOCATION:

For systems maintained by Program Executive Office Enterprise Information Systems:

Project Director for Installation Management Systems—Army 200 Stovall Street, Alexandria, Virginia 22332–6200.

For application and database servers that support the Installation Support Modules Records system:

U.S. Army Signal Network Enterprise Center—Fort Belvoir 10105 Gridley Road, Fort Belvoir, VA 22060–5840;

U.S. Army Signal Network Enterprise Center—Fort Huachuca 2133 Cushing Street, Bldg 61801, Fort Huachuca, AZ 85613–7008.

Official mailing addresses are published as an appendix to the Army's compilation of systems of records notices, individual Installation Support Module Records application are accessible at:

Central Issue Facility (CIF): Property book offices and Central Issue Facilities' supply rooms at most Army activities world-wide, Active Army training activities, National Guard Armories, and U.S. Army Reserve units.

In/Out Processing (In/Out Proc): Administrative offices and Army Staff agencies, field operating commands, installations and/or activities Army wide.

Transition Processing: (TRANSPROC) Transition Centers at Active Army, Army National Guard and US Army Reserve Installations world-wide.

Personnel Locator: Segments are maintained by mailrooms and/or Army telephone information operators at Headquarters, Department of the Army, Staff and field operating agencies, commands, installations and activities.

Education Management Information System (EDMIS): Education Centers at Army installations and a centralized automated education registry transcript system is maintained Army Human Resources Command, 200 Stovall Street, Alexandria, VA 22332–6200.

Categories of individuals covered by the system: Active duty Army, Army Reserve and Army National Guard personnel and in some cases their family members. Additionally, individual applications cover the following categories:

Central Issue Facility (CIF): Civilian or other than Army military personnel who assume temporary custody or responsibility for United States Government property at Army.

Installation's Central Issue Facilities worldwide. Personnel Locator (PERSLOC): Department of the Army civilian employees, and in some instances their dependents.

Education Management Information System (EDMIS): Civilian employees, and in some instances their dependents.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, other names used, Social Security Number (SSN), citizenship, gender, race/ethnicity, birth date, marital status, financial information, medical information, law enforcement information, employment information, military records, education information, Army Knowledge Online (AKO) user ID, living or deceased, military/civilian/foreign national, skills. In addition to the data elements, individual applications maintain the following data:

Central Issue Facility (CIF): Clothing/Equipment issued to Soldiers or other than Army military personnel who assume temporary custody or responsibility for United States Government property.

In/Out Processing (In/Out Proc): Soldiers' personal cell phone number, home telephone number, personal e-mail address, mailing/home address, emergency contact, mother's maiden name, spouse information, and child information.

Transition Processing (TRANSPROC): Soldiers' personal cell phone number, home telephone number, personal e-mail address, mailing/home address, emergency contact, mother's maiden name, spouse information, child information, disability information, awards.

Personnel Locator (PERSLOC): Soldiers' mailing/home address, emergency contact.

Education Management Information System (EDMIS): Soldiers' personal cell phone number, home telephone number, personal e-mail address, mailing/home address, emergency contact, certifications/licensures.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 3013, Secretary of the Army; 10 U.S.C. 136, Under Secretary of Defense for Personnel and Readiness; DoD Instruction 1322.25, Voluntary Education Programs; DoD Instruction 1336.01, Certificate of Release or Discharge from Active Duty (DD Form 214/215 Series); Army Regulation 735–5, Policies and Procedures for Property Accountability; E.O. 9397 (SSN), as amended.

PURPOSE(S):

Provides an automated business practice for processing Soldiers, and selected civilians, to include focusing on Soldier readiness activities, in/out processing of Soldiers and family members, personnel location, management of educational records, issue and turn-in of organizational clothing and individual equipment, and Soldier transition.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, these records contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

Education Management Information System (EDMIS): Information is disclosed to the Department of Labor, Bureau of Apprenticeship and Training for individuals enrolled in an Army Apprenticeship Program for the purpose of identifying Soldier's education and work qualifications for entry into the Department of Labor's Registered Apprenticeship Programs. Department of Labor's Registered Apprenticeship Programs help mobilize America's workforce with structured, on-the-job learning in traditional industries such as construction and manufacturing, as well as new emerging industries such as health care, information technology, energy, telecommunications and more.

Transition Processing (TRANSPROC): DD Form 214, Certificate of Release or Discharge from Active Duty, for Solders separating from the active Army is forwarded to Department of Veterans Affairs, Department of Labor, and State Directors of Veterans Affairs for the purpose of obtaining veterans benefits, re-employment rights and unemployment insurance.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic storage media.

RETRIEVABILITY:

Name and Social Security Number (SSN).

SAFEGUARDS:

Records are protected from unauthorized disclosure by storage in areas accessible only to authorized personnel within buildings secured by locks or guards. The server hosting the database is also protected behind firewall and uses encryption during any data transfer. Access to Installation Support Module Records data by the users is restricted by the Web application itself (*e.g.,* no use of open command lines) and is further limited by user identification/authentication and the user role, which defines user privileges and functions within the application. The Installation Support Module Records system uses Army Knowledge Online (AKO) as its single authoritative source for user authentication. Under AKO authentication, any user who wants to access any part of the ISM application must either use an AKO user name/ password combination or a Common Access Card (CAC).

SYSTEM MANAGER(S) AND ADDRESS:

The Installation Support Module Records system is maintained by the Project Director Installation Management Systems-Army, 200 Stovall Street, Alexandria, VA 22332–6200. Proponents for individual applications are:

Central Issue Facility (CIF): Deputy Chief of Staff for Logistics, Headquarters, Department of the Army, 500 Army Pentagon, Washington, DC 20310–0500.

In/Out Processing: Commander, U.S. Army Human Resources Command, Out-Processing Functional Proponent, 200 Stovall Street, Alexandria, Virginia 22332–0500.

Transition Processing (TRANSPROC): Commander, U.S. Army Human Resources Command, Retirements and Separations Branch, 200 Stovall Street, Alexandria, VA 22332–0500.

Personnel Locator (PERSLOC): Commander or supervisor of organization maintaining locator or directory. Official mailing addresses are published as an appendix to the Army's compilation of systems of records notices.

Education Management Information System (EDMIS): Commander, U.S. Army Human Resources Command, Education Division, 200 Stovall Street, Alexandria, VA 22332–0500.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in these systems should address written inquiries to Project Director, Installation Management Systems-Army, 200 Stovall Street, Alexandria, VA 22332–6200. Address written inquiries for individual applications follows:

Central Issue Facility (CIF): Property book officer at the installation where record is believed to exist. Individual should provide his/her full name, installation at which a hand receipt holder, and any other information that may facilitate locating the record.

In/Out Processing (In/Out Proc): Administrative office of the installation/ activity to which the individual had been assigned. Individual should provide the full name, Social Security Number (SSN), departure date, location of last employing office, and signature.

Transition Processing (TRANSPROC): Commander, U.S. Army Human Resources Command, Retirements and Separations Branch, 200 Stovall Street, Alexandria, VA 22332–0478. Individual should provide the full name, Social Security Number (SSN), military status, and if separated, date and location of separation.

Personnel Locator (PERSLOC): Commander or supervisor of organization to which individual is/was assigned or employed. Official mailing addresses are published as an appendix to the Army's compilation of systems of records notices procedure.

Education Management Information System (EDMIS): Commander, U.S. Army Human Resources Command, Education Division, 200 Stovall Street, Alexandria, VA 22332–0500 or the installation's Privacy Act Officer. For verification purposes, individual should provide full name, rank, and Social Security Number (SSN).

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States: "I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)".

If executed within the United States, its territories, possessions, or commonwealths: "I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)".

RECORDS ACCESS PROCEDURE:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Project Director Installation Management Systems-Army, 200 Stovall Street, Alexandria, VA 22332–6200.

For verification purposes, individual should provide their full name, Social Security Number (SSN), current address and telephone number and other personal identifying data that would assist in locating the records.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States: "I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)".

If executed within the United States, its territories, possessions, or commonwealths: "I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)".

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Other than entering the data via the application, personnel data is also received from external systems: the Army's electronic Military Personnel Office (eMILPO), Total Army Personnel Database-Guard (TAPDB–G), and Total Army Personnel Database-Reserve (TAPDB–R) system.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 2010–9392 Filed 4–22–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID: USA–2010–0003]

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DoD.

ACTION: Notice to alter a system of records.

SUMMARY: Department of the Army proposes to alter a system of records notices in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on May 24, 2010 unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Mr. Leroy Jones at (703) 428–6185.

SUPPLEMENTARY INFORMATION: Department of the Army notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the Department of the Army, Privacy Office, U.S. Army Records Management and Declassification Agency, 7701 Telegraph Road, Casey Building, Suite 144, Alexandria, VA 22325–3905.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on April 9, 2010, to the House Committee on Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, "Federal Agency Responsibilities for Maintaining Records About Individuals" (February 20, 1996; 61 FR 6427).

Dated: April 19, 2010.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

A0351–17b USMA

SYSTEM NAME:

U.S. Military Academy Personnel Cadet Records (August 9, 1996; 61 FR 41595).

* * * * *

CHANGES:

SYSTEM NAME:

Delete entry and replace with "U.S. Military Academy Management System Records."

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with "Present and former cadets and faculty of the U.S. Military Academy."

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with "Name, Social Security Number (SSN), military status, application and evaluations of cadet for admission; letters of recommendation/endorsement; academic achievements, awards, honors, grades, and transcripts; performance counseling; health, physical aptitude and abilities and athletic accomplishments, peer appraisals; supervisory assessments; suitability data, including honor code infractions and disposition. Basic biographical and historical summary of cadet's tenure at the U.S. Military Academy is maintained on cards in the Archives Office or on microfiche in the Cadet Records Section and as part of the system electronic backup. Academic contribution data (courses taught, research papers published, cadet activities supported) of faculty members is maintained."

* * * * *

PURPOSE(S):

Delete entry and replace with "To record cadets appointment to the Academy, his/her scholastic and athletic achievements, performance, motivation, discipline, final standing, and potential as a military career officer. Also used to document faculty contributions as part of the academic and cadet development mission."

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Delete entry and replace with "In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, these records contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Academic transcripts may be provided to educational institutions for the purpose of admissions to further educational degree programs.

The DoD 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

* * * * *

STORAGE:

Delete entry and replace with "Manual records in file folders and electronic storage media."

* * * * *

SAFEGUARDS:

Delete entry and replace with "Electronically and optically stored records are maintained in 'fail-safe' system software with password-protected access. Records are accessible only to authorized persons with a need-to-know who are properly screened, cleared and trained. Access is controlled through role based controls leveraging active directory authentication. Buildings employ alarms or rooms are security-controlled areas accessible only to authorized persons. Paper and electronic records are maintained in approved security containers. Paper and electronic records in the U.S. Army Investigative Records Repository are stored in security-controlled areas accessible only to authorized persons. Use of Common Access Card (CAC) is used to authenticate and lock out unauthorized access."

RETENTION AND DISPOSAL:

Delete entry and replace with "Records of cadets who are commissioned become part of his/her Official Military Personnel File. Records of individuals not commissioned are destroyed after 5 years. Microfilmed and electronic records maintained by U.S. Military Academy are permanent; hard copy files are destroyed after being microfilmed. Contribution data on faculty is permanently maintained."

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with "Chief, Software Engineering Branch, U.S. Military Academy, West Point, NY 10996–5000."

NOTIFICATION PROCEDURE:

Delete entry and replace with "Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the Superintendent, U.S. Military Academy, West Point, NY 10996–5000.

Individual should provide full name, Social Security Number (SSN) and military status or other information verifiable from the record itself.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States: 'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)'.

If executed within the United States, its territories, possessions, or commonwealths: 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)'."

RECORD ACCESS PROCEDURES:

Delete entry and replace with "Individuals seeking access to information about themselves contained in this system of records should address written inquiries to the Superintendent, U.S. Military Academy, West Point, NY 10996–5000.

Individual should provide full name, Social Security Number (SSN) and military status or other information verifiable from the record itself.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States: 'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)'.

If executed within the United States, its territories, possessions, or commonwealths: 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)'."

* * * * *

A0351–17b USMA

SYSTEM NAME:

U.S. Military Academy Management System Records.

SYSTEM LOCATION:

U.S. Military Academy, West Point, NY 10996–5000.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Present and former cadets and faculty of the U.S. Military Academy.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, Social Security Number (SSN), military status, application and evaluations of cadet for admission; letters of recommendation/endorsement; academic achievements, awards, honors, grades, and transcripts; performance counseling; health, physical aptitude and abilities and athletic accomplishments, peer appraisals; supervisory assessments; suitability data, including honor code infractions and disposition. Basic biographical and historical summary of cadet's tenure at the U.S. Military Academy is maintained on cards in the Archives Office or on microfiche in the Cadet Records Section and as part of the system electronic backup. Academic contribution data (courses taught, research papers published, cadet activities supported) of faculty members is maintained.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Secretary of the Army; 10 U.S.C. 4334, Command and Supervision and E.O. 9397 (SSN), as amended.

PURPOSE(S):

To record cadet's appointment to the Academy, his/her scholastic and athletic achievements, performance, motivation, discipline, final standing and potential as a military career officer. Also used to document faculty contributions as part of the academic and cadet development mission.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, these records contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Academic transcripts may be provided to educational institutions for the purpose of admissions to further educational degree programs.

The 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Manual records in file folders and electronic storage media.

RETRIEVABILITY:

By surname or Social Security Number (SSN).

SAFEGUARDS:

Electronically and optically stored records are maintained in 'fail-safe' system software with password-protected access. Records are accessible only to authorized persons with a need-to-know who are properly screened, cleared and trained. Access is controlled through role-based controls leveraging active directory authentication. Buildings employ alarms or rooms are security-controlled areas accessible only to authorized persons. Paper and electronic records are maintained in approved security containers. Paper and electronic records in the U.S. Army Investigative Records Repository are stored in security-controlled areas accessible only to authorized persons. Use of Common Access Card (CAC) is used to authenticate and lock out unauthorized access.

RETENTION AND DISPOSAL:

Records of cadets who are commissioned become part of his/her Official Military Personnel File. Records of individuals not commissioned are destroyed after 5 years. Microfilmed and electronic records maintained by USMA are permanent; hard copy files are destroyed after being microfilmed. Contribution data on faculty is permanently maintained.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Software Engineering Branch, U.S. Military Academy, West Point, NY 10996–5000.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the Superintendent, U.S. Military Academy, West Point, NY 10996–5000.

Individual should provide full name, Social Security Number (SSN) and military status or other information verifiable from the record itself.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States: 'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)'.

If executed within the United States, its territories, possessions, or commonwealths: 'I declare (or certify,

verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)'.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system of records should address written inquiries to the Superintendent, U.S. Military Academy, West Point, NY 10996–5000.

Individual should provide full name, Social Security Number (SSN) and military status or other information verifiable from the record itself.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States: 'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)'.

If executed within the United States, its territories, possessions, or commonwealths: 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)'.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual, his/her sponsors, peer evaluations, grades and reports of U.S. Military Academy academic and physical education department heads, transcripts from other educational institutions, medical examination/assessments, supervisory counseling/performance reports.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

Evaluation material used to determine potential for promotion in the Military Services may be exempt pursuant to 5 U.S.C. 552a(k)(7), but only to the extent that the disclosure of such material would reveal the identity of a confidential source.

An exemption rule for this record system has been promulgated in accordance with the requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and published in 32 CFR part 505. For additional information contact the system manager.

[FR Doc. 2010–9390 Filed 4–22–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Navy

[Docket ID USN–2010–0011]

Privacy Act of 1974; System of Records

AGENCY: Department of the Navy, DoD.

ACTION: Notice to alter a system of records.

SUMMARY: The Department of the Navy proposes to alter a system of records in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The changes will be effective on May 24, 2010 unless comments are received that would result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal Rulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Mrs. Miriam Brown-Lam (202) 685–6545.

SUPPLEMENTARY INFORMATION: The Department of the Navy systems of records notice subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, has been published in the **Federal Register** and is available from Mrs. Miriam Brown-Lam, HEAD, FOIA/Privacy Act Policy Branch, the Department of the Navy, 2000 Navy Pentagon, Washington, DC 20350–2000.

The proposed systems reports, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, were submitted on April 9, 2010, to the House Committee on Government Report, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, "Federal Agency Responsibilities for Maintaining records About Individual," dated February 8, 1996 (February 20, 1996; 61 FR 6427).

Dated: April 19, 2010.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

N01306–1

SYSTEM NAME:

Job Advertisement/Career Management/Detailing System (September 25, 2006; 71 FR 55778).

CHANGES:

* * * * *

SYSTEM NAME:

Delete entry and replace with "Career Management/Interactive Detailing System (CMS/ID) Records."

SYSTEM LOCATION:

Delete entry and replace with "SPAWAR Systems Center Atlantic (SSC LANT), 2251 Lakeshore Drive, New Orleans, LA 70145–3533; and all Navy afloat units."

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with "Limited personnel records in automated form displaying basic qualifications to include name, Social Security Number (SSN), enlisted service number, date of birth, rate, rank, record status, activity, e-mail address and phone number. This system primarily displays a listing of available billets from which a sailor can make their own request for or through their career counselor."

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with "5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 5013, Secretary of the Navy; and E.O. 9397 (SSN), as amended."

PURPOSE(S):

Delete entry and replace with "To assist Navy officials and employees in the initiation, development, and implementation of policies pertaining to enlisted personnel assignment, placement, retention, career enhancement and motivation, and other career related matters to meet

manpower allocations and requirements."

* * * * *

NOTIFICATION PROCEDURE:

Delete entry and replace with "Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Commander, Navy Personnel Command (PERS–455), 5720 Integrity Drive, Millington, TN 38055–0600.

The request should contain full name, Social Security Number (SSN) (and/or enlisted service number), rate, military status, and signature of the requester. The system manager may require an original signature or a notarized signature as a means of proving the identity of the individual requesting access to the records."

RECORD ACCESS PROCEDURE:

Delete entry and replace with "Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Commander, Navy Personnel Command (PERS–455), 5720 Integrity Drive, Millington, TN 38055–0600.

The request should contain the full name, Social Security Number (SSN) (and/or enlisted service number), rate, military status, and signature of the requester. The system manager may require an original signature or a notarized signature as a means of proving the identity of the individual requesting access to the records."

* * * * *

N01306–1

SYSTEM NAME:

Career Management/Interactive Detailing System (CMS/ID) Records.

SYSTEM LOCATION:

SPAWAR Systems Center Atlantic (SSC LANT), 2251 Lakeshore Drive, New Orleans, LA 70145–3533; and all Navy afloat units.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All Navy enlisted personnel: Active, Selected Reserve (SELRES), Full Time Support (FTS), and Junior Officer Submariners.

CATEGORIES OF RECORDS IN THE SYSTEM:

Limited personnel records in automated form displaying basic qualifications to include name, Social Security Number (SSN), enlisted service number, date of birth, rate, rank, record status, activity, e-mail address and phone number. This system primarily displays a listing of available billets from which a sailor can make their own request for or through their career counselor.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 5013, Secretary of the Navy; and E.O. 9397 (SSN), as amended.

PURPOSE(S):

To assist Navy officials and employees in the initiation, development, and implementation of policies pertaining to enlisted personnel assignment, placement, retention, career enhancement and motivation, and other career related matters to meet manpower allocations and requirements.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In additional to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, these records contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems of record notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records and electronic storage media.

RETRIEVABILITY:

Name, Social Security Number (SSN), rate/pay grade, activity, and/or record status within command.

SAFEGUARDS:

Computer processing facilities and terminals are located in restricted areas accessible only to authorized persons that are properly screened, cleared, and trained. Manual records and computer printouts are available only to authorized personnel having a need-to-know.

RETENTION AND DISPOSAL:

Records are maintained until superseded or for a period of two years and then disposed of by burning or shredding.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Navy Personnel Command (PERS–455), 5720 Integrity Drive, Millington, TN 38055–0600.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Commander, Navy Personnel Command (PERS–455, 5720 Integrity Drive, Millington, TN 38055–0600.

The request should contain full name, Social Security Number (SSN) and/or enlisted service number, rate, military status, and signature of the requester. The system manager may require an original signature or a notarized signature as a means of proving the identity of the individual requesting access to the records.

RECORD ACCESS PROCEDURE:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Commander, Navy Personnel Command (PERS–455), 5720 Integrity Drive, Millington, TN 38055–0600.

The request should contain the full name, Social Security Number (SSN) and/or enlisted service number, rate, military status, and signature of the requester. The system manager may require an original signature or a notarized signature as a means of proving the identity of the individual requesting access to the records.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORDS SOURCE CATEGORIES:

Personnel service jackets, correspondence, official records of professional qualifications, and educational institutions.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 2010–9385 Filed 4–22–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID USA–2010–0005]

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DoD.

ACTION: Notice to alter a system of records.

SUMMARY: Department of the Army proposes to alter a system of records notices in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on May 24, 2010 unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Mr. Leroy Jones at (703) 428–6185.

SUPPLEMENTARY INFORMATION: Department of the Army notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the Department of the Army, Privacy Office, U.S. Army Records Management and Declassification Agency, 7701 Telegraph Road, Casey Building, Suite 144, Alexandria, VA 22325–3905.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on April 9, 2010 to the House Committee on Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, "Federal Agency Responsibilities for Maintaining Records About Individuals" (February 20, 1996; 61 FR 6427).

Dated: April 19, 2010.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

A0027–50 DAJA

SYSTEM NAME:

Foreign Jurisdiction Case Files (July 14, 2008; 73 FR 40309).

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with "Office of the Judge Advocate General, Headquarters, Department of the Army, International and Operational Law Division, Washington, DC 20310–2210. (Copy of record will exist for shorter periods in Office of the Staff Judge Advocate at the command where the case originated.)

Office of the Judge Advocate General, Headquarters, Department of the Air Force, AF/JAO, 1420 Air Force Pentagon, Washington, DC 20330–1420."

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with "Members of the U.S. Army and Air Force, U.S. Army and Air Force civilians employed by, serving with, or accompanying the U.S. Army and Air Force abroad and Army and Air Force dependents of such individuals who have been subject to the exercise of civil or criminal jurisdiction by foreign courts or foreign administrative agencies and/or sentenced to unsuspended confinement."

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with "Full name, Social Security Number (SSN); individual case reports concerning the exercise of jurisdiction by foreign tribunals, trial observer reports, requests for provision of counsel, records of trials, requests for local authorities to refrain from exercising their jurisdiction, communications with lawyers, officials within the Department of the Army, Department of the Air Force and Department of Defense, diplomatic mission information, and other related documents."

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with "10 U.S.C. 3013, Department of the Army; Department of Defense Directive 5525.1, Status of Forces Policy and Information; Army Regulation 27–50, Status of Forces Policies, Procedures, and Information; Air Force Joint Instruction 51–706, Status of Forces Policies, Procedures and Information; and E.O. 9397 (SSN), as amended."

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Delete entry and replace with "In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system."

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with "The Judge Advocate General, Headquarters, Department of the Army, Washington, DC 20310–2210.

The Judge Advocate General, Headquarters, Department of the Air Force, 1420 Air Force Pentagon, AF/JAO, Washington, DC 20330–1420."

NOTIFICATION PROCEDURE:

Delete entry and replace with "Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to:

For Army: The Judge Advocate General, Headquarters, Department of the Army, Washington, DC 20310–2210 or the Staff Judge Advocate of the installation or Command where legal assistance was sought. Official mailing addresses can be obtained by writing the system manager.

For Air Force: The Judge Advocate General, Headquarters, Department of the Air Force, 1420 Air Force Pentagon, AF/JAO, Washington, DC 20330–1420.

Individual should provide full name, Social Security Number (SSN) or other information verifiable from the record itself.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States: 'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)'.

If executed within the United States, its territories, possessions, or commonwealths: 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)'."

RECORD ACCESS PROCEDURES:

Delete entry and replace with "Individuals seeking access to information about themselves contained in this system of records should address written inquiries to:

For Army: The Judge Advocate General, Headquarters, Department of the Army, Washington, DC 20310–2210

or the Staff Judge Advocate of the installation or Command where legal assistance was sought. Official mailing addresses can be obtained by writing the system manager.

For Air Force: The Judge Advocate General, Headquarters, Department of the Air Force, 1420 Air Force Pentagon, AF/JAO, Washington, DC 20330–1420.

Individual should provide full name, Social Security Number (SSN) or other information verifiable from the record itself.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States: 'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)'.

If executed within the United States, its territories, possessions, or commonwealths: 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)'."

CONTESTING RECORD PROCEDURES:

Delete entry and replace with "The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

The Air Force's rules for accessing records and for contesting contents and appealing initial agency determinations are contained in Air Force Instruction 33–332, Air Force Privacy Act Program, or may be obtained from the system manager."

A0027–50 DAJA

SYSTEM NAME:

Foreign Jurisdiction Case Files.

SYSTEM LOCATION:

Office of the Judge Advocate General, Headquarters, Department of the Army, International and Operational Law Division, Washington, DC 20310–2210. (Copy of record will exist for shorter periods in Office of the Staff Judge Advocate at the command where case originated.)

Office of the Judge Advocate General, Headquarters, Department of the Air Force, AF/JAO, 1420 Air Force Pentagon, Washington, DC 20330–1420.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Members of the U.S. Army and Air Force, U.S. Army and Air Force civilians employed by, serving with, or accompanying the U.S. Army and Air Force abroad and Army and Air Force dependents of such individuals who have been subject to the exercise of civil or criminal jurisdiction by foreign courts or foreign administrative agencies and/or sentenced to unsuspended confinement.

CATEGORIES OF RECORDS IN THE SYSTEM:

Full name, Social Security Number (SSN); individual case reports concerning the exercise of jurisdiction by foreign tribunals, trial observer reports, requests for provision of counsel, records of trials, requests for local authorities to refrain from exercising their jurisdiction, communications with lawyers, officials within the Department of the Army, Department of the Air Force and Department of Defense, diplomatic mission information, and other related documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013; Department of the Army; Department of Defense Directive 5525.1, Status of Forces Policy and Information; Army Regulation 27–50, Status of Forces Policies, Procedures, and Information; Air Force Joint Instruction 51–706, Status of Forces Policies, Procedures and Information; and E.O. 9397 (SSN), as amended.

PURPOSE(S):

To monitor development and status of each individual case to ensure that all rights and protection to which U.S. personnel abroad and their dependents are entitled under pertinent international agreements are afforded such personnel; to obtain information to answer queries regarding the status and disposition of individual cases involving the exercise of civil or criminal jurisdiction by foreign courts or foreign administrative agencies; to render management and statistical reports.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, these records contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records and electronic storage media.

RETRIEVABILITY:

By individual's surname.

SAFEGUARDS:

Records are maintained in a secure controlled area and are accessible only to authorized personnel. Physical and electronic access is restricted to designated individuals having a need-to-know in the performance of official duties. Buildings are equipped with alarms, cameras, and monitored continuously.

RETENTION AND DISPOSAL:

Permanent. Keep in current files area until no longer needed for conducting business, then retire to Records Holding Area/Army Electronic Archives (RHA/AEA). The RHA/AEA will transfer to the National Archives when the record is 20 years old.

SYSTEM MANAGER(S) AND ADDRESS:

The Judge Advocate General, Headquarters, Department of the Army, Washington, DC 20310–2210.

The Judge Advocate General, Headquarters, Department of the Air Force, 1420 Air Force Pentagon, AF/JAO, Washington, DC 20330–1420.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to:

For Army: The Judge Advocate General, Headquarters, Department of the Army, Washington, DC 20310–2210 or the Staff Judge Advocate of the installation or Command where legal assistance was sought. Official mailing addresses can be obtained by writing the system manager.

For Air Force: The Judge Advocate General, Headquarters, Department of the Air Force, 1420 Air Force Pentagon, AF/JAO, Washington, DC 20330–1420.

Individual should provide full name, Social Security Number (SSN) or other information verifiable from the record itself.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States: 'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the

foregoing is true and correct. Executed on (date). (Signature)'.

If executed within the United States, its territories, possessions, or commonwealths: 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)'.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system of records should address written inquiries to:

For Army: The Judge Advocate General, Headquarters, Department of the Army, Washington, DC 20310–2210 or the Staff Judge Advocate of the installation or Command where legal assistance was sought. Official mailing addresses can be obtained by writing the system manager.

For Air Force: The Judge Advocate General, Headquarters, Department of the Air Force, 1420 Air Force Pentagon, AF/JAO, Washington, DC 20330–1420.

Individual should provide full name, Social Security Number (SSN) or other information verifiable from the record itself.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States: 'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)'.

If executed within the United States, its territories, possessions, or commonwealths: 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)'.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

The Air Force's rules for accessing records and for contesting contents and appealing initial agency determinations are contained in Air Force Instruction 33–332, Air Force Privacy Act Program, or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual, his/her attorney, foreign government agencies, Department of State, law enforcement jurisdictions, relevant Army records and reports.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 2010–9389 Filed 4–22–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID USA–2010–0004]

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DoD.

ACTION: Notice to add a system of records.

SUMMARY: The Department of the Army proposes to add a system of records to its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This proposed action would be effective without further notice on May 24, 2010 unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal Rulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Mr. Leroy Jones at (703) 428–6185.

SUPPLEMENTARY INFORMATION: The Department of the Army notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the Department of the Army, Privacy Office, U.S. Army Records Management and Declassification Agency, 7701 Telegraph Road, Casey Building, Suite 144, Alexandria, VA 22325–3905.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on April 9, 2010 to the House Committee on Oversight and Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated February 8, 1996 (February 20, 1996; 61 FR 6427).

Dated: April 19, 2010.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

A0030–22 AMC

SYSTEM NAME:

Army Food Management Information System Records

SYSTEM LOCATION:

Software Engineering Center, Functional Processing Center, Fort Lee, Virginia 23801–1507.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All authorized diners which include Reserve and active components of all services, civilians, contractors and foreign nationals authorized to consume meals in Army dining facilities.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, Social Security Number (SSN), and DoD Electronic Data Interchange Personal Identifier (EDIPI).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Secretary of the Army; DoD 1338.10, Manual for the DoD Food Program; Army Regulation 30–22, Food Program; and E.O. 9397, as amended.

PURPOSE(S):

The Army Food Management Information System will be used to automate the Army's Food Service Program. The system facilitates the ordering, receipt, warehousing, and issuance of subsistence to dining facilities and others. Authorized diners are accounted for through the scanning of their identification card to be used on reports to support the number of diners consuming meals during the day in Army dining facilities.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, these records contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' set forth at the beginning of the Army's

compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic storage media.

RETRIEVABILITY:

By individual's name and Social Security Number (SSN).

SAFEGUARDS:

The system is housed within a security facility requiring a key card. Electronic records are accessed by authorized persons with a need-to-know through the use of a Common Access Card (CAC) or be sponsored to have an Army Knowledge Online (AKO) account and use the AKO user name and password. Data is encrypted in its stored form and cannot be accessed except through the system application or by the developer when authorized by the team leader.

RETENTION AND DISPOSAL:

Records are stored electronically for two years, then destroyed by erasing.

SYSTEM MANAGER(S) AND ADDRESS:

Supervisor, Army Food Management Information System, Program Manager, 401 First Street, Suite 157, Fort Lee, Virginia 23801–1507.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to Army Food Management Information System, Supervisor, 401 First Street, Suite 157, Fort Lee, Virginia 23801–1507.

For verification purposes, individuals should provide their full name, Social Security Number (SSN), any details, which may assist in locating record, and their signature.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States: 'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)'.

If executed within the United States, its territories, possessions, or commonwealths: 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)'.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Army Food Management Information System, Supervisor, 401 First Street, Suite 157, Fort Lee, Virginia 23801–1507.

For verification purposes, individuals should provide their full name, Social Security Number (SSN), any details, which may assist in locating record, and their signature.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States: 'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)'.

If executed within the United States, its territories, possessions, or commonwealths: 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)'.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 2010–9388 Filed 4–22–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

Small, Rural School Achievement Program

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Notice announcing application deadline.

Catalog of Federal Domestic Assistance (CFDA) Number: 84.358A.

SUMMARY: Under the Small, Rural School Achievement (SRSA) Program, the U.S. Department of Education (Department) awards grants on a formula basis to eligible local educational agencies (LEAs) to address the unique needs of rural school districts. In this notice, we establish the deadline for submission of fiscal year (FY) 2010 SRSA grant applications.

DATES: The deadline for transmittal of electronic applications is June 30, 2010, 4:30:00 p.m. Washington, DC time.

FOR FURTHER INFORMATION CONTACT: Mr. Eric Schulz, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3W107, Washington, DC 20202. *Telephone:* (202) 401–0039 or by *e-mail: reap@ed.gov.*

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Which LEAs Are Eligible for an Award Under the SRSA Program?

An LEA (including a public charter school that is considered an LEA under State law) is eligible for an award under the SRSA program if—

(a) The total number of students in average daily attendance at all of the schools served by the LEA is fewer than 600, or each county in which a school served by the LEA is located has a total population density of fewer than 10 persons per square mile; and

(b) All of the schools served by the LEA are designated with a school locale code of 7 or 8 by the Department's National Center for Education Statistics (NCES), or the Secretary has determined, based on a demonstration by the LEA and concurrence of the State educational agency, that the LEA is located in an area defined as rural by a governmental agency of the State.

The school locale codes are the locale codes determined on the basis of the NCES school code methodology in place on the date of enactment of section 6211(b) of the Elementary and Secondary Education Act of 1965, as amended.

Which Eligible LEAs Must Submit an Application To Receive an FY 2010 SRSA Grant Award?

An eligible LEA must submit an application to receive an FY 2010 SRSA grant award if it falls under any of the following categories:

1. The LEA never submitted an application for SRSA funds in any prior year;

2. The LEA received an SRSA grant for FY 2007, and, as of December 31, 2009, had not drawn down from the Department's Grant Administration and Payment System any of its FY 2007 SRSA funds;

3. The LEA was identified in a prior year on the SRSA eligibility spreadsheets as needing to re-apply for SRSA because of the absence of drawdown activity, but did not do so.

Under the regulations in 34 CFR 75.104(a), the Secretary makes grants only to an eligible party that submits an application. Given the limited purpose served by the application under the SRSA program, the Secretary considers the application requirement to be met if an LEA submitted an SRSA application for any prior year and does not fall under any of the categories listed above requiring the submission of a new application. In this circumstance, unless an LEA advises the Secretary by the application deadline that it is withdrawing its application, the Secretary deems the application that an LEA previously submitted to remain in effect for FY 2010 funding, and the LEA does not have to submit an additional application.

We intend to provide, by April 15, 2010, a list of LEAs eligible for FY 2010 funds on the Department's Web site at *http://www.ed.gov/programs/reapsrsa/eligibility.html.* Eligible LEAs that must submit a new electronic application to the Department to receive an FY 2010 SRSA grant award will be highlighted on the list in yellow. The list will also include eligible LEAs that are considered already to have met the application requirement.

Eligible LEAs needing to submit a new application in order to receive FY 2010 SRSA funds must do so electronically by the deadline established in this notice.

Electronic Submission of Applications

An eligible LEA that is required to submit an application to receive FY 2010 SRSA funds (in other words, an LEA that did not submit an application in a prior year, or was identified in a prior year as needing to re-apply because of the absence of drawdown activity) must submit an electronic application by June 30, 2010, 4:30:00 p.m., Washington, DC time. If it submits its application after this deadline, the LEA will receive a grant award only to the extent that funds are available after the Department awards grants to other eligible LEAs under the program.

Submission of an electronic application involves the use of the Department's Electronic Grant Application System (e-Application) available through the Department's e-GRANTS system.

You can access the electronic application for the SRSA Program at: *http://e-grants.ed.gov.*

When you access this site, you will receive specific instructions regarding the information to include in your application.

The hours of operation of the e-Grants Web site are 6:00 a.m. Monday until 7:00 p.m. Wednesday; and 6:00 a.m. Thursday until 8:00 p.m. Sunday, Washington, DC time. Please note that, because of maintenance, the system is unavailable between 8:00 p.m. on Sundays and 6:00 a.m. on Mondays, and between 7:00 p.m. on Wednesdays and 6:00 a.m. on Thursdays, Washington, DC time. Any modifications to these hours are posted on the e-Grants Web site.

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT.**

Electronic Access To This Document: You can view this document, as well as all other documents of this Department published in the **Federal Register,** in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.* To use PDF you must have Adobe Acrobat Reader, which is available free at this site.

Note: The official version of this document is the document published in the **Federal Register.** Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Program Authority: 20 U.S.C. 7345–7345b.

Dated: April 20, 2010.

Thelma Meléndez de Santa Ana,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 2010–9515 Filed 4–22–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Safe and Drug-Free Schools; Overview Information; Building State Capacity for Preventing Youth Substance Use and Violence; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2010

Catalog of Federal Domestic Assistance (CFDA) Number: 84.184W.

Dates: Applications Available: April 23, 2010.

Deadline for Transmittal of Applications: June 7, 2010.

Deadline for Intergovernmental Review: August 6, 2010.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: Building State Capacity for Preventing Youth Substance Use and Violence provides competitive grants to State educational agencies (SEAs) to build and sustain capacity to prevent youth substance use and violence and support collaboration between SEAs and other State agencies that are involved in efforts to prevent these problems. Funds must be used to enhance the capacity of State agencies to support local educational agencies (LEAs) in their efforts to create and sustain a safe and drug-free school environment.

Priority: We are establishing this priority for the FY 2010 grant competition and any subsequent year in which we make awards from the list of unfunded applicants from this competition, in accordance with section 437(d)(1) of the General Education Provisions Act (GEPA), 20 U.S.C. 1232(d)(1).

The Safe and Drug-Free Schools and Communities Act (SDFSCA) State and Local Grants program, which, for many years, provided funding for formula grants to States to support LEAs and community-based organizations in developing and implementing programs to prevent drug use and violence among children and youth, did not receive a fiscal year 2010 appropriation. As we transition from formula to discretionary and competitive funding under the FY 2010 appropriation, this priority is established to help States increase their capacity to provide a State prevention infrastructure and to assist States with strategic planning during this transition process by facilitating partnerships between SEAS and other State agencies to support the prevention efforts of LEAs.

Absolute Priority: This priority is an absolute priority. Under 34 CFR 75.105(c)(3) we consider only applications that meet this priority.

This priority is:

Grants to build and sustain SEA capacity to prevent youth substance use and violence and support collaboration between the SEA and other State agencies that are involved in efforts to prevent these problems. To meet this priority, funds must be used to enhance the capacity of State agencies to support LEAs in their efforts to create and sustain a safe and drug-free school environment. Grantees may carry out technical assistance and training, program support services, data analysis, coordination of activities, and information dissemination, as well as other activities that enhance the capacity of State agencies to support local school-based efforts to create safe and drug-free environments for their students.

Also as part of this priority, grantees must produce a plan for sustaining their State's infrastructure to support the implementation of effective drug and violence prevention activities at the State and local levels after the grant support provided by this program has ended. The plan must identify and address key elements of the State's strategy, including, but not limited to: (1) The State's strategic goals for preventing youth drug use and violence; (2) planned continued collaboration with other State agencies and relevant non-governmental organizations with expertise in preventing youth drug use and violence, including school and community prevention efforts; (3) the State's systematic needs assessment process, which must include an assessment of available resources at the State and local levels to address the State's needs with regard to preventing youth drug use and violence; and (4) a statement, based on the needs assessment, of the State's performance measures, that will help State agencies, as well as schools and communities, assess progress in preventing youth drug use and violence.

Application Requirements: To be eligible for a grant under this program, an applicant must include in its application—

1. A description of how the applicant will use grant funds to enhance the capacity of State agencies to support LEAs in their efforts to create and sustain safe and drug-free learning environments for their students;

2. A description of how the applicant will plan and coordinate substance use and violence prevention services with the Single State Agency for Substance Abuse Services or other State agencies that are involved in efforts to prevent youth substance use and violence. The application must include a letter signed by the SEA and all participating State agencies indicating their agreement to conduct the activities proposed in the application and specifying the roles and responsibilities of each party;

3. A description of the process the applicant will use to develop the required plan to create or enhance, and sustain, a State infrastructure designed to support effective efforts to prevent youth drug use and violence;

4. A description of how the applicant will use funds to sustain its prevention efforts, identifying relevant sources of funding and other types of support, after the end of the grant period;

5. A description of how the applicant will identify possible overlap and duplication of services, and more efficient uses of resources; and

6. A description of the process the applicant will use to identify gaps and weaknesses in the existing infrastructure.

Waiver of Proposed Rulemaking: Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed priorities and other requirements. Section 437(d)(1) of GEPA, however, allows the Secretary to exempt from rulemaking requirements, regulations governing the first grant competition under a new or substantially revised program authority. This is the first grant competition for this program under section 4121 of the Elementary and Secondary Education Act of 1965, as amended (20 U.S.C. 7131), and therefore qualifies for this exemption. In order to ensure timely grant awards, the Secretary has decided to forgo public comment on the priority and application requirements under section 437(d)(1) of GEPA. This priority and these application requirements will apply to the FY 2010 grant competition and any subsequent year in which we make awards from the list of unfunded applicants from this competition.

Program Authority: 20 U.S.C. 7131.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 79, 80, 81, 82, 84, 85, 97, 98, and 99. (b) The regulations in CFR part 299.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $8,000,000.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in FY 2011 from the list of unfunded applicants from this competition.

Estimated Range of Awards: $125,000–$250,000.

Estimated Average Size of Awards: $125,000 for a State with fewer than 1,400,000 students enrolled; $185,000 for a State with at least 1,400,000 but fewer than 2,000,000 students enrolled; and $250,000 for a State with at least 2,000,000 students enrolled. Award ranges are based on 2007–2008 school year enrollment data submitted by SEAs through the National Center for Education Statistics (NCES).

Estimated Number of Awards: 45.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 12 months.

Note: To support applicants in planning their proposed budgets, the Department has developed the following list, which contains a nonbinding budget maximum for each State.

Group 1—$125,000: Alabama, Alaska, Arizona, Arkansas, Colorado, Connecticut, Delaware, Hawaii, Idaho, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, North Dakota, Oklahoma, Oregon, Rhode Island, South Carolina, South Dakota, Tennessee, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, Wyoming, District of Columbia, Puerto Rico. Outlying Areas: American Samoa, Commonwealth of the Northern Marianas Islands (CNMI), Guam, Virgin Islands.

Group 2—$185,000: Georgia, Michigan, North Carolina, Ohio, Pennsylvania.

Group 3—$250,000: California, Florida, Illinois, New York, Texas.

III. Eligibility Information

1. *Eligible Applicants:* SEAs.

2. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

3. *Other:*

Participation by Private School Children and Teachers:

Section 9501 of the ESEA, requires that SEAs, LEAs, or other entities receiving funds under the SDFSCA provide for the equitable participation of private school children, their teachers, and other educational personnel in private schools located in areas served by the grant recipient.

In order to ensure that grant program activities address the needs of private school children, the applicant must engage in timely and meaningful consultation with private school officials during the design and development of the program. This consultation must take place before any decision is made that affects the opportunities of eligible private school children, teachers, and other educational personnel to participate in grant program activities.

Administrative direction and control over grant funds must remain with the grantee.

IV. Application and Submission Information

1. *Address to Request Application Package:* You can obtain an application package via the Internet. To obtain a copy via the Internet, use the following address: *http://www.ed.gov/fund/grant/apply/grantapps/index.html.* You can also request an application by writing to: Christine F. Pinckney, U.S. Department of Education, 400 Maryland Avenue, SW., room 10077, Potomac

Center Plaza (PCP), Washington, DC 20202.

Individuals with disabilities can obtain a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) by contacting the program contact person listed under *Accessible Format* in section VII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this program.

3. *Submission Dates and Times:*

Applications Available: April 23, 2010.

Deadline for Transmittal of Applications: June 7, 2010.

Applications for grants under this program may be submitted electronically using the Electronic Grant Application System (e-Application) accessible through the Department's e-Grants site, or in paper format by mail or hand delivery. For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery, please refer to section IV.6. *Other Submission Requirements* of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

Deadline for Intergovernmental Review: August 6, 2010.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this program.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Applications for grants under this program may be submitted electronically or in paper format by mail or hand delivery.

a. *Electronic Submission of Applications.*

If you choose to submit your application to us electronically, you must use e-Application, accessible through the Department's e-Grants Web site at: *http://e-grants.ed.gov.*

While completing your electronic application, you will be entering data online that will be saved into a database. You may not e-mail an electronic copy of a grant application to us.

Please note the following:

- Your participation in e-Application is voluntary.
- You must complete the electronic submission of your grant application by 4:30:00 p.m., Washington, DC time, on the application deadline date. E-Application will not accept an application for this program after 4:30 p.m., Washington, DC time, on the application deadline date. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the application process.
- The hours of operation of the e-Grants Web site are 6 a.m. Monday until 7 p.m. Wednesday; and 6 a.m. Thursday until 8 p.m. Sunday, Washington, DC time. Please note that, because of maintenance, the system is unavailable between 8 p.m. on Sundays and 6 a.m. on Mondays, and between 7 p.m. on Wednesdays and 6 a.m. on Thursdays, Washington, DC time. Any modifications to these hours are posted on the e-Grants Web site.
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you submit your application in paper format.
- You must submit all documents electronically, including all information you typically provide on the following forms: the Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. You must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified in this paragraph or submit a password protected file, we will not review that material.
- Your electronic application must comply with any page limit requirements described in this notice.
- Prior to submitting your electronic application, you may wish to print a copy of it for your records.
- After you electronically submit your application, you will receive an automatic acknowledgment that will include a PR/Award number (an identifying number unique to your application).
- Within three working days after submitting your electronic application, fax a signed copy of the SF 424 to the Application Control Center after following these steps:

(1) Print SF 424 from e-Application.

(2) The applicant's Authorizing Representative must sign this form.

(3) Place the PR/Award number in the upper right hand corner of the hard-copy signature page of the SF 424.

(4) Fax the signed SF 424 to the Application Control Center at (202) 245–6272.

- We may request that you provide us original signatures on other forms at a later date.

Application Deadline Date Extension in Case of System Unavailability: If you are prevented from electronically submitting your application on the application deadline date because e-Application is unavailable, we will grant you an extension of one business day to enable you to transmit your application electronically, by mail, or by hand delivery. We will grant this extension if—

(1) You are a registered user of e-Application and you have initiated an electronic application for this competition; and

(2) (a) E-Application is unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the application deadline date; or

(b) E-Application is unavailable for any period of time between 3:30 p.m. and 4:30:00 p.m., Washington, DC time, on the application deadline date.

We must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension or to confirm our acknowledgment of any system unavailability, you may contact either (1) the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** (*see* VII. Agency Contact) or (2) the e-Grants help desk at 1–888–336–8930. If e-Application is unavailable due to technical problems with the system and, therefore, the application deadline is extended, an e-mail will be sent to all registered users who have initiated an e-Application.

Extensions referred to in this section apply only to the unavailability of e-Application. If e-Application is available, and, for any reason, you are unable to submit your application electronically or you do not receive an automatic acknowledgment of your submission, you may submit your

application in paper format by mail or hand delivery in accordance with the instructions in this notice.

b. *Submission of Paper Applications by Mail.*

If you submit your application in paper format by mail (through the U.S. Postal Service or a commercial carrier), you must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, *Attention:* (CFDA Number 84.184W), LBJ Basement Level 1, 400 Maryland Avenue, SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you submit your application in paper format by hand delivery, you (or a courier service) must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, *Attention:* (CFDA Number 84.184W), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this grant notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

Selection Criteria: The selection criteria for this program are from 34 CFR 75.210 and are listed in the application package.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. Part of the performance report must include the sustainability plan described in the absolute priority of this notice. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *http://www.ed.gov/fund/grant/apply/appforms/appforms.html.*

4. *Performance Measures:* We have identified the following Government Performance and Results Act of 1993 (GPRA) performance measure for assessing the effectiveness of the Building State Capacity for Preventing Youth Substance Use and Violence program: The percentage of grantees that submit a high-quality plan to create and sustain an effective infrastructure to support the implementation of effective drug and violence prevention activities. The plan must include, at a minimum, the four key elements described in the absolute priority of this notice.

This measure constitutes the Department's indicator of success for this program. Consequently, we advise an applicant for a grant under this program to give careful consideration to this measure in conceptualizing the approach and evaluation for its proposed project. Each grantee will be required to provide, in its final report, data about its progress in meeting this measure.

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Christine F. Pinckney, U.S. Department of Education, 400 Maryland Avenue, SW., room 10077, Potomac Center Plaza (PCP), Washington, DC 20202. *Telephone:* (202) 245–7894 or by *e-mail: christine.pinckney@ed.gov.*

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

Electronic Access to This Document: You can view this document, as well as all other documents of this Department published in the **Federal Register,** in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.* To use PDF you must have Adobe Acrobat Reader, which is available free at this site.

Note: The official version of this document is the document published in the **Federal Register.** Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: April 20, 2010.

Kevin Jennings,

Assistant Deputy Secretary for Safe and Drug-Free Schools.

[FR Doc. 2010–9498 Filed 4–22–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Overview Information; National Institute on Disability and Rehabilitation Research (NIDRR)—Disability and Rehabilitation Research Projects and Centers Program—Rehabilitation Research and Training Centers (RRTCs)—Individual Level Characteristics Related to Employment Outcomes Among Individuals With Disabilities; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2010

Catalog of Federal Domestic Assistance (CFDA) Number: 84.133B–1.

Dates: Applications Available: April 23, 2010.

Date of Pre-Application Meeting: May 20, 2010.

Deadline for Transmittal of Applications: June 22, 2010.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program:

The purpose of the RRTC program is to improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended, through advanced research, training, technical assistance, and dissemination activities in general problem areas, as specified by NIDRR. Such activities are designed to benefit rehabilitation service providers, individuals with disabilities, and the family members or other authorized representatives of individuals with disabilities.

Additional information on the RRTC program can be found at: *http://www.ed.gov/rschstat/research/pubs/res-program.html#RRTC.*

Priorities: NIDRR has established two absolute priorities for this competition.

Absolute Priorities: The *General Rehabilitation Research and Training Centers (RRTC) Requirements* priority is from the notice of final priorities for the Disability and Rehabilitation Research Projects and Centers program, published in the **Federal Register** on February 1, 2008 (73 FR 6132). The *Individual Level Characteristics Related to Employment Outcomes Among Individuals with Disabilities* priority is from the notice of final priority for the Disability and Rehabilitation Research Projects and Centers Program, published elsewhere in this issue of the **Federal Register.**

For FY 2010, these priorities are absolute priorities. Under 34 CFR 75.105(c)(3) we consider only applications that meet these priorities.

These priorities are:

General Rehabilitation Research and Training Centers (RRTC) Requirements and *Individual Level Characteristics Related to Employment Outcomes Among Individuals with Disabilities.*

Note: The full text of each of these priorities is included in the notice of final priorities published in the **Federal Register** and in the applicable application package.

Program Authority: 29 U.S.C. 762(g) and 764(b)(2).

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 80, 81, 82, 84, 85, 86, and 97. (b) The regulations for this program in 34 CFR part 350. (c) The notice of final priorities for the Disability and Rehabilitation Research Projects and Centers program, published in the **Federal Register** on February 1, 2008 (73 FR 6132). (d) The notice of final priority for the Disability and Rehabilitation Research Projects and Centers program, published elsewhere in this issue of the **Federal Register.**

Note: The regulations in 34 CFR part 86 apply to institutions of higher education (IHEs) only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $850,000.

Maximum Award: We will reject any application that proposes a budget exceeding $850,000 for a single budget period of 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

Estimated Number of Awards: 1.

Note: The Department is not bound by any estimates in this notice.

Note: The maximum amount includes direct and indirect costs. A grantee may not collect more than 15 percent of the total grant award as indirect cost charges (34 CFR 350.23).

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* States; public or private agencies, including for-profit agencies; public or private organizations, including for-profit organizations; IHEs; and Indian tribes and tribal organizations.

2. *Cost Sharing or Matching:* This competition does not require cost sharing or matching.

IV. Application and Submission Information

1. *Address to Request Application Package:* ED Pubs, U.S. Department of Education, P.O. Box 22207, Alexandria, VA 22304. Telephone, toll free: 1–877–433–7827. FAX: (703) 605–6794. If you use a telecommunications device for the deaf (TDD), call, toll free: 1–877–576–7734.

You can contact ED Pubs at its Web site, also: *http://www.EDPubs.gov* or at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application package from ED Pubs, be sure to identify this program or competition as follows: CFDA number 84.133B–1.

Individuals with disabilities can obtain a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) by contacting the person or team listed under *Accessible Format* in section VIII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We recommend that you limit Part III to the equivalent of no more than 125 pages, using the following standards:

- A "page" is 8.5″ × 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative. Single spacing may be used for titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial. An application submitted in any other font (including Times Roman or Arial Narrow) will not be accepted.

The recommended page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, the recommended page limit does apply to all of the application narrative section (Part III).

The application package will provide instructions for completing all components to be included in the application. Each application must include a cover sheet (Standard Form 424); budget requirements (ED Form 524) and narrative justification; other required forms; an abstract, Human Subjects narrative, Part III narrative;

resumes of staff; and other related materials, if applicable.

3. *Submission Dates and Times:*

Applications Available: April 23, 2010.

Date of Pre-Application Meeting: Interested parties are invited to participate in a pre-application meeting and to receive information and technical assistance through individual consultation with NIDRR staff. The pre-application meeting will be held on May 20, 2010. Interested parties may participate in this meeting by conference call with NIDRR staff from the Office of Special Education and Rehabilitative Services between 1:00 p.m. and 3:00 p.m., Washington, DC time. NIDRR staff also will be available from 3:30 p.m. to 4:30 p.m., Washington, DC time, on the same day, by telephone, to provide information and technical assistance through individual consultation. For further information or to make arrangements to participate in the meeting via conference call or for an individual consultation, contact Donna Nangle, U.S. Department of Education, Potomac Center Plaza (PCP), room 5142, 550 12th Street, SW., Washington, DC 20202. *Telephone:* (202) 245–7462 or by *e-mail: Donna.Nangle@ed.gov.*

Deadline for Transmittal of Applications: June 22, 2010.

Applications for grants under this competition must be submitted electronically using the Electronic Grant Application System (e-Application) accessible through the Department's e-Grants site. For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV.6. *Other Submission Requirements* of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

4. *Intergovernmental Review:* This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section in this notice.

6. *Other Submission Requirements:*

Applications for grants under this competition must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications for grants under the Rehabilitation Research and Training Centers (RRTCs)—CFDA Number 84.133B–1 must be submitted electronically using e-Application, accessible through the Department's e-Grants Web site at: *http://e-grants.ed.gov.*

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement *and* submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

While completing your electronic application, you will be entering data online that will be saved into a database. You may not e-mail an electronic copy of a grant application to us.

Please note the following:

- You must complete the electronic submission of your grant application by 4:30:00 p.m., Washington, DC time, on the application deadline date. E-Application will not accept an application for this competition after 4:30:00 p.m., Washington, DC time, on the application deadline date. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the application process.
- The hours of operation of the e-Grants Web site are 6 a.m. Monday until 7 p.m. Wednesday; and 6 a.m. Thursday until 8 p.m. Sunday, Washington, DC time. Please note that, because of maintenance, the system is unavailable between 8 p.m. on Sundays and 6 a.m. on Mondays, and between 7 p.m. on Wednesdays and 6 a.m. on Thursdays, Washington, DC time. Any modifications to these hours are posted on the e-Grants Web site.
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.
- You must submit all documents electronically, including all information you typically provide on the following forms: the Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. You must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified in this paragraph or submit a password protected file, we will not review that material.
- Your electronic application must comply with any page limit requirements described in this notice.
- Prior to submitting your electronic application, you may wish to print a copy of it for your records.
- After you electronically submit your application, you will receive an automatic acknowledgment that will include a PR/Award number (an identifying number unique to your application).
- Within three working days after submitting your electronic application, fax a signed copy of the SF 424 to the Application Control Center after following these steps:

(1) Print SF 424 from e-Application.

(2) The applicant's Authorizing Representative must sign this form.

(3) Place the PR/Award number in the upper right hand corner of the hard-copy signature page of the SF 424.

(4) Fax the signed SF 424 to the Application Control Center at (202) 245–6272.

- We may request that you provide us original signatures on other forms at a later date.

Application Deadline Date Extension in Case of e-Application Unavailability: If you are prevented from electronically submitting your application on the application deadline date because e-Application is unavailable, we will grant you an extension of one business day to enable you to transmit your application electronically, by mail, or by hand delivery. We will grant this extension if—

(1) You are a registered user of e-Application and you have initiated an electronic application for this competition; and

(2)(a) E-Application is unavailable for 60 minutes or more between the hours

of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the application deadline date; or

(b) E-Application is unavailable for any period of time between 3:30 p.m. and 4:30:00 p.m., Washington, DC time, on the application deadline date.

We must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension or to confirm our acknowledgment of any system unavailability, you may contact either (1) the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** (*see* VII. Agency Contact) or (2) the e-Grants help desk at 1–888–336–8930. If e-Application is unavailable due to technical problems with the system and, therefore, the application deadline is extended, an e-mail will be sent to all registered users who have initiated an e-Application. Extensions referred to in this section apply only to the unavailability of e-Application.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through e-Application because—

- You do not have access to the Internet; or
- You do not have the capacity to upload large documents to e-Application; *and*
- No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevents you from using the Internet to submit your application. If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, SW., room 5142, PCP, Washington, DC 20202–2700. FAX: (202) 245–7323.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.*

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, *Attention:* (CFDA Number 84.133B–1), LBJ Basement Level 1, 400 Maryland Avenue, SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application, by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, *Attention:* (CFDA Number 84.133B–1), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this grant notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

Selection Criteria: The selection criteria for this competition are from 34 CFR 350.54 and are listed in the application package.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *http://www.ed.gov/fund/grant/apply/appforms/appforms.html.*

Note: NIDRR will provide information by letter to grantees on how and when to submit the final performance report.

4. *Performance Measures:* To evaluate the overall success of its research program, NIDRR assesses the quality of its funded projects through a review of grantee performance and products. Each year, NIDRR examines a portion of its grantees to determine:

- The percentage of NIDRR-supported fellows, post-doctoral trainees, and

doctoral students who publish results of NIDRR-sponsored research in refereed journals.

- The number of accomplishments (*e.g.,* new or improved tools, methods, discoveries, standards, interventions, programs, or devices) developed or tested with NIDRR funding that have been judged by expert panels to be of high quality and to advance the field.
- The average number of publications per award based on NIDRR-funded research and development activities in refereed journals.
- The percentage of new NIDRR grants that assess the effectiveness of interventions, programs, and devices using rigorous methods.
- The number of new or improved NIDRR-funded assistive and universally designed technologies, products, and devices transferred to industry for potential commercialization.

Each grantee must annually report on its performance through NIDRR's Annual Performance Report (APR) form. NIDRR uses APR information submitted by grantees to assess progress on these measures.

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, SW., room 5142, PCP, Washington, DC 20202. *Telephone:* (202) 245–7462 or by *e-mail: Donna.Nangle@ed.gov.*

If you use a TDD, call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., room 5075, PCP, Washington, DC 20202–2550. *Telephone:* (202) 245–7363. If you use a TDD, call the FRS, toll-free, at 1–800–877–8339.

Electronic Access to This Document: You can view this document, as well as all other documents of this Department published in the **Federal Register,** in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.* To use PDF you must have Adobe Acrobat Reader, which is available free at this site.

Note: The official version of this document is the document published in the **Federal Register.** Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: April 20, 2010.

Alexa Posny,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2010–9500 Filed 4–22–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Overview Information; Rehabilitation Training: Rehabilitation Long-Term Training Notice Inviting Applications for New Awards for Fiscal Year (FY) 2010

Catalog of Federal Domestic Assistance (CFDA) Numbers: 84.129 B, C, E, F, H, J, P, Q, R, and W.

Note: This notice invites applications for 10 separate competitions. For funding information regarding each of the 10 competitions, refer to the chart under *Award Information* in section II of this notice.

Dates: Applications Available: April 23, 2010.

Deadline for Transmittal of Applications: June 7, 2010.

Deadline for Intergovernmental Review: August 6, 2010.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The Rehabilitation Long-Term Training program provides financial assistance for—

(1) Projects that provide basic or advanced training leading to an academic degree in areas of personnel shortages in rehabilitation as identified by the Secretary;

(2) Projects that provide a specified series of courses or program of study leading to the award of a certificate in areas of personnel shortages in rehabilitation as identified by the Secretary; and

(3) Projects that provide support for medical residents enrolled in residency training programs in the specialty of physical medicine and rehabilitation.

Priorities: This notice includes three absolute priorities and one competitive preference priority. In order to receive funding under any of the competitions announced in this notice, an applicant must meet Absolute Priority 1. An applicant for funding under CFDA No. 84.129B (Rehabilitation Counseling) also must meet Absolute Priority 2, and an applicant for funding under CFDA No. 84.129W (Comprehensive System of Personnel Development) also must meet Absolute Priority 3. The competitive preference priority applies to all competitions announced in this notice.

Absolute Priority 1: In accordance with 34 CFR 75.105(b)(2)(ii), this priority is from 34 CFR 386.1. For FY 2010 and any subsequent year in which we make awards from the list of unfunded applicants from these competitions, this priority is an absolute priority. Under 34 CFR 75.105(c)(3) we consider only applications that meet this priority.

This priority is:

Rehabilitation Long-Term Training programs designed to provide academic training in areas of personnel shortages.

Under 34 CFR 75.105(c)(3), for each competition, we consider only applications that propose to provide training in the priority areas of personnel shortages listed in the following chart.

CFDA No.	Priority area
84.129B ...	Rehabilitation Counseling.
84.129C ...	Rehabilitation Administration.
84.129E ...	Rehabilitation Technology.
84.129F ...	Vocational Evaluation and Work Adjustment.
84.129H ...	Rehabilitation of Individuals Who are Mentally Ill.
84.129J	Rehabilitation Psychology.
84.129P ...	Specialized Personnel for Rehabilitation of Individuals who are Blind or Have Vision Impairments.
84.129Q ...	Rehabilitation of Individuals Who are Deaf or Hard of Hearing.
84.129R ...	Job Development and Job Placement Services to Individuals with Disabilities.
84.129W ..	Comprehensive System of Personnel Development.

Absolute Priority 2 (CFDA No. 84.129B): This priority is from the notice of final priority for this program, published in the **Federal Register** on January 15, 2003 (68 FR 2166). For FY 2010 and any subsequent year in which we make awards from the list of unfunded applicants from the competition for CFDA No. 84.129B, this priority is an absolute priority. Under 34 CFR 75.105(c)(3), for this competition, we consider only applications that meet this absolute priority and Absolute Priority 1.

This priority is:

Partnership with the State Vocational Rehabilitation Agency (84.129B—Rehabilitation Counseling).

This priority supports projects that will increase the knowledge of students of the role and responsibilities of the vocational rehabilitation (VR) counselor and of the benefits of counseling in State VR agencies. This priority focuses attention on and intends to strengthen the unique role of rehabilitation

educators and State VR agencies in the preparation of qualified VR counselors by increasing or creating ongoing collaboration between institutions of higher education and State VR agencies.

Projects funded under this priority must include within the degree program information about and experience in the State VR system. Projects must include partnering activities for students with the State VR agency including experiential activities, such as formal internships or practicum agreements. In addition, experiential activities for students with community-based rehabilitation service providers are encouraged.

Projects must include an evaluation of the impact of project activities.

Absolute Priority 3 (CFDA No. 84.129W—Comprehensive System of Personnel Development): This priority is from the notice of final priority for this program, published in the **Federal Register** on October 16, 1998 (63 FR 55764). For FY 2010 and any subsequent year in which we make awards from the list of unfunded applicants from the competition for CFDA No. 84.129W, this priority is an absolute priority. Under 34 CFR 75.105(c)(3), for this competition, we consider only applications that meet this absolute priority and Absolute Priority 1.

This priority is:

Comprehensive System of Personnel Development (84.129W).

Projects must—

(1) Provide training leading to academic degrees or academic certificates to current vocational rehabilitation (VR) counselors, including counselors with disabilities, ethnic minorities, and those from diverse backgrounds, toward meeting designated State unit (DSU) personnel standards required under section 101(a)(7) of the Rehabilitation Act of 1973, as amended, commonly referred to as the Comprehensive System of Personnel Development (CSPD);

(2) Address the academic degree and academic certificate needs specified in the CSPD plans of those States with which the project will be working; and

(3) Develop innovative approaches (*e.g.,* distance learning, competency-based programs, and other methods) that would maximize participation in, and the effectiveness of, project training.

Competitive Preference Priority: This priority is from 34 CFR 75.225. For FY 2010 and any subsequent year in which we make awards from the list of unfunded applicants from any one of these competitions, this priority is a competitive preference priority and is limited to institutions of higher learning. Under 34 CFR 75.105(c)(2)(i) we award an additional 10 points to an application that meets this priority.

This priority is:

Institutions of higher education that meet the definition of novice applicant.

To meet this priority, an applicant must be an institution of higher education that meets the definition of novice applicant in 34 CFR 75.225. To meet this definition of novice applicant, the applicant must—

1. Have never received a grant or subgrant under the Rehabilitation Training: Rehabilitation Long-Term Training program;

2. Have never been a member of a group application, submitted in accordance with sections 34 CFR 75.127–75.129, that received a grant under the Rehabilitation Training: Rehabilitation Long-Term Training program; and

3. Have not had an active discretionary grant from the Federal Government in the five years before the deadline date for applications under the Rehabilitation Training: Rehabilitation Long-Term Training program. A grant is considered active until the end of the grant's project or funding period, including any extensions of these periods that extend the grantee's authority to obligate funds.

Program Authority: 29 U.S.C. 772.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 85, 86, and 99. (b) The regulations for this program in 34 CFR parts 385 and 386. (c) The notice of final priority for this program, published in the **Federal Register** on January 15, 2003 (68 FR 2166). (d) The notice of final priority for this program, published in the **Federal Register** on October 16, 1998 (63 FR 55764).

Note: The regulations in 34 CFR part 79 apply to all applicants except Federally recognized Indian Tribes.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

II. Award Information

Type of Awards: Discretionary grants.

Estimated Available Funds: $6,450,000.

Note: Please refer to the "Maximum Award" column of the chart in this section for the estimated dollar amounts for individual competitions.

Contingent upon the availability of funds and the quality of applications for the competitions announced in this notice, we may make additional awards in FY 2010 from the lists of unfunded applicants from individual competitions.

Estimated Range of Awards: $70,000–$150,000.

Estimated Average Size of Awards: $100,000.

Maximum Award: See chart.

Estimated Number of Awards: See chart.

Project Period: Up to 60 months.

REHABILITATION LONG-TERM TRAINING PROGRAM APPLICATION NOTICE FOR FISCAL YEAR 2010

CFDA Number	Priority area	Maximum award (per budget year)	Estimated number of awards
84.129B	Rehabilitation Counseling	$150,000	25
84.129C	Rehabilitation Administration	100,000	1
84.129E	Rehabilitation Technology	100,000	2
84.129F	Vocational Evaluation and Work Adjustment	100,000	2
84.129H	Rehabilitation of Individuals Who are Mentally Ill	100,000	5
84.129J	Rehabilitation Psychology	100,000	2
84.129P	Specialized Personnel for Rehabilitation of Individuals who are Blind or Have Vision Impairments.	100,000	3
84.129Q	Rehabilitation of Individuals Who are Deaf or Hard of Hearing.	100,000	4
84.129R	Job Development and Job Placement Services to Individuals with Disabilities.	100,000	2
84.129W	Comprehensive System of Personnel Development	100,000	6

We will reject any application that proposes a budget exceeding the maximum amount for each individual competition for a single budget period of 12 months. For projects funded under 84.129B, the maximum amount for a single budget period of 12 months is $150,000. For all other competitions in this notice, the maximum amount is $100,000 for a single budget period of 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

Note: The Department is not bound by any estimates in this notice. The Secretary may decide to increase or decrease the number of grants awarded in each specific priority area based on factors such as the quality of the applications received.

III. Eligibility Information

1. *Eligible Applicants:* States and public or nonprofit agencies and organizations, including Indian Tribes and institutions of higher education.

2. *Cost Sharing or Matching:* Cost sharing of at least 10 percent of the total cost of the project is required of grantees under the Rehabilitation Long-Term Training program. The Secretary may waive part of the non-Federal share of the cost of the project after negotiations if the applicant demonstrates that it does not have sufficient resources to contribute the entire match (34 CFR 386.30).

Note: Under 34 CFR 75.562(c), an indirect cost reimbursement on a training grant is limited to the recipient's actual indirect costs, as determined by its negotiated indirect cost rate agreement, or eight percent of a modified total direct cost base, whichever amount is less. Indirect costs in excess of the limit may not be charged directly, used to satisfy matching or cost-sharing requirements, or charged to another Federal award.

IV. Application and Submission Information

1. *Address to Request Application Package:* ED Pubs, U.S. Department of Education, P.O. Box 22207, Alexandria, VA 22304. Telephone, toll free: 1–877–433–7827. FAX: (703) 605–6794. If you use a telecommunications device for the deaf (TDD), call, toll free: 1–877–576–7734.

You can contact ED Pubs at its Web site, also: *http://www.EDPubs.gov* or at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application package from ED Pubs, be sure to identify the competition as follows: CFDA number 84.129 B, C, E, F, H, J, P, Q, R, or W.

Individuals with disabilities can obtain a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) by contacting the person or team listed under *Accessible Format* in section VIII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for the competition.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit the application narrative (Part III) to the equivalent of no more than 45 pages, using the following standards:

- A "page" is 8.5 × 11, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).
- *Use one of the following fonts:* Times New Roman, Courier, Courier New, or Arial. An application submitted in any other font (including Times Roman or Arial Narrow) will not be accepted.

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, the references, or the letters of support. However, the page limit does apply to all of the application narrative section (Part III).

We will reject your application if you exceed the page limit; or if you apply other standards and exceed the equivalent of the page limit.

3. *Submission Dates and Times:*

Applications Available: April 23, 2010.

Deadline for Transmittal of Applications: June 7, 2010.

Applications for grants under these competitions must be submitted electronically using the Electronic Grant Application System (e-Application) accessible through the Department's e-Grants site. For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV. 6. *Other Submission Requirements* of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

Deadline for Intergovernmental Review: August 6, 2010.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application packages for these competitions.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Applications for grants under these competitions must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. Electronic Submission of Applications

Applications for grants under the Rehabilitation Training: Rehabilitation Long-Term Training competitions—CFDA Numbers 84.129 B, C, E, F, H, J, P, Q, R, and W must be submitted electronically using e-Application, accessible through the Department's e-Grants Web site at: *http://e-grants.ed.gov.*

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement *and* submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

While completing your electronic application, you will be entering data

online that will be saved into a database. You may not e-mail an electronic copy of a grant application to us.

Please note the following:

• You must complete the electronic submission of your grant application by 4:30:00 p.m., Washington, DC time, on the application deadline date. E-Application will not accept an application for these competitions after 4:30:00 p.m., Washington, DC time, on the application deadline date. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the application process.

• The hours of operation of the e-Grants Web site are 6:00 a.m. Monday until 7:00 p.m. Wednesday; and 6:00 a.m. Thursday until 8:00 p.m. Sunday, Washington, DC time. Please note that, because of maintenance, the system is unavailable between 8:00 p.m. on Sundays and 6:00 a.m. on Mondays, and between 7:00 p.m. on Wednesdays and 6:00 a.m. on Thursdays, Washington, DC time. Any modifications to these hours are posted on the e-Grants Web site.

• You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.

• You must submit all documents electronically, including all information you typically provide on the following forms: The Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. You must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified in this paragraph or submit a password protected file, we will not review that material.

• Your electronic application must comply with any page-limit requirements described in this notice.

• Prior to submitting your electronic application, you may wish to print a copy of it for your records.

• After you electronically submit your application, you will receive an automatic acknowledgment that will include a PR/Award number (an identifying number unique to your application).

• Within three working days after submitting your electronic application, fax a signed copy of the SF 424 to the Application Control Center after following these steps:

(1) Print SF 424 from e-Application.

(2) The applicant's Authorizing Representative must sign this form.

(3) Place the PR/Award number in the upper right hand corner of the hard-copy signature page of the SF 424.

(4) Fax the signed SF 424 to the Application Control Center at (202) 245–6272.

• We may request that you provide us original signatures on other forms at a later date.

Application Deadline Date Extension in Case of e-Application Unavailability: If you are prevented from electronically submitting your application on the application deadline date because e-Application is unavailable, we will grant you an extension of one business day to enable you to transmit your application electronically, by mail, or by hand delivery. We will grant this extension if—

(1) You are a registered user of e-Application and you have initiated an electronic application for the competition; and

(2) (a) E-Application is unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the application deadline date; or

(b) E-Application is unavailable for any period of time between 3:30 p.m. and 4:30:00 p.m., Washington, DC time, on the application deadline date.

We must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension or to confirm our acknowledgment of any system unavailability, you may contact either (1) the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** (*see* VII. Agency Contact) or (2) the e-Grants help desk at 1–888–336–8930. If e-Application is unavailable due to technical problems with the system and, therefore, the application deadline is extended, an e-mail will be sent to all registered users who have initiated an e-Application. Extensions referred to in this section apply only to the unavailability of e-Application.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through e-Application because—

• You do not have access to the Internet; or

• You do not have the capacity to upload large documents to e-Application;

and

• No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevents you from using the Internet to submit your application. If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Traci DiMartini, U.S. Department of Education, 400 Maryland Avenue, SW., room 5027, Potomac Center Plaza (PCP), Washington, DC 20202–2800. FAX: (202) 245–7591.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. Submission of Paper Applications by Mail

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: CFDA Number 84.129 B, C, E, F, H, J, P, Q, R, or W, LBJ Basement Level 1, 400 Maryland Avenue, SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. Submission of Paper Applications by Hand Delivery

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application, by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: CFDA Number 84.129 B, C, E, F, H, J, P, Q, R, or W, 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this grant notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

Selection Criteria: The selection criteria for these competitions are from 34 CFR 75.210 and 34 CFR 386.20 and are listed in the application package.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *http://www.ed.gov/fund/grant/apply/appforms/appforms.html.*

4. *Performance Measures:* The Government Performance and Results Act (GPRA) of 1993 directs Federal departments and agencies to improve the effectiveness of programs by engaging in strategic planning, setting outcome-related goals for programs, and measuring program results against those goals.

The goal of the Rehabilitation Services Administration's (RSA) Rehabilitation Training: Rehabilitation Long-Term Training program is to increase the number of qualified VR personnel, including counselors and other professional staff, working in State VR or related agencies. At least 75 percent of all grant funds must be used for direct payment of student scholarships.

Grantees are required to track current and former RSA scholars and maintain accurate information on them from the time they are enrolled in the program until they successfully meet their payback requirements. Specifically, each grantee is required to maintain information on the cumulative support granted to RSA scholars, scholar debt in years, program completion date and reason for exit for each scholar, dates each scholar's work begins and is completed to meet his or her payback agreement, type of employment scholars attain, all current contact information for scholars including home address, and the place of employment of individual scholars.

Grantees are required to report annually to RSA on these data elements using the RSA Grantee Reporting Form, OMB number 1820–0617, an electronic reporting system supported by the RSA Management Information System (RSA MIS). The RSA Grantee Reporting Form collects specific data, including the number of RSA scholars entering the rehabilitation workforce, the rehabilitation field each scholar enters, and the type of employment setting each scholar chooses (*e.g.,* State agency, nonprofit service provider, or practice group). This form allows RSA to measure results against the goal of increasing the number of qualified VR personnel working in State VR and related agencies.

All Rehabilitation Long-Term Training grantees must also submit information in their annual report that details their relationship with State VR agencies including any information demonstrating articulation agreements, internships for RSA scholars, or employment of program graduates in the State VR agency.

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Traci DiMartini, U.S. Department of Education, Rehabilitation Services Administration, 400 Maryland Avenue, SW., room 5027, PCP, Washington, DC 20202–2800. Telephone: (202) 245–6425 or by e-mail: *Traci.DiMartini@ed.gov*.

If you use a TDD, call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) by contacting the Grants and Contracts Service Team, U.S. Department of Education, 400 Maryland Avenue, SW., room 5075, PCP, Washington, DC 20202–2550. Telephone: (202) 245–7363. If you use a TDD, call the FRS, toll free, at 1–800–877–8339.

Electronic Access to This Document: You can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister*. To use PDF you must have Adobe Acrobat Reader, which is available free at this site.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html*.

Dated: April 20, 2010.

Alexa Posny,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2010–9508 Filed 4–22–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

National Institute on Disability and Rehabilitation Research (NIDRR)—Disability and Rehabilitation Research Projects and Centers Program—Rehabilitation Research and Training Centers (RRTCs)—Individual-Level Characteristics Related to Employment Among Individuals With Disabilities

Catalog of Federal Domestic Assistance (CFDA) Number: 84.133B–1.

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice of final priority.

SUMMARY: The Assistant Secretary for Special Education and Rehabilitative Services announces a priority for the Disability and Rehabilitation Research Projects and Centers Program administered by NIDRR. Specifically, this notice announces a priority for an RRTC on Individual-Level Characteristics Related to Employment Among Individuals with Disabilities. The Assistant Secretary may use this priority for competitions in fiscal year (FY) 2010 and later years. We take this action to focus research attention on areas of national need. We intend for this priority to improve rehabilitation services and outcomes for individuals with disabilities.

DATES: *Effective Date:* This priority is effective May 24, 2010.

FOR FURTHER INFORMATION CONTACT: Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, SW., room 5142, Potomac Center Plaza (PCP), Washington, DC 20202–2700. Telephone: (202) 245–7462 or by e-mail: *donna.nangle@ed.gov*.

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

This notice of final priority is in concert with NIDRR's Final Long-Range Plan for FY 2005–2009 (Plan). The Plan, which was published in the **Federal Register** on February 15, 2006 (71 FR 8165), can be accessed on the Internet at the following site: *http://www.ed.gov/about/offices/list/osers/nidrr/policy.html*.

Through the implementation of the Plan, NIDRR seeks to: (1) Improve the quality and utility of disability and rehabilitation research; (2) foster an exchange of expertise, information, and training to facilitate the advancement of knowledge and understanding of the unique needs of traditionally underserved populations; (3) determine best strategies and programs to improve rehabilitation outcomes for underserved populations; (4) identify research gaps; (5) identify mechanisms of integrating research and practice; and (6) disseminate findings.

Purpose of Program: The purpose of the Disability and Rehabilitation Research Projects and Centers Program is to plan and conduct research, demonstration projects, training, and related activities, including international activities, to develop methods, procedures, and rehabilitation technology, that maximize the full inclusion and integration into society, employment, independent living, family support, and economic and social self-sufficiency of individuals with disabilities, especially individuals with the most severe disabilities, and to improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended.

RRTC Program

The purpose of the RRTC program is to improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended, through advanced research, training, technical assistance, and dissemination activities in general problem areas, as specified by NIDRR. Such activities are designed to benefit rehabilitation service providers, individuals with disabilities, and the family members or other authorized representatives of individuals with disabilities. In addition, NIDRR intends to require all RRTC applicants to meet the requirements of the *General Rehabilitation Research and Training Centers (RRTC) Requirements* priority that it published in a notice of final priorities in the **Federal Register** on February 1, 2008 (73 FR 6132). Additional information on the RRTC program can be found at: *http://www.ed.gov/rschstat/research/pubs/res-program.html#RRTC*.

Statutory and Regulatory Requirements of RRTCs

RRTCs must—

- Carry out coordinated advanced programs of rehabilitation research;
- Provide training, including graduate, pre-service, and in-service training, to help rehabilitation personnel more effectively provide rehabilitation services to individuals with disabilities;
- Provide technical assistance to individuals with disabilities, their representatives, providers, and other interested parties;
- Disseminate informational materials to individuals with disabilities, their representatives, providers, and other interested parties; and
- Serve as centers of national excellence in rehabilitation research for individuals with disabilities, their representatives, providers, and other interested parties.

Applicants for RRTC grants must also demonstrate in their applications how they will address, in whole or in part, the needs of individuals with disabilities from minority backgrounds.

Program Authority: 29 U.S.C. 762(g) and 764(b)(2).

Applicable Program Regulations: 34 CFR part 350.

We published a notice of proposed priority (NPP) for NIDRR's Disability and Rehabilitation Research Projects and Centers Program in the **Federal Register** on December 18, 2009 (74 FR 67186). The NPP included a background statement that described our rationale for the priority proposed in that notice.

There are no differences between the NPP and this notice of final priority (NFP) as discussed in the following section.

Public Comment: In response to our invitation in the NPP, three parties submitted comments on the proposed priority. An analysis of the comments and of any changes in the priority since publication of the NPP follows.

Generally, we do not address technical and other minor changes, or suggested changes the law does not authorize us to make under the applicable statutory authority. In addition, we do not address general comments that raised concerns not directly related to the proposed priority.

Analysis of Comments and Changes

Comment: One commenter recommended that NIDRR award grants to applicants who propose research that will contribute to the improvement of rehabilitation programs for underserved populations. This commenter also suggested that NIDRR select applicants who clearly identify robust methods for research and practice.

Discussion: NIDRR agrees that the research funded under this priority should contribute to improved employment practices for underserved populations. We have structured the requirements of this priority with the aim of identifying individuals with disabilities who are at risk for poor employment outcomes and generating new knowledge that can be used to

improve their outcomes. Some individuals with disabilities who are at risk for poor employment outcomes will undoubtedly have been individuals who were underserved. Activities under paragraph (b) of the priority are intended to generate new knowledge about the populations of individuals with disabilities who have the poorest employment outcomes. Activities under paragraph (c) of the priority, in particular, are intended to generate new knowledge about the barriers to, and facilitators of, employment experienced by these subpopulations, and activities under paragraph (d) are intended to promote the incorporation of these research findings into practice or policy.

NIDRR also agrees that robust methods for research in this area are critical. The peer review process will determine the merits of each proposal and will take into consideration the applicant's proposed research methods.

Changes: None.

Comment: One commenter stated that the priority should include a focus on best practices for assisting individuals with disabilities to transition from school to employment.

Discussion: NIDRR agrees that identifying effective practices to improve the transition from school to employment for individuals with disabilities is an important area for research. However, this priority was developed to generate broad knowledge about employment outcomes among a variety of subpopulations of individuals with disabilities. It is not the purpose of this priority to focus on the transition from school to employment, in particular, or on transition-age youth with disabilities. That said, research conducted under paragraphs (a) and (b) of the priority may demonstrate that transition-age youth have poor employment outcomes relative to other subpopulations and therefore require greater research attention. Thus, while NIDRR declines to require all applicants to focus on transition-age youth with disabilities, it is possible for an applicant's proposal to include such a focus. The peer review process will determine the merits of each proposal.

Changes: None.

Comment: One commenter recommended that the priority focus on the interactions between the person and the environment that lead to employment outcomes and that the title of the priority be changed to reflect this focus.

Discussion: Paragraph (c) of the priority requires the RRTC to investigate barriers to, and facilitators of, employment for subpopulations of individuals who are at risk for poor employment outcomes. Barriers to, and facilitators of, employment are likely to be found at both the individual level and in the environment. Paragraph (c) of the priority provides examples of environmental-level barriers to, and facilitators of, employment, such as availability of transportation, social support, and employer practices. Nothing in this priority precludes applicants from proposing methods for gathering and analyzing data in ways that emphasize how experiences of environmental factors at the individual level influence employment opportunities and outcomes. However, NIDRR's focus in this priority is on individual-level characteristics related to employment of individuals with disabilities, which is a broader focus than simply examining the interactions between the person and the environment. Therefore, NIDRR declines to change the title as suggested by the commenter.

Changes: None.

Comment: One commenter suggested that the priority include a focus on the effects of community-level factors that affect employment outcomes for individuals with disabilities, including research on community-level interventions.

Discussion: The priority requires the RRTC to collect and analyze individual-level data about barriers to, and facilitators of, employment for individuals at risk for poor employment outcomes. Nothing in the priority precludes collection of data about community-level barriers to, or facilitators of, employment experienced by individuals with disabilities.

Changes: None.

Final Priority

The Assistant Secretary for Special Education and Rehabilitative Services announces a priority for a Rehabilitation Research and Training Center (RRTC) on Individual-Level Characteristics Related to Employment Among Individuals with Disabilities. This RRTC must identify subpopulations of individuals with disabilities who are at risk of poor employment outcomes, and document the barriers to, and facilitators of, employment that these subgroups experience. This new knowledge is intended to serve as a foundation for future interventions research that will target those who are most at risk of poor employment outcomes. The RRTC must be designed to contribute to the following outcomes:

(a) A synthesis of available knowledge about employment disparities among subpopulations of individuals with disabilities. The RRTC must contribute to this outcome by conducting a review and synthesis of existing research on individual-level characteristics related to successful and poor employment outcomes among individuals with disabilities. Such individual-level characteristics may include, but are not limited to, the following: Disabling condition, severity of disability, age, gender, race, ethnicity, socioeconomic status, education level, and urban/rural status. Successful and poor employment outcomes may be measured by the following indicators: An individual's employment status (*e.g.,* employed, unemployed, underemployed), income, and job retention or promotion. The RRTC must complete this activity by the end of the first year of the grant.

(b) New knowledge about the individual-level characteristics that are most strongly associated with employment-related outcome variables among individuals with disabilities. The RRTC must contribute to this outcome by conducting research on the extent to which employment of individuals with disabilities is related to individual-level characteristics. This research must include, but is not limited to, multivariate analyses of existing national datasets. Analyses of existing data must examine possible variations of employment, including full- or part-time work, self-employment, and industry sector. The RRTC must complete this activity by the end of the second year of the grant.

(c) New knowledge of the employment experiences of individuals who are at risk of poor employment outcomes. The RRTC must contribute to this outcome by collecting and analyzing information from members of subpopulations identified under paragraphs (a) and (b) of this priority. The RRTC must collect individual-level data about the barriers to, and facilitators of, employment that members of these subpopulations have experienced (*e.g.,* the availability of transportation to and from work, social support, workplace accommodations, and employer practices).

(d) Increased incorporation of disability and employment research findings into practice or policy. The RRTC must contribute to this outcome by:

(1) Collaborating with stakeholder groups to develop, evaluate, or implement strategies to promote utilization of the RRTC's research findings.

(2) Conducting training and dissemination activities to facilitate the utilization of the RRTC's research findings by individuals with disabilities, employers, policymakers,

and State vocational rehabilitation agencies.

In addition, this RRTC must collaborate with relevant Rehabilitation Services Administration grantees, such as the 10 regional Technical Assistance and Continuing Education projects.

Types of Priorities

When inviting applications for a competition using one or more priorities, we designate the type of each priority as absolute, competitive preference, or invitational through a notice in the **Federal Register**. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by (1) awarding additional points, depending on the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the priority. However, we do not give an application that meets the priority a preference over other applications (34 CFR 75.105(c)(1)).

This notice does not preclude us from proposing additional priorities, requirements, definitions, or selection criteria, subject to meeting applicable rulemaking requirements.

Note: This notice does *not* solicit applications. In any year in which we choose to use this priority, we invite applications through a notice in the **Federal Register**.

Executive Order 12866: This notice has been reviewed in accordance with Executive Order 12866. Under the terms of the order, we have assessed the potential costs and benefits of this final regulatory action.

The potential costs associated with this final regulatory action are those resulting from statutory requirements and those we have determined as necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of this final regulatory action, we have determined that the benefits of the final priority justify the costs.

Discussion of Costs and Benefits

The benefits of the Disability and Rehabilitation Research Projects and Centers Programs have been well established over the years in that similar projects have been completed successfully. This final priority will generate new knowledge through research and development.

Another benefit of this final priority is that the establishment of a new RRTC will improve the lives of individuals with disabilities. The new RRTC will disseminate and promote the use of new information that will improve the options for individuals with disabilities to obtain, retain, and advance in employment.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., room 5075, PCP, Washington, DC 20202–2550. Telephone: (202) 245–7363. If you use a TDD, call the FRS, toll-free, at 1–800–877–8339.

Electronic Access to this Document: You can view this document, as well as all other documents of this Department published in the **Federal Register,** in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister*. To use PDF you must have Adobe Acrobat Reader, which is available free at this site.

Note: The official version of this document is the document published in the **Federal Register.** Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html*.

Dated: April 20, 2010.

Alexa Posny,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2010–9506 Filed 4–22–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

National Advisory Committee on Institutional Quality and Integrity (NACIQI) Meeting

AGENCY: National Advisory Committee on Institutional Quality and Integrity, Office of Postsecondary Education, Department of Education.

What is the purpose of this notice?

The purpose of this notice is two-fold. It is to:

(1) Announce the public meeting of the NACIQI to be held Tuesday-Thursday, September 14–16, 2010, in Washington, D.C., at the U.S. Department of Education, which is predicated on the appointment of members prior to that date; and

(2) Invite written comments concerning the recognition of any agency published in this notice.

This notice presents the proposed meeting agenda and informs the public of its opportunity to attend this meeting. The notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act, section 114(d)(1)(B) of the Higher Education Opportunity Act, and section 114(d)(1)(B) and (D) of the Higher Education Act, as amended.

In all instances, written comments about agencies seeking initial recognition, continued recognition, and/or an expansion of an agency's scope of recognition must relate to the Criteria for Recognition found at section 496 of the Higher Education Act of 1965, as amended, and 34 CFR parts 602 and 603. In addition, comments for any agency whose interim report/compliance report is proposed for review must relate to the issues raised within the letter that requested the report.

When and where will the meeting take place?

Depending on when the appointment of members is made to the NACIQI, the public meeting will be held on Tuesday-Thursday, September 14–16, 2010, from 8:30 a.m. until approximately 5:00 p.m., at the U.S. Department of Education, Eighth Floor Conference Center, 1990 K Street, NW., Washington, DC.

What assistance will be provided to individuals with disabilities?

The meeting site is accessible to individuals with disabilities. If you will need an auxiliary aid or service to participate in the meeting (*e.g.*, interpreting service, assistive listening device, or materials in an alternate format), contact Melissa Lewis at *melissa.lewis@ed.gov* at least four weeks before the scheduled meeting date. Although we will attempt to meet a request received after that date, we may not be able to make available the requested auxiliary aid or service because of insufficient time to arrange it.

What is the role of the NACIQI?

The NACIQI is established under Section 114 of the Higher Education Act (HEA), as amended, 20 U.S.C. 1011c. Congress created NACIQI to assess the process of accreditation and the institutional eligibility and certification of institutions of higher education under Title IV of the HEA.

What are the functions of the NACIQI?

The NACIQI advises the Secretary of Education about:

- The establishment and enforcement of the Criteria for Recognition of accrediting agencies or associations under Subpart 2 of Part H of Title IV, HEA.
- The recognition of specific accrediting agencies or associations.
- The preparation and publication of the list of nationally recognized accrediting agencies and associations.
- The eligibility and certification process for institutions of higher education under Title IV, HEA.
- The relationship between: (1) Accreditation of institutions of higher education and the certification and eligibility of such institutions, and (2) State licensing responsibilities with respect to such institutions.
- Any other advisory functions relating to accreditation and institutional eligibility that the Secretary may prescribe.

What items are on the proposed agenda for discussion at the meeting?

Proposed agenda topics include the review of nationally recognized accrediting agencies and State approval agencies for nurse education that have submitted petitions for renewal of recognition and/or an expansion of an agency's scope of recognition, or a compliance report, formerly an interim report.

What agencies does the department propose NACIQI will review at the meeting?

The Secretary of Education recognizes accrediting agencies and State approval agencies for nurse education if the Secretary determines that they meet the Criteria for Recognition. Recognition means that the Secretary considers the agency to be a reliable authority as to the quality of education offered by institutions or programs it accredits that are encompassed within the scope of recognition he grants to the agency. As part of the recognition process, agencies are sometimes asked to submit a compliance report. A compliance report, formerly an interim report, means a written report that the Department requires an agency to file to demonstrate that the agency has addressed deficiencies specified in a decision letter from the senior Department official or the Secretary, per 34 CFR 602.3. There may also be other reports due that were previously requested by the NACIQI prior to August 14, 2008, when the Higher Education Opportunity Act was enacted.

The following agencies are proposed to be reviewed during the September 14–16, 2010 NACIQI meeting:

Nationally Recognized Accrediting Agencies

Compliance Reports

1. Association of Advanced Rabbinical and Talmudic Schools, Accreditation Commission.
2. Commission on Accreditation of Healthcare Management Education.
3. Council on Accreditation of Nurse Anesthesia Educational Program.
4. Council on Education for Public Health.
5. Northwest Commission on Colleges and Universities (progress report).
6. The Higher Learning Commission of the North Central Association of Colleges and Schools.

Petition for Initial Recognition

1.AdvancED.

Petitions for Renewal of Recognition

1. American Academy for Liberal Education.
2. American Board of Funeral Service Education.
3. American Speech Language Hearing Association, Council on Academic Accreditation in Audiology and Speech-Language Pathology.
4. Commission on Massage Therapy Accreditation.
5. Council on Naturopathic Medical Education.
6. Midwifery Education Accreditation Council.
7. Montessori Accreditation Council for Teacher Education, Commission on Accreditation.
8. National Accrediting Commission of Cosmetology Arts and Sciences.
9. New England Association of Schools and Colleges, Commission on Technical and Career Institutions.
10. Western Association of Schools and Colleges Accrediting Commission for Schools.

Request for an Expansion of Scope and Name Change

1. North Central Association Commission on Accreditation and School Improvement, Board of Trustees.

State Agencies Recognized for the Approval of Nurse Education

Compliance Report

1. Missouri State Board of Nursing.

Petition for Renewal of Recognition 1.

1. Montana State Board of Nursing.

When, where, and how should I submit my written comments?

Submit your written comments by e-mail no later than May 23, 2010, to the Accreditation and State Liaison (ASL) Records Manager at *aslrecordsmanager@ed.gov* with the subject line listed "Written Comments re: (agency name)." In all instances, your comments about agencies seeking continued recognition and/or an expansion of an agency's scope of recognition must relate to the Criteria for Recognition.

Do Not Send Material Directly to NACIQI Members

Only materials submitted by the deadline to the e-mail address listed in this notice, and in accordance with these instructions, become part of the official record and are considered by the Department and the NACIQI in their deliberations.

Will this be my only opportunity to submit written comments regarding agencies listed in this notice that are proposed to be reviewed by NACIQI at the meeting?

Yes. This notice announces the only opportunity you will have to submit written comments on those agencies for this meeting. However, a subsequent **Federal Register** notice will publish another meeting notice and invite individuals and groups to submit requests to make oral presentations before the NACIQI on the agencies proposed for review. That notice, however, does not offer a second opportunity to submit written comments. If other agencies are added to the agenda when it is finalized, an additional notice will be published soliciting written comment on those agencies.

What happens to the written comments that I submit?

Any third-party written comments regarding an agency received by May 23, 2010, in accordance with this **Federal Register** notice, will become part of the official record. Those comments will be considered by the Department in its review of the agency's submission and by the NACIQI when it the agency's submission at the September 2010 meeting.

Where can I inspect petitions and third-party comments before the meeting and the meeting records?

The redacted versions of all materials submitted by agencies and any third-party comments received in advance of the meeting will be available for public inspection and copying, concurrently with their availability to the NACIQI, which we anticipate will be in mid-to-late July. The materials will be available at the U.S. Department of Education,

Office of Postsecondary Education, Room 7126, 1990 K Street, NW., Washington, DC 20006, telephone 202 219–7011, from 9:00 a.m. to 4:00 p.m., Monday through Friday, except Federal holidays; and at the National Library of Education, 400 Maryland Avenue, SW., Plaza Level (Level B), Washington, DC 20202, from 9:00 a.m. to 5:00 p.m., Monday through Friday, except Federal holidays. It is preferred that an appointment be made in advance of an inspection.

What happens to comments received after the deadline?

Department staff will review any comments received after the deadline. If such comments, upon investigation, reveal that the agency is not acting in accordance with the Criteria for Recognition, we will take action either before or after the meeting, as appropriate. Documents responsive to this notice but received after May 23, 2010, will not be distributed to the NACIQI for its consideration. Individuals making oral presentations may not distribute written materials at the meeting.

How do I request to make an oral presentation?

On or before August 14, 2010, the Department of Education will publish another notice of the meeting in the **Federal Register** and will invite interested parties, including those who submitted third-party written comments concerning agencies' compliance with the criteria for Recognition, to make oral presentations before the NACIQI.

How do I request to present comments regarding general issues rather than specific accrediting agencies?

Also, in the same **Federal Register** notice inviting oral comments concerning the agencies' compliance with the Criteria for Recognition, the public will be invited to make general comments pertaining to the functions of the NACIQI.

How may I obtain access to the records of the meeting?

We will record the meeting, and the meeting transcript will be available for public inspection on the NACIQI Web site: *http://www.ed.gov/about/bdscomm/list/naciqi.html,* for up until approximately a year after the meeting.

How may I obtain electronic access to this document?

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF), on the Internet at the following site: *http://www.ed.gov/legislation/FedRegister.* To use PDF, you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or, in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/index.html.*

Delegation of Authority: The Secretary of Education has delegated authority to Daniel T. Madzelan, Director, Forecasting and Policy Analysis for the Office of Postsecondary Education, to perform the functions and duties of the Assistant Secretary for Postsecondary Education.

Authority: 5 U.S.C. Appendix 2.

Dated: April 20, 2010.

Daniel T. Madzelan,

Director, Forecasting and Policy Analysis.

[FR Doc. 2010–9516 Filed 4–22–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

National Institute on Disability and Rehabilitation Research (NIDRR)—Disability and Rehabilitation Research Projects and Centers Program—Rehabilitation Research and Training Centers (RRTCs)—Improved Outcomes for Individuals With Serious Mental Illness and Co-Occurring Conditions

Catalog of Federal Domestic Assistance (CFDA) Number: 84.133B–5.

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice of proposed priority.

SUMMARY: The Assistant Secretary for Special Education and Rehabilitative Services proposes a funding priority for the Disability and Rehabilitation Research Projects and Centers Program administered by NIDRR. Specifically, this notice proposes a priority for an RRTC on Improved Outcomes for Individuals with Serious Mental Illness and Co-Occurring Conditions. The Assistant Secretary may use this priority for competitions in fiscal year (FY) 2010 and later years. We take this action to focus research attention on areas of national need. We intend this priority to improve rehabilitation services and outcomes for individuals with disabilities.

DATES: We must receive your comments on or before May 24, 2010.

ADDRESSES: Address all comments about this notice to Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, SW., room 5142, Potomac Center Plaza (PCP), Washington, DC 20202–2700.

If you prefer to send your comments by e-mail, use the following address: *donna.nangle@ed.gov.* You must include the term "Proposed Priority for an RRTC on Improved Outcomes for Individuals with Serious Mental Illness and Co-Occurring Conditions" in the subject line of your electronic message.

FOR FURTHER INFORMATION CONTACT: Donna Nangle. Telephone: (202) 245–7462 or by e-mail: *donna.nangle@ed.gov.*

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

This notice of proposed priority is in concert with NIDRR's Final Long-Range Plan for FY 2005–2009 (Plan). The Plan, which was published in the **Federal Register** on February 15, 2006 (71 FR 8165), can be accessed on the Internet at the following site: *http://www.ed.gov/about/offices/list/osers/nidrr/policy.html.*

Through the implementation of the Plan, NIDRR seeks to: (1) Improve the quality and utility of disability and rehabilitation research; (2) foster an exchange of expertise, information, and training to facilitate the advancement of knowledge and understanding of the unique needs of traditionally underserved populations; (3) determine best strategies and programs to improve rehabilitation outcomes for underserved populations; (4) identify research gaps; (5) identify mechanisms of integrating research and practice; and (6) disseminate findings.

This notice proposes a priority that NIDRR intends to use for RRTC competitions in FY 2010 and possibly later years. However, nothing precludes NIDRR from publishing additional priorities, if needed. Furthermore, NIDRR is under no obligation to make an award for this priority. The decision to make an award will be based on the quality of applications received and available funding.

Invitation to Comment: We invite you to submit comments regarding this notice. To ensure that your comments have maximum effect in developing the notice of final priority, we urge you to identify clearly the specific topic that each comment addresses.

We invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from this proposed priority. Please let us know of any further ways we could reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about this notice in room 5142, 550 12th Street, SW., PCP, Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Washington, DC time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals with Disabilities in Reviewing the Rulemaking Record: On request we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this notice. If you want to schedule an appointment for this type of accommodation or auxiliary aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

Purpose of Program: The purpose of the Disability and Rehabilitation Research Projects and Centers Program is to plan and conduct research, demonstration projects, training, and related activities, including international activities, to develop methods, procedures, and rehabilitation technology, that maximize the full inclusion and integration into society, employment, independent living, family support, and economic and social self-sufficiency of individuals with disabilities, especially individuals with the most severe disabilities, and to improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended.

RRTC Program

The purpose of the RRTC program is to improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended, through advanced research, training, technical assistance, and dissemination activities in general problem areas, as specified by NIDRR. Such activities are designed to benefit rehabilitation service providers, individuals with disabilities, and the family members or other authorized representatives of individuals with disabilities. In addition, NIDRR intends to require all RRTC applicants to meet the requirements of the *General Rehabilitation Research and Training Centers (RRTC) Requirements* priority that it published in a notice of final priorities in the **Federal Register** on February 1, 2008 (73 FR 6132). Additional information on the RRTC program can be found at: *http://www.ed.gov/rschstat/research/pubs/res-program.html#RRTC.*

Statutory and Regulatory Requirements of RRTCs

RRTCs must—

- Carry out coordinated advanced programs of rehabilitation research;
- Provide training, including graduate, pre-service, and in-service training, to help rehabilitation personnel more effectively provide rehabilitation services to individuals with disabilities;
- Provide technical assistance to individuals with disabilities, their representatives, providers, and other interested parties;
- Disseminate informational materials to individuals with disabilities, their representatives, providers, and other interested parties; and
- Serve as centers of national excellence in rehabilitation research for individuals with disabilities, their representatives, providers, and other interested parties.

Applicants for RRTC grants must also demonstrate in their applications how they will address, in whole or in part, the needs of individuals with disabilities from minority backgrounds.

Program Authority: 29 U.S.C. 762(g) and 764(b)(2).

Applicable Program Regulations: 34 CFR part 350.

Proposed Priority

This notice contains one proposed priority.

Improved Outcomes for Individuals With Serious Mental Illness and Co-Occurring Conditions

Background

As many as 6.5 percent of adults ages 18–64 experience serious mental illness (SMI) during any 12-month period (Kessler *et al.,* 2008). Individuals with SMI are at high risk for chronic diseases such as cardiovascular disease, diabetes, asthma, and cancer (Colton & Manderscheid, 2006; Sederer, *et al.,* 2006). The comorbidity of SMI and chronic disease is associated with limitations on activities such as self-care and employment (McKnight-Eily *et al.,* 2007). Individuals with SMI experience disproportionately low rates of employment compared to the general United States population and to other individuals with disabilities, and those with SMI and co-occurring conditions work even fewer hours, have lower total earnings, and are less likely to engage in competitive employment than those with SMI alone (Cook *et al.,* 2005; Goldberg *et al.,* 2007).

Health promotion, illness self-management, and using a holistic approach to rehabilitation are practices that have been rigorously studied and effectively used to prevent, control, or treat a variety of medical conditions such as diabetes, breast and cervical cancer, heart disease, and stroke. Peer-delivered health and wellness education curriculums also have been widely implemented to reduce tobacco or alcohol usage, improve nutrition, and modify risk behaviors among the general population or subpopulations, including women, workers, and members of racial or ethnic minorities (CDC, 2009; Collins, Marks, and Koplan, 2009). While some of this research and practice addresses health promotion for individuals with SMI, the science for individuals with SMI is still emerging, and has not sufficiently advanced to address the needs and experiences of individuals with SMI and co-occurring conditions (CMHS, 2005; Richardson *et al.,* 2005; Sederer *et al.,* 2006).

Past research funded by NIDRR and others provides a potential base for testing models that link management and self-management of SMI and co-occurring physical conditions to mental health recovery (Vandiver, 2007). For example, consumer-to-consumer education and consumer-directed programs [1] for individuals with SMI can be effective in promoting recovery from mental illness and merit further study as mechanisms for health promotion (CMHS, 2005). At the systems level, lack of integration and coordination of mental health and primary care services contribute to poor health outcomes for those with SMI (CMHS, 2005). Further study on integration and coordination of mental health and primary care services at the systems level, therefore, would be highly beneficial for individuals with SMI and co-occurring physical conditions.

Improved management of SMI and co-occurring conditions could contribute to improved health and employment outcomes for these individuals (Merikangas *et al.*, 2007). Research is

[1] Consumer-directed models of service delivery are defined by the belief that individuals with disabilities should determine the types, amounts, and sources of the services they receive. In the mental health services context, consumer-directed care approaches include self-help and mutual-aid support groups, mental illness self-management, and advance crisis planning by individuals with SMI (Cook, 2005).

needed to develop interventions that address the interactions between SMI and health that are potential barriers to competitive employment, economic well-being, and maximum participation in society.

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Proposed Priority

The Assistant Secretary for Special Education and Rehabilitative Services proposes a priority for a Rehabilitation Research and Training Center (RRTC) on Improved Outcomes for Individuals with Serious Mental Illness and Co-Occurring Conditions. The RRTC must conduct research to adapt, modify, and enhance health and mental health models to improve health and employment outcomes for individuals with serious mental illness (SMI) and co-occurring conditions. The RRTC must conduct research, knowledge translation, training, dissemination, and technical assistance within a framework of self-management and consumer-directed services. Under this priority, the RRTC must contribute to the following outcomes:

(a) Increased knowledge that can be used to enhance the health and well-being of individuals with SMI and co-occurring conditions. The RRTC must contribute to this outcome by:

(1) Conducting research to develop a better understanding of the health, and health care needs of individuals with SMI and co-occurring conditions.

(2) Conducting research to identify or develop and then test interventions that aim to improve health outcomes and promote recovery among individuals living with SMI and co-occurring conditions. These interventions must include individual-level health promotion strategies, such as peer supports and consumer control, as well as system-level strategies for the delivery of physical and mental health services. These interventions must be based on the findings of research conducted under paragraph (a)(1) of this proposed priority. In carrying out this activity, the grantee must investigate the applicability of strategies that have proven successful with the general population or other subpopulations to determine if they are effective with individuals with SMI and co-occurring conditions.

(b) Improved employment outcomes among individuals with SMI and co-occurring conditions. The RRTC must contribute to this outcome by conducting research that demonstrates how improvements in health service delivery mechanisms, self-management, peer support, and consumer control affect employment outcomes in individuals with SMI and co-occurring conditions. In carrying out this activity the grantee must utilize one or more of the interventions developed under paragraph (a)(2) of this proposed priority.

(c) Increased incorporation of research findings related to SMI, co-occurring conditions, health management, and employment into practice or policy. The RRTC must contribute to this outcome by coordinating with appropriate NIDRR-funded knowledge translation grantees to advance their work in the following areas:

(1) Developing, evaluating, or implementing strategies to increase utilization of research findings related to SMI, co-occurring conditions, health management, and employment.

(2) Conducting training, technical assistance, and dissemination activities to increase utilization of research findings related to SMI, co-occurring conditions, health management, and employment.

Types of Priorities

When inviting applications for a competition using one or more priorities, we designate the type of each priority as absolute, competitive preference, or invitational through a notice the **Federal Register**. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by (1) awarding additional points, depending on the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the priority. However, we do not give an application that meets the priority a preference over other applications (34 CFR 75.105(c)(1)).

Final Priority: We will announce the final priority in a notice in the **Federal Register**. We will determine the final priority after considering responses to this notice and other information available to the Department. This notice does not preclude us from proposing additional priorities, requirements, definitions, or selection criteria, subject to meeting applicable rulemaking requirements.

Note: This notice does *not* solicit applications. In any year in which we choose to use this priority, we invite applications through a notice in the **Federal Register.**

Executive Order 12866: This notice has been reviewed in accordance with Executive Order 12866. Under the terms of the order, we have assessed the potential costs and benefits of this proposed regulatory action.

The potential costs associated with this proposed regulatory action are those resulting from statutory requirements and those we have determined as necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of this proposed regulatory action, we have determined that the benefits of the proposed priority justify the costs.

Discussion of Costs and Benefits

The benefits of the Disability and Rehabilitation Research Projects and Centers Programs have been well established over the years in that similar projects have been completed successfully. This proposed priority will generate new knowledge through research and development.

Another benefit of this proposed priority is that the establishment of a new RRTC will improve the lives of individuals with disabilities. The new RRTC will disseminate and promote the use of new information that will improve the options for individuals with disabilities to obtain, retain, and advance in employment.

Intergovernmental Review: This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., room 5075, PCP, Washington, DC 20202–2550. Telephone: (202) 245–7363. If you use a TDD, call the FRS, toll free, at 1–800–877–8339.

Electronic Access to This Document: You can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.* To use PDF you must have Adobe Acrobat Reader, which is available free at this site.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: April 20, 2010.

Alexa Posny,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2010–9511 Filed 4–22–10; 8:45 am]

BILLING CODE 4000–01–P

ELECTION ASSISTANCE COMMISSION

Request for Substantive Comments on the EAC's Proposed Requirements for the Testing of Pilot Voting Systems To Serve UOCAVA Voters; Correction

AGENCY: United States Election Assistance Commission.

ACTION: Notice; correction.

SUMMARY: *This is a correcting to provide for a thirty day public comment period as reflected by commission tally vote.* The original notice incorrectly provided for a fifteen day public comment period. The U.S. Election Assistance Commission (EAC) is publishing for public comment a set of proposed requirements for the testing of pilot voting systems to be used by jurisdictions to serve Uniformed and Overseas voters.

FOR FURTHER INFORMATION CONTACT: Matthew Masterson, Phone (202) 566–3100, e-mail *votingsystemguidelines@eac.gov.*

Correction

In the **Federal Register** of March 31, 2010, on page 16090, in the first column, correct the **DATE** caption to read:

DATES: Comments must be received on or before 4 p.m. EST on April 30, 2010.

Alice Miller,

Chief Operating Officer, U.S. Election Assistance Commission.

[FR Doc. 2010–9384 Filed 4–22–10; 8:45 am]

BILLING CODE 6820–KF–P

DEPARTMENT OF ENERGY

Agency Information Collection Extension

AGENCY: U.S. Department of Energy.

ACTION: Notice and request for Comments.

SUMMARY: The Department of Energy (DOE), pursuant to the Paperwork Reduction Act of 1995, intends to extend, for three years, an information collection request with the Office of Management and Budget (OMB). Comments were invited on: (a) Whether the extended collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, 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 respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments regarding this proposed information collection must be received on or before June 22, 2010. If you anticipate difficulty in submitting comments within that period or if you want access to the collection of

information, without charge, contact the person listed below as soon as possible.

ADDRESSES: Written comments should be sent to the following: Denise Clarke, Procurement Analyst, MA–612/L'Enfant Plaza Building, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–1615, *deniset.clarke@hq.doe.gov*.

FOR FURTHER INFORMATION CONTACT: Denise Clarke, at the above address, or by telephone at (202) 287–1748.

SUPPLEMENTARY INFORMATION: This information collection request contains: (1) *OMB No.:* 1910–0400 (Renewal); (2) *Information Collection Request Title:* DOE Financial Assistance Information Clearance; (3) *Type of Review:* Continuation of Mandatory Information Collection under Paperwork Reduction Act; (4) *Purpose:* This information collection package covers collections of information necessary to annually plan, solicit, negotiate, award and administer grants and cooperative agreements under the Department's financial assistance programs. The information is used by Departmental management to exercise management oversight with respect to implementation of applicable statutory and regulatory requirements and obligations. The collection of this information is critical to ensure that the government has sufficient information to judge the degree to which awardees meet the terms of their agreements; that public funds are spent in the manner intended; and that fraud, waste, and abuse are immediately detected and eliminated; (5) *Respondents:* 48,860; and (6) *Estimated Number of Burden Hours:* 890,537.

Statutory Authorities: Federal Grant and Cooperative Agreement Act, 31 U.S.C. 6301–6308. Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

Issued in Washington, DC, on April 19, 2010.

Edward R. Simpson,

Director, Office of Procurement and Assistance Management.

[FR Doc. 2010–9439 Filed 4–22–10; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13526–002]

Bowersock Mills and Power Company; Notice of Application Accepted for Filing, Soliciting Motions To Intervene and Protests, Ready for Environmental Analysis, and Soliciting Comments, Terms and Conditions, Recommendations, and Prescriptions

April 16, 2010.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Original Major License.

b. *Project No.:* 13526–002.

c. *Date Filed:* February 8, 2010.

d. *Applicant:* Bowersock Mills Power Company (Bowersock).

e. *Name of Project:* Bowersock Mills and Power Company Expanded Kansas River Hydropower Project.

f. *Location:* The project would be located on the Kansas River in Douglas County, Kansas. The project would not affect Federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Sarah Hill-Nelson, The Bowersock Mills and Power Company, P.O. Box 66, Lawrence, Kansas 66044; (785) 766–0884.

i. *FERC Contact:* Monte TerHaar, (202) 502–6035, or via e-mail at *monte.terhaar@ferc.gov.*

j. Deadline for filing motions to intervene and protests, comments, terms and conditions, recommendations, and prescriptions: 60 days from the issuance of this notice. All reply comments must be filed with the Commission within 105 days from the date of this notice.

All documents may be filed electronically via the Internet. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov/docs-filing/ferconline.asp*) under the "eFiling" link. For a simpler method of submitting text only comments, click on "Quick Comment." For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov;* call toll-free at (866) 208–3676; or, for TTY, contact (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and eight copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor 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.

k. This application has been accepted for filing and is now ready for environmental analysis.

l. *Project Description:* The existing Bowersock dam and powerhouse currently operates under an exemption (Project No. 2644) as a small hydropower project of 5 megawatts (MW) or less. The proposed project would consist of the existing Bowersock dam and two powerhouses; the existing powerhouse on the South bank of the Kansas River, and a proposed powerhouse on the North bank of the Kansas River. The proposed project would have a total capacity of 6.6 MW and generate an estimated 33 gigawatt-hours annually. The electricity produced by the project would be sold to a local utility.

The proposed project would consist of the following:

(1) The existing 665-foot-long, 17-foot-high timber-crib Bowersock Dam; (2) raising the existing flashboards from 4 feet high to 5.5 feet high; (3) the existing 4.3-mile-long reservoir, having a normal water surface elevation of 813.5 feet mean sea level; (4) the existing South powerhouse, containing seven turbine/generator units having an installed capacity of 2.012 MW; (5) a proposed North powerhouse with four turbine/generator units, having an installed capacity of 4.6 MW; (6) a proposed 20-foot-wide roller gate; (7) a proposed intake flume with trashracks; (8) a proposed 150-foot-long canoe portage and fishing platform located along the North bank of the Kansas River; (10) a proposed 765-foot-long, 12-kilovolt (kV) transmission line connecting to an existing 535-foot-long 2.3-kV transmission line; and (8) appurtenant facilities.

The project would be operated in a run-of-river mode, where water levels in the reservoir would be maintained near the top of the flash boards. To avoid potential flooding of upstream lands, the project would incorporate a 20-foot-wide roller gate designed to release flows up to 2,600 cfs. In addition, the flashboards would be designed to collapse during periods of high inflows when the water surface elevation rises 6 inches above the top of the flashboards.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may 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. For assistance, contact FERC Online Support. A copy is also available for inspection and reproduction at the address in item h above.

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, contact FERC Online Support.

n. Any qualified applicant desiring to file a competing application must submit to the Commission, on or before the specified intervention deadline date, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified intervention deadline date. Applications for preliminary permits will not be accepted in response to this notice.

A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit a development application. A notice of intent must be served on the applicant(s) named in this public notice.

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.

All filings must (1) Bear in all capital letters the title "PROTEST", "MOTION TO INTERVENE", "NOTICE OF INTENT TO FILE COMPETING APPLICATION," "COMPETING APPLICATION," "COMMENTS," "REPLY COMMENTS," "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

o. A license applicant must file no later than 60 days following the date of issuance of this notice: (1) A copy of the water quality certification; (2) a copy of the request for certification, including proof of the date on which the certifying agency received the request; or (3) evidence of waiver of water quality certification.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–9408 Filed 4–22–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP10–136–000]

Empire Pipeline Inc.; Notice of Application

April 16, 2010.

Take notice that on February 2, 2010, Empire Pipeline, Inc. (EPI), 6363 Main Street, Williamsville, New York 14221, filed in Docket No. CP10–136–000, an application pursuant to section 3 of the Natural Gas Act (NGA), to amend its authorization under NGA section 3 and its Presidential Permit to allow it to export natural gas from the United States to Canada utilizing EPI's existing cross-border facilities. EPI proposes no new facilities in its application. The application is on file with the Commission and open to public inspection. 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. For assistance, call (202) 502–8659 or TTY, (202) 208–3676.

Any questions regarding this petition should be directed to David W. Reitz, Attorney for Empire Pipeline, Inc., 6363 Main Street, Williamsville, NY 14221, at (716) 857–7949, by fax at (716) 857–7206, or at *reitzd@natfuel.com.*

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding, or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify Federal and State agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all Federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the below listed comment date, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party

to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

Motions to intervene, protests and comments 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 under the "e-Filing" link. The Commission strongly encourages electronic filings.

Comment Date: May 7, 2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–9410 Filed 4–22–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP10–125–000]

Henry Gas Storage LLC; Notice of Application

April 16, 2010.

Take notice that on April 5, 2010, Henry Gas Storage LLC (HGS), 1010 Lamar, Suite 1720, Houston, Texas 77002, filed in Docket No. CP10–125–000, a petition for Exemption of Temporary Acts and Operations from Certificate Requirements, pursuant to Rule 207(a)(5) of the Commission's Rules of Practice and Procedure, and section 7(c)(1)(B) of the Natural Gas Act (NGA), to perform specific temporary activity related to drill site preparation and to the drilling of one stratigraphic test well to determine the salt characteristics and the feasibility of developing the Cote Blanche Island salt dome for natural gas storage in St. Mary Parish, Louisiana, all as more fully set forth in the application which is on file with the Commission and open to public inspection. 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. For assistance, call (202) 502–8659 or TTY, (202) 208–3676.

Any questions regarding this application should be directed to J. Gordon Pennington, Attorney at Law, 2707 N. Kensington St., Arlington, Virginia 22207, at (703) 533–7638.

Pursuant to Section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify Federal and State agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all Federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentors will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: May 7, 2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–9412 Filed 4–22–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12749–002]

Oregon Wave Energy Partners I, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

April 16, 2010.

On March 2, 2010, Oregon Wave Energy Partners I, LLC filed an application for a subsequent preliminary permit, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Coos Bay OPT Wave Park Project. The requested project boundary comprises approximately 7.36 square miles of coastal waters, located between 2.5 and 3.0 miles off the coast near Coos Bay, Oregon.

The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of: (1) 200 PowerBuoys having a total installed capacity of 100 megawatts; (2) an approximately 2.5-mile-long, subsea transmission cable; (3) an approximately 200-yard-long transmission line connecting to an existing substation; and (4) appurtenant facilities. The project would have an estimated average annual generation of 276,000 megawatt-hours.

Applicant Contact: Mr. Charles F. Dunleavy, Oregon Wave Energy Partners I, LLC, 1590 Reed Road, Pennington, NJ 08534.

FERC Contact: Jim Hastreiter, (503) 552–2760, or via e-mail at *james.hastreiter@ferc.gov*.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov/docs-filing/ferconline.asp*) under the "eFiling" link. For a simpler method of submitting text only comments, click on "Quick Comment." For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov;* call toll-free at (866) 208–3676; or, for TTY, contact (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and eight copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the "eLibrary" link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–12749–002) in the docket number field to access the document. For assistance, contact FERC Online Support.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–9411 Filed 4–22–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

April 12, 2010.

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC10–49–000.

Applicants: GWF Energy LLC.

Description: Supplemental Information Supporting Section 203 Application for Authorization for Disposition of Jurisdictional Facilities and Request for Privileged Treatment of GWF Energy LLC.

Filed Date: 04/07/2010.

Accession Number: 20100407–5076.

Comment Date: 5 p.m. Eastern Time on Thursday, April 22, 2010.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER97–324–018; ER97–3834–024.

Applicants: The Detroit Edison Company.

Description: The Detroit Edison Co *et al.* submits a compliance filing, Attachment A.

Filed Date: 04/09/2010.

Accession Number: 20100409–0211.

Comment Date: 5 p.m. Eastern Time on Friday, April 30, 2010.

Docket Numbers: ER02–862–013.

Applicants: Entergy Power Ventures, L.P.

Description: Entergy Power Ventures, LP submits an amendment to their application requesting Category 1 Seller designation, *etc.*

Filed Date: 04/09/2010.

Accession Number: 20100412–0203.

Comment Date: 5 p.m. Eastern Time on Friday, April 30, 2010.

Docket Numbers: ER07–312–006.

Applicants: Dogwood Energy LLC.

Description: Supplemental Filing to Market Power Update of Dogwood Energy LLC.

Filed Date: 04/09/2010

Accession Number: 20100409–5126.

Comment Date: 5 p.m. Eastern Time on Friday, April 30, 2010.

Docket Numbers: ER10–468–002.

Applicants: Google Energy LLC.

Description: Google Energy LLC submits substitute FERC Electric Tariff, Volume No. 1.

Filed Date: 04/06/2010.

Accession Number: 20100406–0208.

Comment Date: 5 p.m. Eastern Time on Tuesday, April 27, 2010.

Docket Numbers: ER10–715–003.

Applicants: Llano Estacodo Wind, LLC.

Description: Llano Estacado Wind, LLC submits an amendment to their updated market power analysis to support the continued allowance of market-based rates.

Filed Date: 04/09/2010.

Accession Number: 20100412–0202.

Comment Date: 5 p.m. Eastern Time on Friday, April 30, 2010.

Docket Numbers: ER10–820–001.

Applicants: The Detroit Edison Company.

Description: Detroit Edison Company submits a First Revised Sheet 1 to its FERC Electric Tariff, Original Volume 2—Notice of Cancellation.

Filed Date: 04/09/2010.

Accession Number: 20100409–0216.

Comment Date: 5 p.m. Eastern Time on Friday, April 30, 2010.

Docket Numbers: ER10–881–001

Applicants: Reliable Power, LLC.

Description: Reliable Power, LLC submits an Amendment to Application for Market-Based Rate Authority.

Filed Date: 04/09/2010.

Accession Number: 20100409–0208.

Comment Date: 5 p.m. Eastern Time on Friday, April 30, 2010.

Docket Numbers: ER10–1036–000.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator, Inc submits an Generator Interconnection Agreement.

Filed Date: 04/09/2010.

Accession Number: 20100409–0210.

Comment Date: 5 p.m. Eastern Time on Friday, April 30, 2010.

Docket Numbers: ER10–1037–000.

Applicants: Xcel Energy Services Inc.

Description: Northern States Power Company-Minnesota submits a proposed termination of the Market Interface Integration Services Agreement, as amended, Rate Schedule FERC 600 with Tatanka Wind Power LLC.

Filed Date: 04/09/2010.

Accession Number: 20100412–0201.

Comment Date: 5 p.m. Eastern Time on Friday, April 30, 2010.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES10–30–000.

Applicants: Southern Indiana Gas & Electric Company.

Description: Amendment to Application of Southern Indiana Gas & Electric Company for Authority to Issue Short-Term Debt and Request for Shortened Comment Period.

Filed Date: 04/12/2010.

Accession Number: 20100412–5037.

Comment Date: 5 p.m. Eastern Time on Thursday, April 22, 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. 2010–9438 Filed 4–22–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP10–132–000]

Caledonia Energy Partners, L.L.C.; Notice of Request Under Blanket Authorization

April 16, 2010.

Take notice that on April 12, 2010, Caledonia Energy Partners, L.L.C. (Caledonia), 20329 State Highway 249, Suite 400, Houston, Texas 77070, filed in Docket No. CP10–132–000, a prior notice request pursuant to sections 157.205 and 157.214 of the Federal Energy Regulatory Commission's regulations under the Natural Gas Act for authorization to increase its maximum storage capacity at its storage facility, the Caledonia Facility, located in Lowndes and Monroe Counties, Mississippi, all as more fully set forth in the application, which is on file with the Commission and open to public inspection. The filing may also be viewed on the Web 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. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676 or TTY, (202) 502–8659.

Specifically, Caledonia proposes to increase the maximum certificated storage capacity of the Caledonia Facility from 22.7 billion cubic feet (Bcf) to 28.1 Bcf, and the working gas capacity from 16.9 Bcf to 22.0 Bcf. Caledonia states that the effect of these modifications will be to increase the maximum daily withdrawal rate to 550,000 Mcf/day, and the maximum injection rate to 558,000 Mcf/day. Caledonia declares that it does not have to construct any additional facilities to make this capacity available.

Any questions regarding the application should be directed to Daryl W. Gee, Enstor Operating Company, LLC, 20329 Hwy 249, Suite 400, Houston, Texas 77070, at (281) 374–3062.

Any person may, within 60 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention. Any person filing to intervene or the Commission's staff may, pursuant to section 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) (18 CFR 157.205) file a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

The Commission strongly encourages electronic filings of comments, protests, and interventions 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.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–9409 Filed 4–22–10; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2009–0535; FRL–9141–6]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; NESHAP for Phosphoric Acid Manufacturing and Phosphate Fertilizers Production (Renewal), EPA ICR Number 1790.05, OMB Control Number 2060–0361

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR which is abstracted below describes the nature of the collection and the estimated burden and cost.

DATES: Additional comments may be submitted on or before May 24, 2010.

ADDRESSES: Submit your comments, referencing docket ID number EPA–HQ–OECA–2009–0535, to (1) EPA online using *http://www.regulations.gov* (our preferred method), or by e-mail to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center (EPA/DC), Environmental Protection Agency, Enforcement and Compliance Docket and Information Center, mail code 28221T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Robert C. Marshall, Jr., Office of Compliance, 2223A, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (202) 564–7021; fax number (202) 564–0050; e-mail address: *marshall.robert@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On July 30, 2009 (74 FR 38005), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under docket ID number EPA–HQ–OECA–2009–0535, which is available for public viewing online at *http://www.regulations.gov,* in person viewing at the Enforcement and Compliance Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket is (202) 566–1752.

Use EPA's electronic docket and comment system at *http://www.regulations.gov,* to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select "docket search," then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov,* as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *http://www.regulations.gov.*

Title: NESHAP for Phosphoric Acid Manufacturing and Phosphate Fertilizers Production (Renewal)

ICR Numbers: EPA ICR Number 1790.05, OMB Control Number 2060–0361.

ICR Status: This ICR is scheduled to expire on June 30, 2010. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, and displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: The National Emission Standards for Hazardous Air Pollutants (NESHAP) for Phosphoric Acid Manufacturing and Phosphate Fertilizers Production were: proposed on December 27, 1996; promulgated on June 10, 1999; and amended on June 12, 2002.

Owners/operators of affected phosphoric acid manufacturing and phosphate fertilizer production must submit one-time only notifications (where applicable) and annual reports on performance test results. Semiannual reports are required. In addition, a quarterly report is required when excess emissions occur. Subparts AA and BB require respondents to install monitoring devices to measure the pressure drop and liquid flow rate for wet scrubbers. These operating parameters are permitted to vary within ranges determined concurrently with performance tests. Exceedances of the operating ranges are considered violations of the site-specific operating limits. The standards require sources to determine and record the amount of phosphatic feedstock material processed or stored on a daily basis. Respondents also maintain records of specific information needed to determine that the standards are being achieved and maintained.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 18 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Phosphoric acid manufacturing and phosphate fertilizers production facilities.

Estimated Number of Respondents: 12.

Frequency of Response: Initially, occasionally, semiannually and annually.

Estimated Total Annual Hour Burden: 1,534.

Estimated Total Annual Cost: $154,929, which includes $144,297 in labor costs, no capital/startup costs, and

$10,632 in operation and maintenance (O&M) costs.

Changes in the Estimates: There is no change in the calculation methodology for labor hours in this ICR compared to the previous ICR. This is due to two considerations: (1) The regulations have not changed over the past three years and are not anticipated to change over the next three years; and (2) the growth rate for the respondents is very low, negative or non-existent. However, due to a mathematical correction, there is a decrease of eight hours in respondent labor hours.

This ICR has been updated with the most recent available labor rates for each of the three labor categories. There is an increase in both respondent and Agency costs resulting from labor rate increases from 2003 to 2009. This ICR uses 2009 labor rates because burden and cost calculations in Tables 1 and 2 of this ICR were expanded to include managerial and clerical labor rates, and the previous ICR only provided a technical labor rate. The cost figure has also been updated to the nearest dollar, whereas the previous ICR rounded the figure to the nearest thousand dollar.

Dated: April 20, 2010.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2010–9461 Filed 4–22–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9141–4]

Proposed CERCLA Administrative Cost Recovery Settlement Agreement; AVX Corporation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed settlement agreement; request for public comment.

SUMMARY: In accordance with section 122(i) the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), 42 U.S.C. 9622(i), notice is hereby given of a proposed administrative settlement for recovery of projected future response oversight costs and performance of work concerning the Aerovox Site located at 740 Belleville Avenue in New Bedford, Bristol County, Massachusetts with AVX Corporation. The settlement provides for the performance of a portion of a non-time critical removal action, pre-payment of future response oversight costs, payment for long-term care of the Site and implementation of deed restrictions at the Site. The settlement also compromises the claim for past costs. In addition, the settlement includes a covenant not to sue the settling party pursuant to section 107(a) of CERCLA, 42 U.S.C. 9607(a) conditioned upon the satisfactory performance of its obligations under this settlement agreement. For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the settlement agreement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at 5 Post Office Square, Suite 100, Boston, MA 02109.

DATES: Comments must be submitted on or before May 24, 2010.

ADDRESSES: The proposed settlement and an electronic copy of the attachments is available for public inspection at EPA New England OSRR Records and Information Center, 5 Post Office Square, Suite 100, Mailcode LIB01–2, Boston, MA 02109–3912, by appointment, (617) 918–1440. Comments should be addressed to the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region I, 5 Post Office Square, Suite 100, Mailcode ORA18–1, Boston, MA 02109–3912 and should refer to: In re: Aerovox, U.S. EPA Region 1 Docket No. CERCLA–01–2010–0017.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed settlement agreement can also be obtained from Ann Gardner, U.S. Environmental Protection Agency, Region I, 5 Post Office Square, Suite 100, Mailcode OES04–4, Boston, MA 02109–3912. Additional information on the Aerovox site and the Administrative Record for this site can be found at *http://www.epa.gov/ne/superfund/sites/aerovox/.*

Dated: April 15, 2010.

James T. Owens, III,

Director, Office of Site Remediation and Restoration, U.S. EPA, Region I.

[FR Doc. 2010–9459 Filed 4–22–10; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Update to Notice of Financial Institutions for Which the Federal Deposit Insurance Corporation Has Been Appointed Either Receiver, Liquidator, or Manager

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Update listing of financial institutions in liquidation.

SUMMARY: Notice is hereby given that the Federal Deposit Insurance Corporation (Corporation) has been appointed the sole receiver for the following financial institutions effective as of the Date Closed as indicated in the listing. This list (as updated from time to time in the **Federal Register**) may be relied upon as "of record" notice that the Corporation has been appointed receiver for purposes of the statement of policy published in the July 2, 1992 issue of the **Federal Register** (57 FR 29491). For further information concerning the identification of any institutions which have been placed in liquidation, please visit the Corporation Web site at *http://www.fdic.gov/bank/individual/failed/banklist.html* or contact the Manager of Receivership Oversight in the appropriate service center.

Dated: April 19, 2010.

Federal Deposit Insurance Corporation.

Valerie J. Best,

Assistant Executive Secretary.

INSTITUTIONS IN LIQUIDATION

[In alphabetical order]

FDIC Ref. No.	Bank name	City	State	Date closed
10210	AmericanFirst Bank	Clermont	FL	4/16/2010
10211	Butler Bank	Lowell	MA	4/16/2010
10212	City Bank	Lynnwood	WA	4/16/2010
10213	First Federal Bank of North Florida	Palatka	FL	4/16/2010
10214	Innovative Bank	Oakland	CA	4/16/2010
10215	Lakeside Community Bank	Sterling Heights	MI	4/16/2010

INSTITUTIONS IN LIQUIDATION—Continued

[In alphabetical order]

FDIC Ref. No.	Bank name	City	State	Date closed
10216	Riverside National Bank of Florida	Fort Pierce	FL	4/16/2010
10217	Tamalpais Bank	San Rafael	CA	4/16/2010

[FR Doc. 2010–9395 Filed 4–22–10; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Update to Notice of Financial Institutions for Which the Federal Deposit Insurance Corporation Has Been Appointed Either Receiver, Liquidator, or Manager

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Update Listing of Financial Institutions in Liquidation.

SUMMARY: Notice is hereby given that the Federal Deposit Insurance Corporation (Corporation) has been appointed the sole receiver for the following financial institutions effective as of the Date Closed as indicated in the listing. This list (as updated from time to time in the **Federal Register**) may be relied upon as "of record" notice that the Corporation has been appointed receiver for purposes of the statement of policy published in the July 2, 1992 issue of the **Federal Register** (57 FR 29491). For further information concerning the identification of any institutions which have been placed in liquidation, please visit the Corporation Web site at *http://www.fdic.gov/bank/individual/failed/banklist.html* or contact the Manager of Receivership Oversight in the appropriate service center.

Dated: April 19, 2010.

Federal Deposit Insurance Corporation.

Valerie J. Best,

Assistant Executive Secretary.

INSTITUTIONS IN LIQUIDATION

[In alphabetical order]

FDIC Ref. No.	Bank name	City	State	Date closed
10210	AmericanFirst Bank	Clermont	FL	4/16/2010
10211	Butler Bank	Lowell	MA	4/16/2010
10212	City Bank	Lynnwood	WA	4/16/2010
10213	First Federal Bank of North Florida	Palatka	FL	4/16/2010
10214	Innovative Bank	Oakland	CA	4/16/2010
10215	Lakeside Community Bank	Sterling Heights	MI	4/16/2010
10216	Riverside National Bank of Florida	Fort Pierce	FL	4/16/2010
10217	Tamalpais Bank	San Rafael	CA	4/16/2010

[FR Doc. 2010–9396 Filed 4–22–10; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL RESERVE SYSTEM

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY: *Background.* On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act (PRA), as per 5 CFR 1320.16, to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320 Appendix A.1. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the Paperwork Reduction Act Submission, supporting statements and approved collection of information instruments are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Request for Comment on Information Collection Proposals

The following information collections, which are being handled under this delegated authority, have received initial Board approval and are hereby published for comment. At the end of the comment period, the proposed information collections, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility;

b. The accuracy of the Federal Reserve's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected; and

d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments must be submitted on or before June 22, 2010.

ADDRESSES: You may submit comments, identified by FR 4102 by any of the following methods:

- *Agency Web site: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

• *E-mail: regs.comments@federalreserve.gov*. Include the OMB control number in the subject line of the message.

• *Fax:* 202–452–3819 or 202–452–3102.

• *Mail:* Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form in Room MP–500 of the Board's Martin Building (20th and C Streets, NW.) between 9 a.m. and 5 p.m. on weekdays.

Additionally, commenters should send a copy of their comments to the OMB Desk Officer by mail to the Office of Information and Regulatory Affairs, U.S. Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street, NW., Washington, DC 20503 or by fax to 202–395–6974.

FOR FURTHER INFORMATION CONTACT: A copy of the PRA OMB submission, including the proposed reporting form and instructions, supporting statement, and other documentation will be placed into OMB's public docket files, once approved. These documents will also be made available on the Federal Reserve Board's public Web site at: *http://www.federalreserve.gov/boarddocs/reportforms/review.cfm* or may be requested from the agency clearance officer, whose name appears below.

Michelle Shore, Federal Reserve Board Clearance Officer (202–452–3829), Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may contact (202–263–4869).

Proposal to approve under OMB delegated authority the extension for three years, without revision, of the following reports:

Report title: Reporting and Disclosure Requirements Associated with the Policy on Payments System Risk.

Agency form number: FR 4102.

OMB control number: 7100–0315.

Frequency: Biennial.

Reporters: Payment and securities settlement systems.

Estimated annual reporting hours: 210 hours.

Estimated average hours per response: 70 hours.

Number of respondents: 3.

General description of report: This information collection is mandatory and authorized pursuant the Federal Reserve Act (12 U.S.C. 248(i) & (j), 342, 248(o), 360, and 464). Also, in order to carry out the purposes of the Expedited Funds Availability Act, Public Law 100–86, 101 Stat. 635 (1985) (codified as amended at 12 U.S.C. 4001–4010), the Federal Reserve is given the authority to "regulate any aspect of the payment system." 12 U.S.C. 4008(c)(1). Because the self-assessments are to be publicly disclosed and because the Federal Reserve will not collect any information pursuant to this information collection beyond what is made publicly available, no confidentiality issue arises with regard to the FR 4102.

Abstract: The FR 4102 was implemented in January 2007 as a result of revisions to the Federal Reserve's Payments System Risk (PSR) policy. Under the revised policy, systemically important payments and settlement systems subject to the Federal Reserve's authority are expected to complete and disclose publicly self-assessments against the principles and minimum standards in the policy. The self-assessment should be reviewed and approved by the system's senior management and board of directors upon completion and made readily available to the public.

In addition, a self-assessment should be updated following material changes to the system or its environment and, at a minimum, reviewed by the system every two years.

Board of Governors of the Federal Reserve System, April 20, 2010.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 2010–9417 Filed 4–22–10; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier OS–0990–0344; 30-Day Notice]

Agency Information Collection Request; 30-Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed collection for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, e-mail your request, including your address, phone number, OMB number, and OS document identifier, to *Sherette.funncoleman@hhs.gov,* or call the Reports Clearance Office on (202) 690–5683. Send written comments and recommendations for the proposed information collections within 30 days of this notice directly to the OS OMB Desk Officer; faxed to OMB at 202–395–5806.

Proposed Project: HavBED Assessment to Prepare for Public Health Emergencies—OMB No. 0990–0344—Revision—Office of the Assistant Secretary for Preparedness and Response (ASPR), Office of Preparedness and Emergency Operations (OPEO).

Abstract: The Office of the Secretary (OS) is requesting clearance by the Office of Management and Budget to extend data collection regarding the status of the health care system. ASPR/OPEO received expedited clearance for data collection during the 2009—H1N1 pandemic. Since September 2009 HHS has collected data on bed availability, health care system resource needs such as ventilators and health care system stress such as implementation of surge strategies. These data have proven useful to ASPR in fulfilling its responsibilities for preparedness and response.

Pursuant to section 2811 of the PHS Act, the ASPR serves as the principal advisor to the Secretary on all matters related to Federal public health and medical preparedness and response for public health emergencies. In addition to other tasks, the ASPR coordinates with State, local, and tribal public health officials and healthcare systems to ensure effective integration of Federal public health and medical assets during an emergency. ASPR's National Hospital Preparedness Program (HPP) awards cooperative agreements to each of the 50

states, the Pacific Islands, and U.S. territories (for a total of 62 awardees) to improve surge capacity and enhance community and hospital preparedness for public health emergencies. These 62 awardees are responsible for enhancing the preparedness of the nation's nearly 6000 hospitals. These awards are authorized under section 391C–2 of the Public Health Service (PHS) Act.

For this data collection the situation will dictate how often the data will be collected using the web-based interface known as HAvBED. For a large scale emergency data will be collected nationally from all 62 HPP awardees to include all 6000 hospitals in HAvBED system. For smaller scale events data collection will be targeted to individual states or regions. Data may also be gathered during exercises. Notifications for data collection are sent to the affected states through the HPP program staff. The data gathered from the hospitals are reported to the HHS Secretary's Operations Center to inform situational awareness and national preparedness.

ANNUAL ESTIMATED BURDEN HOURS

Type of respondent	Number of respondents	Number of responses/ respondent	Average burden hours per response	Total burden hours
Hospital staff (training)	6,000	1	1	6,000
Hospital staff (data collection)	6,000	102	1	612,000
State/Territory Preparedness staff (training)	62	1	1	62
State/Territory Preparedness staff (data collection)	62	102	3	18,972
Total				31,154

Seleda Perryman,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. 2010–9429 Filed 4–22–10; 8:45 am]

BILLING CODE 4150–45–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Notice of Meeting: Secretary's Advisory Committee on Genetics, Health, and Society

Pursuant to Public Law 92–463, notice is hereby given of the twenty-second meeting of the Secretary's Advisory Committee on Genetics, Health, and Society (SACGHS), U.S. Public Health Service. The meeting will be held from 8:30 a.m. to approximately 5:30 p.m. on Tuesday, June 15, 2010, and from 8 a.m. to approximately 2:45 p.m. on Wednesday, June 16, 2010, at the Washington Plaza Hotel, 10 Thomas Circle, NW., Washington, DC 20005. The meeting will be open to the public with attendance limited to space available. The meeting will also be Web cast.

The main agenda item will be an exploratory session on the implications of affordable whole-genome sequencing. The meeting will also include updates and discussions on other issues SACGHS has been addressing, including the work of the Secretary's Advisory Committee on Heritable Disorders in Newborns and Children related to the retention and use of dried blood spot specimens from newborn screening.

As always, the Committee welcomes hearing from anyone wishing to provide public comment on any issue related to genetics, health and society. Please note that because SACGHS operates under the provisions of the Federal Advisory Committee Act, all public comments will be made available to the public. Individuals who would like to provide public comment should notify the SACGHS Executive Secretary, Ms. Sarah Carr, by telephone at 301–496–9838 or e-mail at *carrs@od.nih.gov*. The SACGHS office is located at 6705 Rockledge Drive, Suite 750, Bethesda, MD 20892. Anyone planning to attend the meeting who needs special assistance, such as sign language interpretation or other reasonable accommodations, is also asked to contact the Executive Secretary.

Under authority of 42 U.S.C. 217a, Section 222 of the Public Health Service Act, as amended, the Department of Health and Human Services established SACGHS to serve as a public forum for deliberations on the broad range of human health and societal issues raised by the development and use of genetic and genomic technologies and, as warranted, to provide advice on these issues. The draft meeting agenda and other information about SACGHS, including information about access to the Web cast, will be available at the following Web site: *http://oba.od.nih.gov/SACGHS/sacghs_meetings.html*.

Dated: April 16, 2010.

Jennifer Spaeth,

Director, NIH Office of Federal Advisory Committee Policy.

[FR Doc. 2010–9453 Filed 4–22–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier CMS–10316 and CMS–10209]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS) is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* New collection; *Title of Information Collection:* Medicare Prescription Drug Plan (PDP) and Medicare Advantage Prescription Drug Plan (MA–PD) Disenrollment Reasons Survey; *Use:* The Medicare Prescription Drug, Improvement, and Modernization

Act of 2003 (MMA) provides a requirement to collect and report performance data for Part D prescription drug plans. Specifically, the MMA under section 1860D–4 (Beneficiary Protections for Qualified Prescription Drug Coverage) requires CMS to conduct consumer satisfaction surveys regarding PDPs and MA–PDs. CMS seeks through the survey to obtain information about beneficiaries' reasons for disenrolling from their chosen Part D plan, and their expectations relative to provided benefits and services. Determining the reasons for disenrollment from Part D plans will provide important information regarding potential dissatisfaction with some aspect of the plan, such as access, service, cost, quality of care, or the benefits provided. This information can be used by CMS to improve the design and functioning of the Part D program. *Form Number:* CMS–10316 (OMB#: 0938–New); *Frequency:* Yearly; *Affected Public:* Individuals and households; *Number of Respondents:* 120,000; *Total Annual Responses:* 120,000; *Total Annual Hours:* 34,800. (For policy questions regarding this collection contact Phyllis Nagy at 410–786–6646. For all other issues call 410–786–1326.)

2. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Chronic Care Improvement Program and Medicare Advantage Quality Improvement Project; *Use:* The Social Security Act, section 1852 e(1), (2) and (3)(a)(i), and CFR 42, 422.152 describe CMS' regulatory authority to require each Medicare Advantage Organization (other than Medicare Advantage (MA) private fee for service and MSA plans) that offers one or more MA plans to have an ongoing quality assessment and performance improvement program. This program must include measuring performance using standard measures required by CMS and report its performance to CMS. *Form Number:* CMS–10209 (OMB#: 0938–New); *Frequency:* Yearly; *Affected Public:* Business or other for-profits and Not-for-profit institutions; *Number of Respondents:* 394; *Total Annual Responses:* 788; *Total Annual Hours:* 18,912. (For policy questions regarding this collection contact Darlene Anderson at 410–786–9824. For all other issues call 410–786–1326.)

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS' Web Site at *http://www.cms.hhs.gov/PaperworkReductionActof1995,* or e-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov,* or call the Reports Clearance Office on (410) 786–1326.

In commenting on the proposed information collections please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in one of the following ways by *June 22, 2010:*

1. *Electronically.* You may submit your comments electronically to *http://www.regulations.gov.* Follow the instructions for "Comment or Submission" or "More Search Options" to find the information collection document(s) accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: April 15, 2010.

Michelle Shortt,

Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2010–9503 Filed 4–22–10; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier CMS–10298 and CMS–R–142]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the Agency's function; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* New Collection; *Title of Information Collection:* Developing Outpatient Therapy Payment Alternatives; *Use:* In Section 545 of the Benefits Improvement and Protection Act (BIPA) of 2000, the Congress required the Secretary of the Department of Health and Human Services to report on the development of standardized assessment instruments for outpatient therapy. Currently, CMS does not collect these data. The purpose of this project is to identify, collect, and analyze therapy-related information tied to beneficiary need and the effectiveness of outpatient therapy services that is currently unavailable to CMS. The immediate goals are to develop and assess the feasibility of a comprehensive and uniform therapy-related data collection instrument and to determine the subset of the measures that CMS can routinely and reliably collect in support of payment alternatives. The ultimate goal is to develop payment method alternatives to the current financial cap on Medicare outpatient therapy services.

CMS made over 20 changes and improvements to the CARE–C and CARE–F instruments. Many revisions were minor word changes or clarifications to item coding instructions. The revised version of CARE retains its clinical integrity while allowing for greater response specificity. *Form Number:* CMS–10298 (OMB#: 0938—New); *Frequency:* Reporting—Daily; *Affected Public:* Business or other for-profit and Not-for-profit institutions; *Number of Respondents:* 190; *Total Annual Responses:* 38,632; *Total Annual Hours:* 14,271. (For policy questions regarding this collection contact David Bott at 410–786–0249. For all other issues call 410–786–1326.)

2. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Examination and Treatment for Emergency Medical Conditions and Women Labor (EMTALA), 42 CFR 482.12, 488.18, 489.20, and 489.24; *Use:* This collection contains the requirements for hospitals in effort to prevent them from inappropriately transferring individuals with emergency medical conditions, as mandated by Congress. CMS uses this information to help assure compliance not contained elsewhere in regulations.

Form Number: CMS–R–142 (OMB#: 0938–0667); *Frequency:* Daily; *Affected Public:* Individuals or households, Private Sector; *Number of Respondents:* 6,149; *Total Annual Responses:* 6,149; *Total Annual Hours:* 1. (For policy questions regarding this collection contact Renate Rockwell at 410–786–1326. For all other issues call 410–786–1326.)

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS Web Site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995,* or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov,* or call the Reports Clearance Office on (410) 786–1326.

To be assured consideration, comments and recommendations for the proposed information collections must be received by the OMB desk officer at the address below, no later than 5 p.m. on *May 24, 2010.*

OMB, Office of Information and Regulatory Affairs, Attention: CMS Desk Officer, Fax Number: (202) 395–6974, E-mail: *OIRA_submission@omb.eop.gov.*

Dated: April 15, 2010.

Michelle Shortt,

Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2010–9501 Filed 4–22–10; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; Comment Request Web Based Training for Pain Management Providers

Under the provisions of section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Institute on Drug Abuse, the National Institutes of Health has submitted to the Office of Management and Budget (OMB) a request to review and approve the information collection listed below. This proposed information collection was previously published in the **Federal Register** in Vol. 75, No. 25, pages 6208–6209 on Monday, February 8, 2010 and allowed 60 days for public comment. No public comments were received on the planned study or any of the specific topics outlined in the 60-day notice. Five comments were received requesting information on the educational program rather than the study. Responses to these requests were sent to the interested parties. The purpose of this notice is to allow an additional 30 days for public comment. 5 CFR 1320.5 (General requirements) Reporting and Recordkeeping Requirements: Final Rule requires that the agency inform the potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Proposed Collection

Title: Web Based Training for Pain Management Providers.

Type of Information Collection Request: New.

Need and Use of Information Collection: This research will evaluate the effectiveness of the Web Based Training for Pain Management Providers, via the Web site *PainAndAddictionTreatment.com*, to positively impact the knowledge, attitudes, intended behaviors and clinical skills of health care providers in the US who treat pain. The Web Based Training for Pain Management Providers is a new program developed with funding from the National Institute on Drug Abuse. The primary goal is to assess the impact of the training program on knowledge, attitude, intended behavior, and clinical skills. A secondary goal is to assess learner satisfaction with the program. If the program is a success, there will be a new, proven resource available to health care providers to improve their ability to treat pain and addiction co-occurring in the provider's patients. In order to evaluate the effectives of the program, information will be collected from health care providers before exposure to the web based materials (pre-test), after exposure to the web based materials (post-test), and 4–6 weeks after the program has been completed (follow-up).

Frequency of Response: On occasion.

Affected Public: Volunteer health care providers who treat patients with pain.

Type of Respondents: Physicians, nurse practitioners, and physician assistants.

The annual reporting burden is as follows:

Estimated Number of Respondents: 80.

Estimated Number of Responses per Respondent: 3.

Average Burden Hours per Response: 0.75.

Estimated Total Annual Burden Hours Requested: 180.

The annualized cost to respondents is estimated at: $11,925. There are no Capital Costs, Operating Costs, and/or Maintenance Costs to report.

Type of respondents	Estimated number of respondents	Estimated Number of responses per respondent	Average burden hours per response	Estimated annual burden hours requested
Physicians	60	3	0.75	135
Other primary care providers (*e.g.*, nurse practitioners, physician assistants)	20	3	0.75	45

Request for Comments: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to 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 plans and instruments, contact: Scudder Quandra, Project Officer, NIH/NIDA/CCTN, Room 3105, MSC 9557, 6001 Executive Boulevard, Bethesda, MD 20892–9557 or e-mail your request, including your address to *scudderq@nida.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: April 15, 2010.

Mary Affeldt,

Executive Officer, (OM Director, NIDA), National Institutes of Health.

[FR Doc. 2010–9374 Filed 4–22–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. FDA–2009–E–0172 and FDA–2009–E–0174]

Determination of Regulatory Review Period for Purposes of Patent Extension; VIMPAT —NDA 22–253

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for VIMPAT based on new drug application (NDA) 22–253 for VIMPAT TABLETS and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of applications to the Director of Patents and Trademarks, Department of Commerce, for the extensions of patents which claim the human drug product, VIMPAT. The regulatory review period determination for VIMPAT Injection is publishing in this issue of the **Federal Register**.

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, VIMPAT (lacosamide). VIMPAT tablets are indicated as adjunctive therapy in the treatment of partial-onset seizures in patients with epilepsy aged 17 years and older. Subsequent to this approval, the Patent and Trademark Office received patent term restoration applications for VIMPAT (U.S. Patent Nos. 5,654,301 and RE38,551) from Research Corporation Technologies, Inc., and the Patent and Trademark Office requested FDA's assistance in determining the patents' 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 VIMPAT 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 VIMPAT is 3,452 days. Of this time, 3,055 days occurred during the testing phase of the regulatory review period, while 397 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 19, 1999. FDA has verified the applicant's claim that the date the investigational new drug application became effective was on May 19, 1999.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the act*: September 28, 2007. FDA has verified the applicant's claim that the new drug application (NDA 22–253) for VIMPAT tablets was submitted on September 28, 2007.

3. *The date the application was approved*: October 28, 2008. FDA has verified the applicant's claim that NDA 22–253 was approved on October 28, 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 1,827 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 22, 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 20, 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 numbers 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. 2010–9512 Filed 4–22–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. FDA–2009–E–0175 and FDA–2009–E–0173]

Determination of Regulatory Review Period for Purposes of Patent Extension; VIMPAT—NDA 22–254

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for VIMPAT based on new drug application (NDA) 22–254 for VIMPAT injection and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of applications to the Director of Patents and Trademarks, Department of Commerce, for the extension of patents which claim the human drug product, VIMPAT. The regulatory review period determination for VIMPAT Tablets is publishing in this issue of the **Federal Register**.

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 0993–0002, 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 VIMPAT (lacosamide). VIMPAT injection is indicated as adjunctive therapy in the treatment of partial-onset seizures in patients with epilepsy aged 17 years and older when oral administration is temporarily not feasible. Subsequent to this approval, the Patent and Trademark Office received patent term restoration applications for VIMPAT (U.S. Patent Nos. 5,654,301 and RE38,551) from Research Corporation Technologies, Inc., and the Patent and Trademark Office requested FDA's assistance in determining the patents' 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 VIMPAT 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 VIMPAT is 3,452 days. Of this time, 3,055 days occurred during the testing phase of the regulatory review period, while, 397 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 19, 1999. The applicant claims November 14, 2003, as the date an investigational new drug application (IND) became effective. However, according to FDA records, this IND was not the first IND received for this active ingredient. In general, FDA has used the first IND of the active ingredient of the drug product as the beginning of the testing phase, if information derived from this first IND was or could have been relied on or was relevant for approval to market the drug product. FDA records indicate that the effective date of the first IND for lacosamide was May 19, 1999, which was 30 days after FDA receipt of this first IND. This is the same IND and the same date FDA determined was the beginning of the regulatory review period for Vimpat Tablets approved under new drug application (NDA) 22–253. The regulatory review period determination for VIMPAT Tablets is publishing in this issue of the **Federal Register**.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the act:* September 28, 2007. FDA has verified the applicant's claim that the new drug application (NDA) 22–254 for VIMPAT injection was submitted on September 28, 2007.

3. *The date the application was approved*: October 28, 2008. FDA has verified the applicant's claim that NDA 22–254 was approved on October 28, 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 applications for patent extension, this applicant seeks 1,104 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 22, 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 20, 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 numbers 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. 2010–9509 Filed 4–22–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0159]

North American Bioproducts Corp.; Filing of Food Additive Petition (Animal Use); Erythromycin Thiocyanate

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that North American Bioproducts Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of erythromycin thiocyanate as an antimicrobial processing aid in fuel-ethanol fermentations with respect to its consequent presence in by-product distiller grains used as an animal feed or feed ingredient.

DATES: Submit written or electronic comments on the petitioner's environmental assessment May 24, 2010.

ADDRESSES: You may submit written comments 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: Isabel W. Pocurull, Center for Veterinary Medicine, Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240–453–6853, email: *isabel.pocurull@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (section 409(b)(5) (21 U.S.C. 348(b)(5)), notice is given that a food additive petition (FAP 2263) has been filed by North American Bioproducts Corp., Corporate Support Center, 1815 Satellite Blvd., Building 200, Duluth, GA 30097. The petition proposes to amend the food additive regulations in 21 CFR Part 573 *Food Additives Permitted in Feed and Drinking Water of Animals* to provide for the safe use of erythromycin thiocyanate as an antimicrobial processing aid in fuel-ethanol fermentations with respect to its consequent presence in by-product distiller grains used as an animal feed or feed ingredient.

The potential environmental impact of this action is being reviewed. To encourage public participation consistent with regulations issued under the National Environmental Policy Act (40 CFR 1501.4(b)), the agency is placing the environmental assessment submitted with the petition that is the subject of this notice on public display at the Division of Dockets Management (see **ADDRESSES**) for public review and comment.

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) electronic or written comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday. FDA will also place on public display any amendments to, or comments on, the petitioner's environmental assessment without further announcement in the **Federal Register**. If, based on its review, the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.51(b).

Dated: April 14, 2010.

Bernadette Dunham,

Director, Center for Veterinary Medicine.

[FR Doc. 2010–9420 Filed 4–22–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Fiscal Year (FY) 2010 Funding Opportunity

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice of intent to award a Single Source Grant to the current grantee for the National Center for Child Traumatic Stress.

SUMMARY: This notice is to inform the public that the Substance Abuse and Mental Health Services Administration (SAMHSA) intends to award approximately $1,000,000 (total costs) for up to one year to the current grantee for the National Center for Child Traumatic Stress (NCCTS). This is not a formal request for applications. Assistance will be provided only to the current grantee for the National Center for Child Traumatic Stress based on the receipt of a satisfactory application that is approved by an independent review group.

Funding Opportunity Title: SM–10–016.

Catalog of Federal Domestic Assistance (CFDA) Number: 93.243.

Authority: Section 582 of the Public Health Service Act, as amended.

Justification: Only an application from the current grantee for the National Center for Child Traumatic Stress will be considered for funding under this announcement. One-year funding has become available to assist SAMHSA in responding to data analysis and reporting activities that improve evidence-based practices and raise the standard of trauma care. It is considered most cost-effective and efficient to supplement the existing grantee because they have access to the existing National Child Traumatic Stress Network (NCTSN) datasets and data analytic expertise to conduct the required data analytic activities. There is no other potential organization with the required access and expertise.

Eligibility for this program supplement is restricted to the current grantee, National Center for Child Traumatic Stress in accordance with Congressional intent for 2010 SAMHSA appropriations.

The role of the NCCTS is to provide infrastructure and support for the National Child Traumatic Stress Network to achieve its goals of increasing access and raising the standard of care for traumatized children, adolescents, and their

families. The NCCTS is responsible for data collection for the NCTSN and the dissemination of program findings to guide best practice implementation. This data collection includes the core data set which details the demographics, clinical, family and trauma exposure factors which are related to the types of services received through National Child Traumatic Stress Initiative. The data analysis supported by the NCCTS will improve evidence-based practices and raise the standard of trauma care.

Contact: Shelly Hara, Substance Abuse and Mental Health Services Administration, 1 Choke Cherry Road, Room 8–1095, Rockville, MD 20857; telephone: (240) 276–2321; E-mail: *shelly.hara@samhsa.hhs.gov.*

Toian Vaughn,

SAMHSA Committee Management Officer.

[FR Doc. 2010–9465 Filed 4–22–10; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Office of Clinical and Preventive Services; Elder Care Initiative Long-Term Care Grant Program

Announcement Type: New.

Funding Announcement Number: HHS–2010–IHS–EHC–0001.

Catalog of Federal Domestic Assistance Number: 93.933.

Key Dates

Letter of Intent Deadline Date: May 10, 2010.

Application Deadline Date: June 4, 2010.

Review Dates: June 22–24, 2010.

Earliest Anticipated Start Date: August 1, 2010.

I. Funding Opportunity Description

Statutory Authority

The Indian Health Service (IHS) announces the availability of up to $600,000 for competitive grants through the Elder Care Initiative Long-Term Care (ECILTC) Grant Program to support planning and implementation of sustainable long-term care services for American Indians and Alaska Native (AI/AN) elders. This program is authorized under the Snyder Act, 25 U.S.C. 1652, 25 U.S.C. 1653(c), and the Public Health Service Act, Section 301, as amended. This program is described at 93.933 in the Catalog of Federal Domestic Assistance (CFDA).

Background

The AI/AN elder population is growing rapidly and the AI/AN population as a whole is aging. The prevalence of chronic disease in this population continues to increase, contributing to a frail elder population with increasing long-term care (LTC) needs.

LTC is best understood as a set of social and health care services that support an individual who has needs for assistance in activities of daily living over a prolonged period of time. LTC supports elders and their families with medical, personal, and social services delivered in a variety of settings to support quality of life, maximum function, and dignity. While families continue to be the backbone of LTC for AI/AN elders, there is well documented need to support this care with formal services. The way these services and systems of care are developed and implemented can have a profound impact on the cultural and spiritual health of the community.

Home and Community-based Services (HCBS) have the potential for meeting the needs of the vast majority of elders requiring LTC services, supporting the key roles of the family in the care of the elder and the elder in the care of the family and community. A LTC system with a foundation in home and community-based services will also be consistent with the United States Supreme Court interpretation of the Americans with Disabilities Act in *Olmstead* v. *L.C.,* 527 U.S. 581 (1999). The 28 CFR 35.130(d) ruling obligates States and localities to provide care for persons with disabilities, "in the most integrated setting appropriate to the needs of qualified individuals with disabilities." An efficient and effective LTC system would make use of all available resources, integrating and coordinating services to assist families in the care of their elders.

The primary focus for planning and program development for AI/AN LTC is at the Tribal and urban community level. Tribes and communities have very different histories, capabilities, and resources with regard to LTC program development. Each Tribe or community will have different priorities in building LTC infrastructure. It is critical that the development of LTC services be well grounded in an assessment of need based on population demographics and rates of functional impairment. LTC services should be acceptable to elders and their families and consistent with community values in their implementation. The services should be a part of an overall vision and plan for a LTC system to support elders and their families.

There are a number of elements (Tribal sovereignty and the government-to-government relationship, the unique funding structure of Indian health, and the importance of the cultural context) that distinguish AI/AN LTC. Tribes and Tribal organizations have found it useful to look both inside and outside of the Indian Health system (IHS, Tribal, and urban Indian health programs) for LTC strategies and models.

In order to create sustainable programs, the planning and design of LTC services must identify the revenue source or sources that will support the delivery of care. Finding resources for LTC services presents a formidable challenge. Funds appropriated through the IHS (whether direct service or Tribal) can provide health care services which are part of a LTC system, but do not provide for a comprehensive set of LTC services. Programs funded through the Administration on Aging's American Indian, Alaska Native and Native Hawaiian Program (*e.g.* Title VI A and Title VI C Family Caregiver Support Program) have been key elements in the LTC infrastructure in AI/AN communities. Additional Older American Act resources may be available through State Units on Aging and Area Agencies on Aging. Other resources are available to provide LTC services on a reimbursable basis for eligible AI/AN elders. The majority of formal or paid LTC services in this country are funded by reimbursements from State Medicaid and HCBS programs. The Veterans Administration may be a source of reimbursement for LTC services for eligible AI/AN veterans. Federal housing programs are a potential resource in developing the housing component of the LTC infrastructure. Each of these resources has unique eligibility requirements. Development of reimbursement-based LTC services often requires an ongoing investment of funds to support delivery of services during the initial period of client recruitment, start-up of services, and the receipt of reimbursement for those services.

Purpose

The purpose of the Elder Care Initiative Long Term Care grants is to provide support for the development of AI/AN LTC services, with funding for either assessment and planning, or program implementation. LTC services developed with support of this grant program must be those which the IHS has the authority to provide, either directly or through funding agreement, and must be designed to serve IHS

beneficiaries. Most Tribes and urban communities are building toward their ideal LTC system incrementally, adding new or integrating existing services over time. The goal of this grant program is to support Tribes, Tribal organizations, Tribal consortia, and Urban Indian health programs as they build LTC systems and services that meet the needs of their elders and that keep elders engaged and involved in the lives of their families and communities.

II. Award Information

Type of Award

Grant.

Estimated Funds Available

The total amount of funding identified for the current fiscal year FY 2010 is approximately $600,000. Competing and continuation awards issued under this announcement are subject to the availability of funds. In the absence of funding, the agency is under no obligation to make awards that are selected for funding under this announcement.

Anticipated Number of Awards

Approximately, 8–10 awards will be issued under this program announcement.

Project Period

Two years (24 months).

Award Amount

$50,000 per year for Category 1—Assessment and Planning Awards.

$75,000 per year for Category 2—Implementation Awards.

Category 1—Assessment and Planning awards will support the following activities:

a. Demographic assessment of the population and assessment of LTC needs on a population basis.

b. Evaluation of existing services and resources for LTC.

c. Evaluation of potential resources to fund LTC services.

d. Assessment of cultural and religious values regarding care of the elder for the population(s) served.

e. Assessment of elder preferences for type, structure, and setting of services.

f. Establishment of a comprehensive vision for LTC services with priorities for implementation.

g. Identification of potential funding sources for program development and for ongoing financing of service delivery.

h. The integration and incorporation of the above elements into a report or other document that guides LTC services/system implementation, including a plan for sustainability.

Category 2—Implementation awards will support the following activities: Implementation of a service or group of services that add capacity to the LTC system of the applicant's Tribe or organization. The implementation plan should be based on a comprehensive assessment and plan, including a business plan. The services should be designed to be self-sustaining at the end of the project period.

Applications must be for only one Project Type. Applications that address more than one Project Type will be considered ineligible and will be returned to the applicant.

III. Eligibility Information

1. Eligibility

This is a full and open competition to all eligible applicants.

The AI/AN applicant must be one of the following:

A. A Federally-recognized Indian Tribe as defined by 25 U.S.C. 1603(d).

B. A Tribal organization as defined by 25 U.S.C. 1603(e).

C. Urban Indian health programs that operate a Title V Urban Indian Health Program: This includes programs currently under a grant or contract with the IHS under Title V of the Indian Health Care Improvement Act, (Pub. L. 94–437).

D. A consortium of eligible Tribes, Tribal organizations and Title V Urban Indian health programs.

Definitions

- Federally-recognized Indian Tribe means any Indian Tribe, band, nation, or other organized group or community, including any Alaska Native village or group or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) [43 U.S.C. 1601, *et seq.*], which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians. 25 U.S.C. 1603(d).
- Tribal organization means the elected governing body of any Indian Tribe or any legally established organization of Indians which is controlled by one or more such bodies or by a board of directors elected or selected by one or more such bodies (or elected by the Indian population to be served by such organization) and which includes the maximum participation of Indians in all phases of its activities. 25 U.S.C. 1603(e).
- Urban Indian organizations are defined as non-profit corporate bodies situated in an urban center governed by an urban Indian controlled board of directors, and providing for maximum participation of all interested Indian groups and individuals, which body is capable of legally cooperating with other public and private entities for the purposes of performing the activities outlined in section 1653(a) of Title 25 U.S.C. 1603(h).

2. Cost Sharing or Matching

The Elder Care Initiative Long-Term Care Grant Program does not require matching funds or cost sharing.

3. Other Requirements

If application budgets exceed the stated dollar amount that is outlined within this announcement the application will not be considered for funding.

A Letter of Intent (LOI) is required to be submitted by no later than May 10, 2010. The LOI is mandatory but non-binding request for information that will assist in planning during the pre award phase. Applications will not be reviewed if a LOI is not submitted.

The following documentation of support is required: Tribal Resolution—A resolution of the Indian Tribe served by the project must accompany the application submission. This can be attached to the electronic application. An Indian Tribe that is proposing a project affecting another Indian Tribe must include resolutions from all affected Tribes to be served. Applications by Tribal organizations will not require a specific Tribal resolution if the current Tribal resolution(s) under which they operate would encompass the proposed grant activities. Draft resolutions are acceptable in lieu of an official resolution; however an official signed Tribal resolution must be received by the Division of Grants Operations (DGO), Attn: Kimberly M. Pendleton, 12300 Twinbrook Parkway, Suite 360, Rockville, MD 20852, prior to the Objective Review Committee on June 22–24, 2010. Therefore, if the IHS DGO does not receive an official signed resolution by June 15, 2010 then the application will be considered incomplete and will be returned without consideration.

*It is highly recommended that the Tribal resolution be sent by a delivery method that includes proof of receipt.

Tribal Consortia submitting an application are required to:

- Identify each of the consortium member Tribes.
- Identify if any of the member Tribes intend to submit a LTC grant application of their own.
- Demonstrate that the Tribal consortia's application does not

duplicate or overlap any objectives of the other consortium members who may be submitting their own LTC grant application.

Any application received from a Consortium that does not meet the requirements above will be considered ineligible for review.

Nonprofit urban Indian Health Service organizations must submit a copy of the 501(c)(3) Certificate as proof of non-profit status.

IV. Application and Submission Information

1. Obtaining Application Materials

An application package and detailed instructions for this announcement may be found through Grants.gov (*http://www.grants.gov*) or at: *http://www.ihs.gov?NonMedicalPrograms/gogp/index.cfm?module=gogp* funding.

2. Content and Form Application Submission

The applicant must include the project narrative as an attachment to the application package.

Mandatory documents for all applicants include:

- Application forms:
  - SF–424.
  - SF–424A.
  - SF–424B.
- Budget Narrative (must be single spaced, not to exceed 3 pages).
- Project Narrative (must not exceed 10 pages).
- Tribal Resolution(s) or Tribal Letter(s) of Support (Tribal Organizations only).
- Letter of Support from Organization's Board of Directors (Title V Urban Indian Health Programs only)
- 501(c)(3) Certificate (Title V Urban Indian Health Programs only).
- Biographical sketches for all Key Personnel.
- Disclosure of Lobbying Activities (SF–LLL) (if applicable).
- Documentation of current OMB A–133 required Financial Audit, if applicable. Acceptable forms of documentation include:
  - E-mail confirmation from Federal Audit Clearinghouse (FAC) that audits were submitted; or
  - Face sheets from audit reports. These can be found on the FAC Web site: *http://harvester.census.gov/fac/dissem/accessoptions.html?submit=Retrieve+Records.*
- Letter of Intent.

A Letter of Intent (LOI) is required from each entity that plans to apply for funding under this announcement. The LOI must be submitted to the Division of Grants Operations to the attention of Kimberly M. Pendleton by May 10, 2010. Please submit all LOIs via fax (301) 443–9602. The LOI must reference the funding opportunity number, application deadline date, and eligibility status and indicate whether the intent is to apply for a Category I (Assessment and Planning) or Category II (Implementation) grant. Tribal Consortia submitting a letter of intent must also list all Tribal members of the consortium and indicate which of those Tribal members will be participating in the application. The letter must be signed by the authorized organizational official within your entity.

Public Policy Requirements

All Federal-wide public policies apply to IHS grants with exception of the Discrimination policy.

Requirements for Project and Budget Narratives

A. *Project Narrative:* This narrative should be a separate Word document that is no longer than 10 pages (*see* page limitations for each Part noted below) with consecutively numbered pages. Be sure to place all responses and required information in the correct section or they will not be considered or scored. If the narrative exceeds the page limit, only the first 10 pages will be reviewed. There are three parts to the Narrative: Part A—Program Information; Part B—Program Planning and Evaluation; and Part C—Program Report. *See* below for additional details about what must be included in the Narrative

Part A: Program Information (not to exceed 4 pages).

Section 1: Needs.

Part B: Program Planning and Evaluation (not to exceed 4 pages).

Section 1: Program Plans.

Section 2: Program Evaluation.

Part C: Program Report (not to exceed 2 pages).

Section 1: Describe major Accomplishments over the last 24 months.

Section 2: Describe major Activities over the last 24 months.

Note: Only those programs or services which the IHS is authorized to provide, either directly or through funding agreement, can be supported by this grant program. Programs and services developed with support of this grant program must be designed for the benefit of IHS beneficiaries. Guidance for the Project Narrative is provided below for the Category I Assessment and Planning grants and for the Category II Implementation grants.

Category I—Assessment and Planning

Part A: Program Information (not to exceed 4 pages).

Section 1: Needs.

Provide an understanding of the LTC needs of the elderly in the Tribe or service area and identify the additional information needed for planning. The number of elders affected by the program will be considered a factor in the review and the relationship of the amount of funding requested to the number of elders to be served will be considered. The applicant should use the best data available. Reviewers understand that, for many programs, these data elements will not be available or be poor in quality and that improved data for future planning will be an outcome of this project. When data is not available the unavailability of that data should be noted in this section and strategies for obtaining the necessary data should be included in the Program Planning and Evaluation section as part of the work-plan. Identify all information sources. Applicants will find the following questions helpful for this portion of the narrative.

1. What information do we currently have to guide development of LTC services or programs?

a. What do we know about our elder and disabled population and the need and preferences for services?

i. How many elders do we have? What proportion of the population are elders and at what rate is this segment growing?

ii. What are the rates of functional impairment or need for assistance in activities of daily living in our community? What do we know about the specific types of assistance needed?

iii. What geographic and social factors, including availability of caregivers, impact the ability of our elders and disabled to live in the community?

iv. What are the cultural and religious values regarding care of the elder that are important in planning for services?

v. What do we know about what elders want? What kinds of services do they want for themselves? What do they tell us about who should provide them, how and where?

b. What do we know about existing services and resources for LTC in our community?

i. What aging and LTC services are currently available to our elders and how are these organized? What services are provided by the Tribe or other AI/AN organizations and what might be available from non-Tribal/Non-Native organizations or programs?

ii. What health services, including Native or Traditional Medicine, are available for the elderly? How are these integrated into LTC?

iii. Do we have the capacity as a community or Tribe to provide care "in the most integrated setting appropriate to the needs of qualified individuals with disabilities" (*Olmstead* vs. *L.C*). Do we have the supports necessary for an individual with LTC needs to live in the community if that is what they want?

c. What resources do we have to support the formal (paid) and informal (usually family) caregivers who care for our elderly?

i. Do we have a way to train new formal caregivers or advance the knowledge and skills of existing caregivers?

ii. Do we have training and support for informal (usually family) caregivers?

d. What are the funding streams that currently pay for LTC services in our Tribe or community?

e. What collaborations in program development or service delivery are currently underway in our Tribe or community?

2. What do we know about the unmet need for LTC services?

3. What information don't we have that we will need to plan for sustainable services or programs to meet the unmet need?

Part B: Program Planning and Evaluation (not to exceed 4 pages).

Section 1: Program Plans.

In this section of the Narrative the applicant should explain what work they intend to do and how they intend to do it. The plan should strive to answer important unanswered questions in Part A in order to produce, as an end product, the readiness to develop LTC service(s).

For an example of the kind of information needed to demonstrate readiness to develop LTC service(s), *see* Part A: Need in the Category II Implementation Narrative instructions.

[Note that attendance and presentation at the AI/AN Long Term Care Conference and participation in periodic grantee teleconferences are a requirement of the grant and should be included as activities in the work plan].

a. Describe what you plan to do and how it is supported by the Narrative in Part A.

b. List the objectives of the assessment and planning process and how you will accomplish these objectives.

i. Tasks.

ii. Resources needed to implement and complete the project.

iii. Timeline.

iv. Any specialized technical resources you might need for data collection or analysis.

v. Training needs.

- Include in work plan attendance and presentation at the annual AI/AN Long Term Care Conference.

c. Identify the final product of the assessment/plan and the strategy for dissemination.

Section 2: Program Evaluation.

This section should show how you will know that you are successful with this project. It should answer the following questions:

- What is the overall result or product that you expect to achieve with this project?
- How will you track progress toward that outcome over time? What are the key deliverables or outcomes associated with each objective or task in the work plan?
- Who will be responsible for this evaluation (it does not have to be an external evaluator)? Evaluation activities should appear in the work plan.

Part C: Program Report (no more than 2 pages).

Section 1: Describe any work done in the past 10 years to assess the need for LTC services and plan for service or program development.

a. Is there a Tribal or Community vision for LTC and priorities for development of new services?

b. Have there been any assessment and planning activities? If so, what were the funding sources and dates of funding? What were the project accomplishments? What is the relationship of that work to the current proposal?

Section 2: Describe how this proposal integrates with current planning efforts or service delivery for the elderly and disabled in the Tribe or organization.

Category II—Implementation

Part A: Program Information (no more than 4 pages).

Section 1: Needs.

This section should give an understanding of need for and availability of LTC services in the Tribe or service area. Identify the number of elders to be served. Reviewers will take into account the number of elders that will be affected by the program. This section should demonstrate that the proposal is based on sound assessment and planning and that the services fit within a comprehensive vision or plan for elder care. The outline below identifies the information that should be included in this section. If this information is not available, you may consider applying for Category I funding to support the assessment and planning activities necessary for successful program development.

a. Demographic assessment of the population and assessment of LTC needs on a population basis.

i. Population distribution. Number of elderly of different age and gender groups in the population.

ii. Rates of functional impairment and numbers of elders with need for assistance in activities in daily living with adequate detail to project need for services.

b. Geographic and social factors that affect access to services and availability of caregivers.

i. Rural vs. urban; population density.

ii. Family structure and organization.

c. Assessment of cultural and religious values regarding care of the elder for the population(s) to be served.

d. Assessment of elder preferences for type, structure, and setting of services.

e. Evaluation of existing services and resources for LTC.

i. Availability and organization of existing aging and LTC services. Include services available to Tribal or community members provided by programs or organizations that are not Tribal or AI/AN organizations.

ii. Availability and organization of health services for the elderly, including Native healing systems and Traditional Medicine.

iii. The capacity of existing LTC services to support care provided in the least restrictive setting or "in the most integrated setting appropriate to the needs of qualified individuals with disabilities" (*Olmstead* vs. *L.C*).

f. Assessment of caregiver workforce.

i. The availability of potential caregivers (formal and informal).

ii. Training and support resources for formal and informal caregivers.

g. Identification of potential resources for new LTC service.

i. Funding for program development.

ii. Funding for ongoing service delivery.

iii. Potential partners in program development.

h. Relevant Federal, IHS, Tribal and/or State standards, laws and regulations and codes and relevant licensure or certification requirements.

i. A comprehensive vision or plan for LTC system/services which incorporates the information above and identifies priorities for implementation.

j. Unmet need for LTC services.

Part B: Program Planning and Evaluation (no more than 4 pages).

Section 1: Program Plans.

This section should include both the work plan for program implementation and the underlying plan or strategy for sustainability of the service(s) past the point of grant support. [Note that attendance and presentation at the AI/AN Long Term Care Conference and participation in periodic grantee teleconferences are a requirement of the

grant and should be included as activities in the work plan].

a. Identify the LTC service(s) to be implemented and show how it:

i. Is consistent with the results of the assessment/planning process described above (*Part A:* Need).

ii. Integrates with existing LTC and health services.

b. Summarize the business plan or plan for self-sufficiency and sustainability, including:

i. Funding stream(s) to support ongoing services.

ii. Clearly indicate whether the program will be self-supporting (and if so, when) or not. If the services will not be self-supporting identify the source of the necessary additional revenue and document the availability of these resources.

iii. Timeline with projections for client recruitment, expected revenue and shortfalls, resources for funds needed to bridge between onset of services and collection of reimbursement, *etc.*

iv. Licensure or certification requirements.

v. Indicate if Tribal revenue is expected to pay in part or in whole for services and if so include a letter from the Tribal Council or administration indicating that these funds have been budgeted for this purpose.

c. Describe the approach to implementation.

i. Tasks.

ii. Resources needed to implement and complete the project.

iii. Timeline for implementation.

iv. Specialized technical resources.

v. Training needs.

• Include in work plan attendance and presentation at the annual AI/AN Long Term Care Conference.

vi. Consultation needs (if any).

Section 2: Program Evaluation.

This section should show how you will know that you are successful with this project. It should answer the following questions:

• What is the overall result or product that you expect to achieve with this project?

• How will you track progress toward that outcome over time? What are the key deliverables or outcomes associated with each objective or task in the work plan?

• Who will be responsible for this evaluation (it does not have to be an external evaluator)? Evaluation activities should appear in the work plan.

Part C: Program Report (no more than 2 pages).

Describe assessment and planning activities over the past 5 years that indicate readiness to successfully implement this program or service and a high likelihood of success.

B. *Budget Narrative:* This narrative should be a separate Word document that is no longer than 3 pages with consecutively numbered pages. If the Narrative exceeds the page limit, only the first 3 pages will be reviewed. The Budget Narrative should explain why each line item is necessary or relevant to the proposed project and should include sufficient details to facilitate the determination of cost allowability.

3. Submission Dates and Times

Applications must be submitted electronically through Grants.gov by June 4, 2010 at 12 midnight Eastern Standard Time (EST). Any application received after the application deadline will not be accepted for processing, and it will be returned to the applicant(s) without further consideration for funding.

If technical challenges arise and the applicants need help with the electronic application process, contact Grants.gov Customer Support via e-mail to *support@grants.gov* or at (800) 518–4726. Customer Support is available to address questions 24 hours a day, 7 days a week (except on Federal holidays). If problems persist, contact Tammy Bagley, Senior Grants Policy Analyst, IHS Division of Grants Policy (DGP) (*tammy.bagley@ihs.gov*) at (301) 443–5204. Please be sure to contact Ms. Bagley at least ten days prior to the application deadline. Please do not contact the DGP until you have received a Grants.gov tracking number. In the event you are not able to obtain a tracking number, call the DGP as soon as possible.

If an applicant needs to submit a paper application instead of submitting electronically via Grants.gov, prior approval must be requested and obtained. The waiver must be documented in writing (e-mails are acceptable), before submitting a paper application. A copy of the written approval must be submitted along with the hardcopy that is mailed to the DGO (Refer to Section VII to obtain the mailing address). Paper applications that are submitted without a waiver will be returned to the applicant without review or further consideration. Late applications will not be accepted for processing, will be returned to the applicant and will not be considered for funding.

4. Intergovernmental Review

Executive Order 12372 requiring intergovernmental review is not applicable to this program.

5. Funding Restrictions

• Pre-award costs are not allowable without prior approval from the awarding agency.

• In accordance with 45 CFR parts 74 and 92, pre-award costs are incurred at the recipient's risk. The awarding office is under no obligation to reimburse such costs if for any reason the applicant does not receive an award or if the award to the recipient is less than anticipated.

• The available funds are inclusive of direct and appropriate indirect costs.

• Only one grant/cooperative agreement will be awarded per applicant.

• Tribes, Tribal organizations, urban Indian health programs, or Tribal consortia receiving a Category I (Assessment and Planning) grant in the FY2006 or 2008 IHS Elder Care Initiative Long Term Care Grants cycles will be considered ineligible for FY2010 Category I (Assessment and Planning) funding unless they can demonstrate that the current application serves a different population than the FY2006–2007 grants. (*e.g.* a consortium may target different Tribes).

• Tribes, Tribal organizations, urban Indian health programs, or Tribal consortia receiving a Category II (Implementation) grant in the FY2006 or 2008 IHS Elder Health Care Initiative Long Term Care Grants cycles will be considered ineligible for FY2010 Category II (Implementation) funding unless they can demonstrate that they will be implementing an entirely new service or program (*e.g.* an applicant with current funding to implement an Adult Day Health Program may now apply for funding to implement a personal care program).

• IHS will not acknowledge receipt of applications.

6. Electronic Submission Requirements

The preferred method for receipt of applications is electronic submission through Grants.gov. In order to submit an application electronically, please go to *http://www.Grants.gov* and select the "Apply for Grants" link on the homepage. Download a copy of the application package on Grants.gov Web site, complete it offline and then upload and submit the application via Grants.gov site. You may not e-mail an electronic copy of a grant application to IHS.

Applicants that receive a waiver to submit paper application documents must follow the rules and timelines that are noted below. The applicant must seek assistance at least 15 days prior to the application deadline (June 4, 2010).

Please be reminded of the following:

• Please search for the application package in Grants.gov (*http://www.Grants.gov*) by entering the CFDA number or the Funding Opportunity Number. Both numbers are located in the header of this announcement.

• Paper application is not the preferred method for submitting applications. However, if you experience technical challenges while submitting your application electronically, please contact Grants.gov Support directly at: *http://www.Grants.gov/CustomerSupport* or (800) 518–4726. Customer Support is available to address questions 24 hours a day, 7 days a week (except on Federal holidays).

• Upon contacting Grants.gov, obtain a tracking number as proof of contact. The tracking number is helpful if there are technical issues that cannot be resolved and a waiver from the DGO must be obtained.

• If it is determined that a waiver is needed, you must submit a request in writing (e-mails are acceptable) to *GrantsPolicy@ihs.gov* with a copy to *Tammy.Bagley@ihs.gov.* Please include a clear justification for the need to deviate from our standard electronic submission process.

• If the waiver is approved, the application should be sent directly to the DGO by the deadline date of June 4, 2010.

• You must submit all documents electronically, including all information typically included on the SF–424 and all necessary assurance and certifications. Audits being sent separately must be received by June 15, 2010.

• Please use the optional attachment feature in Grants.gov to attach additional documentation that may be requested by the IHS.

• Your application must comply with any page limitation requirements described in this program announcement.

• After you electronically submit your application, you will receive an automatic acknowledgement from Grants.gov that contains a Grants.gov tracking number. The DGO will retrieve your application from Grants.gov. The DGO will not notify applicants that the application has been received.

• If submission of a paper application is requested and approved, the original and two copies must be sent to the appropriate grants contact listed in Section VII.

• E-mail applications will not be accepted under this announcement.

Dun and Bradstreet (D&B) Data Universal Numbering System (DUNS)

Applicants are required to have a DUNS number to apply for a grant or cooperative agreement from the Federal Government. The DUNS number is a unique nine-digit identification number provided by D&B, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. The DUNS number is site specific; therefore each distinct performance site may be assigned a DUNS number. To obtain a DUNS number, access it through the following Web site *http://fedgov.dnb.com/webform* or to expedite the process call (866) 705–5711.

Another important fact is that applicants must also be registered with the Central Contractor Registration (CCR), and a DUNS number is required before an applicant can complete their CCR registration. Registration with the CCR is free of charge. Applicants may register online at *http://www.ccr.gov.* Additional information regarding the DUNS, CCR, and Grants.gov processes can be found at *http://www.Grants.gov.* Applicants may register by calling (866) 606–8220. Please review and complete the CCR Registration worksheet located at *http://www.ccr.gov.*

V. Application Review Information

Points will be assigned to each evaluation criteria adding up to a total of 100 points. A minimum score of 65 points is required for funding. Points are assigned as follows:

1. Evaluation Criteria

Program Information (40 points).

Program Planning and Evaluation (40 points).

Progress Report (10 points).

Budget Narrative (10 points).

2. Review and Selection Process

Applications will undergo an initial prescreening by the DGO. The prescreening will assess whether applications that meet the eligibility requirements are complete, responsive, and conform to criteria outlined in this program announcement. The applications that meet the minimum criteria will be reviewed for merit by the Objective Review Committee (ORC) based on the evaluation criteria. The ORC is composed of both Tribal and Federal reviewers, appointed by the IHS, to review and make recommendations on these applications. The review will be conducted in accordance with the IHS Objective Review Guidelines. The technical review process ensures selection of quality projects in a national competition for limited funding. Applications will be evaluated and rated by each reviewer on the basis of the evaluation criteria listed in Section V.1. The reviewers use the criteria outlined in this announcement to evaluate the quality of a proposed project, determine the likelihood of success, and assign a numerical score to each application. The scoring of approved applications will assist the IHS in determining which proposals will be funded if the amount of Elder Care funding is not sufficient to support all approved applications. Applications scored by the ORC at 65 points or above will be recommended for approval and forwarded to the DGO for cost analysis and further recommendation. Applications scoring below 65 points will be disapproved. The comments from the individual reviewers that participate in the ORC will be recommendations only.

VI. Award Administration Information

1. Award Notices

The Notice of Award (NoA) is a legally binding document, signed by the Grants Management Officer, and serves as the official notification of the grant award. The NoA is the authorizing document for which funds are dispersed to the approved entities and reflects the amount of Federal funds awarded, the purpose of the grant, the terms and conditions of the award, the effective date of the award, and the budget/project period. The NoA will be mailed via postal mail to each entity that is approved for funding under this announcement. Applicants who are approved but unfunded or disapproved based on their Objective Review score will receive a copy of the Final Executive Summary which identifies the weaknesses and strengths of the application submitted. Any correspondence other than the NoA announcing to the Project Director that an application was selected is not an authorization to begin performance.

2. Administrative Requirements

Grants are administered in accordance with the following regulations, policies, and OMB cost principles:

A. The criteria as outlined in this Program Announcement.

B. Administrative Regulations for Grants:

• 45 CFR part 92, Uniform Administrative Requirements for Grants and Cooperative Agreements to State, Local and Tribal Governments.

• 45 CFR part 74, Uniform Administrative Requirements for Grants and Agreements with Institutions of

Higher Education, Hospitals, and other Non-profit Organizations.

C. Grants Policy:

• HHS Grants Policy Statement, January 2007.

D. Cost Principles:

• *Title 2:* Grants and Agreements, Part 225—Cost Principles for State, Local, and Indian Tribal Governments (OMB A–87).

• *Title 2:* Grants and Agreements, Part 230—Cost Principles for Non-Profit Organizations (OMB Circular A–122).

E. Audit Requirements:

• OMB Circular A–133 Audit of States, Local Governments and Non-profit Organizations.

3. Indirect Costs

This section applies to all grant recipients that request reimbursement of indirect costs in their grant application. In accordance with HHS Grants Policy Statement, Part II–27, IHS requires applicants to obtain a current indirect cost rate agreement prior to award. The rate agreement must be prepared in accordance with the applicable cost principles and guidance as provided by the cognizant agency or office. A current rate covers the applicable grant activities under the current award's budget period. If the current rate is not on file with the DGO at the time of award, the indirect cost portion of the budget will be restricted and not available to the recipient until the current rate is provided to the DGO.

Generally, indirect costs rates for IHS grantees are negotiated with the Division of Cost Allocation (DCA) *http://rates.psc.gov/* and the Department of Interior National Business Center (1849 C St., NW., Washington, DC 20240) *http://www.nbc.gov/acquisition/ics/icshome.html.* If your organization has questions regarding the indirect cost policy, please contact the DGO at (301) 443–5204.

4. Reporting Requirements

Grantees must submit the reports consistent with the applicable deadlines. Failure to submit required reports within the time allowed may result in suspension or termination of an active grant, withholding of additional awards for the project, or other enforcement actions such as withholding of payments or converting to the reimbursement method of payment. Continued failure to submit required reports may result in one or both of the following: (1) Imposition of special award provisions; and (2) the non-funding or non-award of other eligible projects or activities. This applies whether the delinquency is attributable to the failure of the grantee organization or the individual responsible for preparation of the reports.

A. Progress Reports

Program progress reports are required to be submitted semi-annually, within 30 days after the budget period ends and will include a brief comparison of actual accomplishments to the goals established for the period, or, if applicable, provide sound justification for the lack of progress, and other pertinent information as required. A final report must be submitted within 90 days of expiration of the budget/project period.

B. Financial Reports

Semi-annual financial status reports must be submitted within 30 days after the budget period ends. Final financial status reports are due within 90 days of expiration of the project period. Standard Form 269 (long form) will be used for financial reporting and the final SF–269 must be verified from the grantee's records on how the value was derived.

Federal Cash Transaction Reports are due every calendar quarter to the Division of Payment Management, Payment Management Branch (DPM, PMS) . Please contact DPM/PMS at: *http://www.dpm.psc.gov/* for additional information regarding your cash transaction reports. Failure to submit timely reports may cause a disruption in timely payments to your organization.

Grantees are responsible and accountable for accurate reporting of the Progress Reports and Financial Status Reports which are generally due annually. Financial Status Reports (SF–269) are due 90 days after each budget period and the final SF–269 must be verified from the grantee records on how the value was derived.

Failure to submit required reports within the time allowed may result in suspension or termination of an active grant, withholding of additional awards for the project, or other enforcement actions such as withholding of payments or converting to the reimbursement method of payment. Continued failure to submit required reports may result in one or both of the following: (1) The imposition of special award provisions; and (2) the non-funding or non-award of other eligible projects or activities. This requirement applies whether the delinquency is attributable to the failure of the grantee organization or the individual responsible for preparation of the reports.

Telecommunication for the hearing impaired is available at: TTY (301) 443–6394.

VII. IHS Agency Contact(s)

1. Questions on the programmatic issues may be directed to: Bruce Finke, M.D., Nashville Area/IHS Elder Care Health Consultant, 45 Vernon Street, Northhampton, MA 01060. (413) 584–0790. *E-mail: Bruce.finke@ihs.gov.*

2. Questions on grants management and fiscal matters may be direct to: Kimberly M. Pendleton, Grants Management Officer, Division of Grants Operation. *Telephone No.:* (301) 443–5204. *Fax No.:* (301) 443–9602. *E-mail: Kimberly.pendleton@ihs.gov.*

Dated: April 19, 2010.

Yvette Roubideaux,

Director, Indian Health Service.

[FR Doc. 2010–9505 Filed 4–22–10; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Injury Prevention Program; Announcement Type: Cooperative Agreement

Funding Announcement Number: HHS–2010–IHS–IPP–0001.

Catalog of Federal Domestic Assistance Number: 93.284.

Key Dates

Application Deadline Date: May 28, 2010.

Review Date: June 8–9, 2010.

Earliest Anticipated Start Date: July 1, 2010.

I. Funding Opportunity Description

Statutory Authority

The Indian Health Service (IHS) announces competitive cooperative agreement (CA) funding for the Injury Prevention Program (IPP) for American Indians and Alaska Natives (AI/AN). This program is described at 93.284 in the Catalog of Federal Domestic Assistance. The program is authorized under 25 U.S.C. 13, Snyder Act, and 42 U.S.C. 301(a), Public Health Service Act, as amended.

Background

Injury is a leading cause of death and disability for AI/AN communities. Injuries cause more deaths among AI/AN ages 1–44 than all other causes combined (Trends in Indian Health 2002–2003 Edition, IHS, Division of Program Statistics). The purpose of the IHS CA funding is to promote the

capacity of Tribes and Tribal/urban/non-profit Indian organizations to build sustainable evidence-based IPP. Capacity building supports initiatives for sustaining Tribal ownership of IPP. This includes identifying priorities for planning, implementation, and evaluation of comprehensive IPP. A comprehensive approach in IPP includes: (1) Education; (2) enforcement or policy development; and (3) environmental modifications. This funding will provide an opportunity for Tribes to design effective and innovative strategies in the prevention of injuries. The IHS IPP funding will be a competitive application process for new and existing Tribal IPP. The IHS IPP funding will target two priority areas: motor vehicle-related injuries and unintentional fall prevention for ages +65 years. The priorities integrate the effective strategies for motor vehicle and unintentional fall prevention published at the Centers for Disease Control and Prevention (CDC) Web site: *http://www.cdc.gov/injury*.

Purpose

The IHS will accept CA applications for two categories that support AI/AN: Part I and Part II:

(A) PART I includes two categories, (a) new applicants and (b) previously funded Part I applicants. All Part I applicants must meet the IHS minimum user population of 2,500. The population limit is set by the IHS IPP and not by the IHS. IHS user population is defined as AI/AN people who have utilized services funded by the IHS as least once during the last three-year period.

(a) Part I (a) applicants are new to Tribal IPPs and have not received IHS Injury Prevention funding within the past two years.

(b) Previously funded Part I (b) applicants are the 2005–2010 Tribal Injury Prevention Cooperative Agreement Program (TIPCAP) grantees.

(B) PART II is for applicants that will use effective strategies in 3-year projects with no population requirements.

II. Award Information

Type of Awards: Cooperative Agreement.

Estimated Funds Available: The total amount of funding identified for Fiscal Year 2010 is $2.275 million.

The funding levels will range from $10,000 to $80,000 for each category outlined within the announcement. All awards, new and previously funded are subject to the availability of funds. In the absence of funding, the agency is not under any obligation to issue awards.

Anticipated Number of Awards: Approximately 40 awards will be issued under this CA program. Injury Prevention applicants may apply for more than one of the areas of funding (Part I (a) or (b) and/or Part II) but only one will be awarded.

Part I (a) New: up to $65,000.

Part I (b) Previously funded: up to $80,000.

Part II Effective Strategy Projects: $10,000.

Project Period: This is a 5 year project for Part I and 3 years for Part II.

Programmatic Involvement: The IPP staff will provide substantial oversight to monitor evidence based, effective and innovative strategies for high quality performance in sustaining capacity of the AI/AN IPP.

IHS Injury Prevention Program (IPP) Priorities

The IHS IPP priorities are: (1) Motor vehicle; and (2) unintentional fall prevention. Only evidence based effective strategies that are proven effective will be considered. Motor vehicle related injuries and deaths impact AI/AN communities in catastrophic proportions. It is the leading cause of disability, years of potential life lost, and medical and societal cost. Effective strategies are those that reduce motor vehicle-related injuries and fatalities and are well documented. These strategies to reduce motor vehicle related injuries and fatalities include increasing occupant restraint use (all ages), helmet use, Tribal motor vehicle policy development, enforcement of traffic safety, environmental modifications to improve roadway, lighting of roadways and pedestrian safety. Effective strategies to reduce motor vehicle injuries can be found at: *http://www.cdc.gov/MotorvehicleSafety/index.html*.

Unintentional fall related injuries are a leading cause of hospitalizations in AI/AN communities. Unintentional falls reduce independence and quality of life for adults ages 65 and older. In the United States, every 18 seconds, an older adult is treated in an emergency department for a fall, and every 35 minutes someone in this population dies as a result of their injuries. A comprehensive approach in the prevention of fall related injuries is recommended. These approaches must include documentation of collaboration with a multidisciplinary team that includes the: (1) Clinical staff (M.D., pharmacy, physical therapy, dietitian, optometrist, *etc*); (2) an exercise program (senior centers, Health Promotion/Disease Prevention, Public Health Nurses, Community Health Representative, *etc*); and (3) home safety assessment and improvements (home health aid, environmental health, injury prevention specialist, *etc*).

Effective strategies for unintentional fall prevention can be found at: *http://www.cdc.gov/HomeandRecreationalSafety/Falls/html*. Consideration will be given to proposals that incorporate proven effective strategies to address injury prevention. Please visit the IHS IPP Web site for further information on effective strategies: *http://www.injprev.ihs.gov*. Additional resources can be found at: *http://www.safetylit.org/archive.htm* and at the Online Search, Consultation and Reporting (OSCAR) *http://www.ihs.gov/OSCAR*.

The IPP oversight will include an outside contractor that will provide support for the IHS program official to successfully monitor progress. The IHS contractor will provide support for the IHS responsibilities listed below. The IHS contractor will be responsible for providing technical assistance to the grantees, projects reporting assistance, scheduling conference calls, issuing newsletters, and performing pro-active site visits. The IHS contractor serves as a liaison to the IHS IPP Manager and the Tribal Injury Prevention CA grantee. IHS and the contractor will coordinate an annual training workshop for the Tribal Injury Prevention project coordinators and their IHS project officers to share lessons learned, program successes, and new state-of-the-art or innovative strategies to reduce injuries in Indian communities.

Specific responsibilities of the IHS and grantee for the CA for Part I are listed below in Sections 1 and 2.

1. The responsibilities for the grantee to satisfy the requirements for Part I (a) new and (b) previously funded are as follows:

- A Tribal Injury Prevention Coordinator position will be located within an urban Indian health organization, Tribal health program (or Tribal Highway Safety) or community-based Tribal program.
- The Tribal Injury Prevention Coordinator must be full-time and solely dedicated to the management, control or performance of the IPP. Positions cannot be part-time or split duties.
- Develop and maintain a systematic collection, analysis and interpretation of injury data (primary, secondary sources) for the purpose of priority setting, program planning, implementation and evaluation.
- Develop a 5-year plan (logic model, strategic planning, *etc.*) based on sound injury data and effective strategies. The

5-year plan will include process, impact and outcome evaluation; timeline; action steps and benchmarks.

• Develop injury prevention effective strategies that coincide with the IPP priorities (Motor vehicle, Unintentional fall prevention) and/or local Tribal injury priorities based on sound injury mortality and morbidity data. Develop and implement IPP with culturally competent information to educate and empower communities to take action in injury prevention.

• Develop or participate in an injury prevention coalition (support team, advisory group) to share resources and expertise of partners to address injuries within the Tribal community. The coalition will serve to collaborate in the planning, implementation and evaluation of projects. The coalition may consist of local Tribal members, Tribal leaders, health and social workers, injury prevention (IHS), law enforcement, business, clergy, State and other Federal advocates or key stakeholders.

• Mandatory participation of the Injury Prevention Tribal Coordinator at the annual IHS Tribal CA meeting, site visits, conference calls or at special meetings established by IHS.

2. The responsibilities for IHS to satisfy the requirements for Part I (a) and (b) new and previously funded, are as follows:

• IHS will assign an IHS Injury Prevention Specialist (Area, District) or designee to serve as the project officer (technical advisor/monitor) for the Tribal injury prevention projects.

• The IHS-assigned project officer is required to work in partnership with the Tribal Injury Prevention Coordinator in all decisions involving strategy, injury data (collection, analysis, reporting) hiring of personnel, deployment of resources, release of public information materials, quality assurance, coordination of activities, training, reports, budget and evaluation. The IHS assigned project officer will collaborate with the Tribal Injury Prevention Coordinator in determination and implementation of the injury prevention methods and approaches in injury prevention that will be utilized. Collaboration includes data analysis, interpretation of findings and reporting.

• The IHS-assigned project officer will monitor the overall progress of the grantees' program sites and their adherence to the terms and conditions of the CA. This includes providing guidance for required reports, development of tools, and other products, interpreting of program findings and assistance with evaluation.

• IHS will plan and set an agenda for an annual meeting that provides on-going training, fosters collaboration among sites, and increases visibility of programs.

• IHS will provide guidance in injury prevention training and continuing education courses to increase competencies in injury prevention.

• IHS will provide guidance in preparing articles for publication and/or presentations of program successes, lessons learned and new findings.

The Part II Effective Strategy Projects funding should be based on effectiveness, economic efficiency and feasibility of the projects. The recipient should provide evidence that there is an unmet need in their community for these projects. Injury Prevention effective strategies are those that have been tested and accepted widely to prevent injury morbidity and mortality. For further guidance on effective strategies in injury prevention, *see* the CDC's National Center for Injury Prevention and Control's Community Guide to Preventive Services, which can be found at the following site: *http://www.thecommunityguide.org/library/book/index.html*.

Specific responsibilities of the IHS and grantee for the CA for Part II Effective Strategy Projects are listed below in Sections 1 and 2:

1. Part II Effective Strategy Projects grantees'responsibilities:

• Develop a 3-year plan (logic model, strategic planning, *etc*) based on sound injury data and effective strategies. The 3-year plan will include process, impact and outcome objectives; timeline, action steps benchmarks and evaluation.

• Develop injury prevention effective strategies that coincide with the IHS IPP priorities and/or local Tribal injury priorities based on sound injury mortality and morbidity data.

• Develop and implement IPP with culturally competent information to educate and empower communities to take action in injury prevention.

• Document the evaluation of all program projects and initiatives, *i.e.,* presentations/training/materials/curriculum.

• Provide program outreach and advocacy to key stakeholders, *i.e.,* Tribal leadership, health board and community.

• Present final report for the final third year funding cycle at the annual IHS Tribal CA meeting.

• Work in partnership with the IHS-assigned project officer in all decisions involving strategy, injury data (collection, analysis, reporting), deployment of resources, release of public information materials, quality assurance, coordination of activities, training, reports, budget and evaluation.

2. Part II Effective Strategy Projects IHS responsibilities:

• IHS will assign an IHS IPP Specialist or designee to serve as the on-site project officer for the Tribal IPP.

• The IHS assigned project officer will work in partnership with the grantee in all decisions involving strategy, injury data (collection, analysis, reporting) hiring of personnel, deployment of resources, release of public information materials, quality assurance, coordination of activities, training, reports, budget and evaluation.

• The IHS assigned project officer will collaborate with the grantee in determination and implementation of the injury prevention methods and approaches that will be utilized. Collaboration will include data analysis, interpretation of findings and reporting.

• IHS will provide guidance for submission of required reports.

• IHS will provide consultation on the development of tools and other products.

• IHS will provide guidance in injury prevention training and continuing education courses as needed to increase competencies in injury prevention.

• IHS will communicate with sites through teleconferences, individual site visits and newsletters.

• IHS will provide outside monitoring to provide oversight through site visits, conference calls, technical assistance and training.

III. Eligibility Information

1. Eligible Applicants

Eligible Applicants must be one of the following:

• Federally-recognized Indian Tribe which means any Indian Tribe, band, nation, or other organized group or community, including any Alaska Native village or group or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) [43 U.S.C. 1601, *et seq.*], which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians. 25 U.S.C. 1603(d).

• Tribal organization means the elected governing body of any Indian Tribe or any legally established organization of Indians which is controlled by one or more such bodies or by a board of directors elected or selected by one or more such bodies or elected by the Indian population to be served by such organization and which includes the maximum participation of Indians in all phases of its activities. 25 U.S.C. 1603(e).

• Urban Indian organization which means a non-profit corporate body situated in an urban center governed by an urban Indian controlled board of directors, and providing for the maximum participation of all interested Indian groups and individuals, which body is capable of legally cooperating with other public and private entities for the purpose of performing the activities. 25 U.S.C. 1603(h).

2. Cost Sharing or Matching

The IHS IPP does not require matching funds or cost sharing.

3. Other Requirements

Tribal Resolution(s) are required from Tribes and Tribal organizations. The resolution must be submitted by June 2, 2010, 5 p.m. Eastern Standard Time (EST) in order to be reviewed by the Objective Review Committee.

A resolution of the Indian Tribe served by the project should accompany the application submission. An Indian Tribe that is proposing a project affecting another Indian Tribe must include resolutions from all affected Tribes to be served. The official signed resolution must be submitted to the Division of Grants Operations (DGO) by June 2, 2010, 5 EST or the application will be considered incomplete and will be returned to the applicant without further consideration. The resolution may be faxed to the attention of Mr. Roscoe Brunson at (301) 443–9602.

Applicants submitting applications from urban Indian organizations must provide proof of non-profit status with the application, *e.g.* 501(c)3.

IV. Application and Submission Information

1. Obtaining Application Materials

Applicant package may be found on Grants.gov (*http://www.grants.gov*) or at: *http://www.ihs.gov/NonMedicalPrograms/gogp/index.cfm?module=gogp_funding*.

2. Content and Form Application Submission

The applicant must include the project narrative as an attachment to the application package.

Mandatory documents for all applicants include:

• Application forms:
• SF–424.
• SF–424A.
• SF–424B.
• Budget Narrative (must be single spaced).
• Typed in 12 font size.
• 8½″ x 11″ paper.
• Project Narrative (must not exceed 15 pages).
• Attachments must include consecutively numbered pages.
• Tribal Resolution or Tribal Letter of Support (Tribal Organizations only).
• Letter of Support from Organization's Board of Directors (Title V Urban Indian Health Programs only).
• 501(c) (3) Certificate (Title V Urban Indian Health Programs only).
• Biographical sketches for all Key Personnel.
• Disclosure of Lobbying Activities (SF–LLL) (if applicable).
• Documentation of current OMB A–133 required Financial Audit, if applicable. Acceptable forms of documentation include:
• E-mail confirmation from Federal Audit Clearinghouse (FAC) that audits were submitted; or
• Face sheets from audit reports. These can be found on the FAC Web site: *http://harvester.census.gov/fac/dissem/accessoptions.html?submit=Retrieve+Records*.

Public Policy Requirements

All Federal-wide public policies apply to IHS grants with exception of Lobbying and Discrimination Policies.

Requirements for Project and Budget Narratives

A. *Project Narrative:* This narrative should be a separate Word document that is no longer than 15 pages (*see* page limitations for each section noted below) with consecutively numbered pages. Be sure to place all responses and required information in the correct section or they will not be considered or scored. If the narrative exceeds the page limit, only the first 15 pages will be reviewed. There are three parts to the narrative: Section 1—Program Information; Section 2—Program Planning and Evaluation; and Section 3—Program Report. *See* below for additional details about what must be included in the narrative

Section 1: Program Information—(page limitation—2).

(1) Needs

• User population for Part I (a) and (b) applicants only.

Section 2: Program Planning and Evaluation—(page limitation—8).

(1) Program Plans.

(2) Program Evaluation.

Section 3: Program Report—(page limitation—5).

(1) Describe major accomplishments over the last 24 months.

(2) Describe major activities over the last 24 months.

B. *Budget Narrative:* This narrative must describe the budget requested and match the scope of work described the project narrative. The page limitation should not exceed 3 pages.

3. Submission Dates and Times

Applications must be submitted electronically through Grants.gov by May 28, 2010 at 12 midnight (EST). Any application received after the application deadline will not be accepted for processing and it will be returned to the applicant(s) without further consideration for funding.

If technical challenges arise and assistance is required with the electronic application process, contact Grants.gov Customer Support via e-mail to *support@grants.gov* or at (800) 518–4726. Customer Support is available to address questions 24 hours a day, 7 days a week (except on Federal holidays). If problems persist, contact Tammy Bagley, Division of Grants Policy (DGP) (*tammy.bagley@ihs.gov*) at (301) 443–5204. Please be sure to contact Ms. Bagley at least ten days prior to the application deadline. Please do not contact the DGP until you have received a Grants.gov tracking number. In the event you are not able to obtain a tracking number, call the DGP as soon as possible.

If an applicant needs to submit a paper application instead of submitting electronically via Grants.gov, prior approval must be requested and obtained.

The waiver must be documented in writing (e-mails are acceptable), before submitting a paper application. A copy of the written approval must be submitted along with the hardcopy that is mailed to the DGO. Paper applications that are submitted without a waiver will be returned to the applicant without review or further consideration. Late applications will not be accepted for processing and will be returned to the applicant without further consideration for funding.

4. Intergovernmental Review

Executive Order 12372 requiring intergovernmental review is not applicable to this program.

5. Funding Restrictions

• Pre-award costs are allowable pending prior approval from the awarding agency.

However, in accordance with 45 CFR parts 74 and 92, pre-award costs are incurred at the recipient's risk. The awarding office is under no obligation to reimburse such costs if for any reason the applicant does not receive an award or if the award to the recipient is less than anticipated.

• The available funds are inclusive of direct and appropriate indirect costs.
• Only one CA will be awarded per applicant.

• IHS will not acknowledge receipt of applications.

6. Other Submission Requirements

Use the *http://www.Grants.gov* Web site to submit an application electronically and select the "Apply for Grants" link on the homepage. Download a copy of the application package, complete it offline, and then upload and submit the application via the Grants.gov Web site. Electronic copies of the application may not be submitted as attachments to e-mail messages addressed to IHS employees or offices.

Applicants that receive a waiver to submit paper application documents must follow the rules and timelines that are noted below. The applicant must seek assistance at least ten days prior to the application deadline.

Applicants that do not adhere to the timelines for Central Contractor Registry (CCR) and/or Grants.gov registration and/or request timely assistance with technical issues will not be considered for a waiver to submit a paper application.

Please be aware of the following:

• Please search for the application package in Grants.gov by entering the Catalog of Federal Domestic Assistance (CFDA) number. The CFDA number is located at the header of this announcement.

• Paper applications are not the preferred method for submitting applications. However, if you experience technical challenges while submitting your application electronically, please contact Grants.gov Support directly at: *http://www.Grants.gov/CustomerSupport* or (800) 518–4726. Customer Support is available to address questions 24 hours a day, 7 days a week (except on Federal holidays).

• Upon contacting Grants.gov, obtain a tracking number as proof of contact. The tracking number is helpful if there are technical issues that cannot be resolved and waiver from the agency must be obtained.

• If it is determined that a waiver is needed, you must submit a request in writing (e-mails are acceptable) to *GrantsPolicy@ihs.gov* with a copy to *Tammy.Bagley@ihs.gov.* Please include a clear justification for the need to deviate from our standard electronic submission process.

• If the waiver is approved, the application should be sent directly to the DGO by the deadline date of May 28, 2010.

• Applicants are strongly encouraged not to wait until the deadline date to begin the application process through Grants.gov as the registration process for CCR and Grants.gov could take up to fifteen working days.

• Please use the optional attachment feature in Grants.gov to attach additional documentation that may be requested by the DGO. All applicants must comply with any page limitation requirements described in this funding announcement.

• After you electronically submit your application, you will receive an automatic acknowledgment from Grants.gov that contains a Grants.gov tracking number. The DGO will download your application from Grants.gov and provide necessary copies to the appropriate agency officials. Neither the DGO staff nor the IPP program staff will notify applicants that the application has been received.

E-mail applications will not be accepted under this announcement.

DUNS Number

Applicants are required to have a Data Universal Numbering System (DUNS) number to apply for this CA. The DUNS number is a unique nine-digit identification number, which uniquely identifies your entity. The DUNS number is site specific; therefore each distinct performance site may be assigned a DUNS number. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, you may access it through the following Web site *http://fedov.dnb.com/webform* or to expedite the process call (866) 705–5711.

Another important fact is that applicants must also be registered with the CCR and a DUNS number is required before an applicant can complete their CCR registration. Registration with the CCR is free of charge. Applicants may register online at *http://www.ccr.gov*. Additional information regarding the DUNS, CCR, and Grants.gov processes can be found at: *http://www.Grants.gov*.

Applicants may register by calling (866) 606–8220. Please review and complete the CCR Registration worksheet located at *http://www.ccr.gov.*

V. Application Review Information

Points will be assigned to each evaluation criteria adding up to a total of 100 points.

Evaluation Criteria

Total weights are assigned to each major section noted in parentheses. The instructions for preparing the application narrative also constitute the evaluation criteria for reviewing and scoring the application. Weights assigned to each section are noted in parentheses. The narrative should include all activity information for multi-year projects. Additional pages can be included in the appendix. The narrative should be written in a manner that is clear and concise. The overall proposal should be well organized (follow requirements), succinct, and contain all information necessary for reviewers to understand the project fully. IPP Part I (a) and (b) are on a five-year funding cycle (2010–2015). The narrative should include only the first year of activities and additional years of information for multi-year projects should be in an appendix. The IPP Part II is a three-year funding cycle (2010–2013). The narrative should include only the first year of activities and additional years of information for multi-year projects should be in an appendix. Please review the allowable and not allowable purchases on pages 39–41 in Section VIII Other Information.

Requirements for Project and Budget Narrative for PART I (a) New Grantees Only

A. Project Narrative includes Sections 1, 2 & 3 (total page limitation 15 pages)

Section 1: Program Information (page limitation—2).

(1) Needs (Total 20 Points):

• Describe the need for funding and injury problem supported by use of local IHS, State or national injury data in the community or target area.

• Provide description of the population to be served by the proposed program. Provide documentation that the target population is at least 2,500 people. (IHS User population is the ONLY acceptable source).

Section 2: Program Planning and Evaluation (page limitation—8).

(1) Program Plans: Program goals, objectives, methods, coalition/collaboration (Total 30 Points):

Goals must be clear and concise. Objectives must be measurable, feasible and attainable to accomplish during the 5 year project period (SMART—specific, measurable, attainable, realistic, time specific). *Example:* The IP Effective Strategy Tribal Team will increase front seat passenger's safety belt use at Bob Cat Canyon community to 95% by January 2015.

The methods and staffing will be evaluated on the extent to which the applicant provides:

• A description of proposed year one work plan that describes how the injury prevention effective strategy will be implemented (multi year work plan should be included in appendix with actions steps, timeline, responsible person, *etc.*).

• A description of the roles of the Tribal involvement, organization, or agency and evidence of coordination, supervision, and degree of commitment (*e.g.,* time in-kind, financial) of staff, organizations, and agencies involved in activities.

• Biographical sketches (resumes) for all key personnel. Include information for consultants or contractors to be hired during the proposed project, include information in their scope of work.

• Provide organizational structure (chart) Coalition/Collaboration: Describe coalition or collaboration activities of the Tribe or urban Tribal program.

(2) Program Evaluation (Total 20 Points):

Describe how program will be evaluated to show process, effectiveness, and impact. This includes, but is not limited to, what data will be collected to evaluate the success of the proposed project objectives.

Section 3: Program Report (page limitation—5). (Total 20 Points)

(1) Describe major accomplishments over the last 24 months.

(2) Describe major activities over the last 24 months.

B. *Budget Narrative:* Categorical budget and budget justification not to exceed 3 pages (Total 10 Points):

• Provide a detailed and justification of budget for the first 12-month budget periods. A budget summary should be included for each subsequent year (Year 2–Year 5).

• If indirect costs are claimed, indicate and apply the current negotiated rate to the budget. Include a copy of the current rate agreement in the appendix.

• Include travel expenses for annual workshop (mandatory participation) at a city location to be determined by IHS (Washington DC, Chicago, Denver, *etc.*). Include airfare, per diem, mileage, *etc.*

Appendix items:

• Work plan for proposed 5-year objectives and activities in a timeline format.

• Current Indirect Cost Agreement.

• Organizational chart.

• Multi-year Project requirements (if applicable).

• Letters of commitment/statement of facts.

• Injury Prevention training certificate verification.

Requirements for Project and Budget Narrative for PART I (b) Previously Funded—2005–2010 TIPCAP Grantees Only

A. Project Narrative includes Sections 1, 2 & 3 (page limitation 15 pages).

Section 1: Program Information (page limitation—2).

(1) Needs (Total 20 Points):

• Describe the needs of program. Describe the current TIPCAP program operation and scope of services that are provided.

• Provide supporting injury trend data for 2005–2010 to demonstrate impact or outcome measures.

• Describe and provide documentation of the target population of 2,500 people to be served by the proposed program and geographic location of the proposed program. (IHS User population is the ONLY acceptable source).

Section 2: Program Planning and Evaluation (page limitation—8).

(1) *Program Plans:* Program goals, objectives, methods, coalition/collaboration (Total 25 Points):

• Goals must be clear and concise. Objectives must be measurable, feasible and attainable to accomplish during the 5 year project period (SMART—specific, measurable, attainable, realistic, time specific).

Methods and staffing:

• A description of proposed work plan that clearly describes how the injury prevention effective strategy will be implemented (multi year work plan should be included in appendix with action steps, timeline, responsible person, *etc.*).

• Biographical sketches (resumes) for all key personnel. Include information for consultants or contractors to be hired during the proposed project, include information in their scope of work.

• A description of the roles of the Tribal involvement, organization, or agency and evidence of coordination, supervision, and degree of commitment (*e.g.,* time in-kind, financial) of staff, organizations, and agencies involved in activities. Coalition/Collaboration:

• Describe the partnerships of the Tribe or urban community, the IHS, school, Tribal leadership, Federal or State agencies in facilitating accomplishments of successes in injury prevention.

(2) Program Evaluation (Total 20 Points):

Describe how program will be evaluated to show process, effectiveness, and impact. This includes, but is not limited to, what data will be collected to evaluate the success of the proposed project objectives.

Section 3: Program Report (page limitation—5). (Total 25 Points):

(1) Describe TIPCAP's major accomplishments during the years of 2005–2010.

(2) Describe TIPCAP's major activities over the last 24 months.

B. Budget Narrative Not to exceed 3 pages (Total 10 Points):

Provide a categorical budget for each of the 12-month budget periods requested. A budget summary should be included for each subsequent year (Year 2 to Year 5).

• If indirect costs are claimed, indicate and apply the current negotiated rate to the budget. Include a copy of the current rate agreement in the appendix.

• Include travel expenses for annual workshop (mandatory participation) at a city location to be determined by IHS (Washington DC, Chicago, Denver, *etc.*). Include airfare, per diem, mileage, *etc.*

Appendix items:

• Work plan for proposed 5-year objectives and activities in a time line.

• Consultant proposed scope of work (if applicable).

• Current Indirect Cost Agreement.

• Organizational chart.

• Letters of commitment/statement of facts.

• Injury Prevention training certificate verification.

Requirements for the Project and Budget Narrative for PART II—Effective Strategy Projects Only

A. Project Narrative includes Sections 1, 2 & 3 (page limitation 15 pages).

Section 1: Program Information (page limitation—2).

(1) Needs (Total 20 Points):

• Describe the needs and injury problem in the community or target area.

• Describe the Tribe's/Tribal organization's support for the proposed IP project.

• Describe the population to be served by the proposed project (no minimum population requirement).

Section 2: Program Planning and Evaluation (page limitation—8).

(1) Program Plans—Program goals, objectives, effective strategy, collaboration (Total 30 Points):

• Goals and objective must be clear and concise.

• Objectives must be measurable, feasible and attainable to accomplish during the 3 year project period (SMART—specific, measurable, attainable, realistic, time specific).

Effective Strategy method:

• *Effective strategies* should be based on effectiveness, economic efficiency and feasibility of the project. Provide description of the extent to which proposed projects are an effective strategy based on a documented need in the target communities.

Coalition/Collaboration:

• Describe the extent to which relationships between the programs, the Tribe or urban community, the IHS and other organizations collaboration with

the project or to conduct related activities. Provide a description of the roles of Tribal involvement, organization, or agency and evidence of coordination, supervision, and degree of commitment (*e.g.,* time, in-kind, financial) of staff, organizations, and agencies involved in activities.

(2) Program Evaluation (Total 20 Points): Describe how the project will be evaluated for program process, effectiveness, and impact. This includes, but is not limited to, what data will be collected to evaluate the success of the proposed program objectives.

Section 3: Program Report (page limitation—5). (Total 20 Points):

(1) Describe major accomplishments over the last 24 months.

(2) Describe the major activities over the last 24 months.

B. Budget Narrative Not to exceed 3 pages (Total 10 Points):

Budget Narrative: Three-year intervention projects must include a program narrative, categorical budget, and budget justification for each year of funding requested. If indirect costs are claimed, indicate and apply the current negotiated rate to the budget. Include a copy of the current rate agreement in the appendix.

Appendix Items

- Work plan & budget for proposed objectives.
- Indirect Cost Agreement.
- Organizational chart.
- Letter of commitment/statement of facts.

2. Review and Selection Process.

Each application will be prescreened by the DGO staff for eligibility and completeness as outlined in the funding announcement. Incomplete applications and applications that are non-responsive to the eligibility criteria will not be referred to the Objective Review Committee (ORC). Applicants will be notified by the DGO, via e-mail, outlining the missing components of the application. To obtain a minimum score for funding, applicants must address all program requirements and provide all required documentation. Applicants that receive less than a minimum score will be informed via e-mail of their application's deficiencies. A summary statement outlining the strengths and weaknesses of the application will be provided to these applicants. The summary statement will be sent to the Authorized Organizational Representative (AOR) that is identified on the face page of the application.

A. Proposals will be reviewed for merit by the ORC consisting of Federal and non-Federal reviewers appointed by the IHS.

B. The technical review process ensures the selection of quality projects in a national competition for limited funding. After review of the applications, rating scores will be ranked, and the applications with the highest rating scores will be recommended for funding. Applicants scoring below 60 points will be disapproved.

3. Anticipated Announcement and Award Date—July 1, 2010.

VI. Award Administration Information

1. Award Notices

The Notice of Award (NoA) will be initiated by the DGO and will be mailed via postal mail to each entity that is approved for funding under this announcement. The NoA will be signed by the Grants Management Officer, and this is the authorizing document for which funds are dispersed to the approved entities. The NoA will serve as the official notification of the grant award and will reflect the amount of Federal funds awarded, the purpose of the grant, the terms and conditions of the award, the effective date of the award, and the budget/project period. The NoA is the legally binding document and is signed by an authorized grants official within the IHS.

2. Administrative Requirements

Grants are administered in accordance with the following regulations, policies, and Office of Management and Budget (OMB) cost principles:

A. The criteria as outlined in this Program Announcement.

B. Administrative Regulations for Grants:

- 45 CFR part 92—Uniform Administrative Requirements for Grants and Cooperative Agreements to State, Local and Tribal Governments.
- 45 CFR part 74—Uniform Administrative Requirements for Awards and Sub-Awards for Institutions of Higher Education, Hospitals, Other Non-Profit Organizations, and Commercial Organizations.

C. Grants Policy:

- HHS Grants Policy Statement, 01/2007.

D. Cost Principles:

- OMB Circular A–87, State, Local, and Indian Tribal Governments (Title 2 Part 225).
- OMB Circular A–122, Non-Profit Organizations (Title 2 Part 230).

E. Audit Requirements:

- OMB Circular A–133, Audits of States, Local Governments, and Non-Profit Organizations.

3. Indirect Costs

This section applies to all grant recipients that request reimbursement of indirect costs in their grant application. In accordance with HHS Grants Policy Statement, Part II–27, IHS requires applicants to obtain a current indirect cost rate agreement prior to award. The rate agreement must be prepared in accordance with the applicable cost principles and guidance as provided by the cognizant agency or office. A current rate covers the applicable grant activities under the current award's budget period. If the current rate is not on file with the DGO at the time of award, the indirect cost portion of the budget will be restricted. The restrictions remain in place until the current rate is provided to the DGO. Generally, indirect costs rates for IHS grantees are negotiated with the Division of Cost Allocation *http://rates.psc.gov/* and the Department of the Interior (National Business Center) *http://www.nbc.gov/acquisition/ics/icshome.html.* If your organization has questions regarding the indirect cost policy, please contact the (DGO) at (301) 443–5204.

4. Reporting Requirements

A. Progress Reports

Program progress reports are required semi-annually by March 30 and September 30 of each funding year. The report shall include a brief description of the following for each program function or activity involved:

a. Compare actual accomplishments to the goals established for the period. Provide a description of internal and external collaboration, new resources secured, intervention successes, barriers identified and plans for the next semi-annual period.

b. Indicate reasons for slippage where established goals were not met and plan of action to overcome slippages.

c. *Indicate:* (1) Number of Indians hired or trained; and (2) use of Indian business concerns. If none, state reasons.

d. Specify other pertinent information including analysis and explanation of cost overruns or high costs.

A final report must be submitted within 90 days of expiration of the budget/project period.

B. Financial Reports

Semi-Annual Financial Status Reports (FSR) reports must be submitted within 30 days of the end of the first 6 months of the current budget period. The Final FSRs for the budget period will be due within 90 days of the expiration of the project period. Standard Form 269 (long

form for those reporting on program income; short form for all others) will be used for financial reporting.

Federal Cash Transaction Reports are due every calendar quarter to the Division of Payment Management, Payment Management Branch. Failure to submit timely reports may cause a disruption in timely payments to your organization.

Grantees are responsible and accountable for accurate reporting of the Progress Reports and FSRs which are generally due [semi-annually/annually]. FSRs (SF–269) are due 90 days after each budget period and the final SF–269 must be verified from the grantee records on how the value was derived.

Failure to submit required reports within the time allowed may result in suspension or termination of an active agreement, withholding of additional awards for the project, or other enforcement actions such as withholding of payments or converting to the reimbursement method of payment. Continued failure to submit required reports may result in one or both of the following: (1) The imposition of special award provisions; and (2) the non-funding or non-award of other eligible projects or activities. This applies whether the delinquency is attributable to the failure of the organization or the individual responsible for preparation of the reports.

Telecommunication for the hearing impaired is available at: TTY (301) 443–6394.

VII. Agency Contact(s)

Grants (Business)

Mr. Roscoe Brunson, Grants Management Specialist, 801 Thompson Ave., Reyes Bldg., Suite 360, Rockville, MD 20852. *Telephone:* (301) 443–5204. *E-mail: Roscoe.Brunson@ihs.gov.*

Program (Programmatic/Technical)

Ms. Nancy Bill, Program Manager, IPP Program, HIS, 801 Thompson Ave, Suite 120, OEHE–DEHS TWB 610, Rockville, MD 20852. *Phone:* (301) 443–0105. *Nancy.Bill@ihs.gov.*

VIII. Other Information—Allowable and Non-Allowable Items

The following will be considered allowable equipment purchases—Equipment/Construction:

(1) Costs of breath testing devices are allowable, provided the device appears on the National Highway Traffic Safety Administration (NHTSA) Conforming Products List (CPL) for this type of equipment.

(2) Police traffic radar—cost is allowable subject to the following:

- Devices must appear on the NHTSA Conforming Products List (CPL) when published in the **Federal Register**.
- Operators must be trained using the NHTSA radar operators training program or an approved equivalent.
- The police agency must implement a comprehensive radar operator and one to three year equipment certification program with periodic recertification once every one to three years.

(3) Costs for child restraint devices are allowable. Child safety seat restraint devices must be a "5 star rating" in accordance with the National Highway Traffic Safety Administration Federal Safety Standards (no after market devices) and strict performance standards (Federal Motor Vehicle Safety Standards, FMVSS 213,225).

(4) Cost for limited construction or home safety devices installation that is aligned with the program's objectives or targets specific outcome in reducing unintentional fall prevention projects are acceptable.

(5) Media campaign when combined with enforcement, policy, or incentive programs (print, radio and video).

The following costs are deemed unallowable costs—Equipment/Facilities:

(1) Police officer equipment—uniforms, weapons, handguns, shotguns, mace, batons, riot helmets, bulletproof vests, and ammunition.

(2) Portable scales—including costs associated with transportation and use of portable scales. Costs for large computer systems are not allowable. (Automatic Data Processing, Main Frame, LAN).

(3) Costs for commercial lease or purchase of vehicle or motorcycles.

(4) Costs of equipment maintenance or repairs of vehicles.

(5) Costs for speed measuring devices—except for enforcement purposes and related project evaluation are not allowable *i.e.* speed trailers.

(6) Projects related to water, sanitation and waste management.

(7) Projects that include design and planning of construction of facilities.

(8) Projects not utilizing effective strategies based on evidence or best practice.

(9) Projects with an education only activities.

(10) Animal control programs.

(11) Tribal employee defensive driving course.

IHS IPP is the lead Federal agency in the development and implementation of AI/AN IPP. IHS is directed to develop, implement, and evaluate IPP that would be successful in reducing American Indian and Alaskan Native morbidity and mortality related to injuries. The purpose of the IHS CA funding is to promote the capacity of Tribes and Tribal/urban/non-profit Indian organizations to build and sustain evidence-based IPP. The Public Health Service (PHS) strongly encourages all contracts to provide a smoke-free workplace and promote the non-use of all tobacco products. Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of the facility) in which regular or routine education, library, day care, health care of early childhood development services are provided to children. This is consistent with the IHS mission to protect and advance the physical and mental health of the AI/AN people.

Dated: April 19, 2010.

Yvette Roubideaux,

Director, Indian Health Service.

[FR Doc. 2010–9502 Filed 4–22–10; 8:45 am]

BILLING CODE 4165–16–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–2300–N]

RIN 0938–AP66

Medicaid Program; Final FY 2008, Revised Preliminary FY 2009, and Preliminary FY 2010 Disproportionate Share Hospital Allotments and Final FY 2008, Revised Preliminary FY 2009, and Preliminary FY 2010 Disproportionate Share Hospital Institutions for Mental Disease Limits

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This notice announces the final Federal share disproportionate share hospital (DSH) allotments for Federal FY (FY) 2008 and the preliminary Federal share DSH allotments for FY 2010. This notice also announces the final FY 2008 and the preliminary FY 2010 limitations on aggregate DSH payments that States may make to institutions for mental disease and other mental health facilities. This notice also announces the revised preliminary Federal share DSH allotments for FY 2009 and the revised preliminary FY limitations on aggregate DSH payments that States may make to institutions for mental disease and other mental health facilities to reflect the provisions of the American Reinvestment and Recovery Act of 2009 (the Recovery Act), enacted on February

17, 2009. This notice also includes background information describing the methodology for determining the amounts of States' FY DSH allotments.

DATES: *Effective Date:* This notice is effective June 22, 2010. The final allotments and limitations set forth in this notice are effective for the fiscal year's specified.

FOR FURTHER INFORMATION CONTACT: Richard Strauss, (410) 786–2019.

SUPPLEMENTARY INFORMATION:

I. Background

A. Disproportionate Share Hospital Allotments for Federal FY 2003

Under section 1923(f)(3) of the Social Security Act (the Act), States' Federal fiscal year (FY) 2003 disproportionate share hospital (DSH) allotments were calculated by increasing the amounts of the FY 2002 allotments for each State (as specified in the chart, entitled "DSH Allotment (in millions of dollars)", contained in section 1923(f)(2) of the Act) by the percentage change in the Consumer Price Index for all Urban Consumers (CPI–U) for the prior fiscal year. The allotment, determined in this way, is subject to the limitation that an increase to a State's DSH allotment for a FY cannot result in the DSH allotment exceeding the greater of the State's DSH allotment for the previous FY or 12 percent of the State's total medical assistance expenditures for the allotment year (this is referred to as the 12 percent limit).

Most States' *actual* FY 2002 allotments were determined in accordance with the provisions of section 1923(f)(4) of the Act which allowed for a special DSH calculation rule for FY 2001 and FY 2002. However, as indicated previously, the calculation of States' FY 2003 allotments was *not* based on the actual FY 2002 DSH allotments; rather, section 1923(f)(3) of the Act requires that the States' FY 2003 allotments be determined using the amount of the States' FY 2002 allotments specified in the chart in section 1923(f)(2) of the Act. The exception to this is the calculation of the FY 2003 DSH allotments for certain "Low-DSH States" (defined in section 1923(f)(5) of the Act). Under the Low-DSH State provision, there is a special calculation methodology for the Low-DSH States only. Under this methodology, the FY 2003 allotments were determined by using (that is, increasing) States' actual FY 2002 DSH allotments (not their FY 2002 allotments specified in the chart in section 1923(f)(2) of the Act) by the percentage change in the CPI–U for the previous fiscal year.

B. DSH Allotments for FY 2004

Section 1001(a) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) (Pub. L. 108–173, enacted on December 8, 2003) amended section 1923(f)(3) of the Act to provide for a "Special, Temporary Increase In Allotments On A One-Time, Non-Cumulative Basis." Under this provision, States' FY 2004 DSH allotments were determined by increasing their FY 2003 allotments by 16 percent, and the FY DSH allotment amounts so determined were not subject to the 12 percent limit.

C. DSH Allotments for Non-Low DSH States for FY 2005, and FYs Thereafter

Under the methodology contained in section 1923(f)(3)(C) of the Act, as amended by section 1001(a)(2) of the MMA, the non-Low-DSH States' DSH allotments for FY 2005 and subsequent FYs continue at the same level as the States' DSH allotments for FY 2004 until a "fiscal year specified" occurs. The fiscal year specified is the first FY for which the Secretary estimates that a State's DSH allotment equals (or no longer exceeds) the DSH allotment as would have been determined under the statute in effect before the enactment of the MMA. We determine whether the fiscal year specified has occurred under a special parallel process. Specifically, under this parallel process, a "parallel" DSH allotment is determined for FYs after 2003 by increasing the State's DSH allotment for the previous FY by the percentage change in the CPI–U for the prior FY, subject to the 12 percent limit. This is the methodology as would otherwise have been applied under section 1923(f)(3)(A) of the Act notwithstanding the application of the provisions of MMA. The fiscal year specified, is the FY in which the parallel DSH allotment calculated under this special parallel process finally equals or exceeds the FY 2004 DSH allotment, as determined under the MMA provisions. Once the fiscal year specified occurs for a State, that State's FY DSH allotment will be calculated by increasing the State's previous actual FY DSH allotment (which would be equal to the FY 2004 DSH allotment) by the percentage change in the CPI–U for the previous FY, subject to the 12 percent limit. The following example illustrates how the FY DSH allotment would be calculated for FYs after FY 2004.

Example—In this example, we are determining the parallel FY 2009 DSH allotment. A State's actual FY 2003 DSH allotment is $100 million. Under the MMA, this State's actual FY 2004 DSH allotment would be $116 million ($100 million increased by 16 percent). The State's DSH allotment for FY 2005 and subsequent FYs would continue at the $116 million FY 2004 DSH allotment for FYs following FY 2004 until the fiscal year specified occurs. Under the separate parallel process, we determine whether the fiscal year specified has occurred by calculating the State's DSH allotments in accordance with the statute in effect before the enactment of the MMA. Under this special process, we continue to determine the State's parallel DSH allotment for each FY by increasing the State's parallel DSH allotment for the previous FY (as also determined under the special parallel process) by the percentage change in the CPI–U for the previous FY, and subject to the 12 percent limit. Assume for purposes of this example that, in accordance with this special parallel process, the State's parallel FY 2008 DSH allotment was determined to be $115 million and the percentage change in the CPI–U for FY 2008 (the previous FY) relevant for the calculation of the FY 2009 DSH allotment was 4.4 percent. That is, the percentage change for the CPI–U for FY 2008, the year before FY 2009, was 4.4 percent. Therefore, the State's special parallel process FY 2009 DSH allotment amount would be calculated by increasing the special parallel process FY 2008 DSH allotment amount of $115 million by 4.4 percent; this results in a parallel process DSH allotment process amount for FY 2009 of $120.06 million. Since $120.06 million is greater than $116 million (the actual FY 2004 DSH allotment calculated under the MMA), we would determine that FY 2009 is the fiscal year specified (the first year that the FY 2004 allotment equals or no longer exceeds the parallel process allotment). Since FY 2009 is the fiscal year specified, we would then determine the State's FY 2009 allotment by increasing the State's *actual* FY 2008 DSH allotment ($116 million) by the percentage change in the CPI–U for FY 2008 (4.4 percent). Therefore, the State's FY 2009 DSH allotment would be $121.104 million ($116 million increased by 4.4 percent); for purposes of the calculation in this example, the application of the 12 percent limit has no effect. Furthermore, for FY 2009 and thereafter, the State's DSH allotment would be calculated under the provisions of section 1923(f)(3)(A) of the Act by increasing the State's previous FY's DSH allotment by the percentage change in the CPI–U for the previous FY, subject to the 12 percent limit.

However, as amended by section 1001(b)(4) of the MMA, section

1923(f)(5)(B) of the Act also contains criteria for determining whether a State is a Low-DSH State, beginning with FY 2004. This provision is described in section I.D.

D. DSH Allotments for Low-DSH States for FY 2004 and FYs Thereafter

Section 1001(b)(1) of the MMA amended section 1923(f)(5) of the Act regarding the calculation of the FY DSH allotments for "Low-DSH" States for FY 2004 and subsequent fiscal years. Specifically, under section 1923(f)(5)(B) of the Act, as amended by section 1001(b)(4) of the MMA, a State is considered a Low-DSH State for FY 2004 if its total DSH payments under its State plan for FY 2000 (including Federal and State shares) as reported to CMS as of August 31, 2003, are greater than 0 percent and less than 3 percent of the State's total FY 2000 expenditures under its State plan for medical assistance. For States that meet the new Low-DSH criteria, their FY 2004 DSH allotments are calculated by increasing their FY 2003 DSH allotments by 16 percent. Therefore, for FY 2004, Low-DSH States' FY DSH allotments are calculated in the same way as the DSH allotments for regular States, which under section 1923(f)(3) of the Act, get the special temporary increase for FY 2004.

Furthermore, for States meeting the MMA's Low-DSH definition, the DSH allotments for FYs 2005 through 2008 will continue to be determined by increasing the previous FY's DSH allotment by 16 percent. The Low-DSH States' DSH allotments for FYs 2004 through 2008 are not subject to the 12 percent limit. The Low-DSH States' DSH allotments for FYs 2009 and subsequent FYs are calculated by increasing those States' DSH allotments for the prior FY by the percentage change in the CPI–U for that prior fiscal year. For FYs 2009 and thereafter, the DSH allotments so determined would be subject to the 12 percent limit.

E. Institutions for Mental Diseases DSH Limits for FYs 1998 and Thereafter

Under section 1923(h) of the Act, Federal financial participation (FFP) is not available for DSH payments to institutions for mental diseases (IMDs) and other mental health facilities that are in excess of State-specific aggregate limits. Under this provision, this aggregate limit for DSH payments to IMDs and other mental health facilities is the lesser of a State's FY 1995 total computable (State and Federal share) IMD and other mental health facility DSH expenditures applicable to the State's FY 1995 DSH allotment (as reported on the Form CMS–64 as of January 1, 1997), or the amount equal to the product of the State's current year total computable DSH allotment and the applicable percentage.

Each State's IMD limit on DSH payments to IMDs and other mental health facilities was calculated by first determining the State's total computable DSH expenditures attributable to the FY 1995 DSH allotment for mental health facilities and inpatient hospitals. This calculation was based on the total computable DSH expenditures reported by the State on the Form CMS–64 as mental health DSH and inpatient hospital as of January 1, 1997. We then calculate an "applicable percentage." The applicable percentage for FY 1998 through FY 2000 (1995 IMD DSH percentage) is calculated by dividing the total computable amount of IMD and mental health DSH expenditures applicable to the State's FY 1995 DSH allotment by the total computable amount of all DSH expenditures (mental health facility plus inpatient hospital) applicable to the FY 1995 DSH allotment. For FY 2001 and thereafter, the applicable percentage is defined as the lesser of the applicable percentage as calculated above (for FYs 1998 through 2001) or 50 percent for FY 2001; 40 percent for FY 2002; and 33 percent for each subsequent fiscal year.

The applicable percentage is then applied to each State's total computable FY DSH allotment for the current fiscal year. The State's total computable FY DSH allotment is calculated by dividing the State's Federal share DSH allotment for the FY by the State's Federal medical assistance percentage (FMAP) for that fiscal year.

In the final step of the calculation of the IMD DSH Limit, the State's total computable IMD DSH limit for the FY is set at the lesser of the product of a State's current FY total computable DSH allotment and the applicable percentage for that FY, or the State's FY 1995 total computable IMD and other mental health facility DSH expenditures applicable to the State's FY 1995 DSH allotment as reported on the Form CMS–64.

The MMA legislation did not amend the Medicaid statute with respect to the calculation of the IMD DSH limit.

*F. Publication in the **Federal Register** of Preliminary and Final Notice for DSH Allotments and IMD DSH Limits*

In general, we initially determine States' DSH allotments and IMD DSH limits for a FY using estimates of medical assistance expenditures, including DSH expenditures in their Medicaid programs. These estimates are provided by States each year on the August quarterly Medicaid budget reports (Form CMS–37) before the FY for which the DSH allotments and IMD DSH limits are being determined. Also, as part of the basic determination of preliminary DSH allotments for a FY we use the available CPI–U percentage increase that is available before the beginning of the FY for which the allotment is being determined to determine such preliminary FY DSH allotment. For example, in determining the preliminary FY 2009 DSH allotment, we would apply the CPI–U percentage increase for FY 2008 that was available just before the beginning of FY 2009 on October 1, 2008.

The DSH allotments and IMD DSH limits determined using these estimates and CPI–U percentage increases available before the beginning of the FY are referred to as "preliminary." Only after we receive States' reports of the actual medical assistance expenditures through the quarterly expenditure report (Form CMS–64), and the final historic CPI–U percentage increases for the prior FY, which occurs after the end of the FY, are the "final" DSH Allotments and IMD DSH limits determined.

The notice published in the **Federal Register** on December 28, 2007 (72 FR 73831), included the announcement of the preliminary FY 2008 DSH allotments (based on estimates), and the preliminary FY 2008 IMD DSH limits (since they were based on the preliminary DSH allotments for FY 2008). The notice published in the **Federal Register** on December 19, 2008 (73 FR 77704) and the correction notice published in the **Federal Register** on January 26, 2009 (74 FR 4439) announced the final FY 2007 DSH allotments and the final FY 2007 IMD DSH limits (since they were based on the actual expenditures for years), and the preliminary FY 2009 DSH allotments (based on estimates and CPI–U percentage increases for FY 2008 available prior to the beginning of FY 2009), and the preliminary FY 2009 IMD DSH limits (since they were based on the preliminary DSH allotments for FY 2009).

This notice announces the final FY 2008 DSH allotments and the final FY 2008 IMD DSH limits (since these are now based on the actual expenditures for that FY), the preliminary FY 2010 DSH allotments (based on expenditure estimates), and the preliminary IMD DSH limits for FY 2010 (since they are based on the preliminary DSH allotments for FY 2010). This notice does not include the final FY 2009 DSH allotments or the final FY 2009 IMD DSH limits, since the actual

expenditures for FY 2009 are not available at this time.

However, this notice also announces revised preliminary FY 2009 DSH Allotments and revised preliminary FY 2009 IMD DSH limits determined in accordance with the provisions of section 5002 of the American Recovery and Reinvestment Act of 2009 (the Recovery Act, Pub. L. 111–5) enacted on February 17, 2009, and the final historic CPI–U percentage increase for FY 2008. This DSH provision of the Recovery Act is described in section H below.

G. DSH Allotment Provisions for Certain States

1. DSH Allotments for the State of Tennessee

Section 1923(f)(6)(A) of the Act, as amended by section 404 of Public Law 109–432 (enacted on December 20, 2006), section 204 of Public Law 110–173 (enacted on December 29, 2007), section 202 of Public Law 110–275 (enacted on July 15, 2008), and most recently section 616 of Public Law 111–3 (enacted on February 4, 2009) provides for the determination of a DSH allotment for the State of Tennessee for each of FYs 2007 through FY 2011, and for a period in FY 2012. In accordance with this provision, Tennessee's DSH allotment for each of these FYs is the greater of $280 million and the FY 2007 Federal medical assistance percentage of the DSH payment adjustments reflected in the State's TennCare Demonstration Project for the demonstration year ending in 2006. In accordance with this provision, the State's Federal share DSH allotment for each of FYs 2007 through FY 2011 is $305,451,928. Furthermore, Tennessee's DSH allotment for the period October 1, 2011 through December 31, 2011 (the first quarter of FY 2012) is one-fourth of this amount; that is, $76,362,982. Section 1923(f)(6)(A)(ii) of the Act further limits the amount of Federal funds that are available for DSH payments that Tennessee may make in each FY to 30 percent of the DSH allotment. In this regard, the limit on the DSH payments that the State of Tennessee may make is effectively $91,635,578 (30 percent of $305,451,928) for each FY 2007 through FY 2011, and $22,908,895 (30 percent of $76,362,982) for the period October 1, 2011 through December 31, 2011.

2. DSH Allotments for the State of Hawaii

Section 1923(f)(6)(B) of the Act, as amended by section 404 of Public Law 109–432, section 204 of Public Law 110–173, section 202 of Public Law 110–275, and most recently section 616 of Public Law 111–3 (enacted on February 4, 2009) provides for a DSH allotment for the State of Hawaii for each of FYs 2007 through FY 2011, and for a period in FY 2012. In accordance with this provision, Hawaii's DSH allotment for FY 2007 through FY 2011 is $10 million. Furthermore, Hawaii's DSH allotment for the period October 1, 2011 through December 31, 2011 (the first quarter of FY 2012) is $2.5 million.

H. DSH Allotments for FY 2009 and FY 2010 Under the Recovery Act

Section 5002 of the Recovery Act added a new section 1923(f)(3)(E) of the Act; this new section provides for a temporary increase in States' DSH allotments for FY 2009 and FY 2010.

1. Revised Preliminary DSH Allotments for FY 2009

As indicated above, States' preliminary FY 2009 DSH allotments were previously published in the **Federal Register** on January 26, 2009. However, section 5002 of the Recovery Act enacted after the publication of the preliminary FY 2009 DSH allotments provided for an increase in States' DSH allotments from what were previously determined and published in the **Federal Register** on January 26, 2009. The Recovery Act provided fiscal relief to States during the recent national economic downturn. In that regard, section 1923(f)(3)(E)(i)(I) of the Act, as created by section 5002 of the Recovery Act, requires that in general States' DSH allotments for FY 2009 be equal to 102.5 percent of the FY 2009 allotments that would otherwise have been determined; this provision does not apply to certain States as discussed in section G. above.

As described in section F above, we typically publish States' preliminary DSH allotments based on expenditure estimates and CPI–U percentage increases available before the FY for which the preliminary DSH allotment is being determined. The preliminary DSH allotments are subsequently finalized after the FY is over and when the applicable inputs for determining the DSH allotments (that is, the applicable expenditures and the CPI–U percentage increase for the previous FY) are final.

Due to the Recovery Act temporary increase for FY 2009, in this notice, we are announcing a revision to the preliminary FY 2009 DSH allotments previously published to reflect updated States' expenditures, and more significantly, to reflect an updated and increased CPI–U percentage increase. As described above, States' DSH allotments are determined by increasing the previous FY allotment by the applicable CPI–U percentage increase. In particular, when we previously calculated the preliminary FY 2009 allotments, the applicable CPI–U percentage increase for FY 2008 (used for determining the FY 2009 DSH allotment) which was available before the beginning of FY 2009 was *4.0* percent. However, subsequent to our initial determination of the preliminary FY 2009 DSH allotments, the historical applicable CPI–U percentage increase for FY 2008 became available; that actual CPI–U increase for FY 2008 is *4.4* percent. In order to ensure that the full increase in DSH allotments for FY 2009 is available to States during FY 2009, we revised the preliminary FY 2009 DSH allotments prior to the end of FY 2009 to reflect both the updated increase in the applicable CPI–U percentage increase for FY 2008 and the 2.5 percent increase in States' FY 2009 DSH allotments as required under the Recovery Act.

We note that section 5001 of the Recovery Act provided for the Federal medical assistance percentage (FMAP) for each State to be increased during the "Recession Adjustment Period" specified in such section. As referenced in this notice and in the included charts, the FMAP is a factor in the methodology for determining States' fiscal year DSH allotments and IMD DSH limits. However, section 5001(e) of the Recovery Act specifically precludes the use of the Recovery Act increased FMAP with respect to the determination of DSH payments. Therefore, the regular FMAP is used in the calculation of the fiscal year DSH allotments and the IMD DSH limits.

2. Preliminary DSH Allotments for FY 2010

Sections 1923(f)(3)(E)(i)(II) and (ii) of the Act, as amended by Section 5002 of the Recovery Act, provide that the FY 2010 DSH allotment for a State is determined as the higher of:

- 102.5 percent of the DSH allotment for FY 2009, as determined under the Recovery Act provision, or
- The FY 2010 DSH allotment as would otherwise be calculated without the application of the Recovery Act provision (using the preliminary applicable percentage increase in the CPI–U for FY 2009 (the preceding fiscal year) that was available at the beginning of FY 2010).

In accordance with the Recovery Act provision, we have determined the preliminary FY 2010 DSH allotments for most States as 102.5 percent of the DSH allotments for FY 2009, as determined under the Recovery Act. The exception is that this provision does not apply for the States described in section G above.

3. Determination of FY DSH Allotments for FYs After FY 2010

Under section 1923(f)(3)(E)(i)(III) of the Act, as amended by the Recovery Act, for FYs after FY 2010, the States' DSH allotments are determined as previously calculated under the statute before the enactment of the Recovery Act.

4. Effect of the Recovery Act DSH Provision on Calculation of the States' IMD DSH Limits for FY 2009 and FY 2010

Section E above described the determination of States' IMD DSH limits for FYs beginning FY 1998 and after, as determined under section 1923(h) of the Act. Section 5002 of the Recovery Act did not amend section 1923(h) of the Act. Accordingly, States' IMD DSH limits for FY 2009 and FY 2010, the FYs for which the Recovery Act provisions are applicable, are determined as under the existing provisions. As described in section E above, States' DSH allotments are an element of the determination of the IMD DSH limit; therefore, the DSH allotments for FY 2009 and FY 2010, as determined under the Recovery Act provisions, would be used in calculating States' FY 2009 and FY 2010 IMD DSH limits in the same way as the DSH allotments were applied under section 1923(h) of the Act regardless of the Recovery Act provision.

II. Provisions of the Notice

A. Calculation of the Final FY 2008 Federal Share State DSH Allotments, the Revised Preliminary FY 2009 State DSH Allotments, and the Preliminary FY 2010 Federal Share State DSH Allotments

1. Final FY 2008 Federal Share State DSH Allotments

Chart 1 of the Addendum to this notice provides the States' "final" FY 2008 DSH allotments. The final FY 2008 DSH allotments for each State were computed in accordance with the provisions of the Medicaid statute as amended by the MMA. As required by the provisions of the MMA, the final FY 2004 DSH allotments for the "Low-DSH" States and all the other States were calculated by increasing the FY 2003 DSH allotments by 16 percent. In the March 26, 2004 notice published in the **Federal Register** (69 FR 15850), we explained the definition and determination of the "Low-DSH" States under the MMA provisions. However, for following FYs, the DSH allotments are determined under a process which incorporates the "parallel process" described in the above section I.C of this notice. Under that parallel process, States' final FY 2008 DSH allotments were determined using the States' actual FY 2008 expenditures as reported by States (on Form CMS–64).

2. Revised Calculation of the States' Preliminary FY 2009 Federal Share State DSH Allotments

Chart 2 of the Addendum to this notice provides the States' revised "preliminary" FY 2009 DSH allotments as discussed above in section I.H.1 of this notice.

As discussed in section I.C and I.F of this notice, the preliminary FY 2009 DSH allotments were previously published in the **Federal Register** on January 26, 2009. As described above and in the previous **Federal Register** notice in determining non-Low DSH States' DSH allotments for FYs after FY 2004 under section 1923(f)(3)(C) of the Act for DSH allotments, we determined States' DSH allotments under a "parallel" process. Under the parallel process, for each FY for each State, we have been determining whether the fiscal year specified (as defined in section 1923(f)(3)(D) of the Act) has occurred. Under section 1923(f)(3)(D) of the Act, the fiscal year specified is determined separately for each State and "is the first FY for which the Secretary estimates that the DSH allotment for that State will equal (or no longer exceed) the DSH allotment for that State under the law as in effect before the date of enactment" of MMA. The process in effect before the enactment in MMA is the process described in section 1923(f)(3)(A) of the Act; under this process each States' DSH allotment since FY 2003 is increased by the CPI–U increase for the prior FY and the result is then compared to the State's FY 2004 DSH allotment, as determined under section 1923(f)(3)(C)(i) of the Act (under which the States' FY 2003 DSH allotments were increased by 16 percent). In other words, the fiscal year specified for a State is the FY when the FY 2004 allotment is no longer greater than the parallel process DSH allotment.

We are reiterating the parallel process provision because for all non-Low DSH States (except Louisiana), we have determined that FY 2009 is the fiscal year specified. Therefore, as indicated in section 1923(f)(3)(C)(ii) of the Act, the FY 2009 DSH allotment for all non-Low DSH States (except Louisiana) is equal to the prior FY 2008 DSH allotment increased by the CPI–U increase for FY 2008 (4.4 percent). Chart 2 illustrates the revised preliminary FY 2009 DSH allotments. For the non-Low DSH States for which the FY 2009 is the fiscal year specified, the FY 2010 and subsequent FY DSH allotments will be calculated by increasing the prior FY DSH allotment by the CPI–U increase for the prior fiscal year.

For Low-DSH States, the FY 2009 DSH allotment is calculated using the same methodology as for the non-Low DSH States for which the fiscal year specified has occurred. That is, for FY 2009 and following FYs, the DSH allotment for Low-DSH States is calculated by increasing the prior FY DSH allotment by the percentage change in the CPI–U for the prior fiscal year.

The preliminary FY 2009 allotments were initially determined using the States' August 2008 expenditure estimates submitted by the States on the Form CMS–37, and the percentage increase in the CPI–U for the previous FY that was available before the beginning of FY 2009. As discussed in section I.H.1 above, based on the updated CPI–U percentage increase for FY 2008 (from 4.0 percent to 4.4 percent), and the enactment of section 5002 of the Recovery Act (which provides that States' FY 2009 DSH allotments are equal to 102.5 percent of such allotments as would otherwise be determined for such FY), we are revising the preliminary FY 2009 DSH allotments in this notice from what was previously published in the **Federal Register** correction notice on January 26, 2009.

States' final FY 2009 DSH allotments will be published in the **Federal Register** following receipt of the States' four quarterly Medicaid expenditure reports (Form CMS–64) for FY 2009 following the end of FY 2009.

3. Calculation of the Preliminary FY 2010 Federal Share State DSH Allotments

Chart 3 of the Addendum to this notice provides the preliminary FY 2010 DSH allotments determined in accordance with the Recovery Act provisions discussed above in section I.H.2 of this notice. States' final FY 2010 DSH allotments will be published in the **Federal Register** following receipt of the States' four quarterly Medicaid expenditure reports (Form CMS–64) for FY 2010 following the end of FY 2010.

B. Calculation of the Final FY 2008, Revised Preliminary FY 2009, and Preliminary FY 2010 IMD DSH Limits

As discussed in section I.E. and I.H.4 above of this notice, section 1923(h) of the Act specifies the methodology to be used to establish the limits on the amount of DSH payments that a State can make to IMDs and other mental health facilities. FFP is not available for

IMD or DSH payments that exceed such IMD limits. In this notice, we are publishing the final FY 2008 IMD DSH Limit, the revised preliminary FY 2009 IMD DSH Limit, and the preliminary FY 2010 IMD DSH Limit determined in accordance with the provisions discussed above, and for FY 2009 and FY 2010, reflecting the DSH allotments for such FYs determined under the provisions of section 5002 of the Recovery Act.

Charts 4, 5, and 6 of the Addendum to this notice detail each State's final IMD DSH Limit for FY 2008, revised preliminary IMD DSH Limit for FY 2009, and the preliminary IMD DSH Limit for FY 2010, respectively, determined in accordance with section 1923(h) of the Act.

III. Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 35).

IV. Regulatory Impact Statement

We have examined the impact of this rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), and Executive Order 13132.

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year). This notice does reach the economic threshold and thus is considered a major rule.

There are no changes between the preliminary and final FY 2008 DSH allotments and FY 2008 IMD DSH limits. This is because FY 2008 was not determined to be the fiscal year specified for any State. That is, only substantive changes related to the CPI–U or the States' Medicaid expenditures that would affect the determination of the fiscal year specified would have resulted in a change between the preliminary and final DSH allotments and IMD limits for FY 2008.

The revised preliminary FY 2009 DSH allotments published in this notice are about $308 million greater than the preliminary FY 2009 DSH allotments published in the **Federal Register** correction notice on January 26, 2009 (74 FR 4439). As discussed previously, this occurred because of the application of a higher CPI–U (4.4 percent in the revised preliminary determination compared to 4.0 percent in the original preliminary determination) and the application of the Recovery Act increase to States' DSH allotments for FY 2009.

The revised preliminary FY 2009 IMD DSH Limits being published in this notice are about $22 million greater than the preliminary FY 2009 IMD DSH limits published in the **Federal Register** notice on December 19, 2008 (73 FR 77704). This is because the DSH allotment for a FY is a factor in the determination of the IMD DSH limit for the FY, and since the original preliminary FY 2009 DSH allotments were increased in the revised preliminary FY 2009 DSH allotments, the IMD DSH limits for some States were also increased.

The preliminary FY 2010 DSH allotments being published in this notice are about $277 million greater than the revised preliminary FY 2009 DSH allotments being published in this notice and about $585 million greater than the preliminary FY 2009 DSH allotments published in the **Federal Register** correction notice on January 26, 2009 (74 FR 4439). These increases are a direct result of the application of the Recovery Act provisions which in this case resulted in the FY 2010 DSH allotments being determined as 2.5 percent greater than the FY 2009 DSH allotments as determined under the Recovery Act.

The preliminary FY 2010 IMD DSH Limits being published in this notice are about $21 million greater than the revised preliminary FY 2009 IMD DSH Limits being published in this notice, and about $43 million greater than the preliminary FY 2009 IMD DSH limits published in the **Federal Register** notice on December 19, 2008 (73 FR 77704). This is because the DSH allotment for a FY is a factor in the determination of the IMD DSH limit for the FY, and since the preliminary FY 2010 DSH allotments were increased as compared to the preliminary FY 2009 DSH allotments, the associated FY 2010 IMD DSH limits for some States were also increased.

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $6.5 million to $31.5 million in any one year. Individuals and States are not included in the definition of a small entity. We are not preparing an analysis for the RFA because we have determined, and the Secretary certifies, that this notice will not have significant economic impact on a substantial number of small entities. Specifically, the effects of the various controlling statutes on providers are not impacted by a result of any independent regulatory impact and not this notice. The purpose of the notice is to announce the latest distributions as required by the statute.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Core-Based Statistical Area for Medicaid payment regulations and has fewer than 100 beds. We are not preparing analysis for section 1102(b) of the Act because we have determined and the Secretary certifies that this notice will not have a significant impact on the operations of a substantial number of small rural hospitals.

The Medicaid statute (including as most recently amended by the Recovery Act) specifies the methodology for determining the amounts of States' DSH allotments and IMD DSH limits; and as described previously, results in increases in States' DSH allotments and IMD DSH limits for the FYs referred to. The statute applicable to these allotments and limits does not apply to the determination of the amounts of DSH payments made to specific DSH hospitals; rather, these allotments and limits represent an overall limit on the total of such DSH payments. In this regard, we do not believe that this notice will have a significant economic impact on a substantial number of small entities.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of $100 million in 1995 dollars, updated annually for inflation. That threshold level is currently approximately $133 million. This notice will have no consequential effect on

State, local, or tribal governments or on the private sector.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. Since this notice does not impose any costs on State or local governments, the requirements of E.O. 13132 are not applicable.

Accounting Statement

As required by OMB Circular A–4 (available at *http://www.whitehouse.gov/omb/circulars/a004/a-4.pdf*), in the table below, we have prepared an accounting statement showing the classification of the estimated expenditures associated with the provisions of this notice. This table provides our best estimate of the increase in the Federal share of States' Medicaid DSH payments resulting from the application of the provisions of the Medicaid statute relating to the calculation of States' FY DSH allotments and the increase in such FY DSH allotments from FY 2008 to FY 2009.

TABLE—ACCOUNTING STATEMENT: CLASSIFICATION OF ESTIMATED EXPENDITURES, FROM THE FY 20XX TO FY 2010

[In millions]

Category	Transfers
Annualized Monetized Transfers.	$33,713.

TABLE—ACCOUNTING STATEMENT: CLASSIFICATION OF ESTIMATED EXPENDITURES, FROM THE FY 20XX TO FY 2010—Continued

[In millions]

Category	Transfers
From Whom To Whom?	Federal Government to States.

In accordance with the provisions of Executive Order 12866, this notice was reviewed by the Office of Management and Budget.

Addendum

This addendum contains the charts 1 through 4 (preceded by associated keys) that are referred to in the preamble of this notice.

KEY TO CHART 1—FINAL DSH ALLOTMENTS FOR FY 2008

[Key to the Chart of the Final FY 2008 DSH Allotments. The final FY 2008 DSH Allotments for the regular States are presented in the top section of this chart and the final FY 2008 DSH Allotments for the Low-DSH States are presented in the bottom section of the chart]

Column	Description
For Non-Low-DSH States	
Column A	State.
Column B	Final FY 2004 DSH Allotments—This column contains the final Federal share FY 2004 DSH Allotments.
Column C	FY 2008 DSH Allotments—This column contains the final Federal share FY 2008 DSH Allotments.
For Low-DSH States	
Column A	State.
Column B	Prior FY DSH Allotments (FY 2007)—This column contains the final FY 2007 DSH Allotments.
Column C	FY 2008 DSH Allotments—This column contains the final Federal share FY 2008 DSH Allotments = Column B multiplied by 1.16.

Key to Chart 2. Preliminary DSH Allotments for FY 2009.

KEY TO CHART 2—REVISED PRELIMINARY DSH ALLOTMENTS FOR FY 2009

[The Revised Preliminary FY 2009 DSH Allotments for the NON–Low DSH States are presented in the top section of this chart, and the Revised Preliminary FY 2009 DSH Allotments for the Low-DSH States are presented in the bottom section of this chart]

Column	Description
Column A	State.
Column B	1923(f)(3)(D) Test Met. This column indicates whether the "FY Specified" has occurred with respect to Non-Low-DSH States, determined in accordance with section 1923(f)(3)(D) of the Act. "YES" indicates the FY Specified has occurred; "NOT MET" indicates that the FY Specified has not occurred; and "na" indicates that this provision is not applicable. This provision is not applicable for Low-DSH States indicated in the bottom portion of chart 2.
Columns C–L	For all States, the entries in Columns C through K present the determination of the revised preliminary FY 2009 DSH allotments as would be calculated *without* the application of section 5002 of ARRA. For all States, the entries in Column L present the calculation of the revised preliminary FY 2009 DSH Allotments, determined in accordance with the provisions of section 5002 of ARRA. For Non-Low-DSH States indicated in the top portion of Chart 2, entries in Columns C through K are only for States meeting the "FY Specified" test ("YES" in Column B). For States not meeting the test indicated in Column B, these columns indicate "NA", and for States for which such test is not applicable, these columns indicate "na". For Low-DSH States, entries are in the bottom portion of Chart 2.
Column C	FY 2009 FMAPS. This column contains the States' FY 2009 Federal Medical Assistance Percentages.
Column D	FY 2008 DSH Allotments For States Meeting Test. This column contains the States' prior FY 2008 DSH Allotments.
Column E	FY 2008 Allotments × (1 + Percentage Increase in CPI–U): 1.044. This column contains the amount in Column D increased by 1 plus the percentage increase in the CPI–U for the prior FY (4.4 percent).
Column F	FY 2009 TC MAP Including DSH. This column contains the amount of the States' projected FY 2009 total computable medical assistance expenditures including DSH expenditures.

KEY TO CHART 2—REVISED PRELIMINARY DSH ALLOTMENTS FOR FY 2009—Continued

[The Revised Preliminary FY 2009 DSH Allotments for the NON–Low DSH States are presented in the top section of this chart, and the Revised Preliminary FY 2009 DSH Allotments for the Low-DSH States are presented in the bottom section of this chart]

Column	Description
Column G	FY 2009 TC DSH Expenditures. This column contains the amount of the States' projected FY 2009 total computable DSH expenditures.
Column H	FY 2009 TC MAP Exp. Net of DSH. This column contains the amount of the States' projected FY 2009 total computable medical assistance expenditures net of DSH expenditures, calculated as the amount in Column F minus the amount in Column G.
Column I	12% AMOUNT. This column contains the amount of the "12 percent limit" in Federal share, determined in accordance with the provisions of section 1923(f)(3) of the Act.
Column J	Greater of FY 2008 Allotment or 12% Limit. This column contains the greater of the State's prior FY (FY 2008) DSH allotment or the amount of the 12% Limit, determined as the maximum of the amount in Column D or Column I.
Column K	FY 2009 DSH Allotment. This column contains the States' FY 2009 DSH allotments, determined as the minimum of the amount in Column J or Column E. For Non-Low DSH States that have not met the "FY Specified" test (entry in Column B is "NOT MET"), the amount in Column K is equal to the State's FY 2004 DSH allotment. For States for which the entry in Column B is "na", the amount in Column K is determined in accordance with the provisions of section 1923(f)(6) of the Act.
Column L	FY 2009 DSH Allotment Under ARRA. This column contains the State's FY 2009 DSH allotment as determined in accordance with section 5002 of ARRA, and calculated as the amount in Column K multiplied by 102.5 percent.

Key to Chart 3. Preliminary DSH Allotments for FY 2010.

KEY TO CHART 3—PRELIMINARY DSH ALLOTMENTS FOR FY 2010

[The Preliminary FY 2010 DSH Allotments for the NON–Low DSH States are presented in the top section of this chart, and the Preliminary FY 2010 DSH Allotments for the Low-DSH States are presented in the bottom section of this chart]

Column	Description
Column A	State.
Column B	1923(f)(3)(D) Test Met. This column indicates whether the "FY Specified" has occurred with respect to Non-Low DSH States, determined in accordance with section 1923(f)(3)(D) of the Act. "YES" indicates the FY Specified has occurred; "NOT MET" indicates that the FY Specified has not occurred; and "na" indicates that this provision is not applicable. This provision is not applicable for Low-DSH States indicated in the bottom portion of chart 3.
Columns C–N	For all States, the entries in Columns B through K present the determination of the preliminary FY 2010 DSH allotments as would be calculated *without* the application of section 5002 of ARRA. For all States, the entries in Columns L through N present the calculation of the preliminary FY 2010 DSH Allotments, determined in accordance with the provisions of section 5002 of ARRA. For Non-Low DSH States indicated in the top portion of Chart 3, entries in Columns C through K are only for States meeting the "FY Specified" test ("YES" in Column B). For States not meeting the test indicated in Column B, these Columns indicate "NA", and for States for which such test is not applicable, these Columns indicate "na". For Low DSH States, entries are in the bottom portion of Chart 3.
Column C	FY 2010 FMAPS. This column contains the States' FY 2010 Federal Medical Assistance Percentages.
Column D	FY 2009 DSH Allotments For States Meeting Test. This column contains the States' prior FY 2009 DSH Allotments as would be determined without the application of section 5002 of ARRA.
Column E	FY 2009 Allotments X (1 + Percentage Increase in CPI–U): 1.00. This column contains the amount in Column D increased by 1 plus the percentage increase in the CPI–U for the prior FY (0.0 percent).
Column F	FY 2010 TC MAP Including DSH. This column contains the amount of the States' projected FY 2010 total computable medical assistance expenditures including DSH expenditures.
Column G	FY 2010 TC DSH Expenditures. This column contains the amount of the States' projected FY 2010 total computable DSH expenditures.
Column H	FY 2010 TC MAP Exp. Net of DSH. This column contains the amount of the States' projected FY 2010 total computable medical assistance expenditures net of DSH expenditures, calculated as the amount in Column F minus the amount in Column G.
Column I	12% AMOUNT. This column contains the amount of the "12 percent limit" in Federal share, determined in accordance with the provisions of section 1923(f)(3) of the Act.
Column J	Greater of FY 2009 Allotment or 12% Limit. This column contains the greater of the State's prior FY (FY 2009) DSH allotment or the amount of the 12% Limit, determined as the maximum of the amount in Column D or Column I.
Column K	FY 2010 DSH Allotment. This column contains the States' FY 2010 DSH allotments as would be determined without the application of the provisions of section 5002 of ARRA, determined as the minimum of the amount in Column J or Column E. For Non-Low DSH States that have not met the "FY Specified" test (entry in Column B is "NOT MET"), the amount in Column K is equal to the State's FY 2004 DSH allotment. For States for which the entry in Column B is "na", the amount in Column K is determined in accordance with the provisions of section 1923(f)(6) of the Act.
Column L	FY 2009 DSH Allotment Under ARRA. This column contains the State's FY 2009 revised preliminary DSH allotment as determined under section 5002 of ARRA.
Column M	FY 2010 DSH Allotment Under ARRA. This column contains the State's FY 2010 DSH allotment as determined in accordance with section 5002 of ARRA, and calculated as the amount in Column L multiplied by 102.5 percent.
Column N	FY 2010 DSH Allotment. This column contains the preliminary FY 2010 DSH allotment determined as the higher of the amount in Column K (the preliminary FY 2010 DSH allotment as determined without the application of section 5002 of ARRA) and the amount in Column M (102.5 percent of the amount of the State's FY 2009 DSH allotment determined in accordance with section 5002 of ARRA.

KEY TO CHART 4—FINAL IMD DSH LIMT FOR FY 2008

[Key to the Chart of the Final FY 2008 IMD Limitations—The Final FY 2008 IMD DSH Limits for the regular States are presented in the top section of this chart and the final FY IMD DSH Limits for the Low DSH States are presented in the bottom section of the chart]

Column	Description
Column A	State.
Column B	Inpatient Hospital Services FY 95 DSH Total Computable. This column contains the States' total computable FY 1995 inpatient hospital DSH expenditures as reported on the Form CMS–64.
Column C	IMD and Mental Health Services FY 95 DSH Total Computable. This column contains the total computable FY 1995 mental health facility DSH expenditures as reported on the Form CMS–64 as of January 1, 1997.
Column D	Total Inpatient & IMD & Mental Health FY 95 DSH Total Computable, Col B + C. This column contains the total computation of all inpatient hospital DSH expenditures and mental health facility DSH expenditures for FY 1995 as reported on the Form CMS–64 as of January 1, 1997 (representing the sum of Column B and Column C).
Column E	Applicable Percentage Col C/D. This column contains the "applicable percentage" representing the total computable FY 1995 mental health facility DSH expenditures divided by total computable all inpatient hospital and mental health facility DSH expenditures for FY 1995 (the amount in Column C divided by the amount in Column D). Per section 1923(h)(2)(A)(ii)(II) of the Act, for FYs after FY 2002, the applicable percentage can be no greater than 33 percent.
Column F	FY 2008 Allotment In FS. This column contains the States' final FY 2008 DSH allotments.
Column G	FY 2008 FMAP. This column contains the States' FY 2008 FMAPs.
Column H	FY 2008 DSH Allotments in TC. Col. F/G. This column contains the FY 2008 total computable DSH Allotment (determined as the amount in Column F divided by the amount in Column G).
Column I	Col E * Col H in TC. This column contains the applicable percent of FY 2008 total computable DSH allotment (calculated as the amount in Column E multiplied by the amount in Column H).
Column J	FY 2008 IMD DSH Limit Total Computable. Lesser of Col. C or I. The column contains the lesser of the amount in Column C or Column I.
Column K	FY 2008 IMD DSH Limit in Federal Share, Col. G x J. This column contains the total computable IMD DSH Limit from Col. J and converts that amount into a Federal share (calculated as Col. G x Col. J).

KEY TO CHART 5—REVISED PRELIMINARY IMD DSH LIMIT UNDER ARRA FOR FY 2009

[Key to the Chart of the Revised FY 2009 IMD Limitations—The revised preliminary FY 2009 IMD DSH Limits for the Non-Low DSH States are presented in the top section of this chart and the revised preliminary FY 2009 IMD DSH Limits for the Low-DSH States are presented in the bottom section of the chart]

Column	Description
Column A	State.
Column B	Inpatient Hospital Services FY 95 DSH Total Computable. This column contains the States' total computable FY 1995 inpatient hospital DSH expenditures as reported on the Form CMS–64.
Column C	IMD and Mental Health Services FY 95 DSH Total Computable. This column contains the total computable FY 1995 mental health facility DSH expenditures as reported on the Form CMS–64 as of January 1, 1997.
Column D	Total Inpatient & IMD & Mental Health FY 95 DSH Total Computable, Col. B + C. This column contains the total computation of all inpatient hospital DSH expenditures and mental health facility DSH expenditures for FY 1995 as reported on the Form CMS–64 as of January 1, 1997 (representing the sum of Column B and Column C).
Column E	Applicable Percent Col. C/D. This column contains the "applicable percentage" representing the total Computable FY 1995 mental health facility DSH expenditures divided by total computable all inpatient hospital and mental health facility DSH expenditures for FY 1995 (the amount in Column C divided by the amount in Column D) Per section 1923(h)(2)(A)(ii)(II) of the Act, for FYs after FY 2002, the applicable Percentage can be no greater than 33 percent.
Column F	FY 2009 Federal Share DSH Allotment. This column contains the States' preliminary FY 2009 DSH allotments.
Column G	FY 2009 FMAP. This columns contains the States' FY 2009 FMAPs.
Column H	FY 2009 DSH Allotments in Total Computable Col. F/G. This column contains States' FY 2009 total computable DSH allotment (determined as Column F/Column G).
Column I	Col E * Col H in TC. This column contains the applicable percent of FY 2009 total computable DSH allotment (calculated as the percentage in Column E multiplied by the amount in Column H).
Column J	FY 2009 IMD DSH Limit Total Computable. Lesser of Col. C or I. The column contains the lesser of the lesser of Column I or C.
Column K	FY 2009 IMD DSH Limit in Federal Share, Col. G × J. This column contains the total computable IMD DSH Limit from Col. J and converts that amount into a Federal share (calculated as the amount in Column G multiplied by the amount in Column J).

KEY TO CHART 6—PRELIMINARY IMD DSH LIMIT UNDER ARRA FOR FY 2010

[Key to the Chart of the FY 2010 IMD Limitations.—The preliminary FY 2010 IMD DSH Limits for the Non-Low DSH States are presented in the top section of this chart and the preliminary FY 2010 IMD DSH Limits for the Low-DSH States are presented in the bottom section of the chart]

Column	Description
Column A	State.
Column B	Inpatient Hospital Services FY 95 DSH Total Computable. This column contains the States' total computable FY 1995 inpatient hospital DSH expenditures as reported on the Form CMS–64.
Column C	IMD and Mental Health Services FY 95 DSH Total Computable. This column contains the total computable FY 1995 mental health facility DSH expenditures as reported on the Form CMS–64 as of January 1, 1997.

KEY TO CHART 6—PRELIMINARY IMD DSH LIMIT UNDER ARRA FOR FY 2010—Continued

[Key to the Chart of the FY 2010 IMD Limitations.—The preliminary FY 2010 IMD DSH Limits for the Non-Low DSH States are presented in the top section of this chart and the preliminary FY 2010 IMD DSH Limits for the Low-DSH States are presented in the bottom section of the chart]

Column	Description
Column D	Total Inpatient & IMD & Mental Health FY 95 DSH Total Computable, Col. B + C. This column contains the total computation of all inpatient hospital DSH expenditures and mental health facility DSH expenditures for FY 1995 as reported on the Form CMS–64 as of January 1, 1997 (representing the sum of Column B and Column C).
Column E	Applicable Percent Col. C/D. This column contains the "applicable percentage" representing the total Computable FY 1995 mental health facility DSH expenditures divided by total computable all inpatient hospital and mental health facility DSH expenditures for FY 1995 (the amount in Column C divided by the amount in Column D) Per section 1923(h)(2)(A)(ii)(II) Of the Act, for FYs after FY 2002, the applicable Percentage can be no greater than 33 percent.
Column F	FY 2010 Federal Share DSH Allotment. This column contains the States' preliminary FY 2010 DSH allotments.
Column G	FY 2010 FMAP. This columns contains the States' FY 2010 FMAPs.
Column H	FY 2010 DSH Allotments in Total Computable Col. F/G. This column contains States' FY 2010 total computable DSH allotment (determined as Column F/Column G).
Column I	Col E * Col H in TC. This column contains the applicable percent of FY 2010 total computable DSH allotment (calculated as the percentage in Column E multiplied by the amount in Column H)
Column J	FY 2010 IMD DSH Limit Total Computable. Lesser of Col. C or I. The column contains the lesser of the lesser of Column I or C.
Column K	FY 2010 IMD DSH Limit in Federal Share, Col. G x J. This column contains the total computable IMD DSH Limit from Col. J and converts that amount into a Federal share (calculated as the amount in Column G multiplied by the amount in Column J).

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CHART 1 - FINAL DSH ALLOTMENTS FOR FY:		2008
A	B	C
STATE	FINAL FY 2004 DSH ALLOTMENTS	FY 2008 DSH ALLOTMENTS
ALABAMA	$289,640,400	$289,640,400
ARIZONA	$95,369,400	$95,369,400
CALIFORNIA	$1,032,579,800	$1,032,579,800
COLORADO	$87,127,600	$87,127,600
CONNECTICUT	$188,384,000	$188,384,000
DISTRICT OF COLUMBIA	$37,676,800	$57,692,600
FLORIDA	$188,384,000	$188,384,000
GEORGIA	$253,141,000	$253,141,000
HAWAII*	$0	$10,000,000
ILLINOIS	$202,512,800	$202,512,800
INDIANA	$201,335,400	$201,335,400
KANSAS	$38,854,200	$38,854,200
KENTUCKY	$136,578,400	$136,578,400
LOUISIANA	$731,960,000	$731,960,000
MAINE	$98,901,600	$98,901,600
MARYLAND	$71,821,400	$71,821,400
MASSACHUSETTS	$287,285,600	$287,285,600
MICHIGAN	$249,608,800	$249,608,800
MISSISSIPPI	$143,642,800	$143,642,800
MISSOURI	$446,234,600	$446,234,600
NEVADA	$43,563,800	$43,563,800
NEW HAMPSHIRE	$150,800,000	$150,800,000
NEW JERSEY	$606,361,000	$606,361,000
NEW YORK	$1,512,959,000	$1,512,959,000
NORTH CAROLINA	$277,866,400	$277,866,400
OHIO	$382,655,000	$382,655,000
PENNSYLVANIA	$528,652,600	$528,652,600
RHODE ISLAND	$61,224,800	$61,224,800
SOUTH CAROLINA	$308,478,800	$308,478,800
TENNESSEE*	$0	$305,451,928
TEXAS	$900,711,000	$900,711,000
VERMONT	$21,193,200	$21,193,200
VIRGINIA	$82,519,327	$82,519,327
WASHINGTON	$174,255,200	$174,255,200
WEST VIRGINIA	$63,579,600	$63,579,600
SUBTOTAL	$9,895,858,327	$10,231,326,055
LOW DSH STATES		
STATE	PRIOR FY ALLOTMENTS (FY 2007)	PRIOR FY ALLOTMENTS X FACTOR: 1.16
ALASKA	$16,540,191	$19,186,622
ARKANSAS	$35,027,879	$40,632,340
DELAWARE	$7,351,196	$8,527,387
IDAHO	$13,347,251	$15,482,811
IOWA	$31,977,485	$37,093,883
MINNESOTA	$60,647,366	$70,350,945
MONTANA	$9,216,830	$10,691,523
NEBRASKA	$22,978,156	$26,654,661
NEW MEXICO	$16,540,191	$19,186,622
NORTH DAKOTA	$7,756,209	$8,997,202
OKLAHOMA	$29,404,783	$34,109,548
OREGON	$36,755,979	$42,636,936
SOUTH DAKOTA	$8,968,253	$10,403,173
UTAH	$15,929,803	$18,478,571
WISCONSIN	$76,760,651	$89,042,355
WYOMING	$183,779	$213,184
TOTAL LOW DSH STATES	$389,386,002	$451,687,763
NATIONAL TOTAL	$10,285,244,329	$10,683,013,818

FOOTNOTES:

* Hawaii and Tennessee DSH allotments determined under section 1923(f)(6) of the Act; under this section, Tennessee's DSH payments are limited to 30% of DSH allotment.

CHART 2 - REVISED PRELIMINARY DSH ALLOTMENTS FOR FISCAL YEAR 2009

A	B	C	D	E	F	G	H	I	J	K	L
STATE	1923(f)(3)(D) TEST MET /1	FY 2009 FMAPS	FY 2008 DSH ALLOTMENTS FOR STATE MEETING TEST /2	FY 2008 ALLOTMENTS X (1 + PERCENTAGE INCREASE IN CPI-U): 1.044	FY 2009 TC MAP EXP. INCLUDING DSH /3	FY 2009 TC DSH EXPENDITURES /3	FY 2009 TC MAP EXP. NET OF DSH COL F - G	"12% AMOUNT" =COL H x .12/(1 - 12/COL C) (IN FS)	GREATER OF FY 2008 ALLOT OR 12% AMOUNT (MAX OF COL D OR I)	FY 2009 DSH ALLOTMENT =FY 04 ALLOT OR MIN COL J, COL E	FY 2009 DSH ALLOTMENT UNDER ARRA Col K x 102.5%
ALABAMA	YES	67.98%	$289,640,400	$302,384,578	$4,474,761,000	$430,299,000	$4,044,462,000	$589,373,048	$589,373,048	$302,384,578	$309,944,192
ARIZONA	YES	65 77%	$95,369,400	$99,565,654	$8,676,913,000	$109,305,000	$8,567,608,000	$1,257,559,780	$1,257,559,780	$99,565,654	$102,054,795
CALIFORNIA	YES	50.00%	$1,032,579,800	$1,078,013,311	$42,325,892,000	$2,267,226,000	$40,058,666,000	$6,325,052,526	$6,325,052,526	$1,078,013,311	$1,104,963,644
COLORADO	YES	50 00%	$87,127,600	$90,961,214	$3,554,388,000	$177,951,000	$3,376,437,000	$533,121,632	$533,121,632	$90,961,214	$93,235,244
CONNECTICUT	YES	50.00%	$188,384,000	$196,672,896	$5,631,579,000	$308,712,000	$5,322,867,000	$840,452,684	$840,452,684	$196,672,896	$201,589,718
DISTRICT OF COLU	YES	70.00%	$57,692,600	$60,231,074	$1,630,902,000	$69,561,000	$1,561,341,000	$226,125,248	$226,125,248	$60,231,074	$61,736,851
FLORIDA	YES	55.40%	$188,384,000	$196,672,896	$14,429,552,000	$347,243,000	$14,082,309,000	$2,157,124,199	$2,157,124,199	$196,672,896	$201,589,718
GEORGIA	YES	64.49%	$253,141,000	$264,279,204	$7,561,691,000	$231,211,000	$7,330,480,000	$1,080,760,500	$1,080,760,500	$264,279,204	$270,886,184
HAWAII*	NA	NA	NA	NA	NA	NA	NA	NA	NA	$10,000,000	$10,000,000
ILLINOIS	YES	50.32%	$202,512,800	$211,423,363	$13,711,488,000	$429,013,000	$13,282,475,000	$2,093,029,672	$2,093,029,672	$211,423,363	$216,708,947
INDIANA	YES	64 26%	$201,335,400	$210,194,158	$6,234,171,000	$234,718,000	$5,999,453,000	$885,246,498	$885,246,498	$210,194,158	$215,449,012
KANSAS	YES	60.08%	$38,854,200	$40,563,785	$2,382,478,000	$69,833,000	$2,312,645,000	$346,781,310	$346,781,310	$40,563,785	$41,577,880
KENTUCKY	YES	70 13%	$136,578,400	$142,587,850	$5,380,169,000	$268,996,000	$5,111,173,000	$739,955,058	$739,955,058	$142,587,850	$146,152,546
LOUISIANA	NOT MET	NA	NA	NA	NA	NA	NA	NA	NA	$731,960,000	$750,259,000
MAINE	YES	64.41%	$98,901,600	$103,253,270	$2,531,326,000	$72,415,000	$2,458,911,000	$362,629,554	$362,629,554	$103,253,270	$105,834,602
MARYLAND	YES	50.00%	$71,821,400	$74,981,542	$6,740,293,000	$122,255,000	$6,618,038,000	$1,044,953,368	$1,044,953,368	$74,981,542	$76,856,081
MASSACHUSETTS	YES	50.00%	$287,285,600	$299,926,166	$12,514,318,000	$0	$12,514,318,000	$1,975,944,947	$1,975,944,947	$299,926,166	$307,424,320
MICHIGAN	YES	60.27%	$249,608,800	$260,591,587	$10,739,710,000	$430,489,000	$10,309,221,000	$1,544,653,200	$1,544,653,200	$260,591,587	$267,106,377
MISSISSIPPI	YES	75.84%	$143,642,800	$149,963,083	$3,925,460,000	$191,725,000	$3,733,735,000	$532,267,786	$532,267,786	$149,963,083	$153,712,160
MISSOURI	YES	63.19%	$446,234,600	$465,868,922	$7,717,878,000	$718,702,000	$6,999,176,000	$1,036,791,400	$1,036,791,400	$465,868,922	$477,515,645
NEVADA	YES	50.00%	$43,563,800	$45,480,607	$1,387,412,000	$92,489,000	$1,294,923,000	$204,461,526	$204,461,526	$45,480,607	$46,617,622
NEW HAMPSHIRE	YES	50.00%	$150,800,000	$157,435,200	$1,314,703,000	$234,011,000	$1,080,692,000	$170,635,579	$170,635,579	$157,435,200	$161,371,080
NEW JERSEY	YES	50.00%	$606,361,000	$633,040,884	$9,926,511,000	$1,297,734,000	$8,628,777,000	$1,362,438,474	$1,362,438,474	$633,040,884	$648,866,906
NEW YORK	YES	50.00%	$1,512,959,000	$1,579,529,196	$48,582,984,000	$2,919,328,000	$45,663,656,000	$7,210,050,947	$7,210,050,947	$1,579,529,196	$1,619,017,426
NORTH CAROLINA	YES	64.60%	$277,866,400	$290,092,522	$10,941,487,000	$466,924,000	$10,474,563,000	$1,543,703,657	$1,543,703,657	$290,092,522	$297,344,835
OHIO	YES	62.14%	$382,655,000	$399,491,820	$15,029,029,000	$656,438,000	$14,372,591,000	$2,137,485,771	$2,137,485,771	$399,491,820	$409,479,116
PENNSYLVANIA	YES	54.52%	$528,652,600	$551,913,314	$16,770,860,000	$813,043,000	$15,957,817,000	$2,455,372,106	$2,455,372,106	$551,913,314	$565,711,147
RHODE ISLAND	YES	52.59%	$61,224,800	$63,918,691	$1,877,499,000	$122,295,000	$1,755,204,000	$272,893,358	$272,893,358	$63,918,691	$65,516,658
SOUTH CAROLINA	YES	70.07%	$308,478,800	$322,051,867	$4,794,873,000	$474,750,000	$4,320,123,000	$625,543,693	$625,543,693	$322,051,867	$330,103,164
TENNESSEE*	NA	NA	NA	NA	NA	NA	NA	NA	NA	$305,451,928	$305,451,928
TEXAS	YES	59.44%	$900,711,000	$940,342,284	$22,984,216,000	$1,686,968,000	$21,297,248,000	$3,202,129,227	$3,202,129,227	$940,342,284	$963,850,841
VERMONT	YES	59 45%	$21,193,200	$22,125,701	$1,158,435,000	$36,549,000	$1,121,886,000	$168,673,018	$168,673,018	$22,125,701	$22,678,844
VIRGINIA	YES	50.00%	$82,519,327	$86,150,177	$5,846,529,000	$173,278,000	$5,673,251,000	$895,776,474	$895,776,474	$86,150,177	$88,303,931
WASHINGTON	YES	50.94%	$174,255,200	$181,922,429	$6,757,716,000	$313,969,000	$6,443,747,000	$1,011,539,205	$1,011,539,205	$181,922,429	$186,470,490
WEST VIRGINIA	YES	73.73%	$63,579,600	$66,377,102	$2,423,085,000	$78,830,000	$2,344,255,000	$335,995,959	$335,995,959	$66,377,102	$68,036,530
TOTAL			$9,183,914,127	$9,588,006,349	$309,958,308,000	$15,846,260,000	$294,112,048,000	$45,168,521,405	$45,168,521,405	$10,635,418,275	$10,893,417,434
LOW DSH STATES		FY 2009 FMAPS	PRIOR FY (FY 2008) ALLOTMENTS								
ALASKA		50.53%	$19,186,622	$20,030,833	$1,087,098,000	$18,620,000	$1,068,478,000	$168,150,096	$168,150,096	$20,030,833	$20,531,604
ARKANSAS		72.81%	$40,632,340	$42,420,163	$3,589,971,000	$66,133,000	$3,523,838,000	$506,306,156	$506,306,156	$42,420,163	$43,480,667
DELAWARE		50 00%	$8,527,387	$8,902,592	$1,172,130,000	$6,000,000	$1,166,130,000	$184,125,789	$184,125,789	$8,902,592	$9,125,157
IDAHO		69 77%	$15,482,811	$16,164,055	$1,316,060,000	$23,656,000	$1,292,404,000	$187,303,501	$187,303,501	$16,164,055	$16,568,156
IOWA		62.62%	$37,093,883	$38,726,014	$2,950,520,000	$14,540,000	$2,935,980,000	$435,838,169	$435,838,169	$38,726,014	$39,694,164
MINNESOTA		50.00%	$70,350,945	$73,446,387	$7,464,994,000	$154,619,000	$7,310,375,000	$1,154,269,737	$1,154,269,737	$73,446,387	$75,282,547
MONTANA		68.04%	$10,691,523	$11,161,950	$849,384,000	$16,751,000	$832,633,000	$121,311,241	$121,311,241	$11,161,950	$11,440,999
NEBRASKA		59.54%	$26,654,661	$27,827,466	$1,655,178,000	$40,898,000	$1,614,280,000	$242,610,596	$242,610,596	$27,827,466	$28,523,153
NEW MEXICO		70.88%	$19,186,622	$20,030,833	$3,287,927,000	$26,911,000	$3,261,016,000	$471,075,029	$471,075,029	$20,030,833	$20,531,604
NORTH DAKOTA		63.15%	$8,997,202	$9,393,079	$577,126,000	$1,488,000	$575,638,000	$85,282,205	$85,282,205	$9,393,079	$9,627,906
OKLAHOMA		65.90%	$34,109,548	$35,610,368	$3,994,647,000	$54,845,000	$3,939,802,000	$578,032,546	$578,032,546	$35,610,368	$36,500,627
OREGON		62.45%	$42,636,936	$44,512,961	$3,626,700,000	$69,404,000	$3,557,296,000	$528,411,818	$528,411,818	$44,512,961	$45,625,785
SOUTH DAKOTA		62.55%	$10,403,173	$10,860,913	$725,653,000	$2,700,000	$722,953,000	$107,348,867	$107,348,867	$10,860,913	$11,132,436
UTAH		70 71%	$18,478,571	$19,291,628	$1,619,786,000	$17,941,000	$1,601,845,000	$231,510,393	$231,510,393	$19,291,628	$19,773,919
WISCONSIN		59.38%	$89,042,355	$92,960,219	$6,541,806,000	$159,852,000	$6,381,954,000	$959,798,468	$959,798,468	$92,960,219	$95,284,224
WYOMING		50.00%	$213,184	$222,564	$527,221,000	$292,000	$526,929,000	$83,199,316	$83,199,316	$222,564	$228,128
TOTAL LOW DSH STATES			$451,687,763	$471,562,025	$40,986,201,000	$674,650,000	$40,311,551,000	$6,044,573,927	$6,044,573,927	$471,562,025	$483,351,076
TOTAL			$9,635,601,890	$10,059,568,373	$350,944,509,000	$16,520,910,000	$334,423,599,000	$51,213,095,332	$51,213,095,332	$11,106,980,300	$11,376,768,510

FOOTNOTES

* Hawaii's and Tennessee's DSH allotments are determined under section 1923(f)(6) of the Social Security Act; under such section, Tennessee's DSH payments are limited to 30 percent of the DSH allotment.

/1 "YES", for a State that FY 2009 or a prior fiscal year is the "Fiscal Year Specified", as determined under section 1923(f)(3)(D) of the Social Security Act; "NOT MET", for a State that the Fiscal Year Specified has not occurred; and, "na" for a State that this provision is not applicable.

/2 For Non Low-DSH States, entries in Columns C through J are only for States meeting the "Fiscal Year Specified" test ("YES" in Column B). The entry in Column D is the actual prior fiscal year (FY 2008) DSH allotment, and for States that FY 2009 is the Fiscal Year Specified, the prior FY 2008 DSH allotment was equal to the FY 2004 DSH allotment amount.

CHART 3 - PRELIMINARY DSH ALLOTMENTS FOR FISCAL YEAR: 2010

A	B	C	D	E	F	G	H	I	J	K	L	M	N
											PRELIMINARY FY 2010 DSH ALLOTMENTS UNDER ARRA		
STATE	1923(f)(3)(D) Test Met /1	FY 2010 FMAPS	FY 2009 DSH Allotment For States Meeting Test /2	FY 2009 Allotments x CPIU Increase: 1.00	FY 2010 TC MAP Exp. Incl. DSH	FY 2010 TC DSH Expenditures	FY 2010 TC MAP Exp. Net of DSH Col F - G	"12% AMOUNT" =COL L x 12[1-.12/COL G]* (In FS)	Greater of FY 2009 Allotment or 12% Limit (MAX of D or I)	FY 2010 DSH Allotment =FY 04 ALLOT or MIN Col J, Col E	FY 2009 DSH ALLOTMENT UNDER ARRA	FY 2010 DSH ALLOTMENT UNDER ARRA Col L x 1.025	FY 2010 DSH ALLOTMENT (= Max of Col K or M
ALABAMA	YES	68.01%	$302,384,578	$302,384,578	$4,617,587,000	$430,890,000	$4,186,677,000	$810,039,427	$810,039,427	$302,384,578	$309,944,192	$317,692,797	$317,692,797
ARIZONA	YES	65.75%	$99,565,654	$99,565,654	$9,751,464,000	$156,488,000	$9,592,976,000	$1,408,159,640	$1,408,159,640	$99,565,654	$102,054,795	$104,606,165	$104,606,165
CALIFORNIA	YES	50.00%	$1,078,013,311	$1,078,013,311	$45,214,428,000	$2,288,712,000	$42,925,714,000	$9,777,744,316	$9,777,744,316	$1,078,013,311	$1,104,963,644	$1,132,587,735	$1,132,587,735
COLORADO	YES	50.00%	$90,961,214	$90,961,214	$3,865,589,000	$171,082,000	$3,723,907,000	$587,985,316	$587,985,316	$90,961,214	$93,235,244	$95,566,125	$95,566,125
CONNECTICUT	YES	50.00%	$196,672,896	$196,672,896	$5,076,987,000	$282,728,000	$4,794,259,000	$756,988,263	$756,988,263	$196,672,896	$201,589,718	$206,629,461	$206,629,461
DISTRICT OF COLUM	YES	70.00%	$90,231,074	$90,231,074	$1,858,753,000	$99,500,000	$1,759,223,000	$259,128,848	$259,128,848	$90,231,074	$92,136,851	$93,280,272	$93,280,272
FLORIDA	YES	54.96%	$196,672,896	$196,672,896	$17,237,948,000	$385,883,000	$16,851,783,000	$2,586,812,275	$2,586,812,275	$196,672,896	$201,589,718	$206,629,461	$206,629,461
GEORGIA	YES	65.10%	$284,279,204	$284,279,204	$8,448,826,000	$424,830,000	$8,023,996,000	$1,180,479,412	$1,180,479,412	$284,279,204	$270,888,184	$277,658,339	$277,658,339
HAWAII* /3	na	na	na	na	na	na	na	na	na	$10,000,000	$0	$0	$10,000,000
ILLINOIS	YES	50.17%	$211,423,363	$211,423,363	$13,588,892,000	$439,740,000	$13,129,152,000	$2,070,808,140	$2,070,808,140	$211,423,363	$216,708,947	$222,126,671	$222,126,671
INDIANA	YES	65.93%	$210,194,158	$210,194,158	$7,182,385,000	$295,384,000	$6,886,991,000	$1,010,328,924	$1,010,328,924	$210,194,158	$215,449,012	$220,835,237	$220,835,237
KANSAS	YES	60.35%	$40,583,785	$40,583,785	$2,361,080,000	$85,960,000	$2,275,120,000	$343,727,190	$343,727,190	$40,583,785	$41,577,880	$42,617,327	$42,617,327
KENTUCKY	YES	70.96%	$142,587,850	$142,587,850	$6,652,910,000	$214,080,000	$6,438,830,000	$785,493,963	$785,493,963	$142,587,850	$146,152,546	$149,806,360	$149,806,360
LOUISIANA	NOT MET	na	NA	FY 2004 ALLOTMENT	NA	NA	NA	NA	NA	$731,000,000	$750,259,000	$769,015,475	$769,015,475
MAINE	YES	64.96%	$103,253,270	$103,253,270	$2,639,214,000	$62,698,000	$2,576,516,000	$380,670,334	$380,670,334	$103,253,270	$105,834,602	$108,480,467	$108,480,467
MARYLAND	YES	50.00%	$74,981,542	$74,981,542	$7,650,038,000	$111,241,000	$7,538,797,000	$1,190,336,368	$1,190,336,368	$74,981,542	$76,856,081	$78,777,483	$78,777,483
MASSACHUSETTS	YES	50.00%	$299,928,168	$299,928,168	$12,434,529,080	$0	$12,434,529,000	$1,983,346,884	$1,983,346,884	$299,928,168	$307,424,320	$315,109,928	$315,109,928
MICHIGAN	YES	63.19%	$280,591,587	$280,591,587	$10,523,930,000	$440,982,000	$10,082,978,000	$1,493,596,515	$1,493,596,515	$280,591,587	$287,106,377	$273,784,036	$273,784,036
MISSISSIPPI	YES	75.67%	$149,963,083	$149,963,083	$4,508,411,000	$206,950,000	$4,301,461,000	$813,459,816	$813,459,816	$149,963,083	$153,712,160	$157,554,964	$157,554,964
MISSOURI	YES	64.51%	$465,868,922	$465,868,922	$8,176,204,000	$735,861,000	$7,440,343,000	$1,096,880,275	$1,096,880,275	$465,868,922	$477,515,645	$489,453,536	$489,453,536
NEVADA	YES	50.16%	$45,480,607	$45,480,607	$1,827,082,000	$98,490,000	$1,528,592,000	$241,113,757	$241,113,757	$45,480,607	$46,617,622	$47,783,063	$47,783,063
NEW HAMPSHIRE	YES	50.00%	$157,435,200	$157,435,200	$1,435,246,000	$239,900,000	$1,195,346,000	$188,738,842	$188,738,842	$157,435,200	$161,371,080	$165,405,357	$165,405,357
NEW JERSEY	YES	50.00%	$833,040,884	$833,040,884	$11,057,836,000	$1,297,734,000	$9,759,902,000	$1,541,037,158	$1,541,037,158	$833,040,884	$848,866,906	$865,088,579	$865,088,579
NEW YORK	YES	50.00%	$1,579,529,198	$1,579,529,198	$53,091,850,000	$3,318,996,000	$49,662,854,000	$7,844,631,158	$7,844,631,158	$1,579,529,198	$1,619,017,428	$1,659,492,862	$1,659,492,862
NORTH CAROLINA	YES	65.13%	$290,092,522	$290,092,522	$12,004,155,000	$2,488,982,000	$9,515,173,000	$1,399,713,648	$1,399,713,648	$290,092,522	$297,344,835	$304,778,456	$304,778,456
OHIO	YES	63.42%	$399,491,820	$399,491,820	$15,245,450,000	$669,269,000	$14,586,181,000	$2,158,822,868	$2,158,822,868	$399,491,820	$409,479,116	$419,716,094	$419,716,094
PENNSYLVANIA	YES	54.81%	$551,913,314	$551,913,314	$17,920,929,000	$845,451,000	$17,075,478,000	$2,623,425,225	$2,623,425,225	$551,913,314	$565,711,147	$579,853,926	$579,853,926
RHODE ISLAND	YES	52.63%	$93,918,981	$93,918,981	$1,935,990,000	$124,740,000	$1,811,250,000	$281,544,878	$281,544,878	$93,918,981	$96,316,958	$97,154,574	$97,154,574
SOUTH CAROLINA	YES	70.32%	$322,051,867	$322,051,867	$5,397,332,000	$481,166,000	$4,916,166,000	$711,326,735	$711,326,735	$322,051,867	$330,103,164	$338,355,743	$338,355,743
TENNESSEE* /3	na	na	na	na	na	na	na	na	na	$305,451,928	$0	$0	$305,451,928
TEXAS	YES	58.73%	$940,342,284	$940,342,284	$25,703,621,000	$1,675,740,000	$24,027,881,000	$3,623,772,612	$3,623,772,612	$940,342,284	$963,850,841	$987,947,112	$987,947,112
VERMONT	YES	58.73%	$22,125,701	$22,125,701	$1,246,761,000	$36,549,000	$1,210,212,000	$182,518,513	$182,518,513	$22,125,701	$22,678,844	$23,245,815	$23,245,815
VIRGINIA	YES	50.00%	$86,150,177	$86,150,177	$8,727,073,000	$210,549,000	$8,516,524,000	$1,028,924,842	$1,028,924,842	$86,150,177	$88,303,931	$90,511,529	$90,511,529
WASHINGTON	YES	50.12%	$181,922,429	$181,922,429	$9,048,508,000	$354,312,000	$7,692,194,000	$1,213,839,339	$1,213,839,339	$181,922,429	$186,470,490	$191,132,252	$191,132,252
WEST VIRGINIA	YES	74.04%	$86,377,102	$86,377,102	$2,552,657,000	$91,539,000	$2,461,118,000	$362,458,759	$362,458,759	$86,377,102	$88,536,530	$90,737,443	$90,737,443
TOTAL			$9,588,008,347	$9,588,008,347	$334,700,985,000	$18,895,995,000	$316,001,909,000	$48,507,954,055	$48,507,954,055	$10,635,418,275	$10,577,985,508	$10,842,414,644	$11,157,868,572
LOW DSH STATES		FY 2010 FMAPS	Prior FY 2009 Allotments										
ALASKA		51.43%	$20,030,833	$20,030,833	$1,179,012,000	$38,931,000	$1,142,081,000	$178,758,993	$178,758,993	$20,030,833	$20,531,604	$21,044,894	$21,044,894
ARKANSAS		72.78%	$42,420,163	$42,420,163	$3,881,279,000	$71,489,000	$3,809,790,000	$547,436,360	$547,436,360	$42,420,163	$43,480,667	$44,567,684	$44,567,684
DELAWARE		50.21%	$8,902,592	$8,902,592	$1,232,947,000	$6,150,000	$1,226,797,000	$193,449,268	$193,449,268	$8,902,592	$9,125,157	$9,353,286	$9,353,286
IDAHO		69.40%	$16,184,055	$16,184,055	$1,436,362,000	$24,247,000	$1,412,145,000	$204,884,034	$204,884,034	$16,184,055	$16,588,156	$16,982,360	$16,982,360
IOWA		63.51%	$38,728,014	$38,728,014	$3,199,017,000	$14,540,000	$3,184,477,000	$471,161,641	$471,161,641	$38,728,014	$39,694,184	$40,686,518	$40,686,518
MINNESOTA		50.00%	$73,446,387	$73,446,387	$8,097,178,000	$161,244,000	$7,935,934,000	$1,248,305,368	$1,248,305,368	$73,446,387	$75,282,547	$77,164,611	$77,164,611
MONTANA		67.42%	$11,161,850	$11,161,850	$938,519,000	$16,505,000	$921,614,000	$134,540,345	$134,540,345	$11,161,850	$11,440,896	$11,727,024	$11,727,024
NEBRASKA		60.58%	$27,827,469	$27,827,469	$1,789,290,000	$41,217,000	$1,728,073,000	$258,913,099	$258,913,099	$27,827,469	$28,523,153	$29,236,232	$29,236,232
NEW MEXICO		71.38%	$20,030,833	$20,030,833	$3,861,196,000	$28,526,000	$3,832,954,000	$562,906,580	$562,906,580	$20,030,833	$20,531,604	$21,044,894	$21,044,894
NORTH DAKOTA		63.01%	$9,360,079	$9,360,079	$985,115,000	$1,612,000	$983,503,000	$102,797,782	$102,797,782	$9,360,079	$9,627,906	$9,868,604	$9,868,604
OKLAHOMA		54.43%	$35,610,368	$35,610,368	$4,536,825,000	$67,508,000	$4,473,317,000	$659,658,549	$659,658,549	$35,610,368	$36,509,627	$37,413,143	$37,413,143
OREGON		62.74%	$44,512,981	$44,512,981	$4,083,788,000	$98,930,000	$4,018,858,000	$590,021,295	$590,021,295	$44,512,981	$45,625,785	$46,766,430	$46,766,430
SOUTH DAKOTA		62.72%	$10,860,913	$10,860,913	$729,848,000	$1,801,000	$727,847,000	$106,006,086	$106,006,086	$10,860,913	$11,132,436	$11,410,747	$11,410,747
UTAH		71.98%	$19,291,628	$19,291,628	$1,786,885,000	$27,390,000	$1,759,295,000	$253,584,877	$253,584,877	$19,291,628	$19,773,919	$20,268,267	$20,268,267
WISCONSIN		60.21%	$92,980,219	$92,980,219	$6,350,228,000	$159,849,000	$6,190,379,000	$929,086,729	$929,086,729	$92,980,219	$95,284,224	$97,666,330	$97,666,330
WYOMING		50.00%	$222,564	$222,564	$581,833,000	$295,000	$581,538,000	$88,863,895	$88,863,895	$222,564	$228,128	$233,831	$233,831
TOTAL LOW DSH STATES			$471,582,025	$471,582,025	$44,311,948,000	$716,044,000	$43,595,302,000	$6,527,867,898	$6,527,867,898	$471,582,025	$483,351,076	$495,434,855	$495,434,855
TOTAL			$10,059,590,372	$10,059,590,372	$379,012,851,000	$19,615,840,000	$359,597,211,000	$55,035,521,952	$55,035,521,952	$11,106,980,300	$11,061,316,582	$11,337,849,499	$11,653,301,427

FOOTNOTES

/1 "YES" if FY 2010 or prior fiscal year is the "Fiscal Year Specified", as determined under section 1923(f)(3)(D) of the Social Security Act; "NOT MET", if Fiscal Year Specified has not occurred, and "NA" for States that this provision is not applicable.

/2 For Non-Low DSH States, entries in Column C through Column K are only for States meeting the "Fiscal Year Specified" test ("YES" in Column B). The entry in Column D is the actual prior year (FY 2009) DSH allotment, and for States that FY 2010 is the Fiscal Year Specified, the prior FY 2009 DSH allotment was equal to the FY 2004 allotment.

/3 Hawaii and Tennessee DSH allotments determined under section 1923(f)(6) of the Act; under this section, Tennessee's DSH payments are limited to 30% of DSH allotment.

										CHART 4 - FINAL IMD DSH LIMIT FOR FY:	2008
A	B	C	D	E	F	G	H	I	J	K
STATE	INPATIENT HOSPITAL SERVICES FY 96 DSH TOTAL COMPUTABLE	IMD AND MENTAL HEALTH SERVICES FY 96 DSH TOTAL COMPUTABLE	TOTAL INPATIENT & IMD & MENTAL HEALTH FY 96 DSH TOTAL COMPUTABLE Col B + C	APPLICABLE PERCENT Col C/D	FY 2008 ALLOTMENT IN FS	FY 2008 FMAP	FY 2008 ALLOTMENTS IN TC Col F/G	COL E * COL H IN TC	FY 2008 TC IMD LIMIT (Lesser of Col I or Col C)	FY 2008 IMD LIMIT IN FS Col G x J
ALABAMA	$413,006,229	$4,451,770	$417,457,999	-1.07%	$289,640,400	67.62%	$428,335,404	$4,567,767	$4,451,770	$3,010,287
ARIZONA	$93,916,100	$28,474,900	$122,391,000	23.27%	$95,369,400	66.20%	$144,062,538	$33,516,895	$28,474,900	$18,850,384
CALIFORNIA	$2,189,879,543	$1,555,919	$2,191,435,462	0.071%	$1,032,579,800	50.00%	$2,065,159,600	$1,466,263	$1,466,263	$733,132
COLORADO	$173,900,441	$594,776	$174,495,217	0.34%	$87,127,600	50.00%	$174,255,200	$593,958	$593,958	$296,979
CONNECTICUT	$303,359,275	$105,573,725	$408,933,000	25.82%	$188,384,000	50.00%	$376,768,000	$97,269,727	$97,269,727	$48,634,863
DISTRICT OF COLUMBIA	$39,532,234	$6,545,136	$46,077,370	14.20%	$57,692,600	70.00%	$82,418,000	$11,707,201	$6,545,136	$4,581,595
FLORIDA	$184,468,014	$149,714,986	$334,183,000	33.00%	$188,384,000	56.83%	$331,486,891	$109,390,674	$109,390,674	$62,166,720
GEORGIA	$407,343,557	$0	$407,343,557	0.00%	$253,141,000	63.10%	$401,174,326	$0	$0	$0
HAWAII	$0	$0	$0	0.00%	$10,000,000	56.50%	$17,699,115	$0	$0	$0
ILLINOIS	$315,868,508	$89,408,276	$405,276,784	22.06%	$202,512,800	50.00%	$405,025,600	$89,352,862	$89,352,862	$44,676,431
INDIANA	$79,960,783	$153,566,302	$233,527,085	33.00%	$201,335,400	62.69%	$321,160,313	$105,982,903	$105,982,903	$66,440,682
KANSAS	$11,587,208	$76,663,508	$88,250,716	33.00%	$38,854,200	59.43%	$65,378,092	$21,574,770	$21,574,770	$12,821,886
KENTUCKY	$158,804,908	$37,443,073	$196,247,981	19.08%	$136,578,400	69.78%	$195,727,142	$37,343,700	$37,343,700	$26,058,434
LOUISIANA	$1,078,512,169	$132,917,149	$1,211,429,318	10.97%	$731,960,000	72.47%	$1,010,017,938	$110,818,438	$110,818,438	$80,310,122
MAINE	$99,957,958	$60,958,342	$160,916,300	33.00%	$98,901,600	63.31%	$156,217,975	$51,551,932	$51,551,932	$32,637,528
MARYLAND	$22,226,467	$120,873,531	$143,099,998	33.00%	$71,821,400	50.00%	$143,642,800	$47,402,124	$47,402,124	$23,701,062
MASSACHUSETTS	$469,653,946	$105,635,054	$575,289,000	18.36%	$287,285,600	50.00%	$574,571,200	$105,503,251	$105,503,251	$52,751,625
MICHIGAN	$133,258,800	$304,765,552	$438,024,352	33.00%	$249,608,800	58.10%	$429,619,277	$141,774,361	$141,774,361	$82,370,904
MISSISSIPPI	$182,608,033	$0	$182,608,033	0.00%	$143,642,800	76.29%	$188,285,227	$0	$0	$0
MISSOURI	$521,946,524	$207,234,618	$729,181,142	28.42%	$446,234,600	62.42%	$714,890,420	$203,173,169	$203,173,169	$126,820,692
NEVADA	$73,560,000	$0	$73,560,000	0.00%	$43,563,800	52.64%	$82,757,979	$0	$0	$0
NEW HAMPSHIRE	$92,675,916	$94,753,948	$187,429,864	33.00%	$150,800,000	50.00%	$301,600,000	$99,528,000	$94,753,948	$47,376,974
NEW JERSEY	$736,742,539	$357,370,461	$1,094,113,000	32.66%	$606,361,000	50.00%	$1,212,722,000	$396,111,755	$357,370,461	$178,685,231
NEW YORK	$2,418,869,368	$605,000,000	$3,023,869,368	20.01%	$1,512,959,000	50.00%	$3,025,918,000	$605,409,880	$605,000,000	$302,500,000
NORTH CAROLINA	$193,201,966	$236,072,627	$429,274,593	33.00%	$277,866,400	64.05%	$433,827,322	$143,163,016	$143,163,016	$91,695,912
OHIO	$535,731,956	$93,432,758	$629,164,714	14.85%	$382,655,000	60.79%	$629,470,308	$93,478,140	$93,432,758	$56,797,774
PENNSYLVANIA	$388,207,319	$579,199,682	$967,407,001	33.00%	$528,652,600	54.08%	$977,538,092	$322,587,570	$322,587,570	$174,455,358
RHODE ISLAND	$108,503,167	$2,397,833	$110,901,000	2.16%	$61,224,800	52.51%	$116,596,458	$2,520,977	$2,397,833	$1,259,102
SOUTH CAROLINA	$366,681,364	$72,076,341	$438,757,705	16.43%	$308,478,800	69.79%	$442,010,030	$72,610,612	$72,076,341	$50,302,078
TENNESSEE	$0	$0	$0	0.00%	$305,451,928	63.71%	$479,441,105	$0	$0	$0
TEXAS	$1,220,515,401	$292,513,592	$1,513,028,993	19.33%	$900,711,000	60.56%	$1,487,303,501	$287,540,088	$287,540,088	$174,134,277
VERMONT	$19,979,252	$9,071,297	$29,050,549	31.23%	$21,193,200	59.03%	$35,902,422	$11,210,857	$9,071,297	$5,354,787
VIRGINIA	$129,313,480	$7,770,268	$137,083,748	5.67%	$82,519,327	50.00%	$165,038,654	$9,354,826	$7,770,268	$3,885,134
WASHINGTON	$171,725,815	$163,836,435	$335,562,250	33.00%	$174,255,200	51.52%	$338,228,261	$111,615,326	$111,615,326	$57,504,216
WEST VIRGINIA	$66,962,606	$18,887,045	$85,849,651	22.00%	$63,579,600	74.25%	$85,629,091	$18,838,521	$18,838,521	$13,987,602
TOTAL	$13,402,460,846	$4,118,758,904	$17,521,219,750		$10,231,326,055		$18,039,878,281	$3,346,959,562	$3,288,287,366	$1,844,801,771
LOW DSH STATES										
ALASKA	$2,506,827	$17,611,765	$20,118,592	33.00%	$19,186,622	52.48%	$36,559,874	$12,064,758	$12,064,758	$6,331,585
ARKANSAS	$2,422,649	$819,351	$3,242,000	25.27%	$40,632,340	72.94%	$55,706,526	$14,078,716	$819,351	$597,635
DELAWARE	$0	$7,069,000	$7,069,000	33.00%	$8,527,387	50.00%	$17,054,774	$5,628,075	$5,628,075	$2,814,038
IDAHO	$2,081,429	$0	$2,081,429	0.00%	$15,482,811	69.87%	$22,159,455	$0	$0	$0
IOWA	$12,011,250	$0	$12,011,250	0.00%	$37,093,883	61.73%	$60,090,528	$0	$0	$0
MINNESOTA	$24,240,000	$5,257,214	$29,497,214	17.82%	$70,350,945	50.00%	$140,701,890	$25,076,943	$5,257,214	$2,628,607
MONTANA	$237,048	$0	$237,048	0.00%	$10,691,523	68.53%	$15,601,230	$0	$0	$0
NEBRASKA	$6,449,102	$1,811,337	$8,260,439	21.93%	$26,654,661	58.02%	$45,940,471	$10,073,759	$1,811,337	$1,050,938
NEW MEXICO	$6,490,015	$254,786	$6,744,801	3.78%	$19,186,622	71.04%	$27,008,195	$1,020,239	$254,786	$181,000
NORTH DAKOTA	$214,523	$988,478	$1,203,001	33.00%	$8,997,202	63.75%	$14,113,258	$4,657,375	$988,478	$630,155
OKLAHOMA	$20,019,969	$3,273,248	$23,293,217	14.05%	$34,109,548	67.10%	$50,833,902	$7,143,366	$3,273,248	$2,196,349
OREGON	$11,437,908	$19,975,092	$31,413,000	33.00%	$42,636,936	60.86%	$70,057,404	$23,118,943	$19,975,092	$12,156,841
SOUTH DAKOTA	$321,120	$751,299	$1,072,419	33.00%	$10,403,173	60.03%	$17,329,957	$5,718,886	$751,299	$451,005
UTAH	$3,621,116	$934,586	$4,555,702	20.51%	$18,478,571	71.63%	$25,797,251	$5,292,214	$934,586	$669,444
WISCONSIN	$6,609,524	$4,492,011	$11,101,535	33.00%	$89,042,355	57.62%	$154,533,764	$50,996,142	$4,492,011	$2,588,297
WYOMING	$0	$0	$0	0.00%	$213,184	50.00%	$426,368	$0	$0	$0
TOTAL LOW DSH STATES	$98,662,480	$63,238,167	$161,900,647		$451,687,763		$753,914,847	$164,869,417	$56,250,236	$32,295,894
TOTAL	$13,501,123,326	$4,181,997,071	$17,683,120,397		$10,683,013,818		$18,793,793,127	$3,511,828,979	$3,344,537,602	$1,877,097,665

										CHART 5 - REVISED PRELIMINARY IMD DSH LIMIT UNDER ARRA FOR FY:	2009
A	B	C	D	E	F	G	H	I	J	K
STATE	INPATIENT HOSPITAL SERVICES FY 95 DSH TOTAL COMPUTABLE	IMD AND MENTAL HEALTH SERVICES FY 95 DSH TOTAL COMPUTABLE	TOTAL INPATIENT & IMD & MENTAL HEALTH FY 95 DSH TOTAL COMPUTABLE Col B + C	APPLICABLE PERCENT Min of 33% or Col C/D	FY 2009 ALLOTMENT IN FS	FY 2009 FMAP	FY 2009 ALLOTMENTS IN TC Col F/G	COL E * COL H IN TC	FY 2009 TC IMD LIMIT (Lesser of Col I or Col C)	FY 2009 IMD LIMIT IN FS Col G x J
ALABAMA	$413,006,229	$4,451,770	$417,457,999	1.07%	$309,944,192	67.98%	$455,934,381	$4,862,082	$4,451,770	$3,026,313
ARIZONA	$93,916,100	$28,474,900	$122,391,000	23.27%	$102,054,795	65.77%	$155,169,218	$36,100,922	$28,474,900	$18,727,942
CALIFORNIA	$2,189,879,543	$1,555,919	$2,191,435,462	0.071%	$1,104,963,644	50.00%	$2,209,927,288	$1,569,048	$1,555,919	$777,960
COLORADO	$173,900,441	$594,776	$174,495,217	0.34%	$93,235,244	50.00%	$186,470,488	$635,594	$594,776	$297,388
CONNECTICUT	$303,359,275	$105,573,725	$408,933,000	25.82%	$201,589,718	50 00%	$403,179,436	$104,088,335	$104,088,335	$52,044,167
DISTRICT OF COLUMBIA	$39,532,234	$6,545,136	$46,077,370	14.20%	$61,736,851	70.00%	$88,195,501	$12,527,875	$6,545,136	$4,581,595
FLORIDA	$184,468,014	$149,714,986	$334,183,000	33.00%	$201,589,718	55.40%	$363,880,357	$120,080,518	$120,080,518	$66,524,607
GEORGIA	$407,343,557	$0	$407,343,557	0.00%	$270,886,184	64.49%	$420,043,703	$0	$0	$0
HAWAII	$0	$0	$0	0.00%	$10,000,000	55.11%	$18,145,527	$0	$0	$0
ILLINOIS	$315,868,508	$89,408,276	$405,276,784	22.06%	$216,708,947	50.32%	$430,661,659	$95,008,444	$89,408,276	$44,990,244
INDIANA	$79,960,783	$153,566,302	$233,527,085	33.00%	$215,449,012	64.26%	$335,277,018	$110,641,416	$110,641,416	$71,098,174
KANSAS	$11,587,208	$76,663,508	$88,250,716	33.00%	$41,577,880	60.08%	$69,204,194	$22,837,384	$22,837,384	$13,720,700
KENTUCKY	$158,804,908	$37,443,073	$196,247,981	19.08%	$146,152,546	70.13%	$208,402,319	$39,762,056	$37,443,073	$26,258,827
LOUISIANA	$1,078,512,169	$132,917,149	$1,211,429,318	10.97%	$750,259,000	71.31%	$1,052,109,101	$115,436,650	$115,436,650	$82,317,875
MAINE	$99,957,958	$60,958,342	$160,916,300	33.00%	$105,834,602	64.41%	$164,313,930	$54,223,597	$54,223,597	$34,925,419
MARYLAND	$22,226,467	$120,873,531	$143,099,998	33.00%	$76,856,081	50.00%	$153,712,162	$50,725,013	$50,725,013	$25,362,507
MASSACHUSETTS	$469,653,946	$105,635,054	$575,289,000	18.36%	$307,424,320	50.00%	$614,848,640	$112,899,029	$105,635,054	$52,817,527
MICHIGAN	$133,258,800	$304,765,552	$438,024,352	33.00%	$267,106,377	60.27%	$443,182,972	$146,250,381	$146,250,381	$88,145,104
MISSISSIPPI	$182,608,033	$0	$182,608,033	0.00%	$153,712,160	75.84%	$202,679,536	$0	$0	$0
MISSOURI	$521,946,524	$207,234,618	$729,181,142	28.42%	$477,515,645	63.19%	$755,682,299	$214,766,296	$207,234,618	$130,951,555
NEVADA	$73,560,000	$0	$73,560,000	0.00%	$46,617,622	50.00%	$93,235,244	$0	$0	$0
NEW HAMPSHIRE	$92,675,916	$94,753,948	$187,429,864	33.00%	$161,371,080	50.00%	$322,742,160	$106,504,913	$94,753,948	$47,376,974
NEW JERSEY	$736,742,539	$357,370,461	$1,094,113,000	32.66%	$648,866,906	50.00%	$1,297,733,812	$423,879,189	$357,370,461	$178,685,231
NEW YORK	$2,418,869,368	$605,000,000	$3,023,869,368	20.01%	$1,619,017,426	50.00%	$3,238,034,852	$647,849,112	$605,000,000	$302,500,000
NORTH CAROLINA	$193,201,966	$236,072,627	$429,274,593	33.00%	$297,344,835	64.60%	$460,286,122	$151,894,420	$151,894,420	$98,123,796
OHIO	$535,731,956	$93,432,758	$629,164,714	14.85%	$409,479,116	62.14%	$658,962,208	$97,857,771	$93,432,758	$58,059,116
PENNSYLVANIA	$388,207,319	$579,199,682	$967,407,001	33.00%	$565,711,147	54.52%	$1,037,621,326	$342,415,038	$342,415,038	$186,684,679
RHODE ISLAND	$108,503,167	$2,397,833	$110,901,000	2.16%	$65,516,658	52.59%	$124,580,068	$2,693,593	$2,397,833	$1,261,020
SOUTH CAROLINA	$366,681,364	$72,076,341	$438,757,705	16.43%	$330,103,164	70.07%	$471,104,844	$77,390,124	$72,076,341	$50,503,892
TENNESSEE	$0	$0	$0	0.00%	$305,451,928	64.28%	$475,189,683	$0	$0	$0
TEXAS	$1,220,515,401	$292,513,592	$1,513,028,993	19.33%	$963,850,841	59.44%	$1,621,552,559	$313,494,431	$292,513,592	$173,870,079
VERMONT	$19,979,252	$9,071,297	$29,050,549	31.23%	$22,678,844	59.45%	$38,147,761	$11,911,984	$9,071,297	$5,392,886
VIRGINIA	$129,313,480	$7,770,268	$137,083,748	5.67%	$88,303,931	50.00%	$176,607,862	$10,010,599	$7,770,268	$3,885,134
WASHINGTON	$171,725,815	$163,836,435	$335,562,250	33.00%	$186,470,490	50.94%	$366,059,069	$120,799,493	$120,799,493	$61,535,262
WEST VIRGINIA	$66,962,606	$18,887,045	$85,849,651	22.00%	$68,036,530	73.73%	$92,277,947	$20,301,279	$18,887,045	$13,925,418
TOTAL	$13,402,460,846	$4,118,758,904	$17,521,219,750		$10,893,417,434		$19,205,155,248	$3,569,416,586	$3,374,009,309	$1,898,371,391
LOW DSH STATES										
ALASKA	$2,506,827	$17,611,765	$20,118,592	33.00%	$20,531,604	50.53%	$40,632,503	$13,408,726	$13,408,726	$6,775,429
ARKANSAS	$2,422,649	$819,351	$3,242,000	25.27%	$43,480,667	72.81%	$59,717,988	$15,092,533	$819,351	$596,569
DELAWARE	$0	$7,069,000	$7,069,000	33.00%	$9,125,157	50.00%	$18,250,314	$6,022,604	$6,022,604	$3,011,302
IDAHO	$2,081,429	$0	$2,081,429	0.00%	$16,568,156	69.77%	$23,746,820	$0	$0	$0
IOWA	$12,011,250	$0	$12,011,250	0.00%	$39,694,164	62.62%	$63,388,956	$0	$0	$0
MINNESOTA	$24,240,000	$5,257,214	$29,497,214	17.82%	$75,282,547	50.00%	$150,565,094	$26,834,837	$5,257,214	$2,628,607
MONTANA	$237,048	$0	$237,048	0.00%	$11,440,999	68.04%	$16,815,107	$0	$0	$0
NEBRASKA	$6,449,102	$1,811,337	$8,260,439	21 93%	$28,523,153	59.54%	$47,905,867	$10,504,728	$1,811,337	$1,078,470
NEW MEXICO	$6,490,015	$254,786	$6,744,801	3.78%	$20,531,604	70.88%	$28,966,710	$1,094,222	$254,786	$180,592
NORTH DAKOTA	$214,523	$988,478	$1,203,001	33.00%	$9,627,906	63.15%	$15,246,090	$5,031,210	$988,478	$624,224
OKLAHOMA	$20,019,969	$3,273,248	$23,293,217	14.05%	$36,500,627	65.90%	$55,387,901	$7,783,310	$3,273,248	$2,157,070
OREGON	$11,437,908	$19,975,092	$31,413,000	33.00%	$45,625,785	62.45%	$73,059,704	$24,109,702	$19,975,092	$12,474,445
SOUTH DAKOTA	$321,120	$751,299	$1,072,419	33.00%	$11,132,436	62.55%	$17,797,659	$5,873,228	$751,299	$469,938
UTAH	$3,621,116	$934,586	$4,555,702	20.51%	$19,773,919	70.71%	$27,964,813	$5,736,881	$934,586	$660,846
WISCONSIN	$6,609,524	$4,492,011	$11,101,535	33.00%	$95,284,224	59.38%	$160,465,180	$52,953,509	$4,492,011	$2,667,356
WYOMING	$0	$0	$0	0.00%	$228,128	50.00%	$456,256	$0	$0	$0
TOTAL LOW DSH STATES	$98,662,480	$63,238,167	$161,900,647		$483,351,076		$800,366,962	$174,445,492	$57,988,732	$33,324,848
TOTAL	$13,501,123,326	$4,181,997,071	$17,683,120,397		$11,376,768,510		$20,005,522,210	$3,743,862,078	$3,431,998,041	$1,931,696,239

					CHART 6 - PRELIMINARY IMD DSH LIMIT UNDER ARRA FOR FY:					2010
A	B	C	D	E	F	G	H	I	J	K
STATE	INPATIENT HOSPITAL SERVICES FY 95 DSH TOTAL COMPUTABLE	IMD AND MENTAL HEALTH SERVICES FY 95 DSH TOTAL COMPUTABLE	TOTAL INPATIENT & IMD & MENTAL HEALTH FY 95 DSH TOTAL COMPUTABLE Col B + C	APPLICABLE PERCENT Col C/D	FY 2010 ALLOTMENT IN FS UNDER ARRA	FY 2010 FMAP	FY 2010 ALLOTMENTS IN TC Col F/G	COL E * COL H IN TC	FY 2010 TC IMD LIMIT (Lesser of Col I or Col C)	FY 2010 IMD LIMIT IN FS U/ARRA Col G x J
ALABAMA	$413,006,229	$4,451,770	$417,457,999	1 07%	$317,692,797	68 01%	$467,126,595	$4,981,436	$4,451,770	$3,027,649
ARIZONA	$93,916,100	$28,474,900	$122,391,000	23.27%	$104,606,165	65.75%	$159,096,829	$37,014,701	$28,474,900	$18,722,247
CALIFORNIA	$2,189,879,543	$1,555,919	$2,191,435,462	0 071%	$1,132,587,735	50.00%	$2,265,175,470	$1,608,274	$1,555,919	$777,960
COLORADO	$173,900,441	$594,776	$174,495,217	0 34%	$95,566,125	50.00%	$191,132,250	$651,484	$594,776	$297,388
CONNECTICUT	$303,359,275	$105,573,725	$408,933,000	25.82%	$206,629,461	50.00%	$413,258,922	$106,690,543	$105,573,725	$52,786,863
DISTRICT OF COLUMBIA	$39,532,234	$6,545,136	$46,077,370	14 20%	$63,280,272	70.00%	$90,400,389	$12,841,072	$6,545,136	$4,581,595
FLORIDA	$184,458,014	$149,714,986	$334,183,000	33 00%	$206,629,461	54 98%	$375,826,593	$124,022,776	$124,022,776	$68,187,722
GEORGIA	$407,343,557	$0	$407,343,557	0 00%	$277,658,339	65.10%	$426,510,505	$0	$0	$0
HAWAII	$0	$0	$0	0.00%	$10,000,000	54.24%	$18,436,578	$0	$0	$0
ILLINOIS	$315,868,508	$89,408,276	$405,276,784	22.06%	$222,126,671	50.17%	$442,747,999	$97,674,816	$89,408,276	$44,856,132
INDIANA	$79,960,783	$153,566,302	$233,527,085	33.00%	$220,835,237	65.93%	$334,954,098	$110,534,852	$110,534,852	$72,875,628
KANSAS	$11,587,208	$76,663,508	$88,250,716	33.00%	$42,617,327	60 38%	$70,581,860	$23,292,014	$23,292,014	$14,063,718
KENTUCKY	$158,804,908	$37,443,073	$196,247 981	19 08%	$149,806,360	70.96%	$211,113,811	$40,279,394	$37,443,073	$26,569,605
LOUISIANA	$1,078,512,169	$132,917,149	$1,211,429,318	10.97%	$769,015,475	67.61%	$1,137,428,598	$124,797,843	$124,797,843	$84,375,822
MAINE	$99,957,958	$60,958,342	$160,916,300	33 00%	$108,480,467	64 99%	$166,918,706	$55,083,173	$55,083,173	$35,798,554
MARYLAND	$22,226,467	$120,873,531	$143,099,998	33.00%	$78,777,483	50 00%	$157,554,966	$51,993,139	$51,993,139	$25,996,569
MASSACHUSETTS	$469,653,946	$105,635,054	$575,289,000	18 36%	$315,109,928	50.00%	$630,219,856	$115,721,504	$105,635,054	$52,817,527
MICHIGAN	$133,258,800	$304,765,552	$438,024,352	33 00%	$273,784,036	63.19%	$433,271,144	$142,979,478	$142,979,478	$90,348,732
MISSISSIPPI	$182,608,033	$0	$182,608,033	0.00%	$157,554,964	75.67%	$208,213,247	$0	$0	$0
MISSOURI	$521,946,524	$207,234,618	$729,181,142	28 42%	$489,453,536	64.51%	$758,725,060	$215,631,054	$207,234,618	$133,687,052
NEVADA	$73,560,000	$0	$73,560,000	0 00%	$47,783,063	50 16%	$95,261,290	$0	$0	$0
NEW HAMPSHIRE	$92,675,916	$94,753,948	$187,429,864	33 00%	$165,405,357	50.00%	$330,810,714	$109,167,536	$94,753,948	$47,376,974
NEW JERSEY	$736,742,539	$357,370,461	$1,094,113,000	32.66%	$665,088,579	50.00%	$1,330,177,158	$434,476,169	$357,370,461	$178,685,231
NEW YORK	$2,418,869,368	$605,000,000	$3,023,869,368	20.01%	$1,659,492,862	50.00%	$3,318,985,724	$664,045,340	$605,000,000	$302,500,000
NORTH CAROLINA	$193,201,966	$236,072,627	$429,274,593	33.00%	$304,778,456	65.13%	$467,954,024	$154,424,828	$154,424,828	$100,576,890
OHIO	$535,731,956	$93,432,758	$629,164,714	14.85%	$419,716,094	63.42%	$661,803,996	$98,279,785	$93,432,758	$59,255,055
PENNSYLVANIA	$388,207,319	$579,199,682	$967,407,001	33.00%	$579,853,926	54 81%	$1,057,934,548	$349,118,401	$349,118,401	$191,351,796
RHODE ISLAND	$108,503,167	$2,397,833	$110,901,000	2.16%	$67,154,574	52.63%	$127,597,519	$2,758,835	$2,397,833	$1,261,980
SOUTH CAROLINA	$365,681,364	$72,076,341	$438,757,705	16.43%	$338,355,743	70 32%	$481,165,732	$79,042,864	$72,076,341	$50,684,083
TENNESSEE	$0	$0	$0	0 00%	$305,451,928	65.57%	$465,840,976	$0	$0	$0
TEXAS	$1,220,515,401	$292,513,592	$1,513,028,993	19.33%	$987,947,112	58.73%	$1,682,184,764	$325,216,443	$292,513,592	$171,793,233
VERMONT	$19,979,252	$9,071,297	$29,050,549	31 23%	$23,245,815	58.73%	$39,580,819	$12,359,469	$9,071,297	$5,327,573
VIRGINIA	$129,313,480	$7,770,268	$137,083,748	5 67%	$90,511,529	50.00%	$181,023,058	$10,260,864	$7,770,268	$3,885,134
WASHINGTON	$171,725,815	$163,836,435	$335,562,250	33 00%	$191,132,252	50.12%	$381,349,266	$125,845,258	$125,845,258	$63,073,643
WEST VIRGINIA	$66,962,606	$18,887,045	$85,849,651	22.00%	$69,737,443	74.04%	$94,188,875	$20,721,686	$18,887,045	$13,983,968
TOTAL	$13,402,460,846	$4,118,758,904	$17,521,219,750		$11,157,866,572		$19,674,551,938	$3,651,515,030	$3,402,282,551	$1,919,526,323
LOW DSH STATES										
ALASKA	$2,506,827	$17,611,765	$20,118,592	33.00%	$21,044,894	51.43%	$40,919,491	$13,503,432	$13,503,432	$6,944,815
ARKANSAS	$2,422,649	$819,351	$3,242,000	25.27%	$44,567,684	72.78%	$61,236,169	$15,476,223	$819,351	$596,324
DELAWARE	$0	$7,069,000	$7,069,000	33.00%	$9,353,286	50.21%	$18,628,333	$6,147,350	$6,147,350	$3,086,584
IDAHO	$2,081,429	$0	$2,081,429	0.00%	$16,982,360	69.40%	$24,470,259	$0	$0	$0
IOWA	$12,011,250	$0	$12,011,250	0.00%	$40,686,518	63 51%	$64,063,168	$0	$0	$0
MINNESOTA	$24,240,000	$5,257,214	$29,497,214	17.82%	$77,164,611	50 00%	$154,329,222	$27,505,708	$5,257,214	$2,628,607
MONTANA	$237,048	$0	$237,048	0 00%	$11,727,024	67.42%	$17,393,984	$0	$0	$0
NEBRASKA	$6,449,102	$1,811,337	$8,260,439	21 93%	$29,236,232	60.56%	$48,276,473	$10,585,994	$1,811,337	$1,096,946
NEW MEXICO	$6,490,015	$254,786	$6,744,801	3 78%	$21,044,894	71.35%	$29,495,296	$1,114,190	$254,786	$181,790
NORTH DAKOTA	$214,523	$988,478	$1,203,001	33 00%	$9,868,604	63.01%	$15,661,965	$5,168,448	$988,478	$622,840
OKLAHOMA	$20,019,969	$3,273,248	$23,293,217	14 05%	$37,413,143	64.43%	$58,067,892	$8,159,912	$3,273,248	$2,108,954
OREGON	$11,437,908	$19,975,092	$31,413,000	33 00%	$46,766,430	62.74%	$74,540,054	$24,598,218	$19,975,092	$12,532,373
SOUTH DAKOTA	$321,120	$751,299	$1,072,419	33.00%	$11,410,747	62.72%	$18,193,155	$6,003,741	$751,299	$471,215
UTAH	$3,621,116	$934,586	$4,555,702	20.51%	$20,268,267	71 68%	$28,276,042	$5,800,729	$934,586	$669,911
WISCONSIN	$6,609,524	$4,492,011	$11,101,535	33.00%	$97,666,330	60 21%	$162,209,483	$53,529,130	$4,492,011	$2,704,640
WYOMING	$0	$0	$0	0.00%	$233,831	50.00%	$467,662	$0	$0	$0
TOTAL LOW DSH STATES	$98,662,480	$63,238,167	$161,900,647		$495,434,855		$816,228,650	$177,593,076	$58,208,184	$33,644,999
TOTAL	$13,501,123,326	$4,181,997,071	$17,683,120,397		$11,653,301,427		$20,490,780,588	$3,829,108,106	$3,460,490,735	$1,953,171,322

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program)

Dated: December 17, 2009.

Charlene Frizerra,

Acting Administrator, Centers for Medicare & Medicaid Services.

Dated: February 22, 2010.

Kathleen Sebelius,

Secretary.

[FR Doc. 2010–8502 Filed 4–22–10; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–2309–N]

RIN 0938–AP90

Medicaid Program; State Allotments for Payment of Medicare Part B Premiums for Qualifying Individuals: Federal Fiscal Year 2009 and Federal Fiscal Year 2010

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This notice sets forth final allotments available to States to pay the Medicare Part B premiums for Qualifying Individuals (QIs) for the Federal fiscal year (FY) 2009 and the preliminary QI allotments for FY 2010. The amounts of these QI allotments were determined in accordance with the methodology set forth in regulations, as amended in the **Federal Register** published on November 24, 2008, and reflect funding for the QI program made available under recent legislation.

DATES: *Effective dates:* The final QI allotments for payment of Medicare Part B premiums for FY 2009 are effective October 1, 2008. The preliminary QI allotments for FY 2010 are effective October 1, 2009.

FOR FURTHER INFORMATION CONTACT: Richard Strauss, (410) 786–2019.

SUPPLEMENTARY INFORMATION:

I. Background

A. History of the QI Program

Section 1902 of the Social Security Act (the Act) sets forth the requirements for State plans for medical assistance. Before August 5, 1997, section 1902(a)(10)(E) of the Act specified that State Medicaid plans must provide for some or all types of Medicare cost-sharing for three eligibility groups of low-income Medicare beneficiaries. These three groups included qualified Medicare beneficiaries (QMBs), specified low-income Medicare

beneficiaries (SLMBs), and qualified disabled and working individuals (QDWIs).

A QMB is an individual entitled to Medicare Part A with income at or below 100 percent of the Federal poverty level (FPL). A SLMB is an individual who meets the QMB criteria, except that his or her income is above 100 percent of the FPL and does not exceed 120 percent of the FPL. Effective January 1, 2010, the resource limits for a QMB, SLMB, and QI are $6,600 for a single person and $9,910 for a married person living with a spouse and no other dependents. These resource limits are adjusted January 1 of each year, based upon the change in the annual consumer price index (CPI) since September of the previous year.

A QDWI is a disabled individual who is entitled to enroll in Medicare Part A under section 1818A of the Act, whose income does not exceed 200 percent of the FPL, for a family of the size involved, whose resources do not exceed twice the amount allowed under SSI program, and who is not otherwise eligible for Medicaid. The definition of Medicare cost-sharing at section 1905(p)(3) of the Act includes payment for premiums for Medicare Part B.

Section 4732 of the Balanced Budget Act of 1997 (BBA), (Pub. L. 105–33), enacted on August 5, 1997, amended section 1902(a)(10)(E) of the Act to require States to provide for Medicaid payment of the Medicare Part B premiums for two additional eligibility groups of low-income Medicare beneficiaries, referred to as qualifying individuals (QIs).

Specifically, under BBA, a new section 1902(a)(10)(E)(iv)(I) of the Act was added, under which States must pay the full amount of the Medicare Part B premium for QIs who are eligible QMBs but their income level is at least 120 percent of the FPL but less than 135 percent of the FPL for a family of the size involved. These individuals cannot otherwise be eligible for medical assistance under the approved State Medicaid plan. The BBA also added the second group of QIs under section 1902(a)(10)(E)(iv)(II) of the Act, which includes Medicare beneficiaries who would be QMBs except that their income is at least 135 percent but less than 175 percent of the FPL for a family of the size involved, who are not otherwise eligible for Medicaid under the approved State plan. These QIs were eligible for only a portion of Medicare cost-sharing consisting of a percentage of the increase in the Medicare Part B premium attributable to the shift of Medicare home health coverage from Part A to Part B (as provided in section 4611 of the BBA).

Coverage of the second eligibility group of QIs ended on December 31, 2002, and section 401 of the Welfare Reform Bill (Pub. L. 108–89), enacted on October 1, 2003, eliminated reference to the second QI benefit (for the Medicare beneficiaries who would be QMBs except that their income is at least 135 percent but less than 175 percent of the FPL for a family of the size involved, who are not otherwise eligible for Medicaid under the approved State plan). In 2002 and 2003, continuing resolutions extended the coverage of the first group of QIs (whose income is at least 120 percent but less than 135 percent of the FPL) through the following FY, but maintained the annual funding at the FY 2002 level. Section 1933(g) of the Act was amended by the Extension of Medicare Cost-Sharing for Medicare Part B Premium for Qualifying Individuals Act, (Pub. L. 108–448), enacted December 8, 2004, which continued coverage of this group of QIs (whose income is at least 120 percent but less than 135 percent of the FPL) through September 30, 2005, again, with no change in funding.

The BBA also added a new section 1933 to the Act to provide for Medicaid payment of Medicare Part B premiums for QIs. (The previous section 1933 of the Act was re-designated as section 1934.) Section 1933(a) of the Act specifies that a State plan must provide, through a State plan amendment, for medical assistance to pay for the cost of Medicare cost-sharing on behalf of QIs who are selected to receive assistance. Section 1933(b) of the Act sets forth the rules that States must follow in selecting QIs and providing payment for Medicare Part B premiums. Specifically, the State must permit all qualifying individuals to apply for assistance and must select individuals on a first-come, first-served basis (that is, the State must select QIs in the order in which they apply). Further, under section 1933(b)(2)(B) of the Act, in selecting persons who will receive assistance in years after 1998, States must give preference to those individuals who received assistance as QIs, QMBs, SLMBs, or QDWIs in the last month of the previous year and who continue to be (or become) QIs.

Under section 1933(b)(4) of the Act, persons selected to receive assistance in a calendar year are entitled to receive assistance for the remainder of the year, but not beyond, as long as they continue to qualify. The fact that an individual is selected to receive assistance at any time during the year does not entitle the individual to continued assistance for any succeeding year. Because the State's QI allotment is limited by law, section 1933(b)(3) of the Act provides that the State must limit the number of QIs so that the amount of assistance provided during the year is approximately equal to the allotment for that year.

Section 1933(c) of the Act limits the total amount of Federal funds available for payment of Part B premiums for QIs each FY and specifies the formula that is to be used to determine an allotment for each State from this total amount. For States that executed a State plan amendment in accordance with section 1933(a) of the Act, a total of $1.5 billion was allocated over 5 years as follows: $200 million in FY 1998; $250 million in FY 1999; $300 million in FY 2000; $350 million in FY 2001; and $400 million in FY 2002.

On March 29, 1999, we published a notice in the **Federal Register** (64 FR 14931) to advise States of the methodology used to calculate allotments and each State's specific allotment for that year. Following that notice, there was no change in methodology and States have been notified annually of their allotments. We did not include the methodology for computing the allocation in our regulations. Although the BBA originally provided coverage of QIs through FY 2002, based on several legislative actions, coverage has continued (as discussed below) through December 31, 2010.

The Federal medical assistance percentage, for Medicaid payment of Medicare Part B premiums for QIs, is 100 percent for expenditures up to the amount of the State's allotment. No Federal funds are available for expenditures in excess of the State allotment amount. The Federal matching rate for administrative expenses associated with the payment of Medicare Part B premiums for QIs remains at the 50 percent matching level. Federal financial participation in the administrative expenses is not counted against the State's allotment.

The amount available for each FY is to be allocated among States according to the formula set forth in section 1933(c)(2) of the Act. The formula provides for an amount to each State that is based on each State's share of the Secretary's estimate of the ratio of: (a) An amount equal to the total number of individuals in the State who meet all but the income requirements for QMBs, whose incomes are at least 120 percent but less than 135 percent of the Federal poverty level, and who are not otherwise eligible for Medicaid; to (b) the sum of all individuals for all eligible States.

B. Allotments for FY 2005 Through 2009

In FY 2005, some States exhausted their FY 2005 allotments before the end of the FY, which caused States to deny benefits to eligible persons under section 1933(b)(3) of the Act, while other States projected a surplus in their allotments. We asked those States that exhausted or expected to exhaust their FY 2005 allotments before the end of the FY to project the amount of funds that would be required to grant eligibility to all eligible persons in their State, that is, their need. We also asked those States that did not expect to use their full allotments in FY 2005 to project the difference between the amount they expected to spend and their allotment, that is, their surplus. After all States reported these figures, it was evident that the total surplus exceeded the total need. In spite of there being adequate overall funding for the QI benefit, some eligible individuals would have been denied benefits due to the allocation methodology initially used to determine the FY 2005 allotments.

We believe that it was the intent of the statute to provide benefits to eligible persons up to the full amount of funds made available for the program. We attributed the difference between the surplus in available QI allotments for some States and the need in other States in FY 2005 as due to the imprecision in the data that we used to provide States with their initial allocations under section 1933 of the Act. Therefore, on August 26, 2005, we published in the **Federal Register** an interim final rule (70 FR 50214), which we compensated for this imprecision in order to enable States to enroll those QIs whom they would have been able to enroll had the data been more precise.

The August 26, 2005 interim final rule amended 42 CFR 433.10(c) to specify the formula and the data to be used to determine States' allotments and to revise, under certain circumstances, individual State allotments for a Federal FY for the Medicaid payment of Medicare Part B premiums for qualifying individuals identified under section 1902(a)(10)(E)(iv) of the Act. Section 433.10(c)(5)(iv) states that CMS will notify States of any changes in allotments resulting from any reallocations.

The FY 2005 allotments were determined by applying the U.S. Census Bureau data to the formula set forth in section 1933(c)(2) of the Act. However, the statute requires that the allocation of the FY allotment be based upon a ratio of the amount of "total number of individuals described in section 1902(a)(10)(E)(iv) of the Act in the State" to the sum of these amounts for all States. Because this formula requires an estimate of an unknown number, that is, the number of individuals who could be QIs (rather than the number of individuals who were QIs in a previous period), our use of the Census Bureau data in the formula represented a rough proxy to attain the statutory number. Actual expenditure data, however, revealed that the Census Bureau data yielded an inappropriate distribution of the total appropriated funds as evidenced by the fact that several States projected significant shortfalls in their allotments, while many other States projected a significant surplus by the end of the FY 2005. The Census Bureau data were not accurate for the purpose of projecting States' needs because the data could not take into consideration all variables that contribute to QI eligibility and enrollment, such as resource levels and the application process itself. While section 1933 of the Act requires the Secretary to estimate the allocation of the allotments among the States, it did not preclude a subsequent readjustment of that allocation, when it became clear that the data used for that estimate did not effectuate the statutory objective. The August 26, 2005 interim final rule published in the **Federal Register**, permitted in this specific circumstance a redistribution of surplus funds, as it was demonstrated that the States' projections and estimates resulted in an inequitable initial allocation for FY 2005, such that some States were granted an allocation in excess of their total projected need, while the allocation granted to other States proved insufficient to meet their projected QI expenditures.

In the August 26, 2005 interim final rule, we codified the methodology we have been using to approximate the statutory formula for determining State allotments. However, since certain States projected a deficit in their allotment before the end of FY 2005, the rule permitted FY 2005 funds to be reallocated from the surplus States to the need States. The regulation specified the methodology for computing the annual allotments, and for reallocating funds in this circumstance. The formula used to reallocate funds was intended to minimize the impact on States with FY QI allotments that might be greater than their QI expenditures for the FY, to equitably distribute the total needed amount among those surplus States, and to meet the immediate needs for those States projecting deficits. At the time of the publication of the August 26, 2005 interim final rule, the authorization for the QI benefit was scheduled to expire at the end of calendar year (CY) 2005, and no additional funds were appropriated for the QI benefit beyond September 30, 2005; therefore, the regulation specified a sunset at the end of CY 2005.

On October 20, 2005, the QI, TMA, and Abstinence Programs Extension and Hurricane Katrina Unemployment Relief Act of 2005 (Pub. L. 109–91) was enacted. Section 101 of Public Law 109–91 extended the QI program through September 30, 2007 with no change in the level of funding; that is, under this legislation $400 million per FY was appropriated for each of FY 2006 and FY 2007. The provisions of section 101 of Public Law 109–91 were effective as of September 30, 2005.

On October 16, 2006, we published a final rule in the **Federal Register** (71 FR 60663), which implemented the provisions of section 101 of Public Law 109–91 relating to the QI allotments for final FY 2006 allotments and preliminary FY 2007 allotments. As we stated in that final rule, we believe that the intent of the statute is to provide benefits to eligible persons up to the full amount of funds made available for the program in each FY. We recognized that because of the imprecise data for computing the States' QI allotments for a FY, some States would experience either surpluses or shortages in their FY 2006 and FY 2007 allotments. In accordance with § 433.10(c), the FY 2006 and FY 2007 QI allotments were designed to compensate for the imprecise data to permit shortage States to enroll more QIs than otherwise would have been possible.

Section 3 of the TMA, Abstinence Education, and QI Program Extension Act of 2007, Public Law 110–90 (enacted on September 29, 2007) provided $100 million and extended the QI program through December 31, 2007. Section 203 of the Medicare, Medicaid, and SCHIP Extension Act of 2007 (MMSEA) (Pub. L. 110–173, enacted on December 29, 2007) provided an additional $200 million and extended the QI program through June 30, 2008. Section 111 of the Medicare Improvements for Patients and Providers Act of 2008 (MIPPA) (Pub. L. 110–275) enacted on July 15, 2008, and section 2 of the QI Program Supplemental Funding Act of 2008 (the SFA) enacted on October 8, 2008, (Pub. L. 110–379), extended and provided additional funds for the QI program. As amended by MIPPA and the SFA, a total of $415 million was made available for the QI program for FY 2008, and $480 million was made available for the QI program for FY 2009. Additionally,

$150 million was provided for the QI program for the first quarter of FY 2010 (that is, October 1, 2009 through December 31, 2009).

However, the then-existing regulation at § 433.10(c)(5)(v) authorized the methodology for determining each State's QI allotment under the QI program only through FY 2007. Therefore, on November 24, 2008, we published an interim final rule with comment period entitled, "Medicaid Program; State Allotments for Payment of Medicare Part B Premiums for Qualifying Individuals: Federal Fiscal Year 2008 and Federal Fiscal Year 2009" (73 FR 70886). This rule revised paragraph § 433.10(c)(5)(ii) by changing the statutory reference "section 1933(c)(1)" to "section 1933(g)". It also revised paragraph (c)(5)(iii) introductory text, and paragraphs (c)(5)(iii)(D), and (c)(5)(v) to more generally refer to the period for which QI program funding is available under the statute, rather than referring to particular years.

C. Allotments for FY 2010 and Thereafter

Section 5005 of the American Recovery and Reinvestment Act of 2009 (the Recovery Act, Pub. L. 111–5, enacted on February 17, 2009) extended the QI program by providing $412.5 million in additional funds for the remaining three quarters of FY 2010 and $150 million in additional funds for the first quarter of 2011 (that is, through December 31, 2010). However, most recently, on January 27, 2010 the President signed into law the "Emergency Aid to American Survivors of the Haiti Earthquake Act", P.L. 111–127 (Haiti Earthquake Act); section 3 of this legislation amends section 1933(g)(2)(M) of the Act to make available $462.5 million for the last three quarters of FY 2010 (this replaces the $412.5 million provided under the Recovery Act for that period). Prior to enactment of the Haiti Earthquake Act, through the Recovery Act there was a total of $562.5 million available for States' QI allotments for FY 2010. With the enactment of the Haiti Earthquake Act, a total of $612.5 million is available for States' QI allotments for FY 2010. The Haiti Earthquake Act also amended section 1933(g)(2) of the Act to make $165 million available for the QI program for FY 2011 (this replaces the $150 million for FY 2011 previously provided under the Recovery Act).

The amounts of the final FY 2009 and preliminary FY 2010 QI allotments were determined in accordance with the methodology set forth in existing Medicaid regulations at § 433.10(c)(5), as amended in the **Federal Register** published on November 24, 2008 (73 FR 70893).

II. Charts

The Final QI Allotments for FY 2009 and the Preliminary QI Allotments for FY 2010 are shown by State in Chart 1 and Chart 2 below, respectively:

Chart 1—Final Qualifying Individuals Allotments for October 1, 2008 through September 30, 2009.

Chart 2—Preliminary Qualifying Individuals Allotments for October 1, 2009 through September 30, 2010.

The following describes the information contained in the columns of Chart 1 and Chart 2.

Column A—State. Column A shows the name of each State.

Columns B through D show the determination of an Initial QI Allotment for FY 2009 (Chart 1) or FY 2010 (Chart 2) for each State, based only on the indicated Census Bureau data.

Column B—Number of Individuals. Column B contains the estimated average number of Medicare beneficiaries for each State that are not covered by Medicaid whose family income is at least 120 percent but less than 135 percent of the poverty level. With respect to the final FY 2009 QI allotment (Chart 1), Column B contains the number of such individuals for the years 2005 through 2007, as obtained from the Census Bureau's Annual Social and Economic Supplement to the 2008 Current Population Survey. With respect to the preliminary FY 2010 QI allotment (Chart 2), Column B contains the number of such individuals for the years 2006 through 2008, as obtained from the Census Bureau's Annual Social and Economic Supplement to the 2009 Current Population Survey.

Column C—Percentage of Total. Column C provides the percentage of the total number of individuals for each State, that is, the Number of Individuals for the State in Column B divided by the sum total of the Number of Individuals for all States in Column B.

Column D—Initial QI Allotment. Column D contains each State's Initial QI Allotment for FY 2009 (Chart 1) or FY 2010 (Chart 2), calculated as the State's Percentage of Total in Column C multiplied by the total amount available nationally for QI allotments for the FY. The total amount available nationally for QI allotments each FY is $480,000,000 for FY 2009 (Chart 1) and $612,500,000 for FY 2010 (Chart 2).

Columns E through L show the determination of the States' Final QI Allotments for FY 2009 (Chart 1) or Preliminary QI Allotments for FY 2010 (Chart 2).

Column E—FY 2009 Estimated QI Expenditures. Column E contains the States' estimates of their total QI expenditures for FY 2009 (Chart 1) or FY 2010 (Chart 2) based on information obtained from States in the summer of 2009.

Column F—Need (Difference). Column F contains the additional amount of QI allotment needed for those States whose estimated expenditures in Column E exceeded their Initial QI allotments in Column D for FY 2009 (Chart 1) or for FY 2010 (Chart 2). For such States, Column F shows the amount in Column E minus the amount in Column D. For other "Non-Need" States, Column F shows "NA".

Column G—Percent of Total Need States. For States whose projected QI expenditures in Column E are greater than their initial QI allotment in Column D for FY 2009 (Chart 1) or FY 2010 (Chart 2), respectively, Column G shows the percentage of total need, determined as the amount for each Need State in Column F divided by the sum of the amounts for all States in Column F. For Non-Need States, the entry in Column G is "NA".

Column H—Reduction Pool for Non-Need States. "Column H shows the amount of the pool of surplus QI allotments for FY 2009 (Chart 1) or FY 2010 (Chart 2), respectively, for those States that project QI expenditures for the FY (in Column E) that are less than the initial QI allotments (in Column D) for the FY (referred to as non-need States). The amount in Column H is calculated as the amount in Column D minus the amount in Column E, representing the surplus of QI allotment funds for the indicated FYs. There will only be an amount shown in Column H for States whose projected QI expenditures in Column E are less than the initial QI allotment for the FY shown in Column D." For the States with a need, Column H shows "Need." The reduction pool of excess QI allotments is equal to the sum of the amounts in Column H.

Column I—Percent of Total Non-Need States. For States whose Projected QI Expenditures in Column E are less than their Initial QI Allotment in Column D for FY 2009 (Chart 1) or FY 2010 (Chart 2), Column I shows the percentage of the total reduction pool in Column H, determined as the amount for each Non-Need State in Column H divided by the sum of the amounts for all States in Column H. For Need States, the entry in Column I is "Need".

Column J—Reduction Adjustment for Non-Need States. Column J shows the amount of adjustment needed to reduce the Initial QI Allotments in Column D

for FY 2009 (Chart 1) or FY 2010 (Chart 2) for Non-Need States in order to address the total need shown in Column F. The amount in Column J is determined as the percentage in Column I for Non-Need States multiplied by the lesser of the total need in Column F (equal to the sum of Needs in Column F) or the total Reduction Pool in Column H (equal to the sum of the Non-Need amounts in Column H). For Need States, the entry in Column J is "Need".

Column K—Increase Adjustment for Need States. Column K shows the amount of adjustment to increase the Initial QI Allotment in Column D for FY 2009 (Chart 1) or FY 2010 (Chart 2) for Need States in order to address the total need shown for the FY in Column F. The amount in Column K is determined as the percentage in Column G for Need States multiplied by the lesser of the total need in Column F (equal to the sum of Needs in Column F) or the total Reduction Pool in Column H (equal to the sum of the Non-Need amounts in Column H). For Non-Need States, the entry in Column K is "NA".

Column L—Final FY 2009 QI Allotment (Chart 1) or Preliminary FY 2010 QI Allotment (Chart 2). Column L contains the Final QI Allotment for each State for FY 2009 (Chart 1) or the Preliminary QI Allotment for FY 2010 (Chart 2). For Need States, additional QI allotment amounts for the FY are based on the Estimated QI Expenditures in Column E as compared to their Initial QI allotments in Column D for the FY (States with a projected need amount are shown in Column F); and Column L is equal to the Initial QI Allotment in Column D for FY 2009 (Chart 1) or FY 2010 (Chart 2) plus the amount determined in Column K for Need States. For Non-Need States (States with a projected surplus in Column H), Column L is equal to the QI Allotment in Column D reduced by the Reduction Adjustment amount in Column J.

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CHART 1 - FINAL QUALIFYING INDIVIDUALS ALLOTMENTS FOR OCTOBER 1, 2008 THROUGH SEPTEMBER 30, 2009

STATE	Initial QI Allotments for FY 2009			FY 2009 Estimated QI Expenditures /1	Need (Difference)	Pct of Tot. Need States	Reduction Pool for Non-Need States	Pct of Tot. Non-Need States	Reduction Adj. For Non-Need States	Increase Adj. For Need States	Final FY 2009 QI Allotment /2
	Number of Individuals /3 (000s)	Percentage of Total Col B/Tot. Col B	Initial QI Allotment Col C x $480,000,000		If E>D, E-D	F/(Tot. of F)	If D >= E, D - E	H/(Tot. of H)	Col. I x $71,182,853	Col. G x $71,182,853	
A	B	C	D	E	F	G	H	I	J	K	L
Alabama	25	1.67%	$8,021,680	$17,290,330	$9,268,650	13.0209%	Need	Need	Need	$9,268,650	$17,290,330
Alaska	2	0.11%	$542,005	$107,872	NA	NA	$434,133	0.4069%	$289,619	NA	$252,387
Arizona	18	1.20%	$5,745,257	$12,804,867	$7,059,610	9.9176%	Need	Need	Need	$7,059,610	$12,804,867
Arkansas	21	1.42%	$6,829,268	$9,332,717	$2,503,449	3.5169%	Need	Need	Need	$2,503,449	$9,332,717
California	111	7.50%	$35,989,160	$21,885,625	NA	NA	$14,103,535	13.2177%	$9,408,738	NA	$26,580,422
Colorado	16	1.06%	$5,094,851	$3,234,612	NA	NA	$1,860,239	1.7434%	$1,241,001	NA	$3,853,850
Connecticut	18	1.24%	$5,962,060	$10,061,750	$4,099,690	5.7594%	Need	Need	Need	$4,099,690	$10,061,750
Delaware	4	0.27%	$1,300,813	$607,995	NA	NA	$692,818	0.6493%	$462,192	NA	$838,621
District of Columbia	3	0.20%	$975,610	$0	NA	NA	$975,610	0.9143%	$650,848	NA	$324,762
Florida	113	7.68%	$36,856,369	$39,484,737	$2,628,368	3.6924%	Need	Need	Need	$2,628,368	$39,484,737
Georgia	37	2.48%	$11,924,119	$22,603,852	$10,679,733	15.0032%	Need	Need	Need	$10,679,733	$22,603,852
Hawaii	3	0.23%	$1,084,011	$764,741	NA	NA	$319,270	0.2992%	$212,991	NA	$871,020
Idaho	6	0.41%	$1,951,220	$1,693,000	NA	NA	$258,220	0.2420%	$172,263	NA	$1,778,956
Illinois	68	4.61%	$22,113,821	$17,678,796	NA	NA	$4,435,025	4.1565%	$2,958,690	NA	$19,155,131
Indiana	37	2.51%	$12,032,520	$5,981,480	NA	NA	$6,051,040	5.6710%	$4,036,765	NA	$7,995,756
Iowa	15	1.02%	$4,878,049	$2,779,212	NA	NA	$2,098,837	1.9670%	$1,400,174	NA	$3,477,875
Kansas	13	0.90%	$4,336,043	$2,740,163	NA	NA	$1,595,880	1.4956%	$1,064,642	NA	$3,271,401
Kentucky	21	1.40%	$6,720,867	$10,574,941	$3,854,074	5.4143%	Need	Need	Need	$3,854,074	$10,574,941
Louisiana	16	1.08%	$5,203,252	$14,394,478	$9,191,226	12.9121%	Need	Need	Need	$9,191,226	$14,394,478
Maine	8	0.52%	$2,493,225	$3,491,512	$998,287	1.4024%	Need	Need	Need	$998,287	$3,491,512
Maryland	17	1.15%	$5,528,455	$4,447,800	NA	NA	$1,080,655	1.0128%	$720,926	NA	$4,807,529
Massachusetts	39	2.62%	$12,574,526	$9,380,106	NA	NA	$3,194,420	2.9938%	$2,131,059	NA	$10,443,467
Michigan	49	3.32%	$15,934,959	$10,195,553	NA	NA	$5,739,406	5.3789%	$3,828,868	NA	$12,106,092
Minnesota	23	1.54%	$7,371,274	$4,248,045	NA	NA	$3,123,229	2.9271%	$2,083,566	NA	$5,287,708
Mississippi	14	0.97%	$4,661,247	$10,418,310	$5,757,063	8.0877%	Need	Need	Need	$5,757,063	$10,418,310
Missouri	44	3.00%	$14,417,344	$4,845,739	NA	NA	$9,571,605	8.9704%	$6,385,401	NA	$8,031,943
Montana	7	0.47%	$2,276,423	$1,039,569	NA	NA	$1,236,854	1.1592%	$825,129	NA	$1,451,294
Nebraska	10	0.65%	$3,143,631	$2,711,636	NA	NA	$431,995	0.4049%	$288,192	NA	$2,855,439
Nevada	12	0.84%	$4,010,840	$2,690,831	NA	NA	$1,320,009	1.2371%	$880,603	NA	$3,130,237
New Hampshire	8	0.52%	$2,493,225	$1,301,882	NA	NA	$1,191,343	1.1165%	$794,768	NA	$1,698,457
New Jersey	31	2.08%	$9,972,900	$9,021,305	NA	NA	$951,595	0.8918%	$634,827	NA	$9,338,073
New Mexico	11	0.77%	$3,685,637	$2,997,076	NA	NA	$688,561	0.6453%	$459,352	NA	$3,226,285
New York	92	6.23%	$29,918,699	$35,846,404	$5,927,705	8.3274%	Need	Need	Need	$5,927,705	$35,846,404
North Carolina	53	3.59%	$17,235,772	$20,602,870	$3,367,098	4.7302%	Need	Need	Need	$3,367,098	$20,602,870
North Dakota	5	0.34%	$1,626,016	$532,899	NA	NA	$1,093,117	1.0245%	$729,239	NA	$896,777
Ohio	60	4.09%	$19,620,596	$17,153,038	NA	NA	$2,467,558	2.3126%	$1,646,155	NA	$17,974,441
Oklahoma	22	1.51%	$7,262,873	$7,397,158	$134,285	0.1886%	Need	Need	Need	$134,285	$7,397,158
Oregon	21	1.42%	$6,829,268	$8,716,833	$1,887,565	2.6517%	Need	Need	Need	$1,887,565	$8,716,833
Pennsylvania	82	5.58%	$26,775,068	$22,569,168	NA	NA	$4,205,900	3.9417%	$2,805,836	NA	$23,969,232
Rhode Island	4	0.27%	$1,300,813	$2,064,888	$764,075	1.0734%	Need	Need	Need	$764,075	$2,064,888
South Carolina	25	1.69%	$8,130,081	$6,349,675	NA	NA	$1,780,406	1.6686%	$1,187,743	NA	$6,942,338
South Dakota	3	0.23%	$1,084,011	$1,105,997	$21,986	0.0309%	Need	Need	Need	$21,986	$1,105,997
Tennessee	41	2.80%	$13,441,734	$14,468,676	$1,026,942	1.4427%	Need	Need	Need	$1,026,942	$14,468,676
Texas	124	8.42%	$40,433,604	$21,553,016	NA	NA	$18,880,588	17.6947%	$12,595,602	NA	$27,838,002
Utah	10	0.68%	$3,252,033	$1,450,242	NA	NA	$1,801,791	1.6886%	$1,202,009	NA	$2,050,024
Vermont	3	0.20%	$975,610	$2,988,658	$2,013,048	2.8280%	Need	Need	Need	$2,013,048	$2,988,658
Virginia	35	2.35%	$11,273,713	$6,532,257	NA	NA	$4,741,456	4.4436%	$3,163,116	NA	$8,110,597
Washington	27	1.81%	$8,672,087	$6,123,328	NA	NA	$2,548,759	2.3887%	$1,700,326	NA	$6,971,761
West Virginia	15	1.04%	$4,986,450	$4,499,181	NA	NA	$487,269	0.4567%	$325,066	NA	$4,661,383
Wisconsin	31	2.08%	$9,972,900	$3,109,272	NA	NA	$6,863,628	6.4325%	$4,578,857	NA	$5,394,042
Wyoming	3	0.23%	$1,084,011	$606,901	NA	NA	$477,110	0.4471%	$318,289	NA	$765,722
Total	1,476	100.00%	$480,000,000	$444,480,993	$71,182,853	100.0000%	$106,701,860	100.0000%	$71,182,853	$71,182,853	$480,000,000

Footnotes:

/1 FY 2009 Estimates from July 2009 CMS Survey of States

/2 For Need States, Final FY 2009 QI Allotment is equal to Initial QI Allotment in Column D increased by amount in Column K
For Non-Need States, Final FY 2009 QI Allotment is equal to Initial QI Allotment in Column D reduced by amount in Column J

/3 Three-year average (2005-2007) of number (000) of Medicare beneficiaries in State who are not enrolled in Medicaid but whose incomes are at least 120% but less than 135% of Federal poverty level
Source: Census Bureau Annual Social and Economic Supplement (ASEC) to the 2008 Current Population Survey (CPS)

CHART 2 - PRELIMINARY QUALIFYING INDIVIDUALS ALLOTMENTS FOR OCTOBER 1, 2009 THROUGH SEPTEMBER 30, 2010

STATE	Initial QI Allotments for FY 2010			FY 2010 Estimated QI Expenditures /1	Need (Difference)	Pct of Tot. Need States	Reduction Pool for Non-Need States	Pct of Tot. Non-Need States	Reduction Adj. For Non-Need States Col. I x	Increase Adj. For Need States Col. G x	Preliminary FY 2010 QI Allotment /2
	Number of Individuals /3 (000s)	Percentage of Total Col B/Tot. Col B	Initial QI Allotment Col C x $612,500,000		If E>D, E-D	F/(Tot. of F)	If D >= E, D - E	H/(Tot. of H)	$113,862,028	$113,862,028	
A	B	C	D	E	F	G	H	I	J	K	L
Alabama	30	2.07%	$12,707,469	$30,986,841	$18,279,372	16.0540%	Need	Need	Need	$18,279,372	$30,986,841
Alaska	2	0.14%	$847,165	$127,597	NA	NA	$719,568	0.5844%	$665,422	NA	$181,743
Arizona	16	1.11%	$6,777,317	$15,520,400	$8,743,083	7.6787%	Need	Need	Need	$8,743,083	$15,520,400
Arkansas	20	1.41%	$8,612,840	$12,420,041	$3,807,201	3.3437%	Need	Need	Need	$3,807,201	$12,420,041
California	104	7.19%	$44,052,559	$38,011,082	NA	NA	$6,041,477	4.9067%	$5,586,870	NA	$38,465,689
Colorado	16	1.08%	$6,636,123	$4,525,300	NA	NA	$2,110,823	1.7143%	$1,951,988	NA	$4,684,134
Connecticut	19	1.29%	$7,906,870	$12,250,834	$4,343,964	3.8151%	Need	Need	Need	$4,343,964	$12,250,834
Delaware	5	0.32%	$1,976,717	$2,062,242	$85,525	0.0751%	Need	Need	Need	$85,525	$2,062,242
District of Columbia	3	0.21%	$1,270,747	$0	NA	NA	$1,270,747	1.0321%	$1,175,126	NA	$95,621
Florida	119	8.21%	$50,265,099	$49,490,946	NA	NA	$774,153	0.6287%	$715,900	NA	$49,549,199
Georgia	31	2.17%	$13,272,245	$28,065,805	$14,793,560	12.9925%	Need	Need	Need	$14,793,560	$28,065,805
Hawaii	4	0.25%	$1,553,135	$1,095,035	NA	NA	$458,100	0.3721%	$423,629	NA	$1,129,506
Idaho	5	0.37%	$2,259,106	$2,075,576	NA	NA	$183,530	0.1491%	$169,719	NA	$2,089,386
Illinois	67	4.63%	$28,380,014	$21,852,360	NA	NA	$6,527,654	5.3016%	$6,036,463	NA	$22,343,551
Indiana	29	2.01%	$12,283,887	$6,903,519	NA	NA	$5,380,368	4.3698%	$4,975,507	NA	$7,308,379
Iowa	16	1.13%	$6,918,511	$3,816,120	NA	NA	$3,102,391	2.5197%	$2,868,943	NA	$4,049,568
Kansas	15	1.06%	$6,494,929	$3,354,592	NA	NA	$3,140,337	2.5505%	$2,904,034	NA	$3,590,895
Kentucky	24	1.68%	$10,307,169	$15,139,957	$4,832,788	4.2444%	Need	Need	Need	$4,832,788	$15,139,957
Louisiana	23	1.61%	$9,883,587	$16,682,646	$6,799,059	5.9713%	Need	Need	Need	$6,799,059	$16,682,646
Maine	6	0.41%	$2,541,494	$5,984,796	$3,443,302	3.0241%	Need	Need	Need	$3,443,302	$5,984,796
Maryland	15	1.01%	$6,212,540	$5,865,638	NA	NA	$346,902	0.2817%	$320,799	NA	$5,891,742
Massachusetts	37	2.54%	$15,531,351	$11,940,968	NA	NA	$3,590,383	2.9160%	$3,320,215	NA	$12,211,136
Michigan	46	3.16%	$19,343,592	$14,610,262	NA	NA	$4,733,330	3.8443%	$4,377,157	NA	$14,966,434
Minnesota	23	1.59%	$9,742,393	$5,146,238	NA	NA	$4,596,155	3.7329%	$4,250,305	NA	$5,492,088
Mississippi	15	1.01%	$6,212,540	$23,269,927	$17,057,387	14.9808%	Need	Need	Need	$17,057,387	$23,269,927
Missouri	32	2.24%	$13,695,828	$6,437,470	NA	NA	$7,258,358	5.8950%	$6,712,183	NA	$6,983,644
Montana	7	0.48%	$2,965,076	$1,579,764	NA	NA	$1,385,312	1.1251%	$1,281,071	NA	$1,684,006
Nebraska	9	0.62%	$3,812,241	$3,386,050	NA	NA	$426,191	0.3461%	$394,121	NA	$3,418,120
Nevada	8	0.55%	$3,388,658	$3,733,090	$344,432	0.3025%	Need	Need	Need	$344,432	$3,733,090
New Hampshire	7	0.46%	$2,823,882	$1,811,801	NA	NA	$1,012,081	0.8220%	$935,924	NA	$1,887,958
New Jersey	29	2.01%	$12,283,887	$11,220,822	NA	NA	$1,063,065	0.8634%	$983,071	NA	$11,300,815
New Mexico	12	0.85%	$5,224,182	$3,895,266	NA	NA	$1,328,916	1.0793%	$1,228,918	NA	$3,995,264
New York	92	6.36%	$38,969,571	$57,152,700	$18,183,129	15.9694%	Need	Need	Need	$18,183,129	$57,152,700
North Carolina	58	4.03%	$24,708,967	$25,503,029	$794,062	0.6974%	Need	Need	Need	$794,062	$25,503,029
North Dakota	3	0.23%	$1,411,941	$635,909	NA	NA	$776,032	0.6303%	$717,637	NA	$694,304
Ohio	70	4.84%	$29,650,761	$22,428,028	NA	NA	$7,222,733	5.8661%	$6,679,239	NA	$22,971,521
Oklahoma	18	1.22%	$7,483,287	$8,600,790	$1,117,503	0.9815%	Need	Need	Need	$1,117,503	$8,600,790
Oregon	18	1.24%	$7,624,481	$12,862,593	$5,238,112	4.6004%	Need	Need	Need	$5,238,112	$12,862,593
Pennsylvania	77	5.30%	$32,474,643	$26,281,443	NA	NA	$6,193,200	5.0299%	$5,727,176	NA	$26,747,467
Rhode Island	4	0.28%	$1,694,329	$2,336,193	$641,864	0.5637%	Need	Need	Need	$641,864	$2,336,193
South Carolina	23	1.61%	$9,883,587	$10,209,013	$325,426	0.2858%	Need	Need	Need	$325,426	$10,209,013
South Dakota	3	0.21%	$1,270,747	$1,410,340	$139,593	0.1226%	Need	Need	Need	$139,593	$1,410,340
Tennessee	34	2.35%	$14,401,798	$16,601,179	$2,199,381	1.9316%	Need	Need	Need	$2,199,381	$16,601,179
Texas	128	8.88%	$54,359,728	$23,150,246	NA	NA	$31,209,482	25.3474%	$28,861,041	NA	$25,498,686
Utah	9	0.65%	$3,953,435	$1,716,292	NA	NA	$2,237,143	1.8169%	$2,068,803	NA	$1,884,632
Vermont	3	0.18%	$1,129,553	$3,822,839	$2,693,286	2.3654%	Need	Need	Need	$2,693,286	$3,822,839
Virginia	34	2.33%	$14,260,604	$7,791,642	NA	NA	$6,468,962	5.2539%	$5,982,188	NA	$8,278,416
Washington	25	1.71%	$10,448,363	$7,415,935	NA	NA	$3,032,428	2.4628%	$2,804,245	NA	$7,644,118
West Virginia	15	1.06%	$6,494,929	$5,422,963	NA	NA	$1,071,966	0.8706%	$991,303	NA	$5,503,626
Wisconsin	35	2.40%	$14,684,186	$5,712,295	NA	NA	$8,971,891	7.2867%	$8,296,777	NA	$6,387,409
Wyoming	3	0.23%	$1,411,941	$918,562	NA	NA	$493,379	0.4007%	$456,253	NA	$955,688
Total	1,446	100.00%	$612,500,000	$603,234,976	$113,862,028	100.0000%	$123,127,052	100.0000%	$113,862,028	$113,862,028	$612,500,000

Footnotes:

/1 FY 2010 Estimates from July 2009 CMS Survey of States

/2 For Need States, Final FY 2010 QI Allotment is equal to Initial QI Allotment in Column D increased by amount in Column K

For Non-Need States, Final FY 2010 QI Allotment is equal to Initial QI Allotment in Column D reduced by amount in Column J

/3 Three-year average (2006-2008) of number (000) of Medicare beneficiaries in State who are not enrolled in Medicaid but whose incomes are at least 120% but less than 135% of Federal poverty level

Source: Census Bureau Annual Social and Economic Supplement (ASEC) to the 2009 Current Population Survey (CPS)

BILLING CODE 4120–01–C

III. Waiver of Notice With Comment and 30-Day Delay in Effective Date

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** and invite public comment on a proposed rule. The notice of proposed rulemaking includes a reference to the legal authority under which the rule is proposed, and the terms and substances of the proposed rule or a description of the subjects and issues involved. This procedure can be waived, however, if an agency finds good cause that a notice-and-comment procedure is impracticable, unnecessary, or contrary to the public interest and incorporates a statement of the finding and its reasons in the rule issued. In addition, we also normally provide a delay of 30 days in the effective date. However, if adherence to this procedure would be impractical, unnecessary, or contrary to public interest, we may waive the delay in the effective date in accordance with the Administrative Procedure Act (5 U.S.C. 551 *et seq.*).

We are publishing this notice without a comment period or delay in effective date because of the need to notify individual States of the limitations on Federal funds for their Medicaid expenditures for payment of Medicare Part B premiums for qualifying individuals. Some States have experienced deficits in their current allotments that have caused them to deny benefits to eligible applicants, while other States project a surplus in their allotments. This notice adjusts the allocation of Federal funds, which will reduce the impact of States denying coverage to eligible QIs when there is sufficient funding to cover all or some of these individuals. Because access to Medicare Part B coverage for QIs, who without this coverage would have difficulty paying for needed health care, is critically important, we believe that it is in the public interest to waive the usual notice and comment procedure which we undertake before making a rule final. Moreover, we are not making any changes to the process we use for allocating allotments. We are simply implementing a process already set forth in regulations. For these reasons, we also believe a notice and comment process would be unnecessary.

Therefore, for the reasons discussed above, we find that good cause exists to dispense with the normal requirement that a regulation cannot become effective any earlier than 30 days after its publication. States that will have access to additional funds for QIs need to know that these funds are available as soon as possible. While we believe the surplus States that will have diminished amounts available for this FY will have sufficient funds for enrolling all potential QIs in their States, they also need to know as soon as possible that a certain amount of their unused allocation will no longer be available to them for this FY.

IV. Collection of Information Requirements

This notice does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 35).

V. Regulatory Impact Statement

We have examined the impact of this notice as required by Executive Order 12866 on Regulatory Planning and Review, the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, section 202 of the Unfunded Mandates Reform Act of 1995 (March 22, 1995; Pub. L. 104–4), Executive Order 13132 on Federalism (August 4, 1999) and the Congressional Review Act (5 U.S.C. 804(2)).

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year). This notice does not reach the economic threshold and thus is not considered a major rule.

The RFA requires agencies to analyze options for regulatory relief for small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $7 million to $34.5 million in any 1 year. Individuals and States are not included in the definition of a small entity.

This notice codifies our procedures for implementing provisions of the Balanced Budget Act of 1997 to allocate, among the States, Federal funds to provide Medicaid payment for Medicare Part B premiums for low-income Medicare beneficiaries. The total amount of Federal funds available during a Federal FY and the formula for determining individual State allotments are specified in the law. We have applied the statutory formula for the State allotments. Because the data specified in the law were not initially available, we used comparable data from the U.S. Census Bureau on the number of possible qualifying individuals in the States. This notice also permits, in a specific circumstance, reallocation of funds to enable enrollment of all eligible individuals to the extent of the available funding.

We believe that the statutory provisions implemented in this notice will have a positive effect on States and individuals. Federal funding at the 100 percent matching rate is available for Medicare cost-sharing for Medicare Part B premium payments for qualifying individuals. Also, as a result of the reallocation of State allotments, a greater number of low-income Medicare beneficiaries will be eligible to have their Medicare Part B premiums paid under Medicaid. The changes in allotments will not result in fewer individuals receiving the QI benefit in any State. The FY 2009 and FY 2010 costs for this provision have been included in the Mid-session Review of the FY 2010 President's Budget.

Section 1102(b) of the Social Security Act (the Act) requires us to prepare a regulatory impact analysis for any rule that may have a significant impact on the operations of a substantial number of small rural hospitals. The analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a metropolitan statistical area and has fewer than 100 beds. We are not preparing analyses for either the RFA or section 1102(b) of the Act because we have determined and certify that this notice will not have a significant economic impact on a substantial number of small entities or a significant impact on the operations of a substantial number of small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4) also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of $100 million in 1995 dollars, updated annually for inflation. In 2010, that threshold is approximately $135 million. This notice will have no consequential effect on the governments mentioned or on the private sector.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a rule

that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has federalism implications. Since this regulation does not impose any costs on State or local governments, the requirements of Executive Order 13132 are not applicable.

In accordance with the provisions of Executive Order 12866, this notice was reviewed by the Office of Management and Budget.

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program)

Dated: December 17, 2009.

Charlene Frizzera,

Acting Administrator, Centers for Medicare & Medicaid Services.

Approved: January 22, 2010.

Kathleen Sebelius,

Secretary.

[FR Doc. 2010–8498 Filed 4–13–10; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–1343–NC]

Medicare and Medicaid Programs; Announcement of an Application From a Hospital Requesting Waiver for Organ Procurement Service Area

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice with comment period.

SUMMARY: A hospital has requested a waiver of statutory requirements that would otherwise require the hospital to enter into an agreement with its designated Organ Procurement Organization (OPO). The request was made in accordance with section 1138(a)(2) of the Social Security Act (the Act). This notice requests comments from OPOs and the general public for our consideration in determining whether we should grant the requested waiver.

DATES: *Comment Date:* To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on June 22, 2010.

ADDRESSES: In commenting, please refer to file code CMS–1343–NC. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of four ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this regulation to *http://www.regulations.gov.* Follow the instructions under the "More Search Options" tab.

2. *By regular mail.* You may mail written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–1343–NC, P.O. Box 8010, Baltimore, MD 21244–1850.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–1343–NC, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

4. *By hand or courier.* If you prefer, you may deliver (by hand or courier) your written comments before the close of the comment period to either of the following addresses: a. For delivery in Washington, DC—Centers for Medicare & Medicaid Services, Department of Health and Human Services, Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

(Because access to the interior of the Hubert H. Humphrey Building is not readily available to persons without Federal government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

b. For delivery in Baltimore, MD—Centers for Medicare & Medicaid Services, Department of Health and Human Services, 7500 Security Boulevard, Baltimore, MD 21244–1850.

If you intend to deliver your comments to the Baltimore address, please call telephone number (410) 786–9994 in advance to schedule your arrival with one of our staff members.

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

For information on viewing public comments, *see* the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Mark A. Horney, (410) 786–4554.

SUPPLEMENTARY INFORMATION: *Inspection of Public Comments:* All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following Web site as soon as possible after they have been received: *http://www.regulations.gov.* Follow the search instructions on that Web site to view public comments.

Comments received timely will also be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone 1–800–743–3951.

I. Background

Organ Procurement Organizations (OPOs) are not-for-profit organizations that are responsible for the procurement, preservation, and transport of transplantable organs to transplant centers throughout the country. Qualified OPOs are designated by the Centers for Medicare & Medicaid Services (CMS) to recover or procure organs in CMS-defined exclusive geographic service areas, pursuant to section 371(b)(1) of the Public Health Service Act (42 U.S.C. 273(b)(1) and our regulations at 42 CFR 486.306. Once an OPO has been designated for an area, hospitals in that area that participate in Medicare and Medicaid are required to work with that OPO in providing organs for transplant, pursuant to section 1138(a)(1)(C) of the Social Security Act (the Act) and our regulations at 42 CFR 482.45.

Section 1138(a)(1)(A)(iii) of the Act provides that a hospital must notify the designated OPO (for the service area in which it is located) of potential organ donors. Under section 1138(a)(1)(C) of the Act, every participating hospital must have an agreement to identify potential donors only with its designated OPO.

However, section 1138(a)(2)(A) of the Act provides that a hospital may obtain a waiver of the above requirements from the Secretary under certain specified conditions. A waiver allows the hospital to have an agreement with an OPO other than the one initially designated by CMS, if the hospital meets certain conditions specified in section 1138(a)(2)(A) of the Act. In addition, the Secretary may review additional criteria described in section 1138(a)(2)(B) of the

Act to evaluate the hospital's request for a waiver.

Section 1138(a)(2)(A) of the Act states that in granting a waiver, the Secretary must determine that the waiver—(1) Is expected to increase organ donations; and (2) will ensure equitable treatment of patients referred for transplants within the service area served by the designated OPO and within the service area served by the OPO with which the hospital seeks to enter into an agreement under the waiver. In making a waiver determination, section 1138(a)(2)(B) of the Act provides that the Secretary may consider, among other factors: (1) Cost-effectiveness; (2) improvements in quality; (3) whether there has been any change in a hospital's designated OPO due to the changes made in definitions for metropolitan statistical areas; and (4) the length and continuity of a hospital's relationship with an OPO other than the hospital's designated OPO. Under section 1138(a)(2)(D) of the Act, the Secretary is required to publish a notice of any waiver application received from a hospital within 30 days of receiving the application, and to offer interested parties an opportunity to comment in writing during the 60-day period beginning on the publication date in the **Federal Register.**

The criteria that the Secretary uses to evaluate the waiver in these cases are the same as those described above under sections 1138(a)(2)(A) and (B) of the Act and have been incorporated into the regulations at § 486.308(e) and (f).

II. Waiver Request Procedures

In October 1995, we issued a Program Memorandum (Transmittal No. A–95–11) detailing the waiver process and discussing the information hospitals must provide in requesting a waiver. We indicated that upon receipt of a waiver request, we would publish a **Federal Register** notice to solicit public comments, as required by section 1138(a)(2)(D) of the Act.

According to these requirements, we will review the request and comments received. During the review process, we may consult on an as-needed basis with the Health Resources and Services Administration's Division of Transplantation, the United Network for Organ Sharing, and our regional offices. If necessary, we may request additional clarifying information from the applying hospital or others. We will then make a final determination on the waiver request and notify the hospital and the designated and requested OPOs.

III. Hospital Waiver Requests

As permitted by § 486.308(e), the following hospital has requested a waiver in order to enter into an agreement with an OPO other than the OPO designated for the service area in which the hospital is located:

Jennie Stuart Medical Center (Medicare provider number 18–0051) of Hopkinsville, Kentucky, is requesting a waiver to work with: Kentucky Organ Donor Affiliates, 106 E. Broadway, Louisville, Kentucky 40202.

The Hospital's Designated OPO is: Tennessee Donor Services, 7015 Middlebrook Pike, Knoxville, Tennessee 37909.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; Program No. 93.774, Medicare—Supplementary Medical Insurance, and Program No. 93.778, Medical Assistance Program)

Dated: April 15, 2010.

Charlene Frizzera,

Acting Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 2010–9504 Filed 4–22–10; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Subcommittee for Dose Reconstruction Reviews (SDRR), Advisory Board on Radiation and Worker Health (ABRWH), National Institute for Occupational Safety and Health (NIOSH)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC), announces the following meeting for the aforementioned subcommittee:

Time and Date: 3 p.m.–5 p.m., May 10, 2010.

Teleconference: Audio Conference Call via FTS Conferencing. The USA toll free dial in number is 1–866–659–0537 with a pass code of 9933701.

Status: Open to the public, but without a public comment period.

Background: The Advisory Board was established under the Energy Employees Occupational Illness Compensation Program Act of 2000 to advise the President on a variety of policy and technical functions required to implement and effectively manage the new compensation program. Key functions of the Advisory Board include providing advice on the development of probability of causation guidelines that have been promulgated by the Department of Health and Human Services (HHS) as a final rule; advice on methods of dose reconstruction which have also been promulgated by HHS as a final rule; advice on the scientific validity and quality of dose estimation and reconstruction efforts being performed for purposes of the compensation program; and advice on petitions to add classes of workers to the Special Exposure Cohort (SEC).

In December 2000, the President delegated responsibility for funding, staffing, and operating the Advisory Board to HHS, which subsequently delegated this authority to CDC. NIOSH implements this responsibility for CDC. The charter was issued on August 3, 2001, renewed at appropriate intervals, and will expire on August 3, 2011.

Purpose: The Advisory Board is charged with (a) Providing advice to the Secretary, HHS, on the development of guidelines under Executive Order 13179; (b) providing advice to the Secretary, HHS, on the scientific validity and quality of dose reconstruction efforts performed for this program; and (c) upon request by the Secretary, HHS, advise the Secretary on whether there is a class of employees at any Department of Energy facility who were exposed to radiation but for whom it is not feasible to estimate their radiation dose, and on whether there is reasonable likelihood that such radiation doses may have endangered the health of members of this class. The Subcommittee for Dose Reconstruction Reviews was established to aid the Advisory Board in carrying out its duty to advise the Secretary, HHS, on dose reconstruction.

Matters to be Discussed: The agenda for the Subcommittee meeting includes: selection of individual radiation dose reconstruction cases to be considered for review by the Advisory Board.

The agenda is subject to change as priorities dictate.

In the event an individual cannot attend, written comments may be submitted. Any written comments received will be provided at the meeting and should be submitted to the contact person below well in advance of the meeting.

Contact Person for More Information: Theodore Katz, Executive Secretary, NIOSH, CDC, 1600 Clifton Road, Mailstop E–20, Atlanta GA 30333, Telephone (513) 533–6800, Toll Free 1 (800)CDC–INFO, E-mail *ocas@cdc.gov.*

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of

meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: April 19, 2010.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2010–9523 Filed 4–22–10; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Developing Novel Diagnostic Tests To Improve Surveillance for Antimicrobial Resistant Pathogens, Funding Opportunity Announcement (FOA) CI10–002; Initial Review

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the aforementioned meeting:

Time and Date: 8 a.m.–5 p.m., May 18, 2010 (Closed).

Place: Sheraton Gateway Hotel Atlanta Airport, 1900 Clifton Road, Atlanta, GA 30337, Telephone: (770) 979–1100.

Status: The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters to be Discussed: The meeting will include the initial review, discussion, and evaluation of applications received in response to "Developing Novel Diagnostic Tests to Improve Surveillance for Antimicrobial Resistant Pathogens, FOA CI10–002."

Contact Person for More Information: Gregory Anderson, M.S., M.P.H., Scientific Review Officer, CDC, 1600 Clifton Road, NE., Mailstop E60, Atlanta, GA 30333, Telephone: (404) 498–2293.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: April 19, 2010.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2010–9519 Filed 4–22–10; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel; Clinical and Pediatric Loan Repayment Research Review.

Date: May 13, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: NIEHS/National Institutes of Health, Keystone, 530 Davis Drive, Research Triangle Park, NC 27709, (Virtual Meeting).

Contact Person: Leroy Worth, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research and Training, Nat. Institute of Environmental Health Sciences, P.O. Box 12233, MD EC–30/Room 3171, Research Triangle Park, NC 27709, (919) 541–0670, *worth@niehs.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: April 16, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–9454 Filed 4–22–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Notice of Meeting; National Commission on Children and Disasters

AGENCY: Administration for Children and Families, Department of Health and Human Services.

ACTION: Notice of meeting.

DATES: The meeting will be held on Tuesday, May 11, 2010, from 10:30 a.m. to 3:30 p.m.

ADDRESSES: The meeting will be held at the Administration for Children and Families, 901 D Street, SW., Washington, DC 20024. To attend either in person or via teleconference, please register by 5 p.m. Eastern Time, May 5, 2010. To register, please e-mail *jacqueline.haye@acf.hhs.gov* with "Meeting Registration" in the subject line, or call (202) 205–9560. Registration must include your name, affiliation, and phone number. If you require a sign language interpreter or other special assistance, please call Jacqueline Haye at (202) 205–9560 or e-mail *jacqueline.haye@acf.hhs.gov* as soon as possible and no later than 5 p.m. Eastern Time, April 27, 2010.

Agenda: The Commission will discuss: (1) Ad-hoc progress report on recommendations; (2) reports of Subcommittees; and (3) report on field visit to Florida. Written comments may be submitted electronically to *roberta.lavin@acf.hhs.gov* with "Public Comment" in the subject line. The Commission recommends that you include your name, mailing address and an e-mail address or other contact information in the body of your comment. This ensures that you can be identified as the submitter of the comment, and it allows the Commission to contact you if further information on the substance of the comment is needed or if your comment cannot be read due to technical difficulties. The Commission's policy is that the Commission will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment placed in the official record.

The Commission will provide an opportunity for public comments during the public meeting on May 11, 2010. Those wishing to speak will be limited to three minutes each; speakers are encouraged to submit their remarks in writing in advance to ensure their comment is received in case there is

inadequate time for all comments to be heard on May 11, 2010.

Additional Information: Contact Roberta Lavin, Office of Human Services Emergency Preparedness and Response, e-mail *roberta.lavin@acf.hhs.gov* or (202) 401–9306.

SUPPLEMENTARY INFORMATION: The National Commission on Children and Disasters is an independent Commission that shall conduct a comprehensive study to examine and assess the needs of children as they relate to preparation for, response to, and recovery from all hazards, building upon the evaluations of other entities and avoiding unnecessary duplication by reviewing the findings, conclusions, and recommendations of these entities. The Commission shall then submit a report to the President and the Congress on the Commission's independent and specific findings, conclusions, and recommendations to address the needs of children as they relate to preparation for, response to, and recovery from all hazards, including major disasters and emergencies.

Dated: April 16, 2010.

Carmen R. Nazario,

Assistant Secretary for Children and Families.

[FR Doc. 2010–9433 Filed 4–22–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Form I–687; Extension of an Existing Information Collection; Comment Request

ACTION: 60-Day Notice of Information Collection Under Review; Form I–687, Application for Status as Temporary Resident under Section 245A of the Immigration and Nationality Act; OMB Control No. 1615–0090.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until June 22, 2010.

During this 60-day period, USCIS will be evaluating whether to revise the Form I–687. Should USCIS decide to revise Form I–687 we will advise the public when we publish the 30-day notice in the **Federal Register** in accordance with the Paperwork Reduction Act. The public will then have 30 days to comment on any revisions to the Form I–687.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), USCIS, Chief, Regulatory Products Division, 111 Massachusetts Avenue, NW., Washington, DC 20529–2210. Comments may also be submitted to DHS via facsimile to 202–272–8352 or via e-mail at *rfs.regs@dhs.gov*. When submitting comments by e-mail, please make sure to add OMB Control No. 1615–0090 in the subject box. Written comments and suggestions from the public and affected agencies concerning the collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of this Information Collection:

(1) *Type of Information Collection:* Extension of an existing information collection.

(2) *Title of the Form/Collection:* Application for Status as Temporary Resident under Section 245A of the Immigration and Nationality Act.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–687; U.S. Citizenship and Immigration Services (USCIS).

(4) Affected public who will be asked or required to respond, as well as a brief abstract: *Primary:* Individuals or households. The collection of information on Form I–687 is required to verify the applicant's eligibility for temporary status, and if the applicant is deemed eligible, to grant him or her the benefit sought.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 100,000 responses at 1 hour and 10 minutes (1.16 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 116,000 annual burden hours.

If you need a copy of the information collection instrument, please visit the Web site at: *http://www.regulations.gov/*.

We may also be contacted at: USCIS, Regulatory Products Division, 111 Massachusetts Avenue, NW., Washington, DC 20529–2210, Telephone number 202–272–8377.

Dated: April 20, 2010.

Sunday Aigbe,

Chief, Regulatory Products Division, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2010–9466 Filed 4–22–10; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5375–N–15]

Federal Property Suitable as Facilities To Assist the Homeless

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

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

DATES: *Effective Date: April 23, 2010.*

FOR FURTHER INFORMATION CONTACT: Kathy Ezzell, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 7262, Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis,

identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: April 15, 2010.

Mark R. Johnston,

Deputy Assistant Secretary for Special Needs.

[FR Doc. 2010–9136 Filed 4–22–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection for 1029–0087

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing its intention to request renewed approval for the collection of information for 30 CFR 886—State and Tribal Reclamation Grants, and its accompanying form, OSM–76, Abandoned Mine Land Problem Area Description form.

The collection described below has been forwarded to the Office of Management and Budget (OMB) for review and approval. The information collection request describes the nature of the information collection and the expected burden and cost.

DATES: OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, public comments should be submitted to OMB by May 24, 2010, in order to be assured of consideration.

ADDRESSES: Comments may be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget, Department of the Interior Desk Officer, via e-mail at *OIRA_Docket@omb.eop.gov,* or by facsimile to (202) 395–5806. Also, please send a copy of your comments to John Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave., NW., Room 202–SIB, Washington, DC 20240, or electronically to *jtrelease@osmre.gov.* Please reference 1029–0087 in your correspondence.

FOR FURTHER INFORMATION CONTACT: To receive a copy of the information collection request contact John A. Trelease at (202) 208–2783, or electronically at *jtrelease@osmre.gov.*

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities [*see* 5 CFR 1320.8(d)]. OSM has submitted requests to OMB to approve the collections of information for 30 CFR 886, State and Tribal Reclamation Grants, and its accompanying form, OSM–76, Abandoned Mine Land Problem Area Description form. OSM is requesting a 3-year term of approval for this information collection activity.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for this collection of information is displayed on the form OSM–76 (1029–0087).

As required under 5 CFR 1320.8(d), a **Federal Register** notice soliciting comments on these collections of information was published on November 24, 2009 (74 FR 61363). No comments were received. This notice provides the public with an additional 30 days in which to comment on the following information collection activity:

Title: 30 CFR 886—State and Tribal Reclamation Grants and Form OSM–76.

Bureau Form: OSM–76—The Abandoned Mine Land Problem Area Description Form.

OMB Control Number: 1029–0087.

Summary: The regulation at 886.23(b) and its implementing form OSM–76 will be used to update the Office of Surface Mining Reclamation and Enforcement's inventory of abandoned mine lands. From this inventory, the most serious problem areas are selected for reclamation through the apportionment of funds to States and Indian tribes.

Frequency of Collection: On occasion.

Description of Respondents: State governments and Indian tribes.

Total Annual Responses: 1,350.

Total Annual Burden Hours: 4,800.

Send comments on the agency need for the collection of information to perform its mission; the accuracy of our burden estimates; ways to enhance the quality, utility and clarity of the information collection; and ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information, to the offices listed in the Addresses section. Please refer to OMB control number 1029–0087 in all correspondence.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: April 19, 2010.

John A. Trelease,

Acting Chief, Division of Regulatory Support.

[FR Doc. 2010–9471 Filed 4–22–10; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Millerton Lake Resource Management Plan/General Plan (RMP/GP), Madera and Fresno Counties, CA

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of availability of the Final Environmental Impact Statement, Environmental Impact Report (EIS/EIR).

SUMMARY: The Bureau of Reclamation (Reclamation), as the National Environmental Policy Act Federal lead agency, and the California Department of Parks & Recreation (CDPR), as the California Environmental Quality Act (CEQA) State lead agency, have prepared a Final EIS/EIR for the Millerton Lake RMP/GP. The RMP/GP involves alternatives for future use of the project area for recreation and resource protection and management.

A Notice of Availability of the Draft EIS/EIR was published in the **Federal Register** on July 25, 2008 (73 FR 43473). The formal comment period on the Draft EIS/EIR ended on September 23, 2008. The Final EIS/EIR contains responses to all comments received and reflects comments and any additional information received during the review period.

DATES: Reclamation will not make a decision on the proposed action until at least 30 days after release of the Final EIS/EIR. After the 30-day waiting period, Reclamation will complete a Record of Decision (ROD). The ROD will state the action that will be

implemented and will discuss all factors leading to the decision.

The California State Parks and Recreation Commission Hearing on the Final RMP/GP EIS/EIR will be held on May 12, 2010. A Notice of Determination will be filed after the Commission Hearing. This action will trigger a 30-day appeal period under CEQA.

ADDRESSES: Send requests for a compact disc copy of the Final EIS/EIR to Mr. Jack Collins, Bureau of Reclamation, 1243 N Street, Fresno, CA 93721.

Copies of the Final RMP/EIS will be available at: *http://www.usbr.gov/mp/nepa/nepa_projdetails.cfm?Project_ID=546. See* the **SUPPLEMENTARY INFORMATION** section for locations where copies of the Final EIS/EIR are available.

FOR FURTHER INFORMATION CONTACT: Mr. Jack Collins, Bureau of Reclamation, Monday through Friday, 7 a.m. to 1 p.m., at (559) 349–4544 (TDD (559) 487–5933) or *jwcollins@usbr.gov.*

SUPPLEMENTARY INFORMATION: The Millerton Lake Final EIS/EIR evaluates the existing resource management of Millerton Lake. *The project purpose consists of:* (1) Identifying the current and most appropriate future uses of land and water resources within the Plan Area; (2) identifying the long-term resource programs and implementation guidelines to manage and develop recreation, natural, and cultural resources; and (3) developing strategies and approaches to protect and preserve the natural, recreational, aesthetic, and cultural resources.

Millerton Lake is an existing reservoir formed by Friant Dam, and located in Fresno and Madera Counties, CA. The Dam, which regulates the normal flow of the San Joaquin River and stores floodwaters for irrigation diversion into the Friant-Kern and Madera Canals, was completed in 1947. Millerton Lake has a storage capacity of 520,500 acre-feet and a surface area of 4,900 acres. Through agreements with Reclamation and the California Department of Fish and Game, the CDPR manages the entire Plan Area.

The most recent General Plan for the Plan Area was completed by CDPR in 1983, and projected recreation trends and deficiencies through 1990. Since the adoption of this plan, several changes to the physical and regulatory environment have resulted in the need for an updated plan. The new joint RMP/GP will have a planning horizon through the year 2035.

The new plan will: (1) Enhance natural resources and recreational opportunities without interrupting reservoir operations; (2) provide recreational opportunities to meet the demands of a growing population with diverse interests; (3) ensure diversity of recreational opportunities and quality of the recreational experience; (4) protect natural, cultural, and recreational sources while providing resource education opportunities and stewardship; and (5) provide updated management for establishing a new management agreement with the State of California.

The Final EIS/EIR contains a program-level analysis of the potential impacts associated with adoption of the RMP/GP. The Final EIS/EIR outlines the formulation and evaluation of alternatives designed to address issues through a representation of the varied interests in the Plan Area and identifies Alternative 2 (Enhancement) as the preferred Alternative. The RMP/GP is intended to be predominately self-mitigating through implementation of management actions and strategies, but also includes mitigation measures to reduce potential adverse effects.

The Final EIS/EIR has been developed within the authorities provided by Congress through the Reclamation Recreation Management Act of 1992 (Pub. L. 102–575, Title 28, 16 U.S.C. 460l–31) and other applicable agency and the U.S. Department of the Interior policies.

Copies of the Final EIS/EIR are available at the following locations:

- Bureau of Reclamation, Mid-Pacific Region, Regional Library, 2800 Cottage Way, Sacramento, CA 95825.
- Bureau of Reclamation, South-Central California Area Office, 1243 N Street, Fresno, CA 93721.
- Millerton Lake State Recreational Area, 5290 Millerton Road, Friant, CA 93626.
- Fresno County Public Library, Central Location, 2420 Mariposa, Fresno, CA 93721.
- Madera County Public Library, Headquarters, 121 North G Street, Madera, CA 93637.
- Bureau of Reclamation, Denver Office Library, Building 67, Room 167, Denver Federal Center, 6th and Kipling, Denver, CO 80225.
- Natural Resources Library, U.S. Department of the Interior, 1849 C Street, NW., Main Interior Building, Washington, DC 20240–0001.

Public Disclosure

Before including your name, address, phone number, e-mail address, or other personal identifying information in any correspondence, you should be aware that your entire correspondence—including your personal identifying information—may be made publicly available at any time. While you can ask us in your correspondence to withhold your personal identifying information from public view, we cannot guarantee that we will be able to do so.

Dated: March 18, 2010.

Pablo R. Arroyave,

Deputy Regional Director, Mid-Pacific Regional Office.

[FR Doc. 2010–9428 Filed 4–22–10; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLUT01000–09–L51010000–ER0000–24–1A00]

Notice of Availability of the Final Environmental Impact Statement for the Mona to Oquirrh Transmission Corridor Project, Utah, and the Proposed Pony Express Resource Management 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 (FLPMA) of 1976, as amended, the Bureau of Land Management (BLM) has prepared a Final Environmental Impact Statement (EIS)/Proposed Resource Management Plan Amendment (RMPA) for the Mona to Oquirrh Transmission Corridor Project and by this notice is announcing its availability.

DATES: The BLM planning regulations at 43 CFR 1610.5–2 state that any person who meets the conditions described there may protest the BLM's Proposed RMPA. Such protest must be filed within 30 days of the date that the Environmental Protection Agency publishes its notice of availability of this Final EIS in the **Federal Register.**

ADDRESSES: Copies of the Final EIS/Proposed RMPA for the Mona to Oquirrh Transmission Corridor Project have been sent to affected Federal, State, and local government agencies and to other stakeholders. Copies are available for public inspection at the BLM's West Desert District Salt Lake Field Office, 2370 South 2300 West, Salt Lake City, Utah 84119 and the Fillmore Field Office, 35 East 500 North, Fillmore, Utah 84631. Interested persons may also review the Final EIS/Proposed RMPA at the following Web site: *http://www.blm.gov/ut/st/en/fo/salt_lake/planning/mona_to_oquirrh_*

transmission.html. All protests must be in writing and mailed to one of the following addresses:

Regular Mail: BLM Director (210), Attention: Brenda Williams, P.O. Box 66538, Washington, DC 20035.

Overnight Mail: BLM Director (210), Attention: Brenda Williams, 1620 L Street, NW., Suite 1075, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: For further information contact Cindy Ledbetter, Environmental Specialist, telephone (801) 977–4300; address 2370 South 2300 West, Salt Lake City, Utah 84119; e-mail *UT_M2OTL_EIS@blm.gov*.

SUPPLEMENTARY INFORMATION: Rocky Mountain Power (a division of PacifiCorp) proposes to construct, operate, and maintain a 69-mile long single-circuit 500 kilovolt (kV) transmission line from the existing Mona Substation near Mona, Utah, to a proposed Mona Annex Substation. The 500kV line would then continue on to the proposed Limber Substation to be located in Tooele Valley, Utah. Two proposed double-circuit 345kV lines would connect the proposed Limber Substation to the Salt Lake Valley. One line would extend 31 miles to the existing Oquirrh Substation in West Jordan, Utah, and the second line would extend 45 miles to the existing Terminal Substation in Salt Lake City, Utah. Portions of the proposed project would cross lands administered by the BLM West Desert District's Salt Lake Field Office and Fillmore Field Office. In order to grant a major right-of-way, an amendment to the Pony Express Resource Management Plan (RMP) would be required in accordance with FLPMA. Comments on the Draft RMPA/Draft EIS, received from the public and internal BLM review, were considered and incorporated as appropriate into the proposed plan amendment.

Instructions for filing a protest with the Director of the BLM regarding the Proposed RMPA may be found in the "Dear Reader Letter" of the Final EIS/Proposed RMPA and at 43 CFR 1610.5–2. E-mail and faxed protests will not be accepted as valid protests unless the protesting party also provides the original letter by either regular or overnight mail postmarked by the close of the protest period. Under these conditions, the BLM will consider the e-mail or faxed protest as an advance copy and it will receive full consideration. If you wish to provide the BLM with such advance notification, please direct faxed protests to the attention of the BLM protest coordinator at (202) 912–7212, and e-mails to *Brenda_Hudgens-Williams@blm.gov.*

All protests, including the follow-up letter to e-mails or faxes, must be in writing and mailed to the appropriate address, as set forth in the **ADDRESSES** section above.

Before including your phone number, e-mail address, or other personal identifying information in your protest, you should be aware that your entire protest, including your personal identifying information, may be made publicly available at any time. While you can ask us in your protest to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Approved:

Selma Sierra,

State Director.

Authority: 40 CFR 1506.6 and 1506.10, 43 CFR 1610.2 and 1610.5–2.

[FR Doc. 2010–9353 Filed 4–22–10; 8:45 am]

BILLING CODE 4310–DQ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNVB0200000 L51100000.GN0000 LVEMCF020000 241A; 10–08807; MO#4500011977; TAS: 14X5017]

Notice of Availability of the Final Environmental Impact Statement for the Round Mountain Expansion Project, Nye County, NV

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) has prepared a Final Environmental Impact Statement (EIS) for the Round Mountain Expansion Project and by this notice is announcing its availability.

DATES: The BLM will not issue a final decision on the proposal for a minimum of 30 days from the date that the Environmental Protection Agency publishes its notice in the **Federal Register.**

ADDRESSES: Copies of the Round Mountain Expansion Project Final EIS are available for public inspection at the BLM Tonopah Field Office, 1553 South Main Street, Tonopah, Nevada, during regular business hours of 7:30 a.m. to 4:30 p.m., Monday through Friday, except holidays. Interested persons may also review the Final EIS at the following Web site: *http://www.blm.gov/nvst/en/fo//battle_mountain_field.html.*

FOR FURTHER INFORMATION CONTACT: Chris Worthington, Planning and Environmental Coordinator, (775) 635–4000; BLM Battle Mountain District, 50 Bastian Road, Battle Mountain, Nevada 89820–1420; e-mail: *christopher_worthington@blm.gov.*

SUPPLEMENTARY INFORMATION: The Round Mountain Gold Corporation, which is a joint venture of Kinross Gold Corporation and Barrick Gold Corporation, proposes to expand its Round Mountain Mine, an existing open-pit gold mining and processing operation. The Round Mountain Mine is located in central Nevada approximately 55 miles north of Tonopah in Nye County.

The proposed Project would expand mining operations in the Round Mountain area and develop new open pit mining and leaching facilities several miles to the north in the Gold Hill area. Mine expansion in the Round Mountain area would increase the existing Round Mountain mine plan boundary by 3,122 acres to a total of 10,385 acres; expand the Round Mountain pit by 209 acres to approximately 1,289 acres; expand the dewatering operations by 1,325 gallons per minute (gpm) to a maximum rate of 7,525 gpm; allow for underground mining operations within the Round Mountain Pit; expand the north waste rock dump by 700 acres to approximately 1,919 acres; allow for the construction of a new north dedicated leach pad with a footprint of approximately 538 acres; increase the daily production capacity of the Round Mountain Mill from 11,000 tons per day to 22,000 tons per day; and increase tailings disposal capacity from a currently authorized 677 acres to approximately 1,607 acres.

Development in the Gold Hill area would include delineating a project boundary of approximately 4,928 acres; excavating an open pit with a footprint of approximately 222 acres; creating two waste rock dumps with combined footprints of approximately 552 acres; constructing and operating a heap leach facility and lined solution ponds with a footprint of approximately 300 acres; and constructing a 1.1 mile transportation and utility corridor of about 66.2 acres between the Round Mountain area and the Gold Hill area. The primary method of processing low-grade ore in the Gold Hill area would be heap leaching.

A range of action alternatives was developed and analyzed to address the concerns and issues that were

identified. The alternatives include processing all Gold Hill ore in the Gold Hill area rather than trucking some ore to Round Mountain for processing (Gold Hill area processing alternative); constructing an overpass rather than a grade crossing at the intersection of the transportation and utility corridor and County Road 875 (County Road Overpass Alternative); and completing mining at Round Mountain under current BLM authorizations (No Action Alternative). Other alternatives considered, and the rationale for their elimination from detailed analysis, are also discussed. Mitigation measures have been identified, as needed, to minimize potential environmental impacts and to ensure that the proposed project would not result in undue or unnecessary degradation of public lands. In addition, the Final EIS includes an analysis of cumulative impacts, including a comprehensive evaluation of potential impacts to Native American cultural values.

The BLM mailed information on the proposed Round Mountain Mine expansion to the Timbisha, Duckwater, Yomba, and Ely tribes in December 2006. Tribal representatives and individuals attended scoping meetings for the project in January 2007. Several informal meetings were held at the Round Mountain Mine attended by tribal representatives and members of the newly formed Western Shoshone Descendents of Big Smoky Valley. Six of these informal meetings were held between June 2007 and April 2009. Some of the meetings included field trips to inspect cultural sites discovered during cultural surveys of the proposed project area. The tribes and some Native American individuals received copies of the Draft EIS for the proposed mine expansion. Some tribal representatives and individuals attended the two BLM-hosted public meetings on the Draft EIS held on August 18 and 19, 2009. Written comments from Native Americans were received at the meetings and by mail during the public comment period (July 31, 2009 to September 14, 2009). The comments, and the responses to the comments, are incorporated into the Final EIS.

A Notice of Intent to prepare an EIS was published in the **Federal Register** on December 26, 2006. Two public scoping meetings were held in 2007 in Hadley and Tonopah, Nevada. The Draft EIS was released for public review on July 21, 2009, with a 45-day comment period. Following release of the Draft EIS, two public comment meetings were held in Hadley and Tonopah in August 2009 to solicit additional comments on the document. Comment responses and resultant changes in the impact analyses are documented in the Final EIS.

Authority: 40 CFR 1506.6.

Thomas J. Seley,

Manager, Tonopah Field Office.

[FR Doc. 2010–9368 Filed 4–22–10; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLOROR957000–L62510000–PM000: HAG10–0222]

Filing of Plats of Survey: Oregon/Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands are scheduled to be officially filed in the Bureau of Land Management Oregon/Washington State Office, Portland, Oregon, 30 days from the date of this publication.

Willamette Meridian

Oregon

T. 14 S., R. 7 W., accepted March 9, 2010.
T. 26 S., R. 7 W., accepted March 9, 2010.
T. 22 S., R. 10 E., accepted March 22, 2010.
T. 31 S., R. 14 W., accepted March 22, 2010.
T. 13 S., R. 11 E., accepted March 24, 2010.
T. 21 S., R. 8 W., accepted April 2, 2010.
T. 30 S., R. 10 W., accepted April 2, 2010.
T. 31 S., R. 13 W., accepted April 2, 2010.
T. 21 S., R. 8 W., accepted April 5, 2010.
T. 36 S., R. 5 W., accepted April 5, 2010.
T. 30 S., R. 3 W., accepted April 5, 2010.

Washington

T. 28 N., R. 13 W., accepted April 2, 2010.
T. 38 N., R. 38 E., accepted April 5, 2010.

ADDRESSES: A copy of the plats may be obtained from the Land Office at the Oregon/Washington State Office, Bureau of Land Management, 333 SW. 1st Avenue, Portland, Oregon 97204, upon required payment. A person or party who wishes to protest against a survey must file a notice that they wish to protest (at the above address) with the Oregon/Washington State Director, Bureau of Land Management, Portland, Oregon.

FOR FURTHER INFORMATION CONTACT: Chief, Branch of Geographic Sciences, Bureau of Land Management, 333 SW. 1st Avenue, Portland, Oregon 97204.

Cathie Jensen,

Branch of Land, Mineral, and Energy Resources.

[FR Doc. 2010–9518 Filed 4–22–10; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS-R1–ES–2010–N040]
[10120–1112–0000–F2]

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XU69

Habitat Conservation Plan for City of Kent, Washington

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

ACTION: Notice of Receipt of an Application for Incidental Take Permits; Notice of Availability of a Draft Environmental Impact Statement and Draft Habitat Conservation Plan, Including a Proposed Implementation Agreement for Public Comment.

SUMMARY: The City of Kent, Washington (Kent), has submitted applications to the National Marine Fisheries Service (NMFS) and U.S. Fish and Wildlife Service (FWS) (together, the Services, us) for Incidental Take Permits (Permit) under the Endangered Species Act of 1973, as amended (ESA). We jointly prepared a Draft Environmental Impact Statement (DEIS) to support permit-issuance decisions by each agency. As required by the ESA, Kent has also prepared a Habitat Conservation Plan (Plan) designed to minimize and mitigate any such take of endangered or threatened species. The Permit applications are related to water withdrawal and habitat enhancement measures on Rock Creek, tributary to the Cedar River, King County, Washington. The Permit and the Plan each have a proposed term of 50 years.

We request comments from the public on the DEIS, the proposed Plan, and the proposed Implementation Agreement (IA). All comments we receive will become part of the public record and will be available for review under the ESA.

DATES: We must receive any written comments on the DEIS, draft Plan, and draft IA no later than June 22, 2010.

ADDRESSES: Address all written comments to: Tim Romanski, U.S. Fish and Wildlife Service, 510 Desmond Drive SE, Suite 102, Lacey, WA 98503, facsimile (360) 753–9518; or John Stadler, National Marine Fisheries Service, 510 Desmond Drive SE, Suite 103, Lacey, WA 98503, facsimile (360)

753–9517. Alternatively, you may submit your comment by e-mail, to *KentHCP.nwr@noaa.gov*. In the subject line of the e-mail include the identifier "City of Kent, Clark Springs Water Supply HCP EIS." Comments and materials we receive will be available for public inspection, by appointment, during normal business hours at the above addresses. To review the DEIS, the proposed Plan, and the proposed IA, see "Document Availability" under **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Tim Romanski, U.S. Fish and Wildlife Service, 510 Desmond Drive SE, Suite 102, Lacey, WA 98503, facsimile (360) 753–9518; or John Stadler, National Marine Fisheries Service, 510 Desmond Drive SE, Suite 103, Lacey, WA 98503, facsimile (360) 753–9517.

SUPPLEMENTARY INFORMATION:

Statutory Authority

Section 9 of the ESA and its implementing Federal regulations prohibit the "taking" of a species listed as endangered or threatened. The term take is defined under the ESA to mean harass, harm, pursue, hunt, shoot, wound, kill trap, capture, or collect, or to attempt to engage in any such conduct. Harm is defined to include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, and sheltering. Harass is defined as an intentional or negligent act or omission which creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns including breeding, feeding, and sheltering.

We may issue permits, under limited circumstances, to allow the take of listed species incidental to, and not the purpose of, otherwise lawful activities. U.S. Fish and Wildlife Service regulations governing permits for endangered species are in 50 CFR 17.22 and regulations governing permits for threatened species are in 50 CFR 17.32. National Marine Fisheries Service regulations governing permits for threatened and endangered species are at 50 CFR 222.307.

Background

The Permit applications are related to the operation and maintenance of Kent's Clark Springs Water Supply System adjacent to Rock Creek, King County, Washington. The Clark Springs Water Supply System consists of a spring-fed infiltration gallery and three well pumps. This facility is located adjacent to Rock Creek 1.8 miles upstream of the creek's confluence with the Cedar River. The facility is surrounded by 320 acres of Kent-owned land that is geographically separated from the City of Kent. Covered activities can be summarized as follows:

- Diversions of ground and surface water under Kent's existing water rights via infiltration gallery, well pumps, and infrastructure;
- Operation and maintenance of Clark Springs Water Supply facilities;
- Maintenance of 320 acres of Kent-owned property as it relates to the protection of its water supply; and
- Operation and maintenance of a water augmentation system for the enhancement of instream flows.

The Permit applications Kent submitted to the Services address the potential take of three ESA-listed threatened species and six unlisted species that may be affected by Kent's water withdrawal activities at the Clark Springs facility in the Rock Creek Watershed. The listed species under FWS jurisdiction is the bull trout (*Salvelinus confluentus*), listed as threatened. Unlisted species under FWS jurisdiction include coastal cutthroat trout (Oncorhynchus clarki clarki), Pacific lamprey (*Lampetra tridentatus*), and river lamprey (*L. ayresi*). Listed species under NMFS jurisdiction are the Puget Sound Chinook salmon (*O. tshawytscha*) and Puget Sound steelhead trout (*O. mykiss*), both listed as threatened. Unlisted species under NMFS jurisdiction include coho salmon (*O. kisutch*), chum salmon (*O. keta*), and sockeye salmon (*O. nerka*).

We formally initiated an environmental review of the project through publication of a Notice of Intent to prepare an Environmental Impact Statement in the **Federal Register** on June 19, 2006 (71 FR 35286). That notice also announced a public scoping period during which interested parties were invited to provide written comments expressing their issues or concerns relating to the proposal, and to attend a public scoping meeting held in Kent, Washington.

Based on public scoping comments, we prepared a DEIS to analyze the effects of alternatives on the human environment. Alternative 2 in the DEIS is described as implementation of Kent's Plan, FWS issuance of a Permit for bull trout and other unlisted species, and NMFS issuance of a Permit for Chinook salmon, steelhead trout, and other unlisted species should they become listed in the future. The other alternative analyzed in the DEIS was Alternative 1, No-Action, under which Kent would continue operating the Clark Springs facility without benefit of incidental take coverage from the Services.

We provide this notice under ESA and NEPA regulations. We will evaluate the application, associated documents, and comments submitted thereon to determine whether the application meets the requirements of the ESA and NEPA. We will then prepare the Final Environmental Impact Statement (FEIS). Our decisions of whether to issue incidental take permits on the application will be made upon completion of the FEIS and the ESA determination.

Document Availability

The documents are available electronically on the World Wide Web at *http://www.nwr.noaa.gov/Salmon-Habitat/Habitat-Conservation-Plans/HCPs-in-Process.cfm*.

Documents are also available at the following public locations:

- Covington Library, 27100 164th Ave. SE, Covington, WA 98042;
- Maple Valley Library, 21844 SE 248th Street, Maple Valley, WA 98038–8582; and
- Kent Library, 212 2nd Avenue North Kent, WA 98032.
- City of Kent Engineering Counter, Centennial Center, Engineering 2nd Floor, 400 West Gowe Street, Kent, WA 98032.

Dated: April 19, 2010.

Angela Somma,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

Dated: April 19, 2010.

Carolyn A. Bohan,

Acting Deputy Regional Director, U.S. Fish and Wildlife Service, Region 1, Portland, Oregon.

[FR Doc. 2010–9507 Filed 4–22–10; 8:45 am]

BILLING CODES 4310–55–S; 3510–22–S

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLORV00000–L10200000.DD0000; HAG 10–230]

Notice of Meeting, Southeast Oregon Resource Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Public Meeting.

SUMMARY: Pursuant to the Federal Land Policy and Management Act and the Federal Advisory Committee Act, the U.S. Department of the Interior, Bureau of Land Management (BLM) Southeast

Oregon Resource Advisory Council (SEORAC) will meet as indicated below:

DATES: The meeting will begin at 7 p.m. (Pacific Daylight Time) on May 6, 2010.

ADDRESSES: The SEORAC will meet by teleconference. For a copy of material to be discussed or the conference call number, please contact the BLM Vale District; information below.

FOR FURTHER INFORMATION CONTACT: Mark Wilkening, Public Affairs Officer, BLM Vale District Office, 100 Oregon Street, Vale, Oregon 97918, or by telephone at (541) 473–6218.

SUPPLEMENTARY INFORMATION: The SEORAC will conduct a public meeting by teleconference to discuss and come to consensus on contents of a letter to be sent to the Oregon/Washington BLM State Director on the Final Environmental Impact Statement for Vegetation Treatments Using Herbicides on BLM Lands in Oregon. The conference call meeting is open for the public to access by telephone. Public comment is scheduled from 7:45 to 8 p.m. (Pacific Daylight Time) May 6, 2010. For a copy of the information distributed to the SEORAC members please contact Mark Wilkening, Public Affairs Officer, BLM Vale District Office, 100 Oregon Street, Vale, Oregon 97918, or by telephone at (541) 473–6218.

Larry Frazier,

Acting District Manager, Vale District Office.

[FR Doc. 2010–9430 Filed 4–22–10; 8:45 am]

BILLING CODE 4310–33–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–130 (Third Review)]

Chloropicrin From China

Determination

On the basis of the record [1] developed in the subject five-year review, the United States International Trade Commission (Commission) determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)), that revocation of the antidumping duty order on chloropicrin from China would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

Background

The Commission instituted this review on July 1, 2009 (74 FR 31760) and determined on October 15, 2009 that it would conduct a full review (74 FR 55065, October 26, 2009). Notice of the scheduling of the Commission's review and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** on October 15, 2009 (74 FR 55065). Counsel for the three domestic producers of chloropicrin offered to submit written testimony in lieu of an oral hearing presentation. In connection with the offer of written testimony, counsel indicated a willingness to respond to written questions of the Commissioners by a date to be set by the Commission. No other party filed a request to appear at the hearing. Consequently, the public hearing in connection with the review, scheduled to begin at 9:30 a.m. on February 18, 2010, at the U.S. International Trade Commission Building was cancelled.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on April 19, 2010. The views of the Commission are contained in USITC Publication 4142 (April 2010), entitled *Chloropicrin from China: Investigation No. 731–TA–130 (Third Review).*

By order of the Commission.

Issued: April 19, 2010.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 2010–9403 Filed 4–22–10; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–468 and 731–TA–1166–1167 (Final)]

Certain Magnesia Carbon Bricks From China and Mexico

AGENCY: United States International Trade Commission.

ACTION: Scheduling of the final phase of a countervailing duty investigation and antidumping investigations.

SUMMARY: The Commission hereby gives notice of the scheduling of the final phase of a countervailing duty investigation No. 701–TA–468 (Final) and antidumping investigation Nos. 731–TA–1166–1167 (Final) under sections 705(b) and 735(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b) and 1673d(b)) (the Act) to determine whether 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 subsidized imports from China or less-than-fair-value imports from China or Mexico of certain magnesia carbon bricks, provided for in subheadings 6902.10.10, 6902.10.50, 6815.91.00, and 6815.99.00 of the Harmonized Tariff Schedule of the United States.[1]

For further information concerning the conduct of this phase of the investigations, hearing procedures, 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 C (19 CFR part 207).

DATES: *Effective Date:* March 12, 2010.

FOR FURTHER INFORMATION CONTACT: Elizabeth Haines (202–205–3200), 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.—The final phase of these investigations is being scheduled as a result of a negative preliminary determination by the Department of Commerce that certain benefits which constitute subsidies within the meaning of section 703 of the Act (19 U.S.C. 1671b) are being provided to manufacturers, producers, or exporters in China of certain magnesia carbon bricks, and affirmative preliminary determinations that imports of certain

[1] For purposes of these investigations, the Department of Commerce has defined the subject merchandise as "certain chemically bonded (resin or pitch), magnesia carbon bricks with a magnesia component of at least 70 percent magnesia ("MgO") by weight, regardless of the source of raw materials for the MgO, with carbon levels ranging from trace amounts to 30 percent by weight, regardless of enhancements, (for example, magnesia carbon bricks can be enhanced with coating, grinding, tar impregnation or coking, high temperature heat treatments, anti-slip treatments or metal casing) and regardless of whether or not antioxidants are present (for example, antioxidants can be added to the mix from trace amounts to 15 percent by weight as various metals, metal alloys, and metal carbides)."

magnesia carbon bricks from China and Mexico are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). The investigations were requested in a petition filed on July 29, 2009, by Resco Products Inc., Pittsburgh, PA.

Participation in the investigations and public service list.—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the final phase of these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigations need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

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 the final phase of these investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the investigations. A party granted access to BPI in the preliminary phase of the investigations need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in the final phase of these investigations will be placed in the nonpublic record on July 13, 2010, and a public version will be issued thereafter, pursuant to section 207.22 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with the final phase of these investigations beginning at 9:30 a.m. on July 27, 2010, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before July 19, 2010. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on July 22, 2010, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 business days prior to the date of the hearing.

Written submissions.—Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.23 of the Commission's rules; the deadline for filing is July 20, 2010. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.25 of the Commission's rules. The deadline for filing posthearing briefs is August 3, 2010; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations, including statements of support or opposition to the petition, on or before August 3, 2010. On August 19, 2010, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before August 23, 2010, but such final comments must not contain new factual information and must otherwise comply with section 207.30 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also 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).

Additional written submissions to the Commission, including requests pursuant to section 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with sections 201.16(c) and 207.3 of the Commission's 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 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 207.21 of the Commission's rules.

By order of the Commission.

Issued: April 19, 2010.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 2010–9405 Filed 4–22–10; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–244 (Third Review)]

Natural Bristle Paint Brushes From China

AGENCY: United States International Trade Commission.

ACTION: Scheduling of a full five-year review concerning the antidumping duty order on natural bristle paint brushes from China.

SUMMARY: The Commission hereby gives notice of the scheduling of a full review pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) (the Act) to determine whether revocation of the antidumping duty order on natural bristle paint brushes from China would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

DATES: *Effective Date:* April 15, 2010.

FOR FURTHER INFORMATION CONTACT: Keysha Martinez (202–205–2136) or Douglas Corkran (202–205–3057), 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 this review may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On February 5, 2010, the Commission determined that responses to its notice of institution of the subject five-year review were such that a full review pursuant to section 751(c)(5) of the Act should proceed (75 FR 18237, April 9, 2010).[1] A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements are available from the Office of the Secretary and at the Commission's Web site.

Participation in the review and public service list.—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in this review as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, by 45 days after publication of this notice. A party that filed a notice of appearance following publication of the Commission's notice of institution of the review need not file an additional notice of appearance. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the review.

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 this review available to authorized applicants under the APO issued in the review, provided that the application is made by 45 days after publication of this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the review. A party granted access to BPI following publication of the Commission's notice of institution of the review need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in the review will be placed in the nonpublic record on July 12, 2010, and a public version will be issued thereafter, pursuant to section 207.64 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with the review beginning at 9:30 a.m. on July 29, 2010, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before July 23, 2010. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on July 28, 2010, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), 207.24, and 207.66 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 business days prior to the date of the hearing.

Written submissions.—Each party to the review may submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.65 of the Commission's rules; the deadline for filing is July 21, 2010. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.67 of the Commission's rules. The deadline for filing posthearing briefs is August 6, 2010; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the review may submit a written statement of information pertinent to the subject of the review on or before August 6, 2010. On August 26, 2010, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before August 30, 2010, but such final comments must not contain new factual information and must otherwise comply with section 207.68 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also 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).

Additional written submissions to the Commission, including requests pursuant to section 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

Issued: April 19, 2010.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 2010–9404 Filed 4–22–10; 8:45 am]

BILLING CODE 7020–02–P

[1] Specifically, the Commission found that the domestic interested party group response to its notice of institution (74 FR 56666, November 2, 2009) was adequate and that the respondent interested party group response was inadequate. The Commission also found that other circumstances warranted conducting a full review. Commissioners Charlotte R. Lane, Irving A. Williamson, and Dean A. Pinkert found that no other circumstances warranted conducting a full review and voted for an expedited review.

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Air Act and the Emergency Planning and Community Right-To-Know Act

Notice is hereby given that on April 19, 2010, a proposed Consent Decree (Decree) in *United States* v. *Westward Seafoods, Inc.,* Civil Action No. 3:10–cv–00073–JWS, was lodged with the United States District Court for the District of Alaska.

In this action the United States, on behalf of the U.S. Environmental Protection Agency, sought penalties and injunctive relief from Westward Seafoods, Inc. for violations of the Clean Air Act and the Emergency Planning and Community Right-To-Know Act. The Complaint alleges violations including the burning of diesel fuel with excessive sulfur; operating three diesel generators while air pollution control devices were inoperable, resulting in excessive emissions of nitrogen oxides; and failing to respond to repeated requests for information from state and federal inspectors. The Decree would settle the United States' claims in return for a payment of $570,000 and improved operation and maintenance procedures and employee training.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either emailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Westward Seafoods, Inc.,* D.J. Ref. 90–5–2–1–09168.

The Decree may be examined at the Office of the United States Attorney, Federal Building & U.S. Courthouse, 222 West 7th Ave., #9, Rm 253, Anchorage, AK 99513–7567. During the public comment period, the Decree may also be examined on the following Department of Justice Web site, to *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or emailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $9.25 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if by email or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Maureen Katz,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2010–9407 Filed 4–22–10; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

National Institute of Corrections

Solicitation for a Cooperative Agreement—Evaluation of Technical Assistance for Evidence-Based Decisionmaking in Local Criminal Justice Systems

AGENCY: National Institute of Corrections, U.S. Department of Justice.

ACTION: Solicitation for a Cooperative Agreement.

SUMMARY: The National Institute of Corrections (NIC) is soliciting proposals to enter into a cooperative agreement for a 20-month project to begin in June 2010. Work under this cooperative agreement will involve documenting the technical assistance (TA) provided to up to six sites selected as grantees under Phase II of the Evidence-Based Decisionmaking in Local Criminal Justice Systems project. The purpose of the evaluation is to assess the quality of the services provided to the sites and to document the degree to which the technical assistance services affected the sites' preparation to implement the Evidence-Based Decisionmaking Framework (the Framework).

DATES: Applications must be received by 4 p.m. EDT on Friday, May 21, 2010.

ADDRESSES: Mailed applications must be sent to Director, National Institute of Corrections, 320 First Street, NW., Room 5007, Washington, DC 20534. Applicants are encouraged to use Federal Express, UPS, or similar service to ensure delivery by the due date.

Hand delivered applications should be brought to 500 First Street, NW., Washington, DC 20534. At the front desk, dial 7–3106, extension 0 for pickup.

Faxed applications will not be accepted. Electronic applications (preferred) can be submitted only via *http://www.grants.gov.*

FOR FURTHER INFORMATION CONTACT: A copy of this announcement and links to the required application forms can be downloaded from the NIC Web site at *http://www.nicic.gov.* All programmatic questions concerning this announcement should be directed to Lori Eville, Correctional Program Specialist, National Institute of Corrections. She can be reached at 1–800–995–6423, extension 62848 or by e-mail at *leville@bop.gov.*

SUPPLEMENTARY INFORMATION:

Background: In June 2008, the National Institute of Corrections awarded the Center for Effective Public Policy, in partnership with the Pretrial Justice Institute, the Justice Management Institute, and The Carey Group, a cooperative agreement to address evidence-Based decisionmaking in local criminal justice systems. The goal of the initiative is to build a systemwide framework that will result in more collaborative, evidence-based decisionmaking in local criminal justice systems. The initiative is grounded in the accumulated knowledge of two decades of research on the factors that contribute to criminal re-offending and the processes and methods the justice system can employ to interrupt the cycle of re-offense. The effort seeks to equip criminal justice policymakers in local communities with the information, processes, and tools that will result in a measurable reduction of pretrial misconduct and postconviction re-offending.

The principle product of the initial 18-month phase of the initiative is A Framework for Evidence-Based Decisionmaking in Local Criminal Justice Systems (the Framework), which is designed to advance constructive change in local level criminal justice decisionmaking. The Framework describes key criminal justice decisions, evidence-based knowledge about effective justice practices, and practical local level strategies for applying risk and harm reduction principles and techniques. A copy of the Evidence-Based Decisionmaking Framework document can be downloaded online at *http://www.cepp.com/ebdm.*

A key component of the Framework is the Evidence-Based Decisionmaking Logic Model, which represents the theory underlying the Framework. The logic model addresses the implementation of the Framework at the "system" level of the criminal justice system. It is built upon the four principles underlying the Framework and outlines the logical flow of both the processes and activities involved in its implementation. The logic model also demonstrates the expected harm reduction impacts that will result from these processes and activities. The logic model is located on page 31 of the Framework document.

Scope of Work: NIC will work with a technical assistance provider under Phase II of the project, under a separate cooperative agreement. The technical assistance is intended to lead to the following outcomes: (1) The establishment of collaborative partnerships among local criminal justice stakeholders, (2) The development of a shared philosophy and vision for the local criminal justice system, (3) The capacity to collect and analyze data, including the quality of the data, to support the implementation of the Framework and to support ongoing analysis of the effectiveness of current and future policies, practices, and services designed to achieve specific risk and harm reduction outcomes, (4) Change in knowledge, skills, and abilities regarding research-based risk reduction strategies, and (5) The development of jurisdiction-specific tools to assist in the implementation of evidence-based decisionmaking at the system, agency, and case levels.

NIC anticipates that these outcomes will be further articulated during Phase II as each site adapts the logic model to meet their specific needs, but the goals listed above should guide applicants in addressing how they will perform the project's five tasks.

Project Goals and Tasks: The goal of this cooperative agreement is to assess the quality of services provided to the sites selected as grantees under Phase II of the Evidence-Based Decisionmaking in Local Criminal Justice Systems project. The assistance provided to these sites is expected to increase their capacity for implementing the Framework. The project should include an examination of how the assistance provided affected implementation readiness at the system and agency level. The recipient of the award under this cooperative agreement will undertake the following tasks: Develop and submit a final evaluation plan that describes the evaluation methodology, qualitative and quantitative data to be collected, data collection tools, and the analysis plan; Develop data collection instruments to include site visit protocols, structured or semi-structured interview guides, and data reporting forms to measure the following: Types and amount of training, coaching, and technical assistance requested and received; Number of persons trained; Nature of coaching of key leaders and local project managers; Satisfaction with the quality of the assistance received (did the technical assistance anticipate needs of the system and agencies?); Changes in knowledge, skills and abilities regarding research-based risk reduction strategies; Actions taken as a result of the training and technical assistance which may include the establishment of collaborative partnerships, development of a shared philosophy and vision for the local criminal justice system, changes in data collection and reporting, and the development of tools to assist in the implementation of evidence-based decisionmaking; Changes and outcomes observed as a result of the training and technical assistance; Collect data from the sites through a minimum of one site visit to each site; Attend a project kickoff meeting with the sites and the TA provider, and conduct periodic meetings with the TA provider; Prepare and submit a final evaluation report to NIC that provides the results of the analysis and includes detailed descriptions of the assistance and training received by the sites, the dosage of the assistance in terms of frequency and duration, and the degree to which the assistance leads to the intended outcomes.

Required Expertise: Successful applicants will be able to demonstrate that they have the organizational capacity to carry out the tasks of the project, including experience conducting qualitative and quantitative program and technical assistance evaluation, extensive experience in correctional and criminal justice policy and practice, and a strong background in criminal justice system-wide change initiatives. Preference will be given to applicants with experience evaluating initiatives that focus on system-wide change and with experience in the implementation of evidence-based practices in the criminal justice system.

Application Requirements: Applications should be concisely written, typed double spaced and reference the "NIC Opportunity Number" and Title provided in this announcement. Please limit the program narrative text to 20 double spaced, numbered pages. Resumes, summaries of experience, or attachments will not be included in the 20-page limit. The package must include a cover letter that identifies the audit agency responsible for the applicant's financial accounts as well as the audit period or fiscal year that the applicant operates under (*e.g.,* July 1 through June 30); a program narrative in response to the statement of work; a budget narrative explaining projected costs; and a description of the qualifications of the applicant. The following forms must also be included: OMB Standard Form 424, Application for Federal Assistance; OMB Standard Form 424A, Budget Information—Non Construction Programs; OMB Standard Form 424B, Assurances—Non Construction Programs (these forms are available at *http://www.grants.gov*) and DOJ/NIC Certification Regarding Lobbying; Debarment, Suspension, and Other Responsibility Matters; and Drug-Free Workplace Requirements (available at *http://www.nicic.org/Downloads/PDF/cerif-frm.pdf*).

Authority: Public Law 93–415.

Funds Available: NIC is seeking the applicant's best ideas regarding accomplishment of the scope of work and the related costs for achieving the goals of this solicitation. Funds may be used only for the activities that are linked to the desired outcome of the project. Budgets will be evaluated against the value of the products and services proposed in the application.

This project will be a collaborative venture with the NIC Community Corrections Division.

Eligibility of Applicants: An eligible applicant is any public or private agency, educational institution, organization, individual, or team with expertise in the described areas.

Review Considerations: Applications received under this announcement will be subject to the NIC Review Process. The criteria for evaluation of each application will be as follows:

Program Narrative (50%)

Are all of the tasks adequately discussed and is there a clear statement of how each of the tasks will be accomplished, including the staffing, resources, and strategies to be employed? Are there any innovative approaches, techniques, or design aspects proposed that will enhance the project? Is the methodology proposed rigorous with an appropriate analysis plan?

Organizational Capabilities (25%)

Do the skills, knowledge, and expertise of the applicant(s) and the proposed project staff demonstrate a high level of competency to carry out the tasks? Does the applicant have the necessary experience and organizational capacity to carry out the goals of the project?

Program Management/Administration (25%)

Does the applicant identify reasonable objectives, milestones, and measures to track progress? If consultants and/or partnerships are proposed, is there a reasonable justification for their inclusion in the project and a clear structure to ensure effective coordination? Is the proposed budget realistic, does it provide sufficient cost

detail/narrative, and does it represent good value relative to the anticipated results?

Note: NIC will NOT award a cooperative agreement to an applicant who does not have a Dun and Bradstreet Database Universal Number (DUNS) and is not registered in the Central Contractor Registry (CCR).

A DUNS number can be received at no cost by calling the dedicated toll-free DUNS number request line at 1–800–333–0505 (if you are a sole proprietor, you would dial 1–866–705–5711 and select option 1).

Registration in the CCR can be done online at the CCR Web site: *http://www.ccr.gov.* A CCR Handbook and worksheet can also be reviewed at the Web site.

Number of Awards: One.

NIC Opportunity Number: 10C84. This number should appear as a reference line in the cover letter, where indicated on Standard Form 424, and outside of the envelope in which the application is sent.

Catalog of Federal Domestic Assistance Number: 16.602.

Executive Order 12372: This program is not subject to the provisions of Executive Order 12372.

Morris L. Thigpen,

Director, National Institute of Corrections.

[FR Doc. 2010–9448 Filed 4–22–10; 8:45 am]

BILLING CODE 4410–36–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

April 19, 2010.

The Department of Labor (DOL) hereby announces the submission of the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of this ICR, with applicable supporting documentation; including among other things a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAMain* or by contacting Darrin A. King on 202–693–4129 (this is not a toll-free number)/e-mail: *DOL_PRA_PUBLIC@dol.gov.*

Interested parties are encouraged to send comments to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Department of Labor—Office of Workers' Compensation Programs (OWCP), Office of Management and Budget, Room 10235, Washington, DC 20503, Telephone: 202–395–7316/Fax: 202–395–5806 (these are not toll-free numbers), E-mail: *OIRA_submission@omb.eop.gov* within 30 days from the date of this publication in the **Federal Register.** In order to ensure the appropriate consideration, comments should reference the OMB Control Number (see below).

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: Office of Workers' Compensation Programs.

Type of Review: Extension without change of a currently approved collection.

Title of Collection: Notice of Issuance of Insurance Policy.

OMB Control Number: 1240–0048.

Agency Form Numbers: CM–921.

Affected Public: Private Sector—Businesses and other for-profits.

Total Estimated Number of Respondents: 60.

Total Estimated Annual Burden Hours: 633.

Total Estimated Annual Costs Burden (Does Not Include Hourly Wage Costs): $1,975.

Description: The Form CM–921 provides insurance carriers with the means to supply OWCP's Division of Coal Mine Workers' Compensation with information showing that a responsible coal mine operator is insured against liability for payment of compensation under the Federal Black Lung Benefits Act, as amended 30 U.S.C. 933. For additional information, see related notice published in the **Federal Register** on September 15, 2009 (74 FR page 47275).

Darrin A. King,

Departmental Clearance Officer.

[FR Doc. 2010–9418 Filed 4–22–10; 8:45 am]

BILLING CODE 4510–27–P

DEPARTMENT OF LABOR

Office of Workers' Compensation Programs

Division of Coal Mine Workers' Compensation; Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Office of Workers' Compensation Programs is soliciting comments concerning the proposed collection: Request for State or Federal Workers' Compensation Information (CM–905). A copy of the proposed information collection request can be obtained by contacting the office listed below in the addresses section of this Notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before June 22, 2010.

ADDRESSES: Mr. Vincent Alvarez, U.S. Department of Labor, 200 Constitution Ave., NW., Room S–3201, Washington, DC 20210, telephone (202) 693–0372, fax (202) 693–1378, E-mail *Alvarez.Vincent@dol.gov.* Please use only one method of transmission for comments (mail, fax, or E-mail).

SUPPLEMENTARY INFORMATION:

I. *Background:* The Federal Mine Safety and Health Act of 1977, as amended (30 U.S.C. 901) and 20 CFR 725.535, require that DOL Black Lung benefit payments to a beneficiary for any month be reduced by any other payments of state or federal benefits for workers' compensation due to

pneumoconiosis. To ensure compliance with this mandate, DCMWC must collect information regarding the status of any state or Federal workers' compensation claim, including dates of payments, weekly or lump sum amounts paid, and other fees or expenses paid out for this award, such as attorney fees and related expenses associated with pneumoconiosis. Form CM–905 is used to request the amount of those workers' compensation benefits. This information collection is currently approved for use through September 30, 2010.

II. *Review Focus:* The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

III. *Current Actions:* The Department of Labor seeks the approval for the extension of this currently-approved information collection in order to gather information to determine the amounts of Black Lung benefits paid to beneficiaries. Black Lung amounts are reduced dollar for dollar, for other Black Lung related workers' compensation awards the beneficiary may be receiving from State or Federal programs.

Type of Review: Revision.

Agency: Office of Workers' Compensation Programs.

Title: Request for State or Federal Workers' Compensation Information.

OMB Number: 1240–0032.

Agency Number: CM–905.

Affected Public: Federal government; State, Local or Tribal Government.

Total Respondents: 1400.

Total Annual Responses: 1400.

Average Time per Response: 15 minutes.

Estimated Total Burden Hours: 350.

Frequency: On occasion.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $808.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: April 19, 2010.

Vincent Alvarez,

Agency Clearance Officer, Office of Workers' Compensation Programs, US Department of Labor.

[FR Doc. 2010–9381 Filed 4–22–10; 8:45 am]

BILLING CODE 4510–CK–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–71,414]

Tata Technologies Incorporated; A Subsidiary of Tata Technologies Limited: Formally Known As Incat: Novi, MI; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, as amended ("Act"), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on January 21, 2010, applicable to workers of Tata Technologies Incorporated, a subsidiary of TATA Technologies Limited, Novi, Michigan. The notice was published in the **Federal Register** on March 5th, 2010 (75 FR 10322).

At the request of the State Agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in activities related to providing engineering design and product lifecycle management.

Information reports that before April 2009, Tata Technologies Incorporated, a subsidiary of Tata Technologies Limited, was formally known as INCAT. Some workers separated from employment at the subject firm had their wages reported under two separate unemployment insurance (UI) tax accounts under the names Tata Technologies Incorporated, a subsidiary of Tata Technologies Limited, formally known as INCAT.

Accordingly, the Department is amending this certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of the subject firm who were adversely affected by an affiliated vendor acquiring engineering design and product lifecycle management in India.

The amended notice applicable to TA–W–71,414 is hereby issued as follows:

All workers of Tata Technologies Incorporated, a subsidiary of Tata Technologies Limited, formerly known as INCAT, Novi, Michigan, who became totally or partially separated from employment on or after June 25, 2008, through January 21, 2012, and all workers in the group threatened with total or partial separation from employment on date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed at Washington, DC, this 13th day of April 2010.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–9487 Filed 4–22–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–71,263]

Chrysler Group LLC, Formerly Known as Chrysler LLC; Belvidere Assembly Plant: Including On-Site Leased Workers From Aerotek, G Tech Services, Inc., and Tri-Dim Filer Corp. Belvidere, IL; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended ("Act"), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on September 8, 2009, applicable to workers of Chrysler Group LLC, formerly known as Chrysler LLC, Belvidere Assembly Plant, include on-site leased workers from Aerotek and G Tech Services, Inc., Belvidere, Illinois. The notice was published in the **Federal Register** on November 5, 2009 (74 FR 57337).

At the request of the State Agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in activities related to the assembly the Dodge Caliber, Jeep Compass and Jeep Patriot.

The company reports that on-site leased workers from TRI–DIM Filer Corp. were employed on-site at the Belvidere, Illinois location of Chrysler Group LLC, formerly known as Chrysler LLC, Belvidere Assembly Plant. The Department has determined that these workers were sufficiently under the control of the subject firm to be considered leased workers.

Based on these findings, the Department is amending this certification to include workers leased from TRI–DIM Filer Corp working on-site at the Belvidere, Illinois location of Chrysler Group LLC, formerly known as Chrysler LLC, Belvidere Assembly Plant.

The amended notice applicable to TA–W–71,263 is hereby issued as follows:

All workers of Chrysler Group LLC, formerly known as Chrysler LLC, Belvidere Assembly Plant, including on-site leased workers from Aerotek, G Tech Services, Inc., and TRI–DIM Filer Corp, Belvidere, Illinois, who became totally or partially separated from employment on or after June 16, 2008, through September 8, 2011, and all workers in the group threatened with total or partial separation from employment on date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed in Washington, DC, this 15th day of April 2010.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–9486 Filed 4–22–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–73,642]

Intel Corporation, Fab 20 Division, Including On-Site Leased Workers From Volt Technical Resources, Staff Finders Technical, Kelly Services, Retronix International, Manpower-Oregon and Nikon Precision, Inc., Hillsboro, OR; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended ("Act"), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to apply for Worker Adjustment Assistance on March 10, 2010, applicable to workers of Intel Corporation, Fab 20 Division, including on-site leased workers of Volt Technical Resources, Staff Finders Technical and Kelly Services, Hillsboro, Oregon. The notice will be published soon in the **Federal Register**.

At the request of the subject firm, the Department reviewed the certification for workers of the subject firm. The workers are engaged in activities related to the production of chipsets.

The company reports that workers leased from Retronix International, Manpower-Oregon and Nikon Precision, Inc. were employed on-site at the Hillsboro, Oregon location of Intel Corporation, Fab 20 Division. The Department has determined that these workers were sufficiently under the control of the subject firm to be considered leased workers.

Based on these findings, the Department is amending this certification to include workers leased from Retronix International, Manpower-Oregon and Nikon Precision, Inc. working on-site at the Hillsboro, Oregon location of Intel Corporation, Fab 20 Division.

The amended notice applicable to TA–W–73,642 is hereby issued as follows:

All workers of Intel Corporation, Fab 20 Division, including on-site leased workers from Volt Technical Resources, Staff Finders Technical, Kelly Services, Retronix International, Manpower-Oregon and Nikon Precision, Inc., Hillsboro, Oregon who became totally or partially separated from employment on or after March 3, 2009, through March 10, 2012, and all workers in the group threatened with total or partial separation from employment on date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed in Washington, DC, this 13th day of April 2010.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–9479 Filed 4–22–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, as amended (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers by (TA–W) number issued during the period of March 8, 2010 through March 26, 2010.

In order for an affirmative determination to be made for workers of a primary firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(a) of the Act must be met.

I. Under Section 222(a)(2)(A), the following must be satisfied:

(1) A significant number or proportion of the workers in such workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The sales or production, or both, of such firm have decreased absolutely; and

(3) One of the following must be satisfied:

(A) Imports of articles or services like or directly competitive with articles produced or services supplied by such firm have increased;

(B) Imports of articles like or directly competitive with articles into which one or more component parts produced by such firm are directly incorporated, have increased;

(C) imports of articles directly incorporating one or more component parts produced outside the United States that are like or directly competitive with imports of articles incorporating one or more component parts produced by such firm have increased;

(D) Imports of articles like or directly competitive with articles which are produced directly using services supplied by such firm, have increased; and

(4) The increase in imports contributed importantly to such workers' separation or threat of separation and to the decline in the sales or production of such firm; or

II. Section 222(a)(2)(B) all of the following must be satisfied:

(1) A significant number or proportion of the workers in such workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) One of the following must be satisfied:

(A) There has been a shift by the workers' firm to a foreign country in the production of articles or supply of services like or directly competitive with those produced/supplied by the workers' firm;

(B) there has been an acquisition from a foreign country by the workers' firm of articles/services that are like or directly competitive with those produced/supplied by the workers' firm; and

(3) The shift/acquisition contributed importantly to the workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected workers in public agencies and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(b) of the Act must be met.

(1) A significant number or proportion of the workers in the public agency have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The public agency has acquired from a foreign country services like or directly competitive with services which are supplied by such agency; and

(3) The acquisition of services contributed importantly to such workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected secondary workers of a firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(c) of the Act must be met.

(1) A significant number or proportion of the workers in the workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The workers' firm is a Supplier or Downstream Producer to a firm that employed a group of workers who received a certification of eligibility under Section 222(a) of the Act, and such supply or production is related to the article or service that was the basis for such certification; and

(3) Either—

(A) the workers' firm is a supplier and the component parts it supplied to the firm described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) a loss of business by the workers' firm with the firm described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected workers in firms identified by the International Trade Commission and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(f) of the Act must be met.

(1) The workers' firm is publicly identified by name by the International Trade Commission as a member of a domestic industry in an investigation resulting in—

(A) An affirmative determination of serious injury or threat thereof under section 202(b)(1);

(B) An affirmative determination of market disruption or threat thereof under section 421(b)(1); or

(C) An affirmative final determination of material injury or threat thereof under section 705(b)(1)(A) or 735(b)(1)(A) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)(1)(A) and 1673d(b)(1)(A));

(2) The petition is filed during the 1-year period beginning on the date on which—

(A) a summary of the report submitted to the President by the International Trade Commission under section 202(f)(1) with respect to the affirmative determination described in paragraph (1)(A) is published in the **Federal Register** under section 202(f)(3); or

(B) notice of an affirmative determination described in subparagraph (1) is published in the **Federal Register**; and

(3) The workers have become totally or partially separated from the workers' firm within—

(A) the 1-year period described in paragraph (2); or

(B) notwithstanding section 223(b)(1), the 1-year period preceding the 1-year period described in paragraph (2).

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (increased imports) of the Trade Act have been met.

TA–W–70,211: Premium Allied Tool, Inc., On-site Leased Workers from Manpower and Spartan Staffing, Owensboro, KY, May 18, 2008

TA–W–70,764: Quality Metalcraft, Inc., Livonia, MI, May 21, 2008

TA–W–70,851: Kennametal, Inc., Irwin, PA, May 28, 2008

TA–W–70,942: Precise Engineering, Lowell, MI, May 26, 2008

TA–W–71,118: Rexnord Industries, LLC, Industrial Chain & Conveyor, Stivers, West Milwaukee, WI, June 9, 2008

TA–W–71,768: U.S. Steel Tubular Products, Inc., U.S. Steel Corporation, Leased Workers from Aerotek, Bellville, TX, July 21, 2008

TA–W–71,960: Hexagon Metrology, Inc., Fond du Lac, WI, August 7, 2008

TA–W–72,265: Strippit, Inc., LVD Company N.V., Leased Workers from Victory Staffing, Akron, NY, August 31, 2008

TA–W–72,299: National Office Furniture, Non-Manufacturing Division, Jasper, IN, September 14, 2008

TA–W–72,558: Weyerhaeuser Engineered Wood Products, Elkin, NC, October 8, 2008

TA–W–72,669: A&H Sportswear Co., Inc., Leased Workers from Job Connections and Express Personnel, Pen Argyl, PA, October 23, 2008

TA–W–72,992: Ideal Tool and Plastics, Joint Venture Tool and Mold, LLC, Meadville, PA, October 20, 2009

TA–W–73,006: Mueller Systems, DBA Hersey Meters, Leased Workers of Staffmasters, Cleveland, NC, November 27, 2008

TA–W–73,194: Beam Global Spirits and Wine, Leased Workers from Adecco, Cincinnati, OH, December 29, 2008

TA–W–72,745: Sanborn Map Company, Inc., Leased Workers Boecore Professional Services, Prototest, Chesterfield, MO, October 26, 2008

TA–W–72,130: Sanoh-America, Inc., Time Services, Findlay, OH, August 21, 2008

TA–W–72,875: Cooper Tools, Customer Service Division, Cooper Industries, Apex, NC, November 16, 2008

TA–W–70,621: John D. Hollingsworth on Wheels, Inc., Leased Workers of Corporate Staffing, Inc., Greenville, SC, May 19, 2008

TA–W–70,912: Anvil International, Inc., Beck Manufacturing, Leased Workers From Aerotek, Greencastle, PA, May 20, 2008

TA–W–71,145: St. Marys Carbon Company, Brookville, PA, June 10, 2008

TA–W–71,327: Arcelormittal Monessen, LLC, Arcelormittal Holdings, formerly known as Koppers, Leased Workers US Security Associates, Monessen, PA, May 31, 2008

TA–W–71,704: Hart and Cooley, Inc., Tomkins PLC, Leased Workers from Reliable, Masiello Employment Services, Turners Falls, MA, July 12, 2008

TA–W–71,722: Meritor Heavy Vehicle Braking System USA, Inc., Arvinmeritor, Inc., Leased Workers from Sourcepro, Carrollton, KY, July 16, 2008

TA–W–71,820: Fulton Precision Industries, Inc., McConnellsburg, PA, July 24, 2008

TA–W–71,838: Chickasha Manufacturing Co., Inc., Chickasha, OK, July 28, 2008

TA–W–71,869: Lane Furniture Industries, Inc., Laneventure Division, Leased Workers of Manpower, Conover, NC, July 30, 2008

TA–W–72,012: The Frog, Switch and Manufacturing Company, Carlisle, PA, July 18, 2008

TA–W–72,210: The Mitchell Gold Company, DBA Mitchell Gold And Bob Williams, Leased Workers. From Brigette's Staffing, Taylorsville, NC, September 2, 2008

TA–W–72,735: Colfer Manufacturing, Inc., Minerva, OH, October 28, 2008

TA–W–72,752: Arcelormittal Steelton, LLC, Leased Workers From Bernard and Bernard of Exton, Inc., Steelton, PA, November 2, 2008
TA–W–72,882: WER Corporation, DBA Aluminum Alloys and Advanced Machine, Leased Workers From Berks and Beyond, Sinking Spring, PA, November 20, 2008
TA–W–72,483: Maysteel, LLC, Staff One, Badger Tech, Boyd Hunter, Seek and QPS, Menomonee Falls, WI, September 21, 2008
TA–W–73,185: Belcan Engineering Group, Inc., Cincinnati, OH, December 28, 2008
TA–W–72,384: Milacron Plastics Manufacturing Group, LLC, Leased Workers from Staffmark, Viox, Securitas & Hoist & Crane, Mt. Orab, OH, September 22, 2008
TA–W–71,023: Arcelor Mittal, Cleveland, OH, June 4, 2008
TA–W–71,245: Montana Tunnels Mining, Inc., Apollo Gold Corporation, Jefferson City, MT, June 1, 2008
TA–W–71,269: Horton Archery, LLC, Formerly Known as Wildcomm-Horton Partners, LLC, Tallmadge, OH, June 16, 2008
TA–W–71,329: General Motors Company, Leased Workers of Advantis Occupational Health, Mansfield, OH, June 15, 2008
TA–W–71,430: Peddinghaus Corporation, Leased Workers of Agente Staffing and Citistaff, Bradley, IL, June 22, 2008
TA–W–71,584: Chrysler Group LLC, Formerly Known As Chrysler LLC, Quality Engineering Center, Auburn Hills, MI, June 15, 2008
TA–W–71,705: Arcelor Mittal, Leased Workers from Adecco, ESW, Guardsmark and Hudson Global Resources, Hennepin, IL, July 6, 2008
TA–W–71,952: General Motors Company, General Motors Corporation, Lake Orion, MI, August 6, 2008
TA–W–73,313: Nut Tree, Inc., Kidron, OH, January 6, 2009.

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (shift in production or services) of the Trade Act have been met.

TA–W–70,770: Inrad, Inc., Kentwood, MI, May 28, 2008
TA–W–70,826: Royne Industries LLC, d/b/a/NASCOM, Vertek International, Kalama, WA, May 27, 2008
TA–W–70,917A: Agilent Technologies, Network Solutions, Independent Contractors, Leased Workers Volt Services, Austin, TX, June 1, 2008
TA–W–70,917: Agilent Technologies, Network Solutions, Independent Contractors, Leased Workers Volt Services, Colorado Springs, CO, June 1, 2008
TA–W–71,109: Micro Component Technology, Inc., On-Site Independent Contractor, St. Paul, MN, June 8, 2008
TA–W–71,164: Fortis Plastics, LLC, Brownsville, TX, June 9, 2008
TA–W–71,248: International Business Machines, Global Technology Service, Integrated Technology, Cost and Expense, Working from Various States in the United States, Report to Armonk, New York, June 1, 2008
TA–W–71,332A: Pace Industries, LLC, Corporate Office, Fayetteville, AR, June 12, 2008
TA–W–71,332: Pace Industries, LLC, B&C Division, Jonesboro, AR, June 12, 2008
TA–W–71,409: Emerson Power Transmission, McGill Manufacturing Division, Valparaiso, IN, June 24, 2008
TA–W–71,414: Tata Technologies, Inc., a subsidiary of Tata Technologies Limited, Novi, MI, June 25, 2008
TA–W–71,576: American Axle and Manufacturing, Inc., World Headquarters, Leased Workers from MSXI. EDS and Adecco, Detroit, MI, June 15, 2008
TA–W–71,660: Weyerhaeuser NR, ILevel Engineered Wood Products Division, Leased Workers from Manpower, Colbert, GA, July 9, 2008
TA–W–72,024: Pentair Electronic Packaging, PEP–IL Division Leased Workers of Aerotek, Schaumburg, IL, August 11, 2008
TA–W–72,094: Schaefer Marine, New Bedford, MA, August 15, 2008
TA–W–72,105: Oclaro Technology, Inc., Spectra Physics Div. of Newport Corp., Tex Work, Tucson, AZ, August 21, 2008
TA–W–72,112: Micro Motion, Inc., Div. of Emerson Process Mgmt. Leased Workers From Staffing Solutions, Boulder, CO, July 18, 2008
TA–W–72,123: MKS Instruments, ENI Products Div., Leased Workers Of Burns Personnel, Inc. and NESCO Resource, Rochester, NY, August 1, 2008
TA–W–72,343: Chamberlain Wireless Products Group, Inc., Volt Service Group and Hire Source, Vancouver, WA, September 15, 2008
TA–W–72,379: Premier Manufacturing Support Services, Inc., Spring Hill, TN, June 13, 2009
TA–W–72,386: Sovereign Tool and Engineering, LLC,, Muncie, IN, September 23, 2008
TA–W–72,462: Cardinal Health, Presource Med Products Division, Leased Workers From Adecco Temporary Services, Ontario, CA, September 24, 2008
TA–W–72,518: Wilson Tool International, Office Team/Robert Half and Volt Staffing, White Bear Lake, MN, October 6, 2008
TA–W–72,529: Celanese Corporation, Pampa, TX, October 5, 2008
TA–W–72,571: Freescale Semiconductor, Comuter Integrated Manufacturing Division, Chandler, AZ, October 7, 2008
TA–W–72,683: McConway and Torley, LLC, Trinity Industries, Inc., Pittsburgh, PA, October 26, 2008
TA–W–72,790: Agni-Gencell, Inc., Agni, Inc., Leased Workers from Staffing, Southbury, CT, November 3, 2008
TA–W–72,987: Lapp Insulators, LLC, Andlinger and Company, Leroy, NY, November 6, 2008
TA–W–73,001: Fiber Glass Systems, National Oilwell Varco, San Antonio Staffing, Big Spring, TX, December 1, 2008
TA–W–73,010: General Motors Powertrain Toledo, New GM Company, Leased Workers from Grub and Ellis, Knight, Toledo, OH, December 3, 2008
TA–W–73,059: Honeywell International, Automation & Control, Sensing & Control, Leased Workers from Manpower, Pawtucket, RI, November 12, 2008
TA–W–73,065: Domtar Paper Company, Fine Paper Division, Plymouth, NC, December 3, 2008
TA–W–73,087: Dover Parkersburg, Parkersburg, WV, December 11, 2008
TA–W–73,121: Hyosung USA, Inc., Leased Workers from Defender Services, Scottsville, VA, December 11, 2008
TA–W–73,158: Siemens Medical Solutions USA, Inc., Oncology Care Systems Division, Concord, CA, December 22, 2008
TA–W–73,238: Solon Manufacturing Company, Skowhegan, ME, January 7, 2009
TA–W–73,257: Pacific Coast Industries, Sekiso Corporation, Leased Workers from Adecco and Premier Staffing, Tracy, CA, January 12, 2009
TA–W–73,264: Suntron Corporation, Leased Workers of Manpower, Newburg, OR, December 16, 2008
TA–W–73,293: Continental Automotive Systems, US, Leased Workers of Yoh Managed Services, Huntsville, AL, January 7, 2009
TA–W–73,314A: Delphi Electronics and Safety, Working On Site at Delphi Electronics and Safety, Kokomo, IN, January 15, 2009

TA–W–73,314: Delphi Electronics and Safety, Leased Workers from Alliance, Kokomo, IN, February 15, 2010
TA–W–73,319: LA–Z–Boy Casegoods, Inc.—LEA, aka American Drew, Wilkesboro, NC, January 8, 2009
TA–W–73,400: Volvo Construction Equipment North America, Inc., Leased Workers from Friday's Staffing and Adecco, Arden, NC, February 1, 2009
TA–W–73,642: Intel Corporation, FAB 30 Division, Leased Workers of Volt Technical Resource, Staff Finders, Hillsboro, OR, March 3, 2009
TA–W–72,276: Weyerhaeuser Company, Warrenton, OR, September 2, 2008
TA–W–71,049: Chrysler Group LLC, Formerly Known as Chrysler LLC, Warren Office Building, Warren, MI, May 27, 2008
TA–W–70,985: Computer Aid, Inc., Leased Workers Imetris Corp., Bonsal Consulting etc., Rochester, NY, May 19, 2008
TA–W–71,110: International Decision Systems, Inc., Minneapolis, MN, June 8, 2008
TA–W–71,150: Seton Company, Americas Sales Division, Farmington Hills, MI, June 10, 2008
TA–W–71,166: Franklin Electronic Publishing, Leased Workers of Brooksource Personnel, Burlington, NJ, June 10, 2008
TA–W–71,323: Sanlo, Inc., Div. of Actuant Corp., Leased Workers From Swanson Staffing, Kelly Service, Michigan City, IN, June 19, 2008
TA–W–71,377: International Business Machines Corporation, Global Business Services, Lease Workers Ajilon, Analysts Int'l Corp., Apollo, Southbury, CT, June 22, 2008
TA–W–71,457: Oxford Collections, Division of Li and Fung USA, Gaffney, SC, June 25, 2008
TA–W–71,527: Pomeroy IT Solutions, Working On-Site at Cincinnati Bell, Cincinnati, OH, June 26, 2008
TA–W–71,552: Hewlett-Packard (HP), Enterprise Services Division, Formerly Known As EDS, Englewood, CO, July 2, 2008
TA–W–71,601: The Bank of New York Mellon, Corporate Trust Operations Division/Leased Workers of Aerotek, Inc., Syracuse, NY, July 7, 2008
TA–W–71,611: AT&T Services, Inc., Information Technology Operations, Leased Workers Agile 19008 Group Etc, Hoffman Estates, IL, July 9, 2008
TA–W–71,612: Ameriprise Financial Services, Inc., Customer Service Department, Onsite Workers from WNS and Sykes, Minneapolis, MN, July 8, 2008
TA–W–72,115: Emerson Climate Technologies, White-Rodgers Division, St. Louis, MO, August 18, 2008
TA–W–72,237: AGFA HealthCare, Inc., Healthcare Division, Westerly, RI, September 3, 2008
TA–W–72,451: International Business Machines Corporation, Leased Workers from Logicalis, Teksystems, SDI, Golden Valley, MN, September 29, 2008
TA–W–72,769: Siemens IT Solutions and Services, Level One Service Desk, Clarks Summit, PA, October 30, 2008
TA–W–72,774: CRH North America, Inc., Kforce, Warren, MI, October 14, 2008
TA–W–72,804: Borland Software, Micro Focus, Worldwide Revenue Department, Austin, TX, November 5, 2008
TA–W–72,843: Renaissance Bankcard Services of Kentucky, Inc., Operations Support, HSBC Finance Corporation, London, KY, November 12, 2008
TA–W–72,874: Cooper Tools, Customer Service Division, Cooper Industries, Lexington, SC, November 16, 2008
TA–W–72,879: Universal Warranty Corporation, GMAC Inc., Leased Workers of Guru Alliance, ATS Services etc., Omaha, NE, November 11, 2008
TA–W–72,890: Nortel Networks, Ltd, 4G LTE, Richardson, TX, November 18, 2008
TA–W–72,946: Kraft Foods Global, Inc., Mobile Operations Support Group. Leased Workers of Spherion, Wilkes-Barre, PA, November 24, 2008
TA–W–72,980: IBM, Farmers Branch, TX, November 24, 2008
TA–W–73,011A: AGFA HealthCare, Incorporated, Wilmington, MA, September 3, 2008
TA–W–73,011: AGFA HealthCare, Inc., Wilmington, MA September 3, 2008
TA–W–73,034: Aalfs Manufacturing, Inc., Sample and Pattern Making, Sioux City, IA, December 3, 2008
TA–W–73,380: Fiserv Fulfillment Services, Inc., ISNG Solutions, Gators Division, Pittsburgh, PA, January 22, 2009
TA–W–72,078: Advance Auto Business Support, LLC, Expense Accounts Payable Div., Advance Stores Co., Roanoke, VA, August 18, 2008
TA–W–72,400: California State Automobile Association Inter-Insurance Bureau, Information Technology Division, Glendale, AZ, September 15, 2008
TA–W–72,549: Charming Shoppes of Delaware, Inc., Information Technology Services Division, Bensalem, PA, October 7, 2008
TA–W–72,610: Brand Science LLC, dba Lesportsac, Leased Workers of The Job Shop, Stearns, KY, October 16, 2008
TA–W–72,651: EDS An HP Company, Hewlett Packard Enterprise Services, Vandalia, OH, September 22, 2008
TA–W–72,720: Philips Healthcare Global Customer Service, Global Customer Service (GCS), Philips Electronics, North America Corp., San Jose, CA, October 28, 2008
TA–W–72,789: Hartford Financial Services Group, Inc., Leased Workers from Beeline, Farmington, CT, November 6, 2008
TA–W–72,958: Roadway Express, Inc., Regional Acquired Shipment Detail, YRC Worldwide, Burnsville, MN, November 25, 2008
TA–W–73,097: Coventry Health Care Workers Compensation, Inc., Bill Review Services Dept., Leased Workers Remedy Staffing/Office Team, Tucson, AZ, December 14, 2008.

The following certifications have been issued. The requirements of Section 222(b) (adversely affected workers in public agencies) of the Trade Act have been met.

None.

The following certifications have been issued. The requirements of Section 222(c) (supplier to a firm whose workers are certified eligible to apply for TAA) of the Trade Act have been met.

TA–W–71,062: Kautex of Georgia, Inc., Business Unit of Textron, Leased Workers of Phillips Staffing, etc., Lavonia, GA, June 5, 2008
TA–W–71,088: Cubicon Corporation, Ripley, MS, June 4, 2008
TA–W–71,132: General Motors Corporation, Grand Rapids Metal Center, Metal Fabricating, Leased Workers from Securitas, Grand Rapids, MI, May 20, 2008
TA–W–71,135: Noble Metal Processing Ohio, Noble International, Stow, OH, June 10, 2008
TA–W–71,200: Protective Industries, Inc., Leased Workers of Career Concepts, Volt Services Group, Erie, PA, May 21, 2008
TA–W–71,223: Keystone Powdered Metal Company, Cherryville Division, Leased Workers from Lincoln Staffing, Cherryville, NC, June 15, 2008
TA–W–71,292: Nobel Automotive Ohio, LLC., Archbold, OH, June 18, 2008
TA–W–71,371: Standard Locknut LLC., Westfield, IN, June 22, 2008

TA–W–71,376: Johnstown Specialty Castings, Inc., Johnstown, PA, June 17, 2008
TA–W–71,712: Automodular Assemblies of Ohio, Inc., Lordstown, OH, July 16, 2008
TA–W–71,717: Joseph T. Ryerson and Son, Inc., Leased Workers of CRST International, Inc., Burns Harbor, IN, July 6, 2008
TA–W–71,727: TI Automotive, Subsidiary of TI Group Automotive Systems, LLC. Fuel Sys. Div., Ossian, IN, July 7, 2008
TA–W–71,874: Guardian Automotive Trim, Inc., Leased Workers of Action Temporary Services/Team Industrial Services, Evansville, IN, July 30, 2008
TA–W–72,159: Caterpillar Sumter Hydraulics, Advanced Systems Division, Leased Workers from Roper Staffing, Sumter, SC, August 27, 2008
TA–W–72,285: Sunoco, Paper Division, Leased Workers of Manpower, Lancaster, OH, September 11, 2008
TA–W–72,290: General Motors Company, Pontiac Metal Center, Leased Workers Securitas, Premier, etc., Pontiac, MI, September 9, 2008
TA–W–72,803A: Latrobe Specialty Steel Distribution, Leased Workers from Ryan's Alternative Staffing and Accounting, Vienna, OH, November 6, 2008
TA–W–72,803B: Latrobe Specialty Steel Distribution, Leased Workers from Staffmark and Aspire Staffing, Whitehouse, TN, November 6, 2008
TA–W–72,803C: Latrobe Specialty Steel, Leased Workers from Adecco Employment Services, Franklin, PA, November 6, 2008
TA–W–72,803D: Latrobe Specialty Steel Distribution, Chicago, IL, November 6, 2008
TA–W–72,803: Latrobe Specialty Steel, Leased Workers from Adecco Employment Services, Latrobe, PA, November 6, 2008
TA–W–72,912: Rexam Closure System, Inc., Leased Workers from Adecco Employment Services, Hamlet, NC, November 10, 2008
TA–W–72,929: Republic Engineered Products, Inc., Lorain Plant, Lorain, OH, November 20, 2008
TA–W–73,085: Inspire Technologies, Inc., Caldwell, ID, December 1, 2008
TA–W–73,230: Plastic Omnium Automotive Exteriors, LLC., Anderson, SC, January 6, 2009
TA–W–73,251: Amtex, Inc., Hayashi Telepu Company, Leased Workers of Availability Personnel Services, Manteca, CA, January 12, 2009
TA–W–73,252: Arvin Sango, Inc., Leased Workers from Placement Pros, Merced, CA, January 12, 2009
TA–W–70,822: Wagner Equipment Company, Tyrone, NM, May 27, 2008
TA–W–71,279: HCL America, Boise, ID, June 17, 2008
TA–W–71,314: Mattson Technology, Inc., U.S. Field Service Engineering, Leased Workers Nstar Global Services, Fremont, CA, June 18, 2008
TA–W–71,346: Martin Plant Services, Delphi Corporation, Athens, AL, June 19, 2008
TA–W–71,433: Syncreon USA, Belvidere, IL, June 16, 2008
TA–W–72,368: Micale Construction Services, Inc., Kersey, PA, September 17, 2008
TA–W–72,611: Ryder Integrated Logistics, Ryder Logistics Division, Leased Workers of Randstad, Great Lakes HR, Auburn Hills, MI, October 15, 2008
TA–W–72,900: CEVA Freight LLC., Dell Logistics Div., Leased Workers from Prologistix, Winston-Salem, NC, November 18, 2008
TA–W–73,255: Mountain Valley Express Company, Inc., Dedicated Logistics Division, Leased Workers from Staffmark and Adecco, Manteca, CA, January 12, 2009
TA–W–73,445: ILevel By Weyerhaeuser, Weyerhaeuser Company, Boise Tech Center, Boise, ID, January 22, 2009

The following certifications have been issued. The requirements of Section 222(c) (downstream producer for a firm whose workers are certified eligible to apply for TAA) of the Trade Act have been met.

TA–W–72,351: Guardian Freight, LLC., Wholly-Owned Subsidiary of Vanguard Furniture, Inc., Conover, NC, September 14, 2008

The following certifications have been issued. The requirements of Section 222(f) (firms identified by the International Trade Commission) of the Trade Act have been met.

TA–W–73,266: DuPont Teijin Films, Fayetteville, NC, November 6, 2007

Negative Determinations for Worker Adjustment Assistance

In the following cases, the investigation revealed that the eligibility criteria for worker adjustment assistance have not been met for the reasons specified.

The investigation revealed that the criterion under paragraph (a)(1), or (b)(1), or (c)(1) (employment decline or threat of separation) of section 222 has not been met.

TA–W–71,390: Whitley's Clothing, Inc., d/b/a Whitley Apparel Company, Dover, NC
TA–W–71,481: Koppers, Inc., Clairton, PA
TA–W–71,946: Loew-Cornell, Inc., A Subsidiary of Jarden Corporation, Englewood Cliffs, NJ
TA–W–72,868: Empire Die Casting Company, Inc., Macedonia, OH
TA–W–72,955: Bridgestone Americas Product Development, Bridgestone Americas, Leased Workers of Kelly Services, Akron, OH

The investigation revealed that the criteria under paragraphs (a)(2)(A)(i) (decline in sales or production, or both) and (a)(2)(B) (shift in production or services to a foreign country) of section 222 have not been met.

TA–W–71,873: Global Metal Products, Inc., St. Mary's, PA
TA–W–72,475: Tate and Lyle Ingredients Americas, Inc., a subsidiary of Tate and Lyle Plc, d/b/a A.E. Staley, Houlton, ME

The investigation revealed that the criteria under paragraphs(a)(2)(A) (increased imports) and (a)(2)(B) (shift in production or services to a foreign country) of section 222 have not been met.

TA–W–70,487: Meridian Rail Acquisition Corporation, dba Greenbrier Rail Services, aka Greenbrier Casting Reclamation, Chicago Heights, IL
TA–W–70,855: Smurfit-Stone Container, Knoxville, TN
TA–W–70,938: Imperial Carbide, Inc., Meadville, PA
TA–W–70,946: MTD Products, Inc., Brownsville, TN
TA–W–70,952: Paul W. Marino Gages, Inc., Warren, MI
TA–W–70,956: Snorkel International, Inc., A Division of Tanfield Group PLC, Elwood, KS
TA–W–70,990: Veritude, Devonshire Investors A Fidelity Investments, Computer Software Division, West Lake, TX
TA–W–71,038A: General Pattern Company, Blaine, MN
TA–W–71,038: General Pattern Company, Ham Lake, MN
TA–W–71,074: American Roller Bearing & Manufacturing Co., Hiddenite, NC
TA–W–71,146: Sanford Brands, Newell Rubbermaid Office, Shelbyville, TN
TA–W–71,163: Erickson Air-Crane, Inc., Central Point, OR
TA–W–71,285: Rousseau Acquisition Corporation, Modar, Inc., Williamson and Manpower, Benton Harbor, MI
TA–W–71,294: Liberty Pressed Metals, Leased Workers from Spherion, Kersey, PA

TA–W–71,311: Outbound Technologies, Inc., Indianapolis, IN
TA–W–71,401: Setco Automotive, Inc., Paris, TN
TA–W–71,415: Sealy Mattress Company, Clarion, PA
TA–W–71,423: JBT Corporation, JBT Aerotech, Automated Systems Division, Chalfont, PA
TA–W–71,488: BMJ Mold and Engineering, Eikenberry & Associates, Inc., Kokomo, IN
TA–W–71,533: Mestek, Inc., Leased Workers from Coworx and Point Staffing, South Windsor, CT
TA–W–71,561A: Wheeling Corrugating Company, Severstal North American, Beech Bottom, WV
TA–W–71,561B: Mountain State Carbon, LLC., Severstal North American, Follansbee, WV
TA–W–71,561: Severstal Wheeling, Inc. and Wheeling Corrugating Company, Wheeling Corrugating Co., Severstal North American, Wheeling, WV
TA–W–71,695A: Semitool, Inc., Leased from LC Staffing, Express Personnel, and Workplace, Inc., Birch Grove, MT
TA–W–71,695B: Semitool, Inc., Leased Workers from LC Staffing, Express Personnel and Workplace, Inc., Libby, MT
TA–W–71,695: Semitool, Inc., Leased from LC Staffing, Express Personnel and Workplace, Inc., Kalispell, MT
TA–W–71,824: Neenah Paper FR, LLC., Ripon, CA
TA–W–72,043: Carmeuse Industrial Sands, Formerly Oglebay Norton Industrial Sands, Inc., Glenford, OH
TA–W–72,107: Kuka Assembly and Test Corporation, Fenton, MI
TA–W–72,151: UPF, Inc., Flint, MI
TA–W–72,289: ISP Stitching and Bindery Products, Samuel Strapping Systems, Racine, WI
TA–W–72,460: Ranch Life Plastics, Inc., Eaton Rapids, MI
TA–W–72,466: Ethicon, Inc., dba Closure Medical Corp., Johnson and Johnson, Raleigh, NC
TA–W–72,606: American Food and Vending, Spring Hill, TN
TA–W–72,634: Cimarron Energy, Inc., Marlow, OK
TA–W–72,652: Legacy, Inc., Winston-Salem, NC
TA–W–72,788: Barnes Aerospace, Inc., Ceramics Division, Windsor, CT
TA–W–70,871A: Elliott Homes, Inc., A Separate Entity of Solitaire Holdings, LLC., Duncan, OK
TA–W–70,871B: Elliott Homes, Inc., A Separate Entity of Solitaire Holdings, LLC., Madill, OK
TA–W–70,871C: Big Springs Manufactured Homes, LP., A Separate Entity of Solitaire Holdings, LLC., Big Springs, TX
TA–W–70,871: Diamond Homes Transport, Inc., A Separate Entity of Solitaire Holdings, LLC, Duncan, OK
TA–W–70,904: PHD: US, Omincom Media Group, Atlanta, GA
TA–W–71,154: Shogren, Inc., Concord, NC
TA–W–71,240: On Target Xpress, Spokane, WA
TA–W–71,266: Rockwell Automation, Detroit Office, Troy, MI
TA–W–71,408: Circuit City Stores, Incorporated, Marion Distribution Center, Marion, IL
TA–W–71,413: Crystal Employment Services, Madison Heights, MI
TA–W–71,440: O'Bryan Brothers, Inc., Leon, IA
TA–W–72,162: Vendor Managed Solutions, Inc., formerly known as SDE and SDE Vendor Managed Solutions, Troy, MI
TA–W–72,310: Federal Marine Terminals, Inc., Eastport, ME
TA–W–72,370: HMX Tailored, HMX LLC, Buffalo, NY
TA–W–72,605: Coastal Diesel Service, Inc., New Bern, NC
TA–W–72,629: Marmon/Keystone Corporation, Chicago Division, Bolingbrook, IL
TA–W–73,053: Homeq Servicing, Leased Workers from Ranstad, Boone, NC
TA–W–73,224: Jobworks, Inc., Connersville, IN
TA–W–70,828: Botech Industries, LLC, Hohenwald, TN

The investigation revealed that the criteria under paragraphs (b)(2) and (b)(3) (public agency acquisition of services from a foreign country) of section 222 have not been met.

TA–W–72,459: Lawrence County Department of Jobs and Family Services, Ironton, OH

Determinations Terminating Investigations of Petitions for Worker Adjustment Assistance

After notice of the petitions was published in the **Federal Register** and on the Department's Web site, as required by Section 221 of the Act (19 U.S.C. 2271), the Department initiated investigations of these petitions.

The following determinations terminating investigations were issued because the petitioner has requested that the petition be withdrawn.

TA–W–73,104: United Steelworkers, Dawson, PA
TA–W–73,119; Tenax Corporation, Crown Paper Box Division, Indianapolis, IN
TA–W–73,131: Android Wixom, Wixom, MI
TA–W–73,168; Riverside Mechanical, Inc., Groveport, OH
TA–W–73,171; Hallmark Jewelry, Warwick, RI
TA–W–73,284: Lockheed Martin, Cleveland, OH
TA–W–73,658; Arrow Truck Sales, Montebello, CA
TA–W–71,097: Commercial Vehicle Group/Trim Systems, Dublin, VA
TA–W–71,112: Collins Ink Corporation, Cincinnati, OH
TA–W–71,151: J and D Manufacturing, Eau Claire, WI
TA–W–71,176: Euclid Industries, Inc., Bay City, MI
TA–W–71,254: Precision Parts Center, Corpus Christi, TX
TA–W–71,657: Graftech International Holdings, Columbia, TN
TA–W–71,731: Valentine Tool and Stamping, Inc., Norton, MA
TA–W–72,111: Fuzion Technologies, Inc., Adrian, PA
TA–W–72,401: Jastev Casework Company, Columbia, TN
TA–W–72,418: Electronic Data Systems, Montvale, NJ
TA–W–72,533: Ensign United States Drilling Company, Denver, CO
TA–W–72,588: Pavco Industries, Inc., Pascagoula, MS
TA–W–72,598; Nittsu Shoji U.S.A., Inc., Troy, OH
TA–W–72,894: U.S. Axle, Inc., Pottstown, PA
TA–W–72,907; Gallery Leather Company, Inc., Trenton, ME

The following determinations terminating investigations were issued in cases where these petitions were not filed in accordance with the requirements of 29 CFR 90.11.

Every petition filed by workers must be signed by at least three individuals of the petitioning worker group. Petitioners separated more than on year prior to the date of the petition cannot be covered under a certification of a petition under Section 223(b), and therefore, may not be part of a petitioning work group for one or more of these reasons, these petition were deemed invalid.

TA–W–71,622: Vision Custom Tooling, Inc., Birdsboro, PA

The following determinations terminating investigation were issued because the petitioning groups of workers are covered by certifications. Consequently, further investigation in these cases would service no purpose since the petitioning groups of workers cannot be covered by more than one certification at a time.

TA–W–73,061: Honeywell International, Inc., Automation & Control, Sensing

& Control, Springfield, IL, covered by TA–W–72,904A: Honeywell International, Inc., Automation & Control, Sensing & Control, Springfield, IL

TA–W–73,139: Zebra Technologies Corp., Camarillo, CA, covered by TA–W–70,463A: Zebra Technologies Corp., Camarillo, CA

TA–W–71,439: Levi Strauss and Co., Global Supply Chain Organization, San Francisco, CA, covered by TA–W- 70,213: Levi Strauss and Co., Global Supply Chain Organization, San Francisco, CA

TA–W–72,536: Hanesbrands, Inc., Winston-Salem, NC, covered by TA–W–72,989B: Hanesbrands, Inc., Winston-Salem, NC

TA–W–72,592: Sipco Molding Technologies, Meadville, PA, covered by TA–W–70,457A, as amended: Sipco Molding Technologies, Meadville, PA

TA–W–73,058: Honeywell International, Inc., Automation & Control, Sensing & Control, Spring Valley, IL, covered By TA–W–72,902: Honeywell International, Inc., Automation & Control, Sensing & Control, Spring Valley, IL

The following determinations terminating investigations were issued because the petitions are the subject of ongoing investigations under petitions filed earlier covering the same petitioners.

TA–W–73,140: Talbar, Inc., Meadville, PA, covered by TA–W–73,089: Talbar, Inc., Meadville, PA

TA–W–73,151: Trimble Navigation Ltd, Mobile Computing Solutions Division, Corvallis, OR, covered by TA–W- 73,144: Trimble Navigation Ltd., Mobile Computing Solutions Division

TA–W–73,163: Siemens Medical Solutions, Malven, PA, covered by TA–W–73,099: Siemens Medical Solutions, Malven, PA

TA–W–73,298: Citizen's Bank, Medford, MA, covered by TA–W–72,873: RBS Citizens N.A., Medford, MA

TA–W–73,326: The North Carolina Moulding Company, Lexington, NC, covered by TA–W–73,186: The North Carolina Moulding Company, Lexington, NC

TA–W–73,356: Ceratizit Newcomer USA, Derry, PA, covered by

TA–W–73,309: Ceratizit Newcomer USA, Derry, PA

TA–W–73,365; Republic Engineered Products, Massillon, OH, covered by TA–W–73,363: Republic Engineered Products, Massillon, OH

TA–W–73,404: C.C. Forbes Company, Big Lake, TX, covered by TA–W–73,387: C.C. Forbes Company, Big Lake, TX

TA–W–73,408: National Oilwell Varco, Houston, TX (San Angelo, TX), covered by TA–W–73,399: National Oilwell, San Angelo, TX

TA–W–73,475: Springs Global US, Inc., Charles D. Owen Manufacturing Div., Swannanoa, NC, covered by TA–W- 73,469: Springs Global US, Inc., Charles D. Owen Manufacturing Div., Swannanoa, NC

TA–W–73,499; Geocycle, LLC, Dundee, MI, covered by TA–W–73,444: Geocycle, USA, Dundee, MI

TA–W–72,619: ITW Shippers Paper Products, Mt. Pleasant, TN, covered by TA–W–72,476: ITW Shippers Paper Products, Mt. Pleasant, TN

TA–W–72,783; Siemens IT Solutions and Services, Inc., Clark Summit, PA, covered by TA–W–72,283: Siemens IT Solutions and Services, Inc., Clark Summit, PA

I hereby certify that the aforementioned determinations were issued during the period of March 8, 2010 through March 26, 2010. Copies of these determinations are available for inspection in Room N–5428, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address. These determinations also are available on the Department's Web site at *http://www.doleta/tradeact* under the searchable listing of determinations.

Dated: April 16, 2010.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–9484 Filed 4–22–10; 8:45 am]

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DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers by (TA–W) number issued during the period of February 22, 2010 through March 5, 2010.

In order for an affirmative determination to be made for workers of a primary firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(a) of the Act must be met.

I. Under Section 222(a)(2)(A), the following must be satisfied:

(1) A significant number or proportion of the workers in such workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The sales or production, or both, of such firm have decreased absolutely; and

(3) One of the following must be satisfied:

(A) Imports of articles or services like or directly competitive with articles produced or services supplied by such firm have increased;

(B) Imports of articles like or directly competitive with articles into which one or more component parts produced by such firm are directly incorporated, have increased;

(C) Imports of articles directly incorporating one or more component parts produced outside the United States that are like or directly competitive with imports of articles incorporating one or more component parts produced by such firm have increased;

(D) Imports of articles like or directly competitive with articles which are produced directly using services supplied by such firm, have increased; and

(4) The increase in imports contributed importantly to such workers' separation or threat of separation and to the decline in the sales or production of such firm; or

II. Section 222(a)(2)(B) all of the following must be satisfied:

(1) A significant number or proportion of the workers in such workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) One of the following must be satisfied:

(A) There has been a shift by the workers' firm to a foreign country in the production of articles or supply of services like or directly competitive with those produced/supplied by the workers' firm;

(B) There has been an acquisition from a foreign country by the workers' firm of articles/services that are like or directly competitive with those produced/supplied by the workers' firm; and

(3) The shift/acquisition contributed importantly to the workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected workers in public agencies and a certification issued regarding

eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(b) of the Act must be met.

(1) A significant number or proportion of the workers in the public agency have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The public agency has acquired from a foreign country services like or directly competitive with services which are supplied by such agency; and

(3) The acquisition of services contributed importantly to such workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected secondary workers of a firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(c) of the Act must be met.

(1) A significant number or proportion of the workers in the workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The workers' firm is a Supplier or Downstream Producer to a firm that employed a group of workers who received a certification of eligibility under Section 222(a) of the Act, and such supply or production is related to the article or service that was the basis for such certification; and

(3) Either—

(A) The workers' firm is a supplier and the component parts it supplied to the firm described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) A loss of business by the workers' firm with the firm described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected workers in firms identified by the International Trade Commission and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(f) of the Act must be met.

(1) The workers' firm is publicly identified by name by the International Trade Commission as a member of a domestic industry in an investigation resulting in—

(A) An affirmative determination of serious injury or threat thereof under section 202(b)(1);

(B) An affirmative determination of market disruption or threat thereof under section 421(b)(1); or

(C) An affirmative final determination of material injury or threat thereof under section 705(b)(1)(A) or 735(b)(1)(A) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)(1)(A) and 1673d(b)(1)(A));

(2) The petition is filed during the 1-year period beginning on the date on which—

(A) A summary of the report submitted to the President by the International Trade Commission under section 202(f)(1) with respect to the affirmative determination described in paragraph (1)(A) is published in the **Federal Register** under section 202(f)(3); or

(B) Notice of an affirmative determination described in subparagraph (1) is published in the **Federal Register**; and

(3) The workers have become totally or partially separated from the workers' firm within—

(A) The 1-year period described in paragraph (2); or

(B) Notwithstanding section 223(b)(1), the 1-year period preceding the 1-year period described in paragraph (2).

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (increased imports) of the Trade Act have been met.

TA–W–70,891; Lapp Insulators, LLC, Transmission and Distribution, Leased Workers from Will Staff, Sandersville, GA: June 2, 2008.

TA–W–71,167; Cattron-Theimeg, Inc., Leased Workers of Manpower, Career Advantage of Lawrence County, Sharpsville, PA: June 10, 2008.

TA–W–71,779; Saint-Gobain Abrasives, Inc., Leased Workers from Aerotek Staffing and Lean Initiatives, Carol Stream, IL: July 10, 2008.

TA–W–72,437; Copa Tool, Inc., Leased Workers from Kelly Services, South Lyon, MI: September 7, 2008.

TA–W–72,819; Siemens AG, Drive Technologies Division, Leased from Aerotek, Alltek Staffing etc., New Kensington, PA: November 7, 2008.

TA–W–71,977; Parker Hannifin Corporation, Hydraulic Valve Division, Leased Workers of Manpower Temporary Agency, Forest City, NC: August 6, 2008.

TA–W–70,002; Fairfield Chair Company, Foothills Temporary Agency, Lenoir, NC: May 18, 2008.

TA–W–70,821; Standby Screw Machine Products Co., Leased Workers of The Reserves Network, Berea, OH: May 28, 2008.

TA–W–70,923; Acme Architectural Products, Brooklyn, NY: June 1, 2008.

TA–W–70,932; PMG Pennsylvania Corporation, Philipsburg, PA: June 1, 2008.

TA–W–71,143; Oakdale Cotton Mills, Inc., Jamestown, NC: June 10, 2008.

TA–W–71,256; Powerex, Inc., Youngwood, PA: June 10, 2008.

TA–W–71,313; Fort Wayne Foundry Corporation, Machining Division, Fort Wayne, IN: June 16, 2008.

TA–W–71,350; International Extrusion Corporation, International Aluminum Division, Alhambra, CA: June 2, 2008.

TA–W–71,534; SP News Print, Newberg, OR: July 1, 2008.

TA–W–71,790; Fort Wayne Foundry Corporation, Cole Pattern and Engineering/Columbia City Division, Columbia City, IN: June 24, 2008.

TA–W–71,813; Getrag Corporation, Manpower, Newton, NC: July 20, 2008.

TA–W–71,865; QMS, Inc., Glasgow, KY: July 29, 2008.

TA–W–72,311; K and B Garment, Inc., San Francisco, CA: September 4, 2008.

TA–W–72,449; Dalure Fashions, Inc., Gatesville, NC: September 30, 2008.

TA–W–72,456; Applied Extrusion Technologies, Leased Workers From Express Personnel, New Castle, DE: September 24, 2008.

TA–W–72,649; Contech Castings, LLC, Leased Workers from On Staff USA, Dowagiac, MI: October 19, 2008.

TA–W–72,931; Mazer Corporation, Creative Services, Maitland, FL: November 9, 2008.

TA–W–73,173; Muller Martini Mailroom Systems, Inc., Leased Workers from McCallion Staffing and HTSS, Inc., Allentown, PA: December 15, 2008.

TA–W–72,241; Autodie, LLC, On and Off Site Individual Contractors, Grand Rapids, MI: August 31, 2008.

TA–W–72,830; ECM Transport, LLC, New Kensington, PA: November 11, 2008.

TA–W–70,950; Chrysler Group, LLC, Formerly Known As Chrysler, LLC, Leased Workers from Aerotek, Ajilon, G-Tech, Chelsea, MI: May 26, 2008.

TA–W–71,708; The Earnest Sewn Company, New York, NY: July 14, 2008.

TA–W–72,631; Jin Feng Sewing Company, Inc., San Francisco, CA: October 12, 2008.

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (shift in production or services) of the Trade Act have been met.

TA–W–70,918; Agilent Technologies, Systems Product Division, Independent Contractor, Leased Workers Volt Services, Loveland, CO: June 1, 2008.

TA–W–70,988; Delphi Corporation, Delphi Holdings, Leased Workers from Securitas Interim Physicians etc., Flint, MI: June 4, 2008.

TA–W–71,159; RHI Monofrax, Ltd, Falconer, NY: June 10, 2008.

TA–W–71,290; Unison Engine Components, General Electric Aviation, ETC, Asheville, NC: May 16, 2008.

TA–W–71,386; LDS Test and Measurement, LLC, HBM LDS Test and Measurement LLC, Bruel and Kjaer, Middleton, WI: June 23, 2008.

TA–W–71,650; Evergreen Pulp, Inc., Samoa, CA: July 7, 2008.

TA–W–71,670A; Indalex, Inc., Leased Workers from Vanguard Services, Quality Drives Solutions, Personnel Plus, City of Industry, CA: July 13, 2008.

TA–W–71,670B; Indalex, Inc., Burlington, NC: July 13, 2008.

TA–W–71,670C; Indalex, Inc., Leased Workers from Gavlick Personnel and Manpower, Mountain Top, PA: July 13, 2008.

TA–W–71,670D; Indalex, Inc., Connersville, IN: July 13, 2008.

TA–W–71,670E; Indalex, Inc., Leased Workers from Proresources Staffing Services, Elkhart, IN: July 13, 2008.

TA–W–71,670F; Indalex, Inc., Leased Workers from TRC Staffing Solutions, Gainsville, GA: July 13, 2008.

TA–W–71,670G; Indalex, Inc., Kokomo, IN: July 13, 2008.

TA–W–71,670; Indalex, Inc., Elkhart, IN: July 13, 2008.

TA–W–71,804; DJO LLC, Vista, CA: June 21, 2009.

TA–W–72,113; Imerys Clays, Inc., Daniels Processing Improvement Consulting, Inc., Sandersville, GA: August 25, 2008.

TA–W–72,575; Dell Products LP, Winston-Salem (WS–1) Division, Leased Workers of Adecco, Spherion, Patriot, Winston-Salem, NC: October 13, 2008.

TA–W–72,712; Quality Spring Togo, Coldwater, MI: October 26, 2008.

TA–W–72,841; GE Oil and Gas-Conmec LLC, Energy Manufacturing, Easton, PA: November 2, 2008.

TA–W–72,855; Barnstead Thermolyne Corporation, Thermo Fisher Scientific, Leased Workers from Sedona Staffing, Dubuque, IA: November 11, 2008.

TA–W–72,888; Tektronix, Inc., On-Site Leased Workers Adecco Employment Services, Beaverton, OR: November 17, 2008.

TA–W–72,989A; Hanesbrands, Inc., Eden Textiles Operations Division, Forest City, NC: November 24, 2008.

TA–W–72,989B; Hanesbrands, Inc., Eden Textiles Operations Division, Winston-Salem, NC: November 24, 2008.

TA–W–72,989; Hanesbrands, Inc., Eden Textiles Operations Division, Eden, NC: November 24, 2008.

TA–W–73,002; Brose Gainesville, Inc., Brose International, Leased Workers Randstad, TRC, Spherion, Gainesville, GA: December 1, 2008.

TA–W–73,056; Curtiss-Wright Controls, Protemp, Long Beach, CA: December 7, 2008.

TA–W–73,143; LexisNexis, Hotdocs Division, Orem, UT: December 21, 2008.

TA–W–73,220; Schweitzer-Manduit International, Inc., Spotswood, NJ: January 6, 2010.

TA–W–73,221; Springs Window Fashions, LLC, Keystone Staffing, Spherion, Kelly, One Source, Ashford, Montgomery, PA: January 6, 2009.

TA–W–73,243; Agilent Technologies, Inc., Mobile Broadband Operation Div., Volt, Liberty Lake, WA: January 9, 2010.

TA–W–73,249; Boston Scientific, Miami Tech Center, Kelly, Bioteknica, Goode, Apollo, Miami, FL: January 11, 2009.

TA–W–73,274; AEES Grand Traverse Stamping, Leased Workers from Manpower, Traverse City, MI: January 12, 2009.

TA–W–73,291; Schneider Electric USA, Inc., Lincoln, NE: January 6, 2009.

TA–W–73,310; Optera, Inc., Manpower and Key Personnel, Holland, MI: January 18, 2009.

TA–W–73,336; AEES, Inc., Advance Employment, Aerotek, Robert Half, Career, Mattawan, MI: January 20, 2009.

TA–W–73,339; Carlisle Industrial Brake and Friction, Logansport, IN: January 20, 2009.

TA–W–73,366; LifeSparc, Inc., Hollister, CA: January 26, 2009.

TA–W–70,869; Paragon Molding, LLC, Tooling Department, West Milton, OH: May 31, 2008.

TA–W–72,670; Ericsson, Inc., Tek Systems, Vedior North America LLC, etc, Research Triangle Park, NC: October 22, 2008.

TA–W–72,998A; Bristol Myers Squibb, Indiana Technical Operations Division, Leased Workers from Aerotek, Mt. Vernon, IN: November 20, 2008.

TA–W–72,998; Bristol Myers Squibb, Indiana Technical Operations Division, Leased Workers from Aerotek, Evansville, IN: November 20, 2008.

TA–W–73,111; Monahan SFI, LLC, Middlebury, VT: December 15, 2008.

TA–W–70,730; Ameriprise Financial, Inc., Finance and Technology Business Units, etc, Minneapolis, MN: May 28, 2008.

TA–W–71,446; Applied Materials, Inc., Global Information Systems, Leased Workers From Aerotek, Pentagon Technology, Santa Clara, CA: June 25, 2008.

TA–W–71,452; International Business Machines (IBM), Global Business Services Division/Application Services Segment, Newark, NJ: June 29, 2008.

TA–W–71,796; Accenture, LLP, Information Technology Services At Best Buy, Richfield, MN: July 21, 2008.

TA–W–72,600; Unisys Corporation, Global Outsourcing and Infrastructure Services, Eagan, MN: October 15, 2008.

TA–W–72,972A; SunGard Higher Education, Inc., Consulting Practices Division, Leased Workers of Ciccariello Consulting, Malvern, PA: November 25, 2008.

TA–W–72,972B; SunGard Higher Education, Inc., Actionline Division, Leased Workers of Sicom, Malvern, PA: November 25, 2008.

TA–W–72,972; SunGard Higher Education, Inc., Development Division, Leased Workers of Intuitive, Malvern, PA: November 25, 2008.

TA–W–73,014; Schawk Retail Marketing, Chicago Div., Retouching/Digital Dept., Aquent, Creative, Chicago, IL: December 1, 2008.

TA–W–73,052; LZB Manufacturing, Inc., Fabric Processing Center/LA-Z-Boy, Inc.), Florence, SC: December 8, 2008.

TA–W–73,102A; Hewlett Packard, Personal Systems Group-Desktop, Off-Site Teleworkers Reporting to this Site, Fort Collins, CO: December 9, 2008.

TA–W–73,102B; Hewlett Packard, Personal Systems Group-Desktop,

Off-Site Teleworkers Reporting to this Site, Houston, TX: December 9, 2008.

TA–W–73,102C; Hewlett Packard, Personal Systems Group-Desktop, Off-Site Teleworkers Reporting to this Site, King Of Prussia, PA: December 9, 2008.

TA–W–73,102; Hewlett Packard, Personal Systems Group-Desktop, Off-Site Teleworkers Reporting to this Site, Cupertino, CA: December 9, 2008.

TA–W–73,116; Teradyne, Inc., Semiconductor Test Div., Agoura Hills, CA: December 3, 2008.

TA–W–71,179; Citicorp Credit Services, Inc., Operations—Delivery Strategy and Development Division, Hagerstown, MD: June 8, 2008.

TA–W–72,334; International Paper Company, Shreveport Accounting Center, Shreveport, LA: September 16, 2008.

TA–W–72,513; Kaiser Foundation Hospitals, KP–IT Division, Off-Site Tele-Workers Reporting to this Location, Pasadena, CA: September 26, 2008.

TA–W–72,849; Objective Systems Integrators, Inc., Quality Assurance etc., Leased Workers Strategic Staffing & Volt Accounting, Roseville, CA: November 13, 2008.

TA–W–72,864; Cummins Business Services, Leased Workers from Manpower, Nashville, TN: November 16, 2008.

The following certifications have been issued. The requirements of Section 222(c) (supplier to a firm whose workers are certified eligible to apply for TAA) of the Trade Act have been met.

TA–W–70,716; Fuel Systems, Inc., Chicago, IL: May 19, 2008.

TA–W–70,859; Custom Tool and Die Company, Stevensville, MI: May 18, 2008.

TA–W–70,981; Amphenol Printed Circuits, Inc., Subsidiary of Amphenol Corporation, Nashua, NH: June 1, 2008.

TA–W–71,078; Noble Metal Processing—KY G.P., Noble International, Shelbyville, KY: June 8, 2008.

TA–W–71,134; Leech Industries, Inc., Leased Workers from M-Ploy Temporaries, Inc., Meadville, PA: June 3, 2008.

TA–W–71,149; ALCOA Mill Products Texarkana, Alcoa Incorporated, Nash, TX: June 11, 2008.

TA–W–71,160; TTM Technologies, Stafford Division, Stafford, CT: June 10, 2008.

TA–W–71,274; England, Inc., A LA-Z-Boy Furniture Company, Morristown, TN: June 12, 2008.

TA–W–71,351; MeadWestvaco Consumer Packaging Group LLC, Leased Workers from Manpower and Staffmark, Louisa, VA: June 22, 2008.

TA–W–71,502; Charleston Stamping and Manufacturing, Inc., Park Corporation, South Charleston, WV: June 20, 2008.

TA–W–71,587; Magna Mirrors, Division of Magna International, Inc., Alto, MI: July 6, 2008.

TA–W–71,691; National Material Company, Arnold, PA: July 13, 2008.

TA–W–71,803; Brillion Iron Works, Inc., Accuride Corporation, Brillion, WI: July 22, 2008.

TA–W–72,035; Tecstar Mfg. Company, MGS MFG Group, Leased Workers from Seek, QPS Companies and Site, Germantown, WI: August 13, 2008.

TA–W–72,147; Vantec, Inc., Leased Workers of Manpower, Webster City, IA: August 26, 2008.

TA–W–72,256; Positronic Industries, Inc., Leased Workers from Penmac and Willstaff Worldwide, Cabool, MO: September 9, 2008.

TA–W–72,366; Claude Sintz, Deshler, OH: September 16, 2008.

TA–W–72,409; Nuway Speaker Products, Inc., Ambassador Personnel, Clinton, NC: September 24, 2008.

TA–W–72,474; Marco Manufacturing, Akron Equipment Company, Akron, OH: September 30, 2008.

TA–W–72,534; Wells Manufacturing, Dura-Bar and Dura-Bar Metal Services, Leased Workers from Corporate Services, Woodstock, IL: September 25, 2008.

TA–W–72,565; Robert Bosch, LLC, Leased Workers of Bosch Management Services, St. Joseph, MI: September 16, 2008.

TA–W–72,569; Shiloh Industries, Greenfield Die and Manufacturing, Leased Workers From Legacy Staffing, Canton, MI: October 9, 2008.

TA–W–72,584; International Automotive Components (IAC), Dayton, TN: October 13, 2008.

TA–W–72,622; Standard Steel Specialty Company, Beaver Falls, PA: October 19, 2008.

TA–W–72,656; Chemtrade Performance Chemical, LLC, Chemtrade Logistics, Kalama, WA: October 22, 2008.

TA–W–72,665; Federal-Mogul Powertrain, Inc., Division of Federal-Mogul Corporation, Leased Workers of Kelly Services, Waupun, WI: October 23, 2008.

TA–W–72,674; Faurecia Automotive Seating, Inc., Harvard Resources, Auburn Hills, MI: October 20, 2008.

TA–W–72,827; Detroit Heading, LLC, Division of Shannon Precision Fasteners, Detroit, MI: November 9, 2008.

TA–W–72,928; Smith Logging, Inc., Kalispell, MT: November 20, 2008.

TA–W–73,166; Gormac Products, Inc., Racine, WI: December 28, 2008.

TA–W–70,458; April Steel Processing, Leased Workers from Sentech Employment Services, Dearborn, MI: May 10, 2008.

TA–W–71,296; Applied Materials, Inc., Boise, ID: May 19, 2008.

TA–W–71,445; Applied Materials, Inc., Sandstone, VA: June 25, 2008.

TA–W–71,448; Applied Materials, Inc., Lehi, UT: June 25, 2008.

TA–W–72,667; Fastenal Company, Heath, OH: October 23, 2008.

TA–W–72,840; GE Oil and Gas-Conmec LLC, Energy Manufacturing, Leased Workers from Turning Point Systems, Axiem, Bethlehem, PA: November 2, 2008.

The following certifications have been issued. The requirements of Section 222(c) (downstream producer for a firm whose workers are certified eligible to apply for TAA) of the Trade Act have been met.

TA–W–72,108; The Crown Group, Port Huron, MI: August 24, 2008.

TA–W–72,422; Little River Transport, St. David, ME: September 23, 2008.

Negative Determinations for Worker Adjustment Assistance

In the following cases, the investigation revealed that the eligibility criteria for worker adjustment assistance have not been met for the reasons specified.

The investigation revealed that the criterion under paragraph (a)(1), or (b)(1), or (c)(1)(employment decline or threat of separation) of section 222 has not been met.

TA–W–71,774; Barriersafe Solutions International, Inc., Quality and Safety Testing Division, Reno, NV.

TA–W–73,067; Slash Support, Inc., Game House Support Workers, South Jordan, UT.

TA–W–73,132; Hyatt Regency Pittsburgh, Pittsburgh, PA.

The investigation revealed that the criteria under paragraphs (a)(2)(A)(i) (decline in sales or production, or both) and (a)(2)(B) (shift in production or services to a foreign country) of section 222 have not been met.

TA–W–71,133; DSI Underground Systems, Dywidag Systems International, Blairsville, PA.

The investigation revealed that the criteria under paragraphs (a)(2)(A) (increased imports) and (a)(2)(B) (shift in production or services to a foreign country) of section 222 have not been met.

TA–W–70,149; Dyno Nobel, Inc., Wolf Lake Plant Division, Wolf Lake, IL.
TA–W–70,177; Cascade Steel Rolling Mills, Schnitzer Steel Industries, McMinnville, OR.
TA–W–70,399; Monaco Coach Corporation, CTI Division, Hines, OR.
TA–W–70,512; T. RAD North America, Inc., Hopkinsville, KY.
TA–W–70,562; BGF Industries, Inc., Kelly Services, Manpower, Altavista, VA.
TA–W–70,845; Thomasville Furniture Industries Inc., Plant 9, Furniture Brands International, Inc., Hickory, NC.
TA–W–70,874; Advanced Industrial Machinery, Inc., Hickory, NC.
TA–W–70,920; TCS Design, Inc., Hickory, NC.
TA–W–70,965; Hearth and Homes Technologies, HNI Corporation, Mount Pleasant, IA.
TA–W–70,979; Reed Business Information, Business Media Division, Greensboro, NC.
TA–W–71,096; Taylor Wharton Cylinders, LLC, Harrisburg Plant, Harrisburg, PA.
TA–W–71,102; Global Pharmaceutical Supply Group, LLC, AKA Centocor Ortho Biotech, Div. of Johnson and Johnson, Malvern, PA.
TA–W–71,138; Schrader-Bridgeport International Incorporated, Engineered Products Div., Tomkins PLC, Altavista, VA.
TA–W–71,218; Wausau Paper Company, Appleton Plant, Appleton, WI.
TA–W–71,234; Paper Converting Machine Company, Superior Engineering and Employment, Green Bay, WI.
TA–W–71,282A; Westover Sawmill, U.S. Wood Products Division, AbitibiBowater, Westover, AL.
TA–W–71,282; Goodwater Planermill, U.S. Wood Products Division, AbitibiBowater, Goodwater, AL.
TA–W–71,469A; Acutec Precision Machining, Inc., Meadville, PA.
TA–W–71,469; Acutec Precision Machining, Inc., Saegertown, PA.
TA–W–71,572A; Severstal Wheeling, Inc., Severstal North America, Yorkville, OH.
TA–W–71,572B; Severstal Wheeling, Inc., Severstal North America, Mingo Junction, OH.
TA–W–71,572C; Severstal Wheeling, Inc., Severstal North America, Steubenville, OH.
TA–W–71,572; Severstal Wheeling, Inc., Severstal North America, Martins Ferry, OH.
TA–W–71,580; The Goodyear Tire and Rubber Company, North American Tire Division, Danville, VA.
TA–W–71,588; Weather Shield Manufacturing, Inc., Leased Workers from Manpower, Ladysmith, WI.
TA–W–71,592; DuBois Chemicals, Inc., Sharonville, OH.
TA–W–71,631; Plymouth Tube Company, Trent Division, Leased Workers from PA Staffing and Complete Services, East Troy, WI.
TA–W–71,852; Wagon Automotive, Inc., U.S. Division, Wixom, MI.
TA–W–72,225; Tube City IMS, LLC, Employed at Charter Steel, Cuyahoga Heights, OH.
TA–W–72,258; Toledo Commutator Company, Owosso, MI.
TA–W–72,356; Wolverine Broach Co., Inc., Harrison Township, MI.
TA–W–72,780; Xaloy, Inc., AKA Flametech, Seabrook, NH.
TA–W–72,809; Briggs New York, Inc., Brighton, MA.
TA–W–72,836; Iron Mountain Information Management, Inc., A Subsidiary Iron Mountain, North Billerica, MA.
TA–W–70,173; Major Tool Company, Knoxville, TN.
TA–W–70,699; McCall Refrigeration, Division of the Manitowoc Co., Parsons, TN.
TA–W–70,928; TRG Customer Solutions, Greensburg, PA.
TA–W–71,104; Ashland, Inc., Terminal Division, Pittsburgh, PA.
TA–W–71,106; Paris Accessories, Inc., Job Connections, New Smithville, PA.
TA–W–71,336; Burke Industrial Supply, Inc., Morganton, NC.
TA–W–71,544; Arencar Casting, Inc., Huron Casting Inc., Potch Staffing, Standish, MI.
TA–W–71,634; Yale Industrial Trucks-PGH, Inc., Monroeville, PA.
TA–W–71,709; Results—Las Vegas, NM, LLC, Las Vegas, NM.
TA–W–71,828; Brown Shoe Company, Inc., Fredericktown Distribution Center, Fredericktown, MO.
TA–W–72,423; Harmon Cadillac, Inc., Dayton, OH.
TA–W–72,960; Chrysler Financial Services Americas, LLC, Intermediate Holding Co, Farmington Hills, MI.

The investigation revealed that the criteria under paragraphs (b)(2) and (b)(3) (public agency acquisition of services from a foreign country) of section 222 have not been met.

TA–W–72,007; Shelby County Department of Job and Family Services, Sidney, OH.

Determinations Terminating Investigations of Petitions for Worker Adjustment Assistance

After notice of the petitions was published in the **Federal Register** and on the Department's Web site, as required by Section 221 of the Act (19 U.S.C. 2271), the Department initiated investigations of these petitions.

The following determinations terminating investigations were issued because the petitioner has requested that the petition be withdrawn.

TA–W–70,991; Accutherm, Inc., Monroe City, Missouri.

TA–W–71,974; Exide Technologies, Inc., Fort Smith, Arizona.

TA–W–72,604; Career Horizons, d/b/a Teleservices Direct, Indianapolis, Indiana.

TA–W–72,642; Maui Process Technologies, LLC, Makawao, Hawaii.

TA–W–73,049; Vertafore, Inc., Bothell, Washington.

TA–W–73,234; Gerber Technology, Richardson, Texas.

The following determinations terminating investigations were issued because the petitions are the subject of ongoing investigations under petitions filed earlier covering the same petitioners.

TA–W–73,643; IBM Global Services, Southbury, Connecticut, covered by TA–W–71,377; International Business Machines Corporation, Global Business Services, Southbury, Connecticut.

I hereby certify that the aforementioned determinations were issued during the period of February 22, 2010 through March 5, 2010. Copies of these determinations are available for inspection in Room N–5428, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address. These determinations also are available on the Department's Web site at *http://www.doleta/tradeact* under the searchable listing of determinations.

Dated: April 16, 2010.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–9483 Filed 4–22–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility to Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than May 3, 2010.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than May 3, 2010.

The petitions filed in this case are available for inspection at the Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room N–5428, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 16th day of April 2010.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

APPENDIX

[TAA petitions instituted between 4/5/10 and 4/9/10]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
73843	Hasbro, Inc. (Company)	East Longmeadow, MA	04/05/10	04/01/10
73844	JC Penney (Wkrs)	Waterford, MI	04/05/10	04/03/10
73845	Ryder Integrated Logistics (State/One-Stop)	Georgetown, KY	04/05/10	03/05/10
73846	AT and T (State/One-Stop)	Boulder, CO	04/05/10	04/02/10
73847	PricewaterhouseCoopers, LLP (Workers)	Florham Park, NJ	04/05/10	03/22/10
73848	MDM Supply (Company)	Missoula, MT	04/06/10	04/01/10
73849	LTX Credence Corporation (State/One-Stop)	Hillsboro, OR	04/06/10	03/16/10
73850	CPC Logistics (Company)	Chesterfield, MO	04/06/10	03/22/10
73851	Mueller Steam Specialties (Company)	St. Pauls, NC	04/06/10	04/05/10
73852	General Motors (State/One-Stop)	Shreveport, LA	04/06/10	03/19/10
73853	Science Applications International Corporation (State/One-Stop).	Naperville, IL	04/06/10	04/05/10
73854	Mine Safety Appliances Company (Company)	Englewood, CO	04/06/10	03/24/10
73855	The Karsten Company (Workers)	Stayton, OR	04/06/10	03/11/10
73856	Accent Marketing (Company)	Monroe, LA	04/06/10	03/30/10
73857	The Marlin Firearms Company, Inc. (State/One-Stop)	North Haven, CT	04/06/10	04/01/10
73858	Hugo Boss (Workers)	Brooklyn, OH	04/06/10	03/22/10
73859	Watkins Shepard Trucking (Workers)	Missoula, MT	04/06/10	03/23/10
73860	Metalsa (Workers)	Pottstown, PA	04/06/10	04/01/10
73861	Automatic Feed Company (Workers)	Napoleon, OH	04/06/10	03/22/10
73862	J C Penney (Workers)	Plano, TX	04/06/10	03/19/10
73863	Super Media LLC (Union)	Bensalem, PA	04/06/10	04/05/10
73864	Super Media LLC (Union)	Chadds Ford, PA	04/06/10	04/05/10
73865	Super Media LLC (Union)	Monroeville, PA	04/06/10	04/05/10
73866	Super Media LLC (Union)	Bethlehem, PA	04/06/10	04/05/10
73867	Super Media LLC (Union)	Harrisburg, PA	04/06/10	04/05/10
73868	Hewlett Packard Corporation (State/One-Stop)	Marlborough, MA	04/07/10	04/07/10
73869	iLevel by Weyerhaeuser (Company)	Greenwood Village, CO	04/07/10	04/06/10
73870	Amphenol TCS (State/One-Stop)	Milpitas, CA	04/07/10	04/06/10
73871	iLevel by Weyerhaeuser (Company)	Sacramento, CA	04/06/10	04/06/10
73872	Goodrich Aerospace/Landing Gear (Union)	Cleveland, OH	04/07/10	03/18/10
73873	Teleperformance USA (Workers)	Salt Lake City, UT	04/07/10	03/30/10
73874	B&M of Illinois, Inc. (State/One-Stop)	Carlyle, IL	04/07/10	04/06/10
73875	TechTeam Global (State/One-Stop)	Southfield, MI	04/07/10	04/02/10
73876	Lorik Tool Inc. (Workers)	Lawrenceburg, TN	04/07/10	03/30/10
73877	L.A. Najarian, Inc. (Company)	Greene, NY	04/07/10	03/29/10
73878	HNTB (Workers)	Kanas City, MO	04/08/10	04/01/10
73879	Applied Materials (Company)	Santa Clara, CA	04/08/10	04/02/10
73880	Weston Wear Inc. (Workers)	San Francisco, CA	04/08/10	04/02/10
73881	WM Coffman LLC (Company)	Marion, VA	04/08/10	04/07/10
73882	The Ford Motor Company (State/One-Stop)	Maumee, OH	04/08/10	04/07/10
73883	Amphenol Sine Systems (Company)	Lake Wales, FL	04/08/10	04/08/10
73884	Integrated Silicon Solution, Inc. (ISSI) (Company)	San Jose, CA	04/08/10	04/07/10
73885	IAC Sheboygan (Union)	Sheboygan, WI	04/09/10	04/06/10
73886	Burton Manufacturing Center (Company)	South Burlington, VT	04/09/10	03/23/10
73887	ITT–FB (Union)	Zelienople, PA	04/09/10	04/08/10
73888	Beverage Air (Workers)	Brookville, PA	04/09/10	04/06/10
73889	Health Net, Inc. (Company)	Woodland Hills, CA	04/09/10	04/07/10

APPENDIX—Continued

[TAA petitions instituted between 4/5/10 and 4/9/10]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
73890	Pioneer Press (Workers)	Kaukauna, WI	04/09/10	03/30/10
73891	Emerson Process Management (Workers)	McKinney, TX	04/09/10	04/07/10
73892	American Greetings (Union)	Kalamazoo, MI	04/09/10	04/05/10
73893	Sensata Technologies (Company)	Cambridge, MD	04/09/10	03/24/10
73894	United Auto Workers Local 2244 (Union)	Fremont, CA	04/09/10	04/08/10
73895	Idaho Timber of Kansas, LLC (Company)	Halstead, KS	04/09/10	04/08/10
73896	Victory Industrial Products, LLC (State/One-Stop)	Batavia, OH	04/09/10	04/08/10
73897	Ebix, Incorporated (Workers)	Atlanta, GA	04/09/10	04/02/10
73898	GE Transportation (Union)	Erie, PA	04/09/10	04/08/10

[FR Doc. 2010–9482 Filed 4–22–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than May 3, 2010.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than May 3, 2010. The petitions filed in this case are available for inspection at the Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room N–5428, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 16th day of April 2010.

Elliott Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

APPENDIX

[TAA petitions instituted between 3/22/10 and 3/26/10]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
73753	BJI Employee Services, Inc. (wkrs)	Liberty, NC	03/22/10	03/15/10
73754	Anderson Logistics (wkrs)	Birch Run, MI	03/22/10	03/19/10
73755	International Paper Company (State)	Cedarburg, WI	03/22/10	03/19/10
73756	Progressive Furniture, Inc. (Comp)	Claremont, NC	03/22/10	03/19/10
73757	Price Waterhouse Coopers, LLP (wkrs)	Los Angeles, CA	03/22/10	03/12/10
73758	Bluesope Buildings (wkrs)	Laurinsburg, NC	03/22/10	03/19/10
73759	ESKCO Inc. (Comp)	Dayton, OH	03/22/10	03/17/10
73760	Propex Operating Company, LLC (wkrs)	Ringgold, GA	03/22/10	03/19/10
73761	Kmart (State)	Milford, OH	03/22/10	03/19/10
73762	Rain Bird Corporation, Arizona Molding Division (Comp)	Tucson, AR	03/22/10	03/18/10
73763	Leed Foundry (union)	Saint Claire, PA	03/22/10	03/19/10
73764	Amazon (state)	Seattle, WA	03/23/10	03/22/10
73765	Wooden Creations, Inc. (wkrs)	Martinsville, VA	03/23/10	12/30/09
73766	JT Sports (wkrs)	Neosho, MO	03/23/10	02/26/10
73767	Toyoda Gosei (wkrs)	Troy, MI	03/23/10	03/12/10
73768	LIM Corporate Office (comp)	Englewood, CO	03/23/10	03/22/10
73769	Flexsteel Industries, Inc. (union)	Dubugue, IA	03/23/10	03/22/10
73770	Chrysler South Plant (union)	Fenton, MO	03/23/10	03/22/10
73771	Technicolor Video of Michigan (state)	Detroit, MI	03/23/10	03/01/10
73772	JC Penny (wkrs)	Waterford, MI	03/23/10	03/03/10
73773	V&S Detroit Galvanizing, LLC (state)	Redford, MI	03/23/10	01/26/10
73774	Sesame Solutions, LLC (wkrs)	Paris, TX	03/24/10	03/23/10
73775	Eli Lilly & Company (wkrs)	Indianapolis, IN	03/24/10	03/22/10
73776	Workshops of G.E. Henn Pottery (comp)	New Waterford, OH	03/24/10	03/23/10
73777	Accurate Machine & Tool LLC (comp)	Raleigh, NC	03/24/10	03/23/10
73778	Securitas Security working at DPH Holding Corps (wkrs)	Tanner, AL	03/24/10	03/15/10
73779	Portland Title Group (wkrs)	Beaverton, OR	03/24/10	03/16/10
73780	Toyota Tsusho America Inc. (comp)	Memphis, TN	03/24/10	03/22/10
73781	Itasca-Bemidji, Inc. (comp)	Bemidji, MN	03/24/10	03/22/10

APPENDIX—Continued

[TAA petitions instituted between 3/22/10 and 3/26/10]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
73782	Metalsa Structural Projects, Inc. (comp)	Stockton, CA	03/24/10	03/22/10
73783	Scot Industries (wkrs)	Hughes Springs, TX	03/24/10	03/23/10
73784	Ferrania USA, Inc. (comp)	St. Paul, MN	03/24/10	03/22/10
73785	Ferrania USA, Inc. (Union)	Murron, OH	03/24/10	03/22/10
73786	Ferrania USA, Inc. (Union)	Lake Worth, FL	03/24/10	03/22/10
73787	Don Cacciola (Union)	Eagan, MN	03/24/10	03/22/10
73788	Cranston Print Works Company (Company)	Cranston, RI	03/25/10	03/10/10
73789	Application Development Systems (Workers)	Warren, MI	03/25/10	03/23/10
73790	MeadWestVaco (Workers)	Richmond, VA	03/25/10	03/19/10
73791	Burlington Technologies (Company)	Burlington, NC	03/25/10	03/17/10
73792	Kenkel Corporation (Union)	Buffalo, NY	03/25/10	03/17/10
73793	TCM America, Inc. (Company)	West Columbia, SC	03/26/10	03/11/10
73794	TCM America, Inc. (Company)	Houston, TX	03/26/10	03/11/10
73795	TCM America, Inc. (Company)	Swedesboro, NJ	03/26/10	03/11/10

[FR Doc. 2010–9480 Filed 4–22–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than May 3, 2010.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than May 3, 2010.

The petitions filed in this case are available for inspection at the Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room N–5428, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 16th day of April 2010.

Elliott Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

APPENDIX

[TAA petitions instituted between 3/29/10 and 4/2/10]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
73796	TIAA–CREF (State/One-Stop)	Denver, CO	03/29/10	03/26/10
73797	Outotech (USA), Inc. (State/One-Stop)	Centennial, CO	03/29/10	03/26/10
73798	CompuCredit (Workers)	Wilkesboro, NC	03/29/10	03/25/10
73799	Appleseed's Inc. (Company)	Beverly, MA	03/29/10	03/16/10
73800	Sensata Technologies (Company)	Attleboro, MA	03/29/10	03/24/10
73801	Diebold, Inc. (Company)	North Canton, OH	03/29/10	03/19/10
73802	JD Irving Woodland, LLC (Workers)	Fort Kent, ME	03/29/10	03/15/10
73803	Hewlett Packard Company (State/One-Stop)	Syracuse, NY	03/29/10	03/25/10
73804	IBM Corporation (State/One-Stop)	San Ramon, CA	03/29/10	03/24/10
73805	Henkel Corporation (Company)	Billerica, MA	03/29/10	03/23/10
73806	Multina, USA (Company)	Plattsburgh, NY	03/29/10	03/18/10
73807	Keane, Inc. (State/One-Stop)	Boston, MA	03/30/10	03/26/10
73808	Maersk Line Agency (Company)	Madison, NJ	03/30/10	01/12/10
73809	Hewlett Packard/EDS (Workers)	Cupertino, CA	03/30/10	03/19/10
73810	Gaming Partners International, USA (Company)	Las Vegas, NV	03/30/10	03/25/10
73811	Schrupp Industries, Inc. (Workers)	Packer, PA	03/30/10	03/26/10
73812	Johnson Controls, Inc. (Workers)	Rockwood, MI	03/30/10	03/16/10
73813	Fortis Plastics, LLC (Workers)	Henderson, KY	03/30/10	03/22/10
73814	Vought Aircraft (Union)	Grand Prairie, TX	03/30/10	03/26/10
73815	Colfax Envelope Corporation (Workers)	Buffalo Grove, IL	03/30/10	03/15/10
73816	IUE–CWA Local Union 808 (Union)	Evansville, IN	03/30/10	03/24/10
73817	Meridian Autosystems (Workers)	Detroit, MI	03/31/10	02/01/10
73818	EI Detection & Imaging Systems (Workers)	Saxonburg, PA	03/31/10	03/26/10

APPENDIX—Continued

[TAA petitions instituted between 3/29/10 and 4/2/10]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
73819	KGP Telecommunications (Workers)	South Bend, IN	03/31/10	03/03/10
73820	Adrenaline Sporting Goods, LLC (State/One-Stop)	Sherwood, OR	03/31/10	03/02/10
73821	Shaw Diversified (State/One-Stop)	Algona, WA	03/31/10	03/26/10
73822	Ingersoll Rand (Company)	Athens, PA	03/31/10	03/29/10
73823	Demag Cranes & Components (Union)	Cleveland, OH	03/31/10	02/08/10
73824	Honeywell Safety Products (Company)	Rock Island, IL	03/31/10	03/29/10
73825	Steel Fabricators of Monroe, LLC (Company)	Monroe, LA	04/01/10	03/30/10
73826	Kincaid, Inc. (Company)	Athens, TN	04/01/10	03/31/10
73827	Architectural Glazing Technologies (Company)	Sanford, ME	04/01/10	03/30/10
73828	GKN Axles Jackson Center (Workers)	Jackson Center, OH	04/01/10	03/31/10
73829	Suncor Energy (State/One-Stop)	Greenwood Village, CO	04/01/10	03/11/10
73830	CMC Markets (US), LLC (State/One-Stop)	New York, NY	04/02/10	04/01/10
73831	StarTek (Workers)	Greeley, CO	04/02/10	03/31/10
73832	Intuit (State/One-Stop)	Tucson, AZ	04/02/10	04/01/10
73833	VF Jeanswear (Union)	Holly Pond, AL	04/02/10	04/01/10
73834	William B. Altman, Inc. (Company)	Fenelton, PA	04/02/10	04/01/10
73835	The Hartford Insurance Company (Workers)	Syracuse, NY	04/02/10	03/31/10
73836	Domtar Paper Company (Company)	Columbus, MS	04/02/10	03/30/10
73837	B. Braun Medical, Inc. (Company)	Atlanta, GA	04/02/10	04/01/10
73838	Entree Alaska (Company)	Langley, WA	04/02/10	03/30/10
73839	Duthler Ford Truck, Inc. (Company)	Wyoming, MI	04/02/10	03/25/10
73840	Lochmoor Chrysler Jeep (Workers)	Detroit, MI	04/02/10	03/14/10
73841	HSBC Pay Services, Inc. (Local Branch) (State/One-Stop)	Dayton, OH	04/02/10	03/26/10
73842	Bank of America (Workers)	Addision, TX	04/02/10	03/19/10

[FR Doc. 2010–9481 Filed 4–22–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–59,517]

Advanced Electronics, Inc.; Boston, MA; Notice of Negative Determination on Remand

On July 16, 2009, the U.S. Court of International Trade (USCIT) remanded to the Department of Labor (Department) for further investigation *Former Employees of Advanced Electronics, Inc.* v. *United States Secretary of Labor* (Court No. 06–00337).

On July 18, 2006, the Department issued a Negative Determination regarding eligibility to apply for Trade Adjustment Assistance (TAA) and Alternative Trade Adjustment Assistance (ATAA) applicable to workers and former workers of Advanced Electronics, Inc., Boston, Massachusetts (subject firm). The Department's Notice of determination was published in the **Federal Register** on August 4, 2006 (71 FR 44320). Prior to separation, the subject workers produced printed circuit board assemblies.

The determination was based on the Department's findings that the subject firm did not shift production of printed circuit board (PCB) assemblies to a foreign country or import PCB assemblies or like or directly competitive articles, and that the subject firm's major declining customers did not import PCB assemblies or like or directly competitive articles. Further, the Department determined that a portion of the decline in company sales of PCB assemblies was attributed to declining purchases from a foreign customer during the relevant period.

Administrative reconsideration was not requested by any of the parties pursuant to 29 CFR 90.18.

On October 23, 2007, the USCIT granted the Department's request for voluntary remand to conduct further investigation to determine whether, during the relevant period, any of the foreign customer's facilities located in the United States received PCB assemblies produced by the subject firm and, if so, whether the facility(s) had imported articles like or directly competitive with the PCB assemblies produced by the subject firm.

Based on information obtained during the first remand investigation, the Department determined that the foreign customer did not import articles like or directly competitive with the PCB assemblies produced by the subject firm and issued a Notice of Negative Determination on Remand on December 17, 2007. The Department's Notice of determination was published in the **Federal Register** on December 31, 2007 (72 FR 74340).

Although its November 18, 2008 opinion stated that substantial evidence supported the Department's finding that increasing imports of like or directly competitive articles did not contribute importantly to the subject firm's decreased sales to domestic customers, the USCIT directed the Department to "determine whether, and to what extent, an increase in imports into the United States of articles like or directly competitive with the Company's printed circuit boards caused the Company to lose business from its foreign customer."

Based on information obtained during the second remand, the Department determined that, although the foreign customer did switch from the subject firm to another domestic firm, the domestic customer did not import PCB assemblies that it supplied to the subject firm's foreign customer. On February 19, 2009, the Department issued a Notice of Negative Determination on Remand. The Department's Notice of determination was published in the **Federal Register** on March 3, 2009 (74 FR 9290). SAR 27.

On July 16, 2009, the USCIT granted the Department's request for voluntary remand to address the Plaintiff's allegation that the foreign customer replaced the subject firm with two domestic customers and to determine whether increased imports by either, or both, of the domestic customers, of PCB assemblies that were supplied to the subject firm's foreign customer, contributed importantly to worker

separations at the subject firm. SAR 94–104.

In order to apply for TAA based on increased imports, the subject worker group must meet the group eligibility requirements under Section 222(a) of the Trade Act of 1974, as amended, that were in effect on June 5, 2006.

Under Section 222(a)(2)(A), the following criteria must be met:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated; *and*

B. The sales or production, or both, of such firm or subdivision have decreased absolutely; *and*

C. Increased imports of articles like or directly competitive with articles produced by such firm or subdivision have contributed importantly to such workers' separation or threat of separation and to the decline in sales or production of such firm or subdivision.

The Department has previously determined that because the subject firm closed on September 2005, criteria (A) and (B) have been met. Therefore, the only issue at hand is whether criterion (C) has been met.

29 CFR 90.2—Definitions—states that "Increased imports means that imports have increased either absolutely or relative to domestic production compare to a representative base period. The representative base period shall be one year consisting of the four quarters immediately preceding the date which is twelve months prior to the date of the petition."

Because the date of the petition is June 5, 2006, the sole issue is whether imports during June 2005 through May 2006 were greater than during June 2004 through May 2005.

During the third remand investigation, the Department contacted the foreign customer, SAR 30–40, company officials of both domestic companies that replaced the subject firm, SAR 41–59, 63–162, and issued a subpoena, 131–138, to obtain information necessary to make a determination regarding the subject workers' eligibility to apply for TAA.

During the third remand investigation, the Department confirmed that when the subject firm ceased operations in 2005, the foreign customer replaced printed circuit boards produced by the subject firm with those produced by two preferred vendors, both vendors are domestic companies. SAR 30, 35, 38. The Department also obtained information from each vendor that the PCB assemblies supplied to the foreign customer were produced outside the United States and shipped from the foreign production facility without entering the United States en route to the foreign customer. SAR 41, 44–47, 50, 56, 58, 59–62, 64, 67–68, 105, 108–109, 121, 139, 147–149, 151–152, 154, 159, 161–163.

Because neither of the domestic companies that replaced the subject firm as the preferred vendor of the foreign customer imported articles like or directly competitive with the PCB assemblies produced by the subject firm, the Department determines that TAA criterion (C) has not been met.

In order for the Department to issue a certification of eligibility to apply for ATAA, the subject worker group must be certified eligible to apply for TAA. Since the subject workers are not eligible to apply for TAA, the workers cannot be certified eligible for ATAA.

Conclusion

After careful reconsideration, I affirm the original notice of negative determination of eligibility to apply for worker adjustment assistance for workers and former workers of Advanced Electronics, Inc., Boston, Massachusetts.

Signed at Washington, DC, this 15th day of April 2010.

Del Min Amy Chen,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–9485 Filed 4–22–10; 8:45 am]

BILLING CODE 4510–FN–P

EXECUTIVE OFFICE OF THE PRESIDENT

Office of National Drug Control Policy

Designation of Five Counties as High Intensity Drug Trafficking Areas

ACTION: Notice.

SUMMARY: The Director of the Office of National Drug Control Policy designated five additional counties as High Drug Trafficking Areas pursuant to 21 U.S.C. 1706. The new counties are (1) Rock and Brown Counties in Wisconsin as additions to the Milwaukee HIDTA, (2) Lane County and Warm Springs Indian Reservation in Oregon as additions to the Oregon HIDTA, and (3) Travis County, Texas as an addition to the Southwest Border HIDTA, South Texas Region.

FOR FURTHER INFORMATION CONTACT: Questions regarding this notice should be directed to Mr. Arnold Moorin, National HIDTA Program Director, Office of National Drug Control Policy, Executive Office of the President, Washington, DC 20503; (202) 368–8423.

Signed at Washington, DC, this 20th day of April 2010.

Daniel R. Petersen,

Deputy General Counsel.

[FR Doc. 2010–9467 Filed 4–22–10; 8:45 am]

BILLING CODE 3180–02–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 52–027 and 52–028; NRC–2008–0441]

South Carolina Electric and Gas Acting for Itself and as an Agent for South Carolina Public Service Authority (Also Referred to as Santee Cooper) Notice of Availability of the Draft Environmental Impact Statement for the Combined Licenses for Virgil C. Summer Nuclear Station, Units 2 and 3

Notice is hereby given that the U.S. Nuclear Regulatory Commission (NRC) and the U.S. Army Corps of Engineers, Charleston District (USACE), have published NUREG–1939, "Draft Environmental Impact Statement for the Combined Licenses (COLs) for Virgil C. Summer Nuclear Station, Units 2 and 3: Draft Report for Comment." The site for the proposed new nuclear units is located in Fairfield County, South Carolina, on the Broad River, approximately 15 miles west of the county seat of Winnsboro and 26 miles northwest of Columbia, South Carolina. The application for the COLs was submitted by letter dated March 27, 2008, pursuant to 10 CFR Part 52. A notice of receipt of the application, which included the environmental report (ER), was published in the **Federal Register** on July 9, 2008, (73 FR 39339). A notice of acceptance for docketing of the COLs application was published in the **Federal Register** on August 6, 2008, (73 FR 4572). A notice of intent to prepare a draft environmental impact statement (DEIS) and to conduct the scoping process was published in the **Federal Register** on January 5, 2009, (74 FR 323).

The purpose of this notice is to inform the public that NUREG–1939 is available for public inspection. The DEIS can be accessed (1) Online at *http://www.nrc.gov/reactors/new-reactors/col/summer.html,* (2) in the U.S. Nuclear Regulatory Commission's (NRC's) Public Document Room (PDR) located at One White Flint North, 11555 Rockville Pike (first floor), Public File Area O1–F21, Rockville, Maryland, 20852, or (3) from NRC's Agencywide Documents Access and

Management System (ADAMS). ADAMS is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html.* The accession numbers for the DEIS are ML101000010 and ML101000011. Persons who do not have access to ADAMS, or who encounter problems accessing the documents located in ADAMS, should contact the PDR reference staff at 1–800–397–4209 or 301–415–4737, or by e-mail to *pdr.resource@nrc.gov.* In addition, the Fairfield County Library, located at 300 Washington Street, Winnsboro, South Carolina, 29180, has agreed to make the DEIS available to the public.

Any interested party may submit comments on the DEIS for consideration by the NRC staff. Comments may be accompanied by additional relevant information or supporting data. This draft report is being issued with a 75-day comment period. The comment period begins on the date that the U.S. Environmental Protection Agency publishes a Notice of Filing in the **Federal Register** which is expected to be April 23, 2010; such Notices are published every Friday. Comments submitted via e-mail should be sent to *Summer.COLEIS@nrc.gov.* All comments should be sent no later than July 06, 2010. Written comments on the DEIS should be mailed to the Chief, Rules, Announcements, and Directives Branch, Division of Administrative Services, Office of Administration, Mailstop TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001 or sent by fax to (301) 492–3446, and should cite the publication date and page number of this **Federal Register** Notice. Comments submitted in writing or in electronic form will be posted on the NRC Web site and on the Federal rulemaking Web site regulations.gov. Because comments will not be edited to remove any identifying or contact information, the NRC cautions individuals against including any information that they do not want to be publicly disclosed. The NRC requests that any party soliciting or aggregating comments received from other persons for submission to the NRC inform those persons that the NRC will not edit their comments to remove any identifying or contact information, and therefore, they should not include any information in their comments that they do not want publicly disclosed.

To be considered, written comments should be postmarked by the end date of the comment period.

The NRC and USACE staff will hold two public meetings to present a brief overview of the DEIS and to accept public comments on the document on Thursday, May 27, 2010, at the White Hall AME Church, 8594 State Highway 215 South, Jenkinsville, South Carolina. The first meeting will convene at 12 p.m. and will continue until 4 p.m., as necessary. The second meeting will convene at 6 p.m., with a repeat of the overview portions of the first meeting, and will continue until 10 p.m., as necessary. The meetings will include: (1) Brief presentations of the contents of the DEIS and (2) the opportunity for interested government agencies, organizations, and individuals to provide comments on the draft report. In addition, the NRC and USACE staffs will host informal discussions for the first two hours of each meeting. To be considered, comments must be provided orally to an NRC-designated court reporter, in writing, or during the transcribed portion of the meeting.

Persons may pre-register to attend or present oral comments at the meeting by contacting Ms. Patricia Vokoun at 1–800–368–5642, extension 3470, or by e-mail at *Patricia.Vokoun@nrc.gov* no later than May 24, 2010. Members of the public may also register to speak at the meetings within 15 minutes of the start of each meeting. Individual oral comments may be limited by the time available, depending on the number of persons who register. Members of the public who have not registered may also have an opportunity to speak, if time permits. If special equipment or accommodations are needed to attend or present information at the public meeting, Ms. Patricia Vokoun should be contacted no later than May 12, 2010, so that the NRC staff can determine whether the request can be accommodated.

FOR FURTHER INFORMATION CONTACT: Ms. Patricia Vokoun, Environmental Projects Branch 2, Division of Site and Environmental Reviews, Office of New Reactors, U.S. Nuclear Regulatory Commission, Mail Stop T7–E30, Washington, DC, 20555–0001. Ms. Vokoun may also be contacted at the aforementioned telephone number or e-mail address.

Dated at Rockville, Maryland, this 15th day of April 2010.

For the Nuclear Regulatory Commission.

Scott C. Flanders,

Director, Division of Site and Environmental Reviews, Office of New Reactors.

[FR Doc. 2010–9296 Filed 4–22–10; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for OMB Review; Request for Extension, Without Change, of A Currently Approved Collection: (OMB Control No. 3206–0211; Reemployment of Annuitants, 5 CFR 837.103)

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 extension, without change, of a currently approved information collection. "Reemployment of Annuitants" (OMB Control No. 3206–0211; 5 Section 837.103), requires agencies to collect information from retirees who become employed in Government positions. Agencies need to collect timely information regarding the type and amount of annuity being received so the correct rate of pay can be determined. Agencies provide this information to OPM so a determination can be made whether the reemployed retiree's annuity must be terminated.

Approximately 3,000 reemployed retirees are asked this information annually. It takes each reemployed retiree approximately 5 minutes to provide the information for an annual estimated burden of 250 hours.

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 information regarding administrative coordination contact: Cyrus S. Benson, Team Leader, Publications Team, RB/RM/Administrative Services/PT, U.S. Office of Personnel Management, 1900 E

Street, NW.—Room 4H28, Washington, DC 20415 (202) 606–4808.

U.S. Office of Personnel Management.

John Berry,

Director.

[FR Doc. 2010–9517 Filed 4–22–10; 8:45 am]

BILLING CODE 6325–38–P

RAILROAD RETIREMENT BOARD

Proposed Collection; Comment Request

SUMMARY: In accordance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

Comments are invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Title and purpose of information collection:

Employer Service and Compensation Reports; OMB 3220–0070.

Section 2(c) of the Railroad Unemployment Insurance Act (RUIA) specifies the maximum normal unemployment and sickness benefits that may be paid in a benefit year. Section 2(c) further provides for extended benefits for certain employees and for beginning a benefit year early for other employees. The conditions for these actions are prescribed in 20 CFR 302.

All information about creditable railroad service and compensation needed by the RRB to administer Section 2(c) is not always available from annual reports filed by railroad employers with the RRB (OMB 3220–0008). When this occurs, the RRB must obtain supplemental information about service and compensation.

The RRB utilizes Form UI–41, *Supplemental Report of Service and Compensation,* and Form UI–41a, *Supplemental Report of Compensation,* to obtain the additional information about service and compensation from railroad employers. Completion of the forms is mandatory. One response is required of each respondent.

The RRB proposes no changes to Form UI–41 and UI–41a. The completion time for Form UI–41 and UI–41a is estimated at 8 minutes per response.

Additional Information or Comments: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751–3363 or send an e-mail request to *Charles.Mierzwa@RRB.GOV*. Comments regarding the information collection should be addressed to Patricia A. Henaghan, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 or send an e-mail to *Patricia.Henaghan@RRB.GOV*. Written comments should be received within 60 days of this notice.

Charles Mierzwa,

Clearance Officer.

[FR Doc. 2010–9435 Filed 4–22–10; 8:45 am]

BILLING CODE 7905–01–P

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new and/or currently approved information collection.

DATES: Submit comments on or before June 22, 2010.

ADDRESSES: Send all comments regarding whether this information collection is necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collection, to Jihoon Kim, Financial Analyst, Office of Financial Assistance, Small Business Administration, 409 3rd Street, 8th Floor, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Jihoon Kim, Financial Analyst, Office of Financial Assistance, 202–205–6024, *Jihoon.kim@sba.gov* or Curtis B. Rich, Management Analyst, 202–205–7030 *curtis.rich@sba.gov.*

SUPPLEMENTARY INFORMATION: This information collection captures the terms and conditions of the Small Business Administration's (SBA) new Secondary Market for Section 504 First Mortgage Loan Pool Program. SBA needs this information collection in order to identify program participants, terms of financial transactions involving federal government guaranties, and reporting on program efficiency.

Title: "Secondary Market for Section 504 First Mortgage Loan Pool Program".

Description of Respondents: Secondary Market Participants.

Form Numbers: 2401, 2402, 2403, 2404.

Annual Responses: 12,490.

Annual Burden: 33,075.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 2010–9526 Filed 4–22–10; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12040 and #12041]

Virginia Disaster Number VA–00028

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the Commonwealth of Virginia (FEMA–1874–DR), dated 02/16/2010.

Incident: Severe Winter Storm and Snowstorm.

Incident Period: 12/18/2009 through 12/20/2009.

DATES: *Effective Date:* 04/13/2010.

Physical Loan Application Deadline Date: 04/19/2010.

Economic Injury (EIDL) Loan Application Deadline Date: 11/16/2010.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the Commonwealth of Virginia, dated 02/16/2010, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Craig, Fredericksburg City, Roanoke, Roanoke City, Tazewell.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Jane M.D. Pease,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 2010–9431 Filed 4–22–10; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12107 and #12108]

New Jersey Disaster Number NJ–00014

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of New Jersey (FEMA–1897–DR), dated 04/02/2010.

Incident: Severe Storms and Flooding.

Incident Period: 03/12/2010 and continuing through 04/15/2010.

Effective Date: 04/15/2010.

Physical Loan Application Deadline Date: 06/01/2010.

EIDL Loan Application Deadline Date: 01/03/2011.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for the State of New Jersey, dated 04/02/2010 is hereby amended to establish the incident period for this disaster as beginning 03/12/2010 and continuing through 04/15/2010.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2010–9493 Filed 4–22–10; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12109 and #12110]

New Jersey Disaster Number NJ–00016

AGENCY: Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of New Jersey (FEMA–1897–DR), dated 04/02/2010.

Incident: Severe Storms and Flooding.

Incident Period: 03/12/2010 and continuing through 04/15/2010.

DATES: *Effective Date:* 04/15/2010.

Physical Loan Application Deadline Date: 06/01/2010.

Economic Injury (EIDL) Loan Application Deadline Date: 01/03/2011.

ADDRESSES: Submit completed loan applications to: Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of New Jersey, dated 04/02/2010, is hereby amended to establish the incident period for this disaster as beginning 03/12/2010 and continuing through 04/15/2010.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2010–9528 Filed 4–22–10; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12121 and #12122]

Pennsylvania Disaster #PA–00031

AGENCY: Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the Commonwealth of Pennsylvania (FEMA–1898–DR), dated 04/16/2010.

Incident: Severe Winter Storms and Snowstorms.

Incident Period: 02/05/2010 through 02/11/2010.

DATES: *Effective Date:* 04/16/2010.

Physical Loan Application Deadline Date: 06/15/2010.

Economic Injury (EIDL) Loan Application Deadline Date: 01/18/2011.

ADDRESSES: Submit completed loan applications to: Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 04/16/2010, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Adams, Allegheny, Armstrong, Beaver, Bedford, Blair, Butler, Cambria, Chester, Cumberland, Dauphin, Delaware, Fayette, Franklin, Fulton, Greene, Huntingdon, Indiana, Juniata, Lancaster, Lebanon, Perry, Philadelphia, Somerset, Westmoreland, York.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations With Credit Available Elsewhere	3.625
Non-Profit Organizations Without Credit Available Elsewhere	3.000
For Economic Injury:	
Non-Profit Organizations Without Credit Available Elsewhere	3.000

The number assigned to this disaster for physical damage is 12121B and for economic injury is 12122B.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator, for Disaster Assistance.

[FR Doc. 2010–9527 Filed 4–22–10; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12123 and #12124]

New York Disaster # NY–00089

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of New York (FEMA–1899–DR), dated 04/16/2010.

Incident: Severe Storms and Flooding.

Incident Period: 03/13/2010 through 03/15/2010.

Effective Date: 04/16/2010.

Physical Loan Application Deadline Date: 06/15/2010.

Economic Injury (EIDL) Loan Application Deadline Date: 01/18/2011.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 04/16/2010, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Nassau, Orange, Richmond, Rockland, Suffolk, Westchester.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations With Credit Available Elsewhere ...	3.625
Non-Profit Organizations Without Credit Available Elsewhere	3.000
For Economic Injury:	
Non-Profit Organizations Without Credit Available Elsewhere	3.000

The number assigned to this disaster for physical damage is 121236 and for economic injury is 121246.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2010–9495 Filed 4–22–10; 8:45 am]

BILLING CODE 8025–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 29209; File No. 812–13718]

Calvert Social Investment Fund, et al.; Notice of Application

April 19, 2010.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of an application under section 6(c) of the Investment Company Act of 1940 ("Act") for an exemption from rule 12d1–2(a) under the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit funds of funds relying on rule 12d1–2 under the Act to invest in certain financial instruments.

APPLICANTS: Calvert Social Investment Fund (the "Trust"), Calvert Asset Management Company, Inc. ("CAMCO") and Calvert Distributors, Inc. ("CDI").

FILING DATES: The application was filed on November 17, 2009, and amended on March 23, 2010.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on May 14, 2010 and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090; Applicants: 4550 Montgomery Avenue, Suite 1000N, Bethesda, Maryland 20814.

FOR FURTHER INFORMATION CONTACT: Lewis B. Reich, Senior Counsel, at (202) 551–6919, or Jennifer L. Sawin, Branch Chief, at (202) 551–6821 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicants' Representations

1. The Trust is organized as a Massachusetts business trust, and is registered with the Commission as an open-end management investment company. The existing Applicant Funds (as defined below) are series of the Trust that operate as funds of funds. CAMCO, a Delaware corporation, is a subsidiary of Calvert Group, Ltd. that serves as investment adviser to the existing Applicant Funds and the Underlying Funds (as defined below) in which those Applicant Funds invest. CAMCO is, and any other Adviser (as defined below) will be, registered as an investment adviser under the Investment Advisers Act of 1940, as amended. CDI, a Delaware corporation, is a subsidiary of Calvert Group, Ltd. and a broker-dealer registered under the Securities Exchange Act of 1934, as amended ("Exchange Act"), that serves as distributor for the existing Applicant Funds and the Underlying Funds.

2. Applicants request the exemption to the extent necessary to permit any existing or future registered open-end management company or series thereof that (i) Is advised by CAMCO or any investment adviser controlling, controlled by or under common control with CAMCO (collectively with CAMCO, "Advisers"); (ii) is part of the same "group of investment companies" as defined in section 12(d)(1)(G) of the Act, as the Trust; (iii) invests in shares of other registered open-end investment companies ("Underlying Funds") in reliance on section 12(d)(1)(G) of the Act; and (iv) is also eligible to invest in securities (as defined in section 2(a)(36) of the Act) in reliance on rule 12d1–2 under the Act (each an "Applicant Fund") to also invest, to the extent consistent with its investment objective, policies, strategies and limitations, in financial instruments that may not be securities within the meaning of section 2(a)(36) of the Act ("Other Investments").[1] Applicants also request that the order exempt any entity controlling, controlled by or under common control with CAMCO or CDI that now or in the future acts as principal underwriter with respect to the transactions described in the application.

3. Consistent with its fiduciary obligations under the Act, each Applicant Fund's board of trustees or directors will review the advisory fees charged by the Applicant Fund's Adviser to ensure that they are based on services provided that are in addition to, rather than duplicative of, services provided pursuant to the advisory agreement of any investment company in which that Applicant Fund may invest.

[1] Every existing entity that currently intends to rely on the requested order is named as an applicant. Any existing or future entity that relies on the order in the future will do so only in accordance with the terms and condition in the application.

Applicants' Legal Analysis

1. Section 12(d)(1)(A) of the Act provides that no registered investment company may acquire securities of another investment company if such securities represent more than 3% of the acquired company's outstanding voting stock or more than 5% of the acquiring company's total assets, or if such securities, together with the securities of other investment companies, represent more than 10% of the acquiring company's total assets. Section 12(d)(1)(B) of the Act provides that no registered open-end investment company may sell its securities to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or cause more than 10% of the acquired company's voting stock to be owned by investment companies and companies controlled by them.

2. Section 12(d)(1)(G) of the Act provides that section 12(d)(1) will not apply to securities of an acquired company purchased by an acquiring company if: (i) The acquired company and acquiring company are part of the same group of investment companies; (ii) the acquiring company holds only securities of acquired companies that are part of the same group of investment companies, government securities, and short-term paper; (iii) the aggregate sales loads and distribution-related fees of the acquiring company and the acquired company are not excessive under rules adopted pursuant to section 22(b) or section 22(c) of the Act by a securities association registered under section 15A of the Exchange Act or by the Commission; and (iv) the acquired company has a policy that prohibits it from acquiring securities of registered open-end investment companies or registered unit investment trusts in reliance on section 12(d)(1)(F) or (G) of the Act.

3. Rule 12d1–2 under the Act permits a registered open-end investment company or a registered unit investment trust that relies on section 12(d)(1)(G) of the Act to acquire, in addition to securities issued by another registered investment company in the same group of investment companies, government securities, and short-term paper: (1) Securities issued by an investment company that is not in the same group of investment companies, when the acquisition is in reliance on section 12(d)(1)(A) or 12(d)(1)(F) of the Act; (2) securities (other than securities issued by an investment company); and (3) securities issued by a money market fund, when the investment is in reliance on rule 12d1–1 under the Act. For the purposes of rule 12d1–2, "securities" means any security as defined in section 2(a)(36) of the Act.

4. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction from any provision of the Act, or from any rule under the Act, if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act.

5. Applicants state that the proposed arrangement would comply with the provisions of rule 12d1–2 under the Act, but for the fact that the Applicant Funds may invest a portion of their assets in Other Investments. Applicants request an order under section 6(c) of the Act for an exemption from rule 12d1–2(a) to allow the Applicant Funds to invest in Other Investments while investing in Underlying Funds. Applicants assert that permitting the Applicant Funds to invest in Other Investments as described in the application would not raise any of the concerns that the requirements of section 12(d)(1) were designed to address.

Applicants' Condition

Applicants agree that any order granting the requested relief will be subject to the following condition:

Applicants will comply with all provisions of rule 12d1–2 under the Act, except for paragraph (a)(2) to the extent that it restricts any Applicant Fund from investing in Other Investments as described in the application.

For the Commission, by the Division of Investment Management, under delegated authority.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2010–9400 Filed 4–22–10; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

ULH Corp. (n/k/a UniHolding Corp.), Unapix Entertainment, Inc., Unicomp, Inc., and Unidyne Corp.; Order of Suspension of Trading

April 21, 2010.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of ULH Corp. (n/k/a UniHolding Corp.) because it has not filed any periodic reports since it filed a Form 10–K for the period ended May 31, 1999.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Unapix Entertainment, Inc. because it has not filed any periodic reports since it filed a Form 10–Q for the period ended June 30, 2000.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Unicomp, Inc. because it has not filed any periodic reports since it filed a Form 10–Q/A for the period ended November 30, 2000.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Unidyne Corp. because it has not filed any periodic reports since it filed a Form 10–QSB for the period ended September 30, 1999.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed companies.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed companies is suspended for the period from 9:30 a.m. EDT on April 21, 2010, through 11:59 p.m. EDT on May 4, 2010.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2010–9568 Filed 4–21–10; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61935; File No. SR–CBOE–2010–036]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Proposed Rule Change To Permit $1 Strikes for Options on Trust Issued Receipts

April 16, 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 April 13, 2010, Chicago Board Options Exchange, Incorporated (the "Exchange" or "CBOE") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CBOE proposes to amend its Rule 5.5 to allow the Exchange to list options on Trust Issued Receipts in $1 strike price intervals. The text of the rule proposal is available on the Exchange's Web site (*http://www.cboe.org/legal*), at the Exchange's Office of the Secretary and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend Rule 5.5, *Series of Option Contracts Open for Trading,* by adding new Interpretation and Policy .17 that would allow the Exchange to list options on the Trust Issued Receipts ("TIRs"), including HOLding Company Depository ReceiptS ("HOLDRS"), as defined under Interpretation and Policy .07 to Rule 5.3, in $1 or greater strike price intervals, where the strike price is $200 or less and $5 or greater where the strike price is greater than $200.[3]

Currently, the strike price intervals for options TIRs are as follows: (1) $2.50 or greater where the strike price is $25.00 or less; (2) $5.00 or greater where the strike price is greater than $25.00; and (3) $10.00 or greater where the strike price is greater than $200.[4]

The Exchange is seeking to permit $1 strikes for options on TIRs (where the strike price is less than $200) because TIRs have characteristics similar to exchange-traded funds ("ETFs"). Specifically, TIRs are exchange-listed securities representing beneficial ownership of the specific deposited securities represented by the receipts. They are negotiable receipts issued by a trust representing securities of issuers that have been deposited and held on behalf of the holders of the TIRs. TIRs, which trade in round-lots of 100, and multiples thereof, may be issued after their initial offering through a deposit with the trustee of the required number of shares of common stock of the underlying issuers. This characteristic of TIRs is similar to that of ETFs which also may be created on any business day upon receipt of the requisite securities or other investment assets comprising a creation unit. The trust only issues receipts upon the deposit of the shares of the underlying securities that are represented by a round-lot of 100 receipts. Likewise, the trust will cancel, and an investor may obtain, hold, trade or surrender TIRs in a round-lot and round-lot multiples of 100 receipts.

CBOE believes the marketplace and investors expect options on TIRs to trade in a similar manner to ETF options. Strike prices for ETF options are permitted in $1 or greater intervals where the strike price is $200 or less and $5 or greater where the strike price is greater than $200.[5] Accordingly, the Exchange believes that the rationale for permitting $1 strikes for ETF options equally applies to permitting $1 strikes for options on TIRs and the Exchange believes that investors will be better served if $1 strike price intervals are available for options on TIRs (where the strike price is less than $200).

CBOE has analyzed its capacity and represents that it believes the Exchange and the Options Price Reporting Authority have the necessary systems capacity to handle the additional traffic associated with the listing and trading of $1 strikes (where the strike price is less than $200) for options on TIRs.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act[6] and the rules and regulations thereunder and, in particular, the requirements of Section 6(b) of the Act.[7] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[8] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and to perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest by allowing the Exchange to list options on TIRs at $1 strike price intervals.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2010–036 on the subject line.

[3] HOLDRS are a type of Trust Issued Receipt and the current proposal would permit $1 strikes for options on HOLDRS (where the strike price is less than $200).

[4] *See* CBOE Rule 5.5.01(c)–(e). *See also* Securities Exchange Act Release No. 43043 (July 17, 2000), 65 FR 46520 (July 28, 2000) (SR–CBOE–2010–36) (approval order for options on TIRs).

[5] *See* CBOE Rule 5.5.08 (permitting $1 strikes for options on Units covered under Interpretation and Policy .06 to Rule 5.3, which are also known as ETF options).

[6] 15 U.S.C. 78s(b)(1).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

Paper Comments

• Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2010–036. This file number should be included on the subject line if e-mail is used.

To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal offices 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–CBOE–2010–036, and should be submitted on or before May 10, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2010–9457 Filed 4–22–10; 8:45 am]

BILLING CODE 8011–01–P

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61932; File No. SR–Phlx–2010–51]

Self-Regulatory Organizations; NASDAQ OMX PHLX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to a New Category of Fees for "Professional"

April 16, 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 31, 2010, NASDAQ OMX PHLX, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III, 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 adopt fees for a new type of participant called "professional."[3]

While changes to the Exchange's Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated this proposal to be operative on April 1, 2010.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqtrader.com/micro.aspx?id=PHLXfilings,* at the principal office of the Exchange, at the Commission's Public Reference Room, and on the Commission's Web site at *http://www.sec.gov.*

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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 61802 (March 30, 2010) (SR–Phlx–2010–05).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to adopt a new category of fees, "professional." The Exchange believes that the proposed fees for professional orders will allow the Exchange to remain competitive with other options exchanges who apply fees to professional orders.

The Exchange defines a "professional" as any 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)[4] (hereinafter "Professional").

The Exchange proposes to add a "Professional" fee to its fees and rebates for adding and removing liquidity, known as a "maker/taker" model by amending Category I of its Fee Schedule, Fees and Rebates for Adding and Removing Liquidity in Select Symbols, to adopt a $0.20 rebate for adding liquidity and a $0.40 fee for removing liquidity for Professional orders. There are currently five categories of participants in Category I: (i) Specialists, Registered Options Traders ("ROTs"), Streaming Quote Traders ("SQTs")[5] and Remote Streaming Quote Traders ("RSQTs");[6] (ii) customers;[7] (iii) specialists, SQTs and RSQTs that receive Directed Orders ("Directed Participants" or "Directed Specialists, RSQTs or SQTs");[8]

[4] A Professional will be treated in the same manner as an off-floor broker-dealer for purposes of Rules 1014(g)(except with respect to all-or-none orders, which will be treated like customer orders), 1033(e), 1064.02 (except professional orders will be considered customer orders subject to facilitation), and 1080.08 as well as Options Floor Procedure Advices B–6, B–11 and F–5. Member organizations must indicate whether orders are for professionals.

[5] An SQT is an Exchange Registered Options Trader ("ROT") who has received permission from the Exchange to generate and submit option quotations electronically through an electronic interface with AUTOM via an Exchange approved proprietary electronic quoting device in eligible options to which such SQT is assigned. *See* Exchange Rule 1014(b)(ii)(A).

[6] An RSQT is an ROT that is a member or member organization with no physical trading floor presence who has received permission from the Exchange to generate and submit option quotations electronically through AUTOM in eligible options to which such RSQT has been assigned. An RSQT may only submit such quotations electronically from off the floor of the Exchange. *See* Exchange Rule 1014(b)(ii)(B).

[7] This applies to all customer orders, directed and non-directed.

[8] *See* Exchange Rule 1080(l), "* * * The term 'Directed Specialist, RSQT, or SQT' means a specialist, RSQT, or SQT that receives a Directed Order." A Directed Participant has a higher quoting

Continued

(iv) firms; and (v) broker-dealers. The Professional category would be an addition to these existing categories.

The current version of Category I of the Fee Schedule, with the addition of the proposed Professional fee, follows below.

	Customer	Directed participant	Specialist, ROT, SQT and RSQT	Firm	Broker-dealer	*Professional*
Rebate for Adding Liquidity	$0.20	$0.25	$0.23	$0.00	$0.00	*$0.20*
Fee for Adding Liquidity	0.00	0.00	0.00	0.45	0.45	*0.00*
Fee for Removing Liquidity	0.25	0.30	0.32	0.45	0.45	*0.40*

2. Statutory Basis

The Exchange believes that its proposal to amend its schedule of fees is consistent with Section 6(b) of the Act [9] in general, and furthers the objectives of Section 6(b)(4) of the Act [10] in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members. The Exchange believes that adding Professional fees to the Fees and Rebates for Adding and Removing Liquidity in Select Symbols is fair and reasonable, because the proposed fees are similar to the transaction fees applicable to fees assessed by other options exchanges; professional orders will be offered a rebate of $0.20 per contract for adding liquidity and assessed a fee of $0.40 per contract similar to the rebates and fees assessed by NYSE Arca for customers and broker-dealers ($.25 and $.45, respectively).[11]

The impact of the proposal upon the net fees paid by a particular market participant will depend on a number of variables, most important of which will be its propensity to add or remove liquidity in the underlying symbols. The Exchange operates in a highly competitive market in which market participants can readily direct order flow to another exchange if they deem fee levels at a particular exchange to be excessive. The Exchange believes that the proposed fees it charges for options overlying the various symbols remain competitive with fees charged by other exchanges and, therefore, continue to be reasonable and equitably allocated to those members that opt to direct orders to the Exchange rather than to a competing exchange.

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

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 [12] and paragraph (f)(2) of Rule 19b–4 [13] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–Phlx–2010–51 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2010–51. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2010–51 and should be submitted on or before May 14, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2010–9399 Filed 4–22–10; 8:45 am]

BILLING CODE 8011–01–P

requirement as compared with a specialist, SQT or RSQT who is not acting as a Directed Participant. *See* Exchange Rule 1014.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(4).

[11] *See* NYSE Arca General Options and Trading Permit (OTP) Fees.

[12] 15 U.S.C. 78s(b)(3)(A)(ii).

[13] 17 CFR 240.19b–4(f)(2).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61911; File No. SR–OCC–2010–06]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Revise Certain By-Laws and Rules Related to the Stock Loan/Hedge and Market Loan Programs

April 15, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on March 26, 2010, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by OCC. OCC filed the proposal pursuant to Section 19(b)(3)(A)(iii) of the Act [2] and Rule 19b–4(f)(4) [3] thereunder so that the proposal was effective upon filing with 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

The purpose of the proposed rule change is to revise certain by-laws and rules related to the Stock Loan/Hedge and Market Loan Programs.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.[4]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

OCC proposes three changes to certain by-laws and rules related to its stock lending programs known as Stock Loan/Hedge and Market Loan.[5] First, OCC would amend the existing definition of "marking price" used in connection with "loaned stock". Marking price for a loaned stock is currently defined as the closing price on the primary market for a loaned stock on the preceding trading day or if the loaned stock did not trade on the previous trading day the highest reported asked quotation for such stock at or about the close of trading on the preceding trading day. OCC however recently determined that its pricing vendor for marking prices does not provide the highest reported asked quotation for stocks that did not trade on the previous trading day.[6] To reconcile the difference between the vendor's reporting practice and the current marking price definition, as well as to address other potentially related price reporting issues, OCC proposes applying its general definition of marking price that is found in Article I, Section 1 of its By-laws.[7]

Second, with respect to OCC's Market Loan Program, Automated Equity Finance Markets, Inc. ("AQS") [8] asked OCC to develop functionality to accept instructions from AQS to cancel Market Loan transactions that are pending settlement at The Depository Trust Company ("DTC"). AQS advised that this functionality would address situations of obvious error and facilitate its market operations. OCC would amend Rule 2204A to allow it to accept instruction from a Loan Market to cancel a previously-reported transaction that is pending settlement at DTC. When so instructed by a Loan Market, OCC already has authority to unwind settled Market Loan transactions that were erroneously executed.[9] OCC therefore believes this proposed ability to cancel pending transactions would be a minor extension of existing authority.

Finally, and also with respect to the Market Loan Program, AQS asked OCC to process dividend equivalent payments that are not covered by DTC's automatic dividend tracking services ("Dividend Service") and to do so without removing a Market Loan from the Dividend Service. In October 2009, OCC amended its rules so that dividend equivalent payments are principally effected through DTC's Dividend Service. However, OCC retained authority to effect such payments through its cash settlement system if a Market Loan is removed by OCC from the Dividend Service.[10]

Since the time of that rule change by OCC, AQS determined that certain dividend equivalent payments are not tracked by DTC and therefore are not covered by its Dividend Service. In such situations, AQS requested that OCC allow a Loan Market to instruct OCC to use its cash settlement system to transfer these "non-tracked" dividend equivalent payments from a borrower to a lender without removing a Market Loan from the Dividend Service. OCC would amend Rule 2206A to accommodate this request. Guaranty of dividend equivalent payments by OCC would remain limited to the amount of margin OCC collects prior to the expected dividend payment date from any responsible Borrowing Clearing Member.

OCC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act [11] and the rules and regulations thereunder applicable to OCC because the proposed rule change promotes efficiencies in the clearance and settlement of securities transactions by modifying OCC's by-laws and rules to (i) revise the definition of the term "marking price" used in its Stock Loan/Hedge and Market Loan programs, (ii) permit cancellation of Market Loan transactions prior to settlement at DTC, and (iii) permit OCC to settle dividend equivalent payments that are not tracked through DTC's Dividend Service without removing a Market Loan from the Dividend Service.

(B) Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change will have any impact or impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments relating to the proposed rule change have not yet been solicited or received. OCC will notify

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78s(b)(3)(A)(iii).

[3] 17 CFR 240.19b–4(f)(4).

[4] The Commission has modified the text of the summaries prepared by OCC.

[5] The proposed changes to OCC's By-laws and Rules can be found in Exhibit 5 to proposed rule change SR–OCC–2010–06 at *http://www.dtcc.com/downloads/legal/rule_filings/2010/nscc/2010-02.pdf.*

[6] The vendor provides a marking price that is the mid-point between the bid and ask for such stocks.

[7] Article I, Section 1 of OCC's By-laws states, "[t]he term 'marking price' * * * means the most recent market value reasonably ascertainable (or the most recent reasonably ascertainable contract price, in the case of a future), as determined by [OCC] in its discretion * * *".

[8] AQS is a Loan Market as defined in the OCC's Market Loan Program rules.

[9] OCC Rule 2207A.

[10] Securities Exchange Act Release No. 34–60881 (October 26, 2009), 74 FR 56253 (October 30, 2009) File No. SR–OCC–2009–16.

[11] 15 U.S.C. 78q–1.

the Commission of any written comments received by OCC.

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)(iii) of the Act [12] and Rule 19b–4(f)(4) [13] thereunder because the proposed rule change effects a change in an existing service of a registered clearing agency that: (i) Does not adversely affect the safeguarding of securities or funds in the custody or control of the clearing agency or for which it is responsible and (ii) does not significantly affect the respective rights or obligations of the clearing agency or persons using the service. At any time within sixty days of the filing of such 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

- Electronic comments may be submitted by using the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*), or
- Send an e-mail to *rule-comments@sec.gov.* Please include File No. SR–OCC–2010–06 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–OCC–2010–06. 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 Section, 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 filings also will be available for inspection and copying at the principal office of OCC and on OCC's Web site at *http://www.optionsclearing.com/components/docs/legal/rules_and_bylaws/sr_occ_10_06.pdf.*

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–OCC–2010–06 and should be submitted on or before May 14, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–9272 Filed 4–22–10; 8:45 am]

BILLING CODE 8011–01–P

[12] 15 U.S.C. 78s(b)(3)(A)(iii).

[13] 17 CFR 240.19b–4(f)(4).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61937; File No. SR–NYSEArca–2010–23]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change To Modify NYSE Arca Trades Fees, To Establish the NYSE Arca BBO Service and Related Fees, and To Provide an Alternative Unit-of-Count Methodology for Those Services

April 16, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act") [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 1, 2010, the NYSE Arca, Inc. ("NYSE Arca" or "Exchange"), filed with the Securities and Exchange Commission "Commission") the proposed rule change as described in Items I, II, and III 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

NYSE Arca proposes: (A) To modify the professional subscriber fees for its NYSE Arca Trades Service; (B) to establish the NYSE Arca BBO Service, a service that will make available the Exchange's best bids and offers; (C) to establish fees for the NYSE Arca BBO Service; and (D) to provide an alternative unit-of-count methodology for the NYSE Arca Trades and BBO Services. The text of the proposed rule change is available on the Exchange's Web site at *http://www.nyse.com,* on the Commission's Web site at *http://www.sec.gov,* at NYSE Arca, 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

a. NYSE Arca Trades Fees and Unit-of-Count Methodology

On March 18, 2009, the Commission approved the NYSE Arca Trades Service and its fees.[3] NYSE Arca Trades is a NYSE Arca-only market data service that allows a vendor to redistribute on a real-time basis the same last sale information that the Exchange reports under the CTA Plan and the "Nasdaq/UTP Plan" [4] for inclusion in those plans' consolidated data streams and certain other related data elements ("NYSE Arca Last Sale Information").

The Commission approved two professional subscriber fees for the NYSE Arca Trades Service. It approved a fee of $5 per month per display device

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Release No. 34–59598; 74 FR 12919 (March 25, 2009); File No. SR–NYSEArca–2009–05.

[4] Formally referred to as "the Reporting Plan for Nasdaq/National Market System Securities Traded on an Exchange on an Unlisted or Listed Basis."

for the receipt and use of NYSE Arca Last Sale Information relating to Network A and Network B Eligible Securities and $5 per month per display device for the receipt and use of NYSE Arca Last Sale Information relating to securities listed on Nasdaq.

The Exchange proposes to make two changes to these fees. First, the Exchange proposes to consolidate the two $5.00 fees into one $10.00 fee. That is, the Exchange proposes to set the professional subscriber fee for the NYSE Arca Trades Service at $10.00. This fee would entitle professional subscribers to receive NYSE Arca Last Sale Information relating to all securities for which last sale information is reported under the CTA Plan and the Nasdaq/UTP Plan. Consolidating the two fees into one fee makes the NYSE Arca Trades professional subscriber fee consistent with the professional subscriber fee that the Exchange understands that NYSE Amex LLC ("NYSE Amex") will propose for a substantially similar last sale information service that NYSE Arca expects NYSE Amex to file with the Commission in the near future.

Second, the Exchange proposes to offer an alternative to the per-device fee, the traditional means for calculating charges. Under the alternative, a Vendor could elect to pay on the basis of the number of "Subscriber Entitlements" rather than the basis of the number of devices. The "Subscriber Entitlements" methodology is the unit-of-count methodology that the Commission approved earlier this year for the proposed rule change that the New York Stock Exchange, LLC ("NYSE") submitted in respect of its NYSE OpenBook® service (the "Unit-of-Count Filing").[5]

Under that unit-of-count methodology, the Exchange does not define the Vendor-subscriber relationship based on the manner in which a datafeed recipient or subscriber receives data (*i.e.,* through controlled displays or through data feeds). Instead, the Exchange uses more subjective billing criteria. Those criteria define "Vendors," "Subscribers," "Subscriber Entitlements" and "Subscriber Entitlement Controls" as the basis for setting professional subscriber fees. The Exchange believes that these changes more closely align with current data consumption and will reduce costs for the Exchange's customers.

The following basic principles underlie the "Subscriber Entitlement" unit-of-count methodology.

i. Vendors.

• "Vendors" are market data vendors, broker-dealers, private network providers and other entities that control Subscribers' access to data through Subscriber Entitlement Controls.

ii. Subscribers.

• "Subscribers" are unique individual persons or devices to which a Vendor provides data. Any person or device that receives data from a Vendor is a Subscriber, whether the person or device works for or belongs to the Vendor, or works for or belongs to an entity other than the Vendor.

• Only a Vendor may control Subscriber access to data.

• Subscribers may not redistribute data in any manner.

iii. Subscriber Entitlements.

• A Subscriber Entitlement is a Vendor's permissioning of a Subscriber to receive access to data through an Exchange-approved Subscriber Entitlement Control.

• A Vendor may not provide data access to a Subscriber except through a unique Subscriber Entitlement.

• The Exchange will require each Vendor to provide a unique Subscriber Entitlement to each unique Subscriber.

• At prescribed intervals (normally monthly), the Exchange will require each Vendor to report each unique Subscriber Entitlement.

iv. Subscriber Entitlement Controls.

• A Subscriber Entitlement Control is the Vendor's process of permissioning Subscribers' access to data.

• Prior to using any Subscriber Entitlement Control or changing a previously approved Subscriber Entitlement Control, a Vendor must provide the Exchange with a demonstration and a detailed written description of the control or change and the Exchange must have approved it in writing.

• The Exchange will approve a Subscriber Entitlement Control if it allows only authorized, unique end-users or devices to access data or monitors access to data by each unique end-user or device.

• Vendors must design Subscriber Entitlement Controls to produce an audit report and make each audit report available to the Exchange upon request. The audit report must identify:

A. Each entitlement update to the Subscriber Entitlement Control;

B. The status of the Subscriber Entitlement Control; and

C. Any other changes to the Subscriber Entitlement Control over a given period.

• Only the Vendor may have access to Subscriber Entitlement Controls.

Subject to the rules set forth below, the Exchange will require NYSE Arca-Only Vendors to count every Subscriber Entitlement, whether it be a person or a device. This means that the Vendor must include in the count every person and device that has access to the data, regardless of the purposes for which the person or device uses the data. The Exchange will require Vendors to report and count all entitlements in accordance with the following rules.

i. As explained below, the Exchange also proposes to adopt the "Subscriber Entitlement" unit-of-count methodology for the NYSE Arca BBO Service. The count shall be separate for the NYSE Arca Trades and NYSE Arca BBO Services. This means that a device that is entitled to receive both NYSE Arca Last Sale Information and NYSE Arca BBO Information would count as a Subscriber Entitlement for the purposes of the NYSE Arca Trades Service and as a separate Subscriber Entitlement for the purposes of the NYSE Arca BBO Service.

ii. In connection with a Vendor's external distribution of either type of NYSE Arca "Market Data" (*i.e.,* NYSE Arca Last Sale Information or NYSE Arca BBO Information), the Vendor should count as one Subscriber Entitlement each unique Subscriber that the Vendor has entitled to have access to that type of Market Data. However, where a device is dedicated specifically to a single person, the Vendor should count only the person and need not count the device.

iii. In connection with a Vendor's internal distribution of a type of NYSE Arca Market Data, the Vendor should count as one Subscriber Entitlement each unique person (but not devices) that the Vendor has entitled to have access to that type of Market Data.

iv. The Vendor should identify and report each unique Subscriber. If a Subscriber uses the same unique Subscriber Entitlement to receive multiple services, the Vendor should count that as one Subscriber Entitlement. However, if a unique Subscriber uses multiple Subscriber Entitlements to gain access to one or more services (*e.g.,* a single Subscriber has multiple passwords and user identifications), the Vendor should report all of those Subscriber Entitlements.

v. The Vendor should report each Subscriber device serving multiple users individually as well as each person who may access the device. As an example, for a single device to which the Vendor has granted two people access, the Vendor should report three Subscriber Entitlements. Only a single, unique device that is dedicated to a single,

[5] *See* Release No. 34–59544; 74 FR 11162 (March 16, 2009); File No. SR–NYSE–2008–131.

unique person may be counted as one Subscriber Entitlement.

vi. Vendors should report each unique person who receives access through multiple devices as one Subscriber Entitlement so long as each device is dedicated specifically to that person.

vii. The Vendor should include in the count as one Subscriber Entitlement devices serving no users.

By way of examples, if a Subscriber's device has no users or multiple users, the Vendor should count that device as one Subscriber Entitlement. If a Vendor entitles five individuals to use one of a Subscriber's devices, the Vendor should count five individual entitlements and one device entitlement, for a total of six Subscriber Entitlements. If a Vendor entitles an individual to receive a type of NYSE Arca Market Data over a Subscriber device that is dedicated to that individual, the Vendor should count that as one Subscriber Entitlement, not two.

b. The NYSE Arca BBO Service

The NYSE Arca BBO Service is a new NYSE Arca-only market data service that allows a vendor to redistribute on a real-time basis the same best-bid-and-offer information that NYSE Arca reports under the CQ Plan and the Nasdaq/UTP Plan for inclusion in the those Plans' consolidated quotation information data streams ("NYSE Arca BBO Information"). NYSE Arca BBO Information would include the best bids and offers for all securities that are traded on the Exchange and for which NYSE Arca reports quotes under the CQ Plan or the Nasdaq/UTP Plan. NYSE Arca will make the NYSE Arca BBO service available over a single datafeed, regardless of the markets on which the securities are listed.

The NYSE Arca BBO Service would allow vendors, broker-dealers, private network providers and other entities ("NYSE Arca-Only Vendors") to make available NYSE Arca BBO Information on a real-time basis. NYSE Arca-Only Vendors may distribute the NYSE Arca BBO Service to both professional and nonprofessional subscribers.

The Exchange would make NYSE Arca BBO Information available through its new NYSE Arca BBO Service no earlier than it makes that information available to the processor under the CQ Plan or the Nasdaq/UTP Plan, as applicable.

c. NYSE Arca BBO Service Fees

i. Access Fee

For the receipt of access to the NYSE Arca BBO datafeed, the Exchange proposes to charge $750 per month. NYSE Arca also currently charges $750 for access to the NYSE Arca Trades datafeed. However, one $750 monthly access fee entitles an NYSE Arca-Only Vendor to receive both the NYSE Arca BBO datafeed as well as the Exchange's NYSE Arca Trades datafeed. The fee applies to receipt of NYSE Arca Market Data within the Vendor's organization or outside of it.

ii. Professional Subscriber Fee

For the receipt and use of NYSE Arca BBO Information, the Exchange proposes to charge $10 per month per professional subscriber device.

In addition, the Exchange proposes to offer an alternative methodology to the traditional device fee. Instead of charging $10 per month per device, it proposes to offer Vendors the option of paying $10 per month per "Subscriber Entitlement".

The fee entitles the end-user to receive and use NYSE Arca BBO Information relating to all securities traded on NYSE Arca, regardless of the market on which a security is listed.

For the purpose of calculating Subscriber Entitlements, the Exchange proposes to adopt the unit-of-count methodology that the Commission approved earlier this year in approving the Unit-of-Count Filing and that the Exchange has proposed to adopt for the NYSE Arca Trades Service, as described above.

iii. Nonprofessional Subscriber Fees

The Exchange proposes to charge each NYSE Arca-Only Vendor $5.00 per month for each nonprofessional subscriber to whom it provides NYSE Arca BBO Information. The Exchange proposes to impose the charge on the NYSE Arca-Only Vendor, rather than on the nonprofessional Subscriber. At this time, the Exchange does not propose to establish a nonprofessional subscriber fee for NYSE Arca Last Sale Information because the Exchange has recently submitted to the Commission an inexpensive alternative to that product, the NYSE Arca Realtime Reference Prices service.[6]

In addition, the Exchange proposes to establish as an alternative to the fixed $5.00 monthly fee a fee of $.005 for each response that a NYSE Arca-Only Vendor disseminates to a nonprofessional Subscriber's inquiry for a best bid or offer under the NYSE Arca BBO service. The Exchange proposes to limit a NYSE Arca-Only Vendor's exposure under this alternative fee. It proposes to set at $5.00 per month, the same amount as the proposed fixed monthly nonprofessional Subscriber flat fee, as the maximum fee that a NYSE Arca-Only Vendor would have to pay in respect of each nonprofessional Subscriber for the receipt of the NYSE Arca BBO service in any calendar month.

In order to take advantage of the per-query fee, a NYSE Arca-Only Vendor must document in its Exhibit A that it has the ability to measure accurately the number of queries from each nonprofessional Subscriber and must have the ability to report aggregate query quantities on a monthly basis.

The Exchange will impose the per-query fee only on the dissemination of best bids and offers to nonprofessional Subscribers. The per-query charge is imposed on NYSE Arca-Only Vendors, not end-users, and is payable on a monthly basis. NYSE Arca-Only Vendors may elect to disseminate the NYSE Arca BBO service pursuant to the per-query fee rather than the fixed monthly fee.

In establishing nonprofessional Subscriber fees for the NYSE Arca BBO Service, the Exchange proposes to apply the same criteria for qualification as a "nonprofessional subscriber" as the CTA and CQ Plan Participants use. As is true under the CTA and CQ Plans, classification as a nonprofessional subscriber is subject to Exchange review and requires the subscriber to attest to his or her nonprofessional subscriber status. A "nonprofessional subscriber" is a natural person who uses the data solely for his personal, non-business use and who is neither:

A. Registered or qualified with the Securities and Exchange Commission, ("SEC"), the Commodities Futures Trading Commission, any State securities agency, any securities exchange or association, or any commodities or futures contract market or association,

B. Engaged as an "investment adviser" as that term is defined in Section 202(a)(11) of the Investment Advisors Act of 1940 (whether or not registered or qualified under that act), nor

C. Employed by a bank or other organization exemption from registration under Federal and/or State securities laws to perform functions that would require him/her to be so registered or qualified if he/she were to perform such function for an organization not so exempt.

d. Justification of Fees

The proposed monthly access fee, professional subscriber fee and nonprofessional subscriber fees for the NYSE Arca BBO Service, and the

[6] *See* Release No. 34–61404; 75 FR 5363 (February 2, 2010); File No. SR–NYSEArca–2009–85.

proposed combining of the fees for the NYSE Arca Trades Service, enable NYSE Arca-Only Vendors and their subscribers to contribute to the Exchange's operating costs in a manner that is appropriate for the distribution of NYSE Arca Market Data in the form taken by the two services.

In setting the level of the proposed fees, the Exchange took into consideration several factors, including:

(i) NYSE Arca's expectation that the NYSE Arca Trades Service and NYSE Arca BBO Services are likely to be premium services, taken by investors most concerned with receiving NYSE Arca Market Data on a low latency basis;

(ii) The fees that Nasdaq, NYSE, NYSE Amex and the Participants in the CTA, CQ and Nasdaq/UTP Plans are charging for similar services (or that NYSE Arca anticipates they will soon propose to charge);

(iii) Consultation with some of the entities that the Exchange anticipates will be the most likely to take advantage of the proposed service;

(iv) The contribution of market data revenues that the Exchange believes is appropriate for entities that are most likely to take advantage of the proposed service;

(v) The contribution that revenues accruing from the proposed fee will make to meet the overall costs of the Exchange's operations;

(vi) The savings in administrative and reporting costs that the NYSE Arca Trades Service and NYSE Arca BBO Service will provide to NYSE Arca-Only Vendors (relative to counterpart services under the CTA, CQ and Nasdaq/UTP Plans); and

(vii) The fact that the proposed fees provide alternatives to existing fees under the CTA, CQ and Nasdaq/UTP Plans, alternatives that vendors will purchase only if they determine that the perceived benefits outweigh the cost.

The Exchange believes that the levels of the fees are consistent with the approach set forth in the order by which the Commission approved ArcaBook fees for NYSE Arca.[7] In the ArcaBook Approval Order, the Commission stated that "when possible, reliance on competitive forces is the most appropriate and effective means to assess whether the terms for the distribution of non-core data are equitable, fair and reasonable, and not unreasonably discriminatory."[8] It noted that if significant competitive forces apply to a proposal, the Commission would approve it unless a substantial countervailing basis exists.

NYSE Arca BBO Information constitutes "non-core data." The Exchange does not require a central processor to consolidate and distribute the product to the public pursuant to joint-SRO plans. Rather, the Exchange distributes the product voluntarily.

In the case of the NYSE Arca BBO Service and the NYSE Arca Trades Service, both of the two types of competitive forces that the Commission described in the ArcaBook Approval Order are present: The Exchange has a compelling need to attract order flow and the product competes with a number of alternative products.

The Exchange must compete vigorously for order flow to maintain its share of trading volume. This requires the Exchange to act reasonably in setting market data fees for non-core products such as the NYSE Arca BBO Service. The Exchange hopes that the proposed NYSE Arca BBO Service will enable vendors to distribute NYSE Arca BBO Information widely among investors, and thereby provide a means for promoting the Exchange's visibility in the marketplace.

In addition to the need to attract order flow, the availability of alternatives to the NYSE Arca BBO Service and the NYSE Arca Trades Service significantly constrain the prices at which the Exchange can market those services. All national securities exchanges, the several Trade Reporting Facilities of FINRA, ECNs that produce proprietary data, as well as the core data feed under the CQ Plan, are all sources of competition for the NYSE Arca BBO Service and the NYSE Arca Trades Service. Currently:

(i) Nasdaq offers its last sale information and best-bid-and-offer information under services that would provide an alternative to the proposed NYSE Arca services;

(ii) NYSE offers last sale information in services that are substantially similar to the NYSE Arca Trades Service and NYSE Arca anticipates that NYSE Amex will soon do so too; and

(iii) The Exchange anticipates that NYSE and NYSE Amex will soon propose to provide best-bid-and-offer services that are substantially similar to the NYSE Arca BBO Service.

As an alternative, investors can receive NYSE Arca BBO Information from ArcaBook. The information available in the NYSE Arca Trade Service or the NYSE Arca BBO Service is also included in the calculation of the consolidated last sale price information and best-bid-and-offer calculations under the CTA, CQ and Nasdaq/UTP Plans, which comprise core datafeeds. Investors may select the NYSE Arca Trade Service or the NYSE Arca BBO Service as less expensive alternatives to the CTA, CQ and Nasdaq/UTP Plans' consolidated data streams for certain purposes. (Rule 603(c) of Regulation NMS requires vendors to make the consolidated, core datafeeds available to customers when trading and order-routing decisions can be implemented.)

e. Administrative Requirements

In regard to NYSE Arca BBO Information, the Exchange will require each Vendor to enter into the form of "vendor" agreement into which the CTA and CQ Plans require recipients of the Network A datafeeds to enter (the "Consolidated Vendor Form"). That agreement will authorize the Vendor to provide NYSE Arca BBO Information to its customers or to distribute the data internally.

In addition, the Exchange will require each professional end-user that receives NYSE Arca BBO Information from a vendor or broker-dealer to enter into the form of professional subscriber agreement into which the CTA and CQ Plans require end users of Network A data to enter. It will also require Vendors to subject nonprofessional subscribers to the same contract requirements as the CTA and CQ Plan Participants require of Network A nonprofessional subscribers. The Network A Participants submitted the Consolidated Vendor Form and the professional subscriber form to the Commission for comment and notice.[9]

2. Statutory Basis

The bases under the Securities Exchange Act of 1934 (the "Act") for the proposed rule change are the requirement under Section 6(b)(4)[10] that an exchange have rules that provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities and the requirements under Section 6(b)(5)[11] that the rules of an exchange be designed to promote just and equitable principles of trade and not to permit unfair discrimination between customers, issuers, brokers or dealers.

The proposed rule change would benefit investors by facilitating their prompt access to real-time best-bid-and-offer information contained in the NYSE Arca BBO Service and by providing a

[7] *See* Release No. 59039 (December 2, 2008), 73 FR 74770 (December 9, 2008) (SR–NYSE ArcaArca–2006–21) (the "ArcaBook Approval Order").

[8] *Id.* at 74771.

[9] *See* Securities Exchange Act Release Nos. 34–22851 (January 31, 1986), 34–28407 (September 10, 1990), 34–49185 (February 4, 2004), and 34–22851 (January 31, 1986).

[10] 15 U.S.C. 78f(b)(4).

[11] 15 U.S.C. 78f(b)(5).

modern methodology alternative for counting fee-liable units. In addition, the Exchange believes that the proposed fee would allow entities that are most likely to take advantage of the proposed service to make an appropriate contribution towards meeting the overall costs of the Exchange's operations.

The Exchange notes that Nasdaq, NYSE and NYSE Amex already impose charges for services that are similar to the NYSE Arca Trades service and Nasdaq already imposes charges for services that are similar to the NYSE Arca BBO service. NYSE Arca anticipates NYSE and NYSE Arca will soon propose to establish fees for best-bid-and-offer services that are substantially similar to the NYSE Arca BBO service. Thus, the Exchange's proposed fees offer any vendor that wishes to provide its customers with a single market's last sale information or best-bid-and-offer information (as opposed to a more expensive consolidated last sale or quotation information service) an alternative to Nasdaq, NYSE and NYSE Amex.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NYSE Arca BBO Service proposes to provide an alternative to existing services that the Participants make available under the CQ Plan. The proposed fees do not alter or rescind any existing fees. In addition, it amounts to a competitive response to the products that Nasdaq, NYSE and NYSE Amex make available or will soon make available. For those reasons, the Exchange 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

The Exchange has discussed the proposed rules change with those entities that the Exchange believes would be the most likely to take advantage of the proposed NYSE Arca BBO Service by becoming NYSE Arca-Only Vendors. While those entities have not submitted formal, written comments on the proposal, the Exchange has incorporated some of their ideas into the proposal and the proposed rule change reflects their input. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File No. SR–NYSEArca–2010–23 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2010–23. 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 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–2010–23 and should be submitted on or before May 14, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2010–9401 Filed 4–22–10; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61933; File No. SR–Phlx–2010–56]

Self-Regulatory Organizations; NASDAQ OMX PHLX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Fees and Rebates for Adding and Removing Liquidity

April 16, 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 April 1, 2010, NASDAQ OMX PHLX, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its fees and rebates for adding and removing liquidity by establishing that professional orders will not be assessed a charge for electronic auctions.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqtrader.com/micro.aspx?id=PHLXfilings,* at the principal office of the Exchange, at the Commission's Public Reference Room, and at the Commission's Public

[12] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Reference Room, and on the Commission's Web site at *http://www.sec.gov.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend the fees and rebates for adding and removing liquidity to clarify the applicability of these fees to Professionals in an electronic auction.

The Exchange recently amended its rules to give certain non-broker-dealer orders the same priority as broker-dealer orders.[3] Also, the Exchange recently filed a proposed rule change to amend its Fee Schedule to adopt a new category of fees, "professional."[4]

The Exchange defines a "professional" as any 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) (hereinafter "Professional").[5]

The Exchange proposes to amend its fees and rebates for adding and removing liquidity, known as a "maker/taker" model in order that Professionals will not be assessed a charge for electronic auctions which include, without limitation, the Complex Order Live Auction ("COLA"), and Quote and Market Exhaust auctions. Currently, electronic auctions are free to Customers, Directed Participants, Specialists, ROTs, SQTs and RSQTs. Firms and broker-dealers are assessed the appropriate charge for removing liquidity.

2. Statutory Basis

The Exchange believes that its proposal to amend its schedule of fees is consistent with Section 6(b) of the Act[6] in general, and furthers the objectives of Section 6(b)(4) of the Act[7] in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members. The Exchange believes that Professionals should not be assessed the fees and rebates for adding and removing liquidity in electronic auctions as Specialists, ROTs, SQTs and RSQTs are not assessed such fees in electronic auctions.

The impact of the proposal upon the net fees paid by a particular market participant will depend on a number of variables, most important of which will be its propensity to add or remove liquidity in the underlying symbols. The Exchange operates in a highly competitive market in which market participants can readily direct order flow to another exchange if they deem fee levels at a particular exchange to be excessive. The Exchange believes that the proposed fees it charges for options overlying the various symbols remain competitive with fees charged by other exchanges and, therefore, continue to be reasonable and equitably allocated to those members that opt to direct orders to the Exchange rather than to a competing exchange.

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

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[9] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–Phlx–2010–56 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2010–56. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions

[3] *See* Securities Exchange Act Release No. 61802 (March 30, 2010) (SR–Phlx–2010–05).

[4] *See* SR–Phlx–2010–51 and SR–Phlx–2010–55.

[5] A Professional will be treated in the same manner as an off-floor broker-dealer for purposes of Rules 1014(g)(except with respect to all-or-none orders, which will be treated like customer orders), 1033(e), 1064.02 (except professional orders will be considered customer orders subject to facilitation), and 1080.08 as well as Options Floor Procedure Advices B–6, B–11 and F–5. Member organizations must indicate whether orders are for professionals.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(4).

[8] 15 U.S.C. 78s(b)(3)(A)(ii).

[9] 17 CFR 240.19b–4(f)(2).

should refer to File Number SR–Phlx–2010–56 and should be submitted on or before May 14, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2010–9398 Filed 4–22–10; 8:45 am]

BILLING CODE 8011–01–P

[10] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 6978]

Culturally Significant Objects Imported for Exhibition Determinations: "Birth of Impressionism: Masterpieces From the Musee d'Orsay"

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition "Birth of Impressionism: Masterpieces from the Musee d'Orsay," imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to a loan agreement with the foreign owner or custodian. I also determine that the exhibition or display of the exhibit objects at the Fine Arts Museums of San Francisco, San Francisco, CA, from on or about May 22, 2010, until on or about September 6, 2010; Frist Center for the Visual Arts, Nashville, TN, from on or about October 15, 2010, until January 23, 2011, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Julie Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6467). The mailing address is U.S. Department of State, SA–5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505.

Dated: April 19, 2010.

Judith A. McHale,

Under Secretary for Public Diplomacy and Public Affairs, Department of State.

[FR Doc. 2010–9469 Filed 4–22–10; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 6976]

Culturally Significant Objects Imported for Exhibition Determinations: "The Holocaust"

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition "The Holocaust," imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects in the permanent exhibit of the U.S. Holocaust Memorial Museum, Washington, DC, from on or about August 2010 until on or about April 2015, and at possible additional exhibitions or venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Carol B. Epstein, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/632–6473). The address is U.S. Department of State, SA–5, L/PD, Fifth Floor, Washington, DC 20522–0505.

Dated: April 15, 2010.

Maura M. Pally,

Deputy Assistant Secretary for Professional and Cultural Exchanges, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2010–9472 Filed 4–22–10; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 6975]

Culturally Significant Objects Imported for Exhibition Determinations: "The Glory of Ukraine: Sacred Images From the 11th to the 19th Centuries"

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition "The Glory of Ukraine: Sacred Images from the 11th to the 19th Centuries," imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the Museum of Biblical Art, New York, NY, from on or about June 17, 2010, until on or about September 12, 2010; at the Meridian International Center, Washington, DC, from on or about October 5, 2010, until on or about December 3, 2010; at the Joslyn Museum of Art, Omaha, NE, from on or about January 2011 until on or about May 2011, and at possible additional exhibitions or venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Carol B. Epstein, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/632–6473). The address is U.S. Department of State, SA–5, L/PD, Fifth Floor, Washington, DC 20522–0505.

Dated: April 15, 2010.

Maura M. Pally,

Deputy Assistant Secretary for Professional and Cultural Exchanges, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2010–9475 Filed 4–22–10; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 6977]

Culturally Significant Objects Imported for Exhibition Determinations: "Cleopatra: The Search for the Last Queen of Egypt"

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition "Cleopatra: The Search for the Last Queen of Egypt," imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements between the National Geographic Society, Washington, DC, and the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the Franklin Institute, Philadelphia, PA, from on or about June 5, 2010, until on or about December 31, 2010; at Discovery Times Square Exposition, New York, NY, from on or about February 1, 2011, until on or about August 31, 2011; at the Field Museum, Chicago, IL, from on or about October 15, 2011, until on or about April 15, 2012; at the California Science Center, Los Angeles, CA, from on or about May 15, 2012, until on or about December 1, 2012; at the Fort Lauderdale Museum of Art, Fort Lauderdale, FL, from on or about January 1, 2013, until on or about May 31, 2013; and at possible additional exhibitions or venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Carol B. Epstein, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6473). The address is U.S. Department of State, SA–5, L/PD, Fifth Floor, Washington, DC 20522–0505.

Dated: April 15, 2010.

Maura M. Pally,

Deputy Assistant Secretary for Professional and Cultural Exchanges, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2010–9470 Filed 4–22–10; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Applications of Atlas Air, Inc. for Certificate Authority

AGENCY: Department of Transportation.

ACTION: Notice of Order to Show Cause (Order 2010–X–X), Dockets DOT–OST–2009–0267 and DOT–OST–2009–0268.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order finding Atlas Air, Inc., fit, willing, and able, and awarding it a certificate of public convenience and necessity to engage in foreign charter air transportation of persons, property, and mail.

DATES: Persons wishing to file objections should do so no later than April 25, 2010.

ADDRESSES: Objections and answers to objections should be filed in Dockets DOT–OST–2009–0267 and DOT–OST–2009–0268 and addressed to U.S. Department of Transportation Dockets, 1200 New Jersey Avenue, SE., West Building Ground Floor, Rm. W12–140, Washington, DC 20590, and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Mr. Scott Faulk, Air Carrier Fitness Division (X–56, Room W86–487), U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building, Washington, DC 20590, (202) 366–9721.

Dated: April 15, 2010.

Christa Fornaratto,

Deputy Assistant Secretary, for Aviation and International Affairs.

[FR Doc. 2010–9297 Filed 4–22–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[U.S. DOT Docket No. NHTSA–2010–0023]

Reports, Forms, and Recordkeeping Requirements

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Request for public comment on proposed collection of information.

SUMMARY: Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatements of previously approved collections. This document describes one collection of information for which NHTSA intends to seek OMB approval.

DATES: Comments must be received on or before June 22, 2010.

ADDRESSES: Direct all written comments to U.S. Department of Transportation Dockets, 1200 New Jersey Avenue, SE., Washington, DC 20590. Docket No. NHTSA–2010–0023.

FOR FURTHER INFORMATION CONTACT: Ms. Laurie Flaherty, Program Analyst, Office of Emergency Medical Services, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590, NTI–140, Room W44–322,Telephone: (202) 366–2705, or via e-mail at *laurie.flaherty@dot.gov.*

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995, before an agency submits a proposed collection of information to OMB for approval, it must publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulations (at 5 CFR 1320.8(d)), an agency must ask for public comment on the following:

(i) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the

validity of the methodology and assumptions used;

(iii) How to enhance the quality, utility, and clarity of the information to be collected; and

(iv) How to 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, *e.g.,* permitting electronic submissions of responses. In compliance with these requirements, NHTSA asks public comment on the following proposed collection of information:

Request for Information, National 9–1–1 Program

Type of Request: New information collection requirement.

OMB Clearance Number: N/A.

FORM Number: This collection of information uses no standard forms.

Requested Expiration Date of Approval: Three years from date of approval.

Summary of the Collection of Information: NHTSA is proposing to issue annual RFIs seeking comments from all sources (public, private, governmental, academic, professional, public interest groups, and other interested parties) on operational priorities for the National Program.

The National 9–1–1 Program currently provides:

Program and policy coordination across Federal agencies. Support to Public Safety Answering Points and related State and local agencies for 9–1–1 deployment and operations. NHTSA intends to use the National 9–1–1 Program to work cooperatively with public and private 9–1–1 stakeholders to establish a vision for the future of 9–1–1 services in the Nation. The RFIs will solicit comments on the priorities and strategies of the National 9–1–1 Program to accomplish its functions, goals and vision. In addition, the RFIs will obtain expressions of interest in participating as partners and will request responses to specific questions, including critical 9–1–1 issues, benefits to stakeholders, available data and methods of collection, etc. These RFIs will NOT seek comment on the 9–1–1 grant program administered by the NHTSA. The RFIs will not include requests for proposals or invitations for bids.

Description of the Need for the Information and Proposed Use of the Information: The 9–1–1 constituency is a diverse group of entities, including:

Government Agencies:

- Local, State and Federal policy, regulation, and funding agencies.
- Local and State emergency communications agencies.
- Local, State and Federal emergency response agencies.

Non-Governmental Organizations:

- Professional and industry associations.
- Standards Development Organizations.
- Citizen and special interest advocacy organizations.
- Private emergency response and recovery organizations.
- Research and academic organizations.

IT/Telecommunications Service Providers:

- "Traditional" telecommunication service providers.
- "Public Safety/emergency" service providers.
- "Other" IT/telecommunication application service providers.
- IP-network access infrastructure/service providers.

IT/Telecommunications Equipment Providers:

- Equipment and support service suppliers to "traditional" telecommunication companies.
- Equipment and support service suppliers to IT network providers.
- "Public Safety/emergency services network" equipment providers.
- Personal communication device providers.

Third Party Emergency Call Centers:

- Third party service providers such as telematics, poison control, medical alert, central alarm monitoring, relay services, and N9–1–1 services.

In order to collect information needed to develop and implement effective strategies for the National 9–1–1 Program to provide leadership, coordination, guidance and direction to the enhancement of the Nation's 9–1–1 services, NHTSA must utilize efficient and effective means of eliciting the input and opinions of its constituency groups. If approved, the proposed annual RFIs would assist the National 9–1–1 Program in addressing the myriad of issues posed by implementing new technologies in 9–1–1 services in a systematic, prioritized fashion, with active involvement of its constituency in this process. The results of the proposed annual RFIs would be used to:

(1) Identify areas to target programs and activities to achieve the greatest benefit;

(2) Develop programs and initiatives aimed at cooperative efforts to enhance 9–1–1 services nationwide; and

(3) to provide informational support to States, regions, and localities in their own efforts to enhance 9–1–1 services.

Description of the Likely Respondents (Including Estimated Number, and Proposed Frequency of Response to the Collection of Information): Under this proposed effort, the National 9–1–1 Program would issue annual RFIs, seeking responses to specific questions and soliciting comments on the priorities and strategies used by the National 9–1–1 Program to accomplish its functions, goals and vision, and to obtain expressions of interest in participating as partners. The various entities included in the constituency of the National 9–1–1 Program would be notified of the issuance of each RFI. Likely respondents would include companies, agencies and organizations from all of the constituency groups listed above, particularly local and State emergency communications agencies, professional and industry associations, "traditional" telecommunication service providers, "public safety/emergency" service providers and special interest advocacy organizations. The total number of respondents is estimated at 30 to 40.

Estimate of the Total Annual Reporting and Recordkeeping Burden Resulting From the Collection of Information: NHTSA estimates that responses to the questions included in the proposed RFIs would require an average of one hour to complete, for a total of 40 to 50 hours. The respondents would not incur any reporting costs from the information collection. The respondents also would not incur any recordkeeping burden or recordkeeping costs from the information collection.

Authority: 44 U.S.C. 3506(c)(2)(A); 47 U.S.C. 942.

Issued on April 19, 2010.

Jeffrey P. Michael,

Associate Administrator for Research and Program Development.

[FR Doc. 2010–9379 Filed 4–22–10; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Philadelphia International Airport, Capacity Enhancement Program, Environmental Impact Statement, Announcement of a Preferred Alternative

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Announcement.

SUMMARY: The FAA has identified Alternative A as the Preferred Alternative for the Philadelphia International Airport, Capacity

Enhancement Program, Environmental Impact Statement.

DATES: Effective upon publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Susan L. McDonald, Environmental Protection Specialist, Federal Aviation Administration, Harrisburg Airports District Office, 3905 Hartzdale Drive, Suite 508, Harrisburg, PA 17011.

SUPPLEMENTARY INFORMATION: In accordance with the National Environmental Policy Act, the Federal Aviation Administration is in the process of completing an Environmental Impact Statement (EIS) for the Philadelphia International Airport (PHL) Capacity Enhancement Program (CEP). The purpose of the CEP is to enhance airport capacity in order to accommodate current and future aviation demand in the Philadelphia Metropolitan Area during all weather conditions. The Draft EIS was published on September 26, 2008. The DEIS presented three alternatives; the No Action and two on-airport construction alternatives (Alternatives A and B), but did not identify a Preferred Alternative. FAA has now identified Alternative A as its Preferred Alternative.

Alternative A would extend Runway 8–26 to the east, extend Runway 9R–27L to the east, and add a third parallel east-west runway. Alternative A would also reconstruct and enlarge the terminal complex, increasing it from 120 to approximately 150 gates. Alternative A will accommodate all forecasted operations with annualized average delays of 5.2 minutes in 2020 and 8.4 minutes in 2025. Alternative A is estimated to cost $5.2 billion.

Alternative A is FAA Preferred Alternative for the following reasons:

1. Alternative A meets the Purpose and Need by adding capacity and significantly reducing delay in all weather conditions in the long term.
2. Alternative A allows for greater flexibility of construction phasing or scheduling.
3. Alternative A maintains a crosswind runway (Runway 17–35).
4. Alternative A minimizes disruption of local surface transportation, and does not result in construction impacts to Interstate 95.
5. On the average, Alternative A has less average annualized delays during the prolonged construction period.
6. With mitigation, significant environmental impacts can be avoided or minimized.

A Draft General Conformity Determination, based on FAA's Preferred Alternative, is expected to be released for public comment April 27, 2010. The Final EIS is expected to be released late August 2010. The Final EIS will address all comments received on the Draft EIS and provides the rationale behind FAA's selection of Alternative A as the Preferred Alternative. Further information on the project and the EIS process can be found at the project Web site: *http://www.phl-cep-eis.com.*

Issued in Camp Hill, Pennsylvania, April 16, 2010.

Oscar D. Sanchez,

Acting Manager, Harrisburg Airports District Office.

[FR Doc. 2010–9608 Filed 4–21–10; 4:15 pm]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2010–20]

Petition for Exemption; Summary of Petition Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number involved and must be received on or before May 13, 2010.

ADDRESSES: You may send comments identified by Docket Number FAA–2003–14563 using any of the following methods:

- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.
- *Fax:* Fax comments to the Docket Management Facility at 202–493–2251.
- *Hand Delivery:* Bring comments to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy: We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Docket: To read background documents or comments received, go to *http://www.regulations.gov* at any time or to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Laverne Brunache (202) 267–3133 or Tyneka Thomas (202) 267–7626, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on April 20, 2010.

Pamela Hamilton-Powell,

Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2003–14563.

Petitioner: AirTran Airways, Inc.

Section of 14 CFR Affected: 14 CFR 93.123

Description of Relief Sought:

To permit AirTran Airways, Inc., the use of three slots at Ronald Reagan Washington National Airport (DCA) for service from DCA to Atlanta Hartford International Airport.

On July 10, 2009, the FAA renewed AirTran's exemption until September 30, 2010. That grant of exemption stated the FAA would publish any future extension petitions for public comment.

[FR Doc. 2010–9477 Filed 4–22–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2010–19]

Petition for Exemption; Summary of Petition Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number involved and must be received on or before May 13, 2010.

ADDRESSES: You may send comments identified by Docket Number FAA–2002–13734 using any of the following methods:

- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.
- *Fax:* Fax comments to the Docket Management Facility at 202–493–2251.
- *Hand Delivery:* Bring comments to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy: We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Docket: To read background documents or comments received, go to *http://www.regulations.gov* at any time or to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Laverne Brunache (202) 267–3133 or Tyneka Thomas (202) 267–7626, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on April 20, 2010.

Pamela Hamilton-Powell,

Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2002–13734.

Petitioner: Republic Airline Inc. d/b/a Midwest Airlines.

Section of 14 CFR Affected: 14 CFR 93.123.

Description of Relief Sought:

To permit Republic Airline Inc. d/b/a Midwest Airlines the use of slot number 1497 at Ronald Reagan Washington National Airport (DCA) to augment its service from DCA to Milwaukee, Wisconsin.

On July 10, 2009, the FAA renewed Midwest's exemption until September 30, 2010. That grant of exemption stated the FAA would publish any future extension petitions for public comment.

[FR Doc. 2010–9476 Filed 4–22–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2010–14]

Petition for Exemption; Summary of Petition Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petitions or their final disposition.

DATES: Comments on these petitions must identify the petition docket number involved and must be received on or before May 13, 2010.

ADDRESSES: You may send comments identified by Docket Number FAA–2009–0743 using any of the following methods:

- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.
- *Fax:* Fax comments to the Docket Management Facility at 202–493–2251.
- *Hand Delivery:* Bring comments to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy: We will post all comments we receive, without change, to *http://www.regulations.gov*, including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Docket: To read background documents or comments received, go to *http://www.regulations.gov* at any time or to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Tyneka L. Thomas, 202–267–7626, or Ralen Gao, 202–267–3168, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591. This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on April 20, 2010.

Pamela Hamilton-Powell,

Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2009–0743.

Petitioner: US Airways, Inc.

Section of 14 CFR Affected: §§ 60.17(c)(ii) and 60.31.

Description of Relief Sought:

US Airways, Inc. (US Airways), seeks relief from §§ 60.17(c)(ii) and 60.31 to allow US Airways to re-qualify the DCH–8–300 flight simulator with FAA ID 423, utilizing FAA Advisory Circular 120–40B.

[FR Doc. 2010–9489 Filed 4–22–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2010–11]

Petition for Exemption; Summary of Petition Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petitions or their final disposition.

DATES: Comments on these petitions must identify the petition docket number involved and must be received on or before May 13, 2010.

ADDRESSES: You may send comments identified by Docket Number FAA–2010–0168 using any of the following methods:

- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.
- *Fax:* Fax comments to the Docket Management Facility at 202–493–2251.
- *Hand Delivery:* Bring comments to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy: We will post all comments we receive, without change, to *http://www.regulations.gov*, including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Docket: To read background documents or comments received, go to *http://www.regulations.gov* at any time or to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Tyneka L. Thomas, 202–267–7626, or Ralen Gao, 202–267–3168, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on April 20, 2010.

Pamela Hamilton-Powell,

Director, Office of Rulemaking.

Petitions for Exemption

Docket No.: FAA–2010–0168.

Petitioner: Broken Wing, LLC.

Section of 14 CFR Affected: §§ 91.3, 91.7, 91.105.

Description of Relief Sought: Broken Wing, LLC requests an exemption from §§ 91.3, 91.7, 91.105 to allow for flight operations involving Boeing 727 in support of the National Geographic (USA), Channel 4 (UK), and German ProSieben scientific demonstration and filming operation for television broadcast. The purpose of this project is to replicate a survivable aircraft landing mishap for the purposes of aerial filming and television exhibition by controlling a large passenger aircraft into a precise, controlled impact with the ground at a designated and prepared spot.

[FR Doc. 2010–9490 Filed 4–22–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35368]

CSX Transportation, Inc.—Trackage Rights Exemption—Carolina Coastal Railway, Inc.

Pursuant to a written supplemental trackage rights agreement (supplemental agreement) dated January 14, 2010, Carolina Coastal Railway, Inc. (CLNA), has agreed to amend an existing overhead trackage rights agreement with CSX Transportation, Inc. (CSXT),[1] to grant CSXT overhead trackage rights over Norfolk Southern Railway Company's (NSR) rail line:[2] (1) Between CSXT's connection with CLNA in the southwest quadrant of the rail crossing between CSXT and CLNA (CSXT and CLNA Crossing) at milepost NSR 148.1 and milepost NSR 132.0 at NSR's Chocowinity yard limit board, a distance of approximately 16.1 miles; and (2) 558 feet of a connecting track that is being built in the northeast quadrant of the CSXT and CLNA Crossing.

The transaction is scheduled to be consummated on May 7, 2010, the effective date of the exemption (30 days after the exemption was filed).

CSXT states that CLNA and CSXT entered into the original trackage rights agreement governing use of the line with the understanding of the North Carolina Department of Transportation, Rail Division's (NCDOT) plan to reconfigure the trackage in the vicinity of Greenville, including the area around the line. Because of NCDOT's track reconfiguration, CLNA and CSXT entered into a supplemental agreement for purposes of CSXT's continued entry onto and exit from the track. The supplemental trackage rights will allow CSXT's continued use of the track in accordance with NCDOT's track reconfiguration.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Railway—Trackage Rights—Burlington Northern,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Railway—Lease and Operate—California Western Railroad,* 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Stay petitions must be

[1] A redacted version of the initial trackage rights agreement and the supplemental agreement between CLNA and CSXT was filed with the notice of exemption. The full version of the initial agreement, as required by 49 CFR 1180.6(a)(7)(ii), was concurrently filed under seal along with a motion for protective order. The motion is being addressed in a separate decision.

[2] CSXT currently has trackage rights over NSR's line between Greenville and Lee Creek, N.C. (CSXT trackage rights line). *See Seaboard Coast Line R.R.—Trackage Rights—Over Norfolk S. Ry. between Greenville and Lee Creek in Pitt and Beaufort Counties, N.C.,* Docket No. FD 28252 (ICC served Feb. 28, 1977) (NSR's granting of trackage rights to Seaboard Coast Line Railroad Company) and *CSX Corp.—Control—Chessie System, and Seaboard Coast Line Indus.,* 363 I.C.C. 521 (1980) (acquisition of control of Seaboard Coast Line Industries, Inc., by CSX Corporation). NSR leased to CLNA its rail line from Greenville to Chocowinity, N.C., which is a segment of the CSXT trackage rights line. *See Carolina Coastal Ry.—Lease and Operation Exemption—Norfolk S. Ry.,* Docket No. FD 35034 (STB served June 6, 2007).

filed by April 30, 2010 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 35368, must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Steven C. Armbrust, CSX Transportation, Inc., 500 Water Street J–150, Jacksonville, FL 32202, and Louis E. Gitomer, Law Offices of Louis E. Gitomer, LLC, 600 Baltimore Avenue, Suite 301, Towson, MD 21204.

Board decisions and notices are available on our Web site at "*http://www.stb.dot.gov.*"

Decided: April 19, 2010.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Kulunie L. Cannon,

Clearance Clerk.

[FR Doc. 2010–9424 Filed 4–22–10; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35362]

Elgin, Joliet and Eastern Railway Company—Trackage Rights Exemption—Chicago, Central & Pacific Railroad Company

Pursuant to a written amended trackage rights agreement dated March 22, 2010, Chicago, Central & Pacific Railroad Company (CCP) has agreed to amend its existing overhead trackage rights agreement with Elgin, Joliet and Eastern Railway Company (EJ&E) over 27.4 miles of rail line owned by CCP between milepost 35.7 in Munger, Ill., and milepost 8.3 at Belt Crossing, Ill.[1]

EJ&E proposes a consummation date of May 6, 2010, but the earliest the transaction may be consummated is May 7, 2010, the effective date of the exemption (30 days after the exemption is filed).

Under the agreement, the amended trackage rights will allow EJ&E to interchange traffic with CCP at CCP's Hawthorne Yard, an intermediate point between Munger and Belt Crossing at or near milepost 8.9.

As a condition to this exemption, any employees affected by the acquisition of the trackage rights will be protected by the conditions imposed in *Norfolk and Western Railway Co.—Trackage Rights—Burlington Northern, Inc.,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Railway, Inc.—Lease and Operate—California Western Railroad,* 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Stay petitions must be filed by April 30, 2010 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 35362, must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Jeremy M. Berman, Fletcher & Sippel LLC, 29 N. Wacker Drive, Suite 920, Chicago, IL 60606–2832.

Board decisions and notices are available on our Web site at: *http://www.stb.dot.gov.*

Decided: April 19, 2010.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2010–9449 Filed 4–22–10; 8:45 am]

BILLING CODE 4915–01–P

[1] EJ&E and CCP are indirect subsidiaries of Canadian National Railway Company. EJ&E states that the Amended Agreement modifies the original trackage rights previously granted to EJ&E when it was known as EJ&E West Company.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35361]

Elgin, Joliet and Eastern Railway Company—Trackage Rights Exemption—Illinois Central Railroad Company

Pursuant to a written amended trackage rights agreement dated March 22, 2010, Illinois Central Railroad Company (IC) has agreed to amend its existing overhead trackage rights agreement with Elgin, Joliet and Eastern Railway Company (EJ&E) over 42.3 miles of rail line owned by IC between milepost 17.9 at Highlawn, Ill., and milepost 31.4 at University Park, Ill., and between milepost 36.7 in Joliet, Ill., and milepost 7.9 in Lemoyne, Ill.[1]

EJ&E proposes a consummation date of May 6, 2010, but the earliest the transaction may be consummated is May 7, 2010, the effective date of the exemption (30 days after the exemption is filed).

Under the agreement, the amended trackage rights will allow EJ&E to interchange traffic with IC: (1) At IC's Markham Yard, an intermediate point between Highlawn and University Park (between milepost 20.5 and milepost 23.5); and (2)(a) at IC's Glenn Yard (between milepost 9.5 and milepost 11.3), and (b) at Statesville, at or near milepost 35.6, intermediate points between Joliet and Lemoyne.

As a condition to this exemption, any employees affected by the acquisition of the trackage rights will be protected by the conditions imposed in *Norfolk and Western Railway Co.—Trackage Rights—Burlington Northern, Inc.,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Railway, Inc.—Lease and Operate—California Western Railroad,* 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Stay petitions must be filed by April 30, 2010 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 35361, must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Jeremy M. Berman, Fletcher & Sippel LLC, 29 N. Wacker Drive, Suite 920, Chicago, IL 60606–2832.

Board decisions and notices are available on our Web site at " *http://www.stb.dot.gov.*"

Decided: April 19, 2010.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2010–9441 Filed 4–22–10; 8:45 am]

BILLING CODE 4915–01–P

[1] EJ&E and IC are indirect subsidiaries of Canadian National Railway Company. EJ&E states that the Amended Agreement modifies the original trackage rights previously granted to EJ&E when it was known as EJ&E West Company.

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

April 16, 2010.

The Department of the Treasury will submit the following public information collection requirements to OMB for

review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13 on or after the date of publication of this notice. A copy of the submissions may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding these information collections should be addressed to the OMB reviewer listed and to the Treasury PRA Clearance Officer, Department of the Treasury, 1750 Pennsylvania Avenue, NW., Suite 11010, Washington, DC 20220.

DATES: Written comments should be received on or before May 24, 2010 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0016.

Type of Review: Extension without change of a currently approved collection.

Title: United States Additional Estate Tax Return.

Form Number: 706–A.

Abstract: Form 706–A is used by individuals to compute and pay the additional estate taxes due under Code section 2032A(c). IRS uses the information to determine that the taxes have been properly computed. The form is also used for the basis election of section 1016(c)(1).

Respondents: Individuals or households.

Estimated Total Burden Hours: 1,678 hours.

OMB Number: 1545–0029.

Type of Review: Extension without change of a currently approved collection.

Title: Employer's Quarterly Federal Tax Return.

Form Numbers: 941, Schedules B, D, and R, 941–SS, 941–X, 941–V; 941–PR, Anexo B, 941–X (PR), 941–V (PR).

Abstract: Form 941 is used by employers to report payments made to employees subject to income and social security/Medicare taxes and the amounts of these taxes. Form 941–PR is used by employers in Puerto Rico to report social security and Medicare taxes only. Form 941–SS is used by employers in the U.S. possessions to report social security and Medicare taxes only. Schedule B is used by employers to record their employment tax liability.

Respondents: Private sector: Businesses or other for-profits.

Estimated Total Burden Hours: 318,884,262 hours.

OMB Number: 1545–2154.

Type of Review: Extension without change of a currently approved collection.

Title: Short Form Request for Individual Tax Return Transcript.

Form Number: 4506T–EZ, 4506T–EZ (SP).

Abstract: Form 4506T–EZ is used to request tax return transcripts. A taxpayer may designate a third party to receive the transcript.

Respondents: Individuals and households.

Estimated Total Burden Hours: 870,000 hours.

Bureau Clearance Officer: R. Joseph Durbala, Internal Revenue Service, 1111 Constitution Avenue, NW., Room 6129, Washington, DC 20224; (202) 622–3634.

OMB Reviewer: Shagufta Ahmed, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; (202) 395–7873.

Dawn D. Wolfgang,

Treasury PRA Clearance Officer.

[FR Doc. 2010–9394 Filed 4–22–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

First Federal Bank of North Florida; Palatka, FL; 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 First Federal Bank of North Florida, Palatka, Florida, (OTS No. 02558) on April 16, 2010.

Dated: April 20, 2010.

By the Office of Thrift Supervision.

Sandra E. Evans,

Federal Register Liaison.

[FR Doc. 2010–9474 Filed 4–22–10; 8:45 am]

BILLING CODE 6720–01–M

TENNESSEE VALLEY AUTHORITY

Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: Tennessee Valley Authority. **Federal Register** *Citation of Previous Announcement:* 75 FR 19465 (April 14, 2010).

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: Immediately following 8:30 a.m. listening session, April 16, 2010.

PREVIOUSLY ANNOUNCED PLACE OF MEETING: TVA Knoxville West Tower Auditorium, 400 West Summit Hill Drive, Knoxville, Tennessee.

CHANGES IN THE MEETING: The TVA Board of Directors has approved the addition of the following items to the previously announced agenda:

5. Report of the Audit, Governance, and Ethics Committee.

B. Resolution honoring the retiring General Counsel.

C. Proposal to select Chairman of the Board.

FOR MORE INFORMATION: Please call TVA Media Relations at (865) 632–6000, Knoxville, Tennessee.

Ralph E. Rodgers,

Acting General Counsel and Secretary of the Corporation.

[FR Doc. 2010–9558 Filed 4–21–10; 11:15 am]

BILLING CODE 8120–08–P

Federal Register

Friday,
April 23, 2010

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Final Revised Critical Habitat for Hine's Emerald Dragonfly (*Somatochlora hineana*); Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R3–ES–2009–0017]
[MO 92210–0–0009–B4]

RIN 1018–AW47

Endangered and Threatened Wildlife and Plants; Final Revised Critical Habitat for Hine's Emerald Dragonfly *(Somatochlora hineana)*

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), are designating critical habitat for the Hine's emerald dragonfly (*Somatochlora hineana*) under the Endangered Species Act of 1973, as amended (Act). In total, approximately 26,531.8 acres (ac) (10,737 hectares (ha)) in 37 units fall within the boundaries of our critical habitat designation. The critical habitat units are located in Cook, DuPage, and Will Counties in Illinois; Alpena, Mackinac, and Presque Isle Counties in Michigan; Crawford, Dent, Iron, Phelps, Reynolds, Ripley, Washington, and Wayne Counties in Missouri; and Door and Ozaukee Counties in Wisconsin.

DATES: This rule becomes effective on May 24, 2010.

FOR FURTHER INFORMATION CONTACT: For general information regarding this finding, contact the Field Supervisor, Chicago Ecological Services Field Office, 1250 S. Grove, Suite 103, Barrington, IL 60010 (telephone: 847-381-2253; facsimile: 847-381-2285). 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 designation of critical habitat in this rule. We received no new information pertaining to the species' life history, ecology, or habitat following our 2007 final critical habitat designation. For information on the Hine's emerald dragonfly, please refer to our proposed critical habitat rule, which we published in the **Federal Register** on July 26, 2006 (71 FR 42442); the final listing determination, published on January 26, 1995 (60 FR 5267); or the Hine's Emerald Dragonfly (Somatochlora hineana, Williamson) Recovery Plan (Service 2001).

Previous Federal Actions

For information about previous Federal actions for the Hine's emerald dragonfly, see our proposed critical habitat rule for the species (71 FR 42442). On March 20, 2007, we published a notice that included revisions to the proposed critical habitat, announced the availability of the draft economic analysis (DEA), and reopened the public comment period (72 FR 13061). Because we needed to meet our settlement agreement's deadline of submitting a final rule to the **Federal Register** by May 7, 2007, we reopened the comment period for only 14 days. Subsequently, we negotiated a new settlement agreement with the plaintiffs (The Center for Biodiversity *et al.*) to submit a final rule to the **Federal Register** by August 23, 2007. Therefore, on May 18, 2007, we published an additional **Federal Register** document that reopened the comment period on the proposal, revisions to the proposal, and the draft economic analysis for an additional 45 days (72 FR 28016). That comment period ended on July 2, 2007. On September 5, 2007, we published a final rule in the **Federal Register** (72 FR 51102) designating 13,221 ac (5,350 ha) as critical habitat for the Hine's emerald dragonfly in Illinois, Michigan, Missouri, and Wisconsin.

On March 10, 2008, six parties (Northwoods Wilderness Recovery, The Michigan Nature Association, Door County Environmental Council, The Habitat Education Center, Natural Resources Defense Council, and The Center for Biological Diversity) filed a complaint against the Department of the Interior and the Service (*Northwoods Wilderness Recovery et al.* v. *Dirk Kempthorne* 1:08–CV–01407) challenging the exclusion of U.S. Forest Service lands from the 2007 final designation of critical habitat for the dragonfly. On February 12, 2009, the U.S. District Court for the Northern District of Illinois approved a settlement agreement in which the Service agreed to a remand, without voiding the critical habitat designation, in order to reconsider the Federal exclusions from the designation of critical habitat for the Hine's emerald dragonfly. Per that settlement, on April 22, 2009, we published a notice (74 FR 18341) reopening the comment period on the July 26, 2006, proposed critical habitat (71 FR 42442). Upon publication of that notice, the July 26, 2006, proposed critical habitat designation of the U.S. Forest Service lands in Michigan and Missouri was reinstated as proposed. Furthermore, until the effective date of this revised final critical habitat determination (see DATES), the existing designation of critical habitat for the Hine's emerald dragonfly remains in place and effective.

Summary of Comments and Recommendations Received

We requested written comments from the public on our proposed designation of critical habitat for the Hine's emerald dragonfly (71 FR 42442) and our draft economic analysis (72 FR 13061; 72 FR 28026). We contacted appropriate Federal, State, and local agencies; scientific organizations; and other interested parties and invited them to comment on the proposed rule. We also issued press releases and published legal notices in the *Daily American Republic, Kansas City Star*, *Ozaukee News-Graphic, St. Ignace News, Door County Advocate*, *Alpena News, Ozaukee Press*, and *Joliet Herald News* newspapers. We held one public hearing, on August 15, 2006, in Romeoville, Illinois.

During the comment period that opened on July 26, 2006, and closed on September 25, 2006 and the comment period that opened April 22, 2009 and closed on June 22, 2009, we received 40 comments directly addressing our proposed critical habitat designation: 6 from peer reviewers, 4 from Federal agencies, and 30 from organizations or individuals. During the comment periods from March 20, 2007, through April 3, 2007, and May 18, 2007 through July 2, 2007, we received 16 comments directly addressing the proposed critical habitat designation and the draft economic analysis. Of these latter comments, 2 were from Federal agencies and 14 were from organizations or individuals.

In total, 23 commenters supported the designation of critical habitat for the Hine's emerald dragonfly and 10 opposed the designation. Ten commenters, including three peer reviewers, supported exclusion of one or more particular units as identified in the proposed rule, and 7 commenters opposed exclusion of one or more particular units. Eighteen letters were either neutral or expressed both support of and opposition to certain portions of the proposal. Responses to comments are grouped by those received from peer reviewers, States, and the public, in the following sections. We grouped public comments into 10 general issues specifically relating to the proposed critical habitat designation and draft economic analysis. We have incorporated comments into this final rule as appropriate. We did not receive any requests for additional public hearings.

Peer Review

In accordance with our policy published on July 1, 1994 (59 FR 34270), and current Department of the Interior guidance, we solicited expert opinions from seven knowledgeable individuals with scientific expertise that included familiarity with the species, the geographic region in which the species occurs, or conservation biology principles. We received responses from six of the peer reviewers. We reviewed all comments we received from the peer reviewers for substantive issues and new information regarding Hine's emerald dragonfly critical habitat. We have addressed peer reviewer comments in the following summary and have incorporated them into this final rule as appropriate.

The peer reviewers generally concurred with our methods and conclusions and provided additional information, clarifications, and suggestions to improve this final critical habitat rule. Three of the six peer reviewers specifically stated that they support our proposed designation of critical habitat, while one expressed concern that designation may be premature because the population status of the Hine's emerald dragonfly in Missouri and Michigan is not well understood. Information provided by peer reviewers included suggestions for conducting research on dispersal and habitat use that would better inform future Hine's emerald dragonfly conservation efforts, as well as comments on how to improve critical habitat rules. Peer reviewers also made suggestions and provided language to clarify biological information or make the final rule easier to understand. Several of the peer reviewers provided editorial comments that we have addressed in the body of this rule.

Peer Reviewer Comments

(1) *Comment*: One peer reviewer (as well as three other commenters) suggested that we should designate foraging areas (farmlands, pastures, old fields, ponds, and/or surface waters) as critical habitat.

Our response: Although adult Hine's emerald dragonflies have been observed foraging near or in these types of habitats, the importance of such habitats in meeting the daily dietary needs of the dragonfly is still unknown. Foraging and dispersal areas are present in many of the designated critical habitat units, as they contain open areas that serve as corridors that are used by the dragonfly. In most of the units, foraging and dispersal areas are not limiting factors for the species.

(2) *Comment*: One peer reviewer suggested that we use caution when accepting identifications of early instar (defined as the developmental stage on an insect between molts of its exoskeleton) larvae.

Our response: We agree that identifications of Hine's emerald dragonfly based on early instar larvae should be made with caution. Early instar larvae have been used in Missouri to document the presence of the species at new localities or to identify new Hine's emerald dragonfly breeding habitat. Identifications of early instar larvae were made by the two leading experts on *Somatochlora* species larvae: Dr. Tim Cashatt and Mr. Tim Vogt. These two experts wrote the definitive key to final instar larvae for the genus (Cashatt and Vogt 2001, pp. 94–97). These experts have also positively identified early instar larvae of Hine's emerald dragonfly by examining greater numbers of larval specimens than any other recognized dragonfly larvae expert. Cashatt and Vogt (2001, pp. 94–97) confirmed early instar larvae identification by rearing some individuals to a final stage; this allowed preliminary determinations of the species to be confirmed. Identification of early instar larvae by these two recognized experts constitutes the best scientific data available.

(3) *Comment*: One peer reviewer commented that when the species' recovery plan was developed, the network of sites in Missouri was not known and, had the sites been known, this may have led to different recovery criteria, which may have influenced the identification of critical habitat from a scientific perspective.

Our response: Different recovery criteria may have been developed for Hine's emerald dragonfly had more sites been known in Missouri at the time the recovery plan was drafted. However, such changes to the species' recovery criteria would not have influenced our decision regarding designation of critical habitat in Missouri. We based the exclusion of Missouri sites on: (1) Current implementation of State management plans for the species; and (2) Missouri Department of Conservation (MDC) implementation of successful conservation efforts on some private lands. The existing successful partnerships among State agencies and private property owners could be negatively affected by a critical habitat designation, and this could jeopardize future cooperative conservation efforts. We used all available data and information—including both the recovery plan and additional information gained since its development—to determine which areas are essential to the conservation of the Hine's emerald dragonfly. We will work with the Hine's Emerald Dragonfly Recovery Team in reevaluating recovery criteria when the overall status of the species is reexamined in a 5–year review.

(4) *Comment*: One peer reviewer commented that he is reluctant to assume that Hine's emerald dragonflies do not forage and roost in the forest canopy.

Our response: Hine's emerald dragonflies will use trees for roosting. Researchers have also observed Hine's emerald dragonflies foraging along the forest edge. Given that members of the genus *Somatochlora* commonly forage at treetop level along roads and utility rights of way, and dragonflies often perch in vegetation to avoid predation during their sensitive teneral stage (soft-bodied stage immediately after molt), it is possible that Hine's emerald dragonflies may utilize forest canopies to a greater extent than previously observed. There is no available information, however, to define the degree to which Hine's emerald dragonflies may use these habitats for foraging and roosting. We based our criteria to include up to 328 feet (ft) (100 meters (m)) of closed canopy forest around breeding habitat on observations made by one of the leading species experts (T. Vogt, Missouri Department of Natural Resources, in litt. March 2007); this is the best information we have available to date.

(5) *Comment*: One peer reviewer commented that in Missouri the small populations in identified sites may be elements of larger metapopulations. These individual elements, because they are so small, are probably extirpated fairly frequently even in the absence of human disturbance. For this reason, it would seem prudent to conserve suitable, but currently unoccupied sites, since dispersal to such unoccupied sites must be important to the maintenance of the metapopulation. This does not necessarily mean that such sites should be designated as critical habitat for the species.

Our response: While the Hine's Emerald Dragonfly (*Somatochlora hineana* Williamson) Recovery Plan recognizes that the patchy nature of habitat in Illinois and Wisconsin suggests a metapopulation structure in those two States, only three sites were known in Missouri at the time the Recovery Plan was written (Service 2001). We do not have adequate information to determine if the small populations of Hine's emerald dragonflies in Missouri are part of one

or more metapopulations. Such a hypothesis is best tested by conducting various genetic analyses. Genetic analyses of populations in Missouri were initiated in the summer of 2007; however, they are not yet complete. Until these genetic analyses are completed, it is difficult to assess the status of the Missouri populations of Hine's emerald dragonfly in relation to the overall distribution of the species. DNA analyses initiated by the Illinois Museum are ongoing, and final observations are forthcoming and to be published in a peer-reviewed journal.

(6) *Comment*: One peer reviewer stated that the rationales for exclusions are not easy to understand.

Our response: In this rule, we have attempted to further clarify the rationale for our exclusions and why these exclusions are important to the overall conservation of the Hine's emerald dragonfly (see "Exclusions Under Section 4(b)(2) of the Act" section).

(7) *Comment*: One peer reviewer commented that exclusion of the Missouri units based solely on the fact that the habitat is surrounded by contiguous forest does not seem justified. Without knowing anything about the dispersal ability of the species, that fact alone seems insufficient to conclude that such populations may not be important in the long-term survival of the species in Missouri.

Our response: We have described our reasons for excluding Missouri units from the critical habitat designation under the Exclusions section of this rule. We excluded those areas on the basis of existing conservation plans and partnerships, and not based on the fact that most sites are surrounded by contiguous, closed canopy forest.

(8) *Comment*: One peer reviewer suggested that we should include unoccupied habitat in areas that may serve as dispersal corridors or establish connectivity between sites in the critical habitat designation.

Our response: We attempted to include areas that will serve as dispersal corridors that are contiguous with occupied habitat within our critical habitat units. However, little is known about what factors are essential to enable the species to disperse. We designated areas that were occupied at the time of listing and not now occupied in order to allow for connectivity between units. We also included habitat out to the average dispersal distance of the species in order to maintain this dispersal capability. Not all unoccupied sites may be suitable for dispersal corridors, however. We do not have enough scientific information to assess the importance of dispersal corridors to the conservation of the species. There are multiple reasons why Hine's emerald dragonflies may be absent from sites, even those that have all the necessary habitat requirements. Another peer reviewer noted that reasons such as interspecific interactions (for example, with other dragonflies) could preclude Hine's emerald dragonflies in sites that have all the necessary habitat requirements. For example, in Missouri, the distribution of the Hine's emerald dragonfly may be dictated in part by the presence of large dragonfly predators that have been observed preying on individuals of the same genus (*Somatochlora*) as the Hine's emerald dragonfly.

(9) *Comment*: One peer reviewer stated that designation of critical habitat for the Hine's emerald dragonfly is premature because of the lack of knowledge on the status and population structure of the Hine's emerald dragonfly.

Our response: The Service was under a court order to complete the original designation of critical habitat and submit a final rule to the **Federal Register** by August 23, 2007. We were also under a court order to complete this revised critical habitat determination by April 15, 2010. Consequently, we proceeded with the critical habitat process for this species based on the best scientific data that were available at the time, as required by the Act.

(10) *Comment*: One peer reviewer asked if management plans exist for any of the areas in Wisconsin identified in the proposal.

Our response: Lands owned by resource and conservation agencies in proposed critical habitat units in Wisconsin do not have existing management plans that specifically address the Hine's emerald dragonfly. Those entities with conservation plans for their properties include protective measures to conserve wetland habitat, and thereby help to conserve the dragonfly. Those plans, however, do not identify conservation measures for the Hine's emerald dragonfly.

(11) *Comment*: One peer reviewer recommended that research be conducted on dispersal, particularly female dispersal, and that we consider radio-tracking individual dragonflies, as has been done with Aeshnids (darners).

Our response: Research on dispersal is a task identified in the Hine's Emerald Dragonfly (*Somatochlora hineana* Williamson) Recovery Plan (Service 2001, p. 48). The Hine's Emerald Dragonfly Recovery Team and species experts are assessing the feasibility of using a similar methodology as was used to radio track Aeshnids.

General Comments Received During the 2006, 2007, and 2009 Comment Periods

Issue 1: Biological Justification and Methodology Used.

(1A) *Comment*: Several individuals commented that the July 26, 2006 proposal (71 FR 42442) and the April 22, 2009 proposal (74 FR 18341) did not address groundwater recharge areas.

Our response: In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12, in determining what areas are critical habitat, we shall consider those physical and biological features that are essential to the conservation of the species. Some groundwater recharge areas may be included within a critical habitat unit if they co-occur with the biological and physical features essential to the conservation of Hine's emerald dragonfly. Any Federal actions that may affect critical habitat, irrespective of the action's location inside or outside of a critical habitat unit, are subject to section 7 consultation, under the Act. This would include Federal actions that affect groundwater recharge to any of the critical habitat units.

(1B) *Comment*: One individual expressed that we did not show that the best available scientific data support the inclusion of the rail line in Illinois Units 1 and 2.

Our response: The rail line in Illinois Units 1 and 2 does not contain the primary constituent elements and, therefore, does not meet the definition of critical habitat. Therefore, we have not designated it as critical habitat. As stated in the proposal and in this final rule, critical habitat does not include human-made structures existing on the effective date of a final rule and not containing one or more of the primary constituent elements. However, work performed on the rail line would be subject to the provisions of section 7 of the Act if that work could have adverse effects on designated critical habitat or the dragonfly.

(1C) *Comment*: One individual stated that it is not clear whether Wisconsin Unit 11 (containing Kellner's Fen) is sufficiently inclusive, and that this unit should also include the surrounding transitional habitat that may also contain primary constituent elements.

Our response: In designating critical habitat at Kellner's Fen, we used the same criteria we used for all the other units. We designated areas containing the primary constituent elements for the dragonfly, including wetland (fen) areas, shrubby areas, and 100 m into adjacent forest habitat. The map in the **Federal**

Register is generalized, and does not show the habitat variations that actually exist within the unit.

(1D) *Comment*: One comment disputes the accuracy of the report's statement that adult dragonflies are active mid-June to mid-August.

Our response: According to the Recovery Plan (Service 2001), larvae begin to emerge as adult, possibly as early as late May in Illinois and late June in Wisconsin and continue to emerge through the summer (Vogt and Cashatt 1994; Mierzwa *et al.* 1997). The adults' known flight season lasts up to early October in Illinois (Vogt and Cashatt 1994) and to late August in Wisconsin (Vogt and Cashatt 1994). Fully mature adult Hine's emerald dragonflies can live at least 14 days and may live 4 to 6 weeks.

Issue 2: Procedural and Legal Compliance

(2A) *Comment*: Some commenters suggested that excluding Forest Service land was inappropriate as the Forest Service did not consult with the Service under section 7 of the Act. Two commenters mentioned a specific example, the Sprinkler Project on the Hiawatha National Forest, where they believed consultation was not completed. Further, the commenters suggested that designating critical habitat would ensure future consultation between the Service and Forest Service.

Our response: Because we are now designating critical habitat on Forest Service land in Michigan and Missouri, all requirements under section 7(a)(2) are applicable. The Forest Service consistently consults on projects that may affect listed species, including the Hine's emerald dragonfly. The Forest Service completed section 7 consultation on Mark Twain's and Hiawatha's Land and Resource Management Plans. Several other informal and formal consultations have also been completed, including consultation on the Sprinkler Project in 2006.

(2B) *Comment*: One individual commented that the proposed rule states that the conservation role of Hine's emerald dragonfly critical habitat units is to support "viable core area populations," but that the proposed rule did not provide sufficient information to allow commenters to determine whether the proposed units actually contain areas that support such Hine's emerald dragonfly populations.

Our response: "Viable" means capable of living, developing, or reproducing under favorable conditions. We have used the best scientific and commercial information available to determine what conditions are favorable to Hine's emerald dragonfly, and the proposal provided information on the physical and biological features essential to the conservation of the species. We identified areas that are known to contain these features, provided descriptions of the features in each unit, and are designating only those units that contain the features that are essential to the conservation of the species.

(2C) *Comment*: One commenter questioned the legality of the critical habitat designation in regards to takings.

Our response: The designation of critical habitat does not mean that private lands will be taken by the Federal government or that other legal uses will be restricted. We evaluated this rule in accordance with Executive Order (E.O.) 12630, and we believe that the critical habitat designation for the Hine's emerald dragonfly will not have significant takings implications. We do not anticipate that property values, rights, or ownership will be materially affected by the critical habitat designation.

Issue 3: Exclusions

(3A) *Comment*: Several commenters suggested that Michigan Units 1, 2, and 3 should not be excluded, because these units contain areas not covered by Federal or State management plans.

Our response: The entire acreage encompassed by Michigan Units 1 and 2, including some small areas of non-Federal land, were excluded from the previous Hine's emerald dragonfly critical habitat designation published on September 5, 2007. Michigan Unit 3 was not excluded under the previous designation. As of this rule, all of Michigan units 1, 2, and 3 are designated as critical habitat.

(3B) *Comment*: The Forest Plans for the Mark Twain and Hiawatha National Forests do not justify excluding these areas from critical habitat. Although the Forest Plan may address conservation of the Hine's emerald dragonfly, they would not provide for consultation with the Service on future Forest Service actions that may destroy or adversely modify the dragonfly's habitat. Furthermore, while the Service recognizes logging as a threat to the species, the Forest Service has recently proposed timber cutting to protect the species. Neither the Forest Service nor the Service has produced evidence that this logging proposed under the Hiawatha Forest Plan is likely to benefit the dragonfly.

Our response: Because we are now designating critical habitat on Forest Service land in Michigan and Missouri, all requirements under section 7(a)(2) of the Act are applicable. Section 7(a)(2) of the Act applies to any project funded or authorized by a Federal entity, including logging operations on National Forest land.

(3C) *Comment*: One commenter stated that excluding habitat on lands owned by the State of Missouri would lead to no net conservation benefit to the Hine's emerald dragonfly. Designating critical habitat would not harm our good working relationship with the MDC.

Our response: MDC owns and manages all fens on Missouri State lands with Hine's emerald dragonflies. The MDC currently implements various habitat management and conservation actions to sustain and enhance the species at these fens. Furthermore, MDC has recently updated its Conservation Area Plans and the Husman Fen Natural Area Plan to incorporate additional conservation measures for the Hine's emerald dragonfly that will ensure the long-term management and maintenance of fens. The benefits to the species resulting from conservation measures being implemented by MDC would exceed any benefit to the species gained from the designation of critical habitat. Additionally, in their comments on the proposal, MDC requested they be excluded from the critical habitat designation because they anticipate some negative effects of designation. Because of their implementation of management plans for the Hine's emerald dragonfly, we are able to accommodate this request. To provide additional conservation benefits to the species on state-owned and private land, MDC completed a comprehensive Hine's Emerald Dragonfly Recovery Plan for Missouri (Missouri Department of Conservation 2007f) (MDC Recovery Plan). The MDC Recovery Plan outlines numerous recovery objectives, conservation actions, and management recommendations necessary to maintain Hine's emerald dragonfly habitat. These guidelines will help facilitate the recovery of the species in Missouri.

(3D) *Comment*: One commenter expressed that the perception of public hostility does not justify excluding private property. That commenter believed that the lack of support from the general public was due to the Service's failure to properly educate private landowners on the minor impact of designating critical habitat on their property. The commenter stated that the exclusion of all private property in Missouri from critical habitat designation without a unit-by-unit consideration of conservation benefits and landowner amenability is arbitrary.

Our response: We have multiple examples where researchers have been denied access to private land to survey potentially new Hine's emerald dragonfly sites. In other cases, landowners who have documented Hine's emerald dragonflies on their property have been reluctant or apprehensive about taking advantage of multiple landowner incentive programs available to them due to false perceptions of critical habitat.

Service representatives, Hine's emerald dragonfly researchers, and personnel of the MDC's Private Land Services Division expended considerable effort in providing private landowners with information on the Hine's emerald dragonfly and outlining various landowner incentive programs. Despite the combined outreach efforts of multiple individuals, there is documented opposition by private landowners within the dragonfly's range in Missouri that is difficult to overcome. The designation of critical habitat on private property in Missouri would only exacerbate negative attitudes towards federally listed species. See 3I and 3K responses that talk more about management guidelines in a State recovery plan.

We considered the conservation benefits of designating critical habitat for each unit under private ownership, as well as the benefits of excluding the area from critical habitat. The Service weighed the benefits of each, and concluded, using the discretion afforded to the agency under the Act, that actions for the conservation of the species would be best realized if the lands were excluded. More discussion on this topic is covered under the "Exclusions Under Section 4(b)(2) of the Act" section.

(3E) *Comment*: One commenter expressed that Illinois Unit 2 should be excluded from the critical habitat designation, under section 4(b)(2) of the Act, because the substantial benefits of exclusion outweigh any potential benefits of designation and the exclusion will not result in the extinction of the species.

Our response: While the Service recognizes the cooperation of the landowners in Illinois Unit 2, formal conservation agreements or management plans have not been prepared for this unit and, therefore, the future management and protection of this unit are unknown. The landowners of this unit are in the very initial stages of developing a Habitat Conservation Plan for the species. This Habitat Conservation Plan, however, is not complete enough at this time to allow us to evaluate the conservation benefits to the species.

(3F) *Comment*: One commenter stated that Commonwealth Edison's right-of-way in Illinois Units 1-5 and 7 should be excluded because designation of these areas would put Commonwealth Edison's normal operations at severe risk. Another commenter expressed that in Illinois Units 1 and 2, the generating station, rail line, and land adjacent to those structures should be excluded.

Our response: To the greatest extent possible, we avoided including developed areas containing buildings, rail lines, electrical substations, and other urban infrastructure within critical habitat units. Where we have not been able to map out these structures we have excluded them by text. As stated in this rule, critical habitat does not include human-made structures existing on the effective date of a final rule not containing one or more of the primary constituent elements (see definition of "primary constituent elements" in subsequent section). Therefore, human-made structures including utility poles, power lines, rail lines, and the generating station are not included in the critical habitat designation. However, areas around the human-made structures that consist of habitat containing the primary constituent elements of Hine's emerald dragonfly habitat are included in the designation.

Although Commonwealth Edison has been a valued partner in the conservation of Hine's emerald dragonfly, and is one of the parties involved in the preparation of a Habitat Conservation Plan for the species, no management plans for their right of way currently exist.

(3G) *Comment*: Three commenters expressed that the life of a forest plan is likely shorter than the time it will take to recover the Hine's emerald dragonfly. They added that there is no guarantee that the forest plans would be in place or implemented in the future. Therefore, they question the exclusion of Forest Service land in Michigan and Missouri.

Our response: The intended cycle of National Forest plans is 10-15 years. The Mark Twain and Hiawatha National Forest Land and Resource Management Plans were approved in 2005 and 2006, respectively. As identified in the Hine's Emerald Dragonfly (*Somatochlora hineana* Williamson) Recovery Plan, anticipated recovery of the Hine's emerald dragonfly could occur as early as 2019 (Service 2001, p. iv). While we concur that it is likely that current management plans for the Mark Twain and Hiawatha National Forests will expire before the Hine's emerald dragonfly can be recovered, we believe that the track record of cooperation between us and the two national forests outlines the Forest Service's commitment to the conservation of federally listed species under sections 7(a)(1) and 7(a)(2) of the Act. Once the current plans have expired, we are confident that both the Mark Twain and Hiawatha National Forests will complete consultation on the new plans. These consultations will further ensure that actions outlined in future land and resource management plans will not jeopardize the continued existence of any federally listed species, including the Hine's emerald dragonfly. We believe that standards and guidelines established for the Hine's emerald dragonfly will continue to contribute to the conservation of the species until it is recovered and removed from the list of federally protected species. Despite the benefits realized from implementation of the various actions outlined in Forest Service LRMPs for these two national forests, we are designating critical habitat on Forest Service land because we believe the benefits of designating those areas outweighs the benefits of excluding those areas from designation.

(3H) *Comment*: One commenter expressed that we should exclude Illinois Units 1, 2, and 3 because of long-term stakeholder commitment and the Habitat Conservation Plan that is being written.

Our response: Though we are pleased with the progress made to date on the Habitat Conservation Plan, it is still far from complete, and too early to judge its ultimate outcome. At this early stage, the developing Habitat Conservation Plan is not complete enough for us to evaluate whether habitat for the Hine's emerald dragonfly would be appropriately managed. Generally we do not consider excluding an area from critical habitat based on a draft Habitat Conservation Plan until the conservation measures have been determined, an environmental analysis has been completed and released for public review, and we have determined that issuing the associated incidental take permit would not result in a jeopardy or adverse modification finding for the species or its critical habitat. Therefore, we are not excluding Illinois Units 1, 2, and 3 at this time.

(3I) *Comment*: One commenter concluded that there is no reasonable basis for excluding privately owned sites in Missouri and designating Illinois Units 1 and 2. Excluding units in Missouri suggests that similarly situated parties are being treated differently.

Our response: Threats identified for the Hine's emerald dragonfly on private

land in Missouri are addressed through close coordination among personnel with the MDC's Private Land Services Division or Regional Natural History biologists and private landowners. Additionally, MDC personnel work closely and proactively with the National Resources Conservation Service (NRCS) and the Service's Partners for Fish and Wildlife Program to initiate management and maintenance actions on privately owned fens occupied by the Hine's emerald dragonfly that benefit the species and alleviate potential threats.

One site on private property in Missouri is owned and managed by The Nature Conservancy through the implementation of a site-specific plan (The Nature Conservancy 2006, pp. 1–4) that maintains fen habitat. One site under private ownership is a designated State Natural Area that is managed by the MDC through a site-specific plan (Missouri Natural Areas Committee 2007). This plan ensures that the integrity of the fen is maintained (Missouri Natural Areas Committee 2007, pp. 3–29). Hine's emerald dragonfly sites on Missouri State-owned and private land will be further maintained by implementing management guidelines outlined in a State recovery plan that was recently completed (Missouri Department of Conservation 2007f). However, at this time there are no conservation plans in place for Illinois Units 1 and 2 that would guide the implementation of similar measures. In addition, Illinois Unit 1 is a publicly owned site.

(3J) *Comment*: One commenter was concerned with the exclusion of large areas of lands in Michigan and Missouri based solely on the existence of management plans. The commenter suggested that given the uncertainties surrounding funding and implementation, the Service should consider designating these areas. Another commenter opposed exclusion of Michigan Units because the Hine's emerald dragonfly is mobile, and designation of all possible habitat areas is necessary to support increased numbers of the species. Furthermore, the commenter suggested that, by excluding critical habitat areas, we spent more time and money on the designation process.

Our response: While available funding will likely impact the amount of Hine's emerald dragonfly conservation work that occurs in any one year, we are confident that the Forest Service will continue to place a high emphasis and priority on its obligation to contribute to the conservation of the species. In addition, State land management agencies in Missouri are committed to the implementation of recovery actions outlined in their management plans and the recently completed Missouri Hine's Emerald Dragonfly Recovery Plan (Missouri Department of Conservation 2007f). Because we are now designating critical habitat on Forest Service land in Michigan and Missouri, all requirements under section 7(a)(2) are applicable.

In evaluating which areas to exclude, we requested and reviewed management plans and other relevant information. This analysis was conducted for all of the Hine's emerald dragonfly habitat areas we identified as meeting the definition of critical habitat. For excluded units, more time was spent on reviewing pertinent information, addressing public comments, and incorporating public input than for designated critical habitat units. This, however, was not due to the exclusion process, but rather to the amount of pertinent information available for these units (management plans for private and State-owned lands in Missouri) and the large number of public comments associated with exclusion. The evaluation and incorporation of relevant information and public comment was a necessary part of our critical habitat designation.

(3K) *Comment*: One commenter requested that the Service provide an independent rationale why areas adjacent to Forest Service land that are on private property should be excluded.

Our response: In Missouri, we are excluding sites on private land adjacent to Forest Service land because the management and maintenance of these areas are covered through close cooperation between private land owners and the Missouri Department of Conservation in the implementation of recommendations outlined in the Missouri Hine's Emerald Dragonfly Recovery Plan (Missouri Department of Conservation 2007f).

Issue 4: Economic Issues

(4A) *Comment*: The proposed critical habitat rule states that "to the extent that designation of critical habitat provides protection, that protection can come at significant social and economic cost" (71 FR 42443). Two commenters contend that there is no evidence that social or economic costs apply to the Hine's emerald dragonfly critical habitat designation and that some private landowners have recognized that critical habitat designation poses no social or economic threat. Furthermore, the economic and social benefits of critical habitat designation are ignored.

Our response: The economic analysis evaluates the potential economic costs associated with critical habitat designation, and also discusses the benefits of critical habitat designation. Based on our economic analysis, estimated future costs associated with conservation efforts for the dragonfly in areas designated as critical habitat range from $11.0 million to $25.7 million, over the next 20 years, applying a 7-percent discount rate.

The published economics literature has documented that social welfare benefits can result from the conservation and recovery of endangered and threatened species. In its guidance for implementing Executive Order 12866, the Federal Office of Management and Budget (OMB) acknowledges that it may not be feasible to monetize, or even quantify, the benefits of environmental regulations due to either an absence of defensible, relevant studies or a lack of resources on the implementing agency's part to conduct new research. Rather 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. Critical habitat designation may also generate ancillary benefits. Critical habitat aids in the conservation of species specifically by protecting the primary constituent elements on which the species depends. To this end, critical habitat designation can result in maintenance of particular environmental conditions that may generate other social benefits aside from the preservation of the species. That is, management actions undertaken to conserve a species or habitat may have coincident, positive social welfare implications, such as the preservation of open space in a region. While they are not the primary purpose of critical habitat, these ancillary benefits may result in gains in employment, output, or income that may offset the direct, negative impacts to a region's economy resulting from actions to conserve a species or its habitat. It is often difficult to evaluate the ancillary benefits of critical habitat. To the extent that the ancillary benefits of the rulemaking may be captured by the market through an identifiable shift in resource allocation, they are factored into the overall economic impact assessment. For example, if habitat preserves are created to protect a species, the value of existing residential property adjacent to those preserves may increase, resulting in a measurable positive impact. Ancillary benefits that affect markets are not

anticipated in this case and therefore are not quantified.

(4B) *Comment*: One commenter suggested that the proposal was premature and legally deficient because it lacked an economic analysis.

Our response: Under the Act, and clarified in our implementing regulations at 50 CFR 424.19, we are required to, "after proposing designation of [a critical habitat] area, consider the probable economic and other impacts of the designation upon proposed or ongoing activities." The purpose of the draft economic analysis is to determine and evaluate the potential economic effects of the proposed designation. In order to develop an economic analysis of the effects of designation critical habitat, we need to have identified an initial proposed critical habitat designation. Following publication of the critical habitat proposal for the Hine's emerald dragonfly, we developed a draft economic analysis of the proposed designation that was made available for public review and comment on March 20, 2007, for 14 days, and reopened for public review and comment on May 18, 2007, for 45 days. On the basis of information we received during the public comment periods, we may, during the development of our final critical habitat determination, find that areas we proposed are not essential, are appropriate for exclusion under section 4(b)(2) of the Act, or are not appropriate for exclusion. An area may be excluded from critical habitat if it is determined that the benefits of such exclusion outweigh the benefits of including a particular area as critical habitat, unless the failure to designate such area as critical habitat will result in the extinction of the species. We have not, however, excluded any areas from the final designation based on economic reasons.

(4C) *Comment*: One commenter expressed that Midwest Generation's rail line and immediately adjoining areas in Illinois Units 1 and 2 should be excluded from critical habitat based on economic impacts, and they provided an independent economic analysis of alternative coal delivery systems.

Our response: On March 20, 2007, we completed an economic analysis that addressed these issues. As stated above and in the proposed rule "critical habitat does not include human-made structures existing on the effective date of a final rule not containing one or more of the primary constituent elements." The rail line is not part of Illinois Units 1 and 2 because it was excluded by text from the proposal rule and from this final rule. Areas around the rail line that are not human-made but contain at least one primary constituent element are included. We determined that the relatively minor economic costs as described in the draft economic analysis do not justify excluding those areas from critical habitat.

(4D) *Comment*: One commenter expressed concerns about the effects of critical habitat designation on the future of the State snowmobile trail system in Door County, Wisconsin, and on improvements to, and installation of, new trails. Concerns include loss of the State trail corridor, which could bankrupt snowmobile clubs in the area, and loss of associated tourist revenue in Door County.

Our response: While the designation of critical habitat for the Hine's emerald dragonfly does not directly affect private landowners without a Federal nexus, it does alert them to the presence of an endangered species on their land and the need to ensure that their activities are consistent with the conservation of the species. Snowmobiling activity on upland areas in the winter will not affect the dragonfly, as adults are not flying in winter and the larval stage overwinters in crayfish burrows in wetlands. Construction and maintenance of snowmobile trails in upland locations at any time of year are not anticipated to affect the dragonfly. If construction and maintenance activities are planned in or near wetland areas occupied by the dragonfly, measures should be taken to preclude adversely affecting the wetlands or their hydrology. As we anticipate that snowmobiling activities will not be adversely affected by designation of critical habitat, we do not anticipate impacts to tourist revenues associated with snowmobiling in Door County.

(4E) *Comment*: One commenter stated that it was unclear from information in the economic analysis whether a determination had been made regarding exclusion of additional areas from the designation of critical habitat for all or some of the units in Illinois based on economic impact.

Our response: The purpose of the economic analysis is to identify and analyze the potential economic impacts associated with the proposed critical habitat designation for the Hine's emerald dragonfly. The economic analysis did not make a determination about any exclusions. The economic analysis is conducted to inform the Secretary's decision about exclusions. The final determination is made in this rule (see "Exclusions Under Section 4(b)(2) of the Act" section). Based on the information in the draft economic analysis and the comments received during the public comment period, we are not excluding any areas based on economic impacts.

(4F) *Comment*: One commenter asserts that there is little (if any) economic activity in Alpena, Mackinac, or Presque Isle Counties in Michigan. The commenter asserts that declining human populations in these counties is evidence of minimal economic activity.

Our response: The methodology used to obtain land values is discussed in Section 2.1 of the economic analysis, and the land values for each potential critical habitat units are presented in Exhibit 2-3. These values reflect the level of actual economic activity in these counties. The land in the three Michigan counties that coincides with the study area is valued at $1,430 per ac in Alpena County; $4,380 per ac in Presque Isle County; and $1,510 per ac in Mackinac County. The land value estimates for economic impacts in these counties (for units MI 3, MI 4, MI 5, and MI 6) were obtained from local zoning and tax assessor officials in these counties. The price of land in the present constitutes the expected value of current and potential future values of that land. Each of the proposed critical habitat units are near waterfront access and roads, which may make them valuable now or in the future.

(4G) *Comment*: Two comments state that the economic analysis fails to define an appropriate baseline, specifically: (1) The analysis of future conservation measures as co-extensive is unjustified; and (2) the inclusion of past costs associated with the proposed critical habitat as consequences of the critical habitat designation is erroneous.

Our response: (1) The economic analysis includes co-extensive costs because courts and the public have asked to see us display all of the costs of critical habitat, whether or not these costs are co-extensive with other causes. (2) The economic analysis explains why past costs are included in the introduction of Chapter 1. The retrospective analysis of past costs is included to provide context for future costs, and in some cases to help predict them. The Service is not suggesting that these costs are a result of the critical habitat designation. Reporting of past costs is also reviewed in Section 1.4 of the economic analysis, where their inclusion is justified on the basis that past costs may have contributed to the efficacy of the Act in that area.

(4H) *Comment*: Two comments state that the economic analysis does not include benefits in the analysis. The un-quantified benefits they list are: Protection of ecosystem services;

increased recreational and wildlife opportunities; reduced flood risks; concurrent conservation of other species; enhanced groundwater recharge; mosquito reduction; existence value of the dragonfly; protection of other species; wetland protection; decreased use of pesticides, chemicals, and herbicides; and potentially higher property values. One of the comments provides testimony of landowners who want to preserve the dragonfly on their property as evidence of existence value. This comment then proceeds to list several non-use valuation techniques. Another comment argues that the benefits should be expressed in monetary terms rather than in biological terms.

Our response: Potential benefits from critical habitat designation are discussed in Section 1.4 of the economic analysis, which recognizes the valuation methodologies discussed by the commenter. The section then describes the policy of the Service whereby benefits are expressed in biological terms. This section also discusses how ancillary benefits are not expected in the case of the Hine's Emerald Dragonfly. The OMB has acknowledged that it may not be feasible to monetize or quantify benefits because there may be a lack of credible, relevant studies, or because the agency faces resource constraints that would make benefit estimation infeasible (U.S. OMB, "Circular A-4," September 17, 2003, available at *http://www.whitehouse.gov/omb/circulars/a004/a-4.pdf*.).

(4I) *Comment*: One comment states that the economic analysis does not explain how the results of the analysis will be used in the critical habitat designation process.

Our response: In the introduction to Chapter 1, the Framework for Analysis states that the economic analysis will be used to weigh the benefits of excluding particular proposed critical habitat areas against the benefits of including them.

(4J) *Comment*: One comment states that the economic analysis does not consider the effects of other land use regulations that may affect how land can be developed or used, and that value losses attributed to critical habitat designation may be improperly attributed.

Our response: Land use regulations and how they affect land values are discussed in Section 2.1 of the economic analysis, in the context of Exhibit 2-3. First, the analysis explains that present land values will reflect the opportunities for development of that land. In this way, the present value of land incorporates all current and expected future regulatory constraints upon land use.

As an illustration, consider three identical parcels, one which housing can be built on with certainty, one which may or may not be subject to regulatory constraints that prohibit the construction of housing, and one where housing construction is absolutely prohibited. The price of the parcel where housing can be built (with certainty) will incorporate the option value for that housing and will sell for the highest price. The parcel where housing may or may not be built due to uncertainties about future regulation will sell for less than the parcel on which housing can be built with certainty, but will sell for more than the parcel where no housing can be built. The market price for land is net of the expected effect of current or future regulations. As described in Section 2.1 of the economic analysis, the GIS process for determining land values took into account zoning regulations and ownership types before determining land values from tax parcel records and interviews with zoning and planning officials. Impacts in this analysis are predicted using the best publicly available data for reasonably foreseeable land uses.

(4K) *Comment*: One commenter argues that the assumption that the value of land is immediately lost is erroneous because there is imperfect information in markets.

Our response: Section 2.1 of the economic analysis provides an explanation of how real estate markets work, and how current prices are the market's best prediction of future land values. It is correct that all consumers are not perfectly informed about products in a marketplace. In the real estate market, a lack of knowledge can result in a higher or lower property value. In the case of a newly regulated market, this would mean that buyers would still be willing to pay too much for the property.

The goal of the analysis in Section 2.1 is to predict the market equilibrium outcome. Limited information among buyers may cause them to pay too much for the property in the short run, but once the market is informed, everyone will pay the true (lower) market equilibrium value. There are many studies that have empirically shown that, though there may be imperfect information among some potential buyers, real estate markets respond quickly to changes in land use regulation (Kiel 2005; Guttery *et al.* 2000). The assumptions used in this analysis are based on the best available information.

(4L) *Comment*: One comment states that the economic analysis improperly inflates the lost value of development because including all land values as lost development values assumes that these lands are certain to be developed, and there is no certainty that the land will be developed.

Our response: Section 2.1 of the economic analysis addresses this in its discussion of how real estate prices adjust to expectations about future property uses. This analysis does not assume that all lands are certain to be developed. The present price per parcel of land incorporates the expected value of potential current and future uses of that land, regardless of when, or if, the land is ever developed. If current and potential uses are taken away, or if the quality of the land declines, the price of the land parcel will decrease (Quigley and Rosenthal 2005; Kiel and McClain 1995). Even the perception that the quality of the land may change can affect real estate values (Kiel and McClain 1996). Land that can be developed will command a higher price because it could be developed (even if it is never developed), and it is that expected value that the analysis considers.

(4M) *Comment*: One comment states that the economic analysis fails to establish a proper baseline because it does not consider potential regulatory changes or changes in market demand. The comment does not specify what specific changes are likely other than potential changes due to global warming or peaked oil production. A similar comment suggests that the assumption that a dolomite mine in Illinois Unit 2 will close because of critical habitat designation does not consider the impact of unknown future events.

Our response: Section 2.1 of the economic analysis reviews the data sources and analytic procedures used to assess the potential value losses over the next 20 years. These data are the best data that are publicly available and as such provide the basis for the prediction of impacts for reasonably foreseeable land uses under expected future conditions. While costs attributable to critical habitat may result from other factors, we cannot speculate about future events. We must use the best information available to us at the time of the analysis.

(4N) *Comment*: One comment states that the economic analysis estimates of lost property values are incorrect because the analysis does not consider changes to the value of properties outside the study area. The comment argues that if some parcels of land are removed from the market, then other

parcels of land will increase in value by the amount of the decrease in land value lost, so that the net economic effect will be zero change.

Our response:The potential for land use restrictions to affect neighboring properties is a valid concern. If there are no substitute parcels available in the vicinity of the parcel to be regulated (no other land that could be sold), then the price for land in that location will be driven up, and there will be a net gain for surrounding landowners, which could offset (fully or partially) the loss of value for the critical habitat units. However, if substitute parcels of land are plentiful in the vicinity of the critical habitat, then the consumer will have many options to choose from, and will not have to pay a higher price for substitute parcels, hence there will be no increase in surrounding land values (Quigley and Swoboda 2006).

Section 2.1 of the economic analysis discusses the possibility that the amount of land available for development in the vicinity of the study area could be very limited. However, the area of land under consideration for designation as well as the value of that land indicates that there will not be a significant impact on the local real estate market. That is, the amount of land that could be removed from development is not believed to be enough to increase surrounding land values. Results from sampling multiple listing services in Michigan and Wisconsin indicate that limiting residential development on vacant parcels will not have a substantial impact on the local land markets. That is, prices of surrounding parcels are unlikely to change and it is unlikely that there will be effects on the community's well-being, because there are many substitute parcels for the critical habitat units.

Sampling of Alpena County, Michigan found 146 parcels; the 50 sampled parcels had an average size of 24.5 ac, and an average asking price of approximately $68,000. Sampling of Mackinac County, Michigan found 229 parcels; the 50 sampled parcels had an average size of 5.8 acres, and an average asking price of approximately $90,000. Sampling of Presque Isle County, Michigan found 255 parcels; the 50 sampled parcels had an average size of 23 ac, and an average asking price of approximately $81,000. Sampling of the Door County (Wisconsin) Realtors Multiple Listing Service found approximately 550 vacant parcels of various sizes; the 50 sampled properties had an average size of 4.15 ac and an average asking price of approximately $66,000. This information is now included in Section 2.1.

(4O) *Comment*: One comment states that the limitation on resource extraction values in Illinois Unit 2 would not have had an effect because the losses in value would be offset by increases in values to competitors. The comment says that the analysis does not consider whether other companies will profit if Material Services Corporation cannot mine the parcel in critical habitat. The comment also argues that the DEA does not consider the fact that there may be lower cost companies that would profit more if the limitation were passed.

Our response: The magnitude of the dolomite deposits in Illinois Unit 2 relative to the rest of the Illinois dolomite market is discussed in Section 2.2.1 of the DEA. The annual revenue from the dolomite mine in Illinois Unit 2 is estimated to be $500,000. As noted in the report, the annual extraction of dolomite in Illinois has an approximate value of $470 million. Approximate dolomite revenues for Will County specifically (the county containing the mine in Illinois Unit 2) are $94 million. While losses of $500,000 per year to the mining company will be substantial, the expected revenues from this single mine are not significant relative to the entire market. That is, not allowing the dolomite in Illinois Unit 2 to be mined will not cause prices faced by competing companies to change; competitors will make no offsetting welfare gains (Just *et al.* 2004).

The commenter suggests that other companies may be able to compensate for decreased mining activity in Illinois Unit 2 by increasing operations at other facilities, and that there will be no net loss to society. The commenter is correct that any shortfall due to the mine being unable to operate will likely be made up by from other places (especially since the magnitude of the mine is small relative to the overall market). There will still be, however, the lost resource value for the company that is not allowed to mine this specific property.

The comment also contends that another mine may have lower costs, and that increased operations at that mine may be more efficient. At this time, there are no publicly available data concerning different costs structures for dolomite mining companies.

(4P) *Comment*: One comment states that the DEA does not consider alternative uses for the land in Illinois Unit 2 if the mine is not allowed to operate. The comment suggests that there might be wildlife viewing values for the property, or that the limitation on the mine would make nearby house values increase.

Our response: The commenter makes a valid point: Alternate land uses are not considered in this estimation for this proposed unit. In section 2.2.1 of the DEA, the analysis reports the mitigation costs of conservation that would be required to offset mining activities as well as the value lost if mining is not allowed. If mining is not allowed, there may be other uses for the property, but the values of the uses will be negligible compared to the lost mining resource value. It is unlikely that there could be significant economic benefits from preserving this parcel from mining. Visual inspection of Exhibit 1 in Appendix F shows that Illinois Unit 2 is located in an industrial corridor. In fact, the area proposed for the mine is surrounded by previously mined areas and industrial or transportation facilities. These location specifics make it unlikely that residential property values would be increased if the mine does not operate; there are no houses nearby and the effect of the industrial corridor that the mine is a part of will have a value-dampening effect. There is not likely to be any increase in wildlife viewing values from a critical habitat designation, as the designation does not make any private land available to the public for wildlife viewing, nor does it increase the ability of the public to view wildlife on public lands where such viewing would be available even absent the designation.

(4Q) *Comment*: One comment states that the economic analysis fails to include other alternatives to deep water wells as potential means to offset decreases in the water table. This comment argues that water conservation measures and storm water conservation regulations should be included as alternative water management strategies in the analysis.

Our response: Section 3.1 of the DEA describes the threat of water depletion and Section 3.1.1 discusses residential consumption and the methodology that was taken to calculate estimated costs for deep aquifer well drilling. The section contends that one potential remedy for depletion of groundwater levels (and subsequent habitat impacts) is to drill municipal wells into the deep aquifer to meet current and future water demands, as discussed by the Service. Other adaptive behaviors may be feasible, but there are no publicly available data available to model them.

(4R) *Comment*: One comment states that the estimation of costs to drill deep aquifer wells assumes that these wells would not be drilled for population

increases if critical habitat designation did not occur; and thus their inclusion inflates the cost estimates.

Our response: The argument that deep aquifer wells may be drilled regardless of the habitat designation is valid. The analysis does assume that new wells will be drilled in response to population growth. However, the analysis states that the presence of critical habitat could prompt new wells to be drilled into the deep aquifer instead of the upper aquifer. The estimated impact due to critical habitat designation is the projected difference between the cost of deep and upper aquifer wells for future population growth. Section 3.1.1 of the DEA discusses residential consumption of water and how population growth estimates are used to predict the number of new wells that will be needed. It is not known whether any new wells will be drilled, and if drilled, whether they will be drilled into the upper or lower aquifer (though upper aquifer wells are less expensive). It is for this reason that both a low (no deep aquifer well costs) estimate is included with a high estimate (which assumes all deep aquifer costs are in response to the dragonfly). The range of costs between the low (zero) and high estimates spans the potential costs for water use mitigation that may occur in these proposed critical habitat units. The use of a range of estimates addresses the concerns about the uncertainty of whether deep aquifer wells would be drilled or not in response to population increases.

(4S) *Comment*: One comment states that the inclusion of invasive species control costs as coextensive is inappropriate, since other species may have been affected.

Our response: The economic analysis discusses invasive species control measures and costs in Section 6.3. Invasive species control was listed as a threat to the species and a potential adverse affect to critical habitat in the proposed rule. Invasive species control has been ongoing in most critical habitat units and will continue regardless of the presence of Hine's emerald dragonfly or the designation of critical habitat.

(4T) *Comment*: One comment addresses the estimation of impacts from the Interstate 355 extension in Chapter 2 of the DEA. This comment states that "total costs for I-355–related development activities range from a low of $11.8 million to a high of $18 million. This number includes opportunity costs to vehicles that have to slow down due to the presence of the dragonfly, since the Illinois Department of Transportation (IDOT) chose to build the road through dragonfly habitat...." The comment also states that the costs that are discussed will occur before the designation takes place. The comment then states that the DEA does not consider the possibility that IDOT could have decided to not build this road due to the presence of the dragonfly.

Our response: In Section 2.3.2 of the DEA, past costs are estimated to be $1.8 million (undiscounted), as shown in Exhibit 2-7. Future costs are estimated to be $2.3 million (undiscounted) as shown in Exhibit 2-8. The economic analysis does not address speed limits on roads through dragonfly habitat in this section. The costs for the interstate extension do not involve any traffic slowing costs, since the interstate extension is being built 8 feet higher than it otherwise would be built to avoid dragonfly collisions (hence avoiding the need for a limited-speed zone); see Section 2.3.2. The costs to build the roadway higher are included in the analysis. Opportunity costs from lost time due to speed limits to avoid take of dragonflies are estimated for other units — IL 7, WI 4, and WI 5. The costs for the I-355 extension are in unit IL 4.

The comment that these costs will be realized before designation is partially correct. Exhibit 2-7 displays the costs of mitigation and conservation through 2006. The costs in Exhibit 2-8 include costs incurred from 2007 through 2026. These costs include costs incurred in the current year, since this is an ongoing project, and costs may be incurred during the proposal period. Most of the dragonfly-specific costs are attributed to a 20 year period (2007-2026).

The economic analysis does not provide economic estimates for a scenario in which the overpass is not built. The overpass construction was substantially under way when the proposed rule considering designation was published. Since the Illinois Tollway Authority had made several conservation and mitigation efforts for the dragonfly, these impacts were included in the analysis.

(4U) *Comment*: One comment states that the economic analysis fails to include all the relevant information concerning travel time lost due to speed limitations on passenger trains in the analysis. Specifically, the comment states that the analysis does not include time lost for riders of METRA commuter trains, nor does it consider the value of passenger time lost (as well as additional fuel costs) for deceleration in preparation for, and acceleration after, the limited speed zone.

Our response: The commenter raises some valid concerns. The economic estimates (Section 5.1) were based upon the best publicly available data at the time. Newly available ridership information for METRA (which was initially omitted) and actual ridership information for AMTRAK (which had been overestimated by a factor of five by the AMTRAK source contacted initially), and adding in the time value lost and additional fuel costs due for acceleration and deceleration, increases the vehicle slowing costs for Illinois unit 7 from $12.6 million to $13.7 million (undiscounted). This corresponds to an increase in costs from $7.1 million to $7.8 million (discounted at 7 percent). These cost increases are insufficient to change the rank orderings of units by level of impact for the high-end estimates (see Exhibit ES-6).

(4V) *Comment*: One comment states that the value of increased train carbon emissions from the deceleration and acceleration are also not quantified for these actions.

Our response: The commenter is correct; the economic analysis does not quantify increased emission levels due to deceleration and acceleration. The marginal quantities of emissions are not likely to be substantial. In addition, there is no emission trading markets for mobile source diesel fuel emissions. In the absence of such a market, cost estimates for additional carbon pollution would be speculative.

(4W) *Comment*: One comment states that the economic analysis does not include the costs in increased traffic congestion from train riders switching to commuting by car that a speed limitation on AMTRAK and METRA commuter rail trains passing through Illinois Unit 7 would generate.

Our response: The commenter is correct. This comment is concerned with the estimation of values in Exhibit 5-3, Section 5.1 of the DEA. New calculations based on information obtained during the comment period quantified the increased delay for causing the AMTRAK and METRA to decelerate from 79 miles per hour (mph) to 15 mph, travel 15 miles per hour for one quarter mile, then accelerate back to a speed of 79 mph.

The estimated time delays are minimal and thus unlikely to be sufficient to cause many travelers to switch to automobile travel. The additional time taken for deceleration would be 36 seconds. The additional time taken for traveling 15 mph for one quarter mile (mi) would be 45 seconds. The increase in travel time for acceleration would be 40 seconds. The additional 2 minutes and 1 second of travel time is highly unlikely to cause train travelers to switch to travel by automobile, especially since the road

that runs parallel to the track that would have the speed limits will be subject to the same speed limit as well. Travel times on the parallel roadway will increase by at least 3.25 minutes. These estimates, and their derivation, are discussed in Section 5.1.

The economic literature on mode-split indicates that an increase in travel time on a commuter train is unlikely to cause much of a shift to car use. Mode-split studies measure how sensitive travelers are to changes in the cost of traveling. An increase of 10 percent of travel time on a commuter train during peak commuting time will cause a 1-percent increase in demand for commuting by automobile (Lago and McEnroe 1981). The additional delay in unit IL 7 may cause a small increase in travel by car. However, the literature indicates that commuters who travel by rail are not very sensitive to small increases in travel times. The estimated change in demand cited above is illustrative of general behavior; there are no publicly available models or data for modeling this specific situation.

(4X) *Comment*: One comment questions the accuracy of projected cost estimates in Exhibit 4-8 relative to the information provided. The comment is specifically concerned with the dates of anticipated costs from 2011-2014 and from 2007-2026.

Our response: The costs that the comment is concerned with are listed in Exhibit 4-8, Section 4.3 of the DEA. These estimates were obtained from documents provided by Midwest Generation concerning costs they have incurred and expect to incur for work done on the railroad line in Illinois Units 1 and 2. The calculations used to spread costs over the periods 2011-2014 and 2007-2026 were not presented in the draft economic analysis. These calculations are now included in Exhibit 4-8.

Future (long-term) rehabilitation costs from 2011 to 2014 are listed in a document submitted by Midwest Generation during the public comment period. The document is entitled "List of Midwest Generation's Environmental Activities Associated with the Rail Line and HED Commitments." The end of the first paragraph of that document concludes: "Long term maintenance items should be implemented in the four to seven year range...." Four years from the first final rule is 2011 and seven years from the proposed rule is 2014. Accordingly, the long-term rehabilitation costs are spread over those years. These are the costs estimated to take place from 2011 to 2014.

(4Y) *Comment*: One comment states that railroad maintenance and culvert maintenance should not be considered threats. The comment states, "The Service contends that this process is maintenance that the railroad would have to do regardless of the dragonfly, but recognizes that undercutting, combined with the construction of approximately 4 new French drains, and regular culvert maintenance may be potential options for mitigating the hydraulic pumping problem."

Our response: Specific types of railroad maintenance, combined with undercutting, are listed in Section 5.2 of the DEA as mitigation measures that respond to the specific threat of the hydraulic pumping of sediments. As discussed in Chapter 4 of the DEA, maintenance activities may also pose threats to critical habitat. A clarifying sentence has been added to the referenced paragraph in the DEA: "While regular maintenance may help mitigate the hydraulic pumping problem, maintenance activities may still pose a threat to critical habitat. An additional clarifying footnote was added following this sentence: "There are types and methods of railroad maintenance that may be employed without threatening the dragonfly or its habitat; Section 4.3 addresses the additional costs of performing such dragonfly sensitive maintenance."

(4Z) *Comment*: One comment states there is no concession stand in unit WI 5.

Our response: This apparent error occurs in Section 2.2.3. There is an interpretive center/gift store located in WI 5. This store is referred to as a "concession" in local zoning documents. This confusion has been clarified in the text.

Issue 5: Site-Specific Issues

(5) *Comment*: We received four comments on the July 26, 2006, proposal (71 FR 42442) and the April 22, 2009, proposal (74 FR 18341), suggesting that we designate multiple areas of unoccupied habitat in Michigan, including the Stonington Peninsula, Garden Peninsula, Munuscong Bay, Drummond Island, Pointe Aux Chenes River, Wilderness State Park, Lennagene Rossman Stratton Memorial, Peter Memorial, Mystery Valley and others. Additionally, the commenters suggested we designate multiple areas in Michigan where the Hine's emerald dragonfly has been observed on site or within 2 miles of a known locality.

Our response: We did not designate unoccupied habitat listed by the commenters because there are no current or historical records documenting the presence of the species at these sites. In 2006, the Hiawatha National Forest conducted surveys on the Stonington Peninsula and did not document the presence of Hine's emerald dragonflies from this locality.

With regard to sites where the Hine's emerald dragonfly has been observed or where it was observed within a 2-mi (3.3-km) radius, we used the methodology outlined under the section of this rule on "Criteria Used to Identify Critical Habitat." In drawing the outer boundary of a unit, we extended the unit boundary from the dragonfly larval habitat up to 100 meters (328 feet) where the primary constituent elements are found unless we reached areas that did not contain the primary constituent elements before that 100 meters (328 feet), such as a closed canopy forest, roadway, or another natural or human-made break in habitat. This boundary extension is to provide foraging areas for the species. A small number of dragonfly observations do not fall within a critical habitat unit. For instance, a one-time observation of a single foraging Hine's emerald dragonfly would not provide enough information to adequately determine the location of the core breeding habitat. We believe that there could be undiscovered Hine's emerald dragonfly breeding sites in Michigan, but using the best scientific data currently available, we have identified the six breeding areas in Michigan of which we are aware.

Issue 6: Effects of Critical Habitat Designation

(6) *Comment*: One private landowner was concerned that the designation of critical habitat may affect current or planned activities. Specifically, the commenter was concerned about delays or disruptions to future plans to expand or enhance an existing rail line, which would require Federal permits.

Our response: Critical habitat designation does not preclude development. Section 7(a)(2) of the Act requires Federal agencies to consult with the Service to ensure that actions they fund, authorize, permit, or otherwise carry out will not jeopardize the continued existence of any listed species or adversely modify designated critical habitat. If the Federal action agency determines that a project may adversely affect a listed species or designated critical habitat, formal consultation is required. There is a 90–day period of time in which to consult, and beyond that, another 45–day period of time for the Service to prepare a biological opinion. The analysis of whether the proposed action would

likely jeopardize the continued existence of the species or adversely modify designated critical habitat is contained in the biological opinion. If a jeopardy or adverse modification determination is made, the biological opinion must identify any reasonable and prudent alternatives that could allow the project to move forward.

Issue 7: Philosophy on Utility of Critical Habitat

(7A) *Comment*: Two commenters expressed that they disagree with the statement in the proposal that critical habitat designations are driven by litigation and courts rather than biology. They argue that while many critical habitat designations are the result of litigation, it is only to the extent that the Service fails to meet its statutory obligation to designate critical habitat concurrently with listing and that it is a burden imposed by an unambiguous statutory mandate, not by litigation.

Our response: The section in the proposed rule that contained these statements ("The Role of Critical Habitat in Actual Practice of Administering and Implementing the Act") has been removed from this final rule.

(7B) *Comment*: Two commenters suggested that critical habitat designation is strongly associated with species recovery and that the Service must consider the role of critical habitat in the recovery of the species.

Our response: We agree that we must consider the role of critical habitat in the recovery of species. The Ninth Circuit Court's decision in *Gifford Pinchot Task Force* v. *United States Fish and Wildlife Service*, 378 F.3d 1059 (9th Cir 2004) (hereinafter *Gifford Pinchot*) requires consideration of the recovery of species when designating critical habitat. Thus, under this court ruling, and our implementation of Section 7 of the Act, critical habitat designations may provide greater benefits to the recovery of a species. Also, we have found that critical habitat designations serve to educate landowners, State and local governments, and the public regarding the potential conservation value of the areas designated.

(7C) *Comment*: One commenter expressed that the Hawaii example in the proposal does not prove that excluding areas from critical habitat provides superior conservation benefits to designating critical habitat.

Our response: Each exclusion from critical habitat designation is considered on its own merits, after balancing the benefits of designation against the benefits of exclusion, and also considering whether the exclusion will result in the extinction of the species.

Issue 8: Unoccupied Habitat

(8) *Comment*: Two commenters suggested that the Service consider designating areas that would contribute to the species' recovery through reintroduction, introduction, and augmentation efforts, as recommended in the species' recovery plan.

Our response: Although introductions and reintroductions were identified as being potentially important in the 2001 recovery plan, the Service acknowledged that additional surveys needed to be completed (Service 2001, p. 59). Since the recovery plan was written, additional Hine's emerald dragonfly breeding sites were identified in Illinois, Michigan, Missouri, and Wisconsin. Other unidentified sites may also exist in these States. Therefore, at this time we believe that introduction into unoccupied potential habitat, or reintroduction of dragonflies into additional historically occupied but currently unoccupied habitat, may not be necessary to recover the species. As additional research is conducted on the population structure and status of the species, the Service will consider the necessity of introduction and reintroduction of the Hine's emerald dragonfly.

Issue 9: Mapping

(9) *Comment*: Some commenters stated that the maps and descriptions of critical habitat units lacked sufficient detail to determine what essential features are included, what the surrounding land uses are, whether specific properties are included, and whether certain structures are included. Furthermore, they state that the maps should be provided in geological information system and aerial photography formats.

Our response: The scale of the maps prepared under the parameters for publication within the *Code of Federal Regulations* may not be detailed enough to allow landowners to determine whether their property is within the designation. Therefore, when the final rule is published, we will provide more detailed maps on our web site to better inform the public. We also provided contact information for anyone seeking assistance with the proposed critical habitat. Therefore, we believe we made every effort to provide avenues for interested parties to obtain information concerning our proposal and supporting information.

Issue 10: General Comments and Other Relevant Issues

(10A) *Comment*: One commenter stated that critical habitat designation is a "waste of taxpayers' time and money."

Our response: The designation of critical habitat for federally listed species is a requirement under section 4(a)(3)(A) of the Act.

(10B) *Comment*: One commenter expressed that the presence of habitat should have stopped the Interstate 355 (I-355) construction project. The commenter added that projects like the I-355 expansion project show that designation of critical habitat is justified.

Our response: 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 such a 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, compliance with the requirements of section 7(a)(2) will be documented through the Service's 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.

The I-355 project required a permit from the Army Corp of Engineers, which established a Federal nexus, and was addressed under a formal consultation, under section 7(a)(2) of the Act. As part of that formal consultation, conservation measures were agreed to that require the project proponent to fund actions to conserve the Hine's emerald dragonfly and its habitat. The Service concluded that the I-355 project would not jeopardize the continued existence of the Hine's emerald dragonfly.

(10C) *Comment*: One commenter stated that the designation of critical habitat should recognize the importance of protecting genetic diversity through habitat conservation. Specifically, the Hine's emerald dragonfly population in Illinois may contain greater genetic diversity than the other populations. Thus, the importance of protecting habitats in this State is heightened.

Our response: Genetic analysis is identified as a task in the Hine's Emerald Dragonfly (*Somatochlora hineana* Williamson) Recovery Plan (Service 2001, p.54). Genetic analyses have been initiated to better understand the population structure of the species, but the analyses have not been completed. The designation of critical habitat was based on the best available information. All currently occupied

areas in Illinois are included in the critical habitat designation for this and other reasons.

(10D) *Comment*: Two commenters stated that the Service must address Executive Order 13211 and prepare a Statement of Energy Effects, if applicable. Also, the Service must offer an opportunity to comment on any Statement of Energy Effects before making a final determination on the designation.

Our response: Executive Order 13211 was addressed in the Economic Analysis that was announced in the Notice of Availability published on March 20, 2007, and is addressed again in this final rule.

(10E) *Comment*: One commenter is concerned that the proposal infers that Midwest Generation's train traffic is contributing to mortality of Hine's emerald dragonflies and that rail line operations are increasing sediment deposition.

Our response: Vehicular impacts to Hine's emerald dragonflies, including collisions resulting in mortality, have been documented in areas within the species' range. However, since Midwest Generation limits the speed of its trains to 4 to 6 mph in Illinois Units 1 and 2, we have determined that train traffic in these units is not resulting in direct mortality of Hine's emerald dragonflies.

We believe that sediment being released from the rail line ballast in Illinois Units 1 and 2 may be impacting Hine's emerald dragonfly larval habitat. This potential threat is currently being assessed and will be addressed in the Habitat Conservation Plan under development for these units.

(10F) *Comment*: One commenter expressed that human-made structures should be a part of critical habitat.

Our response: We only include areas that contain at least one of the physical and biological features essential to the conservation of the species. Human-made structures are not essential features of the species' habitat.

Comments from States

Section 4(i) of the Act states, "the Secretary shall submit to the State agency a written justification for his/her failure to adopt regulation consistent with the agency's comments or petition. Comments were received from the Illinois Department of Natural Resources (ILDNR), MDC, Michigan Department of Natural Resources (MIDNR) and Michigan Department of Environmental Quality (MIDEQ). Comments supporting the proposed rule were received from the ILDNR and MDC. Additional comments received from States regarding the proposal to designate critical habitat for the Hine's emerald dragonfly are addressed below.

(1) *State Comment*: The Michigan Department of Natural Resources commented that Michigan Units 3, 4, and 5 are partially owned by their agency. As these areas are owned by the State they are afforded protection under land management policies.

Our response: In general, we considered excluding State lands from the final critical habitat designation. Mud Lake-Snake Island Fens, a portion of Michigan Unit 3, is owned by MDNR and is a designated natural area. Much of Michigan Unit 4 is part of Thompson's Harbor State Park. A portion of Michigan Unit 5, approximately 65 acres, is State forest land and managed under Forest Certification Work Instructions. State ownership and the various designations bestowed upon these lands may afford some nonspecific protection for Hine's emerald dragonfly and its habitat. However, we only excluded State that had management plans identifying necessary management and protection efforts for Hine's emerald dragonfly or the primary constituent elements. Therefore, Michigan Units 3, 4, and 5 are included in the final critical habitat designation.

(2) *State Comment*: The Michigan Department of Environmental Quality (MDEQ) emphasized that the State of Michigan has assumed the Federal Clean Water Act section 404 program that provides wetland fill permits. The MDEQ claims that a State, not a Federal, permit is issued; thus, section 7 consultation is not required. However, when reviewing a permit application that could affect a federally listed species or critical habitat, the MDEQ coordinates with the US Environmental Protection Agency (USEPA) and the Service. The MDEQ may incorporate appropriate measures into a permit, thereby avoiding or minimizing impacts to listed species and addressing Federal concerns. The MDEQ cannot issue a permit over the objection of the USEPA Regional Administrator.

Our response: We appreciate MDEQ's dedication to and cooperation in conserving federally listed species. We agree that the approach outlined above is the process we currently use in reviewing section 404 permit applications under the State-assumed program in Michigan.

Summary of Changes from Proposed Rule

The area contained in Wisconsin Unit 1 has been amended. The map and the description of the area for Wisconsin Unit 1 were accurate in the proposed rule; however, the acreage for the unit was incorrect. The error was due to using information from an earlier, larger draft of the map for this unit. Therefore, the acreage has been corrected from 503 ac (204 ha) in the proposed rule to 157 ac (64 ha) in the final rule.

As discussed in the July 26, 2006, proposal (71 FR 42442), additional sites in Wisconsin were evaluated to determine if they contain the features that are essential for the conservation of the Hine's emerald dragonfly. Based on our evaluation of research results from 2006 fieldwork, we have determined that Kellner's Fen in Door County, Wisconsin, contains the features that are essential to the conservation of Hine's emerald dragonfly. Adult Hine's emerald dragonflies have been observed in this area and breeding habitat exists in this unit, although breeding has not yet been confirmed. We announced the proposed addition of this unit in the **Federal Register** on March 20, 2007, and are adding this unit to the critical habitat designation. The additional critical habitat unit, Wisconsin Unit 11, is described in the unit descriptions below.

We are excluding Missouri Units 2b, 3, 6, 9, 10, 11b, 12–20, and 22, from the final designation of critical habitat because we believe that the benefits of excluding these specific areas from the designation outweigh the benefits of including the specific areas. We believe that the exclusion of these areas from the final designation of critical habitat will not result in the extinction of the Hine's emerald dragonfly. These exclusions are discussed in more detail in the Exclusions section below.

We are designating an additional unit on the Mark Twain National Forest that was not known to be occupied by the Hine's emerald dragonfly at the time of the September 5, 2007, final rule, but has since been discovered to be occupied. We included this unit in our April 22, 2009, notice reopening the comment period on the proposed designation. Based on our evaluation of research results from recent fieldwork, we have determined that this newly discovered site on the Mark Twain National Forest in Washington County, Missouri, is essential to the conservation of Hine's emerald dragonfly.

Critical Habitat

Critical habitat is defined in section 3 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

(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 a 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 any endangered or threatened species to the point at which the measures provided under the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management, such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot otherwise be relieved, may include regulated taking.

Critical habitat receives protection under section 7(a)(2) of the Act through the prohibition against Federal agencies carrying out, funding, or authorizing activities that are likely to result in the destruction or adverse modification of critical habitat. Section 7(a)(2) requires consultation on Federal actions that may affect critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation does not allow the government or public to access private lands. Such designation does not require implementation of restoration, recovery, or enhancement measures by non-Federal landowners. Where a landowner seeks or requests Federal agency funding or authorization for an action that may affect a listed species or critical habitat, the consultation requirements of section 7(a)(2) of the Act would apply, but even in the event of a destruction or adverse modification finding, the Federal action agency's and the applicant's obligation is not to restore or recover the species, but to implement reasonable and prudent alternatives to avoid destruction or adverse modification of critical habitat.

For inclusion in a critical habitat designation, the habitat within the geographical area occupied by the species at the time of listing must contain physical and biological features that are essential to the conservation of the species, and be included only if those features may require special management considerations or protection. Critical habitat designations identify, to the extent known using the best scientific and commercial data available, habitat areas supporting the essential physical or biological features that provide essential life cycle needs of the species; that is, areas on which are found the primary constituent elements (PCEs) laid out in the appropriate quantity and spatial arrangement essential to the conservation of the species. Under the Act and regulations at 50 CFR 424.12, we can designate critical habitat in areas outside the geographical area occupied by the species at the time it is listed only when we determine that those areas are essential for the conservation of the species and that designation limited to the species' present range would be inadequate to ensure the conservation of the species.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific and commercial data available. Further, our Policy on Information Standards Under the Endangered Species Act (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658)), and our associated Information Quality Guidelines provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on the best scientific data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

When we are determining which areas should be designated as critical habitat, our primary source of information is generally the information developed during the listing process for the species. Additional information sources may include the recovery plan for the species, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, or other unpublished materials and expert opinion or personal knowledge.

Areas that support occurrences, but are outside the critical habitat designation, will continue to be subject to conservation actions we and other Federal agencies implement under section 7(a)(1) of the Act. They are also subject to the regulatory protections afforded by the section 7(a)(2) jeopardy standard, as determined 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 to these planning efforts calls for a different outcome.

Climate Change

Climate change will be a particular challenge for biodiversity because the interaction of additional stressors associated with climate change and current stressors may push species beyond their ability to survive (Lovejoy 2005, pp325-326). The synergistic implications of climate change and habitat fragmentation are the most threatening facet of climate change for biodiversity (Hannah *et al.* 2005, p4). In addition, local extinction and range shifts are also being documented for some species including dragonflies. In a study of all 37 species of resident odonates (dragonflies and damselflies) in the United Kingdom, all but two species increased in range size and all but three species shifted northwards at their range margin in the last 40 years (Hickling *et al.* 2005, p. 504). While there is uncertainty about the exact nature and severity of climate change related impacts anticipated within the Hine's emerald dragonfly's range, several scientific studies project that there will be increased duration and intensity of heat waves in summer; higher levels of humidity and evaporation; changing patterns of precipitation with fewer rain events of greater intensity; increased frequency and more-intense dry spells; and more flooding from heavy rains (Easterling and Karl 2000, pp. 168–169, 172, 176; Hall and Stuntz 2007, pp. 5–7; IPCC 2007, pp. 30, 46). These climatic changes may impact the Hine's emerald dragonfly's habitat in a variety of direct and indirect ways including: Changes in hydrology, loss of suitable habitat; loss of inter-specific relationships with crayfish; and increased threats from invasive species.

Physical and Biological Features

In accordance with section 3(5)(A)(i) and 4(b)(1)(A) of the Act and regulations at 50 CFR 424.12(b), in determining which areas within the geographical area occupied at the time of listing to

propose as revised critical habitat, we consider those physical and biological features that are essential to the conservation of the species and which may require special management considerations or protection. We consider the essential physical and biological features to be the PCEs laid out in the appropriate quantity and spatial arrangement essential to the conservation of the species. The PCEs include, but are not limited to:

(1) Space for individual and population growth and for normal behavior;

(2) Food, water, air, light, minerals, or other nutritional or physiological requirements;

(3) Cover or shelter;

(4) Sites for breeding, reproduction, and rearing (or development) of offspring; and

(5) Habitats that are protected from disturbance or are representative of the historical, geographical, and ecological distributions of a species.

We derive the PCEs required for the Hine's emerald dragonfly from its biological needs. The areas included in our critical habitat designation for the species contain the essential features to fulfill the species life-history requirements. The PCEs and the resulting physical and biological features essential to the conservation of the Hine's emerald dragonfly are derived from studies of this species' habitat, ecology, and life history as described in the proposed critical habitat designation published in the **Federal Register** on July 26, 2006 (71 FR 42442).

Primary Constituent Elements for the Hine's Emerald Dragonfly

Under the Act and its implementing regulations, when considering the designation of critical habitat, we must focus on the PCEs within the geographical area occupied by the Hine's emerald dragonfly at the time of listing that are essential to the conservation of the species and may require special management considerations or protection. The essential physical and biological features are those PCEs laid out in an appropriate quantity and spatial arrangement determined to be essential to the conservation of the species. All areas designated as critical habitat for the Hine's emerald dragonfly are currently occupied, are within the geographical area occupied by the species at the time of listing, and contain sufficient PCEs to support at least one life- history function.

Based on our current knowledge of the life history, biology, and ecology of the Hine's emerald dragonfly, and the requirements of the habitat to sustain the life-history traits of the species, we determined that the PCEs specific to the Hine's emerald dragonfly are:

(1) For egg deposition and larval growth and development:

(a) Organic soils (histosols, or with organic surface horizon) overlying calcareous substrate (predominantly dolomite and limestone bedrock);

(b) Calcareous water from intermittent seeps and springs and associated shallow, small, slow flowing streamlet channels, rivulets, and/or sheet flow within fens;

(c) Emergent herbaceous and woody vegetation for emergence facilitation and refugia;

(d) Occupied burrows maintained by crayfish for refugia; and

(e) Prey base of aquatic macroinvertebrates, including mayflies, aquatic isopods, caddisflies, midge larvae, and aquatic worms.

(2) For adult foraging; reproduction; dispersal; and refugia necessary for roosting, resting, refuge for adult females to escape from male harassment, and predator avoidance (especially during the vulnerable teneral stage):

(a) Natural plant communities near the breeding/larval habitat which may include fen, marsh, sedge meadow, dolomite prairie, and the fringe (up to 328 ft (100m)) of bordering shrubby and forested areas with open corridors for movement and dispersal; and

(b) Prey base of small flying insect species (e.g., dipterans).

This critical habitat designation is designed for the conservation of those areas containing the physical and biological features necessary to support the species' life-history traits. Each of the areas designated in this rule contain sufficient PCEs to provide for one or more of the life history functions of the Hine's emerald dragonfly.

Special Management Considerations or Protections

When designating critical habitat within the geographical area occupied by the species at the time of listing, we assess whether the physical and biological features essential to the conservation of the species may require special management considerations or protection. In all units, special management considerations or protection of the essential features may be required to provide for the growth, reproduction, and maintenance of the habitat on which the Hine's emerald dragonfly depends.

The lands proposed as critical habitat represent our best assessment of the habitat that meets the definition of critical habitat for the Hine's emerald dragonfly at this time. The essential physical or biological features within the areas proposed as critical habitat may require some level of management to address current and future threats to the Hine's emerald dragonfly, including the direct and indirect effects of habitat loss and degradation from urban development; the introduction of nonnative invasive plant species; and recreational activities.

Nonnative invasive plant species and unauthorized recreational activities (for example, all-terrain vehicles or horseback riding) may alter the vegetation composition or physical structure identified in the PCEs to an extent that the area does not support breeding habitat or refuge for Hine's emerald dragonflies. Additionally, invasive species and unauthorized recreational activities may alter hydrology and alter conditions so that the habitat is unsuitable for crayfish burrows that provide essential wintering refugia for Hine's emerald dragonflies.

In summary, we find that the areas we are designating as critical habitat contain the features essential to the conservation of the Hine's emerald dragonfly, and that these features may require special management considerations or protection. Special management considerations or protection may be required to eliminate, or reduce to negligible level, the threats affecting each unit and to preserve and maintain the essential features that the critical habitat units provide to the Hine's emerald dragonfly. Additional discussions of threats facing individual sites are provided in the individual unit descriptions.

The designation of critical habitat does not imply that lands outside of critical habitat may not play an important role in the conservation of the Hine's emerald dragonfly. In the future, and with changed circumstances, these lands may become essential to the conservation of the Hine's emerald dragonfly. Activities with a Federal nexus that may affect areas outside of critical habitat, such as development, agricultural activities, and road construction, are still subject to review under section 7 of the Act if they may affect the Hine's emerald dragonfly, because Federal agencies must consider both effects to the dragonfly and effects to critical habitat independently. The take prohibitions of section 9 of the Act, applicable to the Hine's emerald dragonfly under 50 CFR 17.71, also continue to apply both inside and outside of designated critical habitat.

Criteria Used To Identify Critical Habitat

We are designating critical habitat in areas we determined were occupied at the time of listing, and that contain sufficient PCEs to support life history functions essential to the conservation of the Hine's emerald dragonfly. Lands are designated based on sufficient PCEs being present to support the life processes of the species. Land designated as critical habitat for this species contain all PCEs and support multiple life processes. We are also designating areas that were not occupied at the time of listing, but which were subsequently identified as being occupied, and which we have determined to be essential to the conservation of the Hine's emerald dragonfly.

To identify features that are essential to the conservation of the Hine's emerald dragonfly and areas essential to the conservation of the species, we considered the natural history of the species and the science behind the conservation of the species as presented in literature summarized in the Hine's Emerald Dragonfly (*Somatochlora hineana* Williamson) Recovery Plan (Service 2001).

We began our analysis of areas with features that are essential to the conservation of the Hine's emerald dragonfly by identifying currently occupied breeding habitat. We developed a list of what constitutes occupied breeding habitat with the following criteria: (a) Adults and larvae documented; (b) Larvae, exuviae (skin that remains after molt), teneral (newly emerged) adults, ovipositing females, and/or patrolling males documented; or (c) Multiple adults sighted and breeding conditions present. We determined occupied breeding habitat through a literature review of data in reports submitted during section 7 consultations and as a requirement from section 10(a)(1)(B) incidental take permits or section 10(a)(1)(A) recovery permits; published peer-reviewed articles; academic theses; and agency reports. We then determined which areas were occupied at the time of listing.

After identifying the core occupied breeding habitat, our second step was to identify contiguous habitat containing one or more of the PCEs within 2.5 mi (4.1 kilometers (km)) of the outer boundary of the core area (Mierzwa *et al.* 1995, pp.17–19; Cashatt and Vogt 1996, pp. 23–24). This distance, the average adult dispersal distance measured in one study, was selected as an initial filter for determining the outer limit of unit boundaries in order to ensure that the dragonflies would have adequate foraging and roosting habitat, corridors among patches of habitat, and the ability to disperse among subpopulations. However, based on factors discussed below, unit boundaries were significantly reduced in most cases based on the contiguous extent of PCEs and the presence of natural or human-made barriers. When assessing wetland complexes in Wisconsin and Michigan we determined that features that fulfill all of the Hine's emerald dragonfly's life history requirements are often within 1 mi (1.6 km) of the core breeding habitat; therefore, the outer boundary of those units is within 1 mi (1.6 km) of the core breeding habitat.

Areas not documented to be occupied at the time of listing but that are currently occupied are considered essential to the conservation of the species due to the limited numbers and small sizes of some extant Hine's emerald dragonfly populations. Recovery criteria established in the recovery plan for the species (Service 2001, pp. 31–32) call for a minimum of three populations, each containing at least three subpopulations, in each of two recovery units. Within each subpopulation there should be at least two breeding areas, each fed by separate seeps and springs. Management and protection of all known occupied areas are necessary to meet these goals.

When determining critical habitat boundaries, we made every effort to avoid including developed areas such as buildings, paved areas, and other structures and features that lack the PCEs for the species. The scale of the maps we have prepared under the parameters for publication within the *Code of Federal Regulations* may not reflect the exclusion of all 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 are excluded from this rule by text and are not designated as critical habitat. Therefore, Federal actions limited to these areas would not trigger section 7 consultation under the Act, unless they affect the species or PCEs in critical habitat.

Units were identified based on sufficient PCEs being present to support Hine's emerald dragonfly life processes. Designated units contain all PCEs and support multiple life processes. Areas lacking documented evidence of breeding based on current knowledge were not considered for critical habitat inclusion because such areas are not deemed essential to the conservation of the species.

A brief discussion of each area designated as critical habitat is provided in the unit descriptions below. Additional detailed documentation concerning the essential nature of these areas is contained in our supporting record for this rulemaking.

Critical Habitat Designation

We are designating 37 units as critical habitat for the Hine's emerald dragonfly. The critical habitat areas described below constitute our best assessment at this time of areas that meet the definition of critical habitat for the Hine's emerald dragonfly. These areas constitute our best assessment of areas determined to be within the geographical area occupied at the time of listing that contain the physical and biological features essential to the conservation of the Hine's emerald dragonfly that may require special management, and those additional areas not occupied at the time of listing but that have been determined to be essential to the conservation of the Hine's emerald dragonfly. Management and protection of all the areas is necessary to achieve the conservation biology principles of representation, resiliency, and redundancy (Shaffer and Stein 2000) as represented in the recovery criteria established in the recovery plan for the species. Recovery criteria established in the recovery plan for the species (Service 2001, pp. 31–32) call for a minimum of three populations, each containing at least three subpopulations, in each of two recovery units. Within each subpopulation there should be at least two breeding areas, each fed by separate seeps and springs. Management and protection of all known occupied areas are necessary to meet these goals.

These units, which generally correspond to the geographic area of the units delineated in the 2007 designation, with the addition of units on Forest Service lands, replace the current critical habitat designation for the Hine's emerald dragonfly in 50 CFR 17.96(a).

Table 1 identifies the approximate area of each designated critical habitat unit by land ownership. Table 2 identifies areas that meet the definition of critical habitat but were excluded from final critical habitat based on their species-specific management plans or partnerships, and the determination the benefits to the species of exclusion from critical habitat outweighs the benefits of designating critical habitat in those units.

TABLE 1. CRITICAL HABITAT UNITS DESIGNATED FOR THE HINE'S EMERALD DRAGONFLY.

Unit	Federal land (acres/hectares)	State land (acres/hectares)	Local and private land (acres/hectares)	Total (acres/hectares) designated
Illinois Unit 1, Will County			419/170	419/170
Illinois Unit 2, Will County			439/178	439/178
Illinois Unit 3, Will County			337/136	337/136
Illinois Unit 4, Will and Cook Counties			607/246	607/246
Illinois Unit 5, DuPage County			326/132	326/132
Illinois Unit 6, Cook County			387/157	387/157
Illinois Unit 7, Will County		130/53	350/142	480/194
Michigan Unit 1, Mackinac County	9,452/3,825			9,452/3,825
Michigan Unit 2, Mackinac County	3,476/1,421		35/14	3,511/1,421
Michigan Unit 3, Mackinac County		23/9	27/11	50/20
Michigan Unit 4, Presque Isle County		875/354	84/34	959/388
Michigan Unit 5, Alpena County		65/26	91/37	156/63
Michigan Unit 6, Alpena County			220/89	220/89
Missouri Unit 1, Crawford County	90/36			90/36
Missouri Unit 2a, Dent County	15/6			15/6
Missouri Unit 4, Dent County	14/6			14/6
Missouri Unit 5, Iron County	50/20			50/20
Missouri Unit 7, Phelps County	33/13			33/13
Missouri Unit 8, Reynolds County	4/2			4/2
Missouri Unit 11a, Reynolds County	22/9			22/9
Missouri Unit 21, Ripley County	6/2			6/2
Missouri Units 23 and 24 Washington County	75/31			75/31
Missouri Unit 25, Washington County	33/13			33/13
Missouri Unit 26, Wayne County	5/2			5/2
Missouri Unit 27, Crawford County	0.8/0.3			0.8/0.3
Wisconsin Unit 1, Door County		42/17	115/47	157/64
Wisconsin Unit 2, Door County		32/13	782/316	814/329
Wisconsin Unit 3, Door County			66/27	66/27
Wisconsin Unit 4, Door County			407/165	407/165
Wisconsin Unit 5, Door County		816/330	2277/922	3,093/1,252
Wisconsin Unit 6, Door County		200/81	30/12	230/93
Wisconsin Unit 7, Door County			352/142	352/142
Wisconsin Unit 8, Door County			70/28	70/28
Wisconsin Unit 9, Door County		684/277	509/206	1,193/483
Wisconsin Unit 10, Ozaukee County		1512/612	800/324	2,312/936
Wisconsin Unit 11, Door County			147/59	147/59

TABLE 1. CRITICAL HABITAT UNITS DESIGNATED FOR THE HINE'S EMERALD DRAGONFLY.—Continued

Unit	Federal land (acres/hectares)	State land (acres/hectares)	Local and private land (acres/hectares)	Total (acres/hectares) designated
Total	13,275.8/5,372.5	4,379/1,772	8,877/3,578	26,531.8/10,737.1

TABLE 2. AREAS DETERMINED TO MEET THE DEFINITION OF CRITICAL HABITAT FOR THE HINE'S EMERALD DRAGONFLY THAT ARE EXCLUDED FROM THE CRITICAL HABITAT DESIGNATION.

Geographic Area	Definitional areas (acres/hectares)	Area excluded from final designation (acres/hectares)	Reason*
Missouri Unit 2b, Dent County	19/8	All	2, 3
Missouri Unit 3, Dent County	18/7	All	2, 3
Missouri Unit 6, Morgan County	22/9	All	2, 3
Missouri Units 9 and 10, Reynolds County	329/133	All	2, 3
Missouri Unit 11b, Reynolds County	91/37	All	2, 3
Missouri Unit 12, Reynolds County	50/20	All	2, 3
Missouri Unit 13, Reynolds County	30/12	All	2, 3
Missouri Unit 14, Reynolds County	14/5	All	2, 3
Missouri Unit 15, Reynolds County	11/4	All	2, 3
Missouri Unit 16, Reynolds County	4/2	All	1
Missouri Units 17 and 18, Ripley County	224/91	All	1, 2, 3
Missouri Units 19 and 20, Ripley County	115/47	All	2, 3
Missouri Unit 22, Shannon County	32/13	All	1
Total	959/388	959/388	

*1= species specific management plan in place; 2= potential loss of partnership with private land owner; 3= existing strong working relationship between MDC and private land owners.

We present brief descriptions of all units, and reasons why they meet the definition of critical habitat for the Hine's emerald dragonfly, below.

Illinois Unit 1 —Will County, Illinois

Illinois Unit 1 consists of 419 ac (170 ha) in Will County, Illinois. This unit was occupied at the time of listing and includes the area where the Hine's emerald dragonfly was first collected in Illinois as well as one of the most recently discovered locations in the State. Adults and larvae are found within this unit. The unit consists of larval and adult habitat with a mosaic of upland and wetland communities, including fen, marsh, sedge meadow, and dolomite prairie. The wetlands are fed by groundwater that discharges into the unit from seeps and upwelling that have formed small flowing streamlet channels that contain crayfish burrows. Known threats to the PCEs in this unit that may require special management include ecological succession and encroachment of invasive species; illegal all-terrain vehicles; utility and road construction and maintenance; management and land use conflicts; and groundwater depletion, alteration, and contamination. The majority of the unit is a dedicated Illinois Nature Preserve that is managed and leased by the Forest Preserve District of Will County. Although a current management plan is in place, it does not specifically address the Hine's emerald dragonfly or its PCEs. This unit also consists of a utility easement that contains electrical transmission and distribution lines and a railroad line used to transport coal to a power plant. In addition, a remaining small portion of this unit is located between a sewage treatment facility and the Des Plaines River. This unit is planned to be incorporated in a HCP that is being pursued by a large partnership, which includes the landowners of this unit. Though we are pleased with the progress made to date on the HCP, it is still far from complete and too early to judge its ultimate outcome. This unit is essential to the conservation of the species because it provides habitat essential to accommodate populations of the species to meet the conservation principles of redundancy and resiliency throughout the species range.

Illinois Unit 2 —Will County, Illinois

Illinois Unit 2 consists of 439 ac (178 ha) in Will County, Illinois. This unit was occupied at the time of listing and has repeated adult and larval observations. The unit consists of larval and adult habitat with a mosaic of plant communities including fen, marsh, sedge meadow, and dolomite prairie. The wetlands are fed by groundwater that discharges into the unit from seeps and upwelling that have formed small flowing streamlet channels that contain crayfish burrows. Known threats to the

PCEs in this unit that may require special management include ecological succession and encroachment of invasive species; utility and road construction and maintenance; management and land use conflicts; and groundwater depletion, alteration, and contamination. The unit is privately owned and includes a utility easement that contains electrical transmission and distribution lines and a railroad line used to transport coal to a power plant. This unit is planned to be incorporated in a HCP that is being pursued by a large partnership, which includes the landowners of this unit. Though we are pleased with the progress made to date on the HCP, it is still far from complete and too early to judge its ultimate outcome. This unit is essential to the conservation of the species because it provides habitat essential to accommodate populations of the species to meet the conservation principles of redundancy and resiliency throughout the species range.

Illinois Unit 3 —Will County, Illinois

Illinois Unit 3 consists of 337 ac (136 ha) in Will County, Illinois. This unit was occupied at the time of listing and includes one of the first occurrences of Hine's emerald dragonfly known after the discovery of the species in Illinois. The unit consists of larval and adult habitat with a mosaic of upland and wetland communities including fen, sedge meadow, marsh, and dolomite prairie. The wetlands are fed by groundwater that discharges into the unit from seeps and upwelling that have formed small flowing streamlet channels that contain crayfish burrows. Known threats to the PCEs in this unit that may require special management include ecological succession and encroachment of invasive species; utility and road construction and maintenance; management and land use conflicts; and groundwater depletion, alteration, and contamination. The majority of the unit is a dedicated Illinois Nature Preserve that is owned and managed by the Forest Preserve District of Will County. Although a current management plan is in place, it does not specifically address the Hine's emerald dragonfly. This unit also consists of a utility easement that contains electrical transmission and distribution lines. This unit is planned to be incorporated in a HCP that is being pursued by a large partnership, which includes the landowners of this unit. Though we are pleased with the progress made to date on the HCP, it is still far from complete and too early to judge its ultimate outcome. This unit is essential to the conservation of the species because it provides habitat essential to accommodate populations of the species to meet the conservation principles of redundancy and resiliency throughout the species range.

Illinois Unit 4 —Will and Cook Counties, Illinois

Illinois Unit 4 consists of 607 ac (246 ha) in Will and Cook Counties in Illinois. This unit was occupied at the time of listing and includes one of the first occurrences of Hine's emerald dragonfly that was verified after the discovery of the species in Illinois. Repeated observations of both adult and larval Hine's emerald dragonfly have been made in this unit. The unit consists of larval and adult habitat with a mosaic of upland and wetland communities including fen, sedge meadow, and dolomite prairie. The wetlands are fed by groundwater that discharges into the unit from seeps and upwelling that have formed small flowing streamlet channels that contain crayfish burrows. Known threats to the PCEs in this unit that may require special management include ecological succession and encroachment of invasive species; utility and road construction and maintenance; management and land use conflicts; and groundwater depletion, alteration, and contamination. The unit is owned and managed by the Forest Preserve District of Will County and the Forest Preserve District of Cook County. Construction of the Interstate 355 extension began in 2005 and the corridor for this project intersects this unit at an elevation up to 67 ft (20 m) above the ground to minimize potential impacts to Hine's emerald dragonflies. This unit also consists of a utility easement that contains electrical transmission lines. This unit is essential to the conservation of the species because it provides habitat essential to accommodate populations of the species to meet the conservation principles of redundancy and resiliency throughout the species range.

Illinois Unit 5—DuPage County, Illinois

Illinois Unit 5 consists of 326 ac (132 ha) in DuPage County, Illinois. This unit was occupied at the time of listing and has repeated adult observations. The unit consists of larval and adult habitat with a mosaic of upland and wetland plant communities including fen, marsh, sedge meadow, and dolomite prairie. The wetlands are fed by groundwater that discharges into the unit from seeps and upwelling that have formed small flowing streamlet channels that contain crayfish burrows. Known threats to the PCEs in this unit that may require special management include ecological succession and encroachment of invasive species; utility and road construction and maintenance; management and land use conflicts; and groundwater depletion, alteration, and contamination. The majority of the unit is owned and managed by the Forest Preserve District of DuPage County. This unit also consists of a railroad line and a utility easement with electrical transmission lines. This unit is essential to the conservation of the species because it provides habitat essential to accommodate populations of the species to meet the conservation principles of redundancy and resiliency throughout the species range.

Illinois Unit 6— Cook County, Illinois

Illinois Unit 6 consists of 387 ac (157 ha) in Cook County, Illinois. This unit was occupied at the time Hine's emerald dragonfly was listed. There have been repeated adult observations as well as observations of teneral (newly emerged) adults and male territorial patrols suggesting that breeding is occurring within close proximity. The unit consists of larval and adult habitat with a mosaic of upland and wetland plant communities including fen, marsh, and sedge meadow. The wetlands are fed by groundwater that discharges into the unit from seeps that have formed small flowing streamlet channels that contain crayfish burrows. Known threats to the PCEs in this unit that may require special management include ecological succession and encroachment of invasive species; utility and road construction and maintenance; management and land use conflicts; and groundwater depletion, alteration, and contamination. The area within this unit is owned and managed by the Forest Preserve District of Cook County. This unit is essential to the conservation of the species because it provides habitat essential to accommodate populations of the species to meet the conservation principles of redundancy and resiliency throughout the species range.

Illinois Unit 7 —Will County, Illinois

Illinois Unit 7 consists of 480 ac (194 ha) in Will County, Illinois. This unit was occupied at the time of listing and includes one of the first occurrences of Hine's emerald dragonfly known after the discovery of the species in Illinois. Adults and larvae have been found within this unit. The unit consists of larval and adult habitat with a mosaic of upland and wetland communities including fen, marsh, sedge meadow, and dolomite prairie. The wetlands are fed by groundwater that discharges into

the unit from seeps and upwelling that have formed small flowing streamlet channels that contain crayfish burrows. Known threats to the PCEs in this unit that may require special management include ecological succession and encroachment of invasive species; utility and road construction and maintenance; management and land use conflicts; and groundwater depletion, alteration, and contamination. A portion of the unit is a dedicated Illinois Nature Preserve that is managed and owned by the ILDNR. This unit also consists of a railroad line and a utility easement that contains electrical distribution lines. This unit is planned to be incorporated in a HCP that is being pursued by a large partnership, which includes the landowners of this unit. Though we are pleased with the progress made to date on the HCP, it is still far from complete and too early to judge its ultimate outcome. This unit is essential to the conservation of the species because it provides habitat essential to accommodate populations of the species to meet the conservation principles of redundancy and resiliency throughout the species range.

Michigan Unit 1—Mackinac County, Michigan

Michigan Unit 1 contains 9,452 ac (3,825 ha) in Mackinac County in the Upper Peninsula of Michigan. This area was not known to be occupied at the time of listing. The unit contains at least four breeding areas for Hine's emerald dragonfly, with female oviposition or male territorial patrols observed at all breeding sites. Adults have also been observed foraging at multiple locations within this unit. The unit contains a mixture of fen, forested wetland, forested dune and swale, and upland communities that are important for Hine's emerald dragonfly breeding and foraging. The habitat is mainly spring-fed rich cedar swamp or northern fen. The breeding areas are open with little woody vegetation or are sparsely vegetated with northern white cedar *(Thuja occidentalis)*. Small shallow pools and seeps are common. Crayfish burrows are found in breeding areas. Corridors between the breeding areas make it likely that adult dragonflies could travel or forage between the breeding sites. The majority of this unit is owned by the Hiawatha National Forest. Known threats to the PCEs in this unit that may require special management include nonnative species invasion, woody encroachment, off-road vehicle use, logging, and utility and road right-of-way maintenance. Small portions of the unit are owned by the State of Michigan and private individuals. This unit is essential to the conservation of the species because it provides for the redundancy and resilience of populations in this portion of the species' range, where habitat is under threat from multiple factors.

Michigan Unit 2—Mackinac County, Michigan

Michigan Unit 2 consists of 3,511 ac (1,421 ha) in Mackinac County in the Upper Peninsula of Michigan. This area was not known to be occupied at the time of listing. The unit contains at least four breeding areas for Hine's emerald dragonfly, with female oviposition or male territorial patrols observed at all breeding sites. The unit contains a mixture of fen, forested wetland, forested dune and swale, and upland communities that are important for Hine's emerald dragonfly breeding and foraging. The breeding habitat varies in the unit. Most breeding areas are northern fen communities with sparse, woody vegetation (northern white cedar) that are probably spring-fed with seeps and marl pools present. One site is a spring-fed marl fen with sedge-dominated seeps and marl pools. Crayfish burrows are found in breeding areas. Corridors between the breeding areas, including a large forested dune and swale complex, make it likely that adult dragonflies could travel or forage between the breeding sites. The majority of this unit is owned by the Hiawatha National Forest and is designated as a Wilderness Area. Known threats to the PCEs in this unit that may require special management include nonnative species invasion, woody encroachment, and off-road vehicle use. About 1 percent of the unit is owned by private individuals. This unit is essential to the conservation of the species because it provides for the redundancy and resilience of populations in this portion of the species' range, where habitat is under threat from multiple factors.

Michigan Unit 3—Mackinac County, Michigan

Michigan Unit 3 consists of 50 ac (20 ha) in Mackinac County on Bois Blanc Island in Michigan. This area was not known to be occupied at the time of listing, but is currently occupied. The unit contains one breeding area for Hine's Emerald dragonfly with male territorial patrols and more than 10 adults observed in 1 year. The unit contains a small fen that is directly adjacent to the Lake Huron shoreline and forested dune and swale habitat that extends inland. The unit contains seeps and small fens, some areas with marl. Known threats to the PCEs in this unit include maintenance of utility and road right of way, and development of private lots and septic systems. Road work and culvert maintenance could change the hydrology of the unit. Approximately half of the unit is owned by the State of Michigan; the remaining portion of the area is owned by The Nature Conservancy or is subdivided private land. This unit is essential to the conservation of the species because it provides habitat essential to accommodate populations of the species to meet the conservation principles of redundancy and resiliency throughout the species range.

Michigan Unit 4—Presque Isle County, Michigan

Michigan Unit 4 consists of 959 ac (388 ha) in Presque Isle County in the northern lower peninsula of Michigan. This area was not known to be occupied at the time of listing but is currently occupied. The unit contains one breeding area for Hine's Emerald dragonfly, with female oviposition and adults observed in more than one year. The unit contains a fen with seeps and crayfish burrows present. The fen has stunted, sparse white cedar and marl flats dominated by beaked spike rush (*Eleocharis rostellata*). The threats to Hine's emerald dragonflies in this unit are unknown. The majority of this unit is a State park owned by the MIDNR, the remainder of the unit is privately owned. This unit is essential to the conservation of the species because it provides habitat essential to accommodate populations of the species to meet the conservation principles of redundancy and resiliency throughout the species' range.

Michigan Unit 5— Alpena County, Michigan

Michigan Unit 5 consists of 156 ac (63 ha) in Alpena County in the northern lower peninsula of Michigan. This area was not known to be occupied at the time of listing but is currently occupied. All PCEs for the Hine's emerald dragonfly are present in this unit. The unit contains one breeding area for Hine's Emerald dragonfly, with adults observed in more than one year and crayfish burrows present. The unit contains a mixture of northern fen and wet meadow habitat that are used by breeding and foraging Hine's emerald dragonfly. Known threats to the PCEs in this unit that may require special management include possible hydrological modification due to outdoor recreational vehicle use and a nearby roadway. The majority of the site is privately owned and the remaining acreage is owned by the State of Michigan. This unit is essential to the

conservation of the species because it provides habitat essential to accommodate populations of the species to meet the conservation principles of redundancy and resiliency throughout the species' range.

Michigan Unit 6—Alpena County, Michigan

Michigan Unit 6 consists of 220 ac (89 ha) in Alpena County in the northern lower peninsula of Michigan. This area was not known to be occupied at the time of listing but is currently occupied. The unit contains one breeding area for Hine's emerald dragonfly, with male territorial patrols and adults observed. The unit contains a marl fen with numerous seeps and rivulets important for breeding and foraging Hine's emerald dragonfly. Known threats to the PCEs in this unit that may require special management include possible hydrological modification due to outdoor recreational vehicle use and development. The unit is owned by a private group. This unit is essential to the conservation of the species because it provides habitat essential to accommodate populations of the species to meet the conservation principles of redundancy and resiliency throughout the species' range.

Missouri Unit 1—Crawford County, Missouri

Missouri Unit 1 consists of 90 ac (36 ha) in Crawford County, Missouri, and is under U.S. Forest Service ownership. This fen is in close proximity to the village of Billard and is associated with James Creek, west of Billard. This area was not known to be occupied at the time of listing. The fen provides surface flow, and includes larval habitat and adjacent cover for resting and predator avoidance. The fen and an adjacent open pasture provide foraging habitat that is surrounded by contiguous, closed-canopy forest. To date, only larvae have been documented from this locality. Known threats to the PCEs in this unit that may require special management include feral hogs and habitat fragmentation. This unit is essential to the conservation of the species because it provides for the redundancy and resilience of populations in this portion of the species' range, where habitat is under threat from multiple factors.

Missouri Unit 2a—Dent County, Missouri

Missouri Unit 2a is comprised of 15 ac (6 ha) in Dent County, Missouri, and is under U.S. Forest Service and private ownership. It is located north of the village of Howes Mill and in proximity to County Road (CR) 438. This area was not known to be occupied at the time of listing. The fen provides surface flow, and includes larval habitat and adjacent cover for resting and predator avoidance. The fen and an adjacent open old field provide foraging habitat and are surrounded by contiguous, closed-canopy forest. Adults have been documented from this unit. Known threats to the PCEs in this unit that may require special management include all-terrain vehicles, feral hogs, and habitat fragmentation. This unit is essential to the conservation of the species because it provides for the redundancy and resilience of populations in this portion of the species' range, where habitat is under threat from multiple factors. This unit includes the Forest Service-owned portion of Missouri Unit 2 as it was described in the July 26, 2006, proposal (71 FR 42442).

Missouri Unit 4—Dent County, Missouri

Missouri Unit 4 is owned and managed by the U.S. Forest Service, and consists of 14 ac (6 ha) in Dent County, Missouri. This fen is associated with a tributary of Watery Fork Creek in Fortune Hollow and is located east of the juncture of Highway 72 and Route MM. This area was not known to be occupied at the time of listing. The fen provides surface flow, and includes larval habitat and adjacent cover for resting and predator avoidance. The fen and adjacent old fields provide habitat for foraging and are surrounded by contiguous, closed-canopy forest. To date, only larvae have been documented from this locality. Known threats to the PCEs in this unit that may require special management include feral hogs and habitat fragmentation. This unit is essential to the conservation of the species because it provides for the redundancy and resilience of populations in this portion of the species' range, where habitat is under threat from multiple factors.

Missouri Unit 5—Iron County, Missouri

Missouri Unit 5 is comprised of 50 ac (20 ha) in Iron County, Missouri, and is under U.S. Forest Service ownership. This fen is adjacent to Neals Creek and Neals Creek Road, southeast of Bixby. This area was not known to be occupied at the time of listing. The fen consists of surface flow and is fed, in part, by a wooded slope north of Neals Creek Road. This small but high-quality fen provides larval habitat and adjacent cover for resting and predator avoidance. The fen, adjacent fields, and open road provide habitat for foraging and are surrounded by contiguous, closed-canopy forest. Both adults and larvae have been documented from this unit. Known threats to the PCEs in this unit that may require special management include all-terrain vehicles, feral hogs, road construction and maintenance, beaver dams, and habitat fragmentation. This unit is essential to the conservation of the species because it provides for the redundancy and resilience of populations in this portion of the species' range, where habitat is under threat from multiple factors.

Missouri Unit 7—Phelps County, Missouri

Missouri Unit 7 consists of 33 ac (13 ha) in Phelps County, Missouri, and is owned and managed by the U.S. Forest Service. This area was not known to be occupied at the time of listing. This fen is associated with Kaintuck Hollow and a tributary of Mill Creek, and is located south-southwest of the town of Newburg. This high-quality fen provides larval habitat and adjacent cover for resting and predator avoidance. The fen, adjacent fields, and open road provide habitat for foraging and are surrounded by contiguous, closed-canopy forest. Despite repeated sampling for adults and larvae, only one exuviae (shed larval exterior) has been documented from this unit. Known threats to the PCEs in this unit that may require special management include all-terrain vehicles, feral hogs, and habitat fragmentation. This unit is essential to the conservation of the species because it provides for the redundancy and resilience of populations in this portion of the species' range, where habitat is under threat from multiple factors.

Missouri Unit 8—Reynolds County, Missouri

Missouri Unit 8 includes Bee Fork West, a portion of the Bee Fork complex. The unit consists of 4 ac (2 ha) in Reynolds County, Missouri, and is owned and managed by the U.S. Forest Service. This locality is part of a series of three fens adjacent to Bee Fork Creek, extending from east-southeast of Bunker east to near the bridge on Route TT over Bee Fork Creek. This area was not known to be occupied at the time of listing. The fen provides surface flow and is fed, in part, by a small spring that originates from a wooded ravine just north of the county road bordering the northernmost fen in the complex. The unit, in conjunction with the rest of the complex (Units 9 and 10, which are excluded from this final designation), is one of the highest quality representative examples of an Ozark fen in the State. The fen provides larval habitat and adjacent cover for resting and predator

avoidance. The fen, adjacent fields, and open road provide habitat for foraging and are surrounded by contiguous, closed-canopy forest. Both adults and larvae have been documented from this unit. The entire complex is an extremely important focal area for conservation actions that benefit Hine's emerald dragonfly. It is likely that the species uses Bee Fork Creek as a connective corridor between adjacent components of the complex. Known threats to the PCEs in this unit that may require special management include feral hogs, ecological succession, utility maintenance, application of herbicides, and habitat fragmentation. This unit is essential to the conservation of the species because it provides for the redundancy and resilience of populations in this portion of the species' range, where habitat is under threat from multiple factors.

Missouri Unit 11a—Reynolds County, Missouri

Missouri Unit 11a is under U.S. Forest Service ownership and consists of 22 ac (9 ha in Reynolds County, Missouri. The unit is a series of small fen openings adjacent to a tributary of Bee Fork Creek, and is located east of the intersection of Route TT and Highway 72, extending north to the Bee Fork Church on County Road 854. This area was not known to be occupied at the time of listing. This unit contains a portion of one of the highest quality representative examples of an Ozark fen in the State. The fen provides surface flow and includes larval habitat and adjacent cover for resting and predator avoidance. The fen, adjacent fields, and open path provide habitat for foraging and are surrounded by contiguous, closed-canopy forest. Adults have been documented from this unit. Known threats to the PCEs in this unit that may require special management include feral hogs, beaver dams, and habitat fragmentation. This unit is essential to the conservation of the species because it provides for the redundancy and resilience of populations in this portion of the species' range, where habitat is under threat from multiple factors. This unit includes the Forest Service-owned portion of Missouri Unit 11 as it was described in the July 26, 2006 proposal (71 FR 42442).

Missouri Unit 21—Ripley County, Missouri

Missouri Unit 21 is a small fen and consists of 6 ac (2 ha) in Ripley County, Missouri. It is under U.S. Forest Service ownership and is located west of Doniphan. This area was not known to be occupied at the time of listing. The fen provides surface flow and includes larval habitat and adjacent cover for resting and predator avoidance. The fen and adjacent open, maintained county road provide habitat for foraging and are surrounded by contiguous, closed-canopy forest. To date, only larvae have been documented from this locality. Known threats to the PCEs in this unit that may require special management include feral hogs, all-terrain vehicles, equestrian use, and habitat fragmentation. This unit is essential to the conservation of the species because it provides for the redundancy and resilience of populations in this portion of the species' range, where habitat is under threat from multiple factors.

Missouri Units 23 and 24—Washington County, Missouri

Missouri Units 23 and 24 comprise the Towns Branch and Welker Fen complex and consist of 75 ac (31 ha) near the town of Palmer in Washington County, Missouri. The complex consists of two fens that are under U.S. Forest Service ownership. This area was not known to be occupied at the time of listing. These fens provide surface flow and include larval habitat and adjacent cover for resting and predator avoidance. The fens and adjacent open, maintained county roads provide habitat for foraging and are surrounded by contiguous, closed-canopy forest. To date, only larvae have been documented from this complex. Known threats to the PCEs in this unit that may require special management include feral hogs, all-terrain vehicles, road construction and maintenance, and habitat fragmentation. This unit is essential to the conservation of the species because it provides for the redundancy and resilience of populations in this portion of the species' range, where habitat is under threat from multiple factors.

Missouri Unit 25—Washington County, Missouri

Missouri Unit 25 consists of 33 ac (13 ha) and is located northwest of the town of Palmer in Washington County, Missouri. The fen is associated with Snapps Branch, a tributary of Hazel Creek, and is owned and managed by the U.S. Forest Service. This area was not known to be occupied at the time of listing. The fen provides surface flow, and includes larval habitat and adjacent cover for resting and predator avoidance. The fen and adjacent old logging road with open canopy provide habitat for foraging and are surrounded by contiguous, closed-canopy forest. To date, only larvae have been documented from this locality. Known threats to the PCEs in this unit that may require special management include feral hogs, all-terrain vehicles, and habitat fragmentation. This unit is essential to the conservation of the species because it provides for the redundancy and resilience of populations in this portion of the species' range, where habitat is under threat from multiple factors.

Missouri Unit 26—Wayne County, Missouri

Missouri Unit 26 is owned and managed by the U.S. Forest Service and consists of 5 ac (2 ha). This small fen is located near Williamsville and is associated with Brushy Creek in Wayne County, Missouri. This area was not known to be occupied at the time of listing. The fen provides surface flow and includes larval habitat and adjacent cover for resting and predator avoidance. The fen and adjacent logging road with open canopy provide habitat for foraging and are surrounded by contiguous, closed-canopy forest. To date, only larvae have been documented from this unit. Known threats to the PCEs in this unit that may require special management include feral hogs, all-terrain vehicles, and habitat fragmentation. This unit is essential to the conservation of the species because it provides for the redundancy and resilience of populations in this portion of the species' range, where habitat is under threat from multiple factors.

Missouri Unit 27—Crawford County, Missouri

Missouri Unit 27 is owned and managed by the U.S. Forest Service and is approximately 3.3 miles (5.2 kilometers) west and southwest of Brazil , Missouri, or about 0.3 mile (0.4 kilometer) southeast of Center Post Church in Crawford County, Missouri. The unit consists of less than 1 ac (0.8 ac (0.3 ha)). This unit was not known to be occupied at the time of listing. Adult Hine's emerald dragonflies have been observed at the site and successful breeding was confirmed (Vogt 2008, p. 10). Surface water consists primarily of seepage pools and small rivulets. Parts of the fen include an open field with scattered shrubs and eastern red cedar *(Juniperus virginiana)* that is likely used as a foraging area by adults. Known threats to the PCEs that may require special management or protections include invasive plant species, feral hogs, all-terrain vehicles, and equestrian use. This unit is essential to the conservation of the species because it provides for the redundancy and resilience of populations in this portion of the species' range, where habitat is under threat from multiple factors.

Wisconsin Unit 1—Door County, Wisconsin

Wisconsin Unit 1 consists of 157 acres (64 hectares) on Washington Island in Door County, Wisconsin. This unit was not known to be occupied at the time of listing but is currently occupied. Three adults were observed at this site in July 2000, as well as male territorial patrols and female ovipositioning behavior; crayfish burrows, seeps, and rivulet streams are present. The unit consists of larval and adult habitat including boreal rich fen, northern wet-mesic forest, emergent aquatic marsh on marl substrate, and upland forest. Known threats to the PCEs that may require special management or protections include loss of habitat due to residential development, invasive plants, alteration of the hydrology of the marsh (low Lake Michigan water levels can result in drying of the marsh), contamination of groundwater, and logging. A portion of one State Natural Area owned by the Wisconsin Department of Natural Resources occurs within the unit; the remainder of the unit is privately owned. This unit is essential to the conservation of the species because it provides habitat essential to accommodate populations of the species to meet the conservation principles of redundancy and resiliency throughout the species' range.

Wisconsin Unit 2—Door County, Wisconsin

Wisconsin Unit 2 consists of 814 acres (329 hectares) in Door County, Wisconsin. This unit was occupied at the time of listing. The first adult recorded in Wisconsin was from this unit in 1987. Exuviae and numerous male and female adults have been observed in this unit. The unit, which encompasses much of the Mink River Estuary, contains larval and adult habitat including wet-mesic and mesic upland forest (including white cedar wetlands), emergent aquatic marsh, and northern sedge meadows. Known threats to the PCEs that may require special management include loss of habitat due to residential development, invasive plants, alteration of wetland hydrology, contamination of the surface and ground water, and logging. The majority of the land in this unit is owned by The Nature Conservancy and other private landowners with a small portion of the unit owned by the State. Forest areas with 100-percent canopy that occur greater than 328 ft (100 m) from the open forest edge of the unit are not considered critical habitat.

Wisconsin Units 3, 4, 5, 6, and 7—Door County, Wisconsin

Wisconsin Units 3 through 7 are located in Door County, Wisconsin and comprise the following areas: Unit 3 consists of 66 ac (27 ha); Unit 4 consists of 407 ac (165 ha); Unit 5 consists of 3,093 ac (1,252 ha); Unit 6 consists of 230 ac (93 ha); and Unit 7 consists of 352 ac (142 ha). Units 3, 5, 6, and 7 were occupied at the time of listing. Unit 4 was not known to be occupied at the time of listing but is currently occupied. All of the units are within 2.5 mi (4 km) of at least one other unit, making exchange of dispersing adults likely among units. Adult numbers recorded from these units varies. Generally fewer than eight adults have been observed at Units 4, 6, and 7 during any one season. A study by Kirk and Vogt (1995, pp. 13–15) reported a total adult population in the thousands in Units 3 and 5. Male and female adults have been observed in all the units. Adult dragonfly swarms commonly occur in Unit 5. Swarms ranging in size from 16 to 275 dragonflies and composed predominantly of Hine's emerald dragonflies were recorded from a total of 20 sites in and near Units 5 and 6 during 2001 and 2002 (Zuehls 2003, pp. iii, 19, 21, and 43). In addition, the following behaviors and life stages of Hine's emerald dragonflies have been recorded from the various units: Unit 3—mating behavior, male patrolling behavior, crayfish burrows, exuviae, and female ovipositioning (egg-laying); Unit 4—larvae and exuviae; Unit 5— teneral adults, mating behavior, male patrolling, larvae, female ovipositioning (egg-laying), and crayfish burrows; and Unit 6—mating behavior, evidence of ovipositioning, and crayfish burrows.

Unit 5 contains two larval areas, while Units 3, 4, 5, 6, and 7 each contains one larval area. Units 3 through 7 all include adult habitat, which varies from unit to unit but generally includes boreal rich fen, northern wet-mesic forest (including white cedar wetlands), upland forest, shrub-scrub wetlands, emergent aquatic marsh, and northern sedge meadow. Known threats to the PCEs that may require special management include loss of habitat due to residential and commercial development, ecological succession, invasive plants, utility and road construction and maintenance, alteration of the hydrology of wetlands (for example, via quarrying or beaver impoundments), contamination of the surface and ground water (for example, via pesticide use at nearby apple/cherry orchards (Unit 7)), agricultural practices, and logging. The majority of the land in the unit is conservation land in public and private ownership; the remainder of the land is privately owned. Forest areas with 100 percent closed canopy that occur greater than 328 ft (100 m) from the open forest edge of the unit but that are too small for us to map out are not considered critical habitat. Unit 4 is essential to the conservation of the species because it provides habitat essential to accommodate populations of the species to meet the conservation principles of redundancy and resiliency throughout the species' range.

Wisconsin Unit—8 Door County, Wisconsin

Wisconsin Unit 8 consists of 70 ac (28 ha) in Door County, Wisconsin and includes Arbter Lake. This unit was not known to be occupied at the time of listing but is currently occupied. Numerous male and female adults as well as ovipositing has been observed in this unit; crayfish burrows and rivulets are present. The unit consists of larval and adult habitat with a mix of upland and lowland forest, and calcareous bog and fen communities. Known threats to the PCEs that may require special management include encroachment of larval habitat by invasive plants and alteration of local groundwater hydrology (for example, via quarrying activities), contamination of surface and groundwater, and logging. Land in this unit is owned by The Nature Conservancy and other private landowners. This unit is essential to the conservation of the species because it provides habitat essential to accommodate populations of the species to meet the conservation principles of redundancy and resiliency throughout the species' range.

Wisconsin Unit—9 Door County, Wisconsin

Wisconsin Unit 9 consists of 1,193 ac (483 ha) in Door County, Wisconsin associated with Keyes Creek. This unit was not known to be occupied at the time of listing but is currently occupied. Numerous male and female adults have been seen in this unit; ovipositing females have been observed. Crayfish burrows are present. The unit consists of larval and adult habitat with a mix of upland and lowland forest, scrub-shrub wetlands, and emergent marsh. Known threats to the PCEs that may require special management or protections are loss and degradation of habitat due to development, groundwater depletion or alteration, surface and groundwater contamination, alteration of the hydrology of the wetlands (for example, via stream impoundment, road

construction and maintenance, and logging). The majority of the land in this unit is a State Wildlife Area owned by the Wisconsin Department of Natural Resources with the remainder of the land privately owned. Forest areas with 100 percent closed canopy that occur greater than 328 ft (100 m) from the open forest edge of the unit are not considered critical habitat. This unit is essential to the conservation of the species because it provides habitat essential to accommodate populations of the species to meet the conservation principles of redundancy and resiliency throughout the species' range.

Wisconsin Unit—10 Ozaukee County, Wisconsin

Wisconsin Unit 10 consists of 2,312 ac (936 ha) in Ozaukee County, Wisconsin, and includes much of Cedarburg Bog. This unit was not known to be occupied at the time of listing but is currently occupied. Known threats to the PCEs that may require special management or protections are loss and degradation of habitat due to development, groundwater depletion or alteration, surface and groundwater contamination, and alteration of the hydrology of the wetlands. Numerous male and female adults have been seen in this unit including teneral adults; ovipositing females have been observed, as well as larvae. Crayfish burrows are present. The unit consists of larval and adult habitat with a mix of shrub-carr, "patterned" bog composed of forested ridges and sedge mats, wet meadow, and lowland forest. The majority of area in the unit is State land and the remainder of the land is privately owned. This unit is essential to the conservation of the species because it provides habitat essential to accommodate populations of the species to meet the conservation principles of redundancy and resiliency throughout the species' range.

Wisconsin Unit 11—Door County, Wisconsin

Wisconsin Unit 11 consists of approximately 147 acres (59 hectares) in Door County, Wisconsin. This unit was not known to be occupied at the time of listing but is currently occupied. Known threats to the PCEs that may require special management or protections are loss and degradation of habitat due to development, groundwater depletion or alteration, surface and groundwater contamination, and alteration of the hydrology of the wetlands. Adults have been observed in this unit over multiple years. Male patrolling behavior has been observed, and crayfish burrows are present. The unit consists of larval and adult habitat, including a floating sedge mat and lowland and upland conifer and deciduous forest. All land in the unit is privately owned. The northern portion of the unit is owned by the Door County Land Trust. This unit is essential to the conservation of the species because it provides for the redundancy and resilience of populations in this portion of the species' range, where habitat is under threat from multiple factors.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out are not likely to destroy or adversely modify critical habitat. Decisions by the Fifth and Ninth Circuit Courts of Appeals have invalidated our definition of "destruction or adverse modification" (50 CFR 402.02) (see *Gifford Pinchot Task Force* v. *U.S. Fish and Wildlife Service*, 378 F. 3d 1059 (9th Cir 2004) and *Sierra Club* v. *U.S. Fish and Wildlife Service et al.*, 245 F.3d 434, 442F (5th Cir 2001)), and we do not rely on this regulatory definition when analyzing whether an action is likely to destroy or adversely modify critical habitat. Under the statutory provisions of the Act, we determine destruction or adverse modification on the basis of whether, with implementation of the proposed Federal action, the affected critical habitat would remain functional (or retain the current ability for the PCEs to be functionally established) to serve its intended conservation role for the species (Service 2004c, p. 3).

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to evaluate their actions with respect to any species that is endangered or threatened and with respect to its critical habitat, if any is proposed or designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402.

Section 7(a)(4) of the Act requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. Conference reports provide conservation recommendations to assist the agency in eliminating conflicts that may be caused by the proposed action. We may issue a formal conference report if requested by a Federal agency. Formal conference reports on proposed critical habitat contain an opinion that is prepared according to 50 CFR 402.14, as if critical habitat were designated. We may adopt the formal conference report as the biological opinion when the critical habitat is designated, if no substantial new information or changes in the action alter the content of the opinion (see 50 CFR 402.10(d)). The conservation recommendations in a conference report or opinion are advisory.

If a species is listed or critical habitat is designated, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a 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 designated critical habitat; or

(2) A biological opinion for Federal actions that may affect, and are likely to adversely affect, listed species or designated critical habitat.

An exception to the concurrence process referred to in (1) above occurs in consultations involving National Fire Plan projects. In 2004, the U.S. Forest Service and the BLM reached agreements with the Service to streamline a portion of the section 7 consultation process (BLM–ACA 2004, pp. 1–8; FS–ACA 2004, pp. 1–8). The agreements allow the U.S. Forest Service and the BLM the opportunity to make "not likely to adversely affect" (NLAA) determinations for projects implementing the National Fire Plan. Such projects include prescribed fire, mechanical fuels treatments (thinning and removal of fuels to prescribed objectives), emergency stabilization, burned area rehabilitation, road maintenance and operation activities, ecosystem restoration, and culvert replacement actions. The U.S. Forest Service and the BLM must insure staff are properly trained, and both agencies must submit monitoring reports to the Service to determine if the procedures are being implemented properly and that effects on endangered species and their habitats are being properly evaluated. As a result, we do not believe the alternative consultation processes being implemented as a result of the National Fire Plan will differ significantly from those consultations being conducted by the Service.

If we issue a biological opinion concluding that a project is likely to jeopardize the continued existence of a listed species or destroy or adversely modify critical habitat, we also provide reasonable and prudent alternatives to the project, if any are identifiable. We define "reasonable and prudent alternatives" at 50 CFR 402.02 as alternative actions identified during consultation that:

- Can be implemented in a manner consistent with the intended purpose of the action,
- Can be implemented consistent with the scope of the Federal agency's legal authority and jurisdiction,
- Are economically and technologically feasible, and
- Would, in the Director's opinion, avoid jeopardizing the continued existence of the listed species or destroying or adversely modifying its critical habitat.

Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where we have listed a new species or subsequently designated critical habitat that may be affected and the Federal agency has retained discretionary involvement or control over the action (or the agency's discretionary involvement or control is authorized by law). Consequently, Federal agencies may sometimes need to request reinitiation of consultation with us on actions for which formal consultation has been completed, if those actions with discretionary involvement or control may affect subsequently listed species or designated critical habitat.

Federal activities that may affect the Hine's emerald dragonfly or its designated critical habitat will require section 7(a)(2) 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 under section 10(a)(1)(B) of the Act from the Service) or involving some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency) will also be subject to the section 7(a)(2) 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(a)(2) consultations.

Application of the Jeopardy and Adverse Modification Standard

Jeopardy Standard

Currently, the Service applies an analytical framework for Hine's emerald dragonfly jeopardy analyses that relies heavily on the importance of known populations to the species' survival and recovery. The section 7(a)(2) of the Act analysis is focused not only on these populations but also on the habitat conditions necessary to support them.

The jeopardy analysis usually expresses the survival and recovery needs of Hine's emerald dragonfly in a qualitative fashion without making distinctions between what is necessary for survival and what is necessary for recovery. Generally, the jeopardy analysis focuses on the range-wide status of Hine's emerald dragonfly, the factors responsible for that condition, and what is necessary for each species to survive and recover. An emphasis is also placed on characterizing the conditions of Hine's emerald dragonfly in the area affected by the proposed Federal action and the role of affected populations in the survival and recovery of the species. That context is then used to determine the significance of adverse and beneficial effects of the proposed Federal action and any cumulative effects for purposes of making the jeopardy determination.

Adverse Modification Standard

The key factor related to the adverse modification determination is whether, with implementation of the proposed Federal action, the affected critical habitat would continue to serve its intended conservation role for the species, or would retain its current ability for the PCEs to be functionally established. Activities that may destroy or adversely modify critical habitat are those that alter the physical and biological features to an extent that appreciably reduces the conservation value of critical habitat for the Hine's emerald dragonfly. Generally, the conservation role of the dragonfly's critical habitat units is to support viable populations throughout this species' range.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe in any proposed or final regulation that designates critical habitat those 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 Hine's emerald dragonfly include, but are not limited to, the following:

(1) Actions that would significantly increase succession and encroachment of invasive species. Such activities could include, but are not limited to, release of nutrients and road salt (NaCl; unless not using road salt would result in an increased degree of threat to human safety and alternative de-icing methods are not feasible) into the surface water or connected groundwater at a point source or by dispersed release (non-point source), and introduction of invasive species through human activities in the habitat. These activities can result in conditions that are favorable to invasive species and would provide an ecological advantage over native vegetation, fill rivulets and seepage areas occupied by Hine's emerald dragonfly larvae; reduce detritus that provides cover for larvae; and reduce flora and fauna necessary for the species to complete its life cycle. Actions that would increase succession and encroachment of invasive species could negatively impact the Hine's emerald dragonfly and the species' habitat.

(2) Actions that would significantly increase sediment deposition within the rivulets and seepage areas occupied by Hine's emerald dragonfly larvae. Such activities could include, but are not limited to, excessive sedimentation from livestock grazing, road construction, channel alteration, timber harvest, all-terrain vehicle use, equestrian use, feral pig introductions, maintenance of rail lines, and other watershed and floodplain disturbances. These activities could eliminate or reduce the habitat necessary for the growth and reproduction of Hine's emerald dragonflies and their prey base by increasing sediment deposition to levels that would adversely affect the organisms' ability to complete their life cycles. Actions that would significantly increase sediment deposition within rivulets and seepage areas could negatively impact the Hine's emerald dragonfly and the species' habitat.

(3) Actions that would significantly alter water quantity and quality. Such activities could include, but are not limited to, groundwater extraction; alteration of surface and subsurface areas within groundwater recharge areas; and release of chemicals, biological pollutants, or heated effluents

into the surface water or groundwater recharge area at a point source or by dispersed release (non-point source). These activities could alter water conditions such that the conditions are beyond the tolerances of the Hine's emerald dragonfly and its prey base, and result in direct or cumulative adverse effects to these individuals and their life cycles. Actions that would significantly alter water quantity and quality could negatively impact the Hine's emerald dragonfly and the species' habitat.

(4) Actions that would significantly alter stream, streamlet, and fen channel morphology or geometry. Such activities could include but are not limited to, all-terrain vehicle use, equestrian use, feral pig introductions, channelization, impoundment, road and bridge construction, mining, and loss of emergent vegetation. These activities may lead to changes in water flow velocity, temperature, and quantity that could negatively impact the Hine's emerald dragonfly and their prey base and/or habitats. Actions that would significantly alter channel morphology or geometry could negatively impact the Hine's emerald dragonfly and the species' habitat.

(5) Actions that would fragment habitat and impact adult foraging or dispersal. Such activities could include, but are not limited to, road construction, destruction or fill of wetlands, and high-speed railroad and vehicular traffic. These activities may adversely affect dispersal, resulting in reduced fitness and genetic exchange within populations and potential mortality of individuals. Actions that would fragment habitat and impact adult foraging or dispersal could negatively impact the Hine's emerald dragonfly and the species' habitat.

Exemptions and Exclusions

Application of Section 4(a)(3) of the Act

The National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108–136) amended the Act to limit areas eligible for designation as critical habitat. Specifically, section 4(a)(3)(B)(i) of the Act (16 U.S.C. 1533(a)(3)(B)(i)) now provides: "The Secretary shall not designate as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an integrated natural resources management plan (INRMP) prepared under section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation."

There are no Department of Defense lands with a completed INRMP within the proposed critical habitat designation. Therefore, there are no specific lands that meet the criteria for being exempted from the designation of critical habitat under section 4(a)(3) of the Act.

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 an area as critical habitat will result in the extinction of the species. The Congressional record is clear that, in making a determination under the section, the Secretary has broad discretion as to which factors to use and how much weight will be given to any factor.

In the following sections, we address a number of general issues that are relevant to the exclusions made in this final rule. In addition, we conducted an economic analysis of the impacts of the proposed critical habitat designation and related factors, which were available for public review and comment. Based on public comment on that document, the proposed designation itself, and the information in the final economic analysis, the Secretary may exclude from critical habitat additional areas beyond those identified in this assessment under the provisions of section 4(b)(2) of the Act. This is also addressed in our implementing regulations at 50 CFR 424.19.

Economic Analysis

Section 4(b)(2) of the Act requires us to designate critical habitat on the basis of the best scientific information available and to consider the economic and other relevant impacts of designating a particular area as critical habitat. We may exclude areas from critical habitat upon a determination that the benefits of such exclusions outweigh the benefits of specifying such areas as critical habitat. We cannot exclude such areas from critical habitat when such exclusion will result in the extinction of the species concerned. Following the publication of the proposed critical habitat designation, we conducted an economic analysis to estimate the potential economic effect of the designation. The draft analysis was made available for public review on March 20, 2007. We accepted comments on the draft analysis until April 3, 2007.

The primary purpose of the economic analysis is to estimate the potential economic impacts associated with the designation of Hine's emerald dragonfly critical habitat. This information is intended to assist the Secretary in making decisions about whether the benefits of excluding particular areas from the designation outweigh the benefits of including those areas in the designation. This economic analysis considers the economic efficiency effects that may result from the designation, including habitat protections that may be coextensive 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. This information can be used by the Secretary to assess whether the effects of the designation might unduly burden a particular group or economic sector.

This 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, local zoning laws, State and natural resource laws, and enforceable management plans and best management practices applied by other State and Federal agencies. Economic impacts that result from these types of protections are not included in the analysis as they are considered to be part of the regulatory and policy baseline.

The draft economic analysis forecasts the costs associated with conservation activities for the Hine's emerald dragonfly would range from $16.8 million to $46.7 million in undiscounted dollars over the next 20 years. In discounted terms, potential economic costs are estimated to be $10.5 to $25.2 million (using a 7-percent discount rate). In annualized terms, potential costs are expected to range from $0.9 to $2.4 million annually (annualized at 7 percent). The Service did not exclude any areas based on economics.

A copy of the economic analysis with supporting documents is included in our administrative record and may be obtained by contacting the Field Supervisor, Chicago, Illinois Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**) or by

downloading from the Internet at *http://www.fws.gov/midwest/Endangered*.

Benefits of Designating Critical Habitat

Regulatory Benefits

The consultation provisions under section 7(a) of the Act constitute the regulatory benefits of critical habitat. As discussed above, Federal agencies must consult with us on actions that may affect critical habitat and must avoid destroying or adversely modifying critical habitat. Prior to our designation of critical habitat, Federal agencies consult with us on actions that may affect a listed species and must refrain from undertaking actions that are likely to jeopardize the continued existence of the species. Thus, the analysis of effects to critical habitat is a separate and different analysis from that of the effects to the species. The difference in outcomes of these two analyses represents the regulatory benefit of critical habitat. For some species, and in some locations, the outcome of these analyses will be similar, because effects on habitat will often result in effects on the species. However, the regulatory standard is different: the jeopardy analysis looks at the action's impact on survival and recovery of the species, while the adverse modification analysis looks at the action's effects on the designated habitat's contribution to the species' conservation. This will, in many instances, lead to different results and different regulatory requirements.

Once an agency determines that consultation under section 7 of the Act is necessary, the process may conclude informally when we concur in writing that the proposed Federal action is not likely to adversely affect critical habitat. However, if we determine through informal consultation that adverse impacts are likely to occur, then we would initiate formal consultation, which would conclude when we issue a biological opinion on whether the proposed Federal action is likely to result in destruction or adverse modification of critical habitat.

For critical habitat, a biological opinion that concludes in a determination of no destruction or adverse modification may contain discretionary conservation recommendations to minimize adverse effects to PCEs, but it would not contain any mandatory reasonable and prudent measures or terms and conditions. We suggest reasonable and prudent alternatives to the proposed Federal action only when our biological opinion results in an adverse modification conclusion.

In providing the framework for the consultation process, the previous section applies to all the following discussions of benefits of inclusion or exclusion of critical habitat.

The process of designating critical habitat as described in the Act requires that the Service identify those lands on which are found the physical or biological features essential to the conservation of the species which may require special management considerations or protection. In identifying those lands, the Service must consider the recovery needs of the species, such that the habitat that is identified, if managed, could provide for the survival and recovery of the species. Furthermore, once critical habitat has been designated, Federal agencies must consult with the Service under section 7(a)(2) of the Act to ensure that their actions will not adversely modify designated critical habitat or jeopardize the continued existence of the species. As noted in the Ninth Circuit's *Gifford Pinchot* decision, the Court ruled that the jeopardy and adverse modification standards are distinct, and that adverse modification evaluations require consideration of impacts to the recovery of species. Thus, through the section 7(a)(2) consultation process, critical habitat designations provide recovery benefits to species by ensuring that Federal actions will not destroy or adversely modify designated critical habitat.

The identification of lands that are necessary for the conservation of the species can assist in the recovery planning for a species, and therefore is beneficial. The process of proposing and finalizing a critical habitat rule provides the Service with the opportunity to determine lands essential for conservation as well as identify the physical and biological features essential for conservation on those lands. The designation process includes peer review and public comment on the identified features and lands. This process is valuable to land owners and managers in developing conservation management plans for identified lands, as well as any other occupied habitat or suitable habitat that may not have been included in the Service's determination of essential habitat.

However, the designation of critical habitat does not require that any management or recovery actions take place on the lands included in the designation. Even in cases where consultation has been initiated under section 7(a)(2) of the Act, the end result of consultation is to avoid jeopardy to the species and adverse modification of its critical habitat, but not specifically to manage remaining lands or institute recovery actions on remaining lands. Conversely, management plans institute intentional, proactive actions over the lands they encompass to remove or reduce known threats to a species or its habitat and, therefore, implement recovery actions. We believe that the conservation of a species and its habitat that could be achieved through the designation of critical habitat, in some cases, is less than the conservation that could be achieved through the implementation of a management plan that includes species-specific provisions and considers enhancement or recovery of listed species as the management standard over the same lands. Consequently, implementation of any HCP or management plan that considers enhancement or recovery as the management standard will often provide as much or more benefit than a consultation for critical habitat designation conducted under the standards required by the Ninth Circuit in the *Gifford Pinchot* decision.

Educational Benefits

A benefit of including lands in critical habitat is that designation of critical habitat serves to educate landowners, State and local governments, and the public regarding the potential conservation value of an area. This helps focus and promote conservation efforts by other parties by clearly delineating areas of high conservation value for the Hine's emerald dragonfly. Because the critical habitat process includes multiple public comment periods, opportunities for public hearings, and announcements through local venues, including radio and other news sources, the designation of critical habitat provides numerous occasions for public education and involvement. Through these outreach opportunities, land owners, State agencies, and local governments can become more aware of the plight of listed species and conservation actions needed to aid in species recovery. Through the critical habitat process, State agencies and local governments may become aware of areas that could be conserved under State laws, local ordinances, or specific management plans.

Conservation Partnerships on Non-Federal Lands

Most federally listed species in the United States will not recover without cooperation of non-Federal landowners. More than 60 percent of the United States is privately owned (National Wilderness Institute 1995), and at least 80 percent of endangered or threatened species occur either partially or solely

on private lands (Crouse *et al.* 2002, p. 720). Stein *et al.* (1995, p. 400) found that only about 12 percent of listed species were found almost exclusively on Federal lands (90 to 100 percent of their known occurrences restricted to Federal lands) and that 50 percent of federally listed species are not known to occur on Federal lands at all.

Given the distribution of listed species with respect to land ownership, conservation of listed species in many parts of the United States is dependent upon working partnerships with a wide variety of entities and the voluntary cooperation of many non-Federal landowners (Wilcove and Chen 1998, p. 1407; Crouse *et al.* 2002, p. 720; James 2002, p. 271). Building partnerships and promoting voluntary cooperation of landowners are essential to our understanding the status of species on non-Federal lands, and necessary for us to implement recovery actions such as reintroducing listed species and restoring and protecting habitat.

Many non-Federal landowners derive satisfaction from contributing to endangered species recovery. We promote these private-sector efforts through the Department of the Interior's Cooperative Conservation philosophy. Conservation agreements with non-Federal landowners (HCPs, safe harbor agreements, other conservation agreements, easements, and State and local regulations) enhance species conservation by extending species protections beyond those available through section 7 consultations. We encouraged non-Federal landowners to enter into conservation agreements, based on the view that we can achieve greater species conservation on non-Federal land through such partnerships than we can through regulatory methods (61 FR 63854; December 2, 1996).

Many private landowners, however, are wary of the possible consequences of attracting endangered species to their property. Evidence suggests that some regulatory actions by the Federal Government, while well-intentioned and required by law, can (under certain circumstances) have unintended negative consequences for the conservation of species on private lands (Wilcove *et al.* 1996, pp.5–6; Bean 2002, pp. 2–3; Conner and Mathews 2002, pp. 1–2; James 2002, pp. 270–271; Koch 2002, pp. 2–3; Brook *et al.* 2003, pp. 1639–1643). Some landowners fear a decline in their property value due to real or perceived restrictions on land-use options where threatened or endangered species are found. Consequently, harboring endangered species is viewed by some landowners as a liability. This perception results in anti-conservation incentives, because maintaining habitats that harbor endangered species represents a risk to future economic opportunities (Main *et al.* 1999, pp. 1264–1265; Brook *et al.* 2003, pp. 1644–1648). We attempt to ease these concerns through communication and outreach with landowners; however, we recognize that these efforts are not always successful.

The purpose of designating critical habitat is to contribute to the conservation of threatened and endangered species and the ecosystems upon which they depend. In cases where conservation actions are currently employed but anxiety regarding the potential impacts of critical habitat designation exists, we may find that excluding non-Federal lands from critical habitat designation results in improved partnerships and conservation efforts.

Exclusions Under Section 4(b)(2) of the Act

We are excluding Missouri units 2b, 3, 6, 9, 10, 11b, 12–20, and 22 from the final designation of critical habitat for the Hine's emerald dragonfly because we believe that the benefits of excluding these specific areas from the designation outweigh the benefits of inclusion of the specific areas. The conservation actions outlined in a Missouri Hine's Emerald Dragonfly Recovery Plan (Missouri Department of Conservation 2007f) and currently being implemented for the Hine's emerald dragonfly on Missouri State-owned and on private lands through MDC's coordination with private landowners in Missouri provide greater conservation benefit to the species than would designating these areas as critical habitat. We believe that the exclusion of these areas from the final designation of critical habitat will not result in the extinction of the Hine's emerald dragonfly. We reviewed information concerning other units to determine whether any other units, or portions thereof, should be excluded from the final designation. No other units were excluded from the final designation.

State Land Management – Exclusions Under Section 4(b)(2) of the Act

We are excluding all State-owned land in Missouri under section 4(b)(2) of the Act based on conservation measures addressed in species-specific management plans for State-managed lands and Missouri's State-wide Hine's emerald dragonfly recovery plan (Missouri Department of Conservation 2007f). Missouri is the only state within the range of the Hine's emerald dragonfly that has management plans that specifically address conservation of the species on State lands.

Missouri units 16, 17, 18, and 22 are under MDC ownership and Unit 14 is privately owned but managed by MDC. Threats identified on land owned and managed by MDC are feral hogs, habitat fragmentation, road construction and maintenance, all-terrain vehicles, beaver dams, and management conflicts.

In regard to Hine's emerald dragonfly conservation, the MDC has:

(1) Developed management plans for the five conservation areas where the Hine's emerald dragonfly has been documented (Missouri Natural Areas Committee 2007; Missouri Department of Conservation 2007a, pp.1–4; 2007b, pp. 1–3; 2007c, pp. 1–4)

(2) Formulated best management practices (Missouri Department of Conservation 2007d, pp. 1–2) and department guidelines (Missouri Department of Conservation 2007e, pp. 1–3); and

(3) Developed a Statewide recovery plan for the Hine's emerald dragonfly (Missouri Department of Conservation 2007f, pp. 1–33).

These plans provide for long-term management and maintenance of fen habitat essential for larval development and adjacent habitat that provides for foraging and resting needs for the species. Areas of management concern include the fen proper, adjacent open areas for foraging, adjacent shrubs, and a 328-ft (100-m) forest edge buffer to provide habitat for resting and predator avoidance. Based on initial groundwater recharge delineation studies by Aley and Aley (2004, p. 22), the 328-ft (100-m) buffer will also facilitate the maintenance of the hydrology associated with each unit. Actions outlined in area management plans and the state recovery plan for the Hine's emerald dragonfly address threats to habitat by preventing the encroachment of invasive woody plants (ecological succession), and by maintaining open conditions of the fen and surrounding areas with prescribed fire and stand improvement through various timber management practices.

In addition to site-specific plans, there is also a Statewide recovery plan (Missouri Department of Conservation 2007f) that outlines objectives for conserving the Hine's emerald dragonfly on State managed and privately owned property in Missouri (Table 3). The recovery plan includes a budget for Fiscal Years 2006 to 2012, showing MDC's commitment to continue acquiring the funds necessary to implement these actions. The MDC coordinated closely with the Service in developing the site-specific plans and

the Statewide Hine's emerald dragonfly recovery plan and the recommended conservation measures within it. We believe that by implementing those recommended conservation actions in Missouri we can achieve recovery of the species in the State.

TABLE 3. SUMMARY OF OBJECTIVES IN MDC'S RECOMMENDATIONS FOR RECOVERY OF HINE'S EMERALD DRAGONFLY AND OZARK FEN COMMUNITIES IN MISSOURI (FY08-FY12).

MDC Recovery Plan Objective	Conservation benefit for Hine's emerald dragonfly
Maintain the natural integrity of Ozark fen communities by decreasing exotic, feral, domestic, and undesirable native animal and plant populations specifically when those populations threaten Ozark fens, associated natural communities, and habitats essential for the life requirements of the dragonfly	Protect, restore, or enhance breeding and foraging areas
Restore local hydrology and protect groundwater contribution areas by eliminating past drainage improvements and ensuring developments do not adversely affect fen recharge areas	Protect, enhance, or restore breeding and foraging areas
Prohibit vehicle operation in fens unless specifically authorized or prescribed for Ozark fen restoration actions and Hine's emerald dragonfly habitat improvement projects	Protect breeding and foraging areas
Ensure that recreational overuse does not impact Ozark fen communities	Protect breeding and foraging areas
Develop public outreach materials and solutions to advance the conservation of Hine's emerald dragonfly and Ozark fen communities	Protect, enhance, or restore breeding and foraging areas
Manage fire-dependent wetland communities with a fire regime similar to that in which the natural communities evolved and developed	Protect, enhance, or restore breeding and foraging areas
Monitor fen water quality, identify potential pollutants, and develop strategies to abate damages	Protect, enhance, or restore breeding and foraging areas
Increase connectivity within Ozark fen complexes	Enhance breeding and foraging areas

Numerous agencies and groups are working together to alleviate threats to the Hine's emerald dragonfly in Missouri. These cooperating partners include conservation area managers, the MDC's Private Land Services (PLS) Division and Natural History biologists, MDC's Recovery Coordinator for the species, the Service, the Missouri Hine's Emerald Dragonfly Workgroup, and the Federal Hine's Emerald Dragonfly Recovery Team (Recovery Team).

We believe that management guidelines outlined in the conservation area plans and natural area plans, the BMPs, and the Statewide recovery plan for the Hine's emerald dragonfly, along with the close coordination among the various agencies mentioned above (plus other identified species experts as needed), adequately address identified threats to Hine's emerald dragonfly and its habitat on MDC lands. The conservation measures as outlined above provide greater benefit to the Hine's emerald dragonfly than would designating critical habitat on Missouri State-managed lands. Thus the relative benefits of designation of these lands are diminished and limited.

(1) Benefits of Designation

The primary effect of designating any particular area as critical habitat is the requirement for Federal agencies to consult with us under section 7 of the Act to ensure actions they carry out, authorize, or fund do not destroy or adversely modify designated critical habitat. Absent critical habitat designation, Federal agencies remain obligated under section 7 of the Act to consult with us on actions that may affect a federally listed species to ensure such actions do not jeopardize the species' continued existence. Designation of critical habitat may also provide educational benefits by informing land managers of areas essential to the conservation of the Hine's emerald dragonfly.

(2) Benefits of Exclusion

Voluntarily, land managers are currently implementing conservation actions for the Hine's emerald dragonfly and its habitat on State-managed lands in Missouri that are beyond those that could be required if critical habitat were designated. Excluding State-owned lands in Missouri from critical habitat designation will sustain and enhance the already robust working relationship between the Service and MDC. The State has a strong history of conserving the Hine's emerald dragonfly and other federally listed species. The MDC is committed to continued conservation for the Hine's emerald dragonfly through its State management plan for the species. The Service's willingness to work closely with MDC on innovative ways to manage federally listed species will continue to reinforce those conservation efforts, which contribute significantly toward achieving recovery of the species in the State.

Furthermore, in the case of Missouri, there is no appreciable educational benefit because the MDC has already demonstrated its knowledge and understanding of essential habitat for the species through active recovery efforts and consultation.

(3) Benefits of Exclusion Outweigh the Benefits of Designation

We find that the benefits of designating critical habitat for the Hine's emerald dragonfly on State lands in Missouri are outweighed by the benefits of exclusion. Exclusion will enhance the partnership efforts with the MDC focused on conservation of the species in the State, and secure conservation benefits for the species that will lead to recovery, as described above, beyond those that could be required under a critical habitat designation. The benefits of designating critical habitat on State-owned lands in Missouri are already largely being realized through the conservation efforts being implemented under the Statewide recovery plan. Therefore, those benefits

of designation are quite small when weighed against enhancing partnership efforts and securing conservation benefits for the species that would be achieved through excluding State-owned lands in Missouri from designation.

(4) Exclusions Will Not Result in Extinction of the Species

We believe that excluding the Missouri units under MDC ownership (Units 16, 17, 18, and 22) and Unit 14, which is privately owned but managed by MDC, from critical habitat would not result in the extinction of Hine's emerald dragonfly because current conservation efforts under the Conservation and Natural Area Plans and other Plans by the MDC adequately protect essential Hine's emerald dragonfly habitat and provide appropriate management to maintain and enhance the PCEs for the Hine's emerald dragonfly. In addition, conservation partnerships on non-Federal lands are important conservation tools for this species in Missouri that could be negatively affected by the designation of critical habitat. As such, there is no reason to believe that this exclusion would result in extinction of the species.

Private Land Management – Exclusions Under Section 4(b)(2) of the Act

We are excluding all private land in Missouri under section 4(b)(2) of the Act based on the cooperative conservation partnership with private landowners in Missouri. Missouri Units 2b, 3, 6, 9, 10, 11b, 12, 13, 15, 19, and 20 are under private ownership. Missouri Unit 14 is also under private ownership but managed by the MDC.

The Nature Conservancy manages Grasshopper Hollow (Unit 11b) in accordance with the Grasshopper Hollow Management Plan (The Nature Conservancy 2006, pp. 1–4) to maintain fen habitat. The plan includes management goals that specifically address the Hine's emerald dragonfly and its habitat: 1) Sustain the high quality fen complex, with a full suite of fen biota; 2) Restore the fen system in suitable drained fields at the north end of Doe Run lands; and 3) Ensure the long-term viability of healthy populations of the Hine's emerald dragonfly.

Threats to the species identified on private land are feral hogs, habitat fragmentation, road construction and maintenance, ecological succession, all-terrain vehicles, beaver dams, utility maintenance, application of herbicides, and change in ownership. All threats listed above for private property in Missouri are addressed in the Missouri Department of Conservation's Statewide recovery plan for the Hine's emerald dragonfly (Missouri Department of Conservation 2007f, pp. 1–33) and through close coordination between personnel with the MDC's PLS Division or Regional Natural History biologists and private landowners. Additionally, MDC personnel work closely and proactively with the National Resources Conservation Service (NRCS) and the Service's Partners for Fish and Wildlife Program to initiate management and maintenance actions on species-occupied fens to benefit the species and alleviate potential threats and these actions are subject to section 7 of the Act. The Missouri Department of Conservation (2007d, pp. 1–2) has developed BMPs for the Hine's emerald dragonfly, which further displays the agencies dedication to conserving the species and its habitat on both State and private land. These BMPs and close coordination with MDC's Recovery Leader for Hine's emerald dragonflies have resulted in the implementation of various activities on private property to benefit the species or minimize potential threats. Current and ongoing conservation actions on private lands include the following: Developing private land partner property plans; providing landowners with technical support through ongoing site visits; providing grazing and forage harvesting recommendations to minimize potential fen damage; excluding heavy equipment from fen habitat; placing signs on fen habitat alerting land owners to the sensitivity of this natural community; providing public land owners with public outreach regarding the life history requirements of Hine's emerald dragonflies and the sensitivity of the species' unique habitat; providing recommendations on the control of beavers, which are harmful to delicate fen habitat; providing education on the need for and correct use of prescribed fire; excluding livestock from fens and other wetland types; restoring fens and wetlands by restoring hydrology or controlling invasive species and woody brush invasion; applying appropriate nutrient and pest management on adjacent agricultural fields to reduce runoff; implementing practices that control erosion and prevent sediment delivery to wetlands; and when applicable, facilitating the transfer or property from private to public ownership. Although implementing Hine's emerald dragonfly BMPs on private land is voluntary, the best way we have found to ensure effective conservation on private lands is through such voluntary actions. Private landowners are generally more receptive to voluntary conservation actions on their lands than they are to regulated actions or perceived regulation. The MDC has successfully conducted conservation actions on many private land parcels and has dedicated numerous staff hours to these actions (Table 4).

TABLE 4. SUMMARY OF PRIVATE LAND INITIATIVES AND AVERAGE ANNUAL EXPENDITURE FOR HINE'S EMERALD DRAGONFLY CONSERVATION MEASURES CONDUCTED BY MDC STAFF ON PRIVATE LANDS (SINCE 2005).

Conservation Action	Average annual expenditure since 2005 (in MDC staff hours)
Landowner technical support in the form of in-field consultation, correspondence, and other communications. Includes operations that affect private land fens that are known Hine's emerald dragonfly sites or potential sites.	250
Farm plan development and fen restoration planning for private landowners. Includes the development of planning documents for private landowners that have Ozark fens.	75
Grazing system and forage harvesting recommendations to private landowners. Many Missouri fens are located in pastures or hay meadows. Maintaining stocking rates at suitable levels benefits Ozark fens and limits pressures associated with woody encroachment.	50
Technical support to landowners directly related to beaver control within Ozark fen communities.	25

TABLE 4. SUMMARY OF PRIVATE LAND INITIATIVES AND AVERAGE ANNUAL EXPENDITURE FOR HINE'S EMERALD DRAGONFLY CONSERVATION MEASURES CONDUCTED BY MDC STAFF ON PRIVATE LANDS (SINCE 2005).—Continued

Conservation Action	Average annual expenditure since 2005 (in MDC staff hours)
Technical assistance to landowners regarding fencing options to exclude cattle or combat possible ATV incursions.	25
Coordination with utility companies applying herbicides or operating mowing equipment on rights-of-way that cross private lands – activities that have the potential to damage fen communities and Hine's emerald dragonfly habitats.	50
Fen restoration demonstration projects including woody encroachment clearing and herbicide application; often in direct coordination with private land partners.	50, plus herbicide and application expenses of $2500.00
Demonstration exotics control including herbicide application and integrated pest management strategy development. Willow encroachment, reed canary grass control, and multi-flora rose control within fens on private lands. Several private land fens have characteristic infestations of undesirable species; MDC staff have applied herbicides to problem exotic invasive plant species to ensure fen habitats are suitable for Hine's emerald dragonfly.	25
Coordination with private landowners to ensure Hine's emerald dragonfly habitat is not impacted by pasture renovation activities; includes delineation of habitat areas with private land partners.	15 (There have only been a few opportunities for this action)
Signage placement on private land fens. Signage is placed on some fens when requested by private landowners or to engender support and understanding for fen restoration projects.	15
Installation of firelines, in cooperation with private landowners, on burn units that include fen communities.	15
Coordination with landowners interested in selling property with Ozark fens and wetland habitats that have the potential to support Hine's emerald dragonfly. Includes close communications with landowners; interagency coordination and technical assistance; coordination with surveyors, real estate lawyers, and biologists.	40
Presentation and outreach events directed to landowners with Hine's emerald dragonfly populations or Ozark fen natural communities.	40
Media contacts (radio, television, and printed media) and coordination directly related to Hine's emerald dragonfly recovery.	80
Coordination with conservation agents, often regarding private land fens that may be threatened by ATV activities	40
Patrols and enforcement operations.	50

Effective measures will continue to be incorporated to minimize threats from feral hogs and beavers by implementing MDC's Statewide recovery plan for the Hine's emerald dragonfly (Missouri Department of Conservation 2007f, pp. 1–3) and by providing technical assistance and implementation assistance to private landowners through coordination with MDC's PLS Division or Regional Natural History biologists, the NRCS, and the Service's Partners for Fish and Wildlife Program. Utility maintenance (Units 9 and 14) and herbicide application to maintain power line rights of way (Unit 9) were identified as potential threats at two units. Implementing the actions outlined in Missouri Department of Conservation's Statewide recovery plan for the Hine's emerald dragonfly and ongoing coordination among the MDC's PLS Division, MDC's Hine's emerald dragonfly recovery coordinator, and the appropriate utility maintenance company and its contractors will continue to minimize potential threats (Missouri Department of Conservation 2007f, pp. 1–3). The potential change in ownership on private land in Missouri from cooperative landowners to ones who may not want to manage their land to benefit the species is a concern on some private lands. This issue will continue to be addressed by close coordination between new landowners and MDC's PLS Division or their Hine's emerald dragonfly recovery coordinator. The landowner's access to grants and technical assistance from multiple landowner incentive programs administered through the MDC, NRCS, and the Service's Partners for Fish and Wildlife Program will remain a main focus of outreach to potential new private property owners. Unit 14 is under private ownership but is a designated State Natural Area (Missouri Natural Areas Committee 2007). An updated plan developed for the area ensures that the integrity of the fen is maintained (Missouri Natural Areas Committee 2007).

Personnel from MDC are currently working in cooperation with private landowners that have important fen habitat on their lands that support Hine's emerald dragonflies. This direct work with private landowners allows for effective maintenance and enhancement of Hine's emerald dragonfly habitat in the state. MDC is also working toward establishing new landowner relationships and cooperative management programs that will provide important contributions to Hine's emerald dragonfly recovery. Because of the close coordination and excellent working partnership of all

parties listed above, we believe that threats to Hine's emerald dragonfly and its habitat on private property in Missouri are minimized.

(1) Benefits of Designation

The primary effect of designating any particular area as critical habitat is the requirement for Federal agencies to consult with us under section 7 of the Act to ensure actions they carry out, authorize, or fund do not destroy or adversely modify designated critical habitat. Absent critical habitat designation, Federal agencies remain obligated under section 7 of the Act to consult with us on actions that may affect a federally listed species to ensure such actions do not jeopardize the species' continued existence. Designation of critical habitat may also provide educational benefits by informing land managers of areas essential to the conservation of the Hine's emerald dragonfly.

(2) Benefits of Exclusion

We view the continued cooperative conservation partnerships with private landowners to be essential for the conservation of the Hine's emerald dragonfly in Missouri. The MDC has a longstanding history of working with private landowners in Missouri, especially regarding the conservation of federally listed species. Of the 16 units being excluded in the State, 12 (75 percent) are on private land. The MDC has worked closely with the NRCS to implement various landowner incentive programs that are available through the Farm Bill.

To further facilitate the implementation of these and other landowner incentive programs on the ground, the MDC created the PLS Division and established 49 staff positions throughout the State. The PLS Division works with multiple landowners within the range of the Hine's emerald dragonfly in Missouri to undertake various conservation actions to maintain or enhance fen habitat. The MDC has also worked closely with the Service's Partners for Fish and Wildlife Program to implement various management actions on private lands. Close coordination between the two agencies for actions that could benefit the species on private land will continue. Excluding private land in Missouri from designation as critical habitat for the Hine's emerald dragonfly will facilitate the ability to implement those landowner incentive programs with multiple landowners, which would preserve the conservation benefits already initiated for the species or those planned in the future.

The Hine's emerald dragonfly, along with other federally listed species, is such a contentious issue in Missouri that the species is viewed negatively by many private landowners. Multiple private landowners have been contacted by MDC personnel to obtain permission to survey the species on their property. In some cases, access has been denied because of negative perceptions associated with the presence of federally listed species on private land and the perception that all fens currently occupied by the Hine's emerald dragonfly would be designated as critical habitat (Gillespie 2005, pers. comm.).

Although access to survey some private land has been denied, several landowners have conducted various management actions to benefit the Hine's emerald dragonfly, especially in Reynolds County where the largest amount of currently occupied habitat on privately owned land occurs. The designation of critical habitat on such sites would have dissolved developing partnerships and prevented the initiation of additional conservation actions. Additionally, it is likely that the designation of critical habitat on private land in Missouri would have ended the cooperation associated with conservation actions already underway (Missouri Department of Conservation, in litt. 2007).

Based on potential habitat identified by examining the Service's National Wetland Inventory maps, there are other areas with suitable Hine's emerald dragonfly habitat where the species may be found. Many of these sites occur on private land. Pending further research on currently occupied sites, especially related to population dynamics and the role Missouri populations may play in achieving the recovery objectives outlined in the Service's Recovery Plan (U.S. Fish and Wildlife Service 2001, pp. 31–32), the likely discovery of additional sites could provide significant contributions towards the range-wide recovery of the species. Thus, access to private property may be important in achieving recovery of the species.

(3) Benefits of Exclusion Outweigh the Benefits of Inclusion

We find that the benefits of designating critical habitat for the Hine's emerald dragonfly on private lands in Missouri are small in comparison to the benefits of exclusion. The conservation measures being implemented by private landowners, as outlined above, and those being implemented from the Missouri Hine's Emerald Dragonfly recovery plan (Missouri Department of Conservation 2007f) provide greater benefit to the Hine's emerald dragonfly and its habitat than would designating critical habitat on private lands in Missouri. Furthermore, in the case of Missouri, private conservation groups have already demonstrated their knowledge and understanding of essential habitat for the species through active recovery efforts and consultation. The Missouri public, particularly landowners with Hine's emerald dragonfly habitat on their lands, is also well informed about the Hine's emerald dragonfly. Thus the relative benefits of designation of these lands are diminished and limited. Exclusion of private lands in Missouri will enhance the partnership efforts with private conservation groups and private landowners focused on conservation of the species in the State, and secure conservation benefits for the species beyond those that could be required under a critical habitat designation. It is our belief that benefits gained through extra outreach efforts associated with critical habitat and additional section 7 requirements under the Act (in the limited situations where there is a Federal nexus), are outweighed by the benefit of sustaining current and future conservation partnerships, especially given that access to private property and the possible discovery of additional sites in Missouri could help facilitate recovery of the species.

(4) The Exclusions Will Not Result in Extinction of the Species

We believe that the excluding the Missouri units in private ownership (Units 2b, 3, 6, 9, 10, 11b, 12, 13, 14, 15, 19, and 20) from critical habitat would not result in the extinction of Hine's emerald dragonfly because current conservation efforts under The Nature Conservancy's Management Plan for Grasshopper Hollow and the Missouri Recovery Plan for Hine's emerald dragonfly (Missouri Department of Conservation 2007f) adequately protect essential Hine's emerald dragonfly habitat and provide appropriate management to maintain and enhance the PCEs for the Hine's emerald dragonfly. In addition, conservation partnerships on non-Federal lands are important conservation tools for this species in Missouri that could be negatively affected by the designation of critical habitat in Missouri, where there is an established negative sentiment toward Federal regulation for endangered species by some private landowners. As such, there is no reason to believe that this exclusion would result in extinction of the species.

Our economic analysis indicates an overall low cost resulting from the designation. Therefore, we have found no areas for which the economic benefits of exclusion outweigh the benefits of designation, and so have not excluded any areas from this designation of critical habitat for the Hine's emerald dragonfly based on economic impacts. In addition, we anticipate no impact to national security, Tribal lands, or HCPs from this critical habitat designation, and have not excluded any lands based on those factors.

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 12866 (E.O. 12866). OMB bases its determination upon the following four criteria:

(1) 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.

(2) Whether the rule will create inconsistencies with other Federal agencies' actions.

(3) Whether the rule will materially affect entitlements, grants, user fees, loan programs or the rights and obligations of their recipients.

(4) Whether the rule raises novel legal or policy issues.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. Based upon our final economic analysis of the designation, we provide our analysis for determining whether the designation of critical habitat for the Hine's emerald dragonfly would result in a significant economic impact on a substantial number of small entities. The SBREFA amended RFA to require Federal agencies to provide a certification statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities. In this final rule, we are certifying that the critical habitat designation for Hine's emerald dragonfly 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, and small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents, as well as small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we considered the types of activities that might trigger regulatory impacts under this designation as well as types of project modifications that may result. In general, the term "significant economic impact" is meant to apply to a typical small business firm's business operations.

To determine if the Hine's emerald dragonfly critical habitat designation would affect a substantial number of small entities, we considered the number of small entities affected within particular types of economic activities (such as residential and commercial development). We apply the "substantial number" test individually to each industry or category to determine if certification is appropriate. However, the SBREFA does not explicitly define "substantial number" or "significant economic impact." Consequently, to assess whether a "substantial number" of small entities is affected by this designation, this analysis considers the relative number of small entities likely to be impacted in an area. In some circumstances, especially with critical habitat designations of limited extent, we may aggregate across all industries and consider whether the total number of small entities affected is substantial. In estimating the numbers of small entities potentially affected, we also considered whether their activities have any Federal involvement.

Designation of critical habitat only affects activities conducted, funded, permitted, or authorized by Federal agencies. Some kinds of activities are unlikely to have any Federal involvement and so will not be affected by the designation of critical habitat. In areas where the species is present, Federal agencies already are required to consult with us under section 7 of the Act on activities they authorize, fund, or carry out that may affect the Hine's emerald dragonfly. Federal agencies must also consult with us if their activities may affect designated critical habitat. Designation of critical habitat, therefore, 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).

In our final economic analysis of the critical habitat designation, we evaluated the potential economic effects on small business entities resulting from conservation actions related to the listing of the Hine's emerald dragonfly and designation of its critical habitat. This analysis estimated prospective economic impacts due to the implementation of Hine's emerald dragonfly conservation efforts in six categories: Development activities, water use, utility and infrastructure maintenance, road and railway use, species management and habitat protection activities, and recreation. The following is a summary of information contained in the final economic analysis:

(a) Development Activities

According to the final economic analysis, the forecast cost of Hine's emerald dragonfly development-related losses ranges from $8.0 to $11.2 million assuming a 7-percent discount rate. The costs consist of the following: (1) Losses in residential land value in Wisconsin and Michigan due to potential limitations on residential development; (2) impacts to Material Services Corporation (MSC) quarrying operations in Illinois; and (3) dragonfly conservation efforts associated with the construction of the Interstate 355 Extension. Given the small average size and value of private land parcels in Wisconsin and Michigan, the noninstitutional landowners (those for which land value losses were computed; institutionally owned properties do not have assessed property values) are most likely individuals, who are not

considered small entities by the SBA. MSC has 800 employees in Illinois and Indiana, and was recently purchased by Hanson, PLC, which has more than 27,000 employees worldwide. The SBA Small Business Standard for Crushed and Broken Limestone Mining and Quarrying industry sector is 500 employees. Therefore, MSC is not considered a small entity. The conservation-related costs associated with the construction of the Interstate 355 Extension are borne by the Illinois Tollway Authority. The Illinois Tollway Authority does not meet the definition of a small entity. As a result of this information, we have determined that the designation of critical habitat for the Hine's emerald dragonfly is not anticipated to have a significant effect on a substantial number of small development businesses.

(b) Water Use

According to the final economic analysis, the forecast cost of Hine's emerald dragonfly water use-related losses range from $21,000 to $4.0 million assuming a 7-percent discount rate. Public water systems may incur costs associated with drilling deep water aquifer wells. The USEPA Agency has defined small entity water systems as those that serve 10,000 or fewer people. None of the municipalities that could be required to construct deep aquifer wells as a result of conservation efforts for the Hine's emerald dragonfly has a population below 10,000. As a result of this information, we have determined that the designation of critical habitat for the Hine's emerald dragonfly is not anticipated to have a substantial effect on a substantial number of small municipalities.

(c) Utility and Infrastructure Maintenance

According to the final economic analysis, the forecast cost of Hine's emerald dragonfly utility and infrastructure maintenance-related losses is estimated to be $1.1 million over 20 years, assuming a 7-percent discount rate. The costs are associated with necessary utility and infrastructure maintenance using dragonfly-sensitive procedures. Within the designated critical habitat units, Commonwealth Edison is responsible for electrical line maintenance, county road authorities for road maintenance, and Midwest Generation for railroad track maintenance in Illinois Units 1 and 2. Neither company is considered a small entity. As a result of this information, we have determined that the designation of critical habitat for the Hine's emerald dragonfly is not anticipated to have a significant effect on a substantial number of small entities.

(d) Road and Railway Use

According to the final economic analysis, the forecast cost of Hine's emerald dragonfly road and railway use–related losses range from $1.3 to $8.8 million assuming a 7-percent discount rate. The costs are associated with necessary railway upgrades for dragonfly conservation. Midwest Generation is responsible for railroad track improvements in Illinois. Neither Midwest Generation nor the individual travelers who would be affected by slower road speeds are considered small entities. As a result of this information, we have determined that the designation of critical habitat for the Hine's emerald dragonfly is not anticipated to have a significant effect on a substantial number of small entities.

(e) Species Management and Habitat Protection Activities

According to the final economic analysis, the forecast cost of Hine's emerald dragonfly species management and habitat protection–related losses is estimated at $563,000 over 20 years, assuming a 7-percent discount rate. The costs primarily consist of species monitoring, maintenance of habitat, invasive species and feral hog control, and beaver dam mitigation. Species management and habitat protection costs will be borne by The Nature Conservancy (Wisconsin chapter), The Ridges Sanctuary, the Service, the U.S. Forest Service, the MIDNR, and the MDC. None of those entities meets the definition of a small entity. As a result of this information, we have determined that the designation of critical habitat for the Hine's emerald dragonfly is not anticipated to have a significant effect on a substantial number of small entities.

(f) Recreation

According to the final economic analysis, the forecast cost of Hine's emerald dragonfly recreation-related losses are estimated at $19,000 (7-percent discount rate) over the next 20 years. Recreational off-road vehicles and equestrian activities have the potential to alter Hine's emerald dragonfly habitat and extirpate populations. The costs are associated with mitigating the effects of those recreational activities. Those costs will be borne by the MIDNR, MDC, the U.S. Forest Service, and various county police departments. None of those entities meets the definition of a small entity. As a result of this information, we have determined that the designation of critical habitat for the Hine's emerald dragonfly is not anticipated to have a significant effect on a substantial number of small entities.

Based on the previous, sector-by-sector analysis, we have determined that this critical habitat designation would not result in a significant economic impact on a substantial number of small entities.

Energy Supply, Distribution, or Use—Executive Order 13211

On May 18, 2001, the President issued Executive Order 13211 (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 Executive Order that outlines nine outcomes that may constitute "a significant adverse effect" when compared to not taking the regulatory action under consideration.

This final rule is considered a significant regulatory action under E.O. 12866 due to potential novel legal and policy issues, but it is not expected to significantly affect energy supplies, distribution, or use. Appendix A of the final economic analysis provides a discussion and analysis of this determination. The Midwest Generation facilities that rely on the transportation of coal through Illinois Units 1 and 2 generate 1,960 megawatts of electricity. The dragonfly conservation measures advocated by the Service, however, are not intended to alter the operation of these facilities. Rather, the recommended conservation activities focus on improving maintenance and railway upgrades. Thus, no energy-related impacts associated with Hine's emerald dragonfly conservation activities within critical habitat units are expected. As such, the designation of critical habitat is not expected to significantly affect energy supplies, distribution, or use and a Statement of Energy Effects is not 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), the Service makes the following findings:

(a) This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose

an enforceable duty upon State, local, or tribal governments, or the private sector, and includes both "Federal intergovernmental mandates" and "Federal private sector mandates." These terms are defined in 2 U.S.C. 658(5)–(7). "Federal intergovernmental mandate" includes a regulation that "would impose an enforceable duty upon State, local, or tribal governments," with two exceptions. It excludes "a condition of Federal assistance." It also excludes "a duty arising from participation in a voluntary Federal program," unless the regulation "relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority," if the provision would "increase the stringency of conditions of assistance" or "place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding" and the State, local, or tribal governments "lack authority" to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; Aid to Families with Dependent Children work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. "Federal private sector mandate" includes a regulation that "would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance; or (ii) a duty arising from participation in a voluntary Federal program." The designation of critical habitat does not impose a legally binding duty on non-Federal government entities or private parties. Under the ACT, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. Non-Federal entities that receive Federal funding, assistance, permits, or otherwise require approval or authorization from a Federal agency for an action may be indirectly impacted by the designation of critical habitat. However, 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 on to State governments.

(b) As discussed in the final economic analysis of the designation of critical habitat for the Hine's emerald dragonfly, the impacts on nonprofits and small governments are expected to be negligible. It is likely that small governments involved with development and infrastructure projects will be interested parties or involved with projects involving section 7 consultations for the Hine's emerald dragonfly within their jurisdictional areas. Any costs associated with this activity are likely to represent a small portion of a local government's budget. Consequently, we do not believe that the designation of critical habitat for the Hine's emerald dragonfly will significantly or uniquely affect these small governmental entities. As such, a Small Government Agency Plan is not required.

Takings

In accordance with E.O. 12630 ("Government Actions and Interference with constitutionally Protected Private Property Right"), we have analyzed the potential takings implications of designating critical habitat for the Hine's emerald dragonfly in a Takings Implications Assessment (TIA). Critical habitat designation does not affect landowner ations that do not require Federal funding or permits, nor does it preclude development of habitat conservation programs or issuance of incidental take permits to permit actions that do require Federal funding or permits to go forward. The TIA concludes that the designation of critical habitat for Hine's emerald dragonfly does not pose significant takings implications for lands within or affected by the designation.

Federalism—Executive Order 13132

In accordance with Executive Order 13132 (Federalism), this rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with DOI and Department of Commerce policy, we requested information from, and coordinated development of, this final critical habitat designation with appropriate State resource agencies in Illinois, Michigan, and Wisconsin. The designation of critical habitat in areas currently occupied by the Hine's emerald dragonfly may impose nominal additional regulatory restrictions to those currently in place and, therefore, may have little incremental impact on State and local governments and their activities. The designation may have some benefit to these governments in that the areas that contain the features essential to the conservation of the species are more clearly defined, and the PCEs of the habitat necessary to the conservation of the species are specifically identified. While making this definition and identification does not alter where and what federally sponsored activities may occur, it may assist these local governments in long-range planning (rather than waiting for case-by-case section 7 consultations to occur).

Civil Justice Reform—Executive Order 12988

In accordance with Executive Order 12988 (Civil Justice Reform), the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and 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 Endangered Species Act. This final rule uses standard property descriptions and identifies the PCEs within the designated areas to assist the public in understanding the habitat needs of the Hine's emerald dragonfly.

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.)

It is our position that, outside the jurisdiction of the U.S. Court of Appeals for the Tenth Circuit, we do not need to prepare environmental analyses as defined by the NEPA (42 U.S.C. 4321 *et seq.*) in connection with designating critical habitat under the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This position was upheld by the U.S. Court of Appeals for the Ninth Circuit (*Douglas County* v. *Babbitt*, 48 F.3d 1495 (9th Cir. Ore. 1995), cert. denied 116 S. Ct. 698 (1996)).

Government-to-Government Relationship with Tribes

In accordance with the President's memorandum of April 29, 1994,

"Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), Executive Order 13175, and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997, "American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act," we readily acknowledge our responsibilities to work directly with Tribes in developing programs for healthy ecosystems, to acknowledge that tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to Tribes. We determined that there are no tribal lands occupied at the time of listing that contain the features essential for the conservation of the species and no tribal lands that are unoccupied areas that are essential for the conservation of the Hine's emerald dragonfly. Therefore, critical habitat for the Hine's emerald dragonfly has not been designated on Tribal lands.

References Cited

A complete list of all references cited in this rulemaking is available on the Internet at *http://www.regulations.govand* upon request from the Field Supervisor, Chicago, Illinois, Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT** section).

Authors

The primary authors of this package are the staff members of the Chicago, Illinois, Ecological Services Field Office.

List of Subjects in 50 CFR Part 17

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

Regulation Promulgation

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

PART 17—[AMENDED]

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

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

■ 2. Amend §17.95(i) by revising the entry for "Hine's emerald dragonfly (*Somatochlora hineana*)" to read as follows:

§17.95 Critical habitat—fish and wildlife.

* * * * *

(i) *Insects*.

* * * * *

Hine's Emerald Dragonfly (*Somatochlora hineana*)

(1) Critical habitat units are depicted for Cook, DuPage, and Will Counties in Illinois; Alpena, Mackinac, and Presque Isle Counties in Michigan; Crawford, Dent, Iron, Phelps, Reynolds, Ripley, Washington, and Wayne Counties in Missouri; and Door and Ozaukee Counties in Wisconsin, on the maps below.

(2) The primary constituent elements of critical habitat for the Hine's emerald dragonfly are:

(i) For egg deposition and larval growth and development:

(A) Organic soils (histosols, or with organic surface horizon) overlying calcareous substrate (predominantly dolomite and limestone bedrock);

(B) Calcareous water from intermittent seeps and springs and associated shallow, small, slow-flowing streamlet channels, rivulets, and/or sheet flow within fens;

(C) Emergent herbaceous and woody vegetation for emergence facilitation and refugia;

(D) Occupied burrows maintained by crayfish for refugia; and

(E) Prey base of aquatic macroinvertebrates, including mayflies, aquatic isopods, caddisflies, midge larvae, and aquatic worms.

(ii) For adult foraging, reproduction, dispersal, and refugia necessary for roosting, for resting, for adult females to escape from male harassment, and for predator avoidance (especially during the vulnerable teneral stage):

(A) Natural plant communities near the breeding/larval habitat which may include fen, marsh, sedge meadow, dolomite prairie, and the fringe (up to 328 ft (100 m)) of bordering shrubby and forested areas with open corridors for movement and dispersal; and

(B) Prey base of small, flying insect species (e.g., dipterans).

(3) Critical habitat does not include human-made structures existing on the effective date of this rule and not containing one or more of the primary constituent elements, such as buildings, lawns, old fields, hay meadows, fallow crop fields, manicured lawns, pastures, piers and docks, aqueducts, airports, and roads, and the land on which such structures are located. We define "old field" here as cleared areas that were formerly forested and may have been used as crop or pasture land that currently support a mixture of native and nonnative herbs and low shrubs. "Fallow field" is defined as a formerly plowed field that has been left unseeded for a season or more and is presently uncultivated. In addition, critical habitat does not include open-water areas (i.e., areas beyond the zone of emergent vegetation) of lakes and ponds.

(4) *Critical habitat map units*. Data layers defining map units were created on a base of USGS 7.5' quadrangles, and critical habitat units were then mapped using Geographical Information Systems, Universal Transverse Mercator (UTM) coordinates. Critical habitat units are described using the public land survey system (township (T), range (R) and section (Sec.)).

(5) *Note*: Index map of critical habitat units (Index map) follows:

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(6) Illinois Units 1 through 7, Cook, DuPage, and Will Counties, Illinois.

(i) Illinois Unit 1: Will County. Located in T36N, R10E, Sec. 22, Sec. 27, SE1/4 NE1/4 Sec. 28, NE1/4 SE1/4 Sec. 28, NW1/4 NW1/4 Sec. 34 of the Joliet 7.5' USGS topographic quadrangle. Land south of Illinois State Route 7, east of Illinois State Route 53, and west of the Des Plaines River.

(ii) Illinois Unit 2: Will County. Located in T36N, R10E, Sec. 3, NW1/4 E1/2 Sec. 10, E1/2 Sec. 15 of the Romeoville and Joliet 7.5' USGS topographic quadrangles. Land east of Illinois State Route 53, and west of the Des Plaines River.

(iii) Illinois Unit 3: Will County. Located in T37N, R10E, SW1/4 Sec. 26, NW1/4 SE1/4 Sec. 26, E1/2 Sec. 34, W1/2 NW 1/4 Sec. 35 of the Romeoville 7.5' USGS topographic quadrangle. Land west and north of the Des Plaines River and north of East Romeoville Road.

(iv) Illinois Unit 4: Will and Cook Counties. Located in T37N, R10E, S1/2 NE1/4 Sec. 24, W1/2 SW1/4 Sec. 24, SE1/4 Sec. 24 and T37N, R11E, SW1/4 SW1/4 Sec. 17, Sec. 19, NW1/4 Sec. 20 of the Romeoville 7.5' USGS topographic quadrangle. Land to the south of Bluff Road, west of Lemont

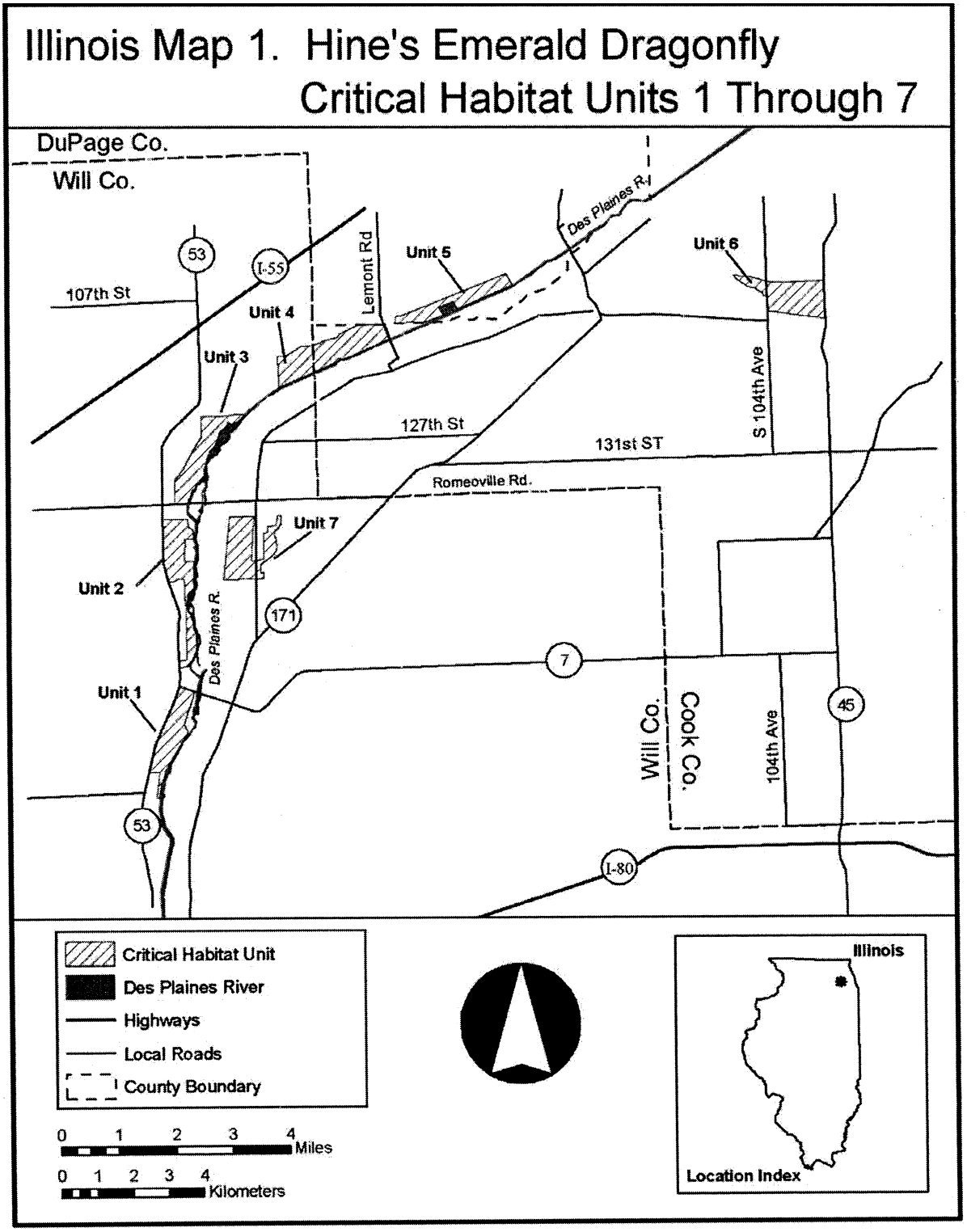
Road, and north of the Des Plaines River.

(v) Illinois Unit 5: DuPage County. Located in T37N, R11E, NW1/4 Sec. 15, NW1/4 SW1/4 Sec. 15, S1/2 NE1/4 Sec. 16, SW1/4 Sec. 16, N1/2 SE1/4 Sec. 16, SE1/4 Sec. 17 of the Sag Bridge 7.5' USGS topographic quadrangle. Land to the north of the Des Plaines River.

(vi) Illinois Unit 6: Cook County. Located in T37N, R12E, S1/2 Sec. 16, S1/2 NE1/4 Sec. 17, N1/2 SE1/4 Sec. 17, N1/2 Sec. 21 of the Sag Bridge and Palos Park 7.5' USGS topographic quadrangles. Land to the north of the Calumet Sag Channel, south of 107th Street, and east of U.S. Route 45.

(vii) Illinois Unit 7: Will County. Located in T36N, R10E, W1/2 Sec. 1, Sec. 2, N1/2 Sec. 11 of the Romeoville and Joliet 7.5' USGS topographic quadrangles. Land east of the Illinois and Michigan Canal.

(viii) *Note*: Map of Illinois Units 1 through 7 (Illinois Map 1) follows:

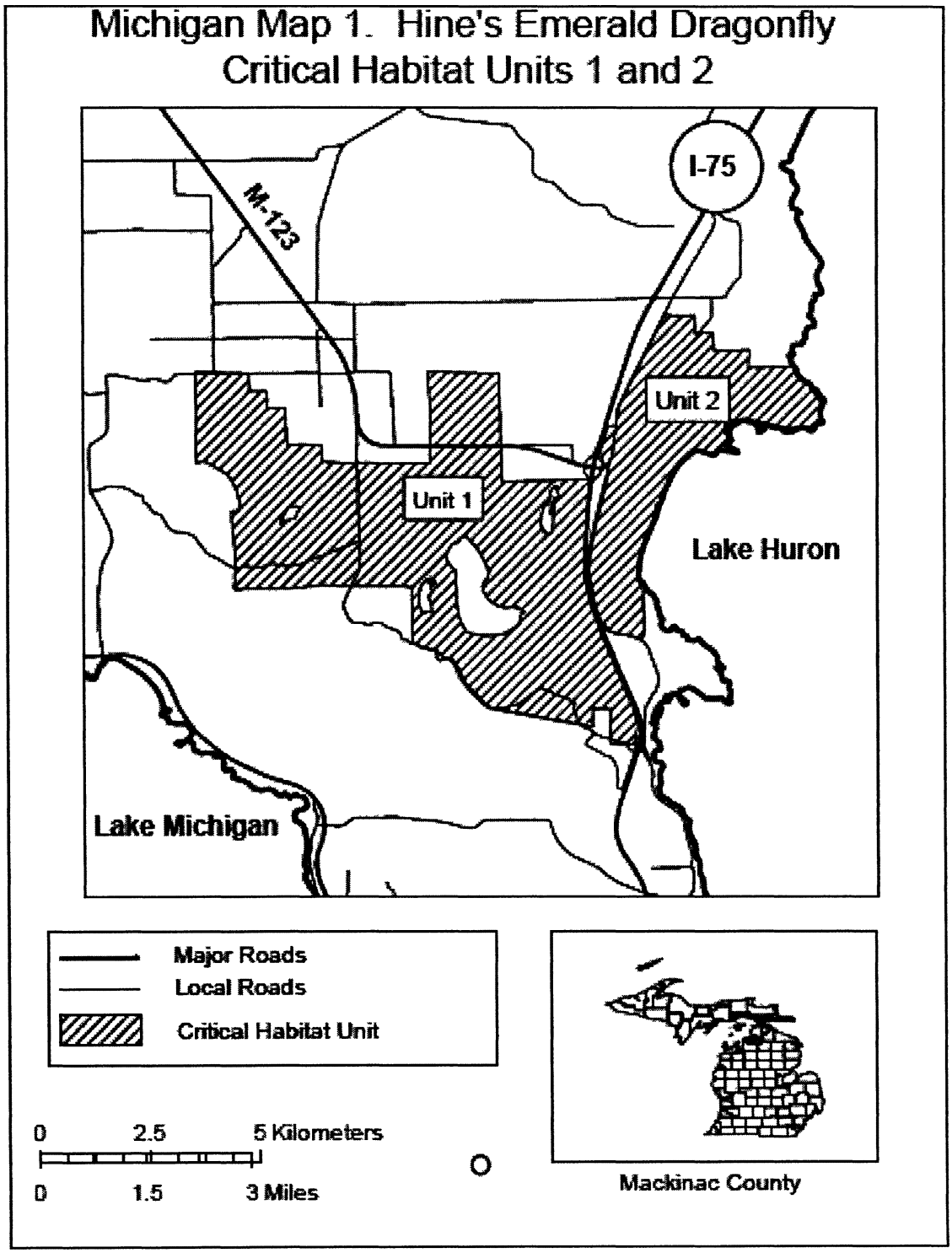


(7) Michigan Units 1 and 2, Mackinac County, Michigan.

(i) Michigan Unit 1: Mackinac County. The unit is located approximately 2 miles north of the village of St. Ignace. The unit contains all of T41N, R4W, Secs. 3, 6, 8, 9, 10, 11, 14, 15, 16, 23; portions of T41N, R4W, Secs. 4, 7, 17, 18, 22, 24, 25, 26, 27; and T41N, R5W, Secs. 1 and 12 of the Moran and Evergreen Shores 7.5' USGS topographic quadrangles. The unit is west of I-75, east of Brevort Lake, and north of Castle Rock Road.

(ii) Michigan Unit 2: Mackinac County. The unit is located approximately 2 miles north of the village of St. Ignace. The unit contains all of T41N, R3W, Sec. 6; portions of T41N, R4W, Secs. 1, 12, 13, 24; portions of T41N, R3W, Secs. 4, 5, 7; and portions of T42N, R3W, Sec. 31 of the Evergreen Shores 7.5' USGS topographic quadrangle. The unit is west of Lake Huron and east of I-75.

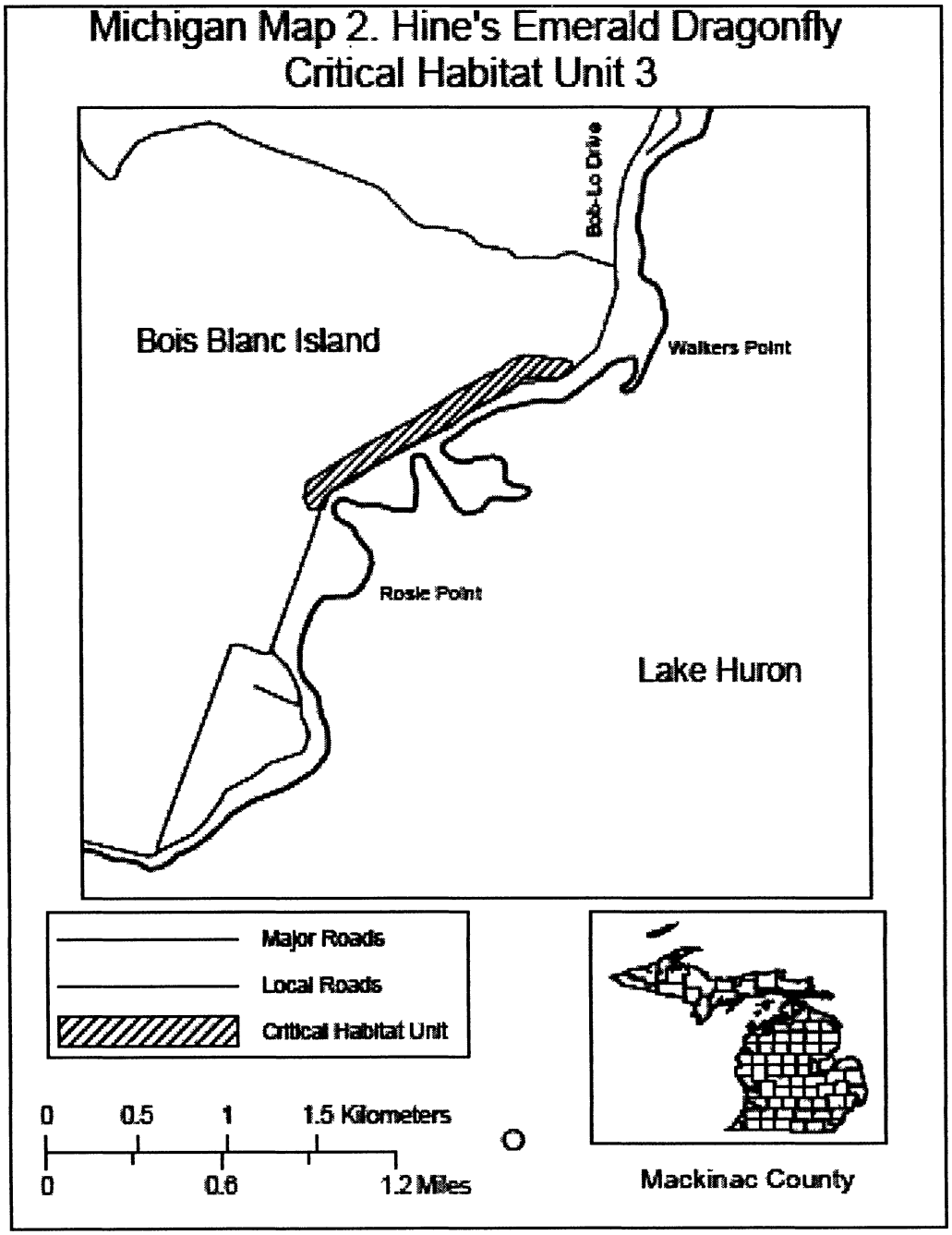
(iii) *Note*: Map of Michigan Units 1 and 2 (Michigan Map 1) follows:



(8) Michigan Unit 3, Mackinac County, Michigan.

(i) Michigan Unit 3: Mackinac County. Located on the east end of Bois Blanc Island. Bois Blanc Island has not adopted an addressing system using the public land survey system. The unit is located in Government Lots 25 and 26 of the Cheboygan and McRae Bay 7.5' USGS topographic quadrangles. The unit extends from approximately Walker's Point south to Rosie Point on the west side of Bob-Lo Drive. It extends from the road approximately 328 ft (100 m) to the west.

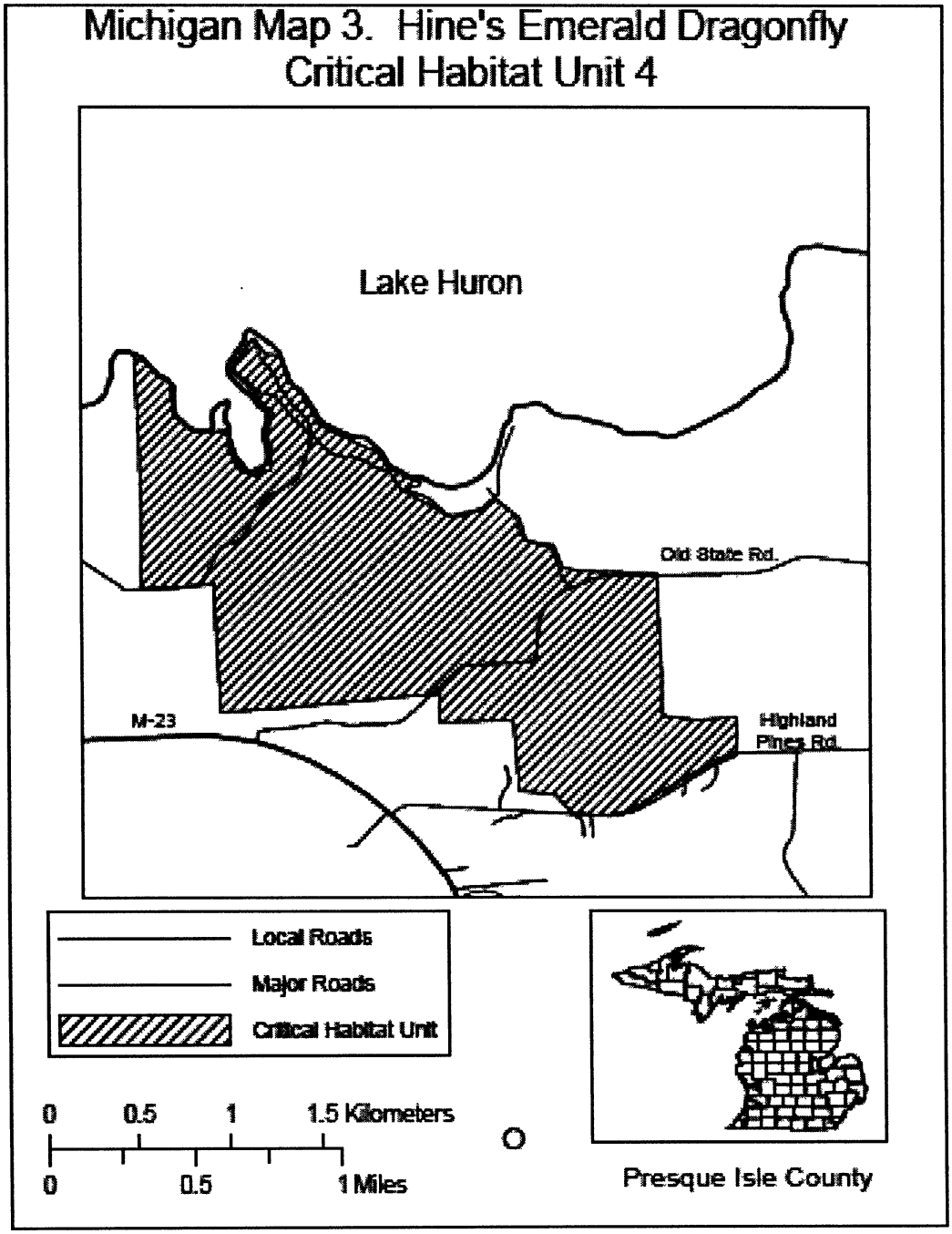
(ii) *Note*: Map of Michigan Unit 3 (Michigan Map 2) follows:



(9) Michigan Unit 4, Presque Isle County, Michigan.

(i) Michigan Unit 4: Presque Isle County. Located approximately 12 miles southeast of the village of Rogers City. The unit contains all of T34N, R7E, SW1/4 SW1/4 Sec. 14, SW1/4 NW1/4 Sec. 15, NE1/4 SW1/4 Sec. 15, NW1/4 SE1/4 Sec. 15, NW1/4 SW1/4 Sec. 15, SE1/4 SE1/4 Sec. 15, NW1/4 NE1/4 Sec. 16, NE1/4 NW1/4 Sec. 16, SE1/4 NE1/4 Sec. 16, and NW1/4 NW1/4 Sec. 23. It also contains portions of T34N, R7E, all 1/4 sections in Secs. 15, all 1/4 sections in Sec. 16, SE1/4 and SW1/4 Sec. 9, SW1/4 Sec. 10, SW1/4 Sec. 14, NE1/4 Sec. 22, NW1/4 and NE1/4 Sec. 23 of the Thompson's Harbor 7.5' USGS topographic quadrangle. The northern boundary of the unit is Lake Huron and the southern boundary is north of M-23.

(ii) *Note*: Map of Michigan Unit 4 (Michigan Map 3) follows:



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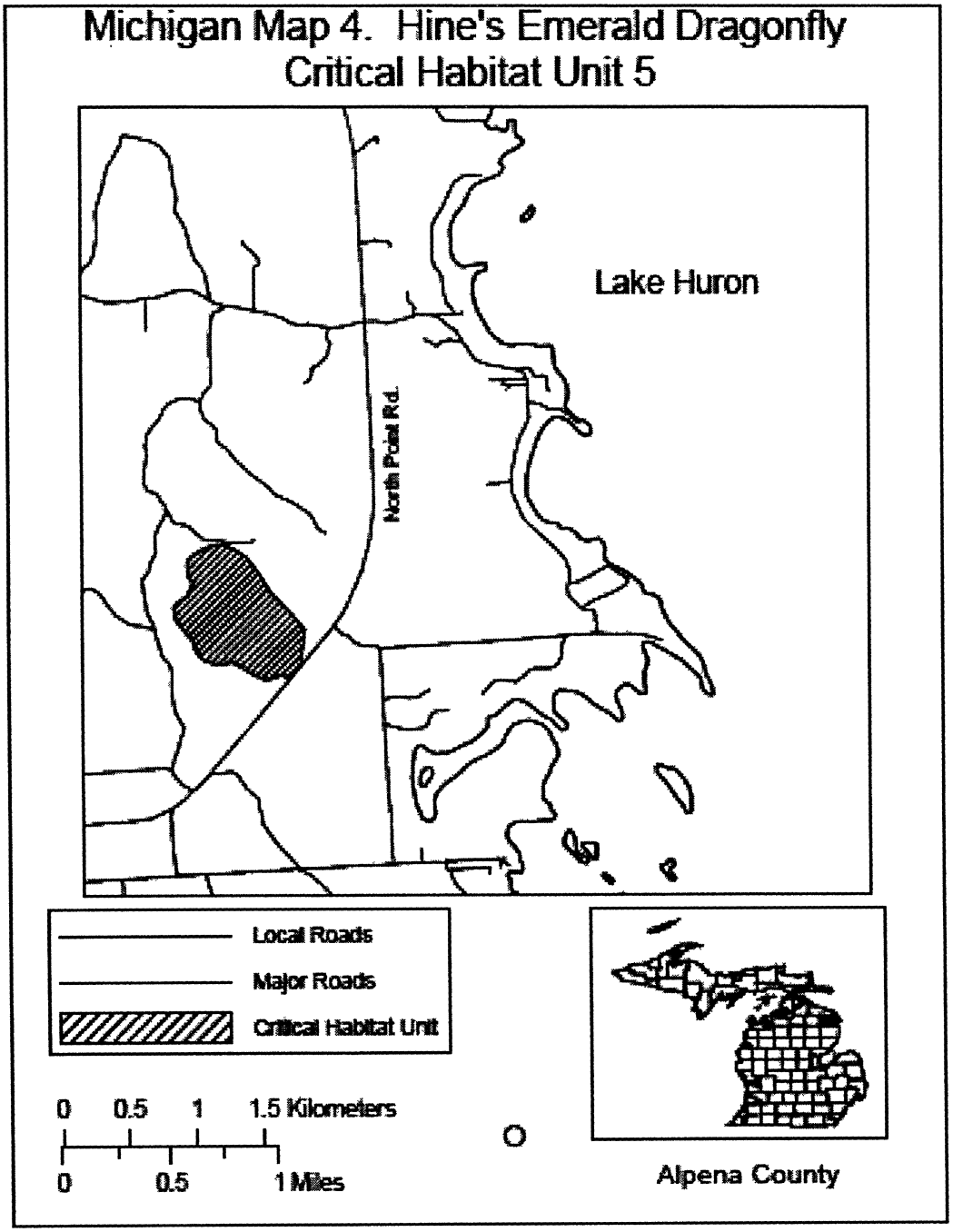
(10) Michigan Unit 5, Alpena County, Michigan.

(i) Michigan Unit 5: Alpena County. Located approximately 9 miles northeast of the village of Alpena. The unit contains all of T31N, R9E, SE1/4 SW1/4 Sec 9. It also contains portions of T31N, R9E, NW1/4 SW1/4 Sec. 9, NE1/4 SW1/4 Sec. 9, SW1/4 SW1/4 Sec. 9, SW1/4 SE1/4 Sec 9; and portions of T31N, R9E, NE1/4 NW1/4 Sec. 16, NW1/4 NE1/4 Sec. 16, NW1/4 NW1/4 Sec. 16 of the 7.5' USGS topographic quadrangle North Point 7.5′ USGS topographic quadrangle. North Point Road is east of the area.

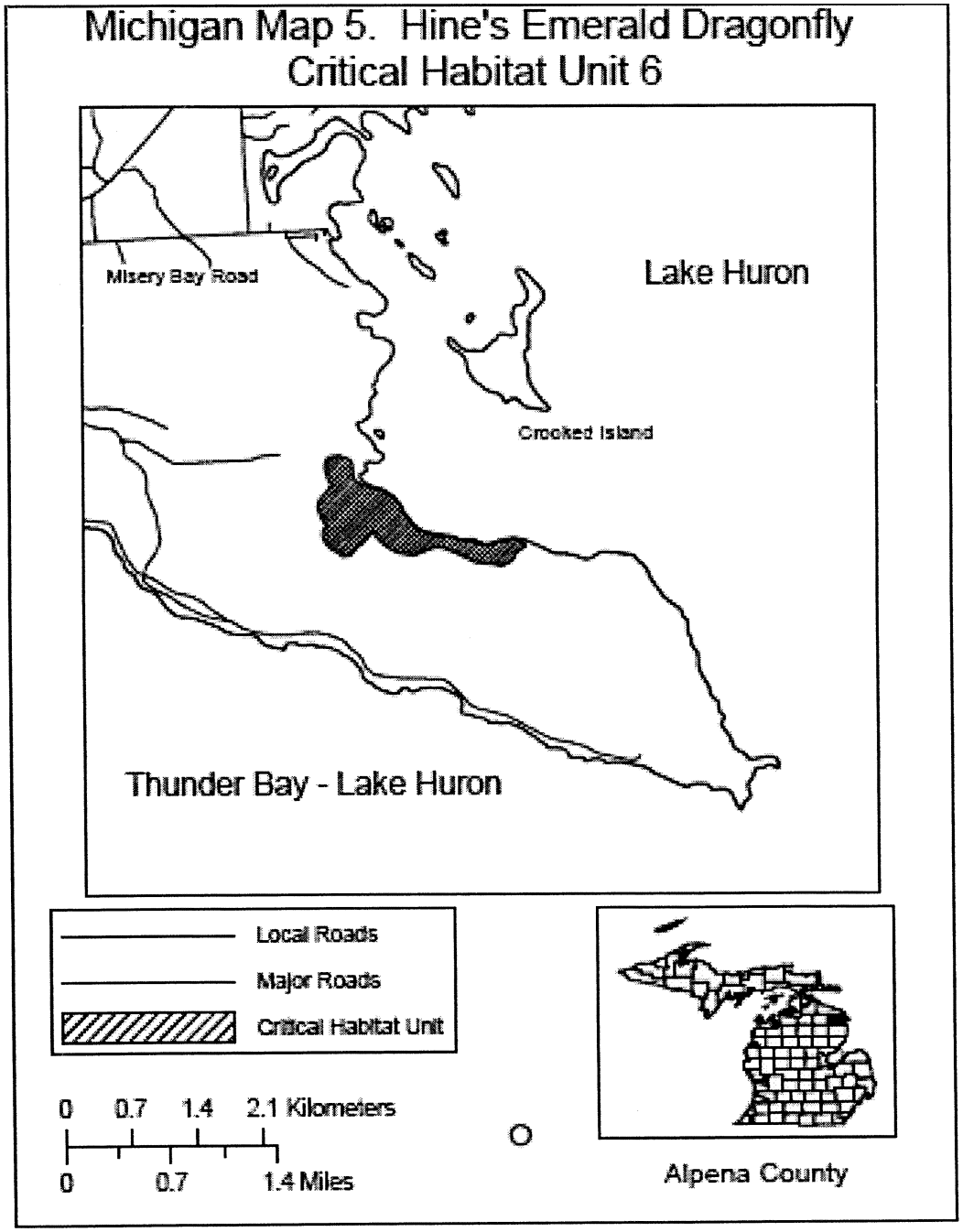
(ii) *Note*: Map of Michigan Unit 5 (Michigan Map 4) follows:



(11) Michigan Unit 6, Alpena County, Michigan.

(i) Michigan Unit 6: Alpena County. Located approximately 5 miles east of the village of Alpena. The unit contains all of T31N, R9E, SW1/4 SE1/4 Sec. 27. It also contains portions of T31N, R9E, NW1/4 SE1/4 Sec. 27, NE1/4 SW1/4 Sec. 27, SE1/4 SW1/4 Sec. 27, SE1/4 SE1/4 Sec. 27; portions of T31N, R9E, NE1/4 NW1/4 Sec. 34, NW1/4 NE1/4 Sec. 34, NE1/4 NE1/4 Sec. 34; and portions of T31N, R9E, NW1/4 NW1/4 Sec. 35, NE1/4 NW1/4, NW1/4 NE1/4 Sec. 35 of the North Point 7.5' USGS topographic quadrangle. Lake Huron is the east boundary of the unit.

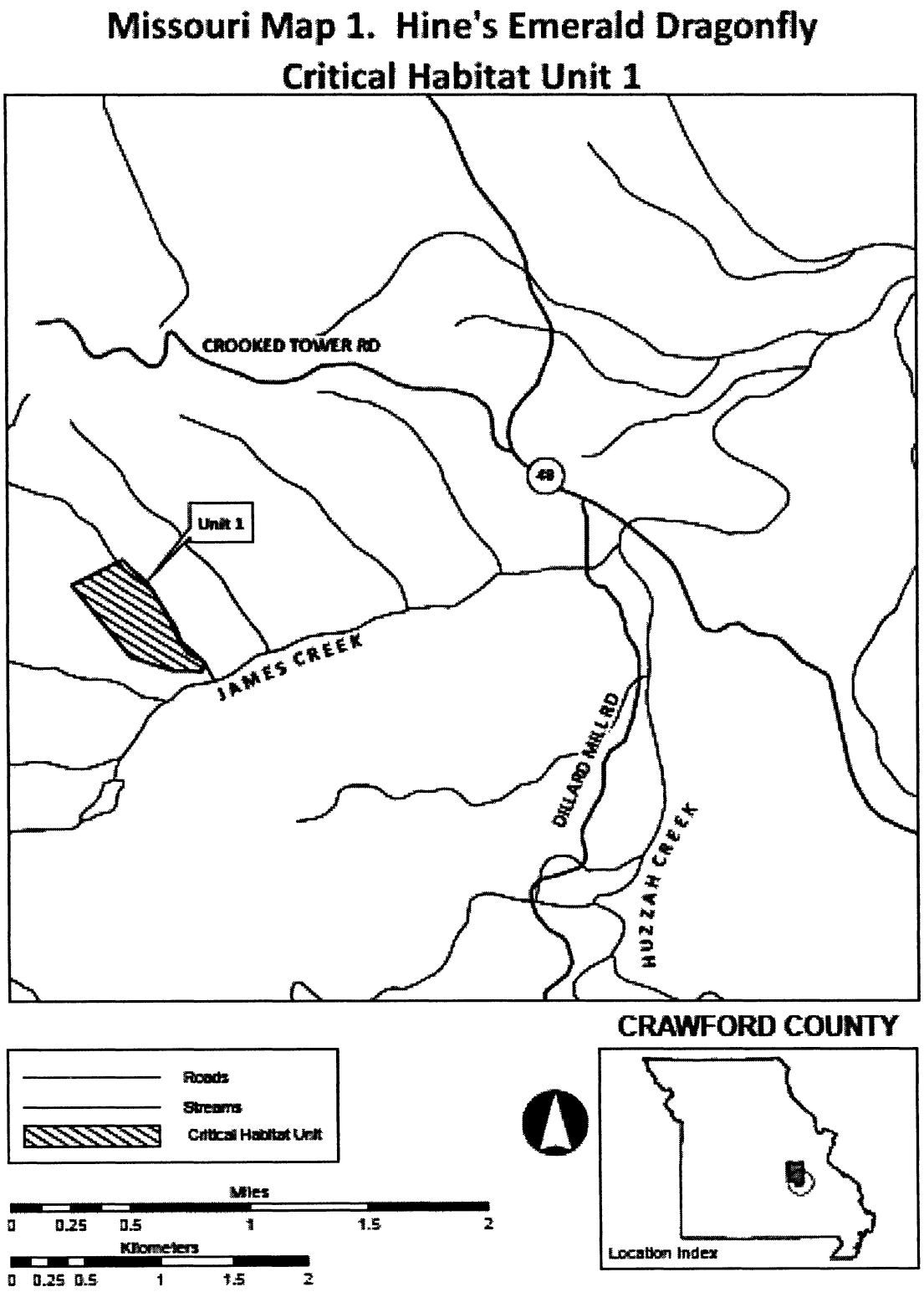
(ii) *Note*: Map of Michigan Unit 6 (Michigan Map 5) follows:



(12) Missouri Unit 1, Crawford County, Missouri.

(i) Missouri Unit 1: Crawford County. Located in T35N, R3W, Secs. 22 and 23 of the Viburnum West 7.5' USGS topographic quadrangle. Missouri Unit 1 is associated with James Creek and is located approximately 1.5 miles west of Billard, Missouri.

(ii) *Note*: Map of Missouri Unit 1 (Missouri Map 1) follows:



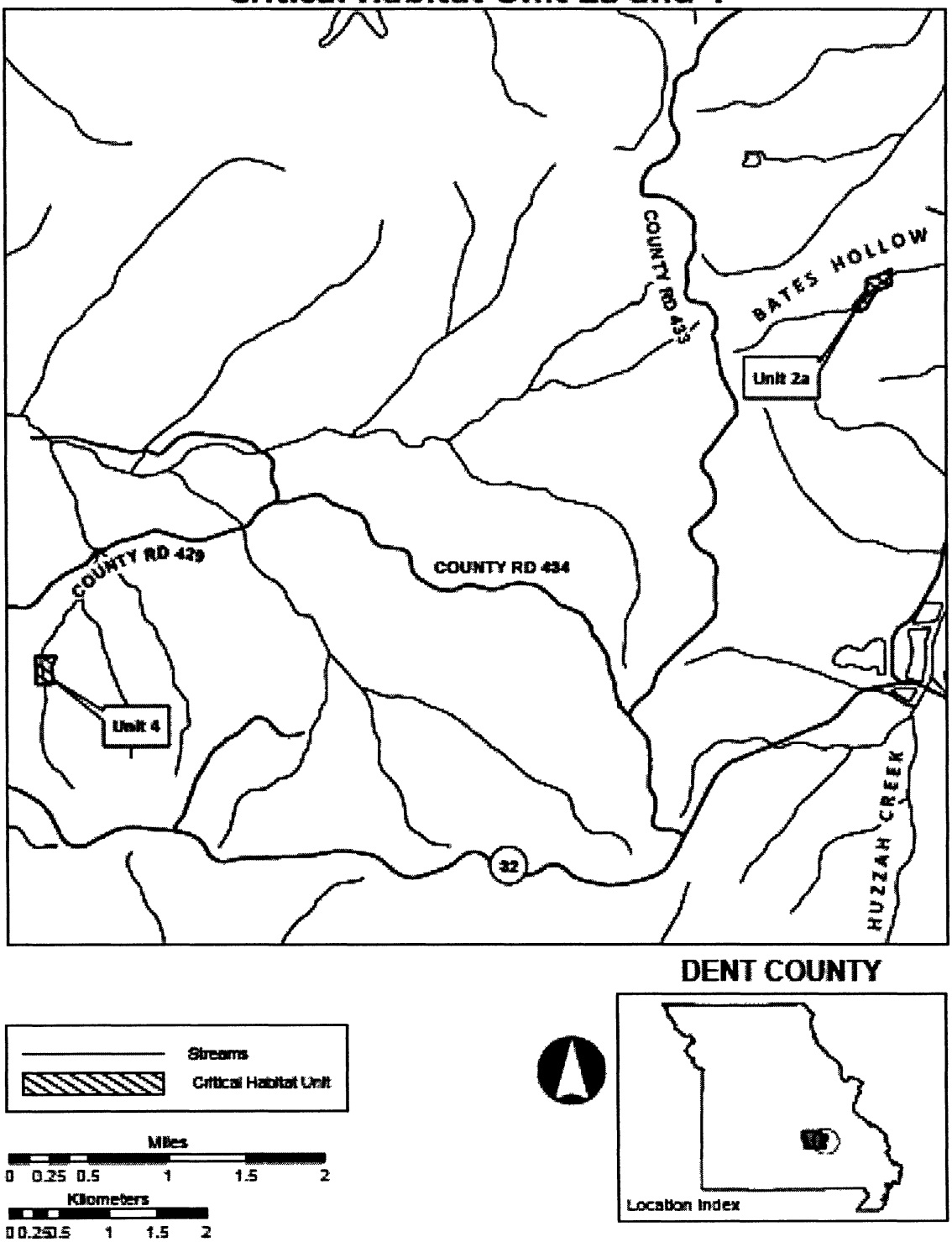
(13) Missouri Units 2a and 4, Dent County, Missouri.

(i) Missouri Unit 2a: Dent County. Located in T34N, R3W, Secs. 3 and 4 of the Howes Mill Spring 7.5' USGS topographic quadrangle. Missouri Unit 2a is associated with an unnamed tributary to West Fork Huzzah Creek and is located approximately 2.5 air miles north of the village of Howes Mill, Missouri adjacent to county road 438.

(ii) Missouri Unit 4: Dent County. Located in T34N, R4W, Secs. 15 and 22 of the Howes Mill Spring 7.5' USGS topographic quadrangle. Missouri Unit 4 is associated with a tributary of Hutchins Creek in Fortune Hollow and is located approximately 1 mile east of the juncture of Highway 72 and Route MM.

(iii) *Note*: Map of Missouri Units 2a and 4 (Missouri Map 2) follows:

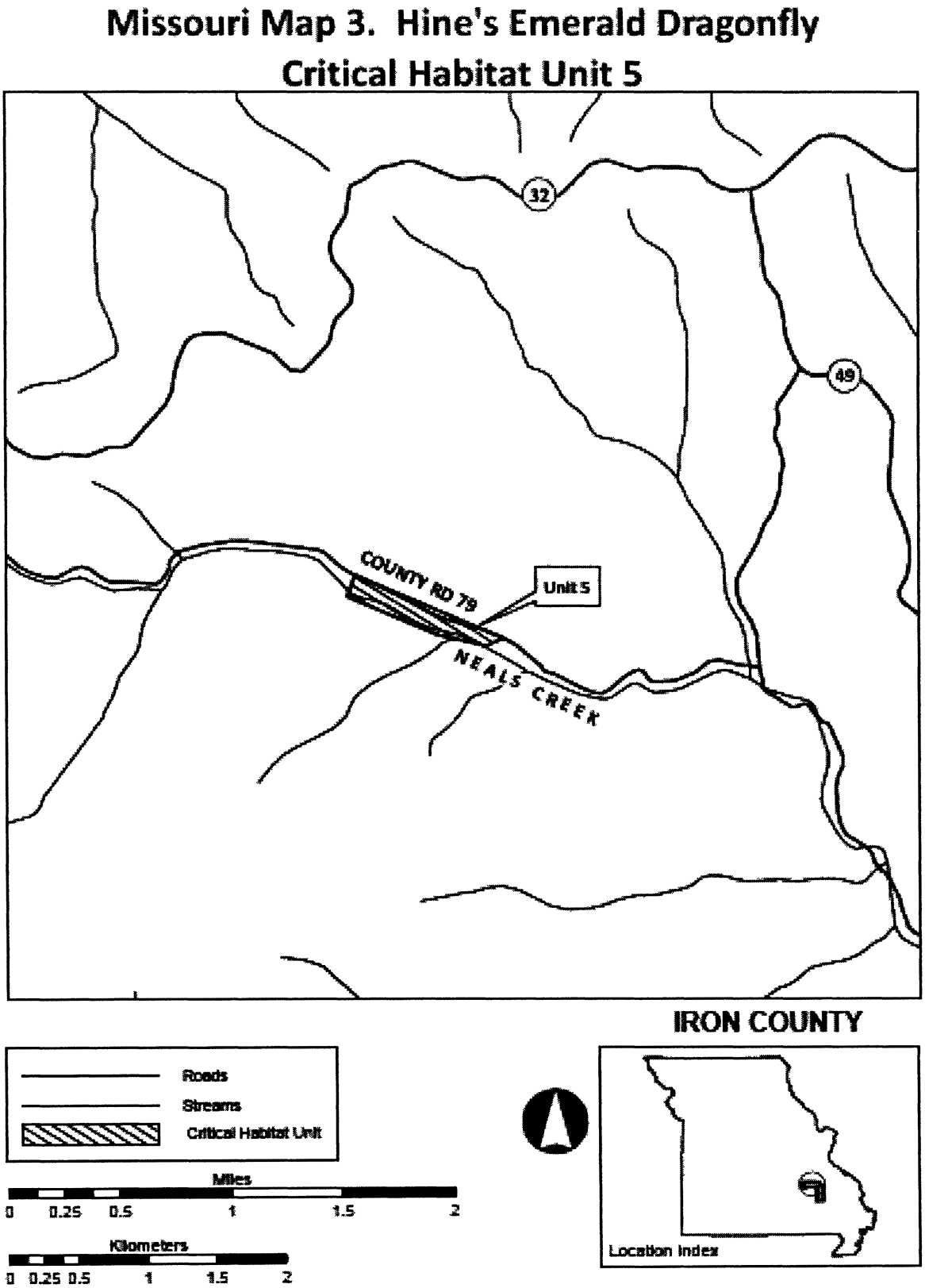
Missouri Map 2. Hine's Emerald Dragonfly Critical Habitat Unit 2a and 4



(14) Missouri Unit 5, Iron County, Missouri.

(i) Missouri Unit 5: Iron County. Located in T34N, R1W, Sec. 17of the Viburnum East 7.5' USGS topographic quadrangle. Missouri Unit 5 is located adjacent to Neals Creek and Neals Creek Road, approximately 2.5 miles southeast of Bixby.

(ii) *Note*: Map of Missouri Unit 5 (Missouri Map 3) follows:

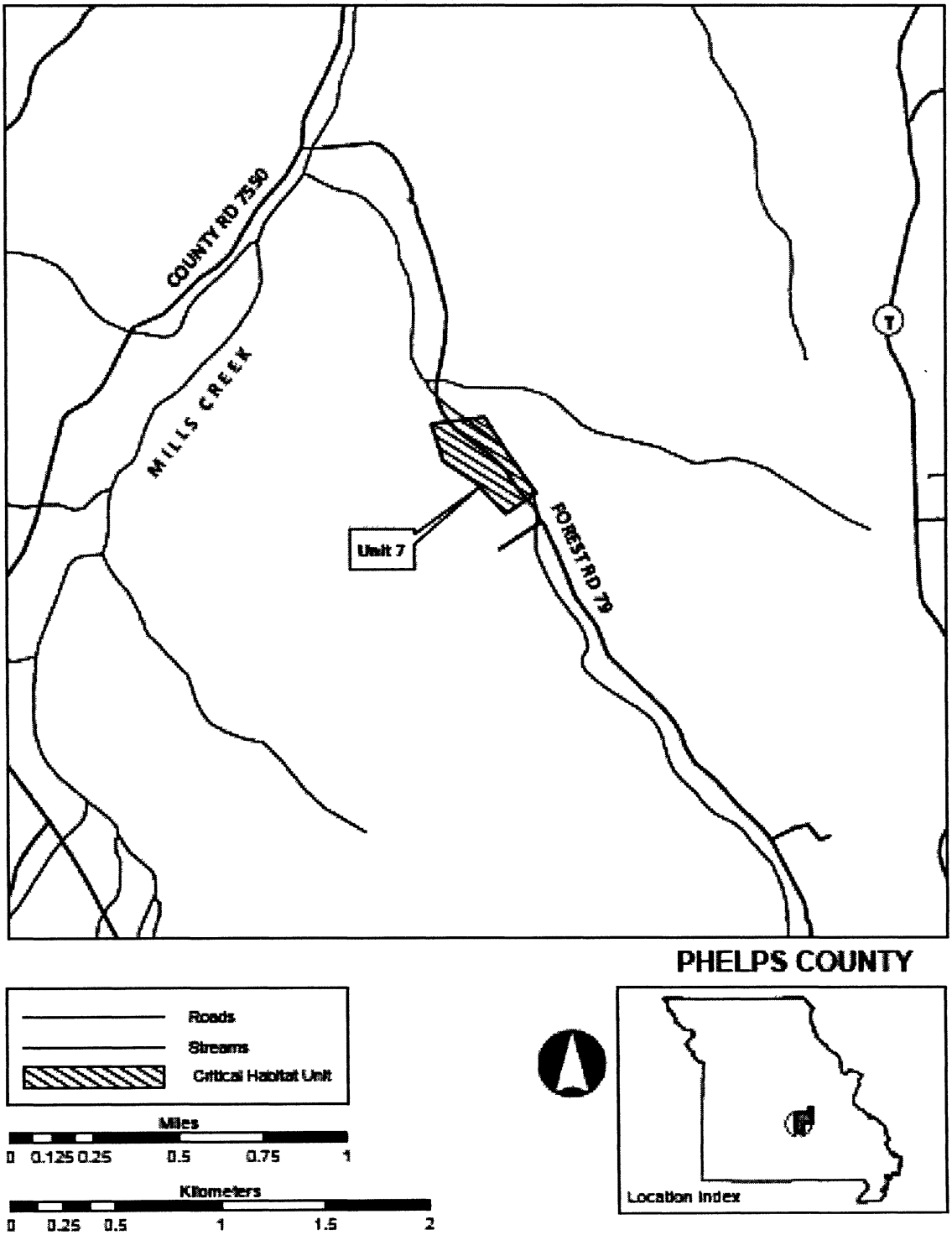


(15) Missouri Unit 7, Phelps County, Missouri.

(i) Missouri Unit 7: Phelps County. Located in T36N, R9W, Sec. 9 of the Kaintuck Hollow 7.5' USGS topographic quadrangle. Missouri Unit 7 is associated with Kaintuck Hollow and a tributary of Mill Creek, and is located approximately 4 miles south southwest of the town of Newburg.

(ii) *Note*: Map of Missouri Unit 7 (Missouri Map 4) follows:

Missouri Map 4. Hine's Emerald Dragonfly Critical Habitat Unit 7

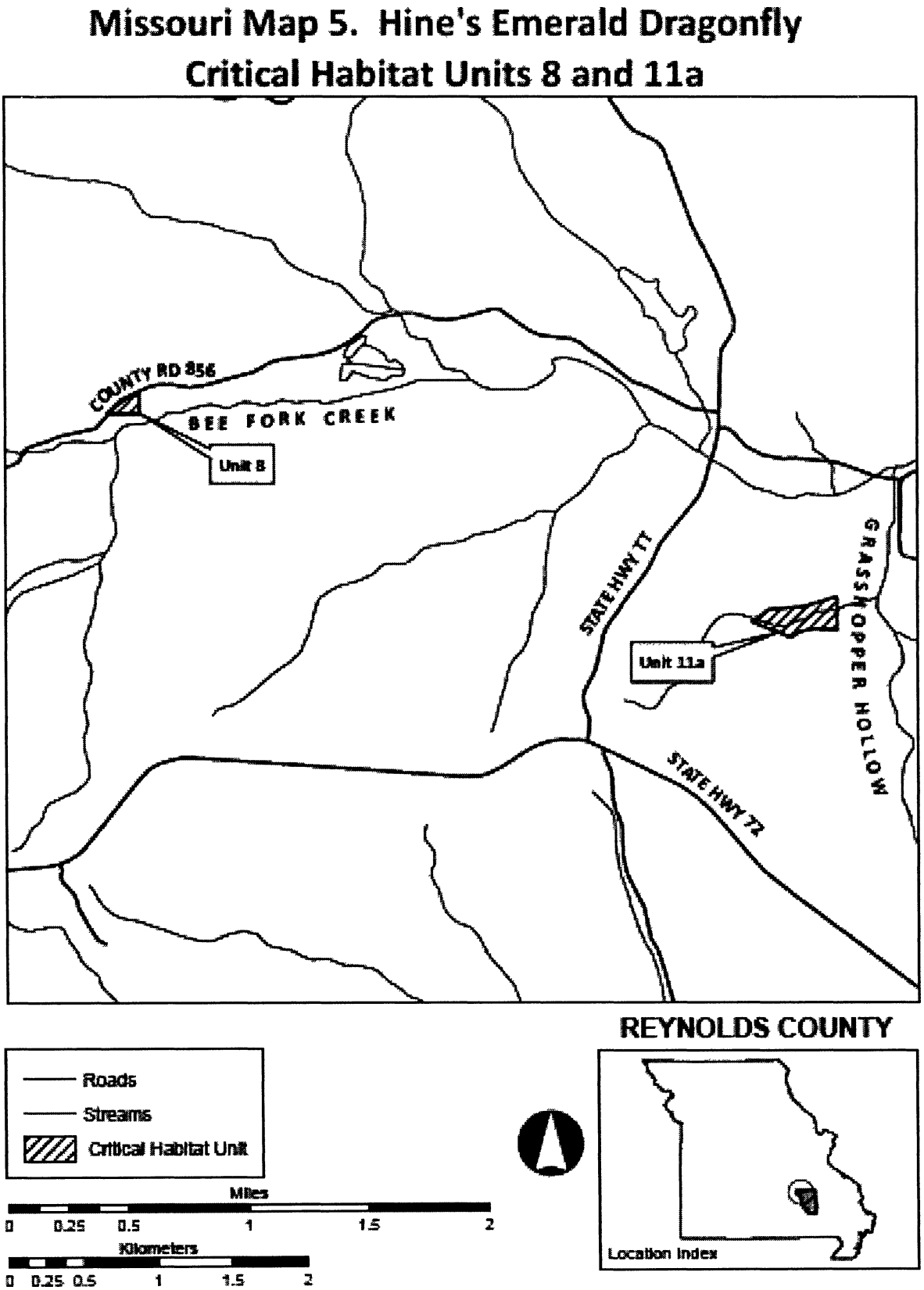


(16) Missouri Units 8and 11a, Reynolds County, Missouri.

(i) Missouri Unit 8: Reynolds County. Located in T32N, R2W, Sec. 22, southeast 1/4, southwest 1/4 of the Bunker 7.5' USGS topographic quadrangle. Missouri Unit 8 is adjacent to Bee Fork Creek and is located approximately 3 miles east of Bunker.

(ii) Missouri Unit 11a: Reynolds County. Located in T32N, R1W, Sec. 30 of the Corridon 7.5' USGS topographic quadrangle. Missouri Unit 11 is located approximately 1 mile east of the intersection of Route TT and Highway 72, extending north to the Bee Fork Church on County Road 854.

(iii) *Note*: Map of Missouri Units 8 and 11a (Missouri Map 5) follows:

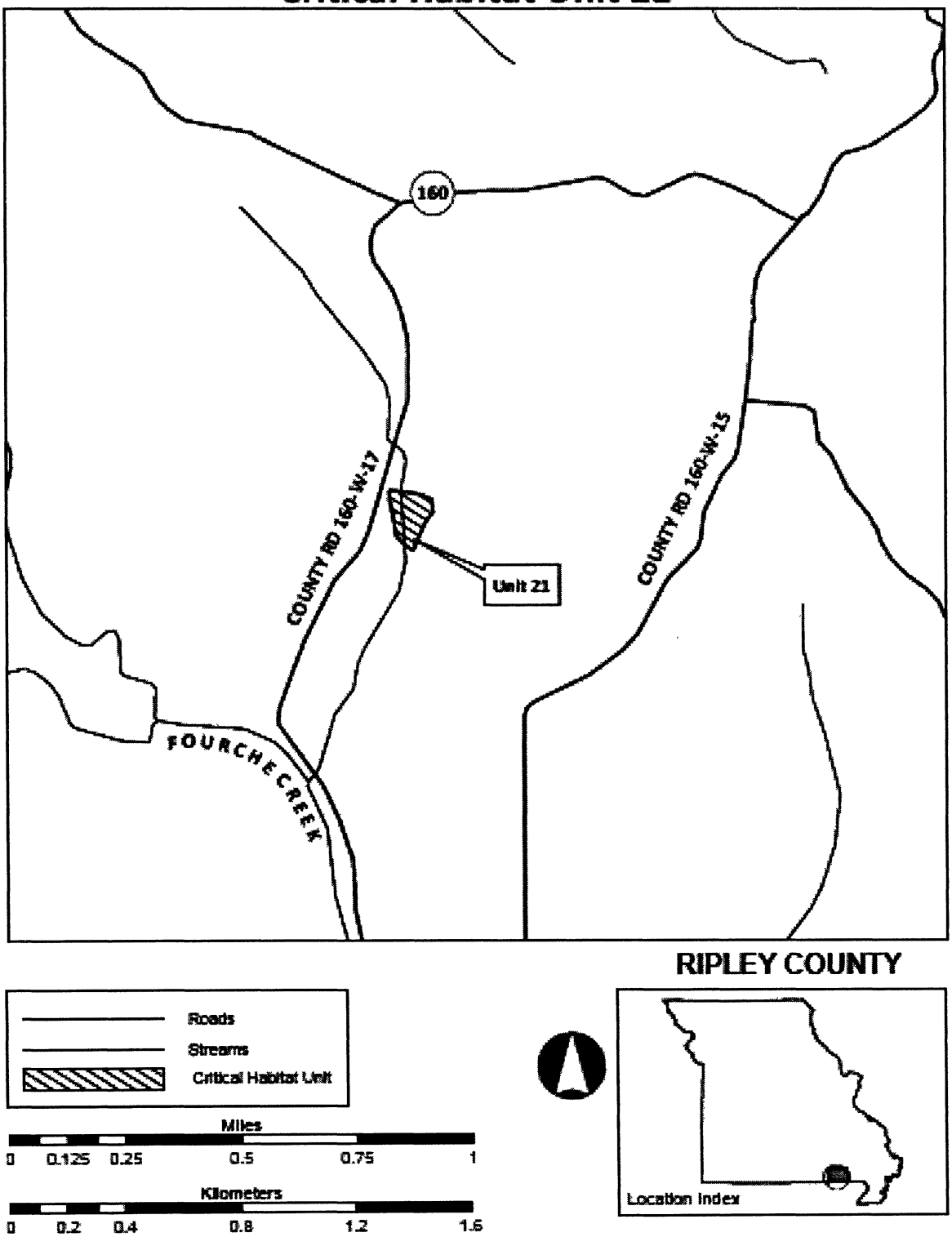


(17) Missouri Unit 21, Ripley County, Missouri.

(i) Missouri Unit 21: Ripley County. Located in T23N, R1W, Sec. 23 of the Bardley 7.5' USGS topographic quadrangle. Missouri Unit 21 is associated with an unnamed tributary of Fourche Creek and is located approximately 12 miles west of Doniphan.

(ii) *Note*: Map of Missouri Unit 21 (Missouri Map 6) follows:

Missouri Map 6. Hine's Emerald Dragonfly Critical Habitat Unit 21

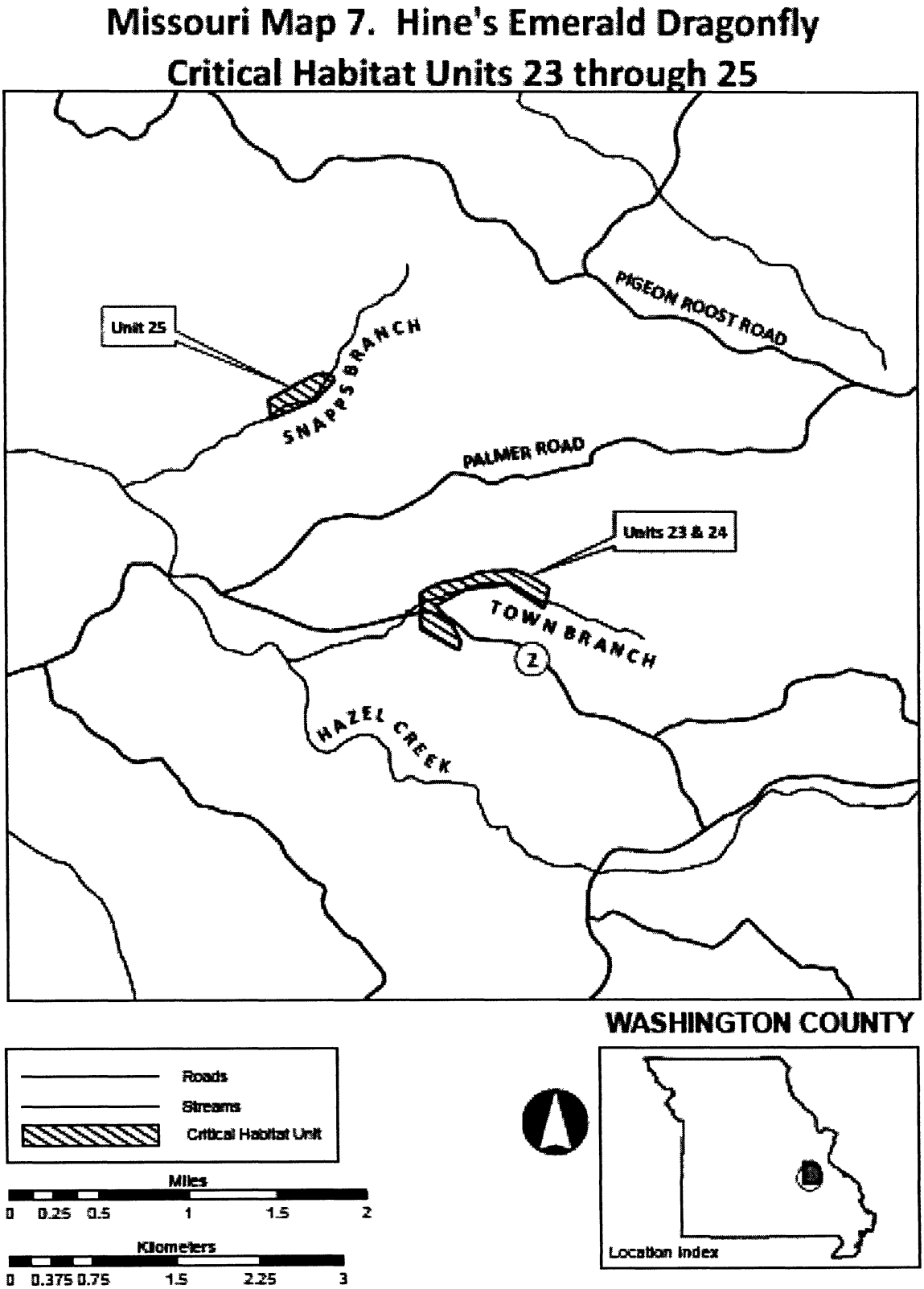


(18) Missouri Units 23 through 25, Washington County, Missouri.

(i) Missouri Units 23 and 24: Washington County. Located in T36N, R1W, Sec. 13 of the Palmer 7.5' USGS topographic quadrangle. Missouri Units 23 and 24 comprise the Towns Branch and Welker Fen complex and are located near the town of Palmer.

(ii) Missouri Unit 25: Washington County. Located in T36N, R1W, Secs. 2 and 11 of the Courtois 7.5' USGS topographic quadrangle. Missouri Unit 25 is associated with a tributary of Hazel Creek and is located approximately 1.5 miles northwest of the town of Palmer.

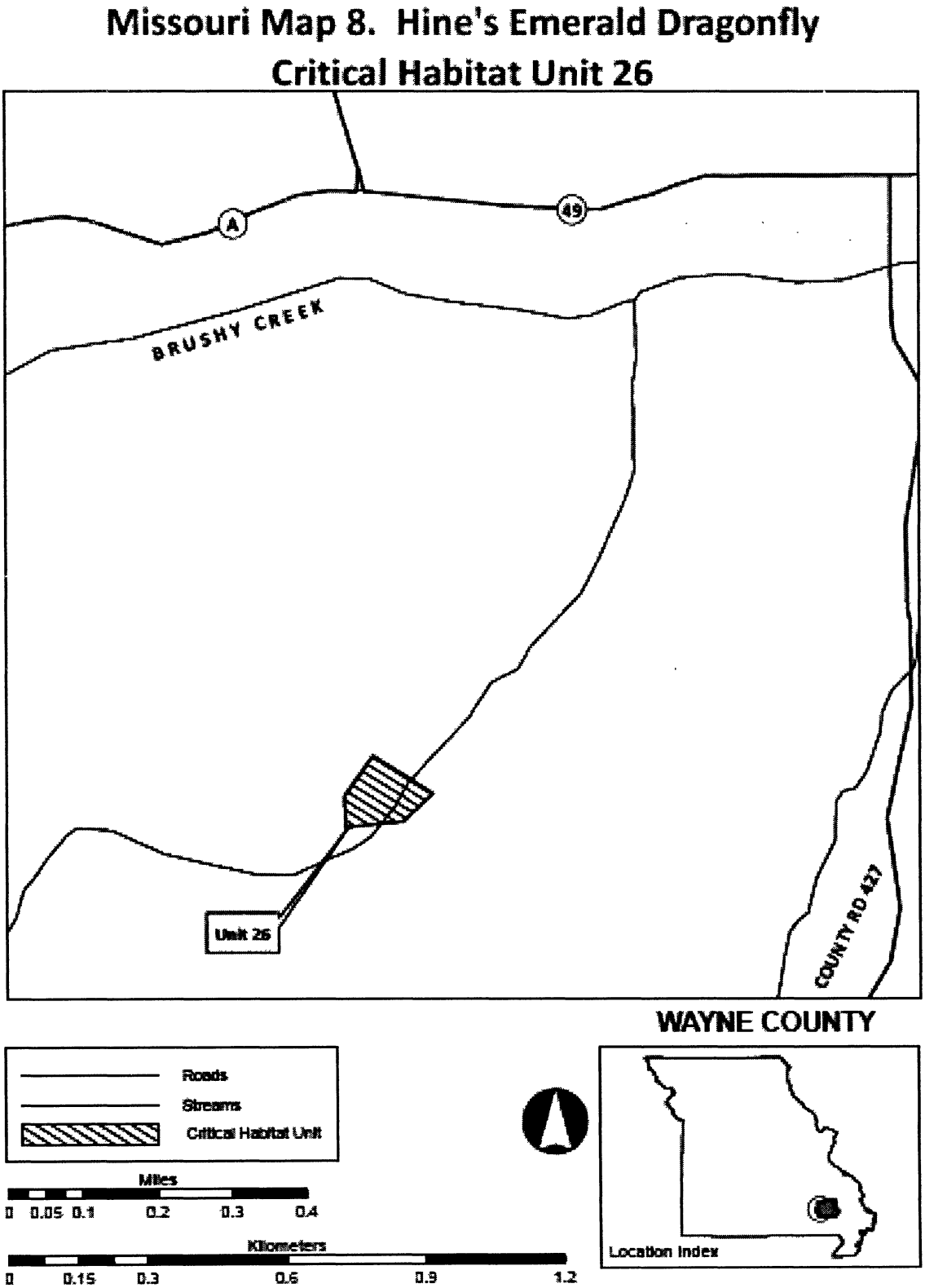
(iii) *Note*: Map of Missouri Units 23 through 25 (Missouri Map 7) follows:



(19) Missouri Unit 26, Wayne County, Missouri

(i) Missouri Unit 26: Wayne County. Located in T27N, R4E, Sec. 33 of the Ellsinore 7.5' USGS topographic quadrangle. Missouri Unit 26 is located near Williamsville and is associated with Brushy Creek.

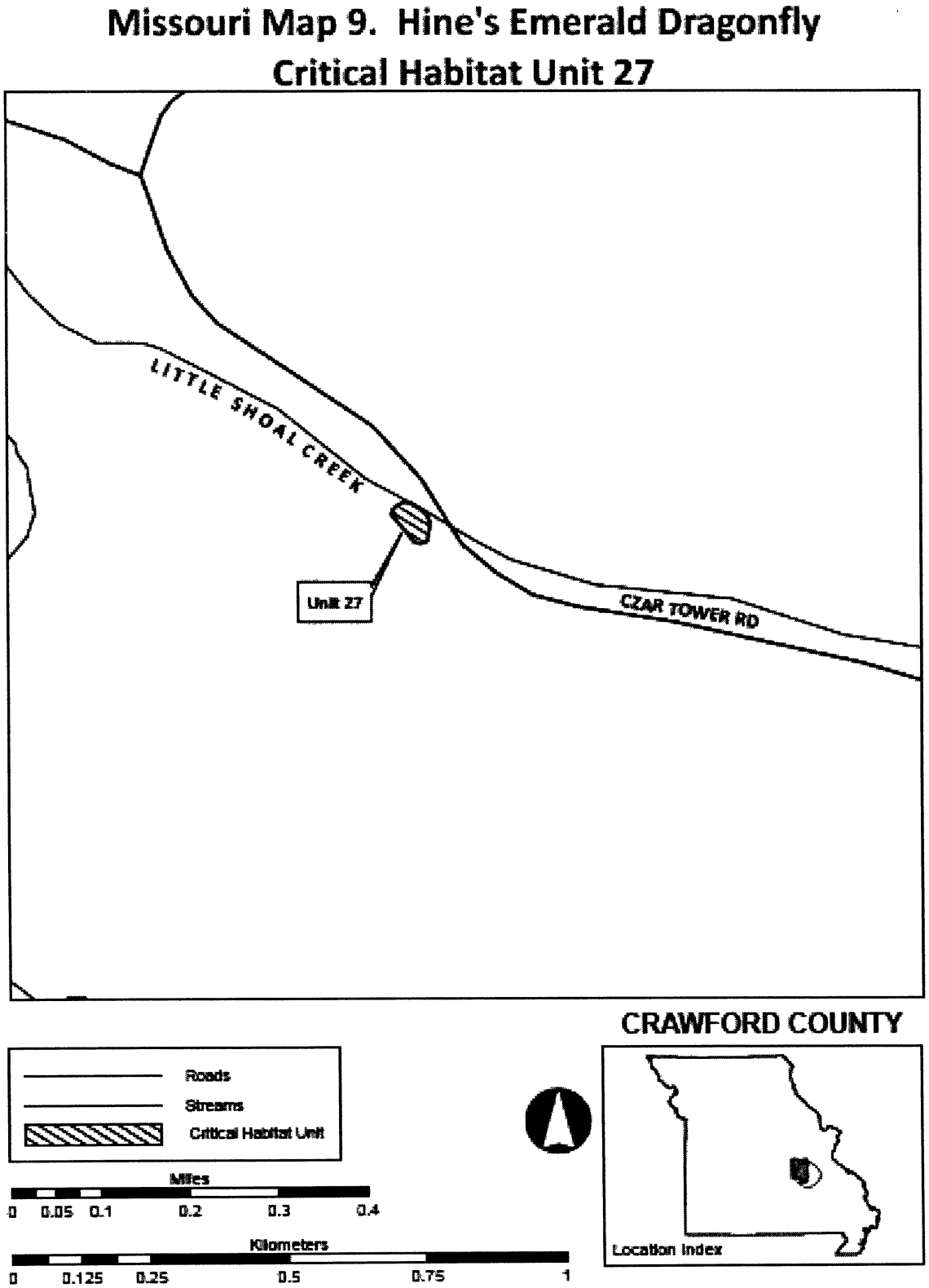
(ii) *Note*: Map of Missouri Unit 26 (Missouri Map 8) follows:



(20) Missouri Unit 27, Crawford County, Missouri.

(i) Missouri Unit 27: Crawford County. Located on the Courtois quadrangle in Township 36 north, Range 2 west, section 14, northeast 1/4, southwest 1/4, northwest 1/4.

(ii) *Note*: Map of Missouri Unit 27 (Missouri Map 9) follows:



(21) Wisconsin Unit 1, Door County, Wisconsin.

(i) Wisconsin Unit 1: Washington Island, Door County. Located in T33N, R30E, W1/2 and NE1/4 Sec. 4, SE1/4 Sec. 5 of Washington Island SE and Washington Island NE 7.5' USGS topographic quadrangles. Lands included are located adjacent to and west of Wickman Road, south of Town Line Road, East of Deer Lane and East Side Roads, north of Lake View Road and include Big Marsh and Little Marsh.

(ii) *Note*: Map of Wisconsin Unit 1 (Wisconsin Map 1) follows:

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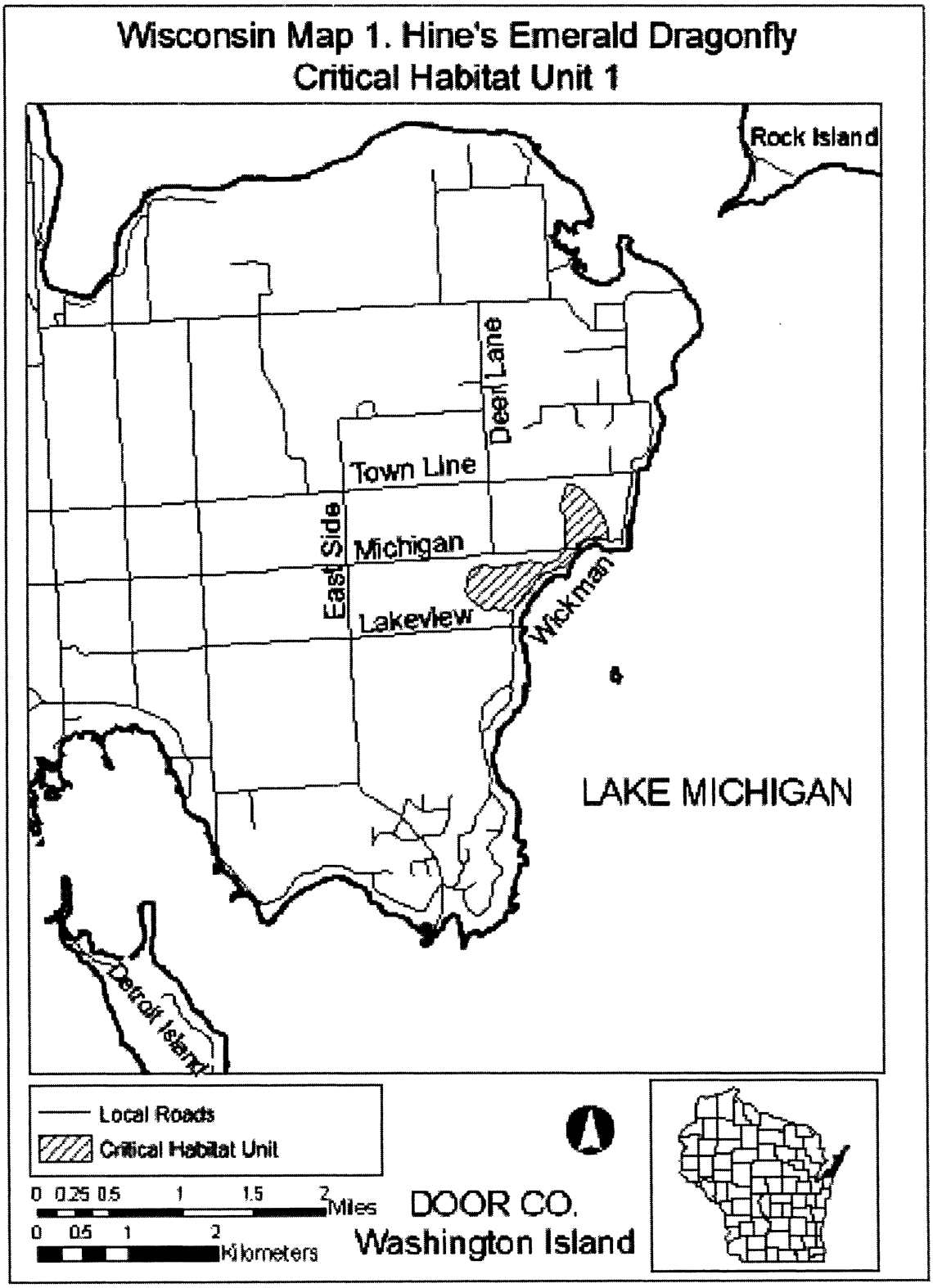
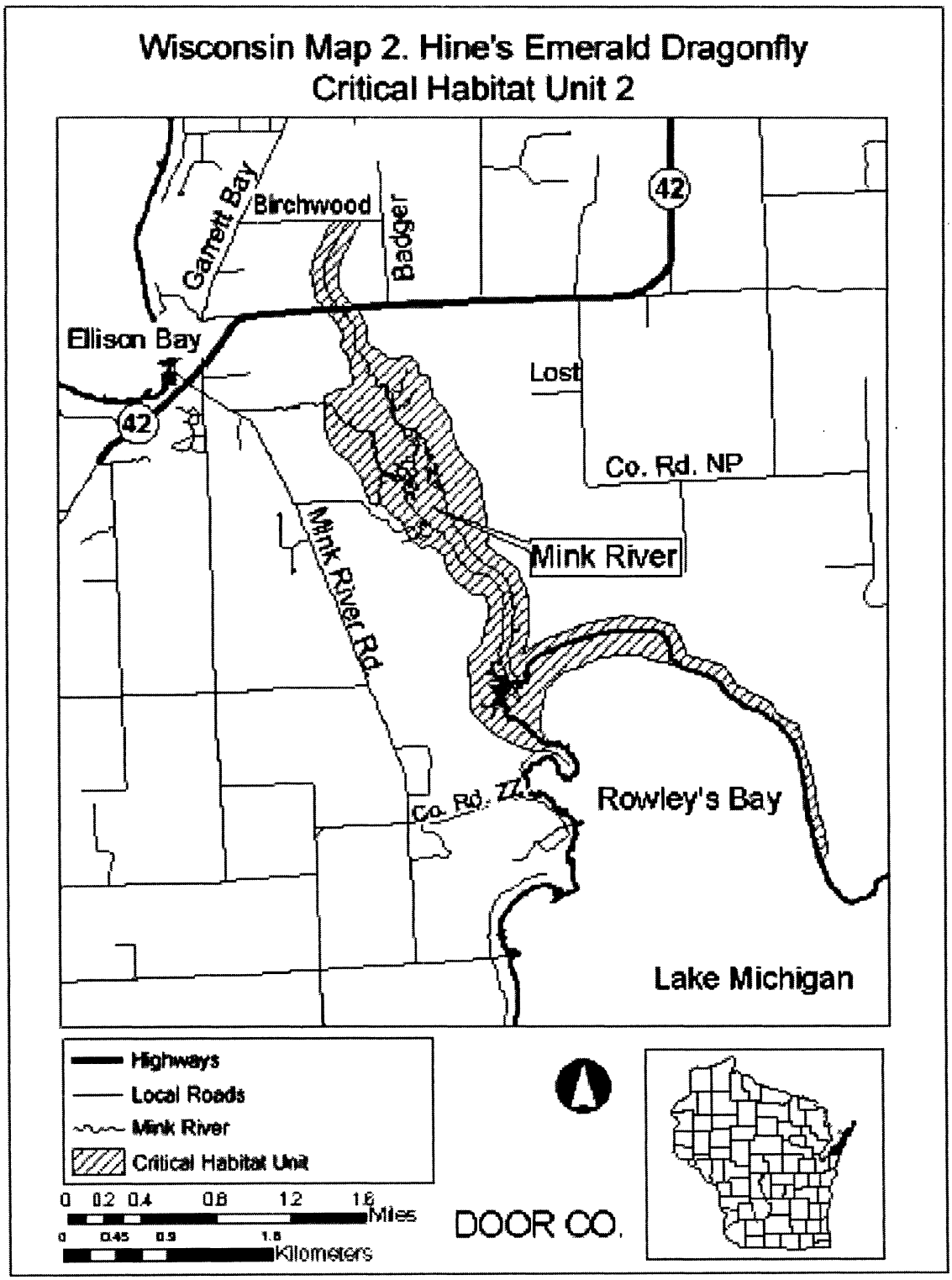


(22) Wisconsin Unit 2, Door County, Wisconsin.

(i) Wisconsin Unit 2: Door County. Located in T32N, R28E, SE 1/4 Sec. 11, NW 1/4 Sec. 13, NE1/4 Sec. 14 of the Ellison Bay 7.5' USGS topographic quadrangle, and in T32N, R28E, W1/2 Sec. 13, E 1/2 Sec. 14, NE1/4 Sec. 23, portions of each 1/4 of Sec. 24, N1/2 Sec. 25, and T32N, R29E, S1/2 Sec. 19, W1/2 Sec. 29, NE1/4 Sec. 30 of Sister Bay 7.5' USGS topographic quadrangle. Lands included are located east of the Village of Ellison Bay, south of Garrett Bay Road and Mink River Roads, North of County Road ZZ, west of Badger Road, County Road NP and Juice Mill Road, and includes the Mink River.

(ii) *Note*: Map of Wisconsin Unit 2 (Wisconsin Map 2) follows:



(23) Wisconsin Units 3 through 7, Door County, Wisconsin.

(i) Wisconsin Unit 3: Door County. Located in T31N R28E, S 1/2 S10, NE 1/4 S15 of Sister Bay 7.5' USGS topographic quadrangle. Lands included are located south of County Road ZZ, north of North Bay (Lake Michigan), west of North Bay Road, east of Old Stage Road and about two miles east of the Village of Sister Bay and include a portion of Three-Springs Creek.

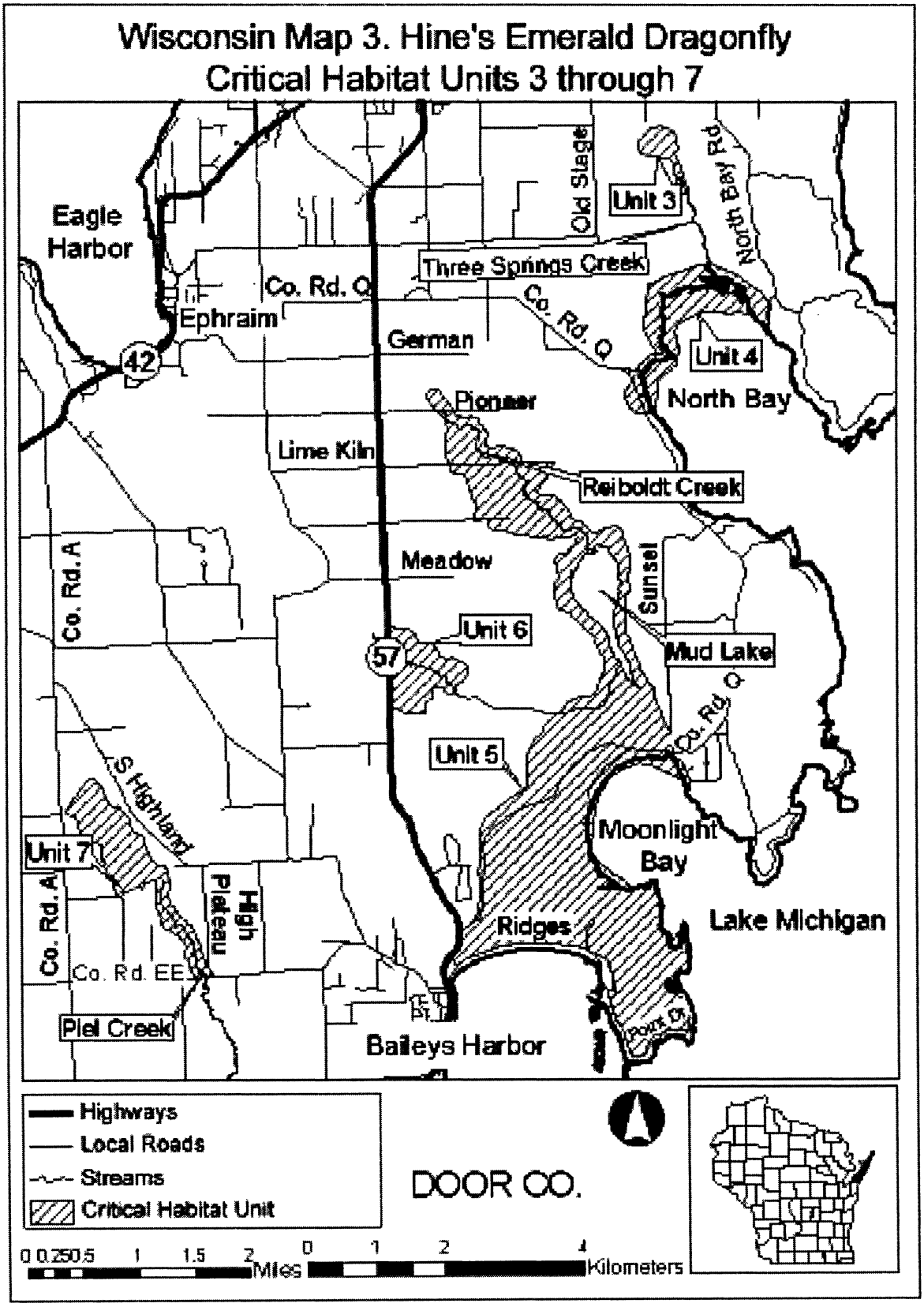
(ii) Wisconsin Unit 4: Door County. Located in T31N, R28E, SW1/4 and S1/2 Sec. 15, portions of each 1/4 of Sec. 22, and N1/2 of Sec. 23 of the Sister Bay 7.5' USGS topographic quadrangle. Lands are located along the north and northwest sides of North Bay (Lake Michigan).

(iii) Wisconsin Unit 5: Door County. Located in T31N, R28E, S1/2 Sec. 20, E1/2 Sec. 29, NW1/4 and S1/2 Sec. 28, N1/2 and SE1/4 Sec. 33, and W1/2 Sec. 34. It also is located in T30N, R28E, W1/2 Sec. 3, E1/2 and SW1/4 Sec. 4, SE1/4 Sec. 8, Sec. 9, N1/2 Sec. 10, W1/2 and SE 1/4 Sec.15, Sec. 16, and Sec. 17 of the Baileys Harbor East, and Sister Bay 7.5' USGS topographic quadrangles. Lands located south of German Road, east of State Highway 57, west of North Bay Drive, Sunset Drive and Moonlight Bay (Lake Michigan), north of Ridges Road and Point Drive and include Mud Lake and Reiboldt Creek.

(iv) Wisconsin Unit 6: Door County. Located in T30N, R28E, portions of each 1/4 of Sec. 5 of the Baileys Harbor East 7.5' USGS topographic quadrangle and Baileys Harbor West 7.5' USGS topographic quadrangle. Lands are located about 2 1/4 miles north of the Town of Baileys Harbor, east of State Highway 57, south of Meadow Road and are associated with an unnamed stream.

(v) Wisconsin Unit 7: Door County. Located in T30N, R27E, Sec. 11, SW1/4 Sec. 13, and N1/2 and SE 1/4 Sec. 14 of the Baileys Harbor West 7.5' USGS topographic quadrangle. Lands are located north of County Road EE, east of County Road A and west of South Highland and High Plateau Roads, about two miles northeast of Town of Baileys Harbor and are associated with the headwaters of Piel Creek.

(vi) *Note*: Map of Wisconsin Units 3 through 7 (Wisconsin Map 3) follows:



(24) Wisconsin Unit 8, Door County, Wisconsin.

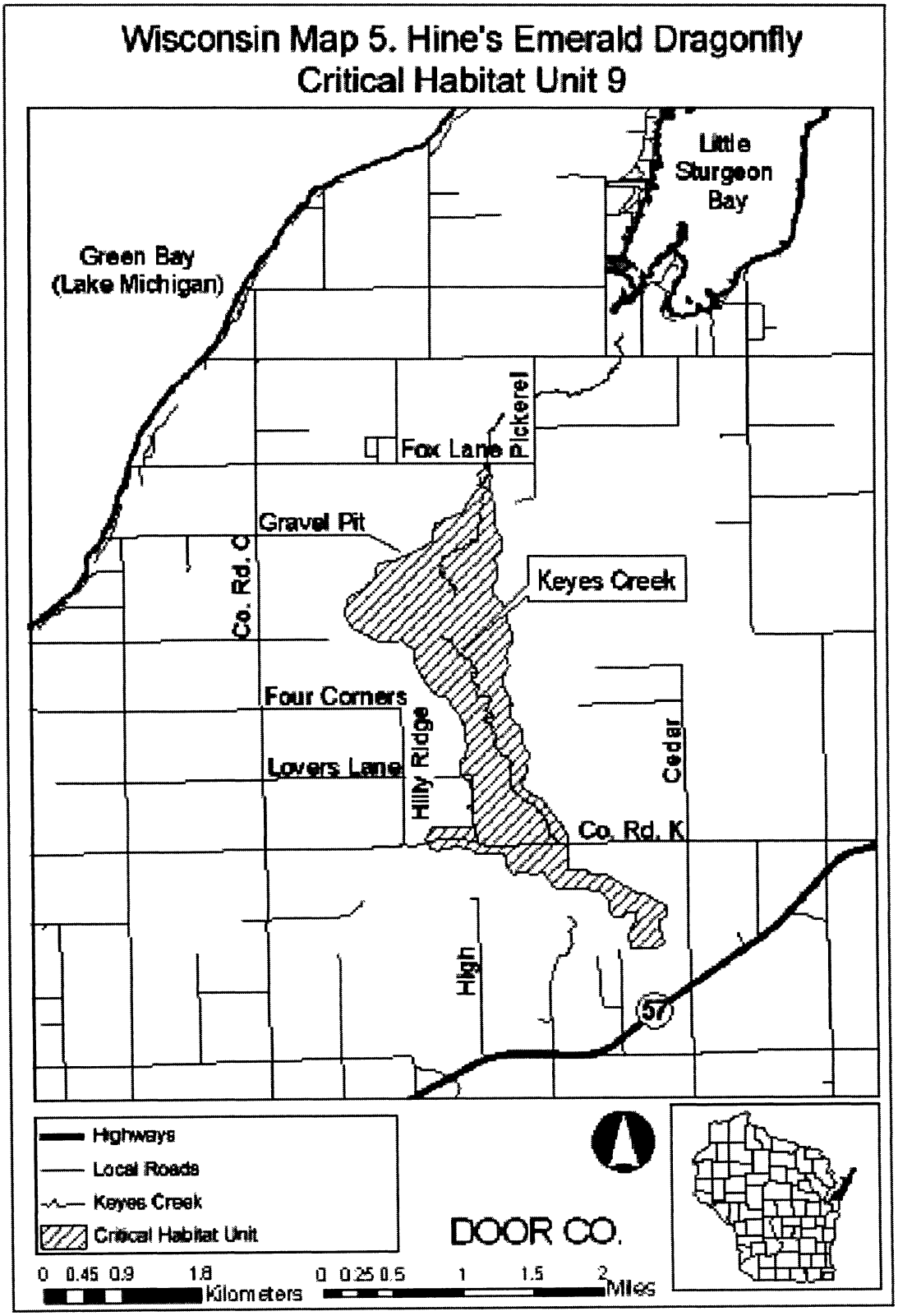
(i) Wisconsin Unit 8: Door County. Located in T28N, R27E, S1/2 Sec. 16, N1/2 Sec. 21 of the Jacksonport 7.5' USGS topographic quadrangle. Lands are located east of Bechtel Road, South of Whitefish Bay Road, west of Glidden Drive and include Arbter Lake.

(ii) *Note*: Map of Wisconsin Unit 8 (Wisconsin Map 4) follows:

(25) Wisconsin Unit 9, Door County, Wisconsin.

(i) Wisconsin Unit 9: Door County, Wisconsin. Located in T27N, R24E, SE1/4 Sec.16, E1/2 Sec. 20, portions of each 1/4 of Secs. 21, 28 and 33, NW1/4 and S1/2 Sec. 34. Also located in T26N, R24E, NW1/4 Sec. 3 of the Little Sturgeon 7.5' USGS topographic quadrangle. Lands are located west of Pickeral Road and Cedar Lane, north of State Highway 57, east of Hilly Ridge Road and County Road C, south of Fox Lane Road, about 1.5 miles southwest of Little Sturgeon Bay (Lake Michigan) and include portions of Keyes Creek and associated wetlands.

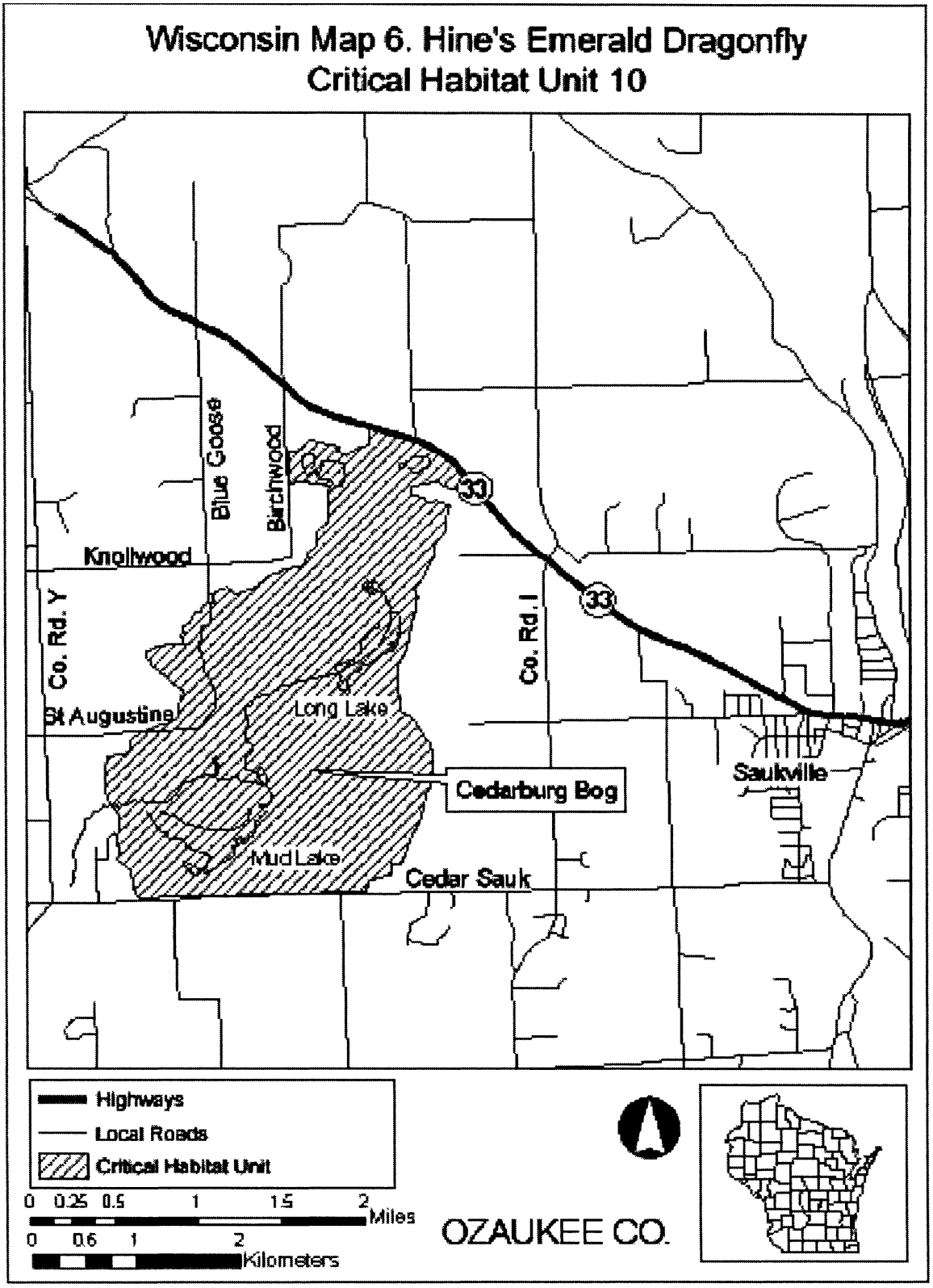
(ii) *Note*: Map of Wisconsin Unit 9 (Wisconsin Map 5) follows:



(26) Wisconsin Unit 10, Ozaukee County, Wisconsin.

(i) Wisconsin Unit 10: Ozaukee County. Located in T11N, R21E, E1/2 of Sec. 20, portions of each 1/4 of Sec. 21, W1/2 Sec. 28, Sec. 29, E1/2 Sec. 30, E1/2 and portions of NW1/4 and SW1/4 Sec. 31, Sec. 32, and W1/2 Sec. 33 of the Cedarburg, Five Corners, Newburg, and Port Washington West 7.5' USGS topographic quadrangles. Lands are located south of State Highway 33, east of County Road Y and Birchwood Road, north of Cedar Sauk Road about 2 miles west of Saukville, and includes the majority of Cedarburg Bog.

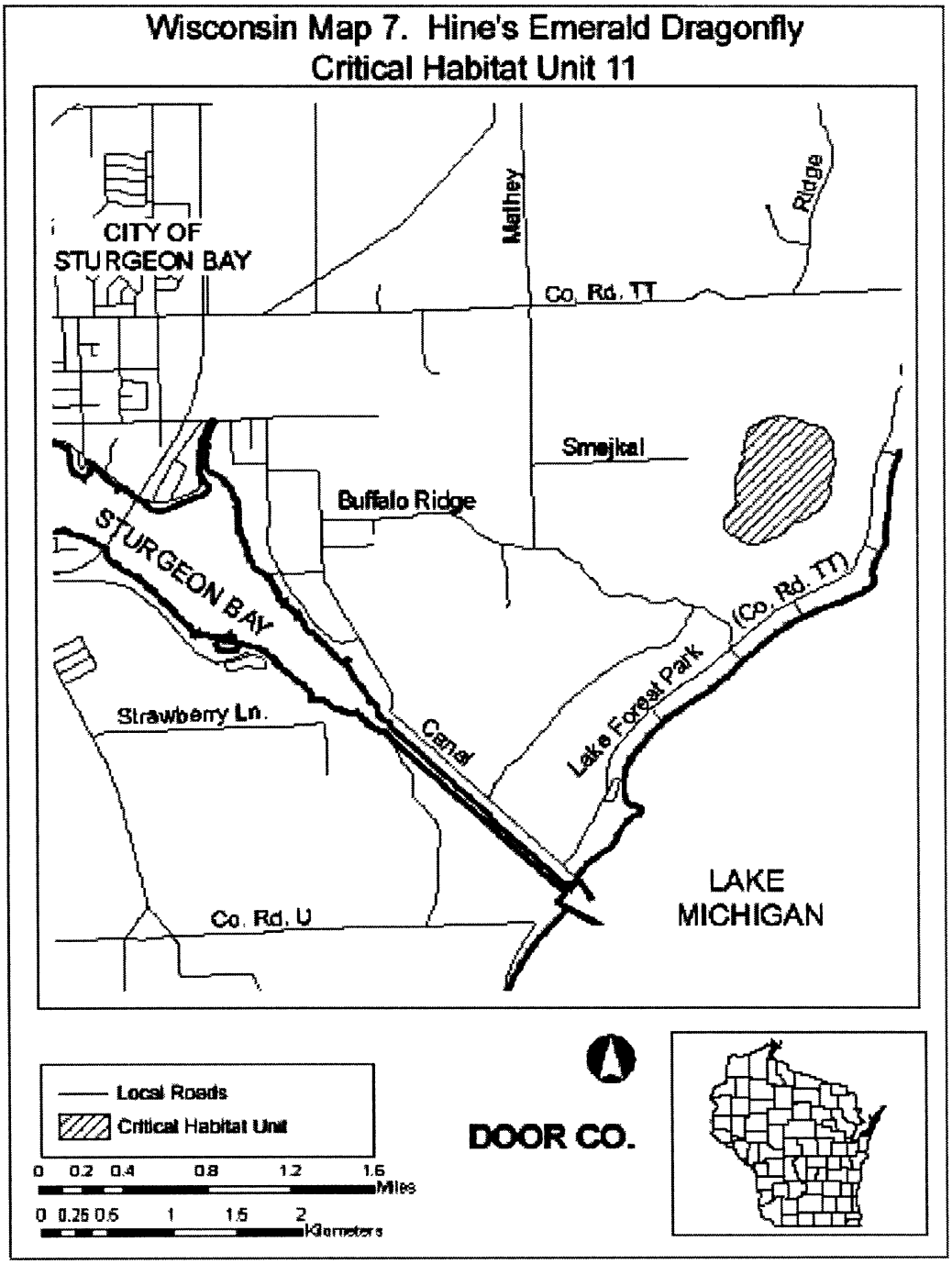
(ii) *Note*: Map of Wisconsin Unit 10 (Wisconsin Map 6) follows:



(27) Wisconsin Unit 11, Door County, Wisconsin.

(i) Wisconsin Unit 11: Door County. Located in T27N, R26E, SE 1/4 Sec. 11, Sec. 12, NW 1/4 Sec. 13, and NE 1/4 Sec. 14 of the Sturgeon Bay East 7.5' USGS topographic quadrangle. Lands are located south of County Road TT, east of Mathey Road, north of Buffalo Ridge Trail, west of Lake Forest Park Road (also County Road TT), about 11/2 miles west of the City of Sturgeon Bay, and include portions of Kellner's Fen.

(ii) *Note*: Map of Wisconsin Unit 11 (Wisconsin Map 7) follows:



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Dated: April 6, 2010

Thomas L. Strickland,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2010–8808 Filed 4–22–10; 8:45 am]

BILLING CODE 4310–55–C

Federal Register

Friday,
April 23, 2010

Part III

Securities and Exchange Commission

17 CFR Parts 240 and 249

Large Trader Reporting System; Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 240 and 249

[Release No. 34–61908; File No. S7–10–10]

RIN 3235–AK55

Large Trader Reporting System

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Securities and Exchange Commission ("Commission") is proposing new Rule 13h–1 and Form 13H under Section 13(h) of the Securities Exchange Act of 1934 ("Exchange Act") to establish a large trader reporting system. The proposal is intended to assist the Commission in identifying and obtaining certain baseline trading information about traders that conduct a substantial amount of trading activity, as measured by volume or market value, in the U.S. securities markets. In essence, a "large trader" would be defined as a person whose transactions in NMS securities equal or exceed two million shares or $20 million during any calendar day, or 20 million shares or $200 million during any calendar month. The proposed large trader reporting system is designed to facilitate the Commission's ability to assess the impact of large trader activity on the securities markets, to reconstruct trading activity following periods of unusual market volatility, and to analyze significant market events for regulatory purposes. It also should enhance the Commission's ability to detect and deter fraudulent and manipulative activity and other trading abuses, and should provide the Commission with a valuable source of useful data to study markets and market activity.

The proposed identification, recordkeeping, and reporting system would provide the Commission with a mechanism to identify large traders and their affiliates, accounts, and transactions. Specifically, proposed Rule 13h–1 would require large traders to identify themselves to the Commission and make certain disclosures to the Commission on proposed Form 13H. Upon receipt of Form 13H, the Commission would issue a unique identification number to the large trader, which the large trader would then provide to its registered broker-dealers. Registered broker-dealers would be required to maintain transaction records for each large trader, and would be required to report that information to the Commission upon request. In addition, registered broker-dealers would be required to adopt procedures to monitor their customers for activity that would trigger the identification requirements of the proposed rule.

DATES: Comments should be submitted on or before June 22, 2010.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/proposed.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number S7–10–10 on the subject line; or
- Use the Federal eRulemaking Portal (*http://www.regulations.gov*). Follow the instructions for submitting comments.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F St., NE., Washington, DC 20549–1090.

All submissions should refer to File Number S7–10–10. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/proposed.shtml*). Comments are also available for Web site viewing and copying in the Commission's Public Reference Room, 100 F St., NE., Washington, DC 20549 on official business days between the hours of 10 a.m. and 3 p.m. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Richard R. Holley III, Senior Special Counsel, at (202) 551–5614, Christopher W. Chow, Special Counsel, at (202) 551–5622, or Gary M. Rubin, Attorney, at (202) 551–5669, Division of Trading and Markets, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–7010.

SUPPLEMENTARY INFORMATION:

I. Introduction

U.S. securities markets have experienced a dynamic transformation in recent years. In large part, the changes reflect the culmination of a decades-long trend from a market structure with primarily manual trading to a market structure with primarily automated trading. Rapid technological advances have produced fundamental changes in the structure of the securities markets, the types of market participants, the trading strategies employed, and the array of products traded. The markets also have become even more competitive, with exchanges and other trading centers offering innovative order types, data products and other services, and aggressively competing for order flow by reducing transaction fees and increasing rebates. These changes have facilitated the ability of large institutional and other professional market participants to employ sophisticated trading methods to trade electronically in huge volumes with great speed. For example, high frequency traders have become increasingly prominent at a time when the markets are experiencing an increase in overall volume. Market analysts have offered a wide range of estimates for the level of activity attributable to high frequency traders, but these estimates typically exceed 50% of total volume.[1] Meanwhile, consolidated average daily share volume and trades in NYSE-listed stocks increased from just 2.1 billion shares and 2.9 million trades in January 2005, to 5.9 billion shares (an increase of 181%) and 22.1 million trades (an increase of 662%) in September 2009.[2]

[1] *See, e.g.,* Jonathan Spicer and Herbert Lash, Who's Afraid of High-Frequency Trading?, Reuters.com, December 2, 2009, *available at http://www.reuters.com/article/idUSN173583920091202* ("High-frequency trading now accounts for 60 percent of total U.S. equity volume, and is spreading overseas and into other markets."); Scott Patterson and Goeffrey Rogow, What's Behind High-Frequency Trading, Wall Street Journal, August 1, 2009 ("High frequency trading now accounts for more than half of all stock-trading volume in the U.S."). *See also* Rob Iati, The Real Story of Trading Software Espionage, Advanced Trading, July 10, 2009, *available at http://advancedtrading.com/algorithms/showArticle.jhtml?articleID=218401501* (high frequency trading accounts for 73% of U.S. equity trading volume). One source estimates that, five years ago, that number was less than 25%. *See* Rob Curran & Geoffrey Rogow, Rise of the (Market) Machines, Wall Street Journal, June 19, 2009, *available at http://blogs.wsj.com/marketbeat/2009/06/19/rise-of-the-market-machines/.* The trend is clear that high frequency traders now play an increasingly prominent role in the securities markets.

[2] *See* NYSE Euronext, Consolidated Volume in NYSE Listed Issues 2000–2009 (*available at http://www.nyxdata.com/nysedata/NYSE/FactsFigures/tabid/115/Default.aspx*). In addition, NYSE's average speed of execution for small (100–499 shares) market orders and marketable limit orders was 10.1 seconds in January 2005, compared to 0.7 seconds in October 2009. *See* NYSE Euronext, Rule 605 Reports for January 2005 and October 2009, *available at http://www.nyse.com/equities/nyseequities/1201780422054.html.* Consolidated average trade size in NYSE-listed stocks was 724

With respect to market movements and volatility, 2008 marked the third largest yearly decline for the Dow Jones Industrial Average ("Dow") since it was inaugurated in 1896, with the Dow finishing down approximately 34% for the year. However, through the end of December 2009, the Dow had advanced approximately 19%.[3] While such market movements are pronounced in absolute terms, volatility and expectations of volatility have fluctuated considerably. Notably, the CBOE VIX volatility index (based on the S&P 500) marked a high of 80.86 on November 20, 2008, but had fallen back to the low 20s by late 2009.[4]

In light of the dramatic changes to the securities markets, including increased volumes, volatility, and the growing prominence of large traders, the Commission recently published a Concept Release to solicit public comment on a broad range of market structure issues.[5] Given the dramatic changes to the securities markets, the Commission believes it is appropriate to exercise its authority under Section 13(h) of the Exchange Act and propose to establish a large trader reporting system, so as to enhance the Commission's ability to identify large market participants, collect information on their trading, and analyze their trading activity.

Currently, to support its regulatory and enforcement activities, the Commission collects transaction data from registered broker-dealers through the Electronic Blue Sheets ("EBS") system.[6] The Commission uses the EBS system to obtain securities transaction information for two primary purposes: (1) To assist in the investigation of possible Federal securities law violations, primarily involving insider trading or market manipulation; and (2) to conduct market reconstructions.

The EBS system has performed relatively effectively as an enforcement tool for analyzing trading in a small sample of securities over a limited period of time. However, because the EBS system is designed for use in narrowly-focused enforcement investigations that generally involve trading in particular securities, it has proven to be insufficient for large-scale market reconstructions and analyses involving numerous stocks during peak trading volume periods.[7] Further, it does not address the Commission's need to identify important market participants and their trading activity. To enhance the Commission's ability to identify large traders and collect information on their trading activity, Congress passed the Market Reform Act of 1990 ("Market Reform Act").[8]

A. The Market Reform Act

Following declines in the U.S. securities markets in October 1987 and October 1989, Congress noted that the Commission's ability to analyze the causes of a market crisis was impeded by its lack of authority to gather trading information.[9] To address this concern, Congress passed the Market Reform Act, which, among other things, amended Section 13 of the Exchange Act to add new subsection (h), authorizing the Commission to establish a large trader reporting system under such rules and regulations as the Commission may prescribe.

The large trader reporting authority in section 13(h) of the Exchange Act was intended to facilitate the Commission's ability to monitor the impact on the securities markets of securities transactions involving a substantial volume or large fair market value, as well as to assist the Commission's enforcement of the federal securities laws.[10] In particular, the Market Reform Act provided the Commission with the authority to collect broad-based information on large traders, including their trading activity, reconstructed in time sequence, in order to provide empirical data necessary for the Commission to evaluate market movement and volatility and enhance its ability to detect illegal trading activity.[11]

The large trader reporting system envisioned by the Market Reform Act authorizes the Commission to require large traders [12] to self-identify to the Commission and provide information to the Commission identifying the trader and all accounts in or through which the trader effects securities transactions.[13] The Market Reform Act also contemplated that the Commission could require large traders to identify their status as large traders to any registered broker-dealer through whom they directly or indirectly effect securities transactions.[14]

In addition to facilitating the ability of the Commission to identify large traders, the Market Reform Act authorizes the Commission to collect information on the trading activity of large traders. In particular, the Commission is authorized to require every registered broker-dealer to make and keep records with respect to securities transactions of large traders that equal or exceed a certain "reporting activity level" and report such

shares in 2005, compared to 268 shares in January through October 2009. *See* NYSE Euronext, Consolidated Volume in NYSE Listed Issues 2000–2009, *available at http://www.nyxdata.com/nysedata/NYSE/FactsFigures/tabid/115/Default.aspx.*

[3] Bloomberg L.P. "Stock price graph for Dow Jones Industrial Average 12/31/08 to 12/31/09." (2010) (18.82%).

[4] For purposes of comparison, the high in the VIX for 2007 was 31.09. *See* CBOE's Volatility Indexes (January 2009) *available at http://www.cboe.com/micro/vix/volatility_qrg.pdf.* The VIX is a measure of market expectations of near-term volatility conveyed by stock index option prices. Specifically, VIX measures 30-day expected volatility of the S&P 500 Index. The components of VIX are near- and next-term put and call options, usually in the first and second SPX contract months. *See* Chicago Board Options Exchange, "The CBOE Volatility Index—VIX," at 1 and 4, *available at http://www.cboe.com/micro/vix/vixwhite.pdf.*

[5] *See* Securities Exchange Act Release No. 61358 (January 14, 2010), 75 FR 3594 (January 21, 2010) (File No. S7–02–10) (Concept Release on Equity Market Structure).

[6] *See* 17 CFR 240.17a–25 (Electronic Submission of Securities Transaction Information by Exchange Members, Brokers, and Dealers).

[7] The shortcomings of the EBS system were noted by the Senate Committee on Banking, Housing and Urban Affairs in the Senate Report accompanying the Market Reform Act of 1990. *See* Senate Report, *infra* note 9, at 48.

[8] Public Law 101–432 (HR 3657), October 16, 1990.

[9] The legislative history accompanying the Market Reform Act also noted the Commission's limited ability to analyze the causes of the market declines of October 1987 and 1989. *See generally* Senate Comm. on Banking, Housing, and Urban Affairs, Report to accompany the Market Reform Act of 1990, S. Rep. No. 300, 101st Cong. 2d Sess. (May 22, 1990) (reporting S. 648) ("Senate Report") and House Comm. on Energy and Commerce, Report to accompany the Securities Market Reform Act of 1990, H.R. No. 524, 101st Cong. 2d Sess. (June 5, 1990) (reporting H.R. 3657).

[10] *See* 15 U.S.C. 78m(h)(1). *See also* Senate Report, *supra* note 9, at 42.

[11] *See* Senate Report, *supra* note 9, at 4, 44, and 71. In this respect, though self-regulatory organization ("SRO") audit trails provide a time-sequenced report of broker-dealer transactions, those audit trails generally do not identify the broker-dealer's customers. Accordingly, the Commission is not presently able to utilize existing SRO audit trail data to accomplish the objectives of the Market Reform Act.

[12] Section 13(h) of the Exchange Act defines a "large trader" as "every person who, for his own or an account for which he exercises investment discretion, effects transactions for the purchase or sale of any publicly traded security or securities by use of any means or instrumentality of interstate commerce or of the mails, or of any facility of a national securities exchange, directly or indirectly by or through a registered broker or dealer in an aggregate amount equal to or in excess of the identifying activity level." *See* 15 U.S.C. 78m(h)(8)(A). The term "identifying activity level" is defined in Section 13(h) as "transactions in publicly traded securities at or above a level of volume, fair market value, or exercise value as shall be fixed from time to time by the Commission by rule or regulation, specifying the time interval during which such transactions shall be aggregated." *See* 15 U.S.C. 78m(h)(8)(C). The proposed "identifying activity level" is set forth in paragraph (a)(7) of proposed Rule 13h–1.

[13] *See* 15 U.S.C. 78m(h)(1)(A).

[14] *See* 15 U.S.C. 78m(h)(1)(B).

transactions upon request of the Commission.[15]

The Market Reform Act specifies that the information collected from large traders and registered broker-dealers under a large trader reporting system would be considered confidential, subject to limited exceptions.[16] In addition, the Market Reform Act provides the Commission with the authority to exempt any person or class of persons or any transaction or class of transactions from the large trader reporting system requirements.[17]

B. Prior Rulemaking

The Commission initially proposed to use its authority under Section 13(h) of the Exchange Act to establish a large trader reporting system in 1991.[18] Similar to the current proposal, the earlier proposed rulemaking would have required large traders to disclose to the Commission their accounts and affiliations by filing Form 13H and would have imposed recordkeeping and reporting requirements on broker-dealers with respect to the activity of their large trader customers.[19]

After considering the comments received on the 1991 Proposal, the Commission clarified and revised its proposed large trader system and issued a re-proposal in 1994.[20] Among other things, the re-proposal sought to: clarify the definition of large trader and to increase the reporting thresholds;[21] streamline the filing requirements and include provisions for an inactive filing status;[22] and provide a safe harbor for a broker-dealer's duty to monitor compliance with the rule.[23]

C. Rule 17a–25 and the Enhanced EBS System

The Commission did not adopt the large trader reporting rule as re-proposed in 1994. However, in 2001 the Commission adopted Rule 17a–25 to enhance the EBS system and facilitate the Commission's ability to collect electronic transaction data to support its investigative and enforcement activities.[24]

Rule 17a–25 enhanced the EBS system in three primary areas. First, it requires broker-dealers to submit to the Commission securities transaction information responsive to a Blue Sheets request in *electronic* format.[25] Second, the rule modified the EBS system to take into account evolving trading strategies used primarily by institutional and professional traders. Specifically, the rule requires firms to supply three additional data elements—prime brokerage identifiers,[26] average price account identifiers,[27] and depository institution identifiers[28]—to assist the Commission in aggregating securities transactions by entities trading through multiple accounts at more than one broker-dealer.[29] Finally, the rule requires broker-dealers to update their contact person information to provide the Commission with up-to-date information necessary for the Commission to direct EBS requests to the appropriate staff.[30]

D. The Current Proposal

While Rule 17a–25 enhanced the Commission's EBS system and improved the Commission's ability to obtain electronic transaction records, it is insufficient for large-scale investigations and market reconstructions involving numerous stocks during peak trading volume periods, and is therefore inadequate with respect to the Commission's efforts to monitor the impact of large trader activity on the securities markets.[31]

In particular, Rule 17a–25 does not specify a definitive deadline by which EBS trade information must be furnished to the Commission and, in the Commission's experience, data collected through the EBS system often is subject to lengthy delays, particularly with respect to files involving a large number of transactions over an extended time period. Commission staff often must make multiple requests to broker-dealers to obtain sufficient order information about the purchase or sale of a specific security to be able to

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[15] *See* 15 U.S.C. 78m(h)(2). Section 13(h) also provides the Commission with authority to determine the manner in which transactions and accounts should be aggregated, including aggregation on the basis of common ownership or control. *See* 15 U.S.C. 78m(h)(3). The term "reporting activity level" is defined in Section 13(h)(8)(D) of the Exchange Act to mean "transactions in publicly traded securities at or above a level of volume, fair market value, or exercise value as shall be fixed from time to time by the Commission by rule, regulation, or order, specifying the time interval during which such transactions shall be aggregated." *See* 15 U.S.C. 78m(h)(8)(D).

[16] *See* 15 U.S.C. 78m(h)(7).

[17] *See* 15 U.S.C. 78m(h)(6).

[18] *See* Securities Exchange Act Release No. 29593 (August 22, 1991), 56 FR 42550 (August 28, 1991) (S7–24–91) ("1991 Proposal").

[19] In 1991, the Commission proposed an "identifying activity level," the triggering level at which large traders would be required to identify themselves to the Commission, of aggregate transactions during any 24-hour period that equals or exceeds either 100,000 shares or fair market value of $4,000,000, or any transactions that constitute program trading. *See* 1991 Proposal, *supra* note 18, 56 FR at 42551.

[20] *See* Securities Exchange Act Release No. 33608 (February 9, 1994), 59 FR 7917 (February 17, 1994) (S7–24–91) ("1994 Reproposal").

[21] Specifically, the Commission proposed to increase the "identifying activity level" to aggregate transactions in publicly traded securities that are equal to or greater than the lesser of 200,000 shares and fair market value of $2,000,000 or fair market value of $10,000,000. The Commission left unchanged the provision that captured transactions that constitute program trading. *See* 1994 Reproposal, *supra* note 20, 59 FR at 7922.

[22] *See* 1994 Reproposal, *supra* note 20, 59 FR at 7927.

[23] *See id.* at 7918.

[24] *See* Securities Exchange Act Release No. 44494 (June 29, 2001), 66 FR 35836 (July 9, 2001) (S7–12–00) (final rulemaking) ("EBS Release"); 42741 (May 2, 2000), 65 FR 26534 (May 8, 2000) (proposed rulemaking).

[25] *See* 17 CFR 240.17a–25. Rule 17a–25 requires submission of the same standard customer and proprietary transaction information that SROs request in connection with their market surveillance and enforcement inquiries. For a proprietary transaction, the broker-dealer must include the following information: (1) Clearing house number or alpha symbol used by the broker-dealer submitting the information; (2) clearing house number(s) or alpha symbol(s) of the broker-dealer(s) on the opposite side to the trade; (3) identifying symbol assigned to the security; (4) date transaction was executed; (5) number of shares, or quantity of bonds or options contracts, for each specific transaction; whether each transaction was a purchase, sale, or short sale; and, if an options contract, whether open long or short or close long or short; (6) transaction price; (7) account number; (8) identity of the exchange or market where each transaction was executed; (9) prime broker identifier; (10) average price account identifier; and (11) the identifier assigned to the account by a depository institution. For customer transactions, the broker-dealer also is required to include the customer's name, customer's tax identification number, customer's address(es), branch office number, registered representative number, whether the order was solicited or unsolicited, and the date the account was opened. If the transaction was effected for a customer of another member, broker, or dealer, the broker-dealer must include information on whether the other party was acting as principal or agent on the transaction.

[26] The Commission requires prime brokerage identifiers to avoid double-counting of transactions where EBS submissions reflect the same trade by both the executing broker-dealer and the broker-dealer acting as the prime broker. *See* EBS Release, *supra* note 24, 66 FR at 35838.

[27] Some broker-dealers use "average price accounts" as a mechanism to buy or sell large amounts of a given security for their customers. Under this arrangement, a broker-dealer's average price account may buy or sell a security in small increments throughout a trading session, and then transfer the accumulated long or short position to one or more accounts for an average price or volume-weighted average price after the market close. Similar to prime brokerage identifiers, the Commission requires average price account identifiers to avoid double-counting where the EBS submission reflects the same transaction for both the firm's average price account and the accounts receiving positions from the average price account. *See* EBS Release, *supra* note 24, 66 FR at 35838–39.

[28] The inclusion of a depository identifier in EBS reports was designed to expedite the Commission's efforts to aggregate trading when conducting complex trading reconstructions. *See* EBS Release, *supra* note 24, 66 FR at 35839.

[29] *See* 17 CFR 240.17a–25(b).

[30] This provision was designed to address the recurring problem of frequent staff turnover and re-organizations at broker-dealers to ensure the Commission directs EBS requests to the appropriate personnel. *See* EBS Release, *supra* note 24, 66 FR at 35839.

[31] *See* 15 U.S.C. 78m(h)(1).

adequately analyze the trading. These multiple requests and responses can take a significant amount of time and delay the Commission's efforts to analyze the data on a contemporaneous basis. Further, since decimal trading has increased the number of price points for securities, the volume of transaction data subject to reporting under the EBS system, particularly in the case of active large traders, can be significantly greater than the EBS system was intended to accommodate in a typical request for data. Thus, the current EBS system does not efficiently collect large volumes of data in a timely manner that allows the Commission to perform contemporaneous analysis of market events.

Further, the data generated by the EBS system does not include important information on the time of the trade or the identity of the customer.[32] While the Commission may be able to use price as a proxy for execution time when reconstructing trading history in a particular security, such analysis is extremely resource intensive and hinders the Commission's ability to promptly analyze data on a contemporaneous basis. Further, information to identify the large trader customer can provide valuable information to permit the Commission to track large trader activity across markets and through various broker-dealers. The ability to track and analyze this information would facilitate the Commission's efforts both to investigate potential manipulative activity and to reconstruct a more accurate market history and would be particularly useful when analyzing information on large traders, as some large traders may trade through multiple accounts at multiple broker-dealers and may trade using sponsored access.[33]

In light of recent turbulent markets and the increasing sophistication and trading capacity of large traders, the Commission needs to enhance further its ability to collect and analyze trading information more efficiently, especially with respect to the most active market participants. In particular, the Commission needs a mechanism to reliably identify large traders, and promptly and efficiently obtain their trading information on a market-wide basis.

The Commission believes a proposal for a large trader reporting system is necessary because, as noted above, large traders appear to be playing an increasingly prominent role in the securities markets. For example, market observers have offered a wide range of estimates for the percent of overall volume attributable to one potential subcategory of large trader—high frequency traders—which are typically estimated at 50% of total volume or higher.[34] The proposed large trader reporting system is intended to provide the Commission with an efficient system for obtaining the information necessary to monitor more effectively the impact on the securities markets of "large traders." As discussed in greater detail below, the Commission proposes to define a "large trader" as a person who, in exercising investment discretion, effects transactions in NMS securities[35] in an amount equal to or greater than (1) during a calendar day, either 2 million shares or shares with a fair market value of $20 million; or (2) during a calendar month, either 20 million shares or shares with a fair market value of $200 million.[36]

Among other things, the Commission believes that a large trader reporting system would enhance its ability to (1) reliably identify large traders and their affiliates, (2) obtain far more promptly trading data on the activity of large traders, including execution time,[37] and (3) aggregate and analyze trading data among affiliated large traders.

II. Description of the Proposed Rule

A. Application and Scope

As discussed in detail below, under proposed Rule 13h–1, any person would be a "large trader" that "directly or indirectly, including through other persons controlled by such person, exercises investment discretion over one or more accounts and effects transactions for the purchase or sale of any NMS security for or on behalf of such accounts, by or through one or more registered broker-dealers, in an aggregate amount equal to or greater than the identifying activity level."[38] All large traders would be required to identify themselves to the Commission by filing Form 13H, and would be required to update their Form 13H at least annually and more frequently as necessary.[39]

Upon receiving an initial Form 13H, the Commission would assign each large trader a unique Large Trader Identification Number ("LTID"). The LTID is a critical component of the proposal, and is intended, among other things, to enable the Commission to aggregate accounts and transactions of large traders on an inter-broker-dealer basis to capture a large trader's trading activity even where the large trader executes trades through a number of different registered broker-dealers. In particular, the LTID would allow the Commission to efficiently sort trade information by large trader.

A large trader would be required to disclose to each of its registered broker-dealers its LTID and identify all of the accounts held by that broker-dealer through which the large trader trades.[40] By requiring the large trader to identify all applicable accounts to its registered broker-dealer, the proposed rule would place the self-identification requirement directly on the large trader, which should assist the registered broker-dealer in easily identifying and marking all of the large trader's accounts held by the broker-dealer. A broker-dealer also would be required to identify itself as a large trader if it effected transactions for a proprietary account (or other account over which it exercises investment discretion) at or above the identifying activity level. Further, the proposed rule would require large traders to provide, upon request, additional information to the Commission that would allow the Commission to further identify the large

[32] The Commission staff also is developing, for Commission consideration, a proposal to establish a consolidated audit trail for equities and options that would collect and consolidate detailed information about orders entered and trades executed on any exchange or in the over-the-counter market. As Commission staff is unable to estimate when that proposal could potentially be operational, the large trader reporting system proposed today is designed to address in the near term the Commission's current need for access to more information about large traders and their activities. Longer term, the proposed large trader reporting system should continue to provide a uniquely valuable tool for efficiently identifying the most significant market participants, in particular with respect to the requirement on large traders to self-identify to the Commission, as this aspect is uniquely addressed by Section 13(h) of the Exchange Act and proposed Rule 13h–1.

[33] The Commission recently proposed rules that would address sponsored access to exchanges. *See* Securities and Exchange Act Release No. 61379 (January 26, 2010), 75 FR 4713 (January 29, 2010) (File No. S7–03–10).

[34] *See supra* note 1.

[35] 17 CFR 240.600(b)(46) (defining "NMS security" as "any security or class of securities for which transaction reports are collected, processed, and made available pursuant to an effective transaction reporting plan, or an effective national market system plan for reporting transactions in listed options."). The term refers to all exchange-listed securities, including equities and options.

[36] *See infra* notes 72–73 and accompanying text (discussing the calculation of the identifying activity level when determining who meets the definition of large trader).

[37] *See infra* note 149 and accompanying text.

[38] *See* proposed Rule 13h–1(a)(1).

[39] *See* proposed Rule 13h–1(b)(1).

[40] *See* proposed Rule 13h–1(b)(2).

trader and all accounts through which the large trader effects transactions.[41]

Proposed Rule 13h–1 also would impose recordkeeping and reporting requirements on registered broker-dealers, and would require registered broker-dealers to provide large trader transaction data to the Commission upon request. Finally, the proposed rule would require registered broker-dealers to establish and maintain systems and procedures designed to help assure compliance with the identification requirements of the proposed rule.

Accordingly, the proposed rule would impose the following obligations on a large trader: (1) Self-identify to the Commission by filing and updating Form 13H; (2) disclose its LTID to its registered broker-dealers and others with whom it collectively exercises investment discretion; and (3) provide certain additional information in response to a Commission request. The proposed rule would impose the following obligations on registered broker-dealers: (1) Maintain records of transactions effected for large traders that are identified by the specific large trader; (2) electronically report large trader transaction information to the Commission upon request; and (3) monitor compliance with the proposed rule.

B. Defining Large Trader

The proposed definition of a large trader is based on the definition of "large trader" in Section 13(h)(8)(A) of the Exchange Act.[42] Specifically, paragraph (a)(1) of the proposed rule defines a "large trader" as "any person that directly or indirectly, including through other persons controlled by such person, exercises investment discretion over one or more accounts and effects transactions for the purchase or sale of any NMS security for or on behalf of such accounts, by or through one or more registered broker-dealers, in an aggregate amount equal to or greater than the identifying activity level."

When determining who would be subject to the proposed requirements as a "large trader," the proposed definition is intended to focus, in more complex organizations, on the parent company of the entities that employ or otherwise control the individuals that exercise investment discretion. The purpose of this focus is to narrow the number of persons that would need to self-identify as "large traders" while allowing the Commission to identify the primary institutions that conduct a large trading business. As discussed further below, the proposed rule provides specific guidance as to who should self-identify as a "large trader." Paragraph (b)(3)(i) of the proposed rule provides that a large trader shall not be required to separately comply with the requirements of paragraph (b) if a person who *controls* the large trader complies with all of the requirements under paragraphs (b)(1), (b)(2), and (b)(4) applicable to such large trader with respect to all of its accounts.[43] The intent of this proposed provision is to push the identification requirement up the corporate hierarchy to the parent entity to identify the primary institutions that conduct a large trading business. By focusing the identification requirements in this manner, the Commission would be able to identify easily the controlling persons that themselves, or through subsidiaries or employees, operate as large traders, while limiting the filing and self-identification burdens that would be imposed to a relatively small group of persons. Accordingly, if a natural person or a subsidiary entity within a large organization independently qualifies as a large trader, but the parent company files Form 13H and identifies itself as the large trader, then the natural person or subsidiary entity would not be required to separately identify itself as a large trader, file Form 13H, or be subject to the other requirements that would apply to large traders. Importantly, this provision would require that the entity that self-identifies as the "large trader" comply with the proposed rule with respect to all accounts within the entity over which investment discretion is exercised, directly or indirectly. Accordingly, if the parent company files Form 13H, then all accounts over which any controlled person exercises investment discretion should be tagged with the parent company's LTID.[44]

Conversely, paragraph (b)(3)(ii) of the proposed rule would apply the same principle on a "top down" basis, providing that a large trader shall not be required to comply with the requirements of paragraph (b) if one or more persons *controlled by* such large trader collectively comply with all of the requirements under paragraphs (b)(1), (b)(2), and (b)(4) applicable to such large trader with respect to all of its accounts. A controlling person of one or more large traders would be required to comply with all of the requirements of paragraph (b) unless the entities that it controls discharge all of the responsibilities of the controlling person under paragraph (b). The intent of this provision is to focus the identification requirement on the parent company, and avoid the application of the requirement to natural persons who may be controlling owners of the parent company. This provision is designed to limit the reporting burden to a relatively small group of persons and avoid redundant identification of accounts, while allowing the Commission to identify the controlling institutions that operate as large traders and obtain information on their trading. As with paragraph (b)(3)(i), this provision would require that the entities that self-identify as large traders (*i.e.,* an entity that is "controlled by" the non-filer) comply with the proposed rule with respect to all accounts of the non-filer controlling person. In other words, a controlling person would not be excused from the large trader requirements under this provision if it directly or indirectly exercises investment discretion over any other accounts, including those of other large traders, unless all of those other large traders have also self-identified

[41] *See* proposed Rule 13h–1(b)(4). For example, the Commission might request additional information regarding a response provided in Schedule 6 to a large trader's Form 13H concerning the identification of accounts.

[42] *See* 15 U.S.C. 78m(h)(8)(A) (providing that "the term 'large trader' means every person who, for his own account or an account for which he exercises investment discretion, effects transactions for the purchase or sale of any publicly traded security or securities by use of any means or instrumentality of interstate commerce or of the mails, or of any facility of a national securities exchange, directly or indirectly by or through a registered broker or dealer in an aggregate amount equal to or in excess of the identifying activity level").

[43] Notably, the definition of "investment discretion" in Section 3(a)(35) of the Exchange Act, 15 U.S.C. 78c(a)(35), applies to a person that is "authorized to determine what securities or other property shall be purchased or sold by or for the account" as well as a person that "makes decisions as to what securities or other property shall be purchased or sold by or for the account even though some other person may have responsibility for such investment decisions* * *." To the extent that an entity employs a natural person that individually, or collectively with others, would meet the proposed definition of a "large trader," then, for purposes of proposed Rule 13h–1, the entity that controls that person or those persons would be considered a "large trader."

[44] Although the proposed rule would relieve a controlled person from separately reporting as a large trader so long as its parent entity complies with the rule with respect to all of its accounts, the Commission anticipates designing the large trader reporting system to accommodate those large traders that wish to voluntarily identify with more granularity the subsidiary, trading desk, or other unit that is directly exercising investment discretion over the account. For example, although the large trader parent entity would be assigned a single LTID by the Commission, the LTID could include a number of blank fields, so that the large trader could elect to append additional characters to sub-identify the relevant unit that directly controls the account. The large trader could then use its generic LTID, along with the more particularized information, when identifying its accounts to its broker-dealers. Large traders voluntarily using these additional characters on their LTID may choose to do so for internal recordkeeping purposes and to facilitate responses to Commission requests for information.

with respect to all of its accounts. The purpose of this proposed provision is to make sure that the entity that self-identifies as a large trader encompasses the full extent of the large trader activity within its domain and those of its controlling person.

For example, a parent holding company generally would file a Form 13H on behalf of itself and each of its large trader subsidiaries. So long as the Form provides all of the relevant information (*e.g.,* discloses contact information and all of the accounts through which it and its affiliates trade), and the holding company makes the necessary disclosures to its and its subsidiaries' broker-dealers, then the large trader subsidiaries would not be required to individually file Forms 13H.[45] Alternatively, if all of the large trader's subsidiaries collectively comply with all of the requirements of proposed paragraphs (b)(1), (b)(2), and (b)(4) with respect to all of the parent company's trading activity, then the holding company would not be required to file a Form 13H.[46] If however, a holding company has two subsidiaries that independently qualify as large traders, and only one elects to file its own Form 13H, then the holding company still would be required to file its own Form 13H that encompasses both subsidiaries.[47] The holding company's Form 13H therefore would include information on each of its subsidiaries, and transactions of both subsidiaries would be tagged with the parent company's LTID.[48]

The examples above describe situations in which, for the limited purpose of determining who should self-identify as a large trader, investment discretion would be considered to be indirectly exercised by a parent company by virtue of the direct or indirect power that the parent company exercises over its subsidiaries. Those who do not exercise investment discretion—either directly or indirectly through, for example controlled persons—would not be large traders, and so mere ownership of accounts—by trusts,[49] custodians, or nominees, for example—through which the requisite number of securities transactions are effected would not trigger large trader status.

The proposed rule focuses on entities that directly or indirectly exercise investment discretion and are responsible for trading large amounts of securities. As these entities can represent significant sources of liquidity and overall trading volume, their trading may have a direct impact on the markets. As such, the Commission believes that the proposed rule, if adopted, would allow the Commission to more readily identify these large traders and obtain current information on their trading activity. The Commission also believes that the proposed rule is tailored to achieve the objectives of section 13(h) of the Exchange Act by allowing the Commission to monitor the impact of large traders on the securities markets and assisting the Commission's enforcement of the Federal securities laws, while at the same time minimizing the burden on affected entities.

1. Definition of Person and Control

Section 13(h)(8)(E) of the Exchange Act defines "person" as having "the meaning given in Section 3(a)(9) [of the Exchange Act] and also includes two or more persons acting as a partnership, limited partnership, syndicate, or other group, but does not include a foreign central bank."[50] Section 3(a)(9) of the Exchange Act defines person as "a natural person, company, government, or political subdivision, agency, or instrumentality of a government."[51] Paragraph (a)(2) of the proposed rule defines "person" by reference to the definition contained in Section 13(h)(8)(E) of the Exchange Act."[52] Accordingly "person," for purposes of proposed Rule 13h–1, would include, among other things, two or more persons acting together for the purpose of trading, acquiring, holding, or disposing of NMS securities.[53]

In addition, paragraph (a)(3) of the proposed rule defines control (including the terms "controlling," "controlled by," and "under common control with") as "the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of securities, by contract, or otherwise. Any person that directly or indirectly has the right to vote or direct the vote of 25% or more of a class of voting securities of an entity or has the power to sell or direct the sale of 25% of more of a class of voting securities of such entity, or in the case of a partnership, has the right to receive, upon dissolution, or has contributed, 25% or more of the capital, is presumed to control that entity." The proposed definition of control is based on the definition of control contained in Form 1 (Application for Registration or Exemption from Registration as a National Securities Exchange). The Commission preliminarily believes that the proposed definition of control is sufficiently limited to capture only those persons with a significant enough controlling interest to warrant identification as a large trader.[54]

While a natural person typically exercises investment discretion over an account, the proposed large trader reporting system is intended to capture the activity of the entity that employs the natural person doing the trading.[55] As discussed above, the proposed rule is intended to push requirements triggered by the large trader definition up the hierarchy of corporate control to the parent company, where applicable. For example, a company that controls persons who, collectively or individually, meet the definition of large trader would file Form 13H and identify itself as the large trader, and all transactions by its employee traders, as well as the employee traders of entities under its control, would be marked with the parent's LTID number.

[45] *See* proposed paragraph (b)(3)(i).

[46] *See* proposed paragraph (b)(3)(ii).

[47] Both the holding company and subsidiary that elected to file its own Form 13H would identify the other as an affiliated large trader in Item 5 of the Form.

[48] Transactions of the subsidiary that filed its own Form 13H would also be tagged with its unique LTID. *See infra* text accompanying note 113 (discussing multiple LTIDs).

[49] Trustees exercising investment discretion on behalf of such trusts would be large traders.

[50] *See* 15 U.S.C. 78m(h)(8)(E).

[51] 15 U.S.C. 78c(a)(9).

[52] As required by Section 13(h)(8)(E) of the Exchange Act, the proposed rule expressly excludes foreign central banks from the definition of a person. *See* 15 U.S.C. 78m(h)(8)(E). *See also* Senate Report, *supra* note 9, at 49 (noting that foreign central banks were to be excluded in the interest of comity and due to the nature of the specific functions of such entities).

[53] *See, e.g.,* House Comm. on Energy and Commerce, Report to Accompany the Securities Market Reform Act of 1990, H.R. No. 524, 101st Cong. 2d Sess. (June 5, 1990) (reporting H.R. 3657).

[54] In particular, the Commission notes that the definition of control contained in Form 1 is among the least expansive definitions of control referenced in Commission rules. *Cf.* Rule 19h–1(f)(2) under the Exchange Act, 17 CFR 240.19h–1(f)(2) (featuring a 10% threshold with respect to the right to vote 10 percent or more of the voting securities or receive 10 percent or more of the net profits). The Commission believes that this definition of control represents a less burdensome option that still achieves the goal of identifying persons who exert direct or indirect control over large traders. Further, the Commission has not incorporated the provision contained in the Form 1 definition of control that is applicable to directors, general partners, or officers that exercise executive responsibility. Rather, given the proposed rule's focus on parent companies, the Commission's proposed definition focuses on the existence of a corporate control relationship over the large trader entity.

[55] Where a firm trades through an algorithmic trading system in which trading decisions are performed by a computer program without the intervention of a natural person, the exercise of investment discretion would be attributed to the firm by way of the natural person or persons who are responsible for the design of the trading engine.

The following examples elaborate on which person would identify itself as the "large trader." For example, if a firm (*e.g.,* a corporation, limited liability company, partnership, limited partnership) employs two natural persons who exercise investment discretion and trade in an amount that would qualify them individually as "large traders," then the firm, as their employer, would file Form 13H and identify itself as a large trader, and the individual employees would not file Form 13H. In addition, if a firm employs two natural persons who exercise investment discretion and trade in an amount that would *not individually* qualify them as "large traders," but, when taken together, the exercise of investment discretion and trading effected by those two natural persons would qualify the firm as a large trader, then the firm, as their employer, would file Form 13H and identify itself as a large trader. This would be the case as long as the firm, directly or indirectly, is the employer of the natural persons and exercises control over them in the context of the employer relationship.[56]

In the case of a large firm that is composed of numerous operating subsidiaries, to accomplish the Commission's goals, the Commission intends that the entity that is the ultimate parent company would file Form 13H and identify itself as the large trader, not the individual subsidiaries. For example, in the case of a large financial holding company, if an adviser and a registered broker-dealer subsidiary both employ persons who exercise investment discretion over accounts and effect the requisite level of transactions (either collectively or individually), the financial holding company could identify itself as the large trader by filing Form 13H, and the adviser and broker-dealer subsidiaries need not file Form 13H.

The following additional examples are intended to provide further clarity as to the party the Commission believes should self-identify as a large trader under the proposed rule:

- In the case of a registered investment adviser that acts as the adviser to several investment companies registered under the Investment Company Act (*e.g.,* mutual funds), even if each fund is managed by one natural person that would meet the applicable large trader threshold, the investment adviser would file Form 13H and identify itself as a large trader and the individual fund manager would not file Form 13H. For purposes of the proposed rule, the investment company would not directly or indirectly exercise investment discretion over one or more accounts and therefore would not file Form 13H.
- Where four individuals form a partnership and operate a proprietary trading business through a computerized algorithmic trading engine, the partnership entity would file Form 13H and identify itself as a large trader, and the four individual partners would not file Form 13H, so long as the partnership covers all of the partners' trading activity for the partnership.[57]
- If a natural person large trader is not employed by an entity (*e.g.,* the person is self-employed), then the natural person would file Form 13H and identify itself as a large trader.

By focusing on parent companies, the proposed rule requires large traders to aggregate accounts over which persons they control exercise investment discretion.[58] Accordingly, even if any individual employee, group, or subsidiary within a company would not effect transactions that equal or exceed the identifying activity threshold by itself, if *collectively* the ultimate parent company operates subsidiaries or controls individuals that together effect transactions that equal or exceed the identifying activity threshold, then the parent company would need to identify itself as a large trader.

The Commission believes that the proposed focus on parent company-level entities should reduce the burden of the proposed rule by requiring self-identification by a concentrated group of parent companies, while capturing those organizations that in the aggregate are responsible for exercising investment discretion over the trading of a substantial volume or fair market value of NMS securities. Notably, companies would not be able to divide their trading among employees, groups, or subsidiaries for the purpose of avoiding meeting the definition of large trader under the proposed rule.

2. Definition of Investment Discretion

Paragraph (a)(4) of proposed Rule 13h–1 states that the definition of "investment discretion" shall have the meaning provided for in Section 3(a)(35) of the Exchange Act. Section 3(a)(35) provides that "[a] person exercises 'investment discretion' with respect to an account if, directly or indirectly, such person (A) is authorized to determine what securities or other property shall be purchased or sold by or for the account, (B) makes decisions as to what securities or other property shall be purchased or sold by or for the account even though some other person may have responsibility for such investment decisions, or (C) otherwise exercises such influence with respect to the purchase and sale of securities or other property by or for the account as the Commission, by rule, determines, in the public interest or for the protection of investors, should be subject to the operation of the provisions of this title and the rules and regulations thereunder."[59] A person's employees would be deemed to exercise investment discretion on behalf of that person when they act within the scope of their employment. This provision is intended to clarify that when an entity determines whether it meets the definition of large trader, it would not count, for example, transactions effected by employees in their personal accounts. The Commission preliminarily believes that this proposed definition would identify those persons and entities responsible for making trading decisions concerning securities transactions involving a substantial volume or a large fair market value consistent with the purposes of section 13(h) of the Exchange Act.

3. Definition of Transaction and NMS Security

Paragraph (a)(6) of the proposed rule defines the term "transaction" to mean all transactions in NMS securities, including exercises or assignments of option contracts, except for a limited number of transactions that are specifically identified in that paragraph, which are discussed below. The term "NMS security" is defined in Rule 600(b)(46) under the Exchange Act.[60] The proposed rule would apply to trading in NMS securities that are traded through any facility of a national securities exchange, as well as traded in foreign or domestic over-the-counter markets and after-hours systems.

[56] The Commission notes that the proposed rule would require the aggregation of accounts over which employees exercise investment discretion in the scope of their employment. *See* proposed Rule 13h–1(a)(4) (defining "investment discretion"). Therefore, as an entity determines whether it is a large trader, it would not count transactions effected by employees in their personal (*e.g.,* 401(k)) accounts.

[57] *See* proposed Rule 13h–1(b)(3)(ii).

[58] *See* proposed Rule 13h–1(a)(1) (defining the term "large trader" to include "any person that directly or indirectly, including through other persons controlled by such person, exercises investment discretion * * *").

[59] 15 U.S.C. 78c(a)(35)(B).

[60] 17 CFR 240.600(b)(46). An "NMS security" means "any security or class of securities for which transaction reports are collected, processed, and made available pursuant to an effective transaction reporting plan, or an effective national market system plan for reporting transactions in listed options."

Section 13(h)(8)(B) defines the term "publicly traded security" to mean "any equity security (including an option on individual equity securities, and an option on a group or index of such securities) listed, or admitted to unlisted trading privileges, on a national securities exchange, or quoted in an automated interdealer quotation system." [61] The Commission preliminarily believes that the definition of "NMS security" encompasses the universe of securities that the term "publicly traded security" used in Section 13(h)(8)(B) was intended to cover.[62]

For purposes of determining whether a person effects the requisite amount of transactions in NMS securities to meet the definition of "large trader," paragraph (a)(6) of the proposed rule would exclude a limited set of transactions from the term "transaction" and the requirements of the proposed rule. The proposed exclusions are designed to exempt certain small and otherwise infrequent traders from the definition of a large trader as well as activity that is not characterized by active investment discretion or is associated with capital raising or employee compensation.

Specifically, the Commission preliminarily believes that the proposed excepted transactions are not effected with an intent that is commonly associated with an arm's length purchase or sale of securities in the secondary market and therefore do not fall within the types of transactions that are characterized by the exercise of investment discretion. While a large enough one-time transaction in the proposed categories could have an impact on the market, the Commission would be able to obtain information on that trade through other means, including the EBS system. The Commission preliminarily believes that the benefit to the Commission of identifying such person as a large trader solely through one of the enumerated excepted transactions would not be justified by the costs that would be imposed on the person and their registered broker-dealer that accompany meeting the definition of large trader. Accordingly, the Commission proposes to exclude the following types of transactions, described below, from the proposed definition of "transaction":

- Any journal or bookkeeping entry made to an account to record or memorialize the receipt or delivery of funds or securities pursuant to the settlement of a transaction; [63]
- Any transaction that is part of an offering of securities by or on behalf of an issuer, or by an underwriter on behalf of an issuer, or an agent for an issuer, whether or not such offering is subject to registration under the Securities Act of 1933, provided, however, that this exemption shall not include an offering of securities effected through the facilities of a national securities exchange;
- Any transaction that constitutes a gift;
- Any transaction effected by a court-appointed executor, administrator, or fiduciary pursuant to the distribution of a decedent's estate; [64]
- Any transaction effected pursuant to a court order or judgment;
- Any transaction effected pursuant to a rollover of qualified plan or trust assets subject to Section 402(c)(1) of the Internal Revenue Code; [65] and
- Any transaction between an employer and its employees effected pursuant to the award, allocation, sale, grant or exercise of a NMS security, option or other right to acquire securities at a pre-established price pursuant to a plan which is primarily for the purpose of an issuer benefit plan or compensatory arrangement.

The Commission preliminarily believes that narrowing the definition of a transaction should reduce the impact of the proposed rule on infrequent traders and at the same time allow the Commission to focus the proposed rule on those persons and activities that require large trader identification.

4. Identifying Activity Level

Section 13(h)(8)(C) defined the term "identifying activity level" to mean "transactions in publicly traded securities at or above a level of volume, fair market value, or exercise value as shall be fixed from time to time by the Commission by rule or regulation, specifying the time interval during which such transactions shall be aggregated." [66] The "identifying activity level" is the threshold level of transaction activity at which a market participant would be considered a "large trader" and required to identify itself to the Commission. The Commission proposes that "identifying activity level" mean aggregate transactions in NMS securities that are equal to or greater than: during a calendar day, either two million shares or shares with a fair market value of $20 million; or (2) during a calendar month, either twenty million shares or shares with a fair market value of $200 million.[67]

The thresholds are designed to identify large traders that effect transactions of a substantial magnitude relative to overall volume. In formulating the proposed threshold, the Commission considered a level that would identify those entities that effect transactions in an amount corresponding to approximately 0.01% of the daily volume and market value of trading in NMS stocks. The Commission staff estimates that daily matched volume in NMS stocks traded on U.S. securities exchanges or reported through a transaction reporting facility [68] is within a range of 7 to 10 billion shares in late 2009.[69] Doubling that matched volume figure to account for the two sides of every trade, considering that the large trader proposal is focused on the aggregated buy and sell activity of traders, results in a figure of between 14 billion and 20 billion shares. Given the Commission's objective to define a "large" trader to be one who effects

[61] *See* 15 U.S.C. 78m(h)(8)(B).

[62] The Commission notes that the term "NMS security" was adopted in 2005, fourteen years after the adoption of Section 13(h). *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005) (File No. S7–10–04) (Regulation NMS adopting release).

[63] The Commission notes that such activity is part of the clearance and settlement process. Because proposed Rule 13h–1 focuses on effecting transactions for the purchase or sale of an NMS security, the Commission does not believe that the capture of this activity is useful in the context of a rule that is designed to identify trading activity.

[64] This proposed exclusion draws a distinction between the distribution and continuing administration of an estate. A court-appointed fiduciary may be authorized to invest and reinvest in securities for many years. Transactions effected pursuant to the continuing administration or investment of an estate's assets would fall outside the exclusion for transactions of a decedent or marital estate, as they would indicate an on-going exercise of investment discretion and extend beyond a one-time event. Only those transactions effected pursuant to the distribution or liquidation of such estates would be excluded.

[65] 26 U.S.C. 402(c)(1).

[66] *See* 15 U.S.C. 78m(h)(8)(C).

[67] *See* proposed Rule 13h–1(a)(7).

[68] Over-the-counter trades, including trades executed by alternative trading systems, are reported to the consolidated trade streams through one of the trade reporting facilities operated by FINRA on behalf of exchanges, or through FINRA's ADF.

[69] While the proposed large trader definition would include options trading in defining a large trader, the proposed threshold was based on information for NMS stock trading. This figure does not count transactions conducted on derivatives markets. Consequently, the Commission believes that the 7 to 10 billion figure understates overall volume relative to the proposed gross-up methodology for calculating the identifying activity threshold. Nevertheless, the Commission preliminarily believes that considering reported volume in NMS stocks provides an appropriate and relevant benchmark, using figures that are widely accessible, for determining the threshold for large trader status. The Commission notes that several exchanges provide daily and moving average volume figures on public Web sites. *See, e.g., http://www.nasdaqtrader.com.*

transactions of approximately .01% of overall daily volume on the equities markets, then a large trader would be a trader who effects transactions involving 2 million shares daily. The Commission estimates that, based on its experience with information gathered in connection with transaction fees pursuant to Section 31 of the Exchange Act,[70] the daily market value of trading in NMS stocks, also on a double-counted basis, is approximately $200 billion. Applying the same 0.01% standard to market value that was applied to daily volume results in a threshold of approximately $20 million.

The first prong of the proposed threshold is designed to identify large traders who effect transactions, on a daily basis, in a substantial volume. The second prong of the proposed threshold is intended to identify large traders who might not trigger the calendar-day threshold but might nevertheless effect transactions in large enough amounts over the course of a calendar month to warrant becoming subject to the proposed requirements that would be applicable to large traders. In addition, the second prong should allow the Commission to establish a high enough first prong so as to not pick up small or infrequent traders who might trigger identification based on a single transaction.

Section 13(h)(3) of the Exchange Act authorizes the Commission to prescribe rules governing the manner in which transactions and accounts shall be aggregated for purposes of determining who should be defined as a large trader.[71] The proposal would require market participants to use a "gross up" approach in calculating their activity levels. Offsetting or netting transactions among or within accounts, even for hedged positions, would be added to a participant's activity level in order to show the full extent of a trader's purchase and sale activity.[72] Specifically, paragraph (c)(1) of proposed Rule 13h–1 would specify that the volume or fair market value of equity securities purchased and sold would be aggregated with the market value of transactions in options or on a group or index of equity securities.[73] For purposes of the identifying activity level, with respect to options, only purchases and sales, and not exercises, would be counted. By considering only purchases and sales, the proposed rule is intended to focus on the trading of options and avoid double-counting towards the applicable identification threshold.

The Commission believes that this approach would accurately identify those traders that effect purchase and sale transactions in a large volume of securities in absolute terms and is designed to minimize the burden on affected entities in calculating the applicable thresholds by utilizing a bright line standard that is readily applied.

To help prevent circumvention of the proposed rule, paragraph (c)(2) further would prohibit a person from disaggregating accounts to avoid identification and the accompanying proposed requirements of a large trader. Accordingly, the proposal would prohibit, among other things, persons from splitting activity among multiple registered broker-dealers, accounts, or transactions for the purpose of evading the large trader identification requirement. Additionally, where two separate entities engage in a coordinated trading strategy that results in the joint exercise of investment discretion over their individual accounts, each entity must count the transactions in NMS securities effected through those "joint" accounts toward its identifying activity level.[74]

The Commission believes that the capture of substantial trading activity would be essential to accomplish the purposes of Section 13(h) of the Exchange Act. The Commission has balanced this need against the burden of capturing the information and preliminarily believes that the proposed identifying activity level strikes an appropriate balance. In particular, the Commission preliminarily believes that trading activity in an amount corresponding to the proposed identifying activity level effected during the applicable measuring periods is sufficiently substantial to warrant identification as a large trader so that the Commission can more readily obtain information about that trader and its market activity. The Commission also preliminarily believes that the proposed identifying activity level would establish a simple bright-line threshold consistent with the activity-based threshold contemplated by Section 13(h) of the Exchange Act.

5. Inactive Status

Proposed Rule 13h–1(b)(3)(iii) would establish an optional inactive status for large traders. Specifically, large traders previously assigned an LTID whose aggregate transactions during the previous full calendar year did not reach the identifying activity level at any time during the year would be eligible to file for inactive status upon checking a box on the cover page of a Form 13H filing. This status would be available to traders that become less active and no longer meet the threshold at which large trader status is realized. After a large trader files for inactive status, it would be relieved from the Form 13H filing requirements, as well as the requirement to inform its registered broker-dealers and others with whom it shares investment discretion, of its LTID.[75]

As proposed, large traders on inactive status who once again reach the identifying activity level would be required to reactivate their large trader status by filing Form 13H promptly after effecting transactions in an amount that equals or exceeds the large trader identifying activity threshold.[76] In submitting a "Reactivated Status" Form 13H, the large trader would retain the LTID initially assigned to it, and would be required to notify registered broker-dealers and others of its status and LTID.

The Commission believes that the proposed provision for an inactive status should eliminate the ongoing costs of compliance with the proposed rule, including the requirement to file amendments to Form 13H with the Commission, for those entities that no longer trade in amounts that would meet the definition of large trader. The Commission preliminarily believes that

[70] 15 U.S.C. 78ee.

[71] *See* 15 U.S.C. 78m(h)(3).

[72] In particular, a trader that nets or hedges its positions, *e.g.,* one that seeks to achieve a net position of zero at the end of a trading day, may nevertheless have transacted in a substantial volume or fair market value during the course of the day. Through the proposed rule, the Commission seeks to identify any person who effects transactions in the requisite amount. Substantial trading activity has the potential to impact the market regardless of the person's net position.

[73] For example, 50,000 shares of XYZ stock and 500 XYZ call options would count as aggregate transactions of 100,000 shares in XYZ (*i.e.,* 50,000 + 500 × 100 = 100,000). With respect to index options, the market value would be computed by multiplying the number of contracts purchased or sold by the market price of the options and the applicable multiplier. For example, if ABC Index has a multiplier of 100, a person who purchased 200 ABC call options for $400 would have effected aggregate transaction of $8 million (*i.e.,* 200 × 400 × 100 = $8,000,000). Transactions in index options are not required to be "burst" into share equivalents for each of the underlying component equities.

[74] The definition of "person" includes two or more persons acting as a partnership, limited partnership, syndicate, or other group. As discussed *infra,* if a person meets the identifying activity level, the person would be a large trader and would need to list the applicable accounts in proposed Schedule 6 to Form 13H.

[75] In addition, a large trader on inactive status could inform its broker-dealers of its inactive status and request that the broker-dealer cease tagging its transactions with its LTID.

[76] *See infra* note 81 (discussing the "promptly" standard).

the provision for an inactive status is consistent with the objectives of Section 13(h) of the Exchange Act.

As a subset of inactive status, proposed Form 13H would allow a large trader that discontinues operations to file an amended Form 13H reflecting its "Termination" status. For example, this status would be applicable in the event of certain mergers or acquisitions involving a large trader, including a merger of two large traders. In that instance, the non-surviving large trader would be required to submit a "Termination Filing" that specifies the effective date of the merger. In Item 5b of the Form 13H, the surviving large trader would be required to list as an affiliate the non-surviving company, note that the company no longer exists, and provide the LTID of the non-surviving company. The Commission believes that specifically allowing a large trader to file an updated Form 13H indicating that it has discontinued operations will allow large traders to accurately reflect their status to the Commission and will enhance the utility of the proposed large trader reporting system.

C. Large Trader Self-Identification

Section 13(h)(1) of the Exchange Act authorizes the Commission to prescribe identification requirements for large traders for the purpose of monitoring the impact on the securities markets of securities transactions involving a substantial volume, or a large fair market value or exercise value, and to assist the Commission in the enforcement of the Exchange Act.[77] The Commission is specifically authorized to require large traders to provide it with the information deemed necessary or appropriate to identify large traders and all accounts in or through which large traders effect transactions.[78] The Commission also is authorized to require large traders to disclose their large trader status to the registered broker-dealers that carry the accounts through which they effect transactions.[79] The Commission is proposing Rule 13h–1(b) and Form 13H to implement these provisions of Section 13(h)(1) of the Exchange Act.

As discussed below, under the proposed rule, each large trader would be required to identify itself to the Commission by filing electronically with the Commission a Form 13H.[80] Additionally, each large trader would be required to identify itself to the broker-dealers through which it effects transactions as well as to any other entity with which it shares investment discretion over an account. Finally, the proposed rule would require a large trader to promptly provide the Commission with such other descriptive or clarifying information that the Commission may request from time to time to further identify the large trader and all accounts through which the large trader effects transactions.[81] Under this provision, the Commission would be able to obtain, for example, clarifying information concerning information provided in a Form 13H filing.

1. Form 13H Filing Requirements

Paragraph (b)(1) of the proposed rule would require large traders to file Form 13H with the Commission promptly after first effecting transactions that reach the identifying activity level.[82] Thereafter, large traders would be required to file an amended Form 13H promptly following the end of a calendar quarter, but only if any of the information contained in the Form 13H becomes inaccurate for any reason (*e.g.,* change of name or address, contact number, type of organization, principal business, regulatory status, or accounts maintained).[83] To the extent none of the information contained in the Form became inaccurate during the quarterly period, the large trader would not be required to file an amended form. Regardless of whether it files any amended Forms 13H, a large trader would still be required to file proposed Form 13H annually, within 45 days after the calendar year-end, in order to help ensure the accuracy and currency of all of the information reported to the Commission.[84]

The Commission believes that the proposed requirement that large traders keep current the information contained in their Form 13H submissions will provide the Commission with up-to-date information that the Commission could utilize promptly when needed. Unless the Commission has up-to-date Forms 13H for each large trader, the Commission could be impaired in its ability quickly to identify and contact large traders, as well as identify their accounts, affiliates, and trading activity. Given the limited amount of information proposed to be collected on the Form 13H, the Commission believes the burden of amending the form would be justified by the benefit to the Commission of minimizing problems that could arise from otherwise stale information.

2. Form 13H and Instructions

Proposed Form 13H, and the Schedules and Instructions thereto, are designed to capture basic information on each large trader consistent with the Commission's authority under Section 13(h) of the Exchange Act. The proposed Instructions to the proposed form provide all of the pertinent definitions, examples of who would be a large trader, and what information must be provided on Form 13H. The proposed Instructions also provide guidance and cross-references to Rule 13h–1 and other related instructions. The Commission believes that a careful review of the Instructions to Form 13H should assist large traders and facilitate the completion and filing of Form 13H.

The cover page to proposed Form 13H requires a large trader to indicate the nature of the submission it is filing, including: "Initial Filing," "Annual Filing," "Interim Filing," "Inactive Status," "Reactivated Status," and "Termination Filing." It also requires that a large trader provide its LTID. For its "Initial Filing," a large trader would not be able to provide an LTID, as the Commission would issue the LTID only after it receives the initial Form 13H submission. After receiving its LTID, the large trader would need to file promptly an "Interim Filing" to include the LTID and any new information.[85] The cover page also would require contact information for the large trader, and requires the signature of the large trader's representative. The cover page contains a statement for the person signing the form to acknowledge that all of the information contained in the form

[77] *See* 15 U.S.C. 78m(h)(1).

[78] *See* 15 U.S.C. 78m(h)(1)(A).

[79] *See* 15 U.S.C. 78m(h)(1)(B).

[80] The Commission is proposing an electronic filing system for proposed Form 13H, and the proposed rule would require electronic filing. *See* proposed Rule 13h–1(b)(1). If the Commission adopts the proposed rule as proposed, it is possible that large traders might be required to file Form 13H in paper until such time as an electronic filing system is operational and capable of receiving the Form. Large traders would be notified as soon as the electronic system can accept filings of Form 13H.

[81] *See* proposed Rule 13h–1(b)(4). *See also infra* note 83 (referencing the "promptly" standard of Rule 15b3–1)."

[82] *See* proposed Rule 13h–1(b)(1)(i).

[83] *See* proposed Rule 13h–1(b)(1)(iii) (requiring registered broker-dealers to "promptly file" amendments to Form 13H as necessary). *See also* 17 CFR 240.15b3–1 (concerning a similar standard for Form BD).

[84] *See* proposed Rule 13h–1(b)(1)(ii).

[85] Proposed Schedule 6 of Form 13H would require a large trader to provide the LTID for all other large traders (if any) that also exercise investment discretion over the accounts it identifies. When large traders submit their "Initial Filings" after implementation of this rule, large traders may not have the LTID of these other large traders for the same reason: the Commission may not have issued them yet. Therefore, as the Commission issues LTID numbers, and as large traders disclose their LTIDs to each other as required under proposed paragraph (b)(2), large traders would need to file "Interim Filings."

is true, correct, and complete. In addition, the cover page notes that intentional misstatements or omissions of fact constitute a federal crime and may result in civil penalties or other sanctions.

Proposed Item 1 to Form 13H would require large traders to identify their business by checking the appropriate pre-populated categories or by indicating "other." In Item 2, a large trader would be required to disclose whether it or any of its affiliates files forms with the Commission and, if so, to indicate the types of forms and all applicable SEC File and CRD numbers. The Commission anticipates that some of the most common registrations or filings that large traders may list in proposed Item 2 would include, for example, Form BD, Form ADV, or Form 10–K. Identification of this information will allow the Commission to readily ascertain the regulatory status of the large trader and its controlled persons.

Proposed Item 3 to Form 13H would require a large trader to disclose whether it or any of its affiliates is: (1) A registered trader or otherwise registered with the Commodity Futures Trading Commission; (2) is a bank holding company, national bank, state member bank of the Federal Reserve System, state non-member bank, savings bank or association, credit union, or foreign bank; (3) an insurance company; or (4) regulated by a foreign regulator. For each entity that is, the form requires additional identifying information, which will allow the Commission to readily ascertain the regulated status of the large trader, and provide context for the Commission to understand the large trader's operations. Such entities must be identified and, for entities registered under the Commodity Exchange Act, the large trader would be required to provide its registration type and number. For other identified entities, a large trader would be required to disclose the applicable regulator(s).

Proposed Item 4 to Form 13H, and the corresponding Schedule 4, would require the large trader to disclose basic business information. For example, the large trader must disclose whether it exercises investment discretion as a trustee, partnership, or corporation. Natural person large traders would be required to disclose whether they are self-employed or otherwise employed. Entities would be required to disclose the jurisdiction in which they are organized and their organization type: partnership, limited partnership, corporation, limited liability company, or other. In addition, entities would be required to identify those persons who own or control a large trader corporation, partnership, limited partnership, or trust. The term "executive officer," used in proposed Schedule 4, would mean "policy-making officer" and otherwise would be interpreted in accordance with Rule 16a–1(f) under the Exchange Act.[86] Further, each large trader would be required to describe the nature of its business. Identification of this information will help the Commission understand the corporate structure of the large trader and the nature of its business. Among other things, this information would be useful to the Commission to provide context to a large trader's operations, and would help the Commission understand the control relationships surrounding the large trader. This information also would be useful to the Commission in tailoring any requests for additional information that it may send to a large trader.

Proposed Item 5 to Form 13H would collect information about the affiliates of large traders that either exercise investment discretion over accounts that hold NMS securities or that beneficially own NMS securities, if any. For purposes of this form, "affiliate" would be defined to mean any person that directly or indirectly controls, is under common control with, or is controlled by the large trader. This proposed definition of affiliate is designed to allow the Commission to collect comprehensive identifying information relating to the large trader and is consistent with other similar definitions of the term.[87] The large trader would be required to identify each affiliate that either exercises investment discretion over accounts that hold NMS securities or that beneficially owns NMS securities, state the nature of its affiliate's business, and explain the relationship to the large trader (*e.g.,* limited partner, direct subsidiary). Additionally, the large trader would be required to provide any applicable LTID for its large trader affiliates. Among other things, proposed Item 5 would allow the Commission to more carefully tailor any request that it may make to disaggregate large trader activity, and should also assist the Commission in understanding the affiliate relationships of the large trader and determine whether the correct entities had self-identified with the Commission.

Proposed Item 6, and the accompanying Schedule 6, are designed to collect information concerning accounts over which the large trader exercises investment discretion. Specifically, the proposed schedule would require the large trader to identify all the accounts over which it directly or indirectly (*e.g.,* through controlled persons) exercises investment discretion for purposes of the proposed rule. Proposed Schedule 6 also would require a large trader to disclose the LTID of any other large traders that exercise investment discretion over the identified accounts. The Commission would use this information to cross-reference accounts and avoid the double counting of transactions. To reduce the burden on large traders, the proposed Instructions specify that large traders may submit internally produced lists of accounts, provided that such lists contain all required information in a format substantially similar to the applicable Schedule. Finally, Schedule 6 would require the identification of a designated contact person at the large trader that the Commission could consult concerning the accounts listed on Schedule 6.

3. Confidentiality

Section 13(h)(7) of the Exchange Act provides that Section 13(h) "shall be considered a statute described in subsection (b)(3)(B) of [5 U.S.C. 552]", which is part of the Freedom of Information Act ("FOIA").[88] As such, "the Commission shall not be compelled to disclose any information required to be kept or reported under [Section 13(h)]."[89] Accordingly, the information that a large trader would be required to disclose on proposed Form 13H or provide in response to a Commission request would be exempt from disclosure under FOIA. In addition, any transaction information that a registered broker-dealer would report under the proposed rule also would be exempt from disclosure under FOIA.

4. Self-Identification to Others

Proposed paragraph (b)(2) of Rule 13h–1 would require each large trader to disclose its LTID to those registered broker-dealers that effect transactions on its behalf. In doing so, a large trader would be required to identify all of the accounts held by such broker-dealer to which its LTID applies. For example, a large trader would not be required to disclose to Broker-Dealer A the large trader's accounts held by Broker-Dealer B, but the large trader would need to

[86] 17 CFR 240.16a–1(f).

[87] This definition is similar to the definition of "affiliate" provided in the instructions to Form 1, 17 CFR 249.1. *See also supra* note 54.

[88] 5 U.S.C. 552(b)(3)(B) is now 5 U.S.C. 552(b)(3)(A)(ii).

[89] *See* section 13(h)(7) of the Exchange Act, 15 U.S.C. 78m(h)(7).

specifically highlight to Broker-Dealer A all of the accounts held by Broker-Dealer A over which the large trader exercises investment discretion. Requiring large traders to provide this information to their broker-dealers would place the primary account identification responsibilities on those who can most readily satisfy them—the large traders themselves—and would facilitate the ability of registered broker-dealers to fulfill their recordkeeping and reporting requirements under the proposed rule by facilitating their ability to identify and properly mark all applicable accounts through which a large trader trades.

Proposed paragraph (b)(2) of Rule 13h–1 also would require each large trader to disclose its LTID to others with whom it collectively exercises investment discretion. The purpose of this provision is to enable large traders to provide all information required under Schedule 6 of Form 13H.[90] In addition, the proposed requirement would facilitate the ability of a large trader to provide a broker-dealer with the LTID of all large traders that exercise investment discretion over an account.[91]

D. Recordkeeping, Reporting, and Monitoring Responsibilities

Section 13(h)(2) of the Exchange Act authorizes the Commission to prescribe for registered broker-dealers recordkeeping requirements related to large trader activity that it deems necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Exchange Act.[92] The Commission also is authorized to conduct reasonable periodic, special, or other examinations of registered broker-dealers of all records required to be made and kept pursuant to the rule.[93] Paragraph (d) of the proposed rule would implement the recordkeeping provisions of Section 13(h)(2) of the Exchange Act.

In addition, Section 13(h)(2) of the Exchange Act specifically authorizes the Commission to require registered broker-dealers to report transactions that equal or exceed the reporting activity level effected directly or indirectly by or through such broker-dealer for persons who they know are large traders, or any persons who they have reason to know are large traders on the basis of transactions effected by or through such broker-dealers.[94] The Commission is proposing paragraph (e) of Rule 13h-1 to implement the transaction reporting provisions of Section 13(h)(2) of the Exchange Act. The proposed rule would mirror the statutory requirement that records and information required to be made and kept pursuant to the proposed rule be available for reporting to the Commission on the morning after the day the transactions were effected.[95] While such information must be available for reporting to the Commission on the following day, the proposed rule further clarifies that transaction data would be required to be submitted to the Commission before the close of business on the day specified in the request for such transaction information.[96] Further, the Commission is authorized to require that such transaction reports be transmitted in any format that it may prescribe, including machine-readable form.[97] The proposed rule mirrors this requirement and, as discussed further below, the proposed rule would utilize the general format applicable to the EBS system, as modified to accommodate the specific requirements of the proposed rule, including the fields of LTID and execution time.[98]

The proposed rule would impose certain duties on broker-dealers. In particular, the proposed rule would impose recordkeeping and reporting requirements on the following: registered broker-dealers that are large traders; registered broker-dealers that, together with a large trader or Unidentified Large Trader, exercise investment discretion over an account; and registered broker-dealers that carry accounts for large traders or Unidentified Large Traders or, with respect to accounts carried by a non-broker-dealer, broker-dealers that execute transactions for large traders or Unidentified Large Traders. Additionally, the proposed rule would require registered broker-dealers to implement procedures to encourage and foster compliance with the self-identification requirements of the proposed rule.

1. Broker-Dealer Recordkeeping

Proposed paragraph (d)(1) of Rule 13h–1 would provide that "[e]very registered broker-dealer shall maintain records of all information required under paragraphs (d)(2) and (d)(3) for all transactions effected directly or indirectly by or through (i) An account such broker-dealer carries for a large trader or an Unidentified Large Trader, (ii) an account over which such broker-dealer exercises investment discretion together with a large trader or an Unidentified Large Trader, or (iii) if the broker-dealer is a large trader, any proprietary or other account over which such broker-dealer exercises investment discretion. Additionally, where a non-broker-dealer carries an account for a large trader or an Unidentified Large Trader, the broker-dealer effecting transactions directly or indirectly for such large trader or Unidentified Large Trader shall maintain records of all of the information required under paragraphs (d)(2) and (d)(3) for those transactions."

The term "Unidentified Large Trader" would be defined to mean "each person who has not complied with the identification requirements of paragraphs (b)(1) and (b)(2) of this rule that a registered broker-dealer knows or has reason to know is a large trader."[99] The proposed "reason to know" standard is discussed in more detail below in the context of a registered broker-dealer's responsibility to monitor for Unidentified Large Traders.

To help the Commission monitor the impact on the securities markets of securities transactions involving a substantial volume or a large fair market value, assist in the Commission's investigation of possible Federal securities law violations, and allow the Commission to conduct time-sequenced market reconstructions, the proposed rule would require registered broker-dealers to maintain specified data that would be relevant for these purposes. Notably, as discussed below, registered broker-dealers already are required to maintain most of the proposed fields of information for all of their customers pursuant to Rule 17a–25 under the Exchange Act and the EBS system. In particular, the proposed rule would require registered broker-dealers to maintain the following information:

- Date the transaction was executed;
- Account number;
- Identifying symbol assigned to the security;

[90] Specifically, Schedule 6 would require a large trader to disclose the LTID of all other large traders who exercise investment discretion over the accounts listed. Absent this requirement, large traders would have no reason to know the LTIDs of the large traders with whom they share investment discretion.

[91] For example, where two advisers co-manage an account, Adviser A would inform Adviser B of its LTID, and Adviser B would provide both its LTID and Adviser A's LTID to the broker-dealer carrying the account.

[92] *See* 15 U.S.C. 78m(h)(2).

[93] *See* 15 U.S.C. 78m(h)(4).

[94] *See* 15 U.S.C. 78m(h)(2).

[95] *See* proposed Rule 13h–1(d)(5). This requirement was intended to include Saturdays or holidays. *See* Senate Report, *supra* note 9, at 40.

[96] *See* proposed Rule 13h–1(e).

[97] *See* 15 U.S.C. 78m(h)(2).

[98] *See infra* note 104 and accompanying text.

[99] *See* proposed Rule 13h–1(a)(9).

- Transaction price;
- Number of shares or option contracts traded in each specific transaction; whether each transaction was a purchase, sale, or short sale; and, if an option contract, whether the transaction was a call or put option, an opening purchase or sale, a closing purchase or sale, or an exercise or assignment
- Clearing house number of the entity maintaining the information and the clearing house numbers of the entities on the opposite side of the transaction;
- Designation of whether the transaction was effected or caused to be effected for the account of a customer of such registered broker-dealer, or was a proprietary transaction effected or caused to be effected for the account of such broker-dealer;
- Identity of the exchange or other market center where the transaction was executed;
- Time that the transaction was executed;
- LTID(s) associated with the account, unless the account is for an Unidentified Large Trader;
- Prime broker identifier;
- Average price account identifier; and
- If the transaction was processed by a depository institution, the identifier assigned to the account by the depository institution.

In addition, proposed paragraph (d)(3) broadens the list of required broker-dealer records for transactions effected by Unidentified Large Traders beyond those that would be required for a self-identified large trader in order to assist the Commission in identifying the Unidentified Large Trader. Specifically, for Unidentified Large Traders, in addition to the above fields, the registered broker-dealer also would be required to retain and report such person's name, address, date the account was opened, and tax identification number(s).

The proposed rule would incorporate the requirement contained in Section 13(h)(2) that transaction records be available for reporting to the Commission on the morning of the day following the day the transactions were effected.[100] When the Commission makes a request for data, the proposed rule specifies that registered broker-dealers would be required to furnish it before the close of business on the day specified in the request for such transaction information.[101] Paragraph (d)(4) of the proposed rule would require that such records be kept for a period of three years, the first two in an accessible place, in accordance with Rule 17a–4(b) under the Exchange Act.[102]

Currently, broker-dealers already are required to provide most of the proposed fields of information for all of their customers pursuant to Rule 17a–25 under the Exchange Act and the EBS system.[103] The only additional items of information that this proposal would capture beyond what is currently captured by the existing EBS system are: (1) LTID and (2) transaction execution time.[104] In this respect, the proposed rule is intended to address the principal limitations of the EBS system when applied to a large trader reporting system under Section 13(h) of the Exchange Act, namely the EBS system's lack of transaction execution time information and lack of a LTID to uniformly identify large traders on a market-wide basis. The proposed rule also would require registered broker-dealers to be able to report trading information for large traders to the Commission much more promptly than the EBS system.[105] The Commission preliminarily believes that the collection of current trading information is necessary to allow it to monitor the impact on the securities markets of large trader activity, particularly during times of market stress when such analyses are particularly relevant, as well as to support the Commission's efforts to detect and deter fraudulent and manipulative activity and other trading abuses.

In particular, the capture of transaction execution times would allow the Commission to reconstruct a more accurate and complete time-sequenced market history and facilitate the Commission's ability to more accurately assess the market impact of large traders, particularly during times of peak activity and market stress. The Commission preliminarily believes that capturing execution time would be essential for accomplishing the purposes of Section 13(h) of the Exchange Act, as the Market Reform Act intended a large trader system through which the Commission could perform time-sequenced reconstruction of trading activity.[106]

The Commission acknowledges that, in some instances, multiple LTIDs may be disclosed to a registered broker-dealer for a single account. For example, such a situation could arise where more than one large trader exercises investment discretion over an account (*e.g.,* where two large trader investment managers co-manage an account), or where a parent company and one of its subsidiaries both identify themselves as large traders. Therefore, registered broker-dealers would need to develop systems capable of tracking multiple LTIDs. The Commission preliminarily believes that capturing the LTID of all large traders that exercise investment discretion for an account would be essential to adequately monitor the trading activity of each large trader that exercises investment discretion over those transactions that are reported to the Commission by broker-dealers and thereby accomplish the purposes of Section 13(h) of the Exchange Act. Without that information, the Commission could be hindered in its ability to readily use large trader data as contemplated in Section 13(h), including to support its regulatory and enforcement activities.

2. Broker-Dealer Reporting

Complementing the proposed recordkeeping requirements on brokers and dealers, proposed paragraph (e) of Rule 13h–1 would implement the transaction reporting provisions of Section 13(h)(2) of the Exchange Act.

a. General Requirements

[100] *See* proposed Rule 13h–1(d)(5). This time frame is established in Section 13(h)(2) of the Exchange Act. *See* 15 U.S.C. 78m(h)(2).

[101] *See* proposed Rule 13h–1(e).

[102] 17 CFR 240.17a–4(b).

[103] Rule 17a–25 requires that broker-dealers provide to the Commission upon request the following information for proprietary transactions: (1) Clearing house number or alpha symbol used by the broker-dealer submitting the information; (2) clearing house number(s) or alpha symbol(s) of the broker-dealer(s) on the opposite side to the trade; (3) security identifier; (4) execution date; (5) quantity executed; (6) transaction price; (7) account number; (8) identity of the exchange or market where each transaction was executed; (9) prime broker identifier; (10) average price account identifier; and (11) the identifier assigned to the account by a depository institution. For transactions effected for a customer account, a broker-dealer must provide to the Commission upon request the following information: The customer's name, customer's address, the customer's tax identification number, and other related account information. *See* Rule 17a–25(a)(2)(ii). Additionally, if the transaction was effected for a customer of another firm or broker-dealer, the broker-dealer must state whether the other broker-dealer was acting as principal or agent on the transaction. *See* Rule 17a–25(a)(2)(iii).

[104] While the recording of execution time is already required of registered broker-dealers pursuant to Rule 17a–3, 17 CFR 240.17a–3, and is currently captured by many SRO audit trails, *see, e.g.,* CBOE Chapter VI, Rule 6.51 (Reporting Duties), with respect to the proposed large trader reporting system, the reporting of execution times within the specified period would constitute a new requirement compared to the existing EBS system. Execution times would need to be recorded and reported with the same degree of precision that is required by applicable rules.

[105] *See* EBS Release, *supra* note 24, 66 FR at 35836 (noting that firms are requested to submit the electronic bluesheets data within 10 business days).

[106] *See* Senate Report, *supra* note 9, at 38–40.

Under proposed paragraph (e) of proposed Rule 13h–1, the broker-dealers required to keep records pursuant to paragraph (d)(1) also would have a duty to report that information upon request. More specifically, upon the request of the Commission, those broker-dealers would be required to report electronically, in machine-readable form and in accordance with a format specified by the Commission that is based on the existing EBS system format, all required information for all transactions effected directly or indirectly by or through accounts carried by such broker-dealer for large traders and Unidentified Large Traders if they equal or exceed the reporting activity level.[107] Broker-dealers would need to report a particular day's trading activity only if it equals or exceeds the "reporting activity level," which is defined and discussed below. Transaction reports, including data on transactions up to and including the day immediately preceding the request, would need to be furnished to the Commission before the close of business on the day specified in the request for such transaction information.[108] In recognition of the value of using existing reporting systems where practicable, the proposed rule would require broker-dealers to utilize the existing technology and infrastructure of the EBS system to the greatest degree possible to maintain large trader data and transmit it to the Commission.[109]

b. Reporting Activity Level

Consistent with Section 13(h)(2) of the Exchange Act, the proposed rule would require a registered broker-dealer to report only those transactions that equal or exceed the reporting activity level for that particular day of trading being reported. Paragraph (a)(8) of Rule 13h–1 would define the "reporting activity level" as: (i) Each transaction in NMS securities, effected in a single account during a calendar day, that is equal to or greater than 100 shares; (ii) any other transaction in NMS securities, effected in a single account during a calendar day, that a registered broker-dealer may deem appropriate; or (iii) such other amount that may be established by order of the Commission from time to time. While a registered broker-dealer would be required to report for a given day data only if it equals or exceeds the reporting activity level, the rule specifically would allow a broker-dealer to voluntarily report a day's trading activity that falls short of the applicable threshold. For example, registered broker-dealers may consider it more appropriate, given the low level of the proposed reporting activity level, to take this approach if they prefer to avoid implementing systems to filter the transaction activity and would rather utilize a "data dump" approach to reporting large trader transaction information to the Commission.

In proposing a reporting activity level of 100 shares, the Commission notes that large traders often break-up large-size orders and disburse their trading interest across multiple market centers in an effort to maintain the confidentiality of the trade and minimize any market impact it might otherwise have if it were revealed to its full extent. Such large orders often are processed by algorithmic systems that split the order into smaller orders of a hundred to a few hundred shares. For example, high frequency traders often quote and trade in round lots of 100 shares or a few hundred shares. By establishing a low reporting activity level, the Commission intends for the proposed rule to result in the reporting of substantially all large trader activity in response to a request for data.[110] Access to substantially all trading data would allow the Commission to perform more complete and accurate reconstructions of aggregate large trader activity.

The proposed rule also would implement the authority in Section 13(h)(8)(D) of the Exchange Act, allowing the Commission to establish, from time to time, such reporting activity level that the Commission shall specify by rule, regulation, or order, by proposing that the Commission would be able to alter the reporting activity level by order.[111] The Commission could use this authority to change the reporting activity level if necessary to assure, for example, the quality of 13H Reports and the level of compliance with the identification requirements.[112]

Unlike the identifying activity level, when considering the reporting activity level, a registered broker-dealer would consider only the trading activity for each of its large trader and unidentified accounts, and would not need to aggregate transaction information on an intra-broker-dealer basis solely for calculating the reporting activity level. Thus, if a large trader maintains two separate accounts at a registered broker-dealer under the same LTID, the broker-dealer would be required to report activity in each account only if the activity in such account equaled or exceeded the reporting activity level on the specified day. A registered broker-dealer would report each account separately and would not need to aggregate accounts with the same LTID. By establishing a low reporting activity level, the Commission's proposal eliminates the need to propose aggregation requirements to assure that most large trader accounts would be reported in response to a request for data. The Commission believes that most active large trader accounts on any given day should contain sufficient transactions (*i.e.,* at least 100 shares traded) to make the accounts reportable in response to a particular Commission request.

c. Multiple LTIDs

Under the proposal, it is possible that more than one LTID could be associated with a particular account. For example, such a situation could arise where two or more large traders share investment discretion over the account. For transactions involving these accounts, the registered broker-dealer would be required to record each LTID for every trade effected in such account.[113] In response to a request for records, the registered broker-dealer would report transaction information containing each LTID associated with the account. For identified large traders, the Commission could then use the LTID information collected on Schedule 6 to proposed Form 13H to filter the data and avoid double counting transactions.

[107] Section 13(h)(2) requires that "[s]uch records and reports shall be in a format and transmitted in a manner prescribed by the Commission (including, but not limited to, machine readable form)." *See* 15 U.S.C. 78m(h)(2).

[108] Section 13(h)(2) requires that "[s]uch records shall be available for reporting to the Commission, or any self-regulatory organization that the Commission shall designate to receive such reports, on the morning of the day following the day the transactions were effected, and shall be reported to the Commission or a self-regulatory organization designated by the Commission immediately upon request by the Commission or such a self-regulatory organization." *See* 15 U.S.C. 78m(h)(2).

[109] Section 13(h)(5)(A) of the Exchange Act directs the Commission to take into account existing reporting systems in exercising its authority under Section 13(h). *See* 15 U.S.C. 78m(h)(5)(A).

[110] *See* proposed Rule 13h–1(a)(6) (exceptions to the definition of transaction).

[111] *See* proposed Rule 13h–1(a)(8). *See also* Senate Report, *supra* note 9, at 73 (noting that this authority to act by order was intended to provide the Commission with the flexibility necessary for responding to changing market conditions).

[112] The Commission might, for example, consider whether an alternative threshold amount would be more appropriate if large traders were managing their account activity to avoid the proposed 100 share reporting activity level.

[113] Broker-dealers also would need to monitor for Unidentified Large Traders that effect transactions through a shared account.

3. Broker-Dealer Monitoring and Safe Harbor

The proposed rule places the principal burden of compliance with the identification requirements on large traders themselves. The Commission, however, believes that a limited monitoring requirement at the broker-dealer level would provide a necessary backstop to encourage compliance and fulfill the objectives of Section 13(h) of the Exchange Act.

Section 13(h) of the Exchange Act contemplates that registered broker-dealers would assist in fostering compliance with a large trader reporting system by monitoring their customers' compliance with the large trader self-identification requirements. Specifically, Section 13(h)(2) of the Exchange Act authorizes the Commission to establish rules for recordkeeping and reporting of transactions effected by persons a registered broker-dealer "knows or has reason to know" is a large trader, based on transactions effected directly or indirectly by or through such broker-dealer. Proposed paragraphs (d) and (e) of Rule 13h–1 would implement that authority by requiring registered broker-dealers to maintain records of and report to the Commission information about transactions effected by Unidentified Large Traders.[114]

With respect to identifying large traders, the Commission emphasizes that the principal burden of compliance with the proposed identification requirements is placed squarely on large traders themselves. However, the Commission also believes that requiring some form of monitoring by the entities that are in the best position to know the details of a large trader's account would help assure that the objectives of the rule are met.

The Commission acknowledges that the duty to monitor its large trader customers would impose a burden on registered broker-dealers. To minimize this burden, paragraph (f) of proposed Rule 13h–1 would establish a "safe harbor" for the duty to monitor for Unidentified Large Traders.[115] Pursuant to proposed paragraph (a)(9), in the case of an Unidentified Large Trader, a "registered broker-dealer has reason to know whether a person is a large trader based on the transactions in NMS securities effected by or through such broker-dealer." A registered broker-dealer would not be deemed to know or to have reason to know that a person is an Unidentified Large Trader if: (1) It does not have actual knowledge that a person is a large trader; and (2) it established and maintained policies and procedures reasonably designed to assure compliance with the identification requirements of the proposed safe harbor. Paragraphs (f)(1) and (2) of the proposed rule provide the specific elements that would be required for the safe harbor.

The safe harbor contained in paragraph (f)(1) of the proposed rule would require the establishment of systems "reasonably designed to detect and identify" persons who have not complied with the identification requirements by providing the broker-dealer with their LTID and highlighting all accounts to which it applies. This paragraph incorporates the "reason to know" standard and clarifies that, with respect to an account or group of accounts that may be identified as large traders (*e.g.,* commonly owned or controlled accounts), policies and procedures would be within the safe harbor if they are reasonably designed to detect and identify such groups of accounts based on account name, tax identification number, or other readily available information.

The Commission would consider "other readily available information" to include, for example, those instances where a single customer effects the requisite transactions through a single registered representative, trading desk, or branch office in his or her personal accounts, accounts of family members, or accounts of others, pursuant to written trading authorizations. In that case, a broker-dealer should be able to identify a large trader based on readily available information. Similarly, customer authorization to transfer funds or securities among accounts in order to receive approval for trading activities, meet margin requirements, or to settle transactions, would be considered to be readily available information, as broker-dealers could use that information to readily identify accounts that may be related. Accordingly, a broker-dealer's responsibility would be limited to those Unidentified Large Traders that are readily identifiable and apparent to the broker-dealer.

Paragraph (f)(2) of the proposed rule would require that broker-dealer monitoring policies and procedures contain systems reasonably designed to inform persons of their obligations to file proposed Form 13H and disclose their large trader status. In this respect, the Commission would consider questions and informative disclosures on new account applications, as well as notices to Unidentified Large Traders when their transactions approach the reporting level, among other things, to fulfill this element of the safe harbor. The Commission believes that, because broker-dealers are in the best position to know the details of a large trader's account, a proposed requirement on broker-dealers to inform a large trader customer of the customer's responsibility to self-identify to the Commission would help educate large traders on their obligations under the proposed rule and foster compliance with it.

The Commission notes that the elements of the safe harbor do not contain precise compliance prescriptions such as automated systems, employee training programs, or other specific systems or procedures. The adequacy of monitoring procedures would depend on the nature and characteristics of a broker-dealer's business. The Commission believes that a variety of systems or procedures may be effective for accomplishing the objectives of the monitoring requirements and, therefore, could satisfy the requirements of the safe harbor. The Commission preliminarily believes that the proposed safe harbor contains sufficient detail and adds objectivity to the "reason to know" requirements of Section 13(h)(2) of the Exchange Act in a manner that is designed to minimize the burden of the monitoring requirements of the proposed large trader system.

E. Exemptions

Section 13(h)(6) of the Exchange Act authorizes the Commission "by rule, regulation, or order, consistent with the purposes of this title, [to] exempt any person or class of persons or any transaction or class of transactions, either conditionally or upon specified terms and conditions or for stated periods, from the operation of [Section 13(h)], and the rules and regulations thereunder."[116] Proposed Rule 13h–1(g) would implement this authority, providing that: "[u]pon written application or upon its own motion, the Commission may by order exempt, upon specified terms and conditions or for stated periods, any person or class of persons or any transaction or class of

[114] *See supra* text accompanying note 99 (discussing recordkeeping requirements for Unidentified Large Traders). In particular, proposed Rule 13h–1(d)(3) would broaden the list of required elements for transactions effected by Unidentified Large Traders, and would require broker-dealers to report for Unidentified Large Traders such person's name, address, date the account was opened, and tax identification number(s).

[115] *See* proposed Rule 13h–1(a)(9) (defining an Unidentified Large Trader as "each person who has not complied with the identification requirements of paragraphs (b)(1) and (b)(2) of this rule that a registered broker-dealer knows or has reason to know is a large trader.")

[116] 15 U.S.C. 78m(h)(6).

transactions from the provisions of this rule to the extent that such exemption is consistent with the purposes of the Securities Exchange Act." Accordingly, persons desiring an exemption from Rule 13h–1 could request exemptive relief under proposed paragraph (g) of the rule.

The Commission is not proposing at this time any specific or class exemptions with respect to persons or classes of persons covered by the proposed rule.[117] The Commission is proposing a comprehensive large trader system that is designed to track all large traders through a system capable of producing comprehensive trading records.

F. Foreign Entities

Section 13(h)(5)(C) of the Exchange Act directs the Commission, in exercising its authority under Section 13(h), to take into account the relationship between U.S. and international securities markets.[118] The Commission is concerned that excluding foreign large traders from the proposed rule's requirements could create a competitive disparity between domestic markets and persons and foreign markets and persons. In particular, including foreign large traders within the scope of the proposed rule would provide the Commission with information on entities contemplated by the statute that trade substantial amounts of NMS securities regardless of their legal domicile and would subject all such entities equally to the self-identification and filing requirements that the Commission is proposing herein.

As discussed above, the application and scope of the proposed rule would be established by the proposed definition of a large trader, which is based on Section 13(h)(8)(A) of the Exchange Act.[119] The Commission notes that foreign broker-dealers that are not U.S. registered would not be subject to the broker-dealer recordkeeping or transaction reporting requirements of the proposed rule. Accordingly, the only foreign entities that would be subject to the proposed rule are those that would qualify as large traders. As discussed above, under the proposal, the duties and burdens imposed on each large trader would be to: (1) File and update Form 13H;[120] (2) disclose large trader status;[121] and (3) upon request, provide additional descriptive or clarifying information with respect to information provided on Form 13H.[122]

Pursuant to the proposal, a foreign entity or person could be a large trader, and thus subject to the proposed rule, if the following elements were present: (1) The person exercises investment discretion over accounts;[123] (2) the aggregate transactions in NMS securities for those accounts reach the identifying activity level;[124] and (3) such transactions were effected by use of any means or instrumentality of interstate commerce or the mails or any facility of a national securities exchange.[125]

By way of example of how the proposal would operate, assume that a foreign investment adviser maintains accounts with a registered broker-dealer. Assume further that, through these accounts, the foreign investment adviser effects trades in NMS securities on a national securities exchange for its foreign clients (*i.e.,* citizens of, or persons domiciled in, a foreign country) that reach the identifying activity level. In this case, the foreign investment adviser would be required to file Form 13H and Schedules 4 and 6. If a foreign client of the foreign investment adviser also were a large trader by virtue of exercising investment discretion (together with the foreign investment adviser) over its investments, then the foreign investment adviser would be required to include in its Schedule 6 the client's LTID when listing that client's account. The foreign investment adviser would not be required to disclose on its Form 13H the identities of any of its clients that have not been issued a LTID. Additionally, under the proposal, the foreign investment adviser would be required to disclose its LTID to its registered broker-dealers and anyone else with whom it shares investment discretion.

As a second example of how the proposal would operate, assume that a registered broker-dealer receives an order from a customer to effect transactions in NMS securities in a foreign over-the-counter market or exchange. To effect these trades, the registered broker-dealer transmits the order information to a foreign broker-dealer affiliate. Further, assume that the affiliated foreign broker-dealer effects the transaction for an account that it carries in the name of the domestic broker-dealer. Because the transaction was effected through a registered broker-dealer, this activity could cause the customer to be a large trader if the activity reached the identifying activity level. The customer exercised investment discretion over its own account and effected indirectly, through an account maintained by a registered broker-dealer, the requisite level of transactions in NMS securities.

G. Proposed Implementation

The Commission proposes that the broker-dealer recordkeeping requirements contained in paragraph (d) and the reporting requirements contained in paragraph (e) of the proposed rule become effective 6 months after adoption of a final rule. The Commission believes that this time frame would provide sufficient time for the registered broker-dealers to plan, design, and implement the various enhancements to their existing transaction reporting systems required by the proposed rule. In particular, because the proposed rule would utilize the existing infrastructure of the EBS system, the Commission preliminarily believes that broker-dealers should be able to efficiently enhance their existing recordkeeping and reporting systems to meet the requirements of the proposed large trader system within the proposed implementation period. In addition, the Commission proposes that the identification requirements for large traders contained in paragraph (b) become effective 3 months after adoption of a final rule. The Commission believes that this time frame would provide sufficient time for large traders to familiarize themselves with the new form and the applicable filing requirements, and would give large traders sufficient time to calculate their trading over the applicable measuring period, which includes aggregate transactions during a calendar month.

H. Solicitation of Comments

The Commission generally requests comment on all aspects of the proposed rule and the proposed large trader reporting system. In addition, the

[117] As discussed above, however, the Commission does propose limiting the application of those provisions of the proposed rule that concern broker-dealers to carrying broker-dealers, or executing broker-dealers where the account is carried by a bank. In addition, the proposed rule proposes to exclude certain types of transactions from the definition of "transaction." *See* proposed Rule 13h–1(a)(6). *See also supra* text accompanying notes 60–65 (discussing the exceptions for transactions not covered by the proposed rule).

[118] 15 U.S.C. 78m(h)(5)(C).

[119] 15 U.S.C. 78m(h)(8)(A).

[120] *See* proposed Rule 13h–1(b)(1).

[121] *See* proposed Rule 13h–1(b)(2).

[122] *See* proposed Rule 13h–1(b)(4).

[123] *See* proposed Rule 13h–1(a)(4) (defining "investment discretion").

[124] *See* proposed Rule 13h–1(a)(7) (defining "identifying activity level").

[125] *See* 15 U.S.C. 78m(h)(8)(A) (defining "large trader" as "every person who, for his own account or an account for which he exercises investment discretion, effects transactions for the purchase or sale of any publicly traded security or securities by use of any means or instrumentality of interstate commerce or of the mails, or of any facility of a national securities exchange * * *").

Commission also requests comment on the following specific issues:

• Is the definition of "large trader" in proposed Rule 13h–1(a)(1) to mean "any person that directly or indirectly, including through other persons controlled by such person, exercises investment discretion over one or more accounts and effects transactions for the purchase or sale of any NMS security for or on behalf of such accounts, with or through one or more registered broker-dealers, in an aggregate amount equal to or greater than the identifying activity level" appropriate and sufficiently clear? Should the Commission consider an alternative definition?

• Would the proposed definition of "identifying activity level" (aggregate transactions in NMS securities that are equal to or greater than: (1) During a calendar day, either two million shares or shares with a fair market value of $20 million; or (2) during a calendar month, either twenty million shares or shares with a fair market value of $200 million) identify those market participants that transact in a significant enough volume such that the Commission should identify the person as a large trader? Should the Commission consider different levels? Should they be higher or lower than what has been proposed? Please explain your reasoning and provide relevant data.

• Is 0.01% of daily volume and market value of trading in NMS stocks an appropriate basis from which to determine the identifying activity level? Should the Commission consider an alternative level?

• Are there other factors the Commission should take into consideration when determining who should be a large trader or what should be the identifying activity level?

• Would basing the large trader definition on aggregated transactions during a different measuring period be more appropriate? For example, to minimize the applicability of the rule to persons that effect one-time transactions greater than the identifying level but who otherwise never or rarely trade anywhere near a substantial volume or large fair market value, instead of considering activity over a calendar day, should the Commission consider activity over several days, a week, or some other time period?

• Instead of requiring large traders to file Form 13H with the Commission "promptly" after first effecting transactions that reach the identifying activity level, should the Commission consider an alternative deadline, such as 10 business days?

• Are the proposed definitions of person, control, and investment discretion appropriate? Should the Commission consider alternative definitions?

• Is the definition of "transaction" in proposed Rule 13h–1(a)(6) and the exceptions thereto appropriate to accomplish the Commission's goals of focusing on trading activity that constitutes an arm's length purchase or sale and warrants the continuing burdens associated with the proposed requirements? Should any other transactions be excluded from the definition of "transaction?" Should any of the transactions proposed to be excepted instead be included? Please explain your reasoning.

• Are the aggregation provisions in proposed Rule 13h–1(c) for the purpose of determining whether a person meets the definition of a large trader appropriate? Should the Commission consider any other alternatives?

• Is the definition of Unidentified Large Trader in proposed Rule 13h–1(a)(9), *i.e.,* a person who has not complied with the identification requirements of paragraphs (b)(1) and (b)(2) of the proposed rule that a registered broker-dealer knows or has reason to know is a large trader, appropriate? Should the Commission consider an alternative definition?

• Is the proposal sufficiently drafted to identify the appropriate person as a large trader? Is the proposed focus on identifying the parent company appropriate to accomplish the Commission's goals and the goals of Section 13(h) of the Exchange Act? Or should the rule take a more granular focus and instead require identification and the assignment of an LTID at a more particularized level within the parent company? Would such an approach be more or less burdensome? In the alternative, should the LTID contain information on both the parent company and the trading entity and the individual trader for a particular trade? Should the Commission consider any other alternatives in this regard? Does assigning a LTID at the parent level pose any difficulties to achieving the goals of the proposed rule?

• Are there other types of large trader identification alternatives that would achieve the Commission's objectives without diminishing the effectiveness of a large trader system in accomplishing the objectives of Section 13(h) of the Exchange Act? Are there any existing identifiers that could serve as an alternative or supplement to the LTID?

• In a situation where fiduciary duties require segregation of proprietary trading from customer trading, should separate LTIDs be required?

• Should the LTID number be structured in any particular manner? For example, should the LTID number be structured so that it discloses both the identity of the parent company and the actual legal entity that effects the trade? Should the LTID number be designed to be "extensible" so that it could be expanded for use in recording aggregated equity and equity option position (as opposed to trade) information, OTC derivatives trades, OTC derivatives positions, and different categories of trader (*e.g.,* hedge fund, insurance company, pension plan), if tracking this information becomes required under applicable law?

• Are the filing requirements applicable to large traders contained in proposed Rule 13h–1(b) sufficiently clear? Is the provision for inactive status appropriate and sufficient, or should it be modified or eliminated? Are the provisions in proposed Rule 13h–1(b)(3)(i) and (ii) regarding compliance by controlling or controlled persons sufficiently clear, or should they be modified? Are there other considerations or alternatives that the Commission should consider?

• Item 5 of proposed Form 13H requests information on a large trader's affiliates, including name, description of their business, relationship to the large trader, and LTID (if any). Should the Commission require any other information on affiliates, such as the tax identification number(s) of the affiliate?

• Should the Commission implement an electronic filing system for the receipt of Form 13H, and, if so, should any particular features be incorporated into the system?

• Is an Annual Filing requirement redundant, in light of the proposed requirement to submit Interim Filings as necessary, or is it necessary to require that large traders keep current their disclosed information?

• How often would large traders need to file "Interim Filings" to correct information that has become inaccurate? The Commission also solicits comments concerning the requirement to submit Interim Filings "promptly" following the end of a calendar quarter in the event that any of the information contained in a Form 13H filing becomes inaccurate for any reason. Are there some items required by the Form that could be more efficiently updated on a less frequent basis? Are there any items required by the Form that ought to be updated more frequently?

• For the broker-dealer recordkeeping requirements contained in proposed Rule 13h–1(d)(2), are there any other fields, elements, codes, designations, or identifiers that the Commission should consider in order to be able to conduct market reconstructions or to aid its investigatory program? Should any of the proposed fields be modified or eliminated? If so, please explain why.

• Should registered broker-dealers also be required to maintain (and report upon request) the exercise price and expiration date of the option position? [126]

• Is the time frame for the availability of transaction information specified in proposed Rule 13h–1(d)(5) appropriate to ensure that the Commission has access to timely transaction data? Should the Commission consider an alternative time frame?

• Are the proposed monitoring responsibilities that would apply to registered broker-dealers sufficient, or are there other or more effective means, within the limitations provided by Section 13(h), that would help assure compliance with the large trader identification requirements?

• Is the safe harbor provided for in proposed Rule 13h–1(f) sufficient to clarify the conditions under which a broker-dealer would be deemed to know or have reason to know whether a person is a large trader? Would an alternative formulation better achieve the Commission's purpose to rely on broker-dealers to help assure compliance by large traders with the self-identification requirements of the proposed rule? Are the policies and procedures that a broker-dealer would need to adopt to take advantage of the proposed safe harbor sufficiently clear and appropriate? Are there any other factors the Commission should consider?

• Would the proposed monitoring responsibility on registered broker-dealers

[126] This information is not covered by Rule 17a–25 under the Exchange Act, 17 CFR 240.17a–25.

and the related safe harbor contained in proposed Rule 13h–1(f) encourage entities that satisfy the large trader standard to identify themselves? Should the Commission consider imposing other types of monitoring duties on broker-dealers? Should the Commission consider requiring a broker-dealer to report promptly to the Commission any Unidentified Large Trader that it detects? Should the Commission require a broker-dealer to report to the Commission a list of all large traders for which it effects transactions?

• Should the Commission consider imposing a duty on large traders to monitor for Unidentified Large Traders among persons with whom they share investment discretion?

• Should the Commission consider exempting certain categories of persons from the proposed rule? The Commission is interested in comments concerning whether certain categories of persons also should be exempt, including the following categories, and if so why:

• A registered broker-dealer that does not carry accounts for itself or others and is registered by a national securities exchange as a specialist or market maker.

• A registered broker-dealer that does not carry accounts for itself or others and is a member of a national securities exchange that exclusively executes transactions on the floor of such national securities exchange (*i.e.,* a "floor broker").

• The Commission is also interested in whether other categories of persons should be excluded.

• Is the proposed "reporting activity level" of transactions in NMS securities, effected in a single account during a calendar day, equal to or greater than 100 shares or any other transaction in NMS securities, effected in a single account during a calendar day, that a registered broker-dealer may consider an appropriate threshold? Why or why not? If not, please identify a more appropriate level and explain your rationale. Should aggregation principles apply to the reporting activity level and could doing so deter non-compliance with the rule? Would doing so impose a significant technological burden on reporting systems?

• Does the proposed 6-month implementation period with respect to the recordkeeping and reporting requirements for broker-dealers, and the 3-month implementation period with respect to the large trader identification requirements, strike an appropriate balance between timely implementation and time needed for system changes, or would a longer or shorter period be more appropriate? If another implementation period is suggested, please also estimate the corresponding change in implementation costs (if any).

• What are the expected costs and related burdens of modifying firms' existing systems to accommodate the proposed new data elements of LTID and execution time?

• Currently, firms are requested to comply with an EBS request for equity and equity option trade data in 10 business days. Is it realistic to expect that broker-dealers will, the first time a request for production is made by the Commission under the proposed rule, be able to produce the required data elements for a day's trades for a large trader in electronic, machine-readable form on the morning after the day the transactions occur?

• Is requiring broker-dealers to maintain the required large trader trade information for prompt production to the Commission upon request the best way to make this information available to the Commission for the rule's purposes? In this connection, we note that the CFTC's Large Trader Reporting Program requires large traders of commodity futures and commodity options to report positions periodically without the CFTC being required to make a prior request for the information. Is this a meaningful precedent for the Commission's large trader reporting system? Why or why not?

• Would a system that requests weekly or daily reporting of large trader trade information to the Commission be unduly burdensome to broker-dealers? Or would it actually be less burdensome to broker-dealers than complying with occasional Commission requests for such information, without having a reliable system in place for providing such information to the Commission? Does data production have to be systematized to be efficient and reasonably free of errors? If a broker-dealer sets up a system to provide large trader information to the Commission on a daily basis as a matter of routine, would the ongoing costs to the broker-dealer for providing large trader information be *de minimis* because the information consists of data the broker-dealer produces on a daily basis anyway in the course of operating its business?

• The proposed rule also is designed to enhance the Commission's ability to conduct market surveillance and to detect and deter fraudulent and manipulative activity. Would it be preferable and ultimately less burdensome for broker-dealers to report large trader activity on a more routine basis (*e.g.,* daily, weekly, or monthly) rather than provide requested information on an infrequent or ad hoc basis?

• Should Item 5a of Form 13H and the corresponding instructions be amended to permit large traders that are registered broker-dealers to incorporate by reference the information provided on Form BD about affiliates?

• Does the proposed rule sufficiently minimize the burden on natural persons?

• Should the proposed rule be expanded to include securities other than NMS securities? If so, what other types of securities should be included?

• Would the large trader reporting requirements influence the day-to-day decisions made by large traders in any substantive way? Would the proposed requirements impact trading strategies? For example, might traders choose in some cases to avoid trading in equities or options in favor of alternative vehicles such as OTC derivatives to avoid reporting? Might they curtail the extent of their trading? Might they trade in foreign jurisdictions?

• Would the application of the proposed rule provide incentives for trading to be effected through certain entities or market centers? If so, how and which ones? For example, would large traders direct their trading through non-registered broker-dealers, like those relying on the foreign broker/dealer exemption (Rule 15a–6)?

• Is the proposed three-year record retention requirement for registered broker-dealers adequate for the Commission to achieve the objectives of the proposed rule? Should the Commission provide for a longer retention period, for example five or more years?

• Is the proposed treatment of foreign entities appropriate? Why or why not? The Commission is aware that some foreign jurisdictions may have statutes that could potentially restrict the ability of a large trader to provide information to the Commission on Form 13H, and that the ability of large traders organized in such jurisdictions would depend on the provisions of such statutes as applied to the scope of information solicited in proposed Form 13H. To what extent do any foreign statutes complicate foreign large traders' ability to comply with the proposed rule?

III. Specific Factors To Be Considered by the Commission

Section 13(h)(5) of the Exchange Act requires the Commission, when exercising its rulemaking authority under Section 13(h) to take into account: (1) Existing reporting systems; (2) the costs associated with maintaining information with respect to transactions effected by large traders and reporting such information to the Commission; and (3) the relationship between United States and international securities markets. As discussed in this release, the Commission took into account these factors when formulating the proposed rule in exercising its authority under Section 13(h) of the Exchange Act.

The proposed rule reflects the Commission's commitment to utilize existing industry systems, such as the EBS system, in an effort to minimize the costs associated with the proposed large trader system while accomplishing the purposes of the proposed rule. Further, the application of the proposed rule to foreign entities has been considered in light of its impact on the relationship between U.S. and international securities markets.

The Commission has attempted to propose an efficient large trader system that accommodates different types of large traders and business practices while at the same time providing the Commission with a useful tool to identify large traders and their trading activity and assist the Commission in monitoring the impact of large traders on the securities markets. The Commission preliminarily believes that the proposed rule would establish a narrow definition of large trader, and thus limit the costs and burdens of the

system on the relevant entities that are responsible for trading decisions.

The Commission preliminarily believes that the information to be captured and disclosed under the proposed identification requirements would be the minimum necessary for creating an effective large trader system that would achieve the purposes of section 13(h) of the Exchange Act. Moreover, the recordkeeping and reporting requirements of the proposed rule have been designed to minimize costs while accomplishing the purposes of section 13(h) of the Exchange Act. In particular, much of the information that would be required to be retained by registered broker-dealers under the proposed rule is similar to the information currently required to be provided by broker-dealers under Rule 17a–25 of the Exchange Act. Further, the rule contemplates that registered broker-dealers would use the existing reporting infrastructure of the EBS system to transmit trading data to the Commission. As such, large trader transaction data would be collected and disclosed in a manner that utilizes the existing reporting systems. Accordingly, the Commission preliminarily believes that the proposed recordkeeping and reporting requirements are designed to minimize costs and provide a tailored method of collecting large trader transaction information.

The Commission acknowledges that certain provisions of the proposed rule would cause market participants to incur costs including: (1) Preparation, filing, and updating of Form 13H; (2) maintenance and reporting of large trader transaction information; (3) maintenance and reporting of LTIDs and execution times; and (4) development and implementation of monitoring systems and procedures.[127] However, the Commission preliminarily believes that the proposal minimizes the costs of a proposed large trader reporting requirement to the greatest extent possible while still allowing the Commission to implement a system that captures a unique large trader identifier and execution times, both of which the Commission believes would be critical elements necessary to accomplish the objectives of Section 13(h) of the Exchange Act.

In addition, the monitoring provisions of the proposed rule would require a registered broker-dealer to monitor its customers' trading. These obligations are intended to facilitate compliance with the proposed rule. The Commission preliminarily believes that the proposed safe harbor provision would provide meaningful detail and objectivity that would considerably reduce the burden of the monitoring responsibility on registered broker-dealers.

Finally, the Commission believes that the proposed rule's application to foreign persons accomplishes the objectives of Section 13(h) in part by maintaining uniformity between domestic and international securities markets.[128]

IV. Paperwork Reduction Act

Certain provisions of the proposal contain "collection of information requirements" within the meaning of the Paperwork Reduction Act of 1995 ("PRA")[129] and the Commission has submitted them to the Office of Management and Budget ("OMB") for review in accordance with 44 U.S.C. 3507 and 5 CFR 1320.11. The title of the new collection of information, including proposed Rule 13h–1 and proposed Form 13H, is "Information Required Regarding Large Traders Pursuant to Section 13(h) of the Securities Exchange Act of 1934 and Rules Thereunder." An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

A. Summary of Collection of Information Under Proposed Rule p13h–1

Under proposed Rule 13h–1, a "large trader" would be any person that directly or indirectly, including through other persons controlled by such person, exercises investment discretion over one or more accounts and effects transactions for the purchase or sale of any NMS security for or on behalf of such accounts, with or through one or more registered broker-dealers, in an aggregate amount equal to or greater than the identifying activity level.

All large traders would be required to identify themselves to the Commission by filing Form 13H, and would be required to update their Form 13H from time to time.[130] Upon receiving an initial Form 13H, the Commission would assign to the large trader a unique large trader identification number ("LTID"). Each large trader would be required to disclose to registered broker-dealers effecting transactions on its behalf its large trader identification number and each account to which it applies.[131] Each large trader also would be required to disclose its large trader identification number to all others with whom it collectively exercises investment discretion. Further, upon request by the Commission, a large trader would be required promptly to provide additional information to the Commission that would allow the Commission to further identify the large trader and all accounts through which the large trader effects transactions.[132]

Proposed Rule 13h–1 also would impose recordkeeping, reporting, and monitoring requirements on registered broker-dealers. Proposed paragraph (d)(1) would require every registered broker-dealer to maintain records of all information required under paragraphs (d)(2) and (d)(3) for all transactions effected directly or indirectly by or through (i) An account such broker-dealer carries for a large trader or an Unidentified Large Trader, (ii) an account over which such broker-dealer exercises investment discretion together with a large trader or an Unidentified Large Trader, or (iii) if the broker-dealer is a large trader, any proprietary or other account over which such broker-dealer exercises investment discretion. Additionally, where a non-broker-dealer such as a bank carries an account for a large trader or an Unidentified Large Trader, the broker-dealer effecting such transactions directly or indirectly for a large trader would be required to maintain records of all of the information required under paragraphs (d)(2) and (d)(3) for those transactions. The term "Unidentified Large Trader" would be defined to mean each person who has not complied with the identification requirements of paragraphs (b)(1) and (b)(2) of proposed Rule 13h–1 that a registered broker-dealer knows or has reason to know is a large trader.[133] A registered broker-dealer would have reason to know whether a person is a large trader based on the transactions in NMS securities effected by or through such broker-dealer. Further, a registered broker-dealer would not be deemed to know or have reason to know that a person is a large trader if it establishes policies and procedures reasonably designed to assure compliance with the identification requirements and does

[127] *See infra* Sections IV (Paperwork Reduction Act) and V (Consideration of Costs and Benefits).

[128] *See* House Comm. on Energy and Commerce, Report to Accompany the Securities Market Reform Act of 1990, H.R. No. 524, 101st Cong. 2d Sess. (June 5, 1990) (reporting H.R. 3657) (expressing the intent that the Commission consider "the relationship between our domestic markets and the international market place for securities.").

[129] 44 U.S.C. 3501 *et seq.*

[130] *See* proposed Rule 13h–1(b).

[131] *See* proposed Rule 13h–1(b)(2).

[132] *See* proposed Rule 13h–1(b)(4).

[133] *See* proposed Rule 13h–1(a)(9).

not have actual knowledge that a person is a large trader.[134]

Section 13(h)(2) of the Exchange Act provides that records of a large trader's transactions must be made available on the morning after the day the transactions were effected.[135] The proposed rule would incorporate this requirement in paragraph (d)(5). Paragraph (d)(4) of the proposed rule would require that such records be kept for a period of three years, the first two in an accessible place, in accordance with Rule 17a–4 under the Exchange Act.[136]

Complementing the recordkeeping requirements on broker-dealers, under proposed paragraph (e), registered broker-dealers that are required to keep records pursuant to paragraph (d)(1) also would have a duty to report that information.[137] Specifically, upon the request of the Commission, registered broker-dealers must report electronically, in machine-readable form and in accordance with instructions issued by the Commission, all information required under paragraphs (d)(2) and (d)(3) for all transactions effected directly or indirectly by or through accounts carried by such broker-dealer for large traders and other persons for whom records must be maintained, equal to or greater than the reporting activity level.[138]

Broker-dealers would need to report a particular day's trading activity only if it equals or exceeds the "reporting activity level." While a registered broker-dealer is required to report for a given day data only if it is equal to or greater than the reporting activity level, the rule specifically allows a broker-dealer to voluntarily report a day's trading activity that falls short of the applicable threshold. Registered broker-dealers may wish to take this approach if they prefer to avoid implementing systems to filter the transaction activity and would rather utilize a "data dump" approach to reporting large trader transaction information to the Commission.

In recognition of the value of utilizing existing reporting systems, the proposed rule would require broker-dealers to transmit the transaction records by utilizing the infrastructure of the existing EBS system. Transaction reports, including data on transactions up to and including the day immediately preceding the request, would need to be furnished before the close of business on the day specified in the request for the information.

B. Proposed Use of Information

The Commission would use the information collected pursuant to proposed Rule 13h–1 to identify large traders and collect data on the trading activity of large traders. The proposed large trader reporting system would allow the Commission to monitor more readily and efficiently the impact of large traders on the securities markets and would facilitate the Commission's trading reconstruction efforts as well as enhance its monitoring, enforcement, and regulatory activities. Registered broker-dealers would use the information they collect pursuant to proposed Rule 13h–1, namely the LTID, to comply with the proposed recordkeeping requirements and the proposed requirement to report to the Commission upon request all transactions effected for large traders. In addition, any registered broker-dealer that chooses to rely on the proposed safe harbor provisions would use the information they collect pursuant to proposed Rule 13h–1 as well as policies and procedures consistent with the proposed rule as part of their systems to detect and identify Unidentified Large Traders and inform them of their obligations to file Form 13H and disclose large trader status under the proposed rule. Self-regulatory organizations, pursuant to their obligations to enforce compliance by their members and persons associated with their members with the rules and regulations under the Exchange Act,[139] would evaluate whether a broker-dealer has collected and maintained the information required by proposed Rule 13h–1 to surveil for and enforce compliance with the proposed rule.

C. Respondents

While we are not aware of a database that would allow the Commission to calculate the precise number of persons that would meet the definition of large trader, based on the Commission's experience in this area, the Commission estimates that there would be 400 large traders subject to the proposed rule. The estimated number of large traders accounts for the proposed filing requirement provisions contained in proposed Rule 13h–1(b)(3), including the rule's focus, in more complex organizations, on the parent company of the entities that employ or otherwise control the individuals that exercise investment discretion. In addition, the Commission estimates from broker-dealer responses to FOCUS report filings with the Commission made in 2009 that there would be 300 registered broker-dealers subject to the proposed rule, including some broker-dealers that will also themselves be large traders. This estimate reflects the number of broker-dealer carrying firms that the Commission believes would carry accounts for large traders or that would effect transactions directly or indirectly for a large trader or Unidentified Large Trader where a non-broker-dealer carries the account. The Commission seeks comment on the number of large traders and registered broker-dealers that could be affected by the proposed rule and the nature of the proposed rule's effect on those persons and entities.

D. Estimated Total Annual Reporting and Recordkeeping Burden

1. Estimated Burden on Large Traders

Proposed Rule 13h–1 would present new burdens to persons and entities that meet the definition of large trader. In particular, persons, including those that might not presently be registered with the Commission in some capacity, that meet the definition of "large trader" would become subject to a new reporting duty, as the proposed rule would require each large trader to identify itself to the Commission by filing a Form 13H and submitting annual updates, as well as updates on a quarterly basis if necessary to correct information that becomes inaccurate. Additionally, each large trader would be required to identify itself to each registered broker-dealer through which it effects transactions and to all others with whom it collectively exercises investment discretion.

Paragraph (b)(1) of the proposed rule would require large traders to file Form 13H with the Commission promptly after first effecting transactions that reach the identifying activity level.[140] Thereafter, large traders would be required to file an amended Form 13H promptly following the end of a calendar quarter in the event that any of the information contained therein becomes inaccurate for any reason (*e.g.,* change of name and address, type of organization, principal business,

[134] *See* proposed Rule 13h–1(f).

[135] *See* 15 U.S.C. 78m(h)(2).

[136] 17 CFR 240.17a–4.

[137] *See* proposed Rule 13h–1(e).

[138] To assist the Commission in enforcing the self-identification requirements of the proposed rule, paragraph (e) of the proposed rule would require broker-dealers to maintain and report certain information about all transactions effected by Unidentified Large Traders. In addition to the information required to be maintained for identified large traders, a broker-dealer would be required to retain and report for Unidentified Large Traders such person's name, address, date the account was opened, and tax identification number(s). *See* proposed Rule 13h–1(d)(3).

[139] *See* 15 U.S.C. 78f(b)(1).

[140] *See* proposed Rule 13h–1(b)(1)(i).

regulatory status, accounts maintained, or associations).[141] Regardless of whether any interim amended Form 13Hs are filed, large traders also would be required to file Form 13H annually, within 45 days after the calendar year-end, in order to ensure the accuracy of all of the information reported to the Commission.[142] Additionally, proposed Rule 13h–1(b)(4) provides that the Commission may require large traders to provide, upon request, additional information to identify the large trader and all accounts through which the large trader effects transactions.

For purposes of the PRA, the Commission estimates that it would take a large trader approximately 20 hours to calculate whether its trading activity qualifies it as a large trader, complete the initial Form 13H with all required information, obtain a LTID from the Commission, and inform its registered broker-dealers and other entities of its LTID and the accounts to which it applies. The Commission understands that large traders currently maintain systems that capture their trading activity, and believes that these existing systems would be sufficient without further modification to enable a large trader to determine whether it effects transactions for the purchase or sale of any NMS security for or on behalf of accounts over which it exercises investment discretion in an aggregate amount equal to or greater than the identifying activity level. Accordingly, the Commission preliminarily estimates that the one-time burden for large traders would be approximately 8,000 burden hours.[143]

The Commission preliminarily estimates that the ongoing annualized burden for complying with proposed Rule 13h–1 would be approximately 6,800 burden hours for all large trader respondents.[144] This figure is based on the estimated number of hours it would take to file interim updates and the annual updated Form 13H. The Commission estimates that the average large trader would be required to file 1 annual update and 3 interim updates.[145]

Therefore, in summary, under the proposed rule, the total burden on large trader respondents would be 8,000 hours for the first year and 6,800 hours for each subsequent year.

2. Estimated Burden on Registered Broker-Dealers

As part of the Commission's existing EBS system, pursuant to Rule 17a–25 under the Exchange Act, the Commission currently requires registered broker-dealers to keep records of most of the information for their customers that would be captured by proposed Rule 13h–1.[146] The additional items of information that this proposal would capture are: (1) LTID; and (2) transaction execution time. To capture the additional field that includes the LTID number, all registered broker-dealers with large trader customers or that are themselves large traders would have to re-program their systems. Some registered broker-dealers also would need to re-program their systems to capture execution time, to the extent their systems do not already capture that information in a manner that is reportable pursuant to an EBS request for data, and LTID.

The Commission believes that the burden of the proposed rule for individual registered broker-dealers would likely vary due to differences in their recordkeeping systems. The Commission estimates that all registered broker-dealers that have a client base that includes large traders and Unidentified Large Traders, or broker-dealers that are themselves large traders, would be required to make modifications to their existing systems to capture the additional data elements that are not currently captured by systems that comply with Rule 17a–25, including, for example, the LTID number. The Commission estimates from broker-dealer responses to FOCUS report filings with the Commission made in 2009 that there would be 300 registered broker-dealers subject to the proposed rule, including some of those broker-dealers that will also themselves be large traders. The Commission preliminary estimates that the one-time, initial annualized burden for registered broker-dealers for system development, including re-programming and testing of the systems to comply with the proposed rule, would be approximately 133,500 burden hours.[147]

This figure is based on the estimated number of hours for initial internal development and implementation, including software development, taking into account the fact that new data elements are required to be captured and must be available for reporting to the Commission as of the morning following the day on which the transactions were effected. Because broker-dealers already capture, pursuant

[141] *See* proposed Rule 13h–1(b)(1)(iii).

[142] *See* proposed Rule 13h–1(b)(1)(ii).

[143] The Commission derived the total estimated burdens from the following estimates, which are based on the Commission's experience with, and burden estimates for, other existing reporting systems including Rule 13f–1: (Compliance Manager at 3 hours) + (Compliance Attorney at 7 hours) + (Compliance Clerk at 10 hours) × (400 potential respondents) = 8,000 burden hours. Rule 13f–1, like the proposed rule, requires monitoring of a certain threshold and, upon reaching that threshold, disclosure of information.

[144] The Commission derived the total estimated burdens from the following estimates, which are based on the Commission's experience with, and burden estimates for, other existing reporting systems including Rule 13f–1 and Rule 17a–25: (Compliance Manager at 2 hours) + (Compliance Attorney at 5 hours) + (Compliance Clerk at 10 hours) × (400 potential respondents) = 6,800 burden hours. Rule 13f–1, like the proposed rule, requires monitoring of a certain threshold and, upon reaching that threshold, disclosure of information. As discussed *supra,* Rule 17a–25 requires broker-dealers to disclose information that is very similar in scope and character to the information required under the proposed rule. The Commission believes that determining whether a firm reaches the identifying activity level is a compliance function and that no software reprogramming would be required. *See infra* note 177.

[145] This estimate is based on the varied characteristics of large traders and the nature and scope of the items that would be disclosed on proposed Form 13H that would require updating, and considers that large traders would file one required annual update and three quarterly updates when information contained in the Form 13H becomes inaccurate.

[146] *See* 17 CFR 240.17a–25. Pursuant to Rule 17a–25, broker-dealers are required to maintain the following information that would be captured by the proposed rule: date on which the transaction was executed; account number; identifying symbol assigned to the security; transaction price; the number of shares or option contracts traded and whether such transaction was a purchase, sale, or short sale, and if an option transaction, whether such was a call or put option, an opening purchase or sale, a closing purchase or sale, or an exercise or assignment; the clearing house number of such broker or dealer and the clearing house numbers of the brokers or dealers on the opposite side of the transaction; a designation of whether the transaction was effected or caused to be effected for the account of a customer of such broker or dealer, or was a proprietary transaction effected or caused to be effected for the account of such broker or dealer; market center where the transaction was executed; prime broker identifier; average price account identifier; and the identifier assigned to the account by a depository institution. For customer transactions, the broker-dealer is required to also include the customer's name, customer's address, the customer's tax identification number, and other related account information.

[147] The Commission derived the total estimated burdens from the following estimates, which are based on the Commission's experience with, and burden estimates for, other existing reporting systems including Rule 13f–1 and Rule 17a–25: (Computer Ops Dept. Mgr. at 30 hours) + (Sr. Database Administrator at 25 hours) + (Sr. Programmer at 150 hours) + (Programmer Analyst at 100 hours) + (Compliance Manager at 20 hours) + (Compliance Attorney at 10 hours) + (Compliance Clerk at 20 hours) + (Sr. Systems Analyst at 50 hours) + (Director of Compliance at 5 hours) + (Sr. Computer Operator at 35 hours) × (300 potential respondents) = 133,500 burden hours. As noted above, the Commission acknowledges that, in some instances, multiple LTIDs may be disclosed to a registered broker-dealer for a single account. Therefore, our hourly burden estimate factors in the cost that registered broker-dealers would need to develop systems capable of tracking multiple LTIDs. Rule 13f–1, like the proposed rule, requires monitoring of a certain threshold and, upon reaching that threshold, disclosure of information. As discussed *supra,* Rule 17a–25 requires broker-dealers to disclose information that is very similar in scope and character to the information required under the proposed rule.

to Rule 17a–25, most of the data that proposed Rule 13h–1 would capture, the Commission does not expect broker-dealers to incur any hardware costs.

The Commission preliminarily believes that the ongoing annualized expense for the recordkeeping requirement for registered broker-dealers would not result in a burden for purposes of the PRA, as registered broker-dealers already are required to provide to the Commission almost all of the proposed information for all of their customers pursuant to Rule 17a–25 under the Exchange Act. Once a registered broker-dealer's system is revised to capture the additional fields of information, the Commission does not believe that the additional fields would result in any ongoing annualized expense beyond what broker-dealers already incur under Rule 17a–25.

In addition to requiring registered broker-dealers to maintain records of account transactions, the proposed rule would also require registered broker-dealers to report such transactions to the Commission upon request. The Commission preliminarily believes that this collection of information would not involve any substantive or material change in the burden that already exists as part of registered broker-dealers providing transaction information to the Commission in the normal course of business.[148] However, the Commission notes that the information would need to be available for reporting to the Commission on a next-day basis, versus the 10 business day period associated with an EBS request for data.[149] Nevertheless, once the electronic recordkeeping system is in place to capture the information, where such system is designed and built to furnish the information within the time period specified in the proposal, the Commission preliminarily believes that the collection of information would result in minimal additional burden.

Although it is difficult to predict with certainty the Commission's future needs to obtain large trader data, the Commission preliminarily believes that, taking into account the Commission's likely need for data to be used in market reconstruction purposes and investigative matters, the Commission estimates that it would likely send 100 requests for large trader data per year to each registered broker-dealer.[150] The Commission estimates that it would take a registered broker-dealer 2 hours to comply with each request, considering that a broker-dealer would need to run the database query of its records, download the data file, and transmit it to the Commission. Accordingly, the ongoing annual aggregate hour burden for broker-dealers is estimated to be 60,000 hours ($100 \times 300 \times 2 = 60{,}000$).[151]

The proposed rule also would require registered broker-dealers to monitor large traders to help ensure compliance by large traders with the self-identification requirements of the rule. In particular, proposed paragraph (e) would require certain broker-dealers to maintain and report to the Commission certain information about all transactions effected by Unidentified Large Traders.

The Commission acknowledges that the duty to monitor would impose burdens on broker-dealers. To reduce the monitoring burden, the Commission has proposed a safe harbor provision for the monitoring duty. Specifically, registered broker-dealers would be deemed to not know or to have no reason to know that a person is an Unidentified Large Trader if: (1) It has established and maintains policies and procedures reasonably designed to assure compliance with the identification requirements of the proposed rule; and (2) it does not have actual knowledge that a person is a large trader.[152]

The Commission preliminary estimates that the one-time, initial burden for all registered broker-dealers to comply with the proposed monitoring requirements would be approximately 21,000 burden hours to establish a compliance system to detect and identify Unidentified Large Traders.[153] This figure is based on the estimated number of hours to establish policies and procedures reasonably designed to assure compliance with the identification requirements of the proposed rule. The Commission preliminarily estimates that the ongoing annualized burden to all broker-dealers for the monitoring requirements of the proposed rule, including the proposed requirement on broker-dealers to inform Unidentified Large Traders of their obligations to File Form 13H and disclose their large trader status under proposed Rule 13h–1, would be approximately 4,500 burden hours.[154]

Therefore, under the proposed rule, the total burden on these respondents would be 164,500 hours for the first year[155] and 14,500 hours for each subsequent year.[156]

E. Collection of Information Is Mandatory

All collections of information pursuant to the proposed rule would be a mandatory collection of information.

F. Confidentiality

Section 13(h)(7) of the Exchange Act provides that Section 13(h) "shall be considered a statute described in subsection (b)(3)(B) of [5 U.S.C. 552]", which is part of the Freedom of Information Act ("FOIA").[157] As such,

[148] *See* 17 CFR 240.17a–25.

[149] *See* Securities Exchange Act Release No. 44494 (June 29, 2001), 66 FR 35836 (July 9, 2001) (S7–12–00) (17a–25 adopting release).

[150] Compared to the EBS system, where the Commission sent 5,168 electronic blue sheets requests between January 2007 and June 2009, the Commission preliminarily expects to send fewer requests for large trader data, in particular because the Commission preliminarily expects that a request for large trader data would be broader and encompass a larger universe of securities and a longer time period than would be the case for the typically more targeted EBS requests it sends to broker-dealers.

[151] The Commission derived the total estimated burdens based on the Commission's experience with, and burden estimates for, other existing reporting systems, including Rule 17a–25. The Commission estimated that each broker-dealer who electronically responds to a request for data in connection with Rule 17a–25 and the EBS system spends 8 minutes per request. *See* EBS Release, *supra* note 24, at 66 FR 35841. Unlike EBS, under proposed Rule 13h–1, a broker-dealer would also be required to report data on Unidentified Large Traders. The Commission therefore believes that the time to comply with a request for data under the proposed rule could take longer than would a similar request for data under the EBS system, as a broker-dealer likely would take additional time to review and report information on any Unidentified Large Traders, including the additional fields of information specified in paragraph (d)(3) of the proposed rule, that they would be required to report to the Commission under the proposed rule.

[152] *See* proposed Rule 13h–1(f).

[153] The Commission derived the total estimated burdens from the following estimates, which are based on the Commission's experience with, and burden estimates for, other existing reporting systems including Rule 13f–1: (Sr. Programmer at 10 hours) + (Compliance Manager at 10 hours) + (Compliance Attorney at 10 hours) + (Compliance Clerk at 20 hours) + (Sr. Systems Analyst at 10 hours) + (Director of Compliance at 2 hours) + (Sr. Computer Operator at 8 hours) × (300 potential respondents) = 21,000 burden hours. Rule 13f–1, like the proposed rule, requires monitoring of a certain trading threshold.

[154] The Commission derived the total estimated burdens from the following estimates, which are based on the Commission's experience with, and burden estimates for, other existing reporting systems including Rule 13f–1 and Rule 17a–25: (Compliance Attorney at 15 hours) × (300 potential respondents) = 4,500 burden hours. Rule 13f–1, like the proposed rule, requires monitoring of a certain threshold and, upon reaching that threshold, disclosure of information.

[155] This figure is derived from the estimated one-time burdens from the recordkeeping requirement (133,500 burden hours) + the reporting requirement (10,000 burden hours) + the monitoring requirement (21,000 burden hours) = 164,500 total burden hours.

[156] This figure is derived from the estimated ongoing burdens from the reporting requirement (10,000 burden hours) + the monitoring requirement (4,500 burden hours) = 14,500 total burden hours.

[157] 5 U.S.C. 552(b)(3)(B) is now 5 U.S.C. 552(b)(3)(A)(ii).

"the Commission shall not be compelled to disclose any information required to be kept or reported under [Section 13(h)]." [158] Accordingly, the information that a large trader would be required to disclose on proposed Form 13H or provide in response to a Commission request would be exempt from disclosure under FOIA. In addition, any transaction information that a registered broker-dealer would report to the Commission under the proposed rule also would be exempt from disclosure under FOIA.

G. Retention Period of Recordkeeping Requirements

Registered broker-dealers would be required to retain records and information under the proposed rule for a period of three years, the first two in an accessible place, in accordance with Rule 17a–4 under the Exchange Act.[159]

H. Request for Comments

Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comment to: (1) Evaluate whether the proposed collection of information is necessary for the performance of the functions of the agency, including whether the information shall have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Persons wishing to submit comments on the collection of information requirements should direct them to the Office of Management and Budget, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Room 3208, New Executive Office Building, Washington, DC 20503; and should send a copy to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090 with reference to File No. S7–10–10. OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication, so a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. The Commission has submitted the proposed collection of information to OMB for approval. Requests for the materials submitted to OMB by the Commission with regard to this collection of information should be in writing, refer to File No. S7–10–10, and be submitted to the Securities and Exchange Commission, Office of Investor Education and Advocacy, 100 F Street, NE., Washington, DC 20549–0213.

V. Consideration of Costs and Benefits

The Commission is sensitive to the costs and benefits of our proposal to establish a large trader reporting system. We request comment on the costs and benefits associated with the proposal. The Commission has identified certain costs and benefits associated with the proposal and requests comment on all aspects of its preliminary cost-benefit analysis, including identification and assessment of any costs and benefits not discussed in this analysis. The Commission also seeks comments on the benefits identified and the costs described in each section of this cost-benefit analysis, as well as elsewhere in this release. Finally, the Commission requests that commenters provide data and any other information or statistics that the commenters relied on to reach any conclusions on such estimates.

A. Benefits

U.S. securities markets have experienced a dynamic transformation in recent years. In large part, the changes reflect the culmination of a decades-long trend from a market structure with primarily manual trading to a market structure with primarily automated trading. Rapid technological advances have produced fundamental changes in the structure of the securities markets, the types of market participants, the trading strategies employed, and the array of products traded. The markets also have become even more competitive, with exchanges and other trading centers offering innovative order types, data products and other services, and aggressively competing for order flow by reducing transaction fees and increasing rebates. These changes have facilitated the ability of large institutional and other professional market participants to employ sophisticated trading methods to trade electronically in huge volumes with great speed. In addition, large traders have become increasingly prominent at a time when the markets are experiencing an increase in overall volume.[160]

Currently, to support its regulatory and enforcement activities, the Commission collects transaction data through the EBS system.[161] The Commission uses the EBS system to obtain securities transaction information for two primary purposes: (1) To assist in the investigation of possible federal securities law violations, primarily involving insider trading or market manipulation; and (2) to conduct market reconstructions.

The EBS system has performed effectively as an enforcement tool for analyzing trading in a small sample of securities over a limited period of time. However, because the EBS system is designed for use in narrowly-focused enforcement investigations that generally involve trading in particular securities, it has proven to be insufficient for large-scale market reconstructions and analyses involving numerous stocks during peak trading volume periods.[162] Further, it does not address the Commission's need to identify important market participants and their trading activity.

Following declines in the U.S. securities markets in October 1987 and October 1989, Congress noted that the Commission's ability to analyze the causes of a market crisis was impeded by its lack of authority to gather trading information.[163] To address this concern, Congress passed the Market Reform Act, which, among other things, amended Section 13 of the Exchange Act to add new subsection (h), authorizing the Commission to establish a large trader reporting system under such rules and regulations as the Commission may prescribe.[164]

The large trader reporting authority in Section 13(h) of the Exchange Act was intended to facilitate the Commission's ability to monitor the impact on the securities markets of securities transactions involving a substantial volume or large fair market value, as well as to assist the Commission's enforcement of the federal securities laws.[165] In particular, the Market Reform Act provided the Commission with the authority to collect broad-based information on large traders, including their trading activity, reconstructed in

[158] *See* section 13(h)(7) of the Exchange Act, 15 U.S.C. 78m(h)(7).

[159] 17 CFR 240.17a–4.

[160] *See, e.g., infra* note 1.

[161] *See* 17 CFR 240.17a–25 (Electronic Submission of Securities Transaction Information by Exchange Members, Brokers, and Dealers).

[162] *See supra* note 7 and accompanying text.

[163] The legislative history accompanying the Market Reform Act also noted the Commission's limited ability to analyze the causes of the market declines of October 1987 and 1989. *See generally* Senate Report, *supra* note 9, and House Comm. on Energy and Commerce, Report to accompany the Securities Market Reform Act of 1990, H.R. No. 524, 101st Cong. 2d Sess. (June 5, 1990) (reporting H.R. 3657).

[164] Public Law 101–432 (HR 3657), October 16, 1990.

[165] *See* 15 U.S.C. 78m(h)(1). *See also* Senate Report, *supra* note 9, at 42.

time sequence, in order to provide empirical data necessary for the Commission to evaluate market movement and volatility and enhance its ability to detect illegal trading activity.[166]

The large trader reporting system envisioned by the Market Reform Act authorizes the Commission to require large traders[167] to self-identify to the Commission and provide information to the Commission identifying the trader and all accounts in or through which the trader effects securities transactions.[168] The Market Reform Act also authorized the Commission to require large traders to identify their status as large traders to any registered broker-dealer through whom they directly or indirectly effect securities transactions.[169]

In addition to facilitating the ability of the Commission to identify large traders, the Market Reform Act also authorizes the Commission to collect information on the trading activity of large traders. In particular, the Commission is authorized to require every registered broker-dealer to make and keep records with respect to securities transactions of large traders that equal or exceed a certain "reporting activity level" and report such transactions upon request of the Commission.[170]

To implement its authority under section 13(h) of the Exchange Act, the Commission now is proposing new Rule 13h–1 and Form 13H to establish an activity-based large trader reporting system. The proposal is intended to assist the Commission in identifying, and obtaining certain baseline trading information about traders that conduct a substantial volume or large fair market value of trading activity in the U.S. securities markets. In essence, a "large trader" would be defined as a person who effects transactions in NMS securities of at least, during any calendar day, two million shares or shares with a fair market value of $20 million or, during any calendar month, either 20 million shares or shares with a fair market value of $200 million.[171] The proposed large trader reporting system is designed to facilitate the Commission's ability to monitor the impact on the securities markets of large trader activity, and allow it to conduct trading reconstructions following periods of unusual market volatility and analyze significant market events for regulatory purposes. It also should enhance the Commission's ability to detect and deter fraudulent and manipulative activity and other trading abuses.

The proposed identification, recordkeeping, and reporting system would provide the Commission with a mechanism to identify large traders, and the affiliates, accounts, and transactions of large traders. Specifically, proposed Rule 13h–-1 would require large traders to identify themselves to the Commission and make certain disclosures to the Commission on proposed Form 13H. Upon receipt of Form 13H, the Commission would issue a unique identification number to the large trader, which the large trader would then provide to its registered broker-dealers. Registered broker-dealers would be required to maintain transaction records for each large trader customer, and would be required to report that information to the Commission upon request. In addition, registered broker-dealers would be required to adopt procedures to monitor their customers' activity for volume that would trigger the identification requirements of the proposed rule.

In light of recent turbulent markets and the increasing sophistication and trading capacity of large traders, the Commission believes it needs to further enhance its ability to collect and analyze trading information, especially with respect to the most active market participants. In particular, the Commission believes it needs a mechanism to reliably identify large traders, and promptly and efficiently obtain their trading information on a market-wide basis.

The Commission believes a proposal for a large trader reporting system is necessary because, as noted above, large traders appear to be playing an increasingly prominent role in the securities markets.[172] Market observers have offered a wide range of estimates for the percent of overall volume attributable to one potential subcategory of large trader—high frequency traders—which are typically estimated at 50% of total volume or higher.[173] The proposed large trader reporting system is intended to provide a basic set of tools so that the Commission can monitor more readily and efficiently the impact on the securities markets of large traders.

Among other things, the Commission believes that a large trader reporting system would enhance its ability to (1) Reliably identify large traders and their affiliates, (2) obtain more promptly trading data on the activity of large traders, including execution time, and (3) aggregate and analyze trading data among affiliated large traders and affiliated accounts.

The Commission generally requests comment on the anticipated benefits of the proposal, including whether the proposal would: (1) Assist in the examination for and investigation of possible federal securities law violations, including insider trading or market manipulation; (2) assist the Commission in conducting market reconstructions; and (3) provide the Commission with a system that would allow it to analyze more readily and efficiently the impact of large traders on the securities markets. Would the proposed rule provide benefits that the Commission has not discussed?

B. Costs

1. Large Traders

The Commission preliminarily anticipates that the primary costs to large traders from the proposal are the requirement to self-identify to the Commission, including utilizing existing systems to detect when the large trader meets the identifying activity level, and the filing and information requirements when large

[166] *See* Senate Report, *supra* note 9, at 4, 44, and 71. In this respect, though self-regulatory organization ("SRO") audit trails provide a time sequenced report of broker-dealer transactions, those audit trail generally do not identify the broker-dealer's customers. Accordingly, the Commission is not presently able to utilize existing SRO audit trail data to accomplish the objectives of the Market Reform Act.

[167] Section 13(h) of the Exchange Act defines a "large trader" as "every person who, for his own or an account for which he exercises investment discretion, effects transactions for the purchase or sale of any publicly traded security or securities by use of any means or instrumentality of interstate commerce or of the mails, or of any facility of a national securities exchange, directly or indirectly by or through a registered broker or dealer in an aggregate amount equal to or in excess of the identifying activity level." *See* 15 U.S.C. 78m(h)(8)(A).

[168] *See* 15 U.S.C. 78m(h)(1)(A).

[169] *See* 15 U.S.C. 78m(h)(1)(B).

[170] *See* 15 U.S.C. 78m(h)(2). Section 13(h) also provides the Commission with authority to determine the manner in which transactions and accounts should be aggregated, including aggregation on the basis of common ownership or control. *See* 15 U.S.C. 78m(h)(3). The term "reporting activity level" is defined in Section 13(h)(8)(D) of the Exchange Act to mean "transactions in publicly traded securities at or above a level of volume, fair market value, or exercise value as shall be fixed from time to time by the Commission by rule, regulation, or order, specifying the time interval during which such transactions shall be aggregated." *See* 15 U.S.C. 78m(h)(8)(D).

[171] This test is defined in the proposed rule as the "identifying activity level." *See* proposed Rule 13h–1(a)(7). Section 13(h)(8)(c) of the Exchange Act authorizes the Commission to determine, by rule or regulation, the applicable identifying activity level. 15 U.S.C. 78m(h)(8)(c).

[172] *See* 15 U.S.C. 78m(h)(1) and (h)(2) (reflecting the purpose of Section 13(h) of the Exchange Act to allow the Commission to monitor the impact of large traders).

[173] *See supra* note 1.

trader status is achieved, as well as the requirement to inform its broker-dealers and others with whom it exercises investment discretion of its LTID and all accounts to which it applies. The proposed rule would require large traders to file Form 13H with the Commission promptly after first effecting transactions that reach the identifying activity level.[174] Large traders would be required to amend their Forms 13H by submitting an "Interim Filing" promptly following the end of a calendar quarter in the event that any of the information contained in a Form 13H filing becomes inaccurate for any reason (*e.g.,* change of name or address, type of organization, principal business, regulatory status, accounts maintained, or associations).[175] Regardless of whether any interim amended Form 13Hs are filed, large traders would be required to file Form 13H annually, within 45 days after the calendar year-end, in order to ensure the accuracy of all of the information reported to the Commission.[176]

The Commission estimates that the aggregate costs for all 400 potential large trader respondents to self-identify on Form 13H and obtain from the Commission and inform others of its LTID and the accounts to which it applies would be $1,317,600.[177] The Commission believes that potential large trader respondents would not need to modify their existing systems to comply with proposed Rule 13h–1. The Commission believes that large traders already employ software that tracks the number and market value of the shares they trade, and the Commission expects that firms would be able to use their existing systems to monitor whether they reach the identifying activity level. Accordingly, the estimate above does not include any software modification costs. In addition, the Commission estimates that the aggregate cost to file interim updates and the annual updated Form 13H would be $998,400.[178] The Commission does not expect these minimal costs per large trader of self-identification and reporting to the Commission to have any significant effect on how large traders conduct business because such costs would not be so large, when compared to level of activity at which a large trader would be trading, so as to result in a change in how such traders conduct business, create a barrier to entry, or otherwise alter the competitive landscape among large traders.

The term "price efficiency" has a technical meaning in financial economics, which is not the only way the term can be interpreted in the Exchange Act.[179] We have, nonetheless, considered the effect of proposed new Rule 13h–1 on price efficiency in terms of financial economic theory, under which the proposed large trader reporting system could adversely affect the extent to which security prices reflect available information. As discussed above, the Commission acknowledges that the proposal would entail certain costs on large traders. These costs would be incremental to certain large traders which, as part of their business model, expend resources to gather and process public information that is ultimately reflected into prices through their trading activity. The Commission is sensitive to the costs of the proposal and preliminarily believes these costs would have minimal impact on a large trader's decision to gather and process public information, and also have minimal impact on a large trader's decision to ultimately trade on this information. Because the large trader reported positions would be made available only to the Commission, and not to the public or a trader's competitors, we expect the proposed rule to have little impact on where a large trader conducts its business. The Commission therefore preliminarily believes that the proposal mitigates any potential adverse impact on price efficiency.

The Commission believes that the proposed rule's requirement for large traders to file and update Form 13H with the Commission, and to identify itself to each registered broker-dealer through which it effects transactions and to all others with whom it collectively exercises investment discretion, will have minimal adverse effect on efficiency, competition, or capital formation. In particular, the Commission does not believe that the requirement to self-identify to the Commission and the increased regulatory scrutiny it would entail would deter large traders from continuing to actively participate in the securities markets or would otherwise negatively impact large traders. Because the large trader positions will be reported only to the Commission, and not made public to a trader's customers or competitors, we expect the proposed rule to have little to no impact on competition.

The Commission acknowledges that, in addition to promoting price efficiency, the trading activity of certain large traders also promotes market liquidity in secondary securities markets. The Commission also acknowledges that participation in primary market offerings may be affected by changes in expectations about secondary market liquidity and price efficiency. As discussed above, however, the Commission preliminarily believes that the proposed rule would have minimal impact on a large trader's secondary market trading activities, and therefore believes there would be little to no impact on capital formation. Further, the Commission believes that proposed Rule 13h–1(b) would enhance the Commission's efforts to monitor the markets, in furtherance of promoting efficiency and capital formation and thereby bolstering investor confidence.

The Commission has sought to limit compliance costs wherever possible. The Commission proposes to establish an initial "identifying activity level" of: (1) 2 million shares, or shares with a fair market value of $20 million, effected during a calendar day; or (2) 20 million shares or shares with a fair market value of $200 million, effected during a

[174] *See* proposed Rule 13h–1(b)(1)(i).

[175] *See* proposed Rule 13h–1(b)(1)(iii).

[176] *See* proposed Rule 13h–1(b)(1)(ii).

[177] The Commission derived the total estimated burdens from the following estimates, which are based on the Commission's experience with, and burden estimates for, other existing reporting systems including Rule 13f–1: (Compliance Manager (3 hours) at $258 per hour) + (Compliance Attorney (7 hours) at $270 per hour) + (Compliance Clerk (10 hours) at $63 per hour) × (400 potential respondents) = $1,317,600. Rule 13f–1, like the proposed rule, requires the filing of a form (Form 13F) upon exceeding a certain trading threshold. This figure is based on the estimated number of hours and hourly costs for the one-time, initial annualized burden for registered broker-dealers for development, including re-programming and testing of the systems to comply with the proposed rule. Hourly figures are from SIFMA's Management & Professional Earnings in the Securities Industry 2008 and SIFMA's Office Salaries in the Securities Industry 2008, modified by Commission staff to account for an 1800-hour work-year and multiplied by 5.35 or 2.93, as appropriate, to account for bonuses, firm size, employee benefits, and overhead.

[178] The Commission derived the total estimated burdens from the following estimates, which are based on the Commission's experience with, and burden estimates for, other existing reporting systems including Rule 6a–2: (Compliance Manager (2 hours) at $258 per hour) + (Compliance Attorney (5 hours) at $270 per hour) + (Compliance Clerk (10 hours) at $63 per hour) × (400 potential respondents) = $998,400. Rule 6a–2, like the proposed rule, requires: (1) Form amendments when there are any material changes to the information provided in the previous submission; and (2) submission of periodic updates of certain information provided in the initial Form 1, whether or not such information has changed.

[179] Where we use the terms "price efficiency" in this proposing release we are using terms of art as used in the economic literature proceeding under the "efficient markets hypothesis," under which financial prices are assumed to reflect all available information and accordingly adjust quickly to reflect new information. *See, e.g.,* Fama, Eugene F., (1991), Efficient capital markets: II, Journal of Finance; Fama E, French K. (1992), The Cross-Section of Expected Stock Returns, Journal of Finance. It should be noted that price efficiency is not identical with the ordinary sense of the word "efficiency."

calendar month. The Commission preliminarily believes that this threshold identifying activity level strikes an appropriate balance between the need to identify significant large traders and the burden on affected entities of capturing this information.

Further, when determining who would be subject to the proposed requirements as a "large trader," the proposed definition is intended to focus, in more complex organizations, on the parent company of the entities that employ the individuals that exercise investment discretion. The purpose of this focus is to narrow the number of persons that would need to self-identify as "large traders," while allowing the Commission to identify the primary institutions that conduct a large trading business. Focusing the identification requirements in this manner would enable the Commission to identify easily and be able to contact readily the principal group of persons that control large traders, while minimizing the filing and self-identification burdens that would be imposed on large traders.

In addition, the Commission is proposing an inactive filing status. The inactive filing status is intended to reduce the burden on infrequent traders who may trip the threshold on a particular occasion but do not regularly trade at sufficient levels to merit continued status as a large trader. In particular, large traders that have not effected aggregate transactions at any time during the previous full calendar year that are equal to or greater than the identifying activity level would be eligible for inactive status upon checking a box on the cover page of their next annual Form 13H filing.[180] The proposed inactive status is designed to minimize the impact of the proposed rule on natural persons that infrequently trade in a magnitude that may warrant imposing the added regulatory burdens of the proposed rule. As a subset of inactive status, proposed Form 13H would provide a space for a large trader to reflect the termination of its operations (*i.e.,* inactive status where the entity, because it has discontinued operations, has no potential to requalify for large trader status in the future). This designation would allow large traders to inform the Commission of their status and would signal to the Commission not to expect future amended Form 13H filings from the large trader. For example, termination status would be relevant in the case of a merger or acquisition where the large trader does not survive the corporate transaction. In addition, with respect to registered broker-dealers, the termination filing status should reduce the burden on registered broker-dealers who would no longer have to track the entity's LTID.

From time to time, information provided by large traders through their Forms 13H may become inaccurate. Rather than requiring prompt updates whenever this occurs, the proposed rule instead would require "Interim Filings" only quarterly (and only when the prior submission becomes inaccurate). The quarterly period is designed specifically to mitigate the filing burden of large traders.

A further limitation of the proposal targeted at balancing between capturing significant trading activity and the burden of capturing this information is that the Commission has proposed several exceptions from the definition of "transaction." These exceptions, among others, would include: any transaction that constitutes a gift, any transaction effected by a court-appointed executor, administrator, or fiduciary pursuant to the distribution of a decedent's estate, any transaction effected pursuant to a court order or judgment, and any transaction effected pursuant to a rollover of qualified plan or trust assets subject to Section 402(c)(1) of the Internal Revenue Code.[181] The Commission believes that narrowing the definition of a transaction by adding these exclusions would reduce the impact of the proposed rule on infrequent traders and registered broker-dealers while at the same time allowing the Commission to focus the rule on those entities and activities most appropriate to identify under the proposed rule.

2. Registered Brokers and Registered Dealers

The Commission preliminarily anticipates that the three primary costs to registered broker-dealers from the proposal are: (1) Recordkeeping requirements; (2) reporting requirements; and (3) monitoring requirements.

The rule would require that registered broker-dealers keep records of transactions for each person they know is a large trader and for each person who has not complied with the information requirements that they have reason to know is a large trader based on transactions effected by or through such broker-dealer (an "Unidentified Large Trader").182 The proposed rule would require brokers and dealers to furnish transaction records of both identified large traders and Unidentified Large Traders to the Commission upon request. While most of the proposed data required to be kept pursuant to proposed Rule 13h–1 is already required under Rule 17a–25 and reported via the EBS system, the large trader system would contain a few additional fields of information, notably the LTID number(s) and execution time. The proposed rule would require that such records be kept for a period of three years, the first two in an accessible place, in accordance with Rule 17a–4(b) under the Exchange Act.[183]

The Commission preliminarily estimates that the one-time, initial expense for each registered brokers-dealer for development, including re-programming and testing of the systems, would be approximately $106,060.[184] The Commission also preliminarily believes that there would be minimal additional costs associated with the operation and maintenance of the large trader system, because the proposed large trader system would utilize the existing EBS system. Accordingly, the total start-up, operating, and maintenance cost burden for registered broker-dealers is estimated to be $31,818,000 (300 × $106,060 = $31,818,000). As previously noted, this figure is based on the estimated number of hours for initial internal development and implementation, including software development, taking into account the fact that new data elements are required to be captured and to be available for reporting to the Commission on the morning following the day on which the transactions were effected. Because broker-dealers already capture most of the data required to be captured under proposal Rule 13h–1 pursuant to Rule 17a–25, the Commission does not expect any additional hardware costs.

The proposed rule would require registered broker-dealers to report transactions that equal or exceed the

[180] *See* proposed Rule 13h–1(b)(3)(iii).

[181] *See* proposed Rule 13h–1(a)(6).

[182] *See* proposed Rule 13h–1(a)(9) (defining "Unidentified Large Trader").

[183] 17 CFR 240.17a–4.

[184] The Commission derived the total estimated one-time burdens from the following: (Computer Ops Dept. Mgr. (30 hours) at $335 per hour) + (Sr. Database Administrator (25 hours) at $281 per hour) + (Sr. Programmer (150 hours) at $292 per hour) + (Programmer Analyst (100 hours) at $193 per hour) + (Compliance Manager (20 hours) at $258 per hour) + (Compliance Attorney (10 hours) at $270 per hour) + (Compliance Clerk (20 hours) at $63 per hour) + (Sr. Systems Analyst (50 hours) at $244 per hour) + (Director of Compliance (5 hours) at $388 per hour) + (Sr. Computer Operator (35 hours) at $75 per hour) = $106,060. As noted above, the Commission acknowledged that, in some instances, multiple LTIDs may be disclosed to a registered broker-dealer for a single account. Therefore, our cost estimate factors in the cost that registered broker-dealers would need to develop systems capable of tracking multiple LTIDs.

reporting activity level effected by or through such broker-dealer for both identified and Unidentified Large Traders. More specifically, upon the request of the Commission, registered broker-dealers would be required to report electronically, in machine-readable form and in accordance with instructions issued by the Commission, all information required under paragraphs (d)(2) and (d)(3) for all transactions effected directly or indirectly by or through accounts carried by such broker-dealer for large traders and other persons for whom records must be maintained, which equal or exceed the reporting activity level. These broker-dealers would need to report a particular day's trading activity only if it equals or exceeds the "reporting activity level," but would be permitted to report all data without regard to that threshold.

The Commission estimates that the costs of the proposed reporting requirements would be $16,200,000.[185] The Commission is taking into account that the proposed rule would utilize the recordkeeping and reporting infrastructure of the existing EBS system.

Paragraph (f) of proposed Rule 13h–1 would establish a "safe harbor" for the proposed duty to monitor for Unidentified Large Traders.[186] Pursuant to proposed paragraph (a)(9), in the case of an Unidentified Large Trader, a "registered broker-dealer has reason to know whether a person is a large trader based on the transactions in NMS securities effected by or through such broker-dealer." A registered broker-dealer would not be deemed to know or to have reason to know that a person is an Unidentified Large Trader if: (1) It does not have actual knowledge that a person is a large trader; and (2) it established and maintained policies and procedures reasonably designed to assure compliance with the identification requirements of the proposed safe harbor. Paragraphs (f)(1) and (2) of the proposed rule provide the specific elements that would be required for the safe harbor. Paragraph (f)(2) of the proposed rule would require that broker-dealer monitoring policies and procedures contain systems reasonably designed to inform persons of their obligations to file proposed Form 13H and disclose their large trader status.

The Commission estimates the initial, one-time burden to establish policies and procedures pursuant to the proposed safe harbor provision would be $4,756,800.[187] The Commission estimates that the ongoing burden would be $1,215,000.[188] The Commission believes that the proposed safe harbor would reduce the burden of the monitoring requirements of the proposed rule on registered broker-dealers. Among other things, they would limit the broker-dealer's obligations to only those Unidentified Large Traders that should be readily identifiable and apparent to the broker-dealer, and would require the broker-dealer to inform such persons of their obligations to file proposed Form 13H and disclose their large trader status to the Commission.

To assist the Commission in evaluating the costs that could result from the proposed rule, the Commission requests comments on the potential costs identified in this proposal, as well as any other costs that could result from the proposed rule. The Commission asks commenters to quantify those costs, where possible, and provide analysis and data to support their views on the costs. While the Commission does not anticipate that there would be significant adverse consequences to a broker-dealer's business as a result of the proposed rule, it seeks commenters' views regarding the possibility of any such impact. For instance, would the proposed rule impact a broker-dealer's ability to attract or retain its large trader customers?

In addition, the Commission requests specific comment on the following questions:

- Are there ways to further reduce the burdens of the filing requirements on large traders? Is the provision for inactive status sufficient?
- Does the capture of trade execution times in a large trader reporting system present any particular technological or other operational challenges?
- Does the potential capture of multiple LTIDs raise any particular issues?
- What other costs might registered broker-dealers incur in developing policies and procedures to monitor for Unidentified Large Traders? Are there ways to further reduce the burdens of monitoring for Unidentified Large Traders and informing them of their obligations to file Form 13H?
- Do commenters believe that the costs of operating and maintaining a large trader reporting system will result in additional costs beyond the existing EBS system?
- Are there ways to further reduce the burdens of the proposed large trader reporting system?
- Would the proposed rule have any unintended, negative consequences for the U.S. markets?

Commenters should provide specific data and analysis to support any comments they submit with respect to the costs and benefits discussed above and any other costs and benefits identified by the commenters.

VI. Consideration of Burden on Competition, and Promotion of Efficiency, Competition and Capital Formation

Section 3(f) of the Exchange Act requires the Commission, whenever it engages in rulemaking and is required to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action would promote efficiency, competition, and capital formation.[189] In addition, section 23(a)(2) of the Exchange Act requires the Commission, when making rules under the Exchange Act, to consider the impact such rules would have on competition.[190] Exchange Act section 23(a)(2) prohibits the Commission from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

The Commission is proposing Rule 13h–1 pursuant to our authority under section 13(h) of the Exchange Act. Section 13(h)(2) requires the Commission, when engaging in rulemaking pursuant to that authority that would require every registered broker-dealer to make and keep for prescribed periods such records as the Commission by rule or regulation prescribes, to consider whether such rule is "necessary or appropriate in the public interest, for the protection of

[185] *See supra* text accompanying note 151. The Commission derived the total estimated ongoing burdens from the following: (Compliance Attorney (2 hours) at $270 per hour) × (100 requests per year) × (300 potential respondents) = $16,200,000.

[186] *See* proposed Rule 13h–1(a)(9) (defining an Unidentified Large Trader as "each person who has not complied with the identification requirements of paragraphs (b)(1) and (b)(2) of this rule that a registered broker-dealer knows or has reason to know is a large trader.")

[187] *See supra* note 153. The Commission derived the total estimated one-time burdens from the following: (Sr. Programmer (10 hours) at $292 per hour) + (Compliance Manager (10 hours) at $258 per hour) + (Compliance Attorney (10 hours) at $270 per hour) + (Compliance Clerk (20 hours) at $63 per hour) + (Sr. Systems Analyst (10 hours) at $244 per hour) + (Director of Compliance (2 hours) at $388 per hour) + (Sr. Computer Operator (8 hours) at $75 per hour) x (300 potential respondents) = $3,982,800.

[188] *See supra* note 154. The Commission derived the total estimated ongoing burdens from the following: (Compliance Attorney at (15 hours) at $270 per hour) x (300 potential respondents) = $1,215,000.

[189] 15 U.S.C. 78c(f).

[190] 15 U.S.C. 78w(a)(2).

investors, or otherwise in furtherance of the purposes of [the Exchange Act]."[191]

A. Competition

We consider in turn the impact of proposed new Rule 13h–1 on the securities markets and market participants. Information provided by market participants and broker-dealers in their registrations and filings with us informs our views on the structure of the markets they comprise. We begin our consideration of potential competitive impacts with observations of the current structure of these markets.

The securities trading industry is a competitive one with reasonably low barriers to entry. The intensity of competition across trading platforms in this industry has increased in the past decade as a result of a number of factors, including market reforms and technological advances. This increase in competition has resulted in decreases in market concentration, more competition among trading centers, a proliferation of trading platforms competing for order flow, and decreases in trading fees.

The reasonably low barriers to entry for trading centers are evidenced, in part, by the fact that new entities, primarily alternative trading systems ("ATSs"), continue to enter the market.[192] For example, currently, there are approximately 50 registered ATSs. In addition, the Commission within the past few years has approved applications by two entities—BATS and Nasdaq—to become registered as national securities exchanges for trading equities, and approved proposed rule changes by two existing exchanges—International Securities Exchange, LLC and Chicago Board Options Exchange, Incorporated—to add equity trading facilities to their existing options business. We believe that competition among trading centers has been facilitated by Rule 611 of Regulation NMS,[193] which encourages quote-based competition between trading centers; Rule 605 of Regulation NMS,[194] which empowers investors and broker-dealers to compare execution quality statistics across trading centers; and Rule 606 of Regulation NMS,[195] which enables customers to monitor order routing practices.

Broker-dealers are required to register with the Commission and at least one SRO. The broker-dealer industry, including market makers, is a competitive industry with most trading activity concentrated among several larger participants and thousands of smaller participants competing for niche or regional segments of the market. There are approximately 5,178 registered broker-dealers, of which approximately 890 are small broker-dealers.[196]

Larger broker-dealers often enjoy economies of scale over smaller broker-dealers and compete with each other to service the smaller broker-dealers, who are both their competitors and customers. The reasonably low barriers to entry for broker-dealers are evidenced, for example, by the fact that the average number of new broker-dealers entering the market each year between 2001 and 2008 was 389.[197]

As discussed above, the Commission acknowledges that the proposal would entail certain costs. In particular, requiring registered broker-dealers to establish recordkeeping systems to capture the required information, in particular the new fields that are not currently captured under the existing EBS system, would require one-time initial expenses, as discussed above. In addition, to utilize the proposed safe harbor, registered broker-dealers would need to implement policies and procedures to monitor their customers' trading in order to determine whether customers' trades would trigger the threshold for large trader status. Preliminarily, the Commission does not believe that these expenses would adversely affect competition.

In our judgment, the costs of proposed Rule 13h–1 would not be so large as to significantly raise barriers to entry, or otherwise alter the competitive landscape of the industries involved because the incremental costs of Rule 13(h) that would be incurred by broker-dealers would be small relative to the costs of complying with the existing EBS system.[198] In industries characterized by reasonably low barriers to entry and competition, the viability of some of the less successful competitors may be sensitive to regulatory costs. Nonetheless, we believe that the broker-dealer industry would remain competitive, despite the costs associated with implementing proposed new Rule 13h–1, even if those costs influence the entry or exit decisions of individual broker-dealer firms at the margin. The Commission does not expect that the costs associated with proposed new Rule 13h–1, which are small relative to the costs of complying with the existing EBS system, would be a determining factor in a broker-dealer's entry or exit decision or decision to accept large trader clients because the volume of trading associated with large traders and resultant revenue that could be gained by servicing a large trader would outweigh the costs associated with the proposed rule.

Further, the Commission would not be compelled to disclose any information required to be kept or reported under Section 13(h) of the Exchange Act, including information kept or reported pursuant to proposed Rule 13h–1.[199] Accordingly, information and trading data that the Commission would obtain pursuant to the proposed rule would not be shared with others and would not be available to other large traders or broker-dealers.

The approach of proposed new Rule 13h–1 would advance the purposes of the Exchange Act in a number of significant ways. In light of recent market turmoil and the increasing prominence, sophistication, and trading capacity of large traders, the Commission believes it should further enhance its ability to collect and analyze information on large traders. The Commission believes that the proposed large trader reporting system could enhance its ability to identify large traders and collect trading data on their activity at a time when, for example, many such traders employ rapid algorithmic systems that quote and trade in huge volumes. The proposed large trader reporting system would provide a basic set of tools necessary to allow the Commission to monitor and analyze more readily and efficiently the impact of large traders,

[191] The Commission is proposing Rule 13h–1(b) relating to identification requirements for large traders pursuant to Section 13(h)(1) of the Exchange Act, which does not require the Commission to consider the factors identified in Section 3(f), 15 U.S.C. 78c(f). Analysis of the effects, including the considerations under Section 23(a), of proposed Rule 13h–1(b) is discussed above in Sections IV and V.

[192] *See* Securities Exchange Act Release No. 60997 (Nov. 13, 2009), 74 FR 61208, 61234 (Nov. 23, 2009) (discussing the reasonably low barriers to entry for ATSs and that these reasonably low barriers to entry have generally helped to promote competition and efficiency).

[193] 17 CFR 242.611.

[194] 17 CFR 242.605.

[195] 17 CFR 242.606.

[196] These numbers are based on a review of 2007 and 2008 FOCUS Report filings reflecting registered broker-dealers, and discussions with SRO staff. The number does not include broker-dealers that are delinquent on FOCUS Report filings.

[197] This number is based on a review of FOCUS Report filings reflecting registered broker-dealers from 2001 through 2008. The number does not include broker-dealers that are delinquent on FOCUS Report filings. New registered broker-dealers for each year during the period from 2001 through 2008 were identified by comparing the unique registration number of each broker-dealer filed for the relevant year to the registration numbers filed for each year between 1995 and the relevant year.

[198] *See supra* Sections IV (Paperwork Reduction Act) and V (Consideration of Costs and Benefits) for a detailed description of the expected costs.

[199] *See supra* text following note 89.

including high–frequency traders, on the securities markets.

The Commission preliminarily believes that the proposal to establish the large trader reporting system would not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. In particular, the Commission believes that the proposal would implement the Commission's authority under Section 13(h) of the Exchange Act at a crucial time when large traders play an increasingly prominent role in the securities markets.

B. Capital Formation

As discussed above, the Commission preliminary believes that the proposed rule will have little to no direct impact on capital formation. However, proposed new Rule 13h–1 is intended to facilitate the Commission's ability to monitor the impact on the securities markets of securities transactions involving a substantial volume of shares, a large fair market value or a large exercise value, as well as to assist the Commission's enforcement of the federal securities laws. As noted in Paragraph B of Section II, the proposed rule focuses on the core of the large trader reporting system—the entities that control persons that exercise investment discretion and are responsible for trading large amounts of securities. As these entities can represent significant sources of liquidity and overall trading volume, their trading may have a direct impact on the cost of capital of securities issuers. As such, the Commission's ability to promptly obtain information from registered broker-dealers on large trader activity should better enable the Commission to understand the impact of large traders on the securities markets. As the Commission improves its understanding, it should be better positioned to administer and enforce the federal securities laws, thereby promoting the integrity and efficiency of the markets, as well as, ultimately, investor confidence and capital formation. For example, the information collected from Rule 13h–1(b) would allow for a more timely reconstruction of trading activity during a market crisis and thus could better position the Commission to craft any regulatory responses.

Proposed new Rule 13h–1 is intended to facilitate the Commission's ability to monitor the impact on the securities markets of securities transactions involving a substantial volume of shares, a large fair market value or a large exercise value, as well as to assist the Commission's enforcement of the federal securities laws. As noted in Paragraph B of Section II, the proposed rule focuses on the core of the large trader reporting system—the entities that control persons that exercise investment discretion and are responsible for trading large amounts of securities. As these entities can represent significant sources of liquidity and overall trading volume, their trading may have a direct impact on the cost of capital of securities issuers. As such, the Commission's ability to promptly obtain information from registered broker-dealers on large trader activity should assist the Commission's efforts to indirectly promote capital formation by better enabling the Commission to understand the impact of large traders on the securities markets. For example, the information collected from proposed Rule 13h–1(b) would allow for a more timely reconstruction of trading activity of large traders during a market crisis, and thus could better position the Commission to craft any regulatory responses. Specifically, we believe that, armed with more current and accurate trading information on large traders, the Commission would be able to identify regulatory and potential enforcement issues more quickly. Thus, proposed Rule 13h–1 could help maintain investor confidence in the markets, and thus could add depth and liquidity to the markets and promote capital formation. Further, the Commission preliminarily believes that the requirements imposed on all large traders, whether U.S. or foreign, are necessary and appropriate, not unduly burdensome, and would be imposed uniformly on all affected entities (whether U.S. or foreign).

C. Efficiency

Proposed new Rule 13h–1 is designed to achieve the appropriate balance between our goals of monitoring the impact on the securities markets of securities transactions by large traders, and assisting the Commission's enforcement of the federal securities laws, on the one hand, and the effort to minimize the burdens and costs associated with implementing a proposed large trader system.

The Commission preliminarily believes that the disclosure by registered broker-dealers to regulators that would be achieved by the proposed large trader reporting system would promote efficiency by enabling the Commission to go beyond the EBS system, which permits investigations of small samples of securities over a limited period of time, to instead assist with large-scale investigations and market reconstructions involving numerous stocks during peak trading volume periods. The proposal also would enable the Commission to receive from registered broker-dealers contemporaneous information on large traders' trading activity much more promptly than is currently the case with the EBS system. With a system designed specifically to help the Commission reconstruct and analyze time-sequenced trading data, the Commission could more quickly investigate the nature and causes of unusual market movements and initiate investigations and regulatory actions where warranted.

D. Request for Comment

The Commission requests comment on all aspects of this analysis and, in particular, on whether the proposed large trader reporting system would place a burden on competition, as well as the effect of the proposal on efficiency, competition, and capital formation. Commenters are requested to provide empirical data and other factual support for their views if possible.

VII. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA") [200] requires Federal agencies, in promulgating rules, to consider the impact of those rules on small entities. Section 603(a)[201] of the Administrative Procedure Act,[202] as amended by the RFA, generally requires the Commission to undertake a regulatory flexibility analysis of all proposed rules, or proposed rule amendments, to determine the impact of such rulemaking on "small entities." [203] Section 605(b) of the RFA states that this requirement shall not apply to any proposed rule or proposed rule amendment, which if adopted, would not "have a significant economic impact on a substantial number of small entities." [204]

Paragraph (a) of Rule 0–10 provides that for purposes of the Regulatory Flexibility Act, a small entity when used with reference to a "person'" other than an investment company means a person that, on the last day of its most recent fiscal year, had total assets of $5

[200] 5 U.S.C. 601 *et seq.*

[201] 5 U.S.C. 603(a).

[202] 5 U.S.C. 551 *et seq.*

[203] Although Section 601(b) of the RFA defines the term "small entity," the statute permits agencies to formulate their own definitions. The Commission has adopted definitions for the term small entity for the purposes of Commission rulemaking in accordance with the RFA. Those definitions, as relevant to this proposed rulemaking, are set forth in Rule 0–10, 17 CFR 240.0–10. *See* Securities Exchange Act Release No. 18451 (January 28, 1982), 47 FR 5215 (February 4, 1982) (File No. AS–305).

[204] *See* 5 U.S.C. 605(b).

million or less.[205] In reference to a broker-dealer, small entity means total capital of less than $500,000 and not affiliated with any person that is not a small business or small organization. Pursuant to Section 605(b), the Commission preliminarily believes that proposed Rule 13h–1 and Form 13H would not, if adopted, have a significant economic impact on a substantial number of small entities.

Proposed Rule 13h–1 and Form 13H would require self-identification by large traders, which is a term that, as discussed below, would implicate persons and entities with the resources and capital necessary to transact securities in substantial volumes relative to overall market volume in publicly traded securities. Specifically, the proposed rule defines "large trader" as a person that effects transactions in an "identifying activity level" of: (1) 2 million shares, or shares with a fair market value of $20 million, effected during a calendar day; or (2) 20 million shares, or shares with a fair market value of $200 million, effected during a calendar month.

The Commission anticipates that the types of entities that would identify as large traders would include, for example, broker-dealers, financial holding companies, investment advisers, and firms that trade for their own account. The Commission does not believe that any small entities would be engaged in the business of trading, over the course of the applicable measuring period, in a volume that approaches the threshold levels. Because the proposed rule focuses on parent companies and is designed to identify the largest market participants by volume or fair market value of trading, the Commission believes that a large trader that trades in such substantial volumes would necessarily have considerable assets (beyond the level of a small entity) to be able to conduct such trading.

In addition, proposed Rule 13h–1 would apply to registered broker-dealers that serve large trader customers. The Commission believes that, given the considerable volume in which a large trader as defined in the proposed rule would effect transactions, particularly in the case of high-frequency traders, registered broker-dealers servicing large trader customers or broker-dealers that are large traders themselves likely would be larger entities, with total capital greater than $500,000, that have systems and capacities capable of handling the trading associated with such accounts. Further, because the trading capacities of large traders will typically necessitate the services of sophisticated broker-dealers likely to be well capitalized entities or affiliated with well capitalized entities, the Commission does not believe that any broker-dealer that maintains large trader customers would be "not affiliated with any person that is not a small business or small organization" under Rule 0–10.

The Commission solicits comment as to whether proposed Rule 13h–1 and Form 13H would have a significant economic impact on a substantial number of small entities. The Commission requests that commenters describe the nature of any impact on small entities and provide empirical data to support the extent of such impact.

VIII. Consideration of Impact on the Economy

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996, or "SBREFA,"[206] the Commission must advise the OMB as to whether the proposed regulation constitutes a "major" rule. Under SBREFA, a rule is considered "major" where, if adopted, it results or is likely to result in: (1) An annual effect on the economy of $100 million or more (either in the form of an increase or a decrease); (2) a major increase in costs or prices for consumers or individual industries; or (3) significant adverse effect on competition, investment or innovation. If a rule is "major," its effectiveness will generally be delayed for 60 days pending Congressional review.

The Commission requests comment on the potential impact of the proposed rule on the economy on an annual basis, on the costs or prices for consumers or individual industries, and on competition, investment, or innovation. Commenters are requested to provide empirical data and other factual support for their views to the extent possible.

IX. Statutory Authority

Pursuant to the Exchange Act and particularly, sections 13(h) and 23(a) thereof, 15 U.S.C. 78m and 78w, the Commission proposes new Rule 13h–1 under the Exchange Act that would implement a large trader reporting system to provide the Commission with a mechanism to identify large traders, and the affiliates, accounts, and transactions of large traders.

List of Subjects in 17 CFR Parts 240 and 249

Reporting and recordkeeping requirements; Securities.

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for Part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78*l,* 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll,* 78mm, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–ll, and 7201 *et seq.;* and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

2. Add § 240.13h–1 to read as follows:

§ 240.13h–l Large trader reporting system.

(a) Definitions.—For purposes of this section:

(1) The term *large trader* means any person that directly or indirectly, including through other persons controlled by such person, exercises investment discretion over one or more accounts and effects transactions for the purchase or sale of any NMS security for or on behalf of such accounts, by or through one or more registered broker-dealers, in an aggregate amount equal to or greater than the identifying activity level.

(2) The term *person* has the same meaning as in Section 13(h)(8)(E) of the Securities Exchange Act of 1934.

(3) The term *control* (including the terms *controlling, controlled by* and *under common control with*) means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of securities, by contract, or otherwise. Any person that directly or indirectly has the right to vote or direct the vote of 25% or more of a class of voting securities of an entity or has the power to sell or direct the sale of 25% or more of a class of voting securities of such entity, or in the case of a partnership, has the right to receive, upon dissolution, or has contributed, 25% or more of the capital, is presumed to control that entity.

(4) The term *investment discretion* has the same meaning as in Section 3(a)(35) of the Securities Exchange Act of 1934. A person's employees who exercise investment discretion within the scope of their employment are deemed to do so on behalf of such person.

[205] 17 CFR 240.0–10(a). Investment companies are small entities when the investment company, together with other investment companies in the same group of related investment companies, has net assets of $50 million or less at the end of its most recent fiscal year. 17 CFR 270.0–10(a).

[206] Public Law 104–121, Title II, 110 Stat. 857 (1996) (codified in various sections of 5 U.S.C., 15 U.S.C. and as a note to 5 U.S.C. 601).

(5) The term *NMS security* has the meaning provided for in Rule 600(b)(46) under the Securities Exchange Act of 1934.

(6) The term *transaction or transactions* means all transactions in NMS securities, including exercises or assignments of option contracts, except for the following transactions:

(i) Any journal or bookkeeping entry made to an account in order to record or memorialize the receipt or delivery of funds or securities pursuant to the settlement of a transaction;

(ii) Any transaction that is part of an offering of securities by or on behalf of an issuer, or by an underwriter on behalf of an issuer, or an agent for an issuer, whether or not such offering is subject to registration under the Securities Act of 1933, provided, however, that this exemption shall not include an offering of securities effected through the facilities of a national securities exchange;

(iii) Any transaction that constitutes a gift;

(iv) Any transaction effected by a court appointed executor, administrator, or fiduciary pursuant to the distribution of a decedent's estate;

(v) Any transaction effected pursuant to a court order or judgment;

(vi) Any transaction effected pursuant to a rollover of qualified plan or trust assets subject to Section 402(a)(5) of the Internal Revenue Code; or

(vii) Any transaction between an employer and its employees effected pursuant to the award, allocation, sale, grant or exercise of a NMS security, option or other right to acquire securities at a pre-established price pursuant to a plan which is primarily for the purpose of an issuer benefit plan or compensatory arrangement.

(7) The term *identifying activity level* means: aggregate transactions in NMS securities that are equal to or greater than:

(i) During a calendar day, either two million shares or shares with a fair market value of $20 million; or

(ii) During a calendar month, either twenty million shares or shares with a fair market value of $200 million.

(8) The term *reporting activity level* means:

(i) Each transaction in NMS securities, effected in a single account during a calendar day, that is equal to or greater than 100 shares;

(ii) Any other transaction in NMS securities, effected in a single account during a calendar day, that a registered broker-dealer may deem appropriate; or

(iii) Such other amount that may be established by order of the Commission from time to time.

(9) The term *Unidentified Large Trader* means each person who has not complied with the identification requirements of paragraphs (b)(1) and (b)(2) of this section that a registered broker-dealer knows or has reason to know is a large trader. A registered broker-dealer has reason to know whether a person is a large trader based on the transactions in NMS securities effected by or through such broker-dealer.

(b) Identification requirements for large traders.

(1) Form 13H. Except as provided in paragraph (b)(3) of this section, each large trader shall file electronically Form 13H (17 CFR 249.327) with the Commission, in accordance with the instructions contained therein:

(i) Promptly after first effecting aggregate transactions, or after effecting aggregate transactions subsequent to becoming inactive pursuant to paragraph (b)(3) of this rule, equal to or greater than the identifying activity level;

(ii) Within 45 days after the end of each full calendar year; and

(iii) Promptly following the end of a calendar quarter in the event that any of the information contained in a Form 13H filing becomes inaccurate for any reason.

(2) Disclosure of large trader status. Each large trader shall disclose to the registered broker-dealers effecting transactions on its behalf its large trader identification number and each account to which it applies. Each large trader also shall disclose its large trader identification number to all others with whom it collectively exercises investment discretion.

(3) Filing requirement.

(i) Compliance by controlling person. A large trader shall not be required to separately comply with the requirements of paragraph (b) of this section if a person who controls the large trader complies with all of the requirements under paragraphs (b)(1), (b)(2), and (b)(4) of this section applicable to such large trader with respect to all of its accounts.

(ii) Compliance by controlled person. A large trader shall not be required to separately comply with the requirements of paragraph (b) if one or more persons controlled by such large trader collectively comply with all of the requirements under paragraphs (b)(1), (b)(2), and (b)(4) of this section applicable to such large trader with respect to all of its accounts.

(iii) Inactive status. A large trader that has not effected aggregate transactions at any time during the previous full calendar year in an amount equal to or greater than the identifying activity level at any time during the year shall become inactive upon filing a Form 13H and thereafter shall not be required to file Form 13H or disclose its large trader status unless and until its transactions again are equal to or greater than the identifying activity level. A large trader that has ceased operations may elect to become inactive by filing an amended Form 13H to indicate its terminated status.

(4) Other information. Upon request, a large trader must promptly provide additional descriptive or clarifying information that would allow the Commission to further identify the large trader and all accounts through which the large trader effects transactions.

(c) Aggregation.

(1) Transactions. For the purpose of determining whether a person is a large trader, the following shall apply:

(i) The volume or fair market value of transactions in equity securities and the volume or fair market value of the equity securities underlying transactions in options on equity securities, purchased and sold only, shall be aggregated;

(ii) The fair market value of transactions in options on a group or index of equity securities (or based on the value thereof), purchased and sold only, shall be aggregated; and

(iii) Under no circumstances shall a person be permitted to subtract, offset, or net purchase and sale transactions, in equity securities or option contracts, and among or within accounts, when aggregating the volume or fair market value of transactions effected under this rule.

(2) Accounts. Under no circumstances shall a person be permitted to disaggregate accounts to avoid the identification requirements of this rule.

(d) Recordkeeping requirements for broker and dealers.

(1) Generally. Every registered broker-dealer shall maintain records of all information required under paragraphs (d)(2) and (d)(3) of this section for all transactions effected directly or indirectly by or through:

(i) An account such broker-dealer carries for a large trader or an Unidentified Large Trader,

(ii) An account over which such broker-dealer exercises investment discretion together with a large trader or an Unidentified Large Trader, or (iii) if the broker-dealer is a large trader, any proprietary or other account over which such broker-dealer exercises investment discretion. Additionally, where a non-broker-dealer carries an account for a large trader or an Unidentified Large Trader, the broker-dealer effecting

transactions directly or indirectly for such large trader or Unidentified Large Trader shall maintain records of all of the information required under paragraphs (d)(2) and (d)(3) of this section for those transactions.

(2) Information. The information required to be maintained for all transactions shall include:

(i) The clearing house number of the entity maintaining the information and the clearing house numbers of the entities on the opposite side of the transaction;

(ii) Identifying symbol assigned to the security;

(iii) Date transaction was executed;

(iv) The number of shares or option contracts traded in each specific transaction; whether each transaction was a purchase, sale, or short sale; and, if an option contract, whether the transaction was a call or put option, an opening purchase or sale, a closing purchase or sale, or an exercise or assignment;

(v) Transaction price;

(vi) Account number;

(vii) Identity of the exchange or other market center where the transaction was executed.

(viii) A designation of whether the transaction was effected or caused to be effected for the account of a customer of such registered broker-dealer, or was a proprietary transaction effected or caused to be effected for the account of such broker-dealer;

(ix) If part or all of an account's transactions at the registered broker-dealer have been transferred or otherwise forwarded to one or more accounts at another registered broker-dealer, an identifier for this type of transaction; and if part or all of an account's transactions at the reporting broker-dealer have been transferred or otherwise received from one or more other registered broker-dealers, an identifier for this type of transaction;

(x) If part or all of an account's transactions at the reporting broker-dealer have been transferred or otherwise received from another account at the reporting broker-dealer, an identifier for this type of transaction; and if part or all of an account's transactions at the reporting broker-dealer have been transferred or otherwise forwarded to one or more other accounts at the reporting broker-dealer, an identifier for this type of transaction;

(xi) If a transaction was processed by a depository institution, the identifier assigned to the account by the depository institution;

(xii) The time that the transaction was executed; and

(xiii) The large trader identification number(s) associated with the account, unless the account is for an Unidentified Large Trader.

(3) Information relating to Unidentified Large Traders. With respect to transactions effected directly or indirectly by or through the account of an Unidentified Large Trader, the information required to be maintained for all transactions also shall include: such Unidentified Large Trader's name, address, date the account was opened, and tax identification number(s).

(4) Retention. The records and information required to be made and kept pursuant to the provisions of this rule shall be kept for such periods of time as provided in § 240.17a–4(b).

(5) Availability of information. The records and information required to be made and kept pursuant to the provisions of this rule shall be available on the morning after the day the transactions were effected (including Saturdays and holidays).

(e) Reporting requirements for brokers and dealers. Upon the request of the Commission, every registered broker-dealer who is itself a large trader, exercises investment discretion over an account together with a large trader or an Unidentified Large Trader, or carries an account for a large trader or an Unidentified Large Trader shall electronically report to the Commission, using the infrastructure supporting 17 CFR 240.17a–25, in machine-readable form and in accordance with instructions issued by the Commission, all information required under paragraphs (d)(2) and (d)(3) of this section for all transactions effected directly or indirectly by or through accounts carried by such broker-dealer for large traders and Unidentified Large Traders, equal to or greater than the reporting activity level. Additionally, where a non-broker-dealer carries an account for a large trader or an Unidentified Large Trader, the broker-dealer effecting such transactions directly or indirectly for a large trader shall electronically report using the infrastructure supporting 17 CFR 240.17a–25, in machine-readable form and in accordance with instructions issued by the Commission, all information required under paragraphs (d)(2) and (d)(3) of this section for such transactions equal to or greater than the reporting activity level. Such reports shall be submitted to the Commission before the close of business on the day specified in the request for such transaction information.

(f) Monitoring safe harbor. For the purposes of this rule, a registered broker-dealer who either is a large trader, exercises investment discretion over an account together with a large trader or an Unidentified Large Trader, carries an account for a large trader or an Unidentified Large Trader, or effects transactions directly or indirectly for a large trader where a non-broker-dealer carries the account shall not be deemed to know or have reason to know that a person is a large trader if it establishes policies and procedures reasonably designed to assure compliance with the identification requirements of this rule and does not have actual knowledge that a person is a large trader. Policies and procedures shall be deemed to satisfy this requirement if they include:

(1) Systems reasonably designed to detect and identify Unidentified Large Traders based upon transactions effected through an account or a group of accounts considering account name, tax identification number, or other information readily available to such broker-dealer; and

(2) Systems reasonably designed to inform Unidentified Large Traders of their obligations to file Form 13H and disclose large trader status under this rule.

(g) Exemptions. Upon written application or upon its own motion, the Commission may by order exempt, upon specified terms and conditions or for stated periods, any person or class of persons or any transaction or class of transactions from the provisions of this rule to the extent that such exemption is consistent with the purposes of the Securities Exchange Act.

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

3. The authority citation for Part 249 continues to read in part as follows:

Authority: 15 U.S.C. 78a, *et seq.* and 7201 *et seq.*; and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

4. Add § 249.327 to read as follows:

§ 249.327 Form 13H Information required on large traders pursuant to Section 13(h) of the Securities Exchange Act of 1934 and rules thereunder.

This form shall be used by persons that are large traders required to furnish identifying information to the Commission pursuant to section 13(h)(1) of the Securities Exchange Act of 1934 [15 U.S.C. 78m(h)(1)] and Rule 13h–1(b) thereunder [§ 240.13h–1(b) of this chapter].

Note: The text of Form 13H does not, and this amendment will not, appear in the Code of Federal Regulations.

BILLING CODE 8011–01–P

United States Securities and Exchange Commission
Washington, DC 20549
FORM 13H

Information Required Regarding Large Traders Pursuant To Section 13(h) of the Securities Exchange Act of 1934 and Rules Thereunder

[ ] INITIAL FILING: Date identifying transactions first effected (mm/dd/yyyy)_____

[ ] ANNUAL FILING: Calendar year ending _____
Items and schedules being updated_____

[ ] INTERIM FILING: Items and schedules being corrected_____

Effective date of each correction_____

[ ] INACTIVE STATUS: Date commencing inactive status (mm/dd/yyyy)_____

[ ] TERMINATION FILING: Effective date (mm/dd/yyyy)_____

[ ] REACTIVATED STATUS: Date identifying transactions first effected, post-inactive status (mm/dd/yyyy)_____

_____
Name of Large Trader

_____ _____
LTID Taxpayer Identification Number

_____
Business Address (Street, City, State, Zip)

Telephone No. (___) ___ - ____ Facsimile No. (___) ___ - ____ Email _____

The Form, schedules, and continuation sheets must be submitted by a natural person who either is the large trader or is a person authorized by the large trader to make this submission. If this authorized person is anyone other than the large trader named above, complete the item immediately below:

_____

Name and Title of Authorized Person (Last, First, Middle Initial)

_____

Relationship to Large Trader

_____

Business Address (Street, City, State, Zip)

Telephone No. (___) ___ - ____ Facsimile No. (___) ___ - ____ Email _____

ATTENTION

Intentional misstatements or omissions of facts constitute Federal Criminal Violations. See 18 U.S.C. 1001 and 15 U.S.C. 78ff(a). Intentional misstatements or omissions of facts may result in civil fines and other sanctions pursuant to the Securities Exchange Act of 1934.

The authorized person signing this form represents that all information contained in the form, schedules, and continuation sheets is true, correct, and complete. It is understood that all information whether contained in the form, schedules, or continuation sheets, is considered an integral part of this form and that any amendment represents that all unamended information remains true, correct, and complete.

Pursuant to the Securities Exchange Act of 1934, the undersigned has caused this form to be signed on its behalf in the city of _____ and the State of _____ on the _____ day of _____, 2____.

_____

Signature of Person Authorized to Submit this Form

FORM 13H
INFORMATION REQUIRED OF ALL LARGE TRADERS

ITEM 1. BUSINESSES OF THE LARGE TRADER (check as many as applicable)

[ ] Broker or Dealer
[ ] Investment Adviser
[ ] Insurance Company
[ ] Other Financial Institution
[ ] Commodity Pool Operator
[ ] Bank
[ ] Investment Company registered under the Investment Company Act
[ ] Pension Trustee
[ ] Holding Company
[ ] Government Securities Broker or Dealer
[ ] Municipal Securities Broker or Dealer
[ ] Futures Commission Merchant
[ ] Other (specify) _____
[ ] Hedge Fund or other Fund not registered under the Investment Company Act

ITEM 2. SECURITIES AND EXCHANGE COMMISSION REGISTRATION

Does the large trader, or any of its affiliates, file any forms with the Commission?

[ ] Yes [ ] No

If yes, specify the forms filed:

-- Use Continuation Sheets if Necessary --

Entity	Form(s) Filed	SEC File No. or CRD Number (if applicable)

ITEM 3. REGULATED ENTITIES

(a) Is the large trader or any of its affiliates registered with the CFTC as a "registered trader" pursuant to sections 4i and 9 of the Commodity Exchange Act?

[ ] Yes [ ] No

If yes, specify the registration number: _____

Is the large trader or any of its affiliates otherwise registered under the Commodity Exchange Act?

[ ] Yes [ ] No

If yes, specify the type of registration and number:

_____
_____
_____
_____

-- Use Continuation Sheets if Necessary --

(b) Is the large trader or any of its affiliates a bank holding company, national bank, state member bank of the Federal Reserve System, state non-member bank, savings bank or association, credit union, or foreign bank?

[ ] Yes [ ] No

If yes, identify each entity and its bank regulator:

_____ _____

_____ _____

(c) Is the large trader or any of its affiliates an insurance company?

[ ] Yes [ ] No

If yes, identify each entity and its insurance regulator:

_____ _____

_____ _____

(d) Is the large trader or any of its affiliates regulated by a foreign regulator?

[ ] Yes [ ] No

If yes, identify each entity and its foreign regulator(s):

_____ _____

_____ _____

ITEM 4. ORGANIZATION/INDIVIDUAL INFORMATION

Complete and submit Schedule 4 with this Form.

ITEM 5. LARGE TRADER AFFILIATES

Does the large trader have any affiliates that either exercise investment discretion over accounts that hold NMS securities or that beneficially own NMS securities?

[ ] Yes [ ] No

If yes, identify each affiliate and its relationship to the large trader below.

-- Use Continuation Sheets if Necessary --

Name	Business	Relationship to the Large Trader	LTID (if any)

ITEM 6. LIST OF ACCOUNTS OVER WHICH THE LARGE TRADER EXERCISES INVESTMENT DISCRETION

Complete and submit Schedule 6 with this Form.

SCHEDULE 4 TO FORM 13H

Page ___ of ___ Name of Large Trader _____ LTID _____

ITEM 1. LARGE TRADER ORGANIZATION (check as many as apply)

[ ] Self-Employed (for individuals)
[ ] Otherwise Employed (for individuals)
[ ] Trustee
[ ] Limited Liability Company
[ ] Partnership
[ ] Limited Partnership
[ ] Corporation
[ ] Other _____

Complete the following for each general partner, and in the case of limited partnerships, each limited partner that is the owner of more than a 10 percent financial interest in the accounts of the large trader:

-- Use Continuation Sheets if Necessary --

Name	Status (check one for each)	
_____	[ ] General Partner	[ ] Limited Partner
_____	[ ] General Partner	[ ] Limited Partner
_____	[ ] General Partner	[ ] Limited Partner
_____	[ ] General Partner	[ ] Limited Partner
_____	[ ] General Partner	[ ] Limited Partner
_____	[ ] General Partner	[ ] Limited Partner
_____	[ ] General Partner	[ ] Limited Partner

Complete the following for each executive officer, director, or trustee of a large trader corporation or trustee:

-- Use Continuation Sheets if Necessary --

Name	Status (check one for each)		
_____	[ ] Officer	[ ] Director	[ ] Trustee
_____	[ ] Officer	[ ] Director	[ ] Trustee
_____	[ ] Officer	[ ] Director	[ ] Trustee
_____	[ ] Officer	[ ] Director	[ ] Trustee
_____	[ ] Officer	[ ] Director	[ ] Trustee
_____	[ ] Officer	[ ] Director	[ ] Trustee
_____	[ ] Officer	[ ] Director	[ ] Trustee

ITEM 2. JURISDICTION IN WHICH THE LARGE TRADER ENTITY IS INCORPORATED OR ORGANIZED:

_____

(city, state)

ITEM 3. PRINCIPAL PLACE OF BUSINESS, IF DIFFERENT THAN INFORMATION PROVIDED ON THE COVER PAGE:

_____

(street, city, state, zip)

ITEM 4. DESCRIBE THE NATURE OF THE LARGE TRADER ENTITY'S BUSINESS

_____

SCHEDULE 6 TO FORM 13H
LIST OF ACCOUNTS OVER WHICH THE LARGE TRADER EXERCISES INVESTMENT DISCRETION

Page ___ of ___ Name of Large Trader _____ LTID _____

ITEM 1. DESIGNATE THE PERSON(S) TO CONTACT FOR INFORMATION REGARDING TRANSACTIONS EFFECTED THROUGH THE ACCOUNTS LISTED ON THIS SCHEDULE:

-- Use Continuation Sheets if Necessary --

_____
Name and Title of Designated Person

_____
Business Address (street, city, state, zip)

Telephone No. (___) ___ - ____ Facsimile No. (___) ___ - ____ Email_____

ITEM 2. IDENTIFICATION OF ACCOUNTS

-- Use Continuation Sheets if Necessary --

Broker-Dealer	Broker-Dealer Account Number	Account Name	LTIDs of Other Large Traders That Exercise Investment Discretion Over the Account

Large traders are required to disclose their LTID to their executing broker-dealers, including those listed on this schedule if applicable, and to comply with the identification requirements of Rule 13h-1.

INSTRUCTIONS FOR FORM 13H

A. Instructions for Form 13H—Cover Page.
Type of Filing. Indicate the type of Form 13H filing by checking the appropriate box at the top of the cover page to Form 13H.

If the filing is an "Initial Filing," indicate the first date on which the aggregate number of transactions effected reached the identifying activity level. An initial filing must include a manually signed Form 13H and all applicable Schedules.

If the filing is an "Annual Filing," indicate the ending date of the applicable calendar year and list the specific Items or Schedules that are amended or changed. If no information has changed, the large trader need only complete and sign the cover pages.

If the filing is an "Interim Filing" indicate the Items and Schedules being corrected and the effective date(s) of the corrections. "Interim Filings" must be filed promptly following the end of a calendar quarter in the event that any of the information contained in a Form 13H filing becomes inaccurate for any reason. A large trader must file an "Interim Filing," when, for example, it changes its name, business address, organization type (e.g., a large trader partnership reincorporates as a limited liability company, or regulatory status (e.g., a hedge fund registers under the Investment Company Act), or when it adds or closes brokerage accounts through which it trades. A large trader also must file an "Interim Filing" to reflect changes in affiliations (e.g., the large trader acquires or is acquired by another entity, an existing affiliate becomes a large trader) and joint account management (e.g., a large trader assumes sole management authority over an account that formerly was jointly managed with another large trader).

If the filing is for "Inactive Status," indicate the date that the large trader qualified for inactive status. A large trader shall become inactive, and exempt from the filing and self-identification requirements upon filing for inactive status until the identifying activity level is reached again.

If the filing is for "Reactivated Status," indicate the date that the aggregate number of transactions again reached or exceeded the identifying activity level.

All filings, other than the "Initial Filing," must indicate the applicable LTID assigned by the Commission and the Taxpayer Identification Number of the large trader. A large trader of inactive status that subsequently resumes activities requiring it to file Form 13H will retain the LTID initially assigned by the Commission and must include that LTID in its filing for "Reactivated Status."

B. Instructions for Form 13H—Items 1 through 5.
Item 1. Business of the Large Trader. Specify the type of business engaged in by the large trader by checking one or more of the listed business types. If the large trader is engaged in more than one type of business, check each type that applies to the large trader. If the large trader is an individual, check "Other" and specify the occupation of such individual. Large trader trust companies and thrift institutions must check "Other Financial Institution." The large trader must disclose in Item 1 only those businesses in which it is directly engaged; businesses

engaged in by affiliates of the large trader must be disclosed in Item 5.

Item 2. SEC Registrations. Indicate whether the large trader or any of its affiliates files forms with the Commission. If "Yes" is checked, identify the entity and the applicable form(s) filed.

SEC file numbers may be obtained through EDGAR, and CRD numbers may be obtained by calling the member services office of the Financial Industry Regulatory Authority (FINRA), during normal business hours.

Item 3. Regulated Entities.
Indicate whether the large trader or any of its affiliates is registered with the Commodity Futures Trading Commission as a "Reporting Trader" pursuant to Sections 4i and 9 of the Commodity Exchange Act, or otherwise is registered under the Commodity Exchange Act. If so, for each entity, specify the number and type of registration. Indicate whether the large trader or any of its affiliates is a bank holding company, national bank, state member bank of the Federal Reserve System, state non-member bank, savings bank or association, credit union, or foreign bank. If so, for each entity, identify the bank regulator. Indicate whether the large trader or any of its affiliates is an insurance company and, if so, identify each entity and its insurance regulator. Indicate whether the large trader or any of its affiliates is regulated by a foreign regulator. If so, for each entity, identify the foreign regulator(s). Unlike Item 1, Item 3 applies to the large trader and its affiliates.

Item 4 and Schedule 4. Type of Large Trader.
The large trader must fill out Schedule 4, which captures basic organizational information. The term "executive officer," used in Schedule 4, means "policy-making officer" and otherwise is interpreted in accordance with Rule 16a-1(f) under the Exchange Act. If the entity is incorporated in more than one jurisdiction, all jurisdictions must be identified. All terms, including "limited liability company," have the meanings ascribed to them in the United States.

Item 5. Large Trader Affiliates.
Indicate in Item 5a whether the large trader has any affiliates that either exercise investment discretion over accounts that hold or beneficially own NMS securities. For purposes of the Form, an "affiliate" is any person that, directly or indirectly, controls, is under common control with, or is controlled by the large trader. If "Yes" is checked, identify all affiliates, and describe their businesses and relationships to the large trader (e.g., direct subsidiary, general partner in Limited Partnership A). Disclose in Item 5b names and LTIDs of affiliated large traders (if any).

Item 6 and Schedule 6. List of Large Trader Accounts.
All large traders must fill out Schedule 6, which requires a large trader to list information about the accounts over which the large trader exercises investment discretion. Provide the following information: the name of the registered broker-dealer that holds the account, the account number, the account name, and, if another large trader also exercises investment discretion over an account, the LTID of that other large trader. Large traders may attach internally produced lists of accounts to the Schedule provided that such lists capture all required information in a format substantially similar to the Schedule. If the large trader does not know the LTID of the other large traders at the time of filing (e.g., when it files its "Initial Filing"), it must submit

promptly an "Interim Filing" upon learning those LTIDs. Provide also name(s) and contact information for the person(s) designated to provide information about the transactions effected through these accounts.

Qualifications of the Designated Contact Person. The large trader is required to designate a contact person for information regarding the accounts listed on the Schedule. The designated contact person must: (i) be a natural person; (ii) be employed by or otherwise affiliated with the large trader; (iii) be authorized by the large trader to respond promptly to any inquiries or requests from the Commission.

Requests for Information. The Commission may require the large trader to provide descriptive or clarifying information about the information disclosed in the Form 13H.

* * * * *

By the Commission.

Dated: April 14, 2010.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2010–9025 Filed 4–22–10; 8:45 am]

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